

# Prison Rape Elimination Act (PREA) Audit Report Community Confinement Facilities

Interim     Final

**Date of Interim Audit Report:** December 21, 2020

**Date of Final Audit Report:** April 2, 2021

## Auditor Information

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**Company Name:** KEA Correctional Consulting LLC

**Mailing Address:** P. O. Box 1872

**City, State, Zip:** Castle Rock, CO 80104

**Telephone:** 484-999-4167

**Date of Facility Visit:** September 10, 11, 2020

## Agency Information

**Name of Agency:** Boyd Andrew Community Services

**Governing Authority or Parent Agency (If Applicable):** SAA

**Physical Address:** 60 S. Last Chance Gulch

**City, State, Zip:** Helena MT 59601

**Mailing Address:** PO BOX 1153

**City, State, Zip:** Helena MT 59624

**The Agency Is:**

Military

Private for Profit

Private not for Profit

Municipal

County

State

Federal

**Agency Website with PREA Information:** <https://www.boydandrew.com/services/elkhorn/>

## Agency Chief Executive Officer

**Name:** Amy Tenney

**Email:** [atenney@boydandrew.com](mailto:atenney@boydandrew.com)

**Telephone:** 406-442-6572 ex 2006

## Agency-Wide PREA Coordinator

**Name:** Madisen Lindquist

**Email:** [mlindquist@boydandrew.com](mailto:mlindquist@boydandrew.com)

**Telephone:** 406-447-3268

<b>PREA Coordinator Reports to:</b> CEO	<b>Number of Compliance Managers who report to the PREA Coordinator:</b> 2
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## Facility Information

**Name of Facility:** Elkhorn Treatment Center

**Physical Address:** 1 Riverside Rd      **City, State, Zip:** Boulder MT 59632

**Mailing Address (if different from above):**  
SAA      **City, State, Zip:** SAA

<b>The Facility Is:</b>	<input type="checkbox"/> Military	<input type="checkbox"/> Private for Profit	<input checked="" type="checkbox"/> Private not for Profit
<input type="checkbox"/> Municipal	<input type="checkbox"/> County	<input type="checkbox"/> State	<input type="checkbox"/> Federal

**Facility Website with PREA Information:** <https://www.boydandrew.com/services/elkhorn/>

**Has the facility been accredited within the past 3 years?**     Yes     No

**If the facility has been accredited within the past 3 years, select the accrediting organization(s) – select all that apply (N/A if the facility has not been accredited within the past 3 years):**

ACA  
 NCCHC  
 CALEA  
 Other (please name or describe:  N/A

**If the facility has completed any internal or external audits other than those that resulted in accreditation, please describe:**  
NA

## Facility Director

**Name:** Dan Krause

**Email:** [dkrause@boydandrew.com](mailto:dkrause@boydandrew.com)      **Telephone:** 406-447-3266

## Facility PREA Compliance Manager

**Name:** Dan Krause

**Email:** [dkrause@boydandrew.com](mailto:dkrause@boydandrew.com)      **Telephone:** 406-447-3266

## Facility Health Service Administrator N/A

**Name:** Penny Uylaki

**Email:** [nur6@boydandrew.com](mailto:nur6@boydandrew.com)      **Telephone:** 406-447-5300

Facility Characteristics	
Designated Facility Capacity:	50
Current Population of Facility:	38
Average daily population for the past 12 months:	45.8
Has the facility been over capacity at any point in the past 12 months?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Which population(s) does the facility hold?	<input checked="" type="checkbox"/> Females <input type="checkbox"/> Males <input type="checkbox"/> Both Females and Males
Age range of population:	22.96 to 58.54
Average length of stay or time under supervision	165.79 days
Facility security levels/resident custody levels	minimum security
Number of residents admitted to facility during the past 12 months	60
Number of residents admitted to facility during the past 12 months whose length of stay in the facility was for 72 hours or more:	60
Number of residents admitted to facility during the past 12 months whose length of stay in the facility was for 30 days or more:	54
Does the audited facility hold residents for one or more other agencies (e.g. a State correctional agency, U.S. Marshals Service, Bureau of Prisons, U.S. Immigration and Customs Enforcement)?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Select all other agencies for which the audited facility holds residents: Select all that apply (N/A if the audited facility does not hold residents for any other agency or agencies):	<input type="checkbox"/> Federal Bureau of Prisons <input type="checkbox"/> U.S. Marshals Service <input type="checkbox"/> U.S. Immigration and Customs Enforcement <input type="checkbox"/> Bureau of Indian Affairs <input type="checkbox"/> U.S. Military branch <input checked="" type="checkbox"/> State or Territorial correctional agency <input type="checkbox"/> County correctional or detention agency <input type="checkbox"/> Judicial district correctional or detention facility <input type="checkbox"/> City or municipal correctional or detention facility (e.g. police lock-up or city jail) <input type="checkbox"/> Private corrections or detention provider <input checked="" type="checkbox"/> : MT Department of Public Health and Human Services (DPHHS) <input type="checkbox"/> N/A
Number of staff currently employed by the facility who may have contact with residents:	31
Number of staff hired by the facility during the past 12 months who may have contact with residents:	14
Number of contracts in the past 12 months for services with contractors who may have contact with residents:	0
Number of individual contractors who have contact with residents, currently authorized to enter the facility:	4- dentist, assistants and hairdresser

<b>Number of volunteers who have contact with residents, currently authorized to enter the facility:</b>	32
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**Physical Plant**

**Number of buildings:**

Auditors should count all buildings that are part of the facility, whether residents are formally allowed to enter them or not. In situations where temporary structures have been erected (e.g., tents) the auditor should use their discretion to determine whether to include the structure in the overall count of buildings. As a general rule, if a temporary structure is regularly or routinely used to hold or house residents, or if the temporary structure is used to house or support operational functions for more than a short period of time (e.g., an emergency situation), it should be included in the overall count of buildings.

1

**Number of resident housing units:**

Enter 0 if the facility does not have discrete housing units. DOJ PREA Working Group FAQ on the definition of a housing unit: How is a "housing unit" defined for the purposes of the PREA Standards? The question has been raised in particular as it relates to facilities that have adjacent or interconnected units. The most common concept of a housing unit is architectural. The generally agreed-upon definition is a space that is enclosed by physical barriers accessed through one or more doors of various types, including commercial-grade swing doors, steel sliding doors, interlocking sally port doors, etc. In addition to the primary entrance and exit, additional doors are often included to meet life safety codes. The unit contains sleeping space, sanitary facilities (including toilets, lavatories, and showers), and a dayroom or leisure space in differing configurations. Many facilities are designed with modules or pods clustered around a control room. This multiple-pod design provides the facility with certain staff efficiencies and economies of scale. At the same time, the design affords the flexibility to separately house residents of differing security levels, or who are grouped by some other operational or service scheme. Generally, the control room is enclosed by security glass, and in some cases, this allows residents to see into neighboring pods. However, observation from one unit to another is usually limited by angled site lines. In some cases, the facility has prevented this entirely by installing one-way glass. Both the architectural design and functional use of these multiple pods indicate that they are managed as distinct housing units.

0

**Number of single resident cells, rooms, or other enclosures:**

5

**Number of multiple occupancy cells, rooms, or other enclosures:**

22

**Number of open bay/dorm housing units:**

0

**Does the facility have a video monitoring system, electronic surveillance system, or other monitoring technology (e.g. cameras, etc.)?**

Yes     No

**Has the facility installed or updated a video monitoring system, electronic surveillance system, or other monitoring technology in the past 12 months?**

Yes     No

**Medical and Mental Health Services and Forensic Medical Exams**

**Are medical services provided on-site?**     Yes     No

**Are mental health services provided on-site?**     Yes     No

<p><b>Where are sexual assault forensic medical exams provided? Select all that apply.</b></p>	<p><input type="checkbox"/> On-site  <input checked="" type="checkbox"/> Local hospital/clinic  <input type="checkbox"/> Rape Crisis Center  <input type="checkbox"/> Other (please name or describe: _____)</p>
<p><b>Investigations</b></p>	
<p><b>Criminal Investigations</b></p>	
<p><b>Number of investigators employed by the agency and/or facility who are responsible for conducting CRIMINAL investigations into allegations of sexual abuse or sexual harassment:</b></p>	<p>0</p>
<p><b>When the facility received allegations of sexual abuse or sexual harassment (whether staff-on-resident or resident-on-resident), CRIMINAL INVESTIGATIONS are conducted by: Select all that apply.</b></p>	<p><input type="checkbox"/> Facility investigators  <input type="checkbox"/> Agency investigators  <input checked="" type="checkbox"/> An external investigative entity</p>
<p><b>Select all external entities responsible for CRIMINAL INVESTIGATIONS: Select all that apply (N/A if no external entities are responsible for criminal investigations)</b></p>	<p><input type="checkbox"/> Local police department  <input checked="" type="checkbox"/> Local sheriff's department  <input type="checkbox"/> State police  <input type="checkbox"/> A U.S. Department of Justice component  <input type="checkbox"/> Other (please name or describe: <input type="checkbox"/> N/A</p>
<p><b>Administrative Investigations</b></p>	
<p><b>Number of investigators employed by the agency and/or facility who are responsible for conducting ADMINISTRATIVE investigations into allegations of sexual abuse or sexual harassment?</b></p>	<p>3</p>
<p><b>When the facility receives allegations of sexual abuse or sexual harassment (whether staff-on-resident or resident-on-resident), ADMINISTRATIVE INVESTIGATIONS are conducted by: Select all that apply</b></p>	<p><input checked="" type="checkbox"/> Facility investigators  <input type="checkbox"/> Agency investigators  <input type="checkbox"/> An external investigative entity</p>
<p><b>Select all external entities responsible for ADMINISTRATIVE INVESTIGATIONS: Select all that apply (N/A if no external entities are responsible for administrative investigations)</b></p>	<p><input type="checkbox"/> Local police department  <input type="checkbox"/> Local sheriff's department  <input type="checkbox"/> State police  <input type="checkbox"/> A U.S. Department of Justice component  <input type="checkbox"/> Other (please name or describe: _____)  <input checked="" type="checkbox"/> N/A</p>

# Audit Findings

## Audit Narrative (including Audit Methodology)

The Prison Rape Elimination Act (PREA) on-site audit of the Elkhorn Treatment Center (ETC) was conducted September 10, 11, 2020 by K. E. Arnold from Castle Rock, CO, a United States Department of Justice (USDOJ) Certified PREA Auditor for both juvenile and adult facilities. Pre-audit preparation included review of all materials and self reports electronically uploaded to an encrypted thumb drive and mailed to the auditor's P.O. address via special mail service. The thumb drive was securely packaged in such a manner as to alert to envelope tampering.

The documentation reviewed included, but was not limited to, agency and facility policies, staff training slides, completed forms regarding both staff and resident training, Memorandums of Understanding (MOUs), organizational chart(s), the PREA video and ETC PREA Handbook presented to offenders, offender education materials, photographs of PREA related materials (e.g. posters, etc.), executed Human Resources documents associated with relevant PREA standard(s), and staff training certifications. This review prompted several questions and informational needs that were addressed with the Boyd Andrew Community Services (BACS) PREA Coordinator (PC). The majority of informational needs were addressed pursuant to telephonic contact and receipt of scanned documents.

Pursuant to contact with the Executive Director at Safe Space, the auditor has determined no ETC sexual abuse allegations were received between the dates of September, 2018 and September, 2020. Safe Space Victim Advocates (VAs) receive training pursuant to the Office of Victims of Crime, a federal agency.

At approximately 8:00AM on September 10, 2020, the auditor met with the ETC Deputy Director (DD) and the BACS PC. The auditor provided an overview of the audit process and advised all attendees the same would be facilitated in the least disruptive manner possible. Additionally, the auditor advised attendees of the tentative schedule(s) for the conduct of the audit.

The auditor notes the resident count at ETC on the date of September 10, 2020 was 38.

During the on-site audit, the auditor was provided a private office and subsequently a conference room from which to review documents and facilitate confidential interviews with staff and residents. The auditor randomly selected (from a resident roster provided by the BACS PREA Coordinator) and interviewed 12 residents (with varying lengths of stay) pursuant to the Random Sample of Residents and/or Specialty Questionnaires. Resident interviewees represented three housing unit wings at ETC.

According to the BACS Chief Operating Officer (COO) and BACS PC, there were no resident(s) confined in the facility at the time of the on-site audit who reported a sexual abuse incident during the audit period. Similarly, there were no resident(s) confined in the facility during the on-site audit who were Limited-English Proficient (LEP), transgender or intersex residents, or residents who reported historical institutional sexual abuse.

It is noted six of the 12 interviewees were identified as random resident interviewees and they were generally questioned regarding their knowledge of a variety of PREA protections/their knowledge of reporting mechanisms available to residents for reporting sexual abuse and sexual harassment. Overall, random resident interviewees presented knowledge of PREA policies and practices. Of note, the auditor inquired as to the basis for their knowledge and random residents advised they had received training by WTC staff however, they have also received training at other Montana Department of Corrections facilities and/or other Pre-Release Centers, treatment facilities, etc. throughout the State of Montana. Additionally, all 12 resident interviewees advised they feel sexually safe at ETC.

Twelve random staff selected by the auditor from a staff roster provided by the BACS PC, were interviewed. The Random Sample of Staff Interview Guide was administered to this sample group of interviewees, comprising questions regarding PREA training and overall knowledge of the agency's zero tolerance policy, reporting mechanisms available to residents and staff, the response protocols when a resident alleges sexual abuse, and First Responder duties.

The following specialty staff questionnaires were utilized during this review including:

Agency Head  
COO  
BACS PC  
Designated Staff Charged with Monitoring Retaliation  
Incident Review Team  
Human Resources  
Investigator (2) (1 administrative investigator and 1 Jefferson County Sheriff Department- criminal investigator)  
SAFE/SANE  
Intake  
Staff Who Perform Screening for Risk of Victimization and Abusiveness (2)  
Security and Non-Security Staff Who Have Acted as First Responders (2)  
Non-medical Staff Involved in Cross-Gender Strip or Visual Searches  
Medical  
Mental Health  
Contractor/Volunteer

In view of the relatively small number of staff assigned to the facility and staff days-off, three of the random staff interviewees were interviewed pursuant to the random staff and non-security staff responder, intake, and non-medical staff who perform cross-gender strip search questionnaires. By virtue of organizational structure and assignment of PREA responsibilities, the COO and the BACS PC were interviewed pursuant to three questionnaires apiece.

As a contract administrator is not employed by BACS, that interview was not conducted.

It is noted BACS is the umbrella company for ETC.

The following resident interviews were facilitated in addition to the random resident interviews. The interview sets are noted below:

LB [lesbian] (2)  
Disabled (one low reading and two cognitively impaired)  
Reported prior community sexual abuse (1)

The auditor reviewed 11 staff and one contractor training records, 11 resident files, 11 staff HR files, two PREA investigative files, and other records reflected throughout the following narrative prior to the audit, during the audit, and subsequent to completion of the same.

On September 10, 2020, the auditor was processed into the facility at the Control Center. As mentioned in the narrative for 115.211, a PREA Compliance Acknowledgment is issued to all contractors, visitors, and volunteers each time they enter ETC. Potential entrants (inclusive of the auditor) are instructed to read this Acknowledgment and affix their signature to the same. The Acknowledgment addresses definitions of sexual abuse, sexual harassment, and voyeurism and mandatory investigation of anyone who has allegedly committed such an act, inclusive of prosecution in those instances wherein the evidentiary threshold is met for a criminal act.

Additionally, the same includes a certification of understanding of the requirements of PREA as scripted in the document, verbiage regarding zero tolerance towards any form of sexual abuse and sexual ha-

rassment, and verbiage regarding immediate reporting of any knowledge of sexual abuse or sexual harassment. This document serves as a constant PREA reminder to affected individuals entering the confines of ETC. When signing this document, contractors, vendors, service providers, volunteers, and visitors at ETC are likewise certifying they have familiarized themselves with and understand PREA, agreeing to abide by this law.

From 8:30AM to 9:15AM on the same date, the ETC DD and the auditor toured the entire facility. The auditor observed, among other features, the facility configuration, location of cameras, staff supervision of offenders, wing layout (inclusive of shower/toilet areas), placement of PREA posters and informational resources, security monitoring, and offender programming.

ETC is comprised of one building with an administrative area located outside a semi-secure control center to the resident side. Three linear female housing unit wings (A, B, and C) are located with two wings horizontally oriented in comparison to a General Purpose (programming, educational, eating area) and one oriented vertical to the same area. The control center is open (half wall) on the entry side of the facility. Staff offices and small rooms are located in one wing. Residents are not authorized to be in the control center and the same is manned on a 24/7 basis.

Throughout the tour, the auditor observed numerous PREA posters displayed in housing wings, program areas, Food Service, staff offices/gathering places, and the General Purpose area. Clearly, residents have access to continual education regarding PREA processes. Additionally, PREA Audit Notices were generously posted throughout the facility.

In total, there are 48 cameras. There is an 85-day video storage period for these cameras.

Cameras are strategically located to cover resident and staff entrance and egress from the facility and most points throughout the same. The auditor's observation of coverage reveals the resident privacy in rooms and bathrooms is preserved. Outside entrances appear to be adequately covered with surveillance.

The Intake Area is electronically surveilled. With the door closed to the bathroom area, observation into the area is precluded.

While the camera coverage captures much of each wing, clarity decreases somewhat as one traverses through the hallway. Any camera addition considerations should include the back of each wing.

The auditor noted one mop closet and "blind spot" area in Food Service warrants camera consideration. The auditor advised the DD regarding the same. It is noted staff are with residents whenever they are in Food Service.

Meals are produced by MDOC (quick chill) and transported to ETC.

While bathrooms and laundry are in the line of site of both cameras and staff, there are no cameras in bathrooms. Likewise, there are no cameras in resident rooms.

Bathrooms are comprised of six shower stalls, inclusive of one handicap shower, privacy ensured by the use of shower curtains. Reportedly, male staff don't enter bathrooms during count. They ask who is in the shower/bathroom.

It is noted resident room doors, bathroom doors, Medical, and mop closet doors are solid. There are windows in each staff office door.

There is an Emergency Grievance Box located in the building. Reportedly, the Emergency Grievance Box and location of the same are addressed during Orientation. There is an ample supply of Emergency Grievance forms, as well as, Third Party Reporting forms, as observed by the auditor.

## **Facility Characteristics**

ETC is a 47-bed residential treatment-based correctional facility serving adult women who must be a resident of Montana. The facility is an alternative to traditional incarceration offering female offenders a therapeutic milieu focused on chemical dependency treatment, management of acute and chronic mental illnesses, job development, and education.

ETC serves 42 females under the custody of the Montana Department of Corrections, and 5 other females pursuant to a contract with the Department of Public Health and Human Services (DPHHS).

Services are as follows:

### **Therapeutic milieu**

Recovery from chemical dependency requires change of the whole person – psychologically, socially, and behaviorally. Assistance with the transformation through supporting and teaching a resident healthy interactions, modeling, leadership, membership, responsibility, and honesty is provided at ETC.

### **Educational programming.**

A transition to a better future requires new approaches. Education and instruction in life skills and job preparation with a long-term focus are provided to residents at ETC. Assistance from the Helena Adult Learning Center and CTI (Career Training Institute) includes completion of the GED. Other educational opportunities include computer literacy.

