



Mandatory Reporting in Custodial Settings: A Checklist for OVW-Funded Victim Service Providers

INTRODUCTION

Serving survivors of sexual assault, dating and domestic violence, and stalking who are in custodial settings is critical work that can raise some privacy challenges. One of these challenges is knowing what needs to be reported, to an institution or otherwise, and by whom, in cases of sexual assault or harassment. This checklist is designed to help Office on Violence Against Women (OVW)-funded victim service providers (VSPs) to protect the confidentiality of survivors in custodial settings.

At least four different federal statutes inform VSPs' response to sexual assault in custodial settings.¹ VSPs are not required to report sexual assault under the Prison Rape Elimination Act (PREA) regulations; they may, however, be required to report sexual assault of certain survivors (e.g., minors, elders, people with disabilities) under their jurisdiction-specific mandatory reporting laws.

The PREA standards require responsible federal, state, local, corporate, or nonprofit agencies (e.g., departments of corrections) to have written policies that mandate zero tolerance of sexual abuse and sexual harassment in their facilities (e.g., prisons, jails, juvenile detention). The policies must outline the agency's approach to preventing, detecting, and responding to such conduct. As part of this zero-tolerance policy, agencies must require all *staff*² to report immediately an incident of sexual abuse³ or sexual harassment that occurred in a facility. *Medical and mental health practitioners*⁴ are similarly required to report unless otherwise precluded by law. The PREA standards do not require VSPs to report sexual abuse and sexual harassment in facilities.

Although not required by the PREA standards to report sexual abuse and harassment, VSPs may be required by other laws in their jurisdiction to report sexual abuse. These requirements, however, usually include sharing private information, with or without a

¹ These include the Prison Rape Elimination Act standards¹ (28 C.F.R. § 115.5 et seq.), the Sexual Abuse and Assault Prevention Standards for Immigration Detention Facilities and DHS Holding Facilities (6 C.F.R. § 115.5, et seq.), the Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children (45 C.F.R. § 411.5, et seq.), and the federal Violence Against Women Act confidentiality requirements (34 U.S.C. § 12291 and 28 C.F.R. § 90.4).

² 28 C.F.R. § 115 defines "staff" as "means employees."

³ See 28 C.F.R. § 115.6, "Definitions related to sexual abuse."

⁴ 28 C.F.R. § 115 defines "medical practitioner" as "a health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice." A "mental health practitioner" is defined in this same section as "a mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice."

survivor's permission. VSPs must be sure they are mandated to report, by statute, court order, or case law, before disclosing personally identifying information (if they don't have a Violence Against Women Act (VAWA)-compliant release of information from the person whose information would be shared). To release personally identifying information without a mandate, and without a release, violates VAWA.

The PREA standards allow people in custodial settings to report sexual abuse and harassment directly to a public or private entity or office that is not part of the agency where they are confined or detained.⁵ The entity or office must be able, per the standards, to immediately forward reports of sexual abuse and harassment they receive to agency officials. OVW-funded VSPs should never be one of these entities or offices if they are providing confidential services at the facility because the entities and offices are *required* to report. OVW-funded VSPs are not allowed to release personally identify information without a release of information; they may not, therefore, immediately forward the information. Furthermore, advocates may have jurisdiction-specific confidentiality and privilege requirements that would preclude them from immediately forwarding reports. Lastly, providing confidential services for people in custodial settings conflicts with receiving and forward reports on behalf of the facility that confines or detains them.

The Victim Rights Law Center developed this checklist to help you navigate mandatory reporting and protect survivors' confidentiality when working in custodial settings. Please contact our technical assistance team at TA@victimrights.org with any questions about this checklist or other privacy issues that come up with your work.

⁵ See 28 C.F.R. 115.51, et al.

CHECKLIST

- I know the mandatory reporting laws for any jurisdiction in which I work.
 - For child abuse and neglect
 - For elder abuse and neglect
 - For abuse and neglect of adults with disabilities
 - For any other relevant abuse, neglect, or injury
 (Please review VRLC's mandatory reporting flow chart to make sure you are fluent with all the necessary elements for making a report. You can request the flow chart by contacting us at TA@victimrights.org.)
- I know which staff and volunteers are mandatory reporters of each type of abuse or neglect for any jurisdiction in which I work.
- I know which of my community partners and referrals are mandatory reporters of abuse and neglect and which are not. I know that different individuals working at partner agencies may have different mandatory reporting responsibilities.
- I know who the PREA regulations requires to report sexual assault and harassment and who is not required to report.
- I tell every survivor I serve about our mandatory reporting obligations before they disclose information that could trigger a report; reporting is not a surprise for anyone I serve.
- I do not work for an entity or office that receives outside reports of sexual abuse and harassment on behalf of a corrections agency if I provide confidential services to survivors in custodial settings.
- The staff and volunteers with whom I work tell our executive director immediately when their reporting status changes (e.g., they received a new professional certification, or a licensure has expired).
- The staff where I work periodically review our organization's policies on reporting to make sure they align with current law in our jurisdiction. (After legislative sessions is a good time to do this.)
- When I make a report, as VAWA requires, I always:
 - Make reasonable attempts to provide notice to victims affected by the disclosure of information; and
 - Take steps necessary to protect the privacy and safety of the persons affected by the release of the information.
- My organization integrates our mandatory reporting responsibilities into staff and volunteer orientations and regular, ongoing training.

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