### **Treatment programming.**

A diverse staff delivers a myriad of treatment programs to facilitate a healthy transition to the community. Programs include parenting, job readiness, co-occurring groups, anger management group, loss and grief groups, chemical dependency groups, Relapse Prevention, Victim Impact Panel, Creative Writing, Yoga, Zumba, money management, and Medicine Wheel. Expertise in chemical dependency, job development, and care management enable us to respond to resident needs. Two full time mental health therapists add to ETC capability to further the emotional and psychological wellness of residents.

### **Connectedness.**

The appeal of ETC is that it assists residents with progressive transition back to a satisfying life and to reestablish connections with family and friends. The pleasant environment with easy access, parking, and contemporary setting encourages a positive return to normalcy. Supervised visitation is offered every Saturday and Sunday, which includes a family education component prior to each visit.

## Summary of Audit Findings

### Standards Exceeded

**Number of Standards Exceeded:** 3  
**List of Standards Exceeded:** 115.231, 115.232, 115.273

### Standards Met

**Number of Standards Met:** 38

### Standards Not Met

**Number of Standards Not Met:** 0  
**List of Standards Not Met:**

## PREVENTION PLANNING

### Standard 115.211: Zero tolerance of sexual abuse and sexual harassment; PREA coordinator

All Yes/No Questions Must Be Answered by The Auditor to Complete the Report

#### 115.211 (a)

- Does the agency have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment?  Yes  No
- Does the written policy outline the agency's approach to preventing, detecting, and responding to sexual abuse and sexual harassment?  Yes  No

#### 115.211 (b)

- Has the agency employed or designated an agency-wide PREA Coordinator?  Yes  No
- Is the PREA Coordinator position in the upper-level of the agency hierarchy?  Yes  No
- Does the PREA Coordinator have sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities?  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the Chief Operations Officer (COO) self reports the agency has a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment in facilities it operates directly or under contract. The COO further self reports the facility has a written policy outlining how it will implement the agency's approach to preventing, detecting, and responding to sexual abuse and sexual harassment.

This policy includes definitions of prohibited behaviors regarding sexual abuse and sexual harassment. Additionally, this policy includes sanctions for those found to have participated in prohibited behaviors. Finally, this policy includes a description of agency strategies and responses to reduce and prevent sexual abuse and sexual harassment of residents.

ETC Policy 6.1.1 entitled PREA General Requirements, pages 1-7, addresses 115.211(a). The auditor finds this policy to be quite comprehensive and clearly commensurate with provision expectations.

Additionally, ETC Policy 6.1.9 entitled PREA Findings, Sanctions, and False Reporting, pages 1-3, sections II(C), (D), (E) and (H) address 115.211(a).

Pursuant to the PAQ, the COO self reports the agency employs or designates an upper-level, agency-wide PREA Coordinator (BACS PC). The COO further self reports the BACS PC has sufficient time and authority

to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its community confinement facilities. The position of the BACS PC is in the agency's organizational structure.

The auditor has reviewed the ETC Organizational Chart and finds the Boyd Andrew Community Services (BACS) PC falls directly under the supervision of the BACS Chief Executive Officer (CEO) and the COO also serves as the ETC PREA Manager (ETC PM). Pursuant to interview with the BACS PC, the auditor learned she does feel she has sufficient time to manage all of her PREA related responsibilities. Her primary designation as PC and Programs Compliance Officer (PCO) entails walking and talking with residents and staff at Elkhorn Treatment Center (ETC). She facilitates all staff training at ETC. The PC is hands-on with all things PREA. Additionally, she tracks all staff and resident training.

In regard to making changes to the PREA program, she does make changes to PREA policies, if warranted. If any monetary expenditures are necessary, the PC addresses the same with the COO and BACS CEO.

In view of the above, the auditor finds ETC substantially compliant with 115.211.

## Standard 115.212: Contracting with other entities for the confinement of residents

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.212 (a)

- If this agency is public and it contracts for the confinement of its residents with private agencies or other entities including other government agencies, has the agency included the entity's obligation to comply with the PREA standards in any new contract or contract renewal signed on or after August 20, 2012? (N/A if the agency does not contract with private agencies or other entities for the confinement of residents.)  Yes  No  NA

#### 115.212 (b)

- Does any new contract or contract renewal signed on or after August 20, 2012 provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards? (N/A if the agency does not contract with private agencies or other entities for the confinement of residents.)  Yes  No  NA

#### 115.212 (c)

- If the agency has entered into a contract with an entity that fails to comply with the PREA standards, did the agency do so only in emergency circumstances after making all reasonable attempts to find a PREA compliant private agency or other entity to confine residents? (N/A if the agency has not entered into a contract with an entity that fails to comply with the PREA standards.)  Yes  No  NA
- In such a case, does the agency document its unsuccessful attempts to find an entity in compliance with the standards? (N/A if the agency has not entered into a contract with an entity that fails to comply with the PREA standards.)  Yes  No  NA

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)

**Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)

**Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to a memo dated April 3, 2017, authored by the COO, the ETC does not contract with other agencies for the confinement of residents. Accordingly, the auditor has determined 115.212 is not applicable to ETC.

However, since there are no deviations from standard requirements, the auditor finds ETC substantially compliant with 115.212.

## Standard 115.213: Supervision and monitoring

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.213 (a)

- Does the facility have a documented staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring, to protect residents against sexual abuse?  
 Yes  No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: The physical layout of each facility?  Yes  No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: The composition of the resident population?  Yes  No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: The prevalence of substantiated and unsubstantiated incidents of sexual abuse?  Yes  No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: Any other relevant factors?  Yes  No

#### 115.213 (b)

- In circumstances where the staffing plan is not complied with, does the facility document and justify all deviations from the plan? (N/A if no deviations from staffing plan.)  
 Yes  No  NA

#### 115.213 (c)

- In the past 12 months, has the facility assessed, determined, and documented whether adjustments are needed to the staffing plan established pursuant to paragraph (a) of this section?  Yes  No
- In the past 12 months, has the facility assessed, determined, and documented whether adjustments are needed to prevailing staffing patterns?  Yes  No
- In the past 12 months, has the facility assessed, determined, and documented whether adjustments are needed to the facility's deployment of video monitoring systems and other monitoring technologies?  Yes  No

- In the past 12 months, has the facility assessed, determined, and documented whether adjustments are needed to the resources the facility has available to commit to ensure adequate staffing levels? X  Yes  No

### **Auditor Overall Compliance Determination**

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- X  **Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports for each facility, the agency develops and documents a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring to protect residents against sexual abuse. Since the last PREA audit, the average daily number of residents has been 37.9 and the average daily number of residents upon which the staffing plan is predicated is 50.

ETC Policy 6.1.1 entitled PREA General Requirements, page 6, section Procedural Guidelines, A(5) addresses 115.213(a).

The auditor reviewed the 2018 and 2019 Staffing Plans signed by the COO, finding the same to be in compliance with the requirements of 115.213(a). The auditor notes the 2020 Staffing Plan is not yet due as of the dates of the on-site audit.

Pursuant to the COO, the facility does have a staffing plan. Adequate staffing levels and video monitoring are considered to protect residents against sexual abuse. Given the mission, contractual obligations, facility configuration, and complement, staffing is adequate. Contractually, two security staff are required per shift however, the general practice is to maintain three security staff per shift.

Video monitoring is considered as part of the staffing plan. Forty-eight cameras are positioned inside and outside the facility.

The staffing plan is documented electronically and shared between the COO and Deputy Director (DD). A hard copy of the plan is maintained in the COO's Office.

When assessing adequate staffing levels and the need for video monitoring, the following issues are considered in staffing plan development;

- a. The physical layout of each facility- The combination of staff and video monitoring must capture the linear configuration of the wings, the line of sight, and blind spots. Cameras are positioned to capture resident activity in all areas accessible to them. All wings can be observed in real time by staff assigned to the Control Center (CC). The CC is manned on a 24/7 basis.
- b. The composition of the resident population- Security Threat Groups (STG) count, LGBTI population, and racial balances are considerations however, none are problematic.
- c. The prevalence of substantiated and unsubstantiated incidents of sexual abuse- There was two allegations in one year and one was unfounded. No trends have been observed or noted. PREA appears to be working based on training and resident comfort in terms of reporting.
- d. Any other relevant factors- There are no other relevant factors.

In regard to monitoring staffing plan compliance, the COO discusses the same with the security coordinator and clinical director. The COO receives a daily report regarding roster vacancies or potential vacancies and solutions are subsequently strategized to ensure the vacancy is filled. There are no unfilled roster vacancies.

In response to the aforementioned staffing plan considerations, the BACS PC asserts she assesses the frequency of sexual abuse/harassment reports and any correlation with staffing. Are there specific areas requiring additional staffing attention? Assessment of blind spots, if any, and a need to modify operations or resident access to specific areas is also considered.

Similarly, the PC assesses whether sexual abuse/harassment reports are originating from specific ethnic groups, the LGBTI population, sex offender population, and STGs. Do we need to realign staff supervision responsibilities, place specific staff in specific areas, or facilitate reassignment of resident rooms?

According to the PC, there are no other considerations.

Pursuant to the PAQ, the COO self reports that each time the staffing plan is not complied with, the facility documents and justifies all deviations from the staffing plan. The COO further self reports 1. Employee Sick Leave; and 2. Staff requested time off are the two most common reasons for deviating from the staffing plan during the last 12 months.

ETC Policy 6.1.1 entitled PREA General Requirements, page 6, section Procedural Guidelines, A(6) addresses 115.213(b).

The auditor's review of five random 2019 BACS/ETC Deviation Forms reveals substantial compliance with 115.213(b). Based on the auditor's limited review, it appears there are no deviations from the staffing plan as positions are always filled by either staff from another discipline, overtime, etc.

The COO asserts all staffing plan non-compliance issues are documented. During the last 12 months, there has been no non-compliance issues as security posts are always filled. If a vacancy occurs, the same is documented on a Deviation Form, complete with a justification.

Pursuant to the PAQ, the COO self reports at least once every year, the facility reviews the staffing plan to see whether adjustments are needed to:

The staffing plan;  
Prevailing staffing patterns;  
The deployment of video monitoring systems and other monitoring technologies; or  
The allocation of facility/agency resources to commit to the staffing plan to ensure compliance with the same.

ETC Policy 6.1.1 entitled PREA General Requirements, page 6, section Procedural Guidelines, A(7) addresses 115.213(c).

Pursuant to the auditor's review of the 2018 and 2019 Staffing Plans, it is apparent that the requirements of this provision are met. All of the above issues have been adequately addressed.

The BACS PC asserts she attends ETC staffing plan meetings and offers input accordingly.

In view of the above, the auditor finds ETC substantially compliant with 115.213.

## **Standard 115.215: Limits to cross-gender viewing and searches**

### **All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

### 115.215 (a)

- Does the facility always refrain from conducting any cross-gender strip or cross-gender visual body cavity searches, except in exigent circumstances or by medical practitioners?  
X  Yes  No

### 115.215 (b)

- Does the facility always refrain from conducting cross-gender pat-down searches of female residents, except in exigent circumstances? (N/A if the facility does not have female residents.)  
X  Yes  No  NA
- Does the facility always refrain from restricting female residents' access to regularly available programming or other outside opportunities in order to comply with this provision? (N/A if the facility does not have female residents.) X  Yes  No  NA

### 115.215 (c)

- Does the facility document all cross-gender strip searches and cross-gender visual body cavity searches? X  Yes  No
- Does the facility document all cross-gender pat-down searches of female residents? (N/A if the facility does not have female residents). X  Yes  No  NA

### 115.215 (d)

- Does the facility have policies that enable residents to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks? X  Yes  No
- Does the facility have procedures that enables residents to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks? X  Yes  No
- Does the facility require staff of the opposite gender to announce their presence when entering an area where residents are likely to be showering, performing bodily functions, or changing clothing? X  Yes  No

### 115.215 (e)

- Does the facility always refrain from searching or physically examining transgender or intersex residents for the sole purpose of determining the resident's genital status? X  Yes  No
- If a resident's genital status is unknown, does the facility determine genital status during conversations with the resident, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner? X  Yes  No

### 115.215 (f)

- Does the facility/agency train security staff in how to conduct cross-gender pat down searches in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs? X  Yes  No
- Does the facility/agency train security staff in how to conduct searches of transgender and inter-sex residents in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs? X  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- X  **Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the facility does not conduct cross-gender strip or cross-gender visual body cavity searches of residents. However, the following policy clearly reflects the same can be conducted pursuant to exigent circumstances or when conducted by a medical professional. The COO further self reports that zero cross-gender strip or cross-gender visual body cavity searches of residents were conducted during the last 12 months.

ETC Policy 6.1.1 entitled PREA General Requirements, page 6, section Procedural Guidelines, A(8) addresses 115.215(a).

The non-medical staff (who may be involved in cross-gender strip or visual searches) interviewee asserts a resident suspected (reasonable suspicion) of being in possession of a weapon constitutes exigent circumstances for facilitation of a cross-gender strip or visual body cavity search however, the same requires COO approval. Of course, the same would only be facilitated in the absence of female staff within the facility.

As reflected above and pursuant to research of the Exigent Circumstances Log, no cross-gender strip searches or cross-gender body cavity searches were conducted during the last 12 months.

Pursuant to the PAQ, the COO self reports the facility does not permit cross-gender pat-down searches of female residents, absent exigent circumstances. The COO further self reports the facility does not restrict female residents' access to regularly available programming or other outside opportunities in order to comply with this provision. Zero pat-down searches of female residents were conducted at ETC by male staff during the last 12 months.

ETC Policy 6.1.1 entitled PREA General Requirements, page 7, section Procedural Guidelines, A(9)(a)(1) addresses 115.215(b).

All 12 random staff interviewees assert the facility does not restrict resident access to programs or outside opportunities if female staff are not available to conduct pat-down searches. Female staff are always on shift.

All six random resident interviewees echoed the statements of random staff interviewees.

Pursuant to the PAQ, the COO self reports facility policy requires that all cross-gender strip searches and cross-gender visual body cavity searches are documented. The COO further asserts facility policy requires that all cross-gender pat-down searches of female residents are documented.

ETC Policy 6.1.1 entitled PREA General Requirements, page 6, section Procedural Guidelines, A(9) addresses 115.215(c).

The auditor has discovered no evidence indicating cross-gender strip/visual body cavity searches or cross-gender pat searches of female residents, occurred at ETC during the last 12 months.

Pursuant to the PAQ, the COO self reports the facility has implemented policies and procedures that enable residents to shower, perform bodily functions, and change clothing without non-medical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks (this includes viewing via video camera). The COO further self reports policies and procedures require staff of the opposite gender to announce their presence when entering a resident housing unit.

ETC Policy 6.1.1 entitled PREA General Requirements, page 7, section Procedural Guidelines, A(10) and (11) addresses 115.215(d).

During the facility tour, the auditor noted cameras are positioned in such a manner that they do not capture anything inside bathrooms or resident rooms. Auditor review of cameras confirmed the same.

Additionally, during the facility tour and throughout the on-site audit, the auditor observed the COO announce his presence (as a male) whenever he entered a wing.

All six random resident interviewees self report male staff announce their presence, by gender, when entering their housing area or a resident bathroom. Additionally, all six interviewees self report they are never naked or in full view of male staff (not including medical staff such as doctors, nurses) when toileting, showering, or changing clothing.

All 12 random staff interviewees self report male staff announce their presence, by gender, when entering housing and shower/toilet areas at ETC. Similarly, all interviewees self report residents are able to dress, shower, and toilet without being viewed by staff of the opposite gender.

Pursuant to the PAQ, the COO self reports the facility has a policy prohibiting staff from searching or physically examining a transgender or intersex resident for the sole purpose of determining the resident's genital status. The COO further self reports such searches have not occurred at ETC during the last 12 months.

ETC Policy 6.1.1 entitled PREA General Requirements, page 7, section Procedural Guidelines, A(9)(a)(3) addresses 115.215(e).

All 12 random staff interviewees self report the facility prohibits staff from searching or physically examining a transgender or intersex resident for the sole purpose of determining the resident's genital status and that they are aware of the relevant policy.

The BACS PC asserts zero transgender/intersex residents were housed at ETC during the on-site audit. Accordingly, such interviews were not facilitated.

Pursuant to the PAQ, the COO self reports that 100% of all security staff received training on conducting cross-gender pat-down searches of female residents and searches of transgender and intersex residents in a professional and respectful manner, consistent with security needs.

ETC Policy 6.1.1 entitled PREA General Requirements, page 7, section Procedural Guidelines, A(12) addresses 115.215(f).

The auditor's review of the Guidance on Cross-Gender and Transgender Pat Searches video and slide 51 of the BACS PREA training power point presentation reveals substantial compliance with 115.215(f). Additionally, the auditor's review of five 2019 and 2020 Staff Development and Training Record Forms substantiates completion of the requisite training during Orientation.

The BACS PC asserts the cross-gender pat search and searches of transgender/intersex residents video is included in the staff orientation program, as well as, the 2018 and 2020 PREA Annual Refresher Training (ART). In 2019, the policies identified in the narratives for 115.215(e) and 115.215(f) were addressed.

The auditor's review of four staff PREA Orientation and seven PREA ART Staff Development and Training Record Forms encompassing 2019 and 2020 reveals substantial compliance with 115.215(f). As all staff receive the same PREA training, these forms encompass several facility disciplines.

All 12 random staff interviewees assert they completed training regarding cross-gender pat searches of female residents and respectful and professional searches of transgender/intersex residents. Training consisted of the aforementioned video presentation, discussion, and some demonstration. Training is provided during Orientation and annual PREA training (PREA ART).

The auditor's on-site review of 11 random staff training files reveals staff received the requisite training during either Orientation or PREA ART.

In view of the above, the auditor finds ETC substantially compliant with 115.215.

## **Standard 115.216: Residents with disabilities and residents who are limited English proficient**

### **All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### **115.216 (a)**

- Does the agency take appropriate steps to ensure that residents with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: Residents who are deaf or hard of hearing? X  Yes  No
- Does the agency take appropriate steps to ensure that residents with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: Residents who are blind or have low vision? X  Yes  No
- Does the agency take appropriate steps to ensure that residents with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: Residents who have intellectual disabilities? X  Yes  No
- Does the agency take appropriate steps to ensure that residents with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: Residents who have psychiatric disabilities? X  Yes  No
- Does the agency take appropriate steps to ensure that residents with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: Residents who have speech disabilities? X  Yes  No
- Does the agency take appropriate steps to ensure that residents with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: Other? (if "other," please explain in overall determination notes.) X  Yes  No

- Do such steps include, when necessary, ensuring effective communication with residents who are deaf or hard of hearing? X  Yes  No
- Do such steps include, when necessary, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary? X  Yes  No
- Does the agency ensure that written materials are provided in formats or through methods that ensure effective communication with residents with disabilities including residents who: Have intellectual disabilities? X  Yes  No
- Does the agency ensure that written materials are provided in formats or through methods that ensure effective communication with residents with disabilities including residents who: Have limited reading skills? X  Yes  No
- Does the agency ensure that written materials are provided in formats or through methods that ensure effective communication with residents with disabilities including residents who: Are blind or have low vision? X  Yes  No

#### 115.216 (b)

- Does the agency take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment to residents who are limited English proficient? X  Yes  No
- Do these steps include providing interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary? X  Yes  No

#### 115.216 (c)

- Does the agency always refrain from relying on resident interpreters, resident readers, or other types of resident assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the resident's safety, the performance of first-response duties under §115.264, or the investigation of the resident's allegations? X  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- X  **Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the agency has established procedures to provide disabled residents equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment.

ETC Policy 6.1.3 entitled PREA Intake and Screening, page 2, section Procedures, A(2) addresses 115.216(a).

As part of the PAQ submission, a copy of the enlarged print version of the ETC PREA Handbook was provided. This version of the Handbook is available for residents who have low vision.

It is noted the PREA video "What You Need to Know" is closed captioned. Thus, residents who are deaf or hard of hearing also have access to education by virtue of this feature, as well as, reading the ETC PREA Handbook.

In addition to the above, Montana Department of Corrections Probation and Parole Division (MDOC PPD) Operational Procedure PPD 4.1.100, page 2, section III(A) and (B), corroborates the Executive Director's assertion. This policy stipulates (in the section entitled Requirements for Pre-Release Centers) that offenders will be physically and mentally capable of work, education, or vocational training. If they are unable to work due to a disability, i.e. a verified physical or mental handicap, and/or they are eligible for Veterans Administration Benefits, SSI, or Vocational Rehabilitation Services, they must have a realistic plan to subsidize their stay at the PPD facility. In the section entitled Requirements for all Facilities, the policy stipulates that if an offender has a medical or psychological condition, facility staff and the facility's screening coordinator will assess the offender to determine if his/her needs can be met in a community-based setting.

In view of the above, the BACS PC asserts if blind or deaf residents were designated to ETC, arrangements would be made to accommodate effective PREA education in advance of arrival.

In response to whether the agency has established procedures to provide residents with disabilities and residents who are limited English proficient equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, the CEO responded in the affirmative. Specifically, she asserts that closed caption videos, large print PREA Handbooks, specialty staff for cognitively impaired residents at ETC, staff read to blind residents, and there is a PREA audio (not updated) available to ETC residents.

Three residents with disabilities (one with low reading and two cognitively impaired) assert the facility provides information about sexual abuse and sexual harassment that they are able to understand.

Throughout the facility tour, the auditor observed PREA posters are properly positioned to ensure physically disabled or impaired residents have access to the information presented in the same. Likewise, printed materials appear to be age appropriate for the population.

Pursuant to the PAQ, the COO self reports the agency has established procedures to provide residents with limited English proficiency equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment.

ETC Policy 6.1.3 entitled PREA Intake and Screening, pages 2 and 3, section Procedures, A(3) addresses 115.216(b).

ETC contracts with CTS LanguageLink to provide interpretation services for residents who are limited English proficient (LEP). A copy of the contract was included with PAQ materials and the auditor's review of the same reveals substantial compliance with 115.216(b).

The BACS PC asserts the ETC PREA Handbook is not printed in Spanish. As articulated in the narrative for 115.216(a), staff would be aware of translation needs prior to the resident's arrival and steps would be initiated to initiate English-to-Spanish translation of materials.

According to the BACS PC, zero limited English proficient (LEP) residents were housed at ETC during the on-site audit. Accordingly, the LEP interview was not conducted.

Pursuant to the PAQ, the COO self reports agency policy prohibits the use of resident interpreters, resident readers, or other types of resident assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the resident's safety, the performance of first-response duties under 115.264, or the investigation of the resident's allegations. The COO further self reports the fa-

cility documents the limited circumstances in individual cases where resident interpreters, readers, or other types of resident assistants are used. Reportedly, there was zero instances in the last 12 months where resident interpreters, readers, or other types of resident assistants have been used and it was not the case that an extended delay in obtaining another interpreter could compromise the resident's safety, the performance of first-response duties, or the investigation of the resident's allegations.

ETC Policy 6.1.3 entitled PREA Intake and Screening, page 3, section Procedures, A(4) addresses 115.216(c).

While policy allows for the use of resident translators/interpreters in accordance with the exceptions noted in this provision, ten of 12 random staff interviewees assert the agency does allow the use of resident interpreters, resident readers, or other types of resident assistants to assist disabled residents or LEP residents when making an allegation of sexual abuse or sexual harassment. Nine of 12 interviewees also assert the loss of evidence/investigation and further injury to the victim are compelling reasons to employ 115.216(c) procedures. Finally, all 12 interviewees assert that to the best of their knowledge, resident interpreters, resident readers, or other types of resident assistants have not been used in relation to reporting allegations of sexual abuse or sexual harassment during the last 12 months.

In view of the above, the auditor finds ETC substantially compliant with 115.216.

## Standard 115.217: Hiring and promotion decisions

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.217 (a)

- Does the agency prohibit the hiring or promotion of anyone who may have contact with residents who: Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997)? X  Yes  No
- Does the agency prohibit the hiring or promotion of anyone who may have contact with residents who: Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse? X  Yes  No
- Does the agency prohibit the hiring or promotion of anyone who may have contact with residents who: Has been civilly or administratively adjudicated to have engaged in the activity described in the question immediately above? X  Yes  No
- Does the agency prohibit the enlistment of services of any contractor who may have contact with residents who: Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997)? X  Yes  No
- Does the agency prohibit the enlistment of services of any contractor who may have contact with residents who: Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse? X  Yes  No
- Does the agency prohibit the enlistment of services of any contractor who may have contact with residents who: Has been civilly or administratively adjudicated to have engaged in the activity described in the question immediately above? X  Yes  No

#### 115.217 (b)

- Does the agency consider any incidents of sexual harassment in determining whether to hire or promote anyone who may have contact with residents? X  Yes  No
- Does the agency consider any incidents of sexual harassment in determining whether to enlist the services of any contractor, who may have contact with residents? X  Yes  No

#### 115.217 (c)

- Before hiring new employees who may have contact with residents, does the agency: Perform a criminal background records check? X  Yes  No
- Before hiring new employees who may have contact with residents, does the agency, consistent with Federal State, and local law: Make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse? X  Yes  No

#### 115.217 (d)

- Does the agency perform a criminal background records check before enlisting the services of any contractor who may have contact with residents? X  Yes  No

#### 115.217 (e)

- Does the agency either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with residents or have in place a system for otherwise capturing such information for current employees? X  Yes  No

#### 115.217 (f)

- Does the agency ask all applicants and employees who may have contact with residents directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions? X  Yes  No
- Does the agency ask all applicants and employees who may have contact with residents directly about previous misconduct described in paragraph (a) of this section in any interviews or written self-evaluations conducted as part of reviews of current employees? X  Yes  No
- Does the agency impose upon employees a continuing affirmative duty to disclose any such misconduct? X  Yes  No

#### 115.217 (g)

- Does the agency consider material omissions regarding such misconduct, or the provision of materially false information, grounds for termination? X  Yes  No

#### 115.217 (h)

- Does the agency provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work? (N/A if providing information on substantiated allegations of sexual abuse or sexual harassment involving a former employee is prohibited by law.) X  Yes  No  NA

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports agency policy prohibits hiring or promoting anyone who may have contact with residents and prohibits enlisting the services of any contractor who may have contact with residents who:

Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);  
Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or  
Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.

BACS Policy 1.3.5.12 entitled Prison Rape Elimination Act, page 7, section 115.217 Hiring and Promotion Decisions addresses 115.217(a).

The auditor's review of the BACS application reveals the three 115.217(a) questions, as well as, a question related to sexual harassment [115.217(b)] are reflected within the application. The applicant signs the application and responds to the questions with a check mark in the correct box.

The auditor's random review of 11 random staff HR files reveals six of the affected staff were hired prior to the last PREA audit and accordingly, those files are not considered relevant to the requirements of 115.217(a) for purposes of this audit. With respect to the applicable five random staff files, the three 115.217(a) and one 115.217(b) questions were asked prior to the date of hire in four of five cases and annually thereafter, dependent upon their date of hire.

In regard to promotions, two staff members were appointed (non-competitive facility executive staff) for positions of increasing responsibility and accordingly, they were not asked the requisite questions. In one other promotion case, the three 115.217(a) and the one 115.217(b) questions were asked with responses provided prior to the promotion.

With respect to contractors, three of the four contractors were hired during 2019. The BACS PC asserts the three 115.217(a) and one 115.217(b) questions are not currently asked of contract applicants. Accordingly, the auditor finds ETC non-compliant with 115.217(a), hereby imposing a 180-day corrective action period in which institutionalization of the provision must be demonstrated. The corrective action period will end on June 18, 2021.

To demonstrate requisite institutionalization with 115.217(a) and (b), it is recommended the BACS PC develop a form which adequately captures the three 115.217(a) and one 115.217(b) questions and provide the same to new contractors at both the application and selection phases. The contractor will sign and date the same, responding to each question with a check mark in the appropriate box on the form. The applicant should elaborate regarding any positive declarations regarding these questions.

The BACS PC will ensure the form is referenced and included in the appropriate policy, providing a copy of the same to the auditor. Additionally, the BACS PC will provide training to the hiring manager(s) regarding the form, its purpose, and the mechanics of implementation. A copy of the relevant training plan and attendee certification documentation will be provided to the auditor for inclusion in the audit file.

### **March 13, 2021 Update:**

**The auditor's review of a Power Point Presentation regarding provision of a newly developed form to all contractors reveals the same is substantially compliant with 115.217(a). The document, entitled Boyd Andrew PREA Acknowledgment for Promotions, Appointments, and Contractors, reflects the three 115.217(a) questions, as well as, sexual harassment and is signed and dated by the contractor. Four BACS Staff Development and Training Record Forms reveal the training was provided to ETC and BACS stakeholders. Additionally, four documents, as aforementioned, completed by contractors in February and March, 2021, serve as evidence of implementation.**

**In view of the above, the auditor finds corrective action has been completed and ETC is now substantially compliant with 115.217(a) and (b).**

In addition to the above, a Boyd Andrew Reference Check Form is forwarded to previous institutional employers relative to prospective employees. 115.217(a), 115.217(b), 115.217(c), and 115.217(f) issues are addressed in this document.

Pursuant to the PAQ, the COO self reports agency policy requires the consideration of any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with residents.

BACS Policy 1.3.5.12 entitled PREA Policy, page 7, section 115.117(b) addresses 115.217(b).

As referenced in the narrative for 115.217(a), the relevant sexual harassment question is asked of prior institutional employers. In addition to the employment application and the criminal background record check, this document serves to further validate 115.217(b) compliance.

The auditor's review of one random Boyd Andrew Reference Check Form reveals the same was discussed telephonically between ETC/BACS staff and representatives from a confinement facility with notations reflected on the documents regarding responses. The auditor clearly finds this process is institutionalized, therefore validating compliance with 115.217(b) and (c).

In addition to the above, the auditor finds ETC considers criminal background record checks, as well as, application certifications with respect to 115.217(b).

While HR staff are not assigned to ETC, the PD responded to relevant HR questions. The COO asserts the facility considers prior incidents of sexual harassment when determining whether to hire or promote anyone, or to enlist the services of any contractors who may have contact with residents. Specifically, the relevant question is captured on the application and interview notes (verbal and then documented by interviewer). Additionally, the hiring manager contacts officials from previous institutional employers, questioning them regarding sexual harassment, as well as, the 115.217(a) questions.

Pursuant to the PAQ, the COO self reports agency policy requires that before it hires any new employees who may have contact with residents, it (a) conducts criminal background record checks, and (b) consistent with federal, state, and local law, makes its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse. The COO further self reports 14 staff were hired during the last 12 months who may have contact with residents who have had criminal background record checks. This equates to 100% of staff hired during the last 12 months.

BACS Policy 1.3.5.12 entitled PREA Policy, page 7, section 115.117(c) addresses 115.217(c).

The auditor's review of six random 2019 and 2020 PAQ criminal background record checks reveals the same were generally conducted pursuant to 115.217(c). One of the criminal background record checks was conducted relative to a promotion and the same was completed five days following the effective date of the same. Four of the remaining five checks were completed prior to the date of hire.

The auditor's review of five applicable random staff [applicable is defined in the narrative for 115.217(a)] HR files reveals timely conduct of criminal background record checks in four cases.

In view of the above, the auditor finds ETC substantially compliant with 115.217(c).

The HR interviewee asserts ETC performs criminal background record checks or considers pertinent civil or administrative adjudications for all newly hired employees who may have contact with residents and all employees, who may have contact with residents, who are considered for promotions. Montana Department of Justice checks for contractors (Montana Criminal Record Background Checks) are conducted. The COO initiates all new staff, promotion, and contractor background checks. The business manager initiates all 5-year re-investigations for staff and contractors.

In addition to the 115.217(a) and (b) questions reflected on the application and interview notes, the three 115.217(a) questions are asked annually pursuant to performance reviews.

The auditor notes only one of the 11 random staff whose files were reviewed, required follow-up with a prior institutional employer(s). The same was accomplished on July 14, 2019.

Pursuant to the PAQ, the COO self reports agency policy requires that a criminal background record check be completed before enlisting the services of any contractor who may have contact with residents. The COO further self reports zero contractor criminal background record checks were completed during the last 12 months. Zero contractors have been brought on board at ETC during the last 12 months.

BACS Policy 1.3.5.12 entitled PREA Policy, page 8, section 115.217(d) addresses 115.217(d).

Pursuant to the PAQ, the COO self reports agency policy requires that either criminal background record checks be conducted at least every five years for current employees and contractors who may have contact with residents or that a system is in place for otherwise capturing such information for current employees.

BACS Policy 1.3.5.12 entitled PREA Policy, page 8, section 115.217(e) addresses 115.217(e).

The HR interviewee asserts Department of Justice (DOJ) criminal background record checks are requested by the COO and DD. Five-year re-investigations (staff and contractor) are tracked by the controller. She uses a spread sheet to manage and monitor five-year re-investigations.

The auditor's review of the random staff HR files articulated in the narrative for 115.217(a) reveals the latest 5-year re-investigations were conducted in all four applicable staff cases. Three of the four contractors were selected during 2019 and accordingly, five-year re-investigations are not yet due. The last contractor was hired in 2013 and her five-year re-investigation was completed in a timely manner.

BACS Policy 1.3.5.12 entitled PREA Policy, page 8, section 115.217(f) addresses 115.217(f).

The auditor's findings regarding the application are clearly reflected in the narrative for 115.217(a).

The auditor's review of the facility annual performance review form reveals the three 115.217(a) questions are documented therein with boxes to check. Additionally, the 115.217(f) admonition is also reflected in the same area on the form. The employee signs and dates the performance review.

The auditor's random review of four random 2019 (one) and 2020 (three) staff performance evaluations reveals substantial compliance with 115.217(f).

The HR interviewee asserts the agency asks all applicants and employees who may have contact with residents about previous misconduct as described at 115.217(a) in written applications for hiring or promotions, and in any interviews or written self evaluations conducted as part of reviews of current employees. He further asserts the facility imposes upon employees a continuing affirmative duty to disclose any such previous misconduct.

Pursuant to the PAQ, the COO self reports agency policy states that material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.

BACS Policy 1.3.5.12 entitled PREA Policy, page 8, section 115.217(g) addresses 115.217(g).

The auditor notes the 115.217(g) caveat is clearly scripted at the end of the application. Again, the applicant signs and dates the same.

BACS Policy 1.3.5.12 entitled PREA Policy, page 8, section 115.217(h) addresses 115.217(h). This policy stipulates unless prohibited by law, BACS shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

The HR interviewee asserts when a former employee applies for work at another institution, upon request from that institution, facility staff provide information regarding substantiated allegations of sexual abuse/harassment involving the former employee, unless prohibited by law. The COO further asserts zero 115.217(h) requests been received at ETC during the last 24 months.

In view of the above, the auditor finds ETC substantially compliant with 115.217.

## Standard 115.218: Upgrades to facilities and technologies

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.218 (a)

- If the agency designed or acquired any new facility or planned any substantial expansion or modification of existing facilities, did the agency consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect residents from sexual abuse? (N/A if agency/facility has not acquired a new facility or made a substantial expansion to existing facilities since August 20, 2012, or since the last PREA audit, whichever is later.)   
Yes  No  NA

#### 115.218 (b)

- If the agency installed or updated a video monitoring system, electronic surveillance system, or other monitoring technology, did the agency consider how such technology may enhance the agency's ability to protect residents from sexual abuse? (N/A if agency/facility has not installed or updated a video monitoring system, electronic surveillance system, or other monitoring technology since August 20, 2012, or since the last PREA audit, whichever is later.)   
Yes  No  NA

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the agency/facility has not acquired a new facility or made a substantial expansion or modification to existing facilities since the last PREA audit. Accordingly, the auditor has determined 115.218(a) is not applicable to ETC.

Pursuant to the PAQ, the COO self reports the facility has not installed or updated a video monitoring system, electronic surveillance system, or other monitoring technology since the last PREA audit. Accordingly, the auditor has determined 115.218(b) is not applicable to ETC.

As the auditor finds no deviation(s) from standard, ETC is deemed substantially compliant with 115.218.

## RESPONSIVE PLANNING

### Standard 115.221: Evidence protocol and forensic medical examinations

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.221 (a)

- If the agency is responsible for investigating allegations of sexual abuse, does the agency follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions? (N/A if the agency/facility is not responsible for conducting any form of criminal OR administrative sexual abuse investigations.)  
X  Yes  No  NA

#### 115.221 (b)

- Is this protocol developmentally appropriate for youth where applicable? (N/A if the agency/facility is not responsible for conducting any form of criminal OR administrative sexual abuse investigations.) X  Yes  No  NA
- Is this protocol, as appropriate, adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011? (N/A if the agency/facility is not responsible for conducting any form of criminal OR administrative sexual abuse investigations.) X  Yes  No  NA

#### 115.221 (c)

- Does the agency offer all residents who experience sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate? X  Yes  No
- Are such examinations performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible? X  Yes  No
- If SAFEs or SANEs cannot be made available, is the examination performed by other qualified medical practitioners (they must have been specifically trained to conduct sexual assault forensic exams)? X  Yes  No
- Has the agency documented its efforts to provide SAFEs or SANEs? X  Yes  No

#### 115.221 (d)

- Does the agency attempt to make available to the victim a victim advocate from a rape crisis center? X  Yes  No
- If a rape crisis center is not available to provide victim advocate services, does the agency make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member? (N/A if agency *always* makes a victim advocate from a rape crisis center available to victims.) X  Yes  No  NA
- Has the agency documented its efforts to secure services from rape crisis centers? X  Yes  No

#### 115.221 (e)

- As requested by the victim, does the victim advocate, qualified agency staff member, or qualified community-based organization staff member accompany and support the victim through the forensic medical examination process and investigatory interviews? X  Yes  No
- As requested by the victim, does this person provide emotional support, crisis intervention, information, and referrals? X  Yes  No

#### 115.221 (f)

- If the agency itself is not responsible for investigating allegations of sexual abuse, has the agency requested that the investigating agency follow the requirements of paragraphs (a) through (e) of this section? (N/A if the agency/facility is responsible for conducting criminal AND administrative sexual abuse investigations.) X  Yes  No  NA

#### 115.221 (g)

- Auditor is not required to audit this provision.

#### 115.221 (h)

- If the agency uses a qualified agency staff member or a qualified community-based staff member for the purposes of this section, has the individual been screened for appropriateness to serve in this role and received education concerning sexual assault and forensic examination issues in general? (N/A if agency *always* makes a victim advocate from a rape crisis center available to victims.) X  Yes  No  NA

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- X  **Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the facility is responsible for conducting administrative sexual abuse investigations (including resident-on-resident sexual abuse or staff sexual misconduct). The Jefferson County Sheriff Department (JCSO) facilitates criminal investigations in response to sexual

abuse or sexual misconduct allegations. The COO further self reports when conducting a sexual abuse investigation, the agency investigators follow a uniform evidence protocol.

ETC Policy 6.1.4 entitled PREA Reporting, pages 7 and 8, section Procedures, E addresses 115.221(a).

The auditor's review of two administrative investigations, facilitated within the last 18 months, reveals substantial compliance with 115.221(a). One investigation was determined to be substantiated based on available evidence while the other investigation was determined to be unfounded. The auditor finds the fact pattern in the substantiated investigation is more aligned with sexual harassment.

All 12 random staff interviewees assert they know and understand the agency's protocol for obtaining usable physical evidence if a resident alleges sexual abuse. Seven of the 12 interviewees responded appropriately to all four requirements of the uniform evidence protocol, ensuring maximization of the potential for obtaining usable physical evidence. In regard to the five remaining interviewees, the majority of confusion centers on "requesting" that the victim not destroy physical evidence vs. "ensuring" that the perpetrator doesn't destroy physical evidence.

In addition to the above, all interviewees properly identified at least one ETC administrative sexual abuse/harassment investigator and 11 of 12 interviewees properly identified the criminal investigative agency (JCSD).

During the facility tour, the auditor noted juvenile/youth residents are not housed at ETC. The protocol was adapted from or is otherwise based on the most recent edition of the DOJ's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011. This is commensurate with the protocols provided to administrative investigators pursuant to 115.264(a) and is clearly compliant with 115.221(b).

The auditor has reviewed the evidence protocol articulated in the ETC Coordinated Response to PREA Incidents flow chart and has determined there is sufficient technical detail to aid responders in obtaining usable physical evidence. Additional detail regarding the protocol is provided in the narratives for 115.264 and 115.265.

Of note, the National Institute of Corrections (NIC) course referenced in the narrative for 115.234 substantiates compliance with 115.221(b).

Pursuant to the PAQ, the COO self reports the facility offers to all residents who experience sexual abuse access to forensic medical examinations at a community hospital. The COO further self reports forensic medical examinations are offered without financial cost to the victim.

Where possible, examinations are conducted by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs). When SANEs or SAFEs are not available, a qualified medical practitioner performs forensic medical examinations. Finally, the COO self reports the facility documents efforts to provide SANEs or SAFEs. The COO reports zero forensic medical examinations were conducted during the last 12 months.

ETC Policy 6.1.4 entitled PREA Reporting, page 8, section Procedures, E(3) addresses 115.221(c).

The auditor's review of a letter and an email describing forensic examination procedures at both St. James Healthcare and St. Peter's Health in Butte and Helena reveals substantial compliance with 115.221(c).

The SANE interviewee is an Emergency Room (ER) Manager at St. Pete's Hospital. She asserts 11 ER Nurses are SANE-trained pursuant to a state funded national standards training program provided once per year. Nineteen additional ER Nurses are trained to facilitate a "rape kit".

SANE-trained Nurses work in conjunction with an ER Physician. The physician is present during part of the examination however, he/she is not present during the evidence collection process. If a SANE-trained Nurse is not available for some reason, it is expected that any of the 19 aforementioned nurses be able to facilitate the kit.

SANE-trained Nurses are available on a 24/7 basis. If necessary, a SANE-trained Nurse can be recalled to facilitate the forensic examination.

Infection prophylaxis is part of the forensic examination. Additionally, any applicable testing, dependent upon the nature of the circumstances, is provided as part of the forensic examination process.

Pursuant to the PAQ, the COO self reports the facility attempts to make a victim advocate from a rape crisis center available to the victim, either in person or by other means. The COO further self reports these efforts are documented. If and when a rape crisis center is not available to provide victim advocate services, the facility provides a qualified staff member from a community-based organization or a qualified agency staff member.

ETC Policy 6.1.4 entitled PREA Reporting, page 8, section Procedures, E(4) addresses 115.221(d).

The auditor has reviewed a Memorandum of Understanding (MOU) between the COO and leadership at Safe Space (dated June 19, 2020). Duties and expectations for both ETC staff and Safe Space are clearly articulated in the MOU. Confidentiality is also addressed.

According to the BACS PC, ETC makes available to residents victim advocates (VAs) pursuant to an MOU with Safe Space. The auditor is aware that Safe Space VAs have been trained regarding PREA requirements by a PC from another company.

The BACS PC asserts zero residents who reported a sexual abuse at ETC were at the facility during the on-site audit.

Pursuant to the PAQ, the COO self reports if requested by the victim, a victim advocate, qualified agency staff member, or qualified community-based organization staff member accompanies and supports the victim through the forensic medical examination process and investigatory interviews and provides emotional support, crisis intervention, information, and referrals.

ETC Policy 6.1.4 entitled PREA Reporting, page 8, section Procedures, E(5) addresses 115.221(e).

According to the BACS PC, if requested by the victim, a victim advocate, qualified agency staff member, or qualified community-based organization staff member accompanies and provides emotional support, crisis intervention, information, and referrals during the forensic medical examination process and investigatory interviews.

Pursuant to the PAQ, the COO self reports as the agency is not responsible for investigating criminal allegations of sexual abuse and relies on another agency to conduct these investigations, he has requested, via MOU, that JCSD follow the requirements of paragraphs §115.221 (a) through (e) of the standards.

ETC Policy 6.1.4 entitled PREA Reporting, page 8, section Procedures, E(6) addresses 115.221(f).

The auditor's review of the aforementioned MOU between ETC and JCSD reveals substantial compliance with 115.221.

In view of the above, the auditor finds ETC substantially compliant with 115.221.

## Standard 115.222: Policies to ensure referrals of allegations for investigations

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.222 (a)

- Does the agency ensure an administrative or criminal investigation is completed for all allegations of sexual abuse? X  Yes  No
- Does the agency ensure an administrative or criminal investigation is completed for all allegations of sexual harassment? X  Yes  No

#### 115.222 (b)

- Does the agency have a policy and practice in place to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior? X  Yes  No
- Has the agency published such policy on its website or, if it does not have one, made the policy available through other means? X  Yes  No
- Does the agency document all such referrals? X  Yes  No

#### 115.222 (c)

- If a separate entity is responsible for conducting criminal investigations, does the policy describe the responsibilities of both the agency and the investigating entity? (N/A if the agency/facility is responsible for conducting criminal investigations. See 115.221(a).) X  Yes  No  NA

#### 115.222 (d)

- Auditor is not required to audit this provision.

#### 115.222 (e)

- Auditor is not required to audit this provision.

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- X  **Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the agency ensures an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment (including resident-on-resident sexual abuse and staff sexual misconduct). The COO further self reports one allegation of sexual

abuse or sexual harassment was received during the last 12 months. This allegation resulted in an administrative investigation.

The aforementioned unfounded administrative investigation was completed during the last 12 months. The auditor validated the same pursuant to review of the actual investigation.

ETC Policy 6.1.4 entitled PREA Reporting, page 2, section Procedures, A(10) addresses 115.222(a).

When questioned as to whether the agency ensures an administrative or criminal investigation is completed for all allegations of sexual abuse or sexual harassment, the CEO responded in the affirmative. The CEO further expounded that administrative investigation(s) are conducted in sexual harassment scenarios. Witnesses are interviewed, cameras are reviewed, any relevant technology is reviewed, and the perpetrator is removed from the facility. Sexual abuse cases are referred to JCSD for investigation.

Pursuant to the PAQ, the COO self reports the agency has a policy that requires allegations of sexual abuse or sexual harassment be referred for investigation to an agency with the legal authority to conduct criminal investigations, including the agency if it conducts its own investigations, unless the allegation does not involve potentially criminal behavior. The COO further self reports agency policy regarding the referral of allegations of sexual abuse or sexual harassment for criminal investigation is published on the agency website or made publicly available via other means. According to the COO, the agency documents all referrals of allegations of sexual abuse or sexual harassment for criminal investigation.

ETC Policy 6.1.4 entitled PREA Reporting, page 2, section Procedures, A(11) addresses 115.222(b).

The investigative staff interviewee asserts agency policy requires that allegations of sexual abuse/harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. All incidents of sexual abuse are referred to JCSD and MDOC in view of statutory ramifications.

The auditor reviewed the BACS/ETC website and found the MOU to be maintained thereon.

The auditor reviewed the MOU between ETC and JCSD and found the same to be commensurate with 115.222(c). Specifically, both agency and JCSD responsibilities are clearly articulated in the document.

In view of the above, the auditor finds ETC substantially compliant with 115.222.

## TRAINING AND EDUCATION

### Standard 115.231: Employee training

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.231 (a)

- Does the agency train all employees who may have contact with residents on: Its zero-tolerance policy for sexual abuse and sexual harassment? X  Yes  No
- Does the agency train all employees who may have contact with residents on: How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures? X  Yes  No
- Does the agency train all employees who may have contact with residents on: Residents' right to be free from sexual abuse and sexual harassment X  Yes  No
- Does the agency train all employees who may have contact with residents on: The right of residents and employees to be free from retaliation for reporting sexual abuse and sexual harassment? X  Yes  No
- Does the agency train all employees who may have contact with residents on: The dynamics of sexual abuse and sexual harassment in confinement? X  Yes  No
- Does the agency train all employees who may have contact with residents on: The common reactions of sexual abuse and sexual harassment victims? X  Yes  No
- Does the agency train all employees who may have contact with residents on: How to detect and respond to signs of threatened and actual sexual abuse? X  Yes  No
- Does the agency train all employees who may have contact with residents on: How to avoid inappropriate relationships with residents? X  Yes  No
- Does the agency train all employees who may have contact with residents on: How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming residents? X  Yes  No
- Does the agency train all employees who may have contact with residents on: How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities? X  Yes  No

#### 115.231 (b)

- Is such training tailored to the gender of the residents at the employee's facility? X  Yes  No
- Have employees received additional training if reassigned from a facility that houses only male residents to a facility that houses only female residents, or vice versa? X  Yes  No

#### 115.231 (c)

- Have all current employees who may have contact with residents received such training? X  Yes  No

- Does the agency provide each employee with refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures?  Yes  No
- In years in which an employee does not receive refresher training, does the agency provide refresher information on current sexual abuse and sexual harassment policies?  Yes  No

#### 115.231 (d)

- Does the agency document, through employee signature or electronic verification, that employees understand the training they have received?  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the agency trains all employees who may have contact with residents on the following matters:

- (1) Its zero-tolerance policy for sexual abuse and sexual harassment;
- (2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
- (3) Residents' rights to be free from sexual abuse and sexual harassment;
- (4) The right of residents and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
- (5) The dynamics of sexual abuse and sexual harassment in confinement;
- (6) The common reactions of sexual abuse and sexual harassment victims;
- (7) How to detect and respond to signs of threatened and actual sexual abuse;
- (8) How to avoid inappropriate relationships with residents;
- (9) How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming residents; and
- (10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

ETC Policy 6.1.6 entitled PREA Training, page 1, section Procedure, A(1-10) addresses 115.231(a).

The auditor has reviewed the following training resources that are provided to staff during Orientation and PREA Annual Refresher Training (ART):

Guidance on cross-gender and transgender pat searches developed by the National PREA Resource Center (PRC) in video, power point, instructors manual, and webinar formats;  
Boyd Andrew PREA training (power point) provided during employee orientation; and  
BACS PREA Power Point provided during PREA ART.

All ten of the requisite topics are addressed in these training resources. The training is tailored to both genders, although only female residents are housed at ETC.

In addition to the topics articulated above, the BACS PC asserts ETC staff are required to complete the following National Institute of Corrections (NIC) courses on an annual basis:

Your Role: Responding to Sexual Abuse;  
Communicating Effectively and Professionally with LGBTI Offenders.

Medical staff complete:

PREA 201 for Medical and Mental Health Practitioners.

LACs and Mental Health staff complete:

Behavioral Health Care for Sexual Assault Victims in a Confinement Setting.

Of note, the auditor's review of NIC certificates relative to three staff substantiates completion of the aforementioned NIC courses throughout the audit period.

All 12 random staff interviewees assert they have received training regarding the aforementioned topics. They have received this training during PREA Orientation, dependent upon their entry on duty date with BACS, and during PREA ART.

The auditor reviewed four 2018 and 2019 ETC staff signature receipts (ETC Staff Development and Training Record Forms) wherein staff certified their receipt, review, and understanding of the subject-matter presented. Of note, all staff receive the same PREA training and accordingly, the above documents pertained to staff representing different disciplines.

Clearly, pursuant to the auditor's review, staff are required to complete one or more PREA on-line courses presented by NIC on an annual basis. The auditor finds ETC leadership and staff have embraced PREA sexual safety training, signifying above and beyond standard expectations with respect to this critical area. Accordingly, the auditor has determined ETC staff have exceeded this standard.

The auditor's on-site review of random staff training files reveals five of six new hires since the last PREA audit received PREA Orientation training prior to contact with residents. Additionally, three of four staff hired prior to the last PREA audit received PREA ART. Of note, one random employee received timely PREA ART for the two years following his PREA Orientation and one employee hired on September 9, 2019 received PREA ART during 2020. Four staff hired in late 2019 and 2020 are not yet due for PREA ART.

According to the BACS PC, staff transferring from HPRC (male facility) receive the same training as that provided at ETC and vice-versa as the training is applicable to both genders. Accordingly, staff transferring from HPRC to ETC and vice-versa are not re-trained.

Pursuant to the PAQ, the COO self reports 31 staff employed by the facility, who have contact with residents, were trained or retrained in PREA requirements. This equates to 100% of all staff assigned to the facility. According to the COO, between trainings, staff are alerted to policy changes/updates pursuant to the NIC website. Additionally, as previously referenced in the narrative for 115.231(a), staff are assigned annual training through the NIC website. The COO self reports employees who may have contact with residents receive PREA ART). The auditor finds this practice above and beyond standard requirements as the same requires refresher training every two years.

Pursuant to the PAQ, the COO self reports the agency documents that employees who have contact with residents understand the training they have received through employee signature or electronic verification.

ETC Policy 6.1.6 entitled PREA Training, page 2, section Procedure D addresses 115.231(d).

Documentation of employee completion and understanding of PREA materials is addressed in the narrative for 115.231(a).

In view of the above, the auditor finds ETC exceeds expectations with respect to 115.231.

## Standard 115.232: Volunteer and contractor training

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.232 (a)

- Has the agency ensured that all volunteers and contractors who have contact with residents have been trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection, and response policies and procedures?  Yes  No

#### 115.232 (b)

- Have all volunteers and contractors who have contact with residents been notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents (the level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with residents)?  Yes  No

#### 115.232 (c)

- Does the agency maintain documentation confirming that volunteers and contractors understand the training they have received?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports all volunteers and contractors who have contact with residents have been trained on their responsibilities under the agency's policies and procedures regarding sexual abuse/harassment prevention, detection, and response. The COO further self reports 32 volunteers and four individual contractors who have contact with residents have been trained in agency policies and procedures regarding sexual abuse/harassment prevention, detection, and response.

ETC Policy 6.1.6 entitled PREA Training, page 2, section Procedure E addresses 115.232(a).

The two contractor and two volunteer interviewees assert they have been trained about their responsibilities regarding sexual abuse and sexual harassment prevention, detection, and response. They report training is facilitated by Power Point and lecture. The training includes the zero tolerance policy at ETC regarding resident sexual abuse/harassment, reporting options in response to an incident of sexual abuse/harassment, warning signs of sexual abuse/harassment in a confinement setting, as well as, the effects of sexual abuse/harassment on the resident population. PREAART is provided annually.

As there is no PREA requirement regarding annual training, the auditor has determined ETC exceeds 115.232(a) provision requirements.

Pursuant to the PAQ, the COO self reports the level and type of training provided to volunteers and contractors is based on the services they provide and level of contact they have with residents.

The COO further self reports all volunteers and contractors who have contact with residents have been notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.

ETC Policy 6.1.6 entitled PREA Training, page 2, section Procedure F addresses 115.232(b).

The auditor's review of the PAQ power point presentation entitled Boyd Andrew Volunteer/Vendor/Contractor PREA Training reveals substantial compliance with 115.232(b). This resource clearly addresses the zero-tolerance policy regarding sexual abuse and sexual harassment and information regarding reporting.

The BACS PC asserts due to the level of contact the contractors and volunteers have with residents, they receive the Boyd Andrew Volunteer/Vendor/Contractor PREA Training and the same reveals substantial compliance with 115.232(b).

The auditor's review of a Volunteer PREA Acknowledgment Certificate, ETC Volunteer/Contractor Acknowledgment Form, ETC PREA Compliance Acknowledgment, and Volunteer, Vendor, Contractor Training Record Form (pertaining to one volunteer) reveals substantial compliance with 115.232(b). Some of these documents reference regulations while others reference policy discussions. These documents encompass 2018 and 2019.

The auditor's review of 2018 and 2019 Volunteer, Vendor, and Contractor Training Record Forms relative to three volunteers reveals substantial compliance with 115.232. All volunteers affix their signature and date to these forms, signifying understanding of the subject-matter presented.

The auditor's on-site review of one contractor's training records reveals substantial compliance with 115.232 as reflected above.

Pursuant to the PAQ, the COO self reports the agency maintains documentation confirming that volunteers/contractors understand the training they have received.

ETC Policy 6.1.6 entitled PREA Training, page 2, section Procedure G addresses 115.232(c).

In view of the above, the auditor finds ETC exceeds standard requirements with respect to 115.232.

## **Standard 115.233: Resident education**

### **All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### **115.233 (a)**

- During intake, do residents receive information explaining: The agency's zero-tolerance policy regarding sexual abuse and sexual harassment? X  Yes  No
- During intake, do residents receive information explaining: How to report incidents or suspicions of sexual abuse or sexual harassment? X  Yes  No
- During intake, do residents receive information explaining: Their rights to be free from sexual abuse and sexual harassment? X  Yes  No
- During intake, do residents receive information explaining: Their rights to be free from retaliation for reporting such incidents? X  Yes  No
- During intake, do residents receive information regarding agency policies and procedures for responding to such incidents? X  Yes  No

### 115.233 (b)

- Does the agency provide refresher information whenever a resident is transferred to a different facility? X  Yes  No

### 115.233 (c)

- Does the agency provide resident education in formats accessible to all residents, including those who: Are limited English proficient? X  Yes  No
- Does the agency provide resident education in formats accessible to all residents, including those who: Are deaf? X  Yes  No
- Does the agency provide resident education in formats accessible to all residents, including those who: Are visually impaired? X  Yes  No
- Does the agency provide resident education in formats accessible to all residents, including those who: Are otherwise disabled? X  Yes  No
- Does the agency provide resident education in formats accessible to all residents, including those who: Have limited reading skills? X  Yes  No

### 115.233 (d)

- Does the agency maintain documentation of resident participation in these education sessions? X  Yes  No

### 115.233 (e)

- In addition to providing such education, does the agency ensure that key information is continuously and readily available or visible to residents through posters, resident handbooks, or other written formats? X  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- X  **Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports residents receive information at time of intake about the zero-tolerance policy, how to report incidents or suspicions of sexual abuse or harassment, their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents. The COO further self reports 60 residents, who were admitted to ETC during the last 12 months, were given the above information at intake. This equates to 100% of admissions during the referenced time frame.

ETC Policy 6.1.3 entitled PREA Intake and Screening, page , section Procedure A(1)(a)(1-4) addresses 115.233(a).

The intake staff interviewee asserts residents are provided with information about the zero-tolerance policy and how to report incidents or suspicions of sexual abuse or sexual harassment at intake pursuant to, minimally, receipt of the PREA Handbook. Additionally, residents are educated regarding their rights to be free from sexual abuse/sexual harassment, right to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents pursuant to review of the PREA video which is generally reviewed shortly following the intake process. The COO or case manager orientation is also a source for the above information.

The interviewee asserts he does, in appropriate cases, read provisions of the ETC PREA Handbook to incoming residents. He also points residents to the PREA posters for further information.

All six random resident interviewees assert they received information about the facility's rules against sexual abuse and harassment when they first came to ETC. Specifically, they generally received the PREA Handbook, minimally, at intake and subsequently, they viewed the PREA video following intake or during case manager PREA Orientation. Additionally, all six random resident interviewees assert they were told about their right to not be sexually abused or sexually harassed, how to report sexual abuse or sexual harassment, and their right not to be punished for reporting sexual abuse or sexual harassment.

Two of six random resident interviewees assert they received this information within one to two days of intake. The auditor's review of resident files for these two residents reveals they received all PREA materials on the date of intake.

The auditor's on-site review of 11 random resident files, inclusive of the two files mentioned in the preceding sentence, reveals all received initial PREA information on the date of admission (at intake).

The BACS PC asserts 26 of the 60 admissions to ETC during the last 12 months (43%) were transferred from other community corrections facilities. All intakes receive the same PREA training/documents.

The auditor's review of the ETC PREA Handbook reveals substantial compliance with 115.233(a). The exception is noted in the narrative for 115.253(b).

In addition to the above, the auditor's review of five random 2019 Receipts of the ETC PREA Handbook reveals the same were received in a timely manner (during intake). Receipt of the MDOC Offender PREA Acknowledgment Form and the two referenced policies further substantiates compliance with 115.233(a). This is confirmed by the auditor's review of five completed 2019 forms.

The BACS PC asserts 26 of the 60 admissions to ETC during the last 12 months (43%) were transferred from other community corrections facilities. All received requisite ETC PREA training.

The BACS PC asserts all new ETC commitments are provided the same PREA Handbook and PREA Orientation. The auditor verified the same pursuant to document reviews as reflected in the narrative for 115.233(a).

According to the staff member who performs intakes, residents are made aware of the rights articulated in 115.233(a) immediately upon arrival (during Intake). Follow-up regarding the COO/case manager Orientation is also reflected in the narrative for 115.233(a).

All six random resident interviewees were received at ETC from other facilities. All assert they received information as required in 115.233(a).

Pursuant to the PAQ, the COO self reports resident PREA education is available in accessible formats for all residents including those who are limited English proficient, deaf, visually impaired, otherwise disabled, as well as to residents who have limited reading skills.

ETC Policy 6.1.3 entitled PREA Intake and Screening, page , section Procedure A(1)(b) addresses 115.233(c).

It is noted the PREA video "What You Need to Know" is closed caption. Thus, residents who are deaf or hard of hearing also have access to education by virtue of this feature, as well as, reading the ETC PREA Handbook.

In addition to the above, Montana Department of Corrections Probation and Parole Division Operational Procedure PPD 4.1.100, page 2, section III(A) and (B), corroborates the Executive Director's assertion. This policy stipulates (in the section entitled Requirements for Pre-Release Centers) that offenders will be physically and mentally capable of work, education, or vocational training. If they are unable to work due to a disability, i.e. a verified physical or mental handicap, and/or they are eligible for Veterans Administration Benefits, SSI, or Vocational Rehabilitation Services, they must have a realistic plan to subsidize their stay at the PPD facility. In the section entitled Requirements for all Facilities, the policy stipulates that if an offender has a medical or psychological condition, facility staff and the facility's screening coordinator will assess the offender to determine if his/her needs can be met in a community-based setting.

The auditor's review of the ETC PREA Handbook reveals the same is comprehensive, well written, and commensurate with 115.233(a) and (c). The enlarged print version of the ETC PREA Handbook is used with those residents who may have low vision capabilities.

Further discussion regarding education of residents with disabilities is articulated in the narrative for 115.216(a).

Pursuant to the PAQ, the COO self reports the agency maintains documentation of resident participation in PREA education sessions.

ETC Policy 6.1.3 entitled PREA Intake and Screening, page 2, section Procedure A(1)(e) and (f) addresses 115.233(d).

115.233(d) documentation is discussed in the narrative for 115.233(a).

Pursuant to the PAQ, the COO self reports the agency ensures that key information about the agency's PREA policies is continuously and readily available or visible through posters, resident handbooks, or other written formats.

ETC Policy 6.1.3 entitled PREA Intake and Screening, page 2, section Procedure A(1)(c) addresses 115.233(e).

The auditor's review of one poster reveals substantial compliance with 115.233(e). The poster addresses zero tolerance and reporting options. The ETC Handbook is addressed throughout the narrative for 115.233.

In view of the above, the auditor finds ETC substantially compliant with 115.233.

## **Standard 115.234: Specialized training: Investigations**

### **All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### **115.234 (a)**

- In addition to the general training provided to all employees pursuant to §115.231, does the agency ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators receive training in conducting such investigations in confinement settings? (N/A if the

agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.221(a.)

X  Yes  No  NA

#### 115.234 (b)

- Does this specialized training include: Techniques for interviewing sexual abuse victims? (N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.221(a.) X  Yes  No  NA
- Does this specialized training include: Proper use of Miranda and Garrity warnings? (N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.221(a.) X  Yes  No  NA
- Does this specialized training include: Sexual abuse evidence collection in confinement settings? (N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.221(a.) X  Yes  No  NA
- Does this specialized training include: The criteria and evidence required to substantiate a case for administrative action or prosecution referral? (N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.221(a.) X  Yes  No  NA

#### 115.234 (c)

- Does the agency maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations? (N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.221(a.) X  Yes  No  NA

#### 115.234 (d)

- Auditor is not required to audit this provision.

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- X  **Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports agency policy requires that investigators are trained in conducting sexual abuse investigations in confinement settings.

ETC Policy 6.1.6 entitled PREA Training, page 3, section Procedure I(1) addresses 115.234(a).

According to the investigative staff interviewee, he completed the NIC course (Basic Conducting Sexual Abuse Investigations in a Confinement Setting) and the advanced course. Additionally, he completed numerous investigative trainings through the Riverside, CA Sheriff Department. The basic course was a three hour on-line course which included case scenarios and the advanced course was primarily comprised of scenario training.

The criminal investigative interviewee asserts he has received sexual abuse investigation training through JCSD. This 16-24 hour training was provided in a classroom setting (based on state standards) and included all topics mentioned above.

The auditor's review of NIC certificates reveals two investigators completed the PREA: Investigating Sexual Abuse in a Confinement Setting: Advanced Investigations Course during 2019. Additionally, they completed the PREA: Investigating Sexual Abuse in a Confinement Setting course during 2019 and 2020. An additional staff member likewise completed the same course in both 2019 and 2020.

ETC Policy 6.1.6 entitled PREA Training, page 3, section Procedure I(2) addresses 115.234(b).

Pursuant to the auditor's research of the NIC website, the training criteria referenced in the above policy is addressed. The same is commensurate with 115.234(b).

According to the investigative staff interviewee, the specialized training referenced above addressed techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.

Pursuant to the PAQ, the COO self reports the agency maintains documentation showing that investigators have completed the required training. The COO further self reports three administrative PREA investigators are currently utilized at ETC and all three have completed requisite training.

ETC Policy 6.1.6 entitled PREA Training, page 3, section Procedure I(3) addresses 115.234(c).

A discussion regarding training completion validation is reflected in the narrative for 115.234(a).

In view of the above, the auditor finds ETC substantially compliant with 115.234.

## **Standard 115.235: Specialized training: Medical and mental health care**

### **All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### **115.235 (a)**

- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in: How to detect and assess signs of sexual abuse and sexual harassment? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners who work regularly in its facilities.)  
X  Yes    No    NA
  
- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in: How to preserve physical evidence of sexual abuse? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners who work regularly in its facilities.) X  Yes    No    NA
  
- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in: How to respond effectively and professionally to victims of sexual abuse and sexual harassment? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners who work regularly in its facilities.) X  Yes    No    NA

- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in: How and to whom to report allegations or suspicions of sexual abuse and sexual harassment? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners who work regularly in its facilities.)  
 Yes    No    NA

### 115.235 (b)

- If medical staff employed by the agency conduct forensic examinations, do such medical staff receive appropriate training to conduct such examinations? (N/A if agency does not employ medical staff or the medical staff employed by the agency do not conduct forensic exams.)  
 Yes    No    NA

### 115.235 (c)

- Does the agency maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners who work regularly in its facilities.)  Yes    No    NA

### 115.235 (d)

- Do medical and mental health care practitioners employed by the agency also receive training mandated for employees by §115.231? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners employed by the agency.)  Yes    No    NA
- Do medical and mental health care practitioners contracted by and volunteering for the agency also receive training mandated for contractors and volunteers by §115.232? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners contracted by or volunteering for the agency.)  Yes    No    NA

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the agency has a policy related to the training of medical and mental health practitioners who work regularly in its facilities. The COO further self reports nine medical and mental health care practitioners who work regularly at the facility received specialized training. This constitutes 100% of ETC medical/mental health staff that received requisite specialized training.

ETC Policy 6.1.5 entitled PREA: Medical and Mental Health, page 3, section Training A addresses 115.235(a).

According to the medical and mental health interviewees, they received the requisite specialty training. They completed the three hour on-line NIC courses PREA: Medical Health Care for Sexual Assault Victims in a Confinement Setting and PREA: Behavioral Health Care for Sexual Assault Victims in a Confinement Setting. The courses included how to detect and assess signs of sexual abuse/harassment, how to pre-

serve physical evidence of sexual abuse, how to respond effectively and professionally to victims of sexual abuse/harassment, and how and to whom to report allegations or suspicions of sexual abuse and sexual harassment. These three hour on-line NIC courses included scenario training.

The auditor's review of NIC certificates for the following requisite courses reveals substantial compliance with 115.235:

PREA: Medical Health Care for Sexual Assault Victims in a Confinement Setting;  
PREA 201 for Medical and Mental Health Practitioners; and  
PREA: Behavioral Health Care for Sexual Assault Victims in a Confinement Setting.

Pursuant to the PAQ, the COO self reports forensic examinations are not conducted at ETC as such examinations would be conducted at a community hospital.

In view of the above, the auditor has determined 115.235(b) is not applicable to ETC.

Pursuant to the PAQ, the COO self reports the agency shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere.

ETC Policy 6.1.5 entitled PREA: Medical and Mental Health, page 3, section Training C addresses 115.235(c).

ETC Policy 6.1.5 entitled PREA: Medical and Mental Health, page 3, section Training D addresses 115.235(d).

The auditor's review of Staff Development and Training Record Forms for five medical and four mental health practitioners (PREA Orientation and PREA ART) reveals substantial compliance with 115.235(d). Documents reveal consecutive trainings when applicable.

In view of the above, the auditor finds ETC substantially compliant with 115.235.

## **SCREENING FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS**

### **Standard 115.241: Screening for risk of victimization and abusiveness**

**All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### **115.241 (a)**

- Are all residents assessed during an intake screening for their risk of being sexually abused by other residents or sexually abusive toward other residents? X  Yes  No
- Are all residents assessed upon transfer to another facility for their risk of being sexually abused by other residents or sexually abusive toward other residents? X  Yes  No

#### **115.241 (b)**

- Do intake screenings ordinarily take place within 72 hours of arrival at the facility?  
X  Yes  No

#### **115.241 (c)**

- Are all PREA screening assessments conducted using an objective screening instrument?  
X  Yes  No

#### 115.241 (d)

- Does the intake screening consider, at a minimum, the following criteria to assess residents for risk of sexual victimization: Whether the resident has a mental, physical, or developmental disability? X  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess residents for risk of sexual victimization: The age of the resident? X  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess residents for risk of sexual victimization: The physical build of the resident? X  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess residents for risk of sexual victimization: Whether the resident has previously been incarcerated?  
X  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess residents for risk of sexual victimization: Whether the resident's criminal history is exclusively nonviolent?  
X  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess residents for risk of sexual victimization: Whether the resident has prior convictions for sex offenses against an adult or child? X  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess residents for risk of sexual victimization: Whether the resident is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming (the facility affirmatively asks the resident about his/her sexual orientation and gender identity AND makes a subjective determination based on the screener's perception whether the resident is gender non-conforming or otherwise may be perceived to be LGBTI)? X  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess residents for risk of sexual victimization: Whether the resident has previously experienced sexual victimization? X  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess residents for risk of sexual victimization: The resident's own perception of vulnerability? X  Yes  No

#### 115.241 (e)

- In assessing residents for risk of being sexually abusive, does the initial PREA risk screening consider, when known to the agency: prior acts of sexual abuse? X  Yes  No
- In assessing residents for risk of being sexually abusive, does the initial PREA risk screening consider, when known to the agency: prior convictions for violent offenses? X  Yes  No
- In assessing residents for risk of being sexually abusive, does the initial PREA risk screening consider, when known to the agency: history of prior institutional violence or sexual abuse?  
X  Yes  No

#### 115.241 (f)

- Within a set time period not more than 30 days from the resident's arrival at the facility, does the facility reassess the resident's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening? X  Yes  No

#### 115.241 (g)

- Does the facility reassess a resident's risk level when warranted due to a: Referral? X  Yes  No
- Does the facility reassess a resident's risk level when warranted due to a: Request? X  Yes  No
- Does the facility reassess a resident's risk level when warranted due to a: Incident of sexual abuse? X  Yes  No
- Does the facility reassess a resident's risk level when warranted due to a: Receipt of additional information that bears on the resident's risk of sexual victimization or abusiveness? X  Yes  No

#### 115.241 (h)

- Is it the case that residents are not ever disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (d)(1), (d)(7), (d)(8), or (d)(9) of this section? X  Yes  No

#### 115.241 (i)

- Has the agency implemented appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the resident's detriment by staff or other residents? X  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- X  **Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the agency has a policy that requires screening (upon admission to a facility or transfer to another facility) for risk of sexual abuse victimization or sexual abusiveness toward other residents.

ETC Policy 6.1.3 entitled PREA Intake and Screening, page 3, section Procedures B addresses 115.241(a).

The auditor's random review of five completed 2019 random ETC PREA Risk Assessments reveals substantial compliance with 115.241(a). The assessments were completed in a comprehensive and timely manner as they were completed within 24 hours of arrival at ETC.

The auditor's on-site review of 11 random resident files reveals comprehensive and timely risk screenings (completed on the date of arrival) were conducted in all 11 cases. Additionally, comprehensive and timely 30-day reassessments were completed in each case.

According to the staff who performs screening for risk of victimization and abusiveness interviewee, she screens residents upon admission to ETC or transfer from another facility for risk of sexual abuse victimization or sexual abusiveness toward other residents. The other interviewee asserts he does not facilitate such screenings. He does not actually conduct Initial PREA Screenings as he is responsible for the conduct of 30-day reassessments, as assigned.

Of the six random resident interviewees, four assert when they first arrived at ETC, they were asked questions like whether they had been in jail or prison before, whether they had ever been sexually abused, whether they identify as being gay, lesbian, or bisexual and whether they think they might be in danger of sexual abuse at ETC. One interviewee asserts she didn't recall whether she was questioned regarding the four previously mentioned topics and one interviewee asserts she was asked the requisite questions within the first couple days of arrival.

The auditor's review of the files for these two residents reveals the referenced questions were asked on the date of arrival during intake.

Pursuant to the PAQ, the COO self reports policy requires that residents be screened for risk of sexual victimization or risk of sexually abusing other residents within 72 hours of their intake. The COO further self reports 60 residents entered ETC during the last 12 months (either through intake or transfer) whose length of stay in the facility was 72 hours or more and all were screened for risk of sexual victimization or risk of sexually abusing other residents. All of these residents were screened within 72 hours of arrival at the facility.

ETC Policy 6.1.3 entitled PREA Intake and Screening, page 3, section Procedures B addresses 115.241(b). This policy requires screening within 24 hours of the resident's arrival at ETC.

The staff who performs initial PREA screening interviewee asserts incoming residents are screened for risk of sexual victimization or risk of sexually abusing other residents at intake, on the date of arrival.

Pursuant to the PAQ, the COO self reports risk assessment is conducted using an objective screening instrument.

The auditor has reviewed the objective screening instrument and finds the same to meet the requirements of 115.241(c).

Pursuant to the PAQ, the COO self reports the intake screening shall consider, at a minimum, the following criteria to assess residents for risk of sexual victimization:

- (1) Whether the resident has a mental, physical, or developmental disability;
- (2) The age of the resident;
- (3) The physical build of the resident;
- (4) Whether the resident has previously been incarcerated;
- (5) Whether the resident's criminal history is exclusively nonviolent;
- (6) Whether the resident has prior convictions for sex offenses against an adult or child;
- (7) Whether the resident is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
- (8) Whether the resident has previously experienced sexual victimization; and
- (9) The resident's own perception of vulnerability.

ETC Policy 6.1.3 entitled PREA Intake and Screening, pages 3 and 4, section Procedures B(1)(a-j) addresses 115.241(d).

In addition to the above, the screening tool is used to assess history of prior institutional violence or sexual abuse, as known to the agency. Specifically, there are questions that address both issues within a confinement setting. Additionally, residents are asked if they have a history of predatory behavior while institutionalized, including jail, and whether they have an institutional history of sexual activity.

The screening tool is separated into Vulnerability Factors and Aggressive/Predatory Factors, with related questions in each section. At the bottom of each section, there is a matrix wherein specific responses to specific questions and cumulative responses to total questions are used to identify the resident being screened as a Known Victim (KV) or Potential Victim (PV) or Known Aggressor (KA) or Potential Aggressor (PA). Additionally, there is a criteria for those residents who do not activate any of the key indicators specified in both sections. These residents are neither victims or aggressors.

The tool reflects the name of the resident, resident number, and assessment date. Additionally, there is a box wherein either Initial Assessment or Reassessment can be checked.

The staff who performs screening for risk of victimization and abusiveness interviewee asserts the initial screening tool considers whether the resident is a PV/KV or PA/KA, identifies as LGBTI, history of sexual abuse or victimization, height/weight/age, history of violence, and Security Threat Group (STG) status. Additionally, the screener's assessment and their feelings are integral to the process.

The interviewee asserts a closed door PREA screening interview is facilitated in the Intake Room. The interview is conducted one-on-one (screener and resident) and the screener reads the questions to the resident, documenting responses on the screening tool. The screening room, as previously described, is monitored. The auditor observed there is a window in the Intake Room door.

ETC Policy 6.1.3 entitled PREA Intake and Screening, page 4, section Procedures B(2) addresses 115.241(e).

As reflected in the narrative for 115.241(d), all of these components are addressed in the ETC Risk Screening tool. The auditor has verified the same pursuant to review of the actual tool and its implementation.

Pursuant to the PAQ, the COO self reports policy requires that the facility reassesses each resident's risk of victimization or abusiveness within a set time period, not to exceed 30 days after the resident's arrival at the facility, based upon any additional, relevant information received by the facility since the intake (initial) screening. The COO further self reports 54 residents (100% during the last 12 months) have entered the facility (either through intake or transfer) who were reassessed for their risk of sexual victimization or of being sexually abusive within 30 days after their arrival at the facility based upon any additional, relevant information received since intake. This represents 100% of all residents received at ETC for 30 days or more.

ETC Policy 6.1.3 entitled PREA Intake and Screening, page 4, section Procedures B(3) addresses 115.241(f).

The auditor's random review of five completed 2019 random ETC PREA Risk 30-day Reassessments reveals substantial compliance with 115.241(a). The assessments were completed in a comprehensive and timely manner as they were completed within 30 days of arrival at ETC.

Additional discussion regarding 30-day reassessments is articulated in the narrative for 115.241(a).

The staff responsible for risk screening (reassessments) interviewee asserts reassessments are conducted within 30 days of arrival at ETC.

Of the six random resident interviewees, four residents assert they were reassessed within one week of intake to 30-days. One interviewee asserts she does not recall when the reassessment was conducted.

A discussion regarding comprehensiveness and timeliness in terms of the facilitation of reassessments is articulated in the narrative for 115.241(a). The auditor notes files were reviewed for all six interviewees.

Pursuant to the PAQ, the COO self reports policy requires that a resident's risk level be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the resident's risk of sexual victimization or abusiveness.

ETC Policy 6.1.3 entitled PREA Intake and Screening, page 4, section Procedures B(4) addresses 115.241(g).

According to the staff member who facilitates PREA screening reassessments, the same can be initiated pursuant to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the resident's risk of sexual victimization or abusiveness.

The interviewee asserts the COO would alert him regarding recent facility sexual abuse and he would facilitate the reassessment. The interviewee asserts he unofficially monitors any sexual abuse incidents that may require the conduct of a reassessment.

The BACS PC asserts zero residents were re-screened during the last 24 months as the result of 115.241(g) criteria.

Pursuant to the PAQ, the COO self reports policy prohibits disciplining residents for refusing to answer or for not disclosing complete information related to questions regarding:

Whether or not the resident has a mental, physical, or developmental disability;  
Whether or not the resident is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender non-conforming;  
Whether or not the resident has previously experienced sexual victimization; and  
The resident's own perception of vulnerability.

ETC Policy 6.1.3 entitled PREA Intake and Screening, page 4, section Procedures B(6) addresses 115.241(h).

The auditor's review of the BACS Disclaimer is commensurate with the above policy. The language is clear and the resident signs and dates the same.

According to the staff responsible for risk screening (initial and reassessment) interviewees, residents are not disciplined in any way for refusing to respond to or for not disclosing complete information related to:

Whether or not the resident has a mental, physical, or developmental disability;  
Whether or not the resident is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender non-conforming;  
Whether or not the resident has previously experienced sexual victimization; and  
The resident's own perception of vulnerability.

Prior to administration of the screening tool, the resident signs a Disclaimer Form which stipulates there will be no discipline for refusal or failure to respond to the specific questions.

ETC Policy 6.1.3 entitled PREA Intake and Screening, page 4, section Procedures B(7) addresses 115.241(i).

According to the BACS PC, the COO, DD, and security coordinator constitute the individuals who have access to a resident's risk assessment within the facility in order to protect sensitive information from exploitation. Initial assessments and reassessments are stored in the BACS PC's Office and the aforementioned staff have access to the same.

The two staff responsible for risk screening corroborated the statement of the BACS PC, with the exception of the interviewee who completes reassessments. Specifically, he asserts subsequent to completion of the reassessment, he is out of the informational chain.

The auditor has determined that information dissemination controls are sufficient to meet the requirements of 115.241(i).

In view of the above, the auditor finds ETC substantially compliant with 115.241.

## Standard 115.242: Use of screening information

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.242 (a)

- Does the agency use information from the risk screening required by § 115.241, with the goal of keeping separate those residents at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Housing Assignments? X  Yes  No
- Does the agency use information from the risk screening required by § 115.241, with the goal of keeping separate those residents at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Bed assignments? X  Yes  No
- Does the agency use information from the risk screening required by § 115.241, with the goal of keeping separate those residents at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Work Assignments? X  Yes  No
- Does the agency use information from the risk screening required by § 115.241, with the goal of keeping separate those residents at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Education Assignments? X  Yes  No
- Does the agency use information from the risk screening required by § 115.241, with the goal of keeping separate those residents at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Program Assignments? X  Yes  No

#### 115.242 (b)

- Does the agency make individualized determinations about how to ensure the safety of each resident? X  Yes  No

#### 115.242 (c)

- When deciding whether to assign a transgender or intersex resident to a facility for male or female residents, does the agency consider on a case-by-case basis whether a placement would ensure the resident's health and safety, and whether a placement would present management or security problems (NOTE: if an agency by policy or practice assigns residents to a male or female facility on the basis of anatomy alone, that agency is not in compliance with this standard)? X  Yes  No
- When making housing or other program assignments for transgender or intersex residents, does the agency consider on a case-by-case basis whether a placement would ensure the resident's health and safety, and whether a placement would present management or security problems? X  Yes  No

#### 115.242 (d)

- Are each transgender or intersex resident's own views with respect to his or her own safety given serious consideration when making facility and housing placement decisions and programming assignments? X  Yes  No

### 115.242 (e)

- Are transgender and intersex residents given the opportunity to shower separately from other residents? X  Yes  No

### 115.242 (f)

- Unless placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting lesbian, gay, bisexual, transgender, or intersex residents, does the agency always refrain from placing: lesbian, gay, and bisexual residents in dedicated facilities, units, or wings solely on the basis of such identification or status? (N/A if the agency has a dedicated facility, unit, or wing solely for the placement of LGBT or I residents pursuant to a consent decree, legal settlement, or legal judgement.) X  Yes  No  NA
- Unless placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting lesbian, gay, bisexual, transgender, or intersex residents, does the agency always refrain from placing: transgender residents in dedicated facilities, units, or wings solely on the basis of such identification or status? (N/A if the agency has a dedicated facility, unit, or wing solely for the placement of LGBT or I residents pursuant to a consent decree, legal settlement, or legal judgement.) X  Yes  No  NA
- Unless placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting lesbian, gay, bisexual, transgender, or intersex residents, does the agency always refrain from placing: intersex residents in dedicated facilities, units, or wings solely on the basis of such identification or status? (N/A if the agency has a dedicated facility, unit, or wing solely for the placement of LGBT or I residents pursuant to a consent decree, legal settlement, or legal judgement.) X  Yes  No  NA

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- X  **Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the agency/facility uses information from the risk screening to inform housing, bed, work, education, and program assignments with the goal of keeping separate those residents at high risk of being sexually victimized from those at high risk of being sexually abusive.

ETC Policy 6.1.3 entitled PREA Intake and Screening, page 5, section Procedures C(2) addresses 115.242(a).

According to the BACS PC, risk screening information is translated into PAs, KAs, KVs, and PVs and As are geographically separated from Vs by room or wing. Staff are aware of the classifications and extra precautions may be employed.

Residents scoring as Unrestricted can be housed with either classification. The BACS PC monitors the grid at least monthly to ensure compliance with 115.242(a).

According to the two staff responsible for risk screening, information gleaned from the risk screening is used to make housing and programming sexual safety decisions. Their statements corroborate that of the BACS PC. All programming is supervised by staff, minimally.

The auditor's review of a document entitled ETC Active Room Assignments reveals residents are assigned as reflected in the following sentences. KVs/PVs and KAs/PAs are noted by room assignment, victims and aggressors are not housed in the same room. Residents classified as Unrestricted are housed with either classification. The auditor's review of the above document reveals no disparity in terms of the aforementioned housing practice. It appears proper separation is accomplished.

Pursuant to the PAQ, the COO self reports the agency shall make individualized determinations about how to ensure the safety of each resident.

ETC Policy 6.1.3 entitled PREA Intake and Screening, page 5, section Procedures C(3) addresses 115.242(b).

The schematic for ensuring resident sexual safety is addressed in the narrative for 115.242(a).

Pursuant to the PAQ, the COO self reports the facility makes housing and program assignments for transgender or intersex residents in the facility on a case-by-case basis.

ETC Policy 6.1.3 entitled PREA Intake and Screening, page 5, section Procedures C(4) and (5) addresses 115.242(c).

The BACS PC asserts staff and resident perceptions of personal safety are a primary consideration when determining housing and programming assignments. Housing, programming, and work strategies are addressed in the narratives for 115.242(a) and (b). There are no specific wings or facilities wherein transgender/intersex residents are housed. The resident's health and safety is always a consideration in terms of placement. Additionally, management and security concerns are a consideration in terms of placement.

The BACS PC asserts zero transgender/intersex residents were housed at ETC during the on-site audit. Accordingly, the interviews were not conducted.

ETC Policy 6.1.3 entitled PREA Intake and Screening, page 5, section Procedures C(6) addresses 115.242(d).

The BACS PC asserts that a transgender/intersex resident's own views with respect to her own safety would be given serious consideration in placement and programming assignments. In-house programming is supervised by staff.

The two staff responsible for risk screening also assert that a transgender/intersex resident's own views of her safety would be given serious consideration in placement and programming assignments. The question is asked on the Screening Tool.

ETC Policy 6.1.3 entitled PREA Intake and Screening, page 6, section Procedures C(9) addresses 115.242(e).

The BACS PC asserts each showering resident has access to an individual shower at ETC. If a transgender/intersex resident requests separate showering from the resident population, the request is directed to the COO or security coordinator. Separate showering is addressed during resident orientation and if requested, the shower would be provided in the intake room shower at a designated time each day.

The two staff responsible for risk screening interviewees corroborate the statement of the BACS PC.

During the facility tour, the auditor validated the statements of the interviewees.

ETC Policy 6.1.3 entitled PREA Intake and Screening, page 6, section Procedures C(10) addresses 115.242(f).

According to the BACS PC, ETC is not subject to a consent decree, legal settlement, or legal judgment requiring that it establish a dedicated facility, unit, or wing for lesbian, bisexual, transgender, or intersex residents. Additionally, there are no specialized wings at ETC wherein such housing arrangements are effected. The two LB interviewees validated the statements of staff, asserting they have not been placed in a housing area only for LGBTI residents.

The auditor's review of relevant housing grid(s) and interview results reveals LGBTI residents are not housed in selected rooms, wings, housing areas, etc.

In view of the above, the auditor finds ETC substantially compliant with 115.242.

## REPORTING

### Standard 115.251: Resident reporting

#### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.251 (a)

- Does the agency provide multiple internal ways for residents to privately report: Sexual abuse and sexual harassment? X  Yes  No
- Does the agency provide multiple internal ways for residents to privately report: Retaliation by other residents or staff for reporting sexual abuse and sexual harassment? X  Yes  No
- Does the agency provide multiple internal ways for residents to privately report: Staff neglect or violation of responsibilities that may have contributed to such incidents? X  Yes  No

#### 115.251 (b)

- Does the agency also provide at least one way for residents to report sexual abuse or sexual harassment to a public or private entity or office that is not part of the agency? X  Yes  No
- Is that private entity or office able to receive and immediately forward resident reports of sexual abuse and sexual harassment to agency officials? X  Yes  No
- Does that private entity or office allow the resident to remain anonymous upon request? X  Yes  No

#### 115.251 (c)

- Do staff members accept reports of sexual abuse and sexual harassment made verbally, in writing, anonymously, and from third parties? X  Yes  No
- Do staff members promptly document any verbal reports of sexual abuse and sexual harassment? X  Yes  No

#### 115.251 (d)

- Does the agency provide a method for staff to privately report sexual abuse and sexual harassment of residents? X  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- X  **Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the agency has established procedures allowing for multiple internal ways for residents to report privately to agency officials about:

Sexual abuse or sexual harassment;  
Retaliation by other residents or staff for reporting sexual abuse and sexual harassment; and  
Staff neglect or violation of responsibilities that may have contributed to such incidents.

ETC Policy 6.1.4 entitled PREA Reporting, page 1, section Procedure A(2) addresses 115.251(a).

The auditor's review of the ETC PREA Handbook reveals resident reporting options are scripted on page 4, section entitled How to Report an Incident of Sexual Abuse. Reporting to an agency external to ETC is also addressed in this section. The names and telephone numbers for JCSD, Safe Space, and Missoula YWCA Pathways Program are provided.

The ETC PREA Handbook reflects these telephone numbers are posted throughout the facility.

All 12 random staff interviewees were able to identify at least two resident reporting options with respect to the above. Options ranged from reporting to staff, contacting JCSD, submission of an emergency grievance, submit a written report, third-party report, submit an emergency grievance, and contact the PREA Hotline (Missoula YWCA Pathways).

All six random resident interviewees were able to articulate at least two reporting options. Reporting options quoted were reporting to staff and contacting the PREA Hotline.

During the facility tour, the auditor noted numerous informational posters, bearing information regarding reporting, hung near the resident telephones. The combination of the ETC PREA Handbook, posters, and resident training clearly provide residents ample opportunities to be informed regarding reporting options.

Pursuant to the PAQ, the COO self reports the agency provides at least one way for residents to report abuse or harassment to a public or private entity or office that is not part of the agency.

ETC Policy 6.1.4 entitled PREA Reporting, page 1, section Procedure A(1) and page 2, A(4) address 115.251(b).

According to the BACS PC, residents may report incidents as referenced in 115.251(a) to JCSD or Missoula YWCA Pathways. The auditor notes the ETC relationship with Missoula YWCA Pathways is relatively new.

The auditor's review of a Memorandum of Understanding (MOU) with Missoula YWCA Pathways reveals that while certainly supportive of 115.251(b) requirements, the same does not meet muster regarding the provision. The Missoula YWCA Pathways MOU does contain relevant verbiage with the caveat of a need for the resident's written release of information authorization regarding the specifics of the report.

Pursuant to follow-up questioning, the BACS PC asserts Missoula YWCA Pathways officials agree to immediately provide the substance of the report to either the ETC COO or ETC DD while respecting a victim's request for anonymity. However, if the victim or reporter has no concerns with such information, the same is reported to the aforementioned BACS officials in view of their 24-hour on-call status. The auditor notes this language is not articulated in the MOU.

All in-state calls are free-of-charge and the same are not monitored or recorded.

The provision is clear, in that, the entity must be able to receive and immediately forward resident reports of sexual abuse and sexual harassment to agency officials. Based on the above analysis, the aforementioned caveat could indirectly impede the timeliness and effectiveness of an investigation.

The auditor notes that JCSD does fulfill the requirements of 115.251(b) however, the same will require negotiation to ensure compliance with 115.251(b). Specifically, the MOU, as currently written, is silent as to immediate forwarding of resident reports of sexual abuse/harassment to agency officials. It is stipulated that the report will be immediately forwarded to the Jefferson County Sheriff for investigation and ETC management staff will be alerted if the resident chooses to remain anonymous.

The BACS PC asserts Missoula YWCA Pathways is the designated private entity for receipt of sexual abuse/harassment reports. Procedures are clearly articulated in an MOU between BACS and Missoula YWCA Pathways. As reflected in the above narrative regarding the same, Missoula YWCA Pathways staff will not provide any identifying information as to the victim's identity, with the exception of that noted above. Accordingly, the BACS PC will be working with either/or JCSD or Missoula YWCA Pathways to establish compliance with 115.251(b).

In view of the above, the auditor is imposing a 180-day corrective action period in which the BACS PC will address this issue with the aforementioned entities, crafting the agreement(s) in amended MOU(s), and training ETC stakeholders (COO, DD, SC, Duty Officers, and shift supervisors,) to achieve institutionalization. Throughout the remainder of the corrective action period, the BACS PC will forward to the auditor any investigations wherein this reporting procedure was utilized by the reporter. Additionally, the auditor will facilitate a test of the system to ensure the same has been institutionalized.

The corrective action will commence upon issuance of this report and conclude no later than May 12, 2021.

To demonstrate compliance, the BACS PC will forward to the auditor a copy of the amended MOU and a copy of training certifications for all affected staff. Any modifications to the ETC PREA Handbook or any other documents will also be forwarded to the auditor. The auditor will include all of this information in the audit file and he will subsequently determine the status of compliance.

#### **March 13, 2021 Update:**

**The auditor has been provided a copy of an MOU between the Boyd Andrews COO and the CEO of Community Counseling and Correctional Services (CCCS) (a private non-profit provider of community confinement services located in Butte, MT) wherein the requisite parameters of 115.251(b) are demonstrated. The CCCS telephone number is highlighted on amended posters hung near the resident telephones and the ETC PREA Handbook has been amended to reflect relevant information. Additionally, a copy of an email forwarded to all ETC staff users reveals the aforementioned information regarding this procedure has been provided to all staff. Finally, the auditor's February 26, 2021 test of the system reveals compliance with 115.251(b).**

#### **March 25, 2021 Update:**

**The auditor's review of three of four ETC Handbook Receipts substantiates new resident receipt of the amended or revised PREA Handbook since completion of the amendments. In view of the above, the auditor finds corrective action is complete and ETC is now substantially compliant with 115.251 and 115.253.**

**In view of the above, the auditor now finds ETC staff have completed and implemented requisite corrective action and ETC is now substantially compliant with 115.251(b).**

Five of six random resident interviewees assert incidents can be reported to family/friends who can submit a report without having to give the resident's name.

Pursuant to the PAQ, the COO self reports the agency has a policy mandating that staff accept reports of sexual abuse and sexual harassment made verbally, in writing, anonymously, and from third parties. The COO further self reports staff are required to document verbal reports as soon as possible following receipt of the same. Upon follow-up with the BACS PC, the PAQ is modified to read such reports are documented immediately.

ETC Policy 6.1.4 entitled PREA Reporting, page 2, section Procedure A(6) address 115.251(c).

All 12 random staff interviewees assert that when a resident alleges sexual abuse, she can do so verbally, in writing, anonymously, and from third parties. Staff unanimously assert they would immediately document such reports.

All six random resident interviewees assert residents can make reports of sexual abuse or sexual harassment either in person or in writing and a report can be made by a third party so the resident does not have to be named.

Pursuant to the PAQ, the COO self reports the agency has established procedures for staff to privately report sexual abuse and sexual harassment of residents. The COO further self reports staff can verbally, telephonically, and electronically, via email, submit a report. Third party reporting forms are a means as well. As reflected at 115.231, staff receive training regarding reporting options pursuant to a Power Point presentation.

ETC Policy 6.1.4 entitled PREA Reporting, page 1, section Procedure A(1) address 115.251(d).

All 12 random staff interviewees were able to identify at least two methods of privately reporting sexual abuse and sexual harassment of residents. Reporting methods include, but are not limited to: contact BACS COO, DD; e-mail to COO/BACS PC/security supervisors; contact COO/BACS PC cell phone; report to supervisor behind closed doors; telephone supervisor; and submit a written report.

In view of the above, the auditor now finds ETC substantially compliant with 115.251.

## **Standard 115.252: Exhaustion of administrative remedies**

### **All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### **115.252 (a)**

- Is the agency exempt from this standard? NOTE: The agency is exempt ONLY if it does not have administrative procedures to address resident grievances regarding sexual abuse. This does not mean the agency is exempt simply because a resident does not have to or is not ordinarily expected to submit a grievance to report sexual abuse. This means that as a matter of explicit policy, the agency does not have an administrative remedies process to address sexual abuse.  Yes  No

#### **115.252 (b)**

- Does the agency permit residents to submit a grievance regarding an allegation of sexual abuse without any type of time limits? (The agency may apply otherwise-applicable time limits to any portion of a grievance that does not allege an incident of sexual abuse.) (N/A if agency is exempt from this standard.)  Yes  No  NA
- Does the agency always refrain from requiring a resident to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse? (N/A if agency is exempt from this standard.)  Yes  No  NA

#### **115.252 (c)**

- Does the agency ensure that: A resident who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint? (N/A if agency is exempt from this standard.)  Yes  No  NA

- Does the agency ensure that: Such grievance is not referred to a staff member who is the subject of the complaint? (N/A if agency is exempt from this standard.) X  Yes  No  NA

#### 115.252 (d)

- Does the agency issue a final agency decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance? (Computation of the 90-day time period does not include time consumed by residents in preparing any administrative appeal.) (N/A if agency is exempt from this standard.) X  Yes  No  NA
- If the agency determines that the 90-day timeframe is insufficient to make an appropriate decision and claims an extension of time (the maximum allowable extension of time to respond is 70 days per 115.252(d)(3)) , does the agency notify the resident in writing of any such extension and provide a date by which a decision will be made? (N/A if agency is exempt from this standard.) X  Yes  No  NA
- At any level of the administrative process, including the final level, if the resident does not receive a response within the time allotted for reply, including any properly noticed extension, may a resident consider the absence of a response to be a denial at that level? (N/A if agency is exempt from this standard.) X  Yes  No  NA

#### 115.252 (e)

- Are third parties, including fellow residents, staff members, family members, attorneys, and outside advocates, permitted to assist residents in filing requests for administrative remedies relating to allegations of sexual abuse? (N/A if agency is exempt from this standard.) X  Yes  No  NA
- Are those third parties also permitted to file such requests on behalf of residents? (If a third-party files such a request on behalf of a resident, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.) (N/A if agency is exempt from this standard.) X  Yes  No  NA
- If the resident declines to have the request processed on his or her behalf, does the agency document the resident's decision? (N/A if agency is exempt from this standard.) X  Yes  No  NA

#### 115.252 (f)

- Has the agency established procedures for the filing of an emergency grievance alleging that a resident is subject to a substantial risk of imminent sexual abuse? (N/A if agency is exempt from this standard.) X  Yes  No  NA
- After receiving an emergency grievance alleging a resident is subject to a substantial risk of imminent sexual abuse, does the agency immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken? (N/A if agency is exempt from this standard.) X  Yes  No  NA
- After receiving an emergency grievance described above, does the agency provide an initial response within 48 hours? (N/A if agency is exempt from this standard.) X  Yes  No  NA

- After receiving an emergency grievance described above, does the agency issue a final agency decision within 5 calendar days? (N/A if agency is exempt from this standard.)  
X  Yes  No  NA
- Does the initial response and final agency decision document the agency's determination whether the resident is in substantial risk of imminent sexual abuse? (N/A if agency is exempt from this standard.) X  Yes  No  NA
- Does the initial response document the agency's action(s) taken in response to the emergency grievance? (N/A if agency is exempt from this standard.) X  Yes  No  NA
- Does the agency's final decision document the agency's action(s) taken in response to the emergency grievance? (N/A if agency is exempt from this standard.) X  Yes  No  NA

### 115.252 (g)

- If the agency disciplines a resident for filing a grievance related to alleged sexual abuse, does it do so ONLY where the agency demonstrates that the resident filed the grievance in bad faith? (N/A if agency is exempt from this standard.) X  Yes  No  NA

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- X  **Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the agency has an administrative procedure for dealing with resident grievances regarding sexual abuse.

ETC Policy 6.1.4 entitled PREA Reporting, pages 3, and 4, section Procedure A(12)(a-f) addresses 115.252(a).

Pursuant to the PAQ, the COO self reports agency policy or procedure allows a resident to submit a grievance regarding an allegation of sexual abuse at any time, regardless of when the incident is alleged to have occurred. The COO further self reports agency policy does not require a resident to use an informal grievance process, or otherwise to attempt to resolve with staff, an alleged incident of sexual abuse.

ETC Policy 6.1.4 entitled PREA Reporting, page 3, section Procedure A(12)(a-d) addresses 115.252(b).

The auditor has reviewed the ETC PREA Handbook and finds the requisite information identified in this provision is accurately captured at page 6, section entitled Grievance Procedure (a).

Pursuant to the PAQ, the COO self reports agency policy and procedure allows a resident to submit a grievance alleging sexual abuse without submitting it to the staff member who is the subject of the complaint. The COO further self reports agency policy and procedure requires that a resident grievance alleging sexual abuse not be referred to the staff member who is the subject of the complaint.

ETC Policy 6.1.4 entitled PREA Reporting, page 4, section Procedure A(12)(e)(5) addresses 115.252(c).

The auditor's review of the ETC PREA Handbook reveals the requisite information identified in this provision is accurately captured at page 6, section entitled Grievance Procedure (b).

Pursuant to the PAQ, the COO self reports agency policy and procedure requires that a decision on the merits of any grievance or portion of a grievance alleging sexual abuse be made within 90 days of the filing of the grievance. The COO further self reports that zero grievances have been filed (alleging sexual abuse) during the last 12 months. Finally, the COO self reports the agency would always notify the resident, in writing, when the agency files for an extension, including notice of the date by which a decision will be made.

ETC Policy 6.1.4 entitled PREA Reporting, page 4, section Procedure A(12)(f)(1-4) addresses 115.252(d).

The auditor's review of the ETC PREA Handbook reveals the requisite information identified in this provision is accurately captured at page 7, section entitled Grievance Procedure (c).

The BACS PC asserts, at the time of the on-site audit, zero resident(s) who reported a sexual abuse at ETC were housed at the facility.

Pursuant to the PAQ, the COO self reports agency policy and procedure permits third parties, including fellow residents, staff members, family members, attorneys, and outside advocates, to assist residents in filing requests for administrative remedies relating to allegations of sexual abuse and to file such requests on behalf of residents. The COO further self reports agency policy and procedure requires if the resident declines third-party assistance in filing a grievance alleging sexual abuse, the agency documents the resident's decision to decline. Zero grievances alleging sexual abuse were filed by residents during the last 12 months in which the resident declined third-party assistance, containing documentation of the resident's decision to decline.

ETC Policy 6.1.4 entitled PREA Reporting, page 7, section Procedure D(2)and (3) addresses 115.252(e).

The auditor's review of the ETC PREA Handbook reveals the requisite information identified in this provision is accurately captured at page 7, section entitled Grievance Procedure (d).

Pursuant to the PAQ, the COO self reports the agency has a policy and established procedures for filing an emergency grievance alleging that a resident is subject to a substantial risk of imminent sexual abuse. The COO further self reports agency policy and procedure for emergency grievances alleging substantial risk of imminent sexual abuse requires an initial response within 48 hours. Zero emergency grievances were filed during the last 12 months alleging substantial risk of imminent sexual abuse. According to the COO, agency policy and procedure for emergency grievances alleging substantial risk of imminent sexual abuse requires that a final agency decision be issued within five days.

ETC Policy 6.1.4 entitled PREA Reporting, page 3, section Procedure 12(e)(1)and (2) addresses 115.252(f).

The auditor's review of the ETC PREA Handbook reveals the requisite information identified in this provision is accurately captured at page 8, section entitled Emergency Grievance.

Pursuant to the PAQ, the COO self reports the agency has a written policy that limits its ability to discipline a resident for filing a grievance alleging sexual abuse to occasions where the agency demonstrates that the resident filed the grievance in bad faith. The COO further self reports in the last 12 months, there were no resident grievances alleging sexual abuse that resulted in disciplinary action by the agency against the resident for having filed the grievance in bad faith.

ETC Policy 6.1.4 entitled PREA Reporting, page 3, section Procedure 12(e)(3) addresses 115.252(g).

The auditor's review of the ETC PREA Handbook reveals the requisite information identified in this provision is accurately captured at page 8, section entitled Emergency Grievance.

In view of the above, the auditor finds ETC substantially compliant with 115.252.

## **Standard 115.253: Resident access to outside confidential support services**

**All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

**115.253 (a)**

- Does the facility provide residents with access to outside victim advocates for emotional support services related to sexual abuse by giving residents mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations? X  Yes  No
- Does the facility enable reasonable communication between residents and these organizations and agencies, in as confidential a manner as possible? X  Yes  No

**115.253 (b)**

- Does the facility inform residents, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws? X  Yes  No

**115.253 (c)**

- Does the agency maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide residents with confidential emotional support services related to sexual abuse? X  Yes  No
- Does the agency maintain copies of agreements or documentation showing attempts to enter into such agreements? X  Yes  No

**Auditor Overall Compliance Determination**

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- X  **Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the facility provides residents with access to outside victim advocates for emotional support services related to sexual abuse by:

Giving residents mailing addresses and telephone numbers (including toll-free hotline numbers where available) for local, state, or national victim advocacy or rape crisis organizations; and Enabling reasonable communication between residents and these organizations in as confidential a manner as possible.

ETC Policy 6.1.5 entitled PREA Medical and Mental Health, pages 1 and 2, section Procedure B(1) addresses 115.253(a).

The auditor's review of the ETC PREA Handbook reveals that the address for Safe Space is not referenced in the Handbook however, the telephone number is referenced on page 4. The address is avail-

able pursuant to resident contact with their case manager and the telephone number is referenced on page 4 of the ETC PREA Handbook in the section entitled How to Report an Incident of Sexual Assault. Additionally, the information is noted on a poster wherein the Safe Space telephone number is referenced.

The auditor recommends the Safe Space telephone number and mailing address be added to the ETC PREA Handbook on page 9 in the section entitled Counseling Programs for Victims of Sexual Assault and deleted from the aforementioned citation on page 4. Additionally, the address should be added to the poster.

Contact with the BACS PC reveals all in-state calls are free-of-charge, calls are not monitored or recorded, and resident pin numbers/other identifiers are not required for the purpose of making in-state or out-of-state telephone calls.

The auditor's review of the MOU between ETC and Safe Space reveals substantial compliance with 115.253.

Four of six random resident interviewees relate they know there are services available outside of the facility for dealing with sexual abuse, if needed. Two of the four interviewees identified specific services that are available (mental health, Safe Space). Three of the six interviewees assert addresses and telephone numbers are identified on the posters positioned near resident telephones. Five of six interviewees assert such telephone calls are free-of-charge. Finally, all six interviewees assert they can talk to people from these services at anytime.

Clearly, some interviewees were knowledgeable regarding outside services while some presented with disinterested attitudes. As mentioned throughout this report, the PREA Handbook is comprehensive, providing valuable information for residents to consume. Minimally, with the amendment of the ETC PREA Handbook as referenced above, residents will be aware of the resources available to them with respect to 115.253(a).

During the facility tour, the auditor did confirm the requisite telephone number is posted in the vicinity of the resident telephones.

Pursuant to the PAQ, the COO self reports the facility informs residents, prior to giving them access to outside support services, of the extent to which such communications will be monitored. The COO further self reports the facility informs residents, prior to giving them access to outside support services, of the mandatory reporting rules governing privacy, confidentiality, and/or privilege that apply to disclosures of sexual abuse made to outside victim advocates, including any limits to confidentiality under relevant federal, state, or local law.

ETC Policy 6.1.5 entitled PREA Medical and Mental Health, page 2, section Procedure B(2) addresses 115.253(b).

Confidentiality is generally addressed on page 9 of the ETC PREA Handbook entitled Counseling Programs for Victims of Sexual Assault. The auditor notes this provision references only mandatory reporting of sexual abuse that occurred or is occurring at ETC. The same does not reference reporting of sexual abuse of a minor in the community, alleged sexual abuse in the community, other criminal behavior at ETC or in the community, or self-injurious behavior.

Accordingly, the auditor finds ETC non-compliant with the intent of 115.253(b). In view of the above, a 180-day corrective action period is imposed wherein ETC will substantiate institutionalization of 115.253(b). The corrective action period will conclude on May 12, 2021.

To substantiate institutionalization, the BACS PC will amend the ETC PREA Handbook to include the aforementioned subject-matter. Contact with the District Attorney's Office may be prudent for a determination regarding mandatory reporting laws in the State of Montana.

The BACS PC will provide to the auditor a copy of the amended ETC PREA Handbook. Subsequently, the BACS PC will provide to the auditor a roster reflective of residents received at ETC since completion and distribution of the amended ETC PREA Handbook. The auditor will randomly select names, provide the same to the BACS PC, and the BACS PC will provide to the auditor copies of resident receipts for the ETC PREA Handbook.

Compliance may also be demonstrated by addressing all components of mandatory reporting, as applicable to the subject-matter of 115.253(b), during the PREA Orientation phase. The BACS PC will provide to the auditor the amended lesson plan bearing the referenced subject-matter if this option is chosen.

If the above option is chosen, the BACS PC will provide to the auditor a copy of a roster reflective of residents received at ETC since completion and distribution of the amended lesson plan. The auditor will randomly select names, provide the same to the BACS PC, and the PC will provide to the auditor copies of corresponding resident education certifications.

**The auditor recommends the Safe Space telephone number and mailing address be added to the ETC PREA Handbook on page 9 in the section entitled Counseling Programs for Victims of Sexual Assault and deleted from the aforementioned citation on page 4. Additionally, the address should be added to the poster.**

**March 13, 2021 Update:** The above information has been added to the ETC PREA Handbook, pages 7 and 8, under the headings Counseling Programs for Victims of Sexual Assault and Notice of Limits to Confidentiality. Additionally, the recommended information (physical address) has been added to the respective PREA poster.

**March 25, 2021 Update:**

**The auditor's review of three of four ETC Handbook Receipts substantiates new resident receipt of the amended or revised PREA Handbook since completion of the amendments. In view of the above, the auditor finds corrective action is complete and ETC is now substantially compliant with 115.251 and 115.253.**

All six random resident interviewees assert that what they say to people representing the service agencies addressed in the narrative for 115.253(a), remains private. Three of the six interviewees identified specific instances when such conversations may be shared or listened to by others. Examples cited were for law enforcement use in the event of a sexual abuse, criminal matter at ETC, and self-injurious behavior. Residents are generally aware of resources from which to research answers to questions regarding the subject-matter of 115.253(b).

Pursuant to the PAQ, the COO self reports the agency or facility maintains MOUs or other agreements with community service providers that are able to provide residents with emotional support services related to sexual abuse. The COO further self reports the facility maintains copies of these agreements.

The auditor's review of the MOUs with Butte Safe Space reveals substantial compliance with 115.253(c).

In view of the above, the auditor finds ETC substantially compliant with 115.253.

## **Standard 115.254: Third-party reporting**

**All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

### 115.254 (a)

- Has the agency established a method to receive third-party reports of sexual abuse and sexual harassment? X  Yes  No
- Has the agency distributed publicly information on how to report sexual abuse and sexual harassment on behalf of a resident? X  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- X  **Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the agency or facility provides a method to receive third-party reports of resident sexual abuse or sexual harassment. A Third Party reporting form is located on all wings and on the www.boydandrew.com website. All reports go directly to the BACS PC who, in turn, distributes same to the respective facility.

The auditor reviewed the BACS Third-Party Reporting Form and determined the same is comprehensive and commensurate with the standard. The name, address, and telephone number of the BACS PC are clearly reflected in the document. Contact information for the reporter consists of name, telephone, and best time to contact. Description of Incident information includes date of the alleged incident, name(s) of offender(s) and staff involved, type of incident (sexual abuse, sexual harassment, unknown), facility wherein offender resides, the facility wherein the alleged incident occurred, and finally, a description of the alleged incident.

According to the COO, no third-party reports have been received during the last 12 months.

In view of the above, the auditor finds ETC substantially compliant with 115.254.

## OFFICIAL RESPONSE FOLLOWING A RESIDENT REPORT

### Standard 115.261: Staff and agency reporting duties

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

### 115.261 (a)

- Does the agency require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency? X  Yes  No
- Does the agency require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding retaliation against residents or staff who reported an incident of sexual abuse or sexual harassment? X  Yes  No

- Does the agency require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding any staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse or sexual harassment or retaliation? X  Yes  No

#### 115.261 (b)

- Apart from reporting to designated supervisors or officials, do staff always refrain from revealing any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions? X  Yes  No

#### 115.261 (c)

- Unless otherwise precluded by Federal, State, or local law, are medical and mental health practitioners required to report sexual abuse pursuant to paragraph (a) of this section? X  Yes  No
- Are medical and mental health practitioners required to inform residents of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services? X  Yes  No

#### 115.261 (d)

- If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, does the agency report the allegation to the designated State or local services agency under applicable mandatory reporting laws? X  Yes  No

#### 115.261 (e)

- Does the facility report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators? X  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- X  **Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports staff must report immediately and according to policy report any knowledge, suspicion, or information they receive regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency;

Any retaliation against residents or staff who reported such an incident; and  
Any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

ETC Policy 6.1.4 entitled PREA Reporting, page 5, section Procedure C(1) addresses 115.261(a).

As previously noted throughout this report, staff/contractor/volunteer training clearly addresses PREA reporting responsibilities. Several "checks and balances" are in place, ensuring the above groups are aware not only of their reporting responsibilities but also, mechanisms to accomplish the same.

All 12 random staff interviewees advise that all staff must report any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility; retaliation against residents or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. All interviewees advise verbal reports must be effected immediately to the COO, DD, shift supervisor, BACS PC, or lead security staff.

Pursuant to the PAQ, the COO self reports apart from reporting to designated supervisors or officials and designated state or local service agencies, agency policy prohibits staff from revealing any information related to a sexual abuse report to anyone other than to the extent necessary to make treatment, investigation, and other security and management decisions.

ETC Policy 6.1.4 entitled PREA Reporting, page 6, section Procedure C(3) addresses 115.261(b).

Both medical and mental health interviewees advise that at the initiation of services to a resident, they disclose the limitations of confidentiality and their duty to report. This is driven by education, Continuing Medical Education (CME), training, policy, ethics, and informed consent. They are also required to report any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment to a designated supervisor or official immediately upon learning of the same (COO, DD, or BACS PC). Neither interviewee has ever become personally aware of such incidents during the last 36 months.

ETC Policy 6.1.4 entitled PREA Reporting, page 6, section Procedure C(4) addresses 115.261(d).

As reported to the auditor by the BACS PC, no residents meeting the criteria of the Montana Elder and Persons with Developmental Disabilities Abuse Prevention Act, have been housed at ETC during the last 12 months.

According to the COO, juveniles are not housed at ETC and therefore, zero residents under the age of 18 are housed at ETC. If the need arose with respect to sexual victimization of a vulnerable adult, Adult Protective Services (APS) and MDOC would be contacted.

The same was again substantiated during the BACS PC's interview. The BACS PC did clarify that vulnerable adults are not generally placed at ETC as the result of the aforementioned screening process.

ETC Policy 6.1.11 entitled PREA Coordinated Response, page 1, section Procedure 2 addresses 115.261(e).

According to the COO, he is a sexual abuse/harassment investigator. Reports would come directly to him and he would either initiate an investigation or delegate the same to one of the other trained investigators.

In view of the above, the auditor finds ETC substantially compliant with 115.261.

## Standard 115.262: Agency protection duties

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.262 (a)

- When the agency learns that a resident is subject to a substantial risk of imminent sexual abuse, does it take immediate action to protect the resident? X  Yes  No

#### Auditor Overall Compliance Determination

**Exceeds Standard** (*Substantially exceeds requirement of standards*)

- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports when the agency or facility learns that a resident is subject to a substantial risk of imminent sexual abuse, it takes immediate action to protect the resident (i.e., it takes some action to assess and implement appropriate protective measures without unreasonable delay). The COO further self reports in the last 12 months, there was zero times the facility determined a resident was subject to substantial risk of imminent sexual abuse.

ETC Policy 6.1.4 entitled PREA Reporting, page 2, section Procedure A(6) addresses 115.262(a).

In response to protective action taken when it is learned that a resident is or may be subject to a substantial risk of imminent sexual abuse, the BACS CEO asserts an investigation and monitoring are initiated. Provision of emotional support is also initiated. The resident will be removed to a safe place and the shift supervisor will be notified to intensify rounds.

In response to a similar question, the COO asserts the potential victim will be placed in a safe place. An attempt is made to identify potential perpetrator(s). Action(s) are initiated immediately.

Pending arrivals are assessed to determine whether they require separation from other resident(s) based on sexual victimization/abuse tendencies and security concerns.

All 12 random staff interviewees assert that if it is learned a resident is at risk of imminent sexual abuse, the potential victim is removed from harm's way and generally monitored while the matter is reported and documented. The action is taken immediately.

In view of the above, the auditor finds ETC substantially compliant with 115.262.

## Standard 115.263: Reporting to other confinement facilities

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.263 (a)

- Upon receiving an allegation that a resident was sexually abused while confined at another facility, does the head of the facility that received the allegation notify the head of the facility or appropriate office of the agency where the alleged abuse occurred?  Yes  No

#### 115.263 (b)

- Is such notification provided as soon as possible, but no later than 72 hours after receiving the allegation?  Yes  No

#### 115.263 (c)

- Does the agency document that it has provided such notification?  Yes  No

#### 115.263 (d)

- Does the facility head or agency office that receives such notification ensure that the allegation is investigated in accordance with these standards?  Yes  No

## Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the agency has a policy requiring that, upon receiving an allegation a resident was sexually abused while confined at another facility, the head of the facility must notify the head of the facility or appropriate office of the agency or facility where sexual abuse is alleged to have occurred. The COO further self reports one such allegation was received during the last 12 months.

ETC Policy 6.1.4 entitled PREA Reporting, page 7, section Procedure C(10) addresses 115.263(a).

The auditor's review of documents and reports from two residents regarding four separate complaints of sexual harassment and sexual abuse against both staff and a resident occurring at other facilities/police departments reveals timely written follow-up by the ETC COO to affected officials in compliance with 115.263(a), (b), and (c). The reports were handled in a timely manner and a written record was maintained. Reports encompassed alleged incidents occurring in 2018 and 2019.

Pursuant to the PAQ, the COO self reports agency policy requires the facility head provides such notification as soon as possible, but no later than 72 hours after receiving the allegation.

ETC Policy 6.1.4 entitled PREA Reporting, page 7, section Procedure C(10) addresses 115.263(b).

Pursuant to the PAQ, the COO self reports the agency or facility documents that it has provided such notification within 72 hours of receiving the allegation.

ETC Policy 6.1.4 entitled PREA Reporting, page 7, section Procedure C(10) addresses 115.263(c).

Pursuant to the PAQ, the COO self reports the agency or facility policy requires that allegations received from other facilities/agencies are investigated in accordance with the PREA standards. The COO further self reports in the last 12 months, zero allegation(s) of sexual abuse were received from other facilities regarding incidents allegedly arising at ETC.

ETC Policy 6.1.4 entitled PREA Reporting, page 7, section Procedure C(10) addresses 115.263(d).

When questioned as to the designated point of contact at ETC for receipt of allegations of sexual abuse or sexual harassment referred from another administrator regarding an incident occurring at ETC, the BACS CEO advises such report would be directed to the COO. He would communicate with the head of the affected agency and if the incident occurred at ETC, the investigation would be initiated accordingly. Zero such referrals were received at ETC during the 12 months as the CEO recalled.

When an allegation is received from another facility or agency regarding an incident of sexual abuse or sexual harassment that allegedly occurred at ETC, the COO asserts an investigation would be immediately initiated. The alleged victim resident would be interviewed either at her current facility or telephonically. The COO would report his findings to the Warden or facility head of the current institution upon conclusion of the investigation.

The COO further asserts zero such allegations were received.

In view of the above, the auditor finds ETC substantially compliant with 115.263.

## Standard 115.264: Staff first responder duties

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.264 (a)

- Upon learning of an allegation that a resident was sexually abused, is the first security staff member to respond to the report required to: Separate the alleged victim and abuser?  
X  Yes  No
- Upon learning of an allegation that a resident was sexually abused, is the first security staff member to respond to the report required to: Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence? X  Yes  No
- Upon learning of an allegation that a resident was sexually abused, is the first security staff member to respond to the report required to: Request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating, if the abuse occurred within a time period that still allows for the collection of physical evidence? X  Yes  No
- Upon learning of an allegation that a resident was sexually abused, is the first security staff member to respond to the report required to: Ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating, if the abuse occurred within a time period that still allows for the collection of physical evidence? X  Yes  No

#### 115.264 (b)

- If the first staff responder is not a security staff member, is the responder required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff? X  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- X  **Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the agency has a first responder policy for allegations of sexual abuse. The COO further self reports the agency policy requires that, upon learning of an allegation a resident was sexually abused, the first security staff member to respond to the report shall be required to:

Separate the alleged victim and abuser;

Preserve and protect any crime

scene until appropriate steps can be taken to collect any evidence;

If the abuse occurred within a time period that still allows for the collection of physical evidence, request the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and

If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

During the last 12 months, one unfounded allegation of resident sexual abuse was reported at ETC.

The auditor's review of the investigative materials reveals completion of the four first responder steps was not relevant to the allegation. Specifically, the reporter did not identify a fact pattern indicative of either sexual abuse or harassment. Accordingly, there was no reason to invoke first responder steps.

ETC Policy 6.1.11 entitled PREA Coordinated Response, pages 1 and 2, section Procedure A(1)(a), (f), (h), and (j) addresses 115.264(a).

In addition to the above, the auditor's review of the ETC Coordinated Response to PREA Incidents flow chart provides further evidence of compliance with 115.264(a).

Both the security staff first responder and non-security staff first responder correctly identified the four steps of the first responder protocol.

Pursuant to the PAQ, the COO self reports all staff first responders are expected to meet the expectations of 115.264(a) as all staff receive the same first responder training. The COO further self reports there were no allegations of sexual abuse reported during the last 12 months wherein the first responder was a non-security staff member.

ETC Policy 6.1.11 entitled PREA Coordinated Response, pages 1 and 2, section Procedure A(1)(a), (f), (h), and (j) addresses 115.264(b).

All 12 random staff interviewees assert they know and understand the agency's protocol for obtaining usable physical evidence if a resident alleges sexual abuse. Seven of the 12 interviewees responded appropriately to all four requirements of the uniform evidence protocol, ensuring maximization of the potential for obtaining usable physical evidence. In regard to the five remaining interviewees, the majority of confusion centers on "requesting" that the victim not destroy physical evidence vs. "ensuring" that the perpetrator doesn't destroy physical evidence.

In view of the above, the auditor finds ETC substantially compliant with 115.264.

## Standard 115.265: Coordinated response

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.265 (a)

- Has the facility developed a written institutional plan to coordinate actions among staff first responders, medical and mental health practitioners, investigators, and facility leadership taken in response to an incident of sexual abuse?  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the facility has developed a written institutional plan to coordinate actions taken in response to an incident of sexual abuse among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

ETC Policy 6.1.11 entitled PREA Coordinated Response, pages 1 through 7 provides an excellent guideline for staff use in the event of a sexual assault or sexual harassment incident at ETC.

In addition to the above, the auditor's review of the ETC Coordinated Response to PREA Incidents flow chart provides further evidence of compliance with 115.265(a).

The COO asserts that a plan is in place to coordinate actions among staff first responders, medical and mental health practitioners, investigators, and facility leadership in response to an incident of sexual abuse. The Coordinated Response Plan is a policy and the ETC Coordinated Response to PREA Incidents flow chart serves as a chronological road map to resolution of sexual abuse incidents. The topic is addressed during new employee PREA Orientation training, as well as, PREA ART.

In view of the above, the auditor finds ETC substantially compliant with 115.265.

## **Standard 115.266: Preservation of ability to protect residents from contact with abusers**

### **All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### **115.266 (a)**

- Are both the agency and any other governmental entities responsible for collective bargaining on the agency's behalf prohibited from entering into or renewing any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff sexual abusers from contact with any residents pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted? X  Yes  No

#### **115.266 (b)**

- Auditor is not required to audit this provision.

### **Auditor Overall Compliance Determination**

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- X  **Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the facility is not engaged in any collective bargaining agreements with any entity. Accordingly, the auditor has determined 115.266(a) is not applicable to ETC however, since there are no deviations from standard, ETC is compliant with the same.

## **Standard 115.267: Agency protection against retaliation**

### **All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### **115.267 (a)**

- Has the agency established a policy to protect all residents and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other residents or staff? X  Yes  No
- Has the agency designated which staff members or departments are charged with monitoring retaliation? X  Yes  No

#### 115.267 (b)

- Does the agency employ multiple protection measures, such as housing changes or transfers for resident victims or abusers, removal of alleged staff or resident abusers from contact with victims, and emotional support services for residents or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations? X  Yes  No

#### 115.267 (c)

- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor the conduct and treatment of residents or staff who reported the sexual abuse to see if there are changes that may suggest possible retaliation by residents or staff? X  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor the conduct and treatment of residents who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by residents or staff? X  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Act promptly to remedy any such retaliation? X  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor any resident disciplinary reports? X  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor resident housing changes? X  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor resident program changes? X  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor negative performance reviews of staff? X  Yes  No

- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor reassignments of staff?  Yes  No
- Does the agency continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need?  Yes  No

#### 115.267 (d)

- In the case of residents, does such monitoring also include periodic status checks?  
 Yes  No

#### 115.267 (e)

- If any other individual who cooperates with an investigation expresses a fear of retaliation, does the agency take appropriate measures to protect that individual against retaliation?  
 Yes  No

#### 115.267 (f)

- Auditor is not required to audit this provision.

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the agency has a policy to protect all residents and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other residents or staff. The COO further self reports the agency designates staff member(s) or charges department(s) with monitoring for possible retaliation. Pursuant to ETC Policy 6.1.9, the COO and Grievance Coordinator are designated as the staff responsible for retaliation monitoring.

ETC Policy 6.1.9 entitled PREA Findings, Sanctions, and False Reporting, page 3, section Procedure I(1) addresses 115.267(a).

The auditor's review of one investigation wherein sexual harassment was substantiated reveals the victim received requisite retaliation monitoring as prescribed in policy. The witness was monitored for one month pursuant to weekly meetings however, she was discharged from the ETC Program three days following the last meeting.

In view of the above, the auditor finds ETC substantially compliant with 115.267(a), (b), (c), (d), and (e).

ETC Policy 6.1.9 entitled PREA Findings, Sanctions, and False Reporting, pages 3 and 4, section Procedure I(2) and (4) addresses 115.267(b).

The BACS CEO asserts the following in terms of strategies to protect residents and staff from retaliation for sexual abuse or sexual harassment allegations:

The perpetrator would be moved to another facility/jail while investigating the allegation. If the allegation is substantiated, the perpetrator would not be returned to the facility. Victims would be monitored for retaliation for 90 days. Frequent check-ins with the victim resident would be employed and immediate Medical/Mental Health support would be invoked. If the victim requests, MDOC may move the victim to another facility.

Staff may be moved to HPRC or vice-versa. The shift supervisor could be directed to increase monitoring of the victim staff member. Shift(s) or housing unit/post assignment(s) could be modified. Finally, the Employee Assistance Program (EAP) might be recommended.

In regard to strategies available for implementation to protect residents and staff from retaliation in response to reporting sexual abuse and sexual harassment, the COO/designated staff member charged with monitoring retaliation asserts there is zero tolerance for such retaliation. He facilitates most retaliation monitoring meetings and completes requisite documentation. He strategizes to keep the victim, witness, reporter, etc. safe.

Strategies that may be implemented are as follows:

- Implement housing changes for victim, witnesses;
- Increase staff rounds to monitor retaliation;
- Discuss staff's observations regarding the victim, witnesses;
- Increased emotional/medical support may be offered;
- Change program assignments to ensure victim and perpetrator are separated;
- Change staff shifts;
- Move staff perpetrator to HPRC or employ other strategy(ies) if appropriate;
- Change housing;
- Place staff perpetrator on unpaid administrative leave, pending the results of the investigation; and
- Remove the resident perpetrator from the program.

The COO asserts he does initiate contact with resident victim(s) who have reported sexual abuse.

Pursuant to the PAQ, the COO self reports the facility monitors the conduct or treatment of residents or staff who reported sexual abuse and of residents who were reported to have suffered sexual abuse to see if there are any changes that may suggest possible retaliation by residents or staff. The COO further self reports the facility monitors the conduct or treatment for a period of 90 days following a report of sexual abuse. The facility acts promptly to remedy any such retaliation.

The COO asserts the facility continues such monitoring beyond 90 days if the initial monitoring indicates a continuing need. There has been no incidents of retaliation within the last 12 months.

ETC Policy 6.1.9 entitled PREA Findings, Sanctions, and False Reporting, pages 3 and 4, section Procedure I(3)(a) and (c) addresses 115.267(c).

According to the COO/designated staff member charged with monitoring retaliation, the measures reflected in the narrative for 115.267(b) are implemented when retaliation is suspected. Additionally, the interviewee would reach out to the victim(s) and initiate retaliation monitoring. He would meet with the victim on a weekly basis for at least 90 days.

According to the staff member charged with monitoring retaliation, he evaluates behavioral changes in regard to resident victims (increase in accrual of disciplinary actions, aggression, isolation, hygiene changes, body language). In regard to staff victims, accrual of disciplinary infractions, poor job performance, tardiness, and excessive call-offs are key indicators of possible retaliation.

Retaliation monitoring for both staff and residents would be invoked minimally on a weekly basis for 90 days. However, resident or staff monitoring could be invoked for the entirety of stay and as long as needed for staff.

ETC Policy 6.1.9 entitled PREA Findings, Sanctions, and False Reporting, pages 3 and 4, section Procedure I(3)(a) addresses 115.267(d).

ETC Policy 6.1.9 entitled PREA Findings, Sanctions, and False Reporting, page 3, section Procedure I(1)(a) addresses 115.267(e).

According to the BACS CEO, the same strategies he/she addressed in the narrative for 115.267(b) apply to 115.267(e).

In view of the above, the auditor finds ETC substantially compliant with 115.267.

## INVESTIGATIONS

### Standard 115.271: Criminal and administrative agency investigations

#### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

##### 115.271 (a)

- When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, does it do so promptly, thoroughly, and objectively? (N/A if the agency/facility is not responsible for conducting any form of criminal OR administrative sexual abuse investigations. See 115.221(a).) X  Yes  No  NA
- Does the agency conduct such investigations for all allegations, including third party and anonymous reports? (N/A if the agency/facility is not responsible for conducting any form of criminal OR administrative sexual abuse investigations. See 115.221(a).) X  Yes  No  NA

##### 115.271 (b)

- Where sexual abuse is alleged, does the agency use investigators who have received specialized training in sexual abuse investigations as required by 115.234? X  Yes  No

##### 115.271 (c)

- Do investigators gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data? X  Yes  No
- Do investigators interview alleged victims, suspected perpetrators, and witnesses? X  Yes  No
- Do investigators review prior reports and complaints of sexual abuse involving the suspected perpetrator? X  Yes  No

##### 115.271 (d)

- When the quality of evidence appears to support criminal prosecution, does the agency conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution? X  Yes  No

#### 115.271 (e)

- Do agency investigators assess the credibility of an alleged victim, suspect, or witness on an individual basis and not on the basis of that individual's status as resident or staff?  
X  Yes  No
- Does the agency investigate allegations of sexual abuse without requiring a resident who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding? X  Yes  No

#### 115.271 (f)

- Do administrative investigations include an effort to determine whether staff actions or failures to act contributed to the abuse? X  Yes  No
- Are administrative investigations documented in written reports that include a description of the physical evidence and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings? X  Yes  No

#### 115.271 (g)

- Are criminal investigations documented in a written report that contains a thorough description of the physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible? X  Yes  No

#### 115.271 (h)

- Are all substantiated allegations of conduct that appears to be criminal referred for prosecution?  
X  Yes  No

#### 115.271 (i)

- Does the agency retain all written reports referenced in 115.271(f) and (g) for as long as the alleged abuser is incarcerated or employed by the agency, plus five years? X  Yes  No

#### 115.271 (j)

- Does the agency ensure that the departure of an alleged abuser or victim from the employment or control of the agency does not provide a basis for terminating an investigation?  
X  Yes  No

#### 115.271 (k)

- Auditor is not required to audit this provision.

#### 115.271 (l)

- When an outside entity investigates sexual abuse, does the facility cooperate with outside investigators and endeavor to remain informed about the progress of the investigation? (N/A if an outside agency does not conduct administrative or criminal sexual abuse investigations. See 115.221(a).) X  Yes  No  NA

## Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the facility has a policy related to criminal and administrative agency investigations.

ETC Policy 6.1.10 entitled PREA Investigations, page 1, section Policy addresses 115.271(a).

The auditor's review of two administrative investigations conducted during the last 18 months (one unfounded complaint regarding a search policy, not inappropriate staff actions) reveals substantial compliance with 115.271.

According to the investigative staff interviewee, PREA investigations would generally be initiated within one hour of reporting. Additionally, anonymous and third-party reports of sexual abuse or sexual harassment would be handled in the same manner as any allegation.

ETC Policy 6.1.10 entitled PREA Investigations, page 1, section Procedure for Investigations A addresses 115.271(b).

PREA investigative training of ETC sexual abuse/harassment investigators is described in detail in the narrative for 115.234.

The investigative staff interviewee asserts he did receive training specific to conducting sexual abuse investigations in a confinement setting. Specifically, he has received the NIC Annual Basic and Advanced NIC PREA investigative trainings mentioned in the narrative for 115.234. Additionally, prior employment included law enforcement officer investigative training with the Riverside County, CA Sheriff Department.

The interviewee asserts all NIC training includes some, if not all, scenario training. Generally, the same are three hour on-line training sessions.

The criminal investigative interviewee asserts the Director forwards the initial report to the JCSD dispatcher and he/she forwards the same to the on-duty officer. If during the investigator's off-duty hours or days off, the on-duty officer reports to the facility and commences a preliminary fact gathering process, inclusive of physical evidence gathering. He/she is generally trained in investigative techniques. If on-duty, the interviewee would generally report to the facility. A response is generally facilitated within 20 minutes of report.

ETC Policy 6.1.10 entitled PREA Investigations, page 1, section Procedure for Investigations C(3) addresses 115.271(c).

Pursuant to the investigations referenced in 115.271(a), video evidence was utilized to assist with decision-making in one case. Additionally, staff reports and interview results were utilized.

According to the investigative interviewee, investigative steps would include:

Check to ensure the crime scene is secure and photograph same (10-15 minutes);

Threshold questioning of the victim to ascertain basic information (approximately 15-20 minutes), dependent upon events and circumstances;  
Collect files, video footage, and data (approximately 10 minutes);  
Review physical evidence and camera surveillance (approximately one to two hours);  
Interview witnesses (30 minutes to two hours);  
Analyze evidence, assessing credibility, and conduct re-interviews of victim and witnesses, if appropriate (one hour);  
Interview perpetrator if the case is administrative, in nature, and/or approved by law enforcement (0 minutes to two hours, dependent upon the circumstances); and  
Write report (two hours).

In regard to direct and circumstantial evidence, the facility PREA investigators are responsible for gathering the same in an incident of sexual abuse. Interview notes, reviewing records, reviewing camera surveillance/ audio, and pulling mental health/medical records comprise the same.

According to the investigative interviewee, compelled interviews are not facilitated at ETC by ETC PREA Investigators rather, such interviews are conducted by JCSD investigators. Prosecution referral would be facilitated by JCSD.

The criminal investigative interviewee asserts that upon arrival at the scene, he is briefed regarding the circumstances of the assault, physical evidence, he reviews any reports, and then he develops his interview list and questions. He also receives and reviews any video footage and file documents. Subsequently, he interviews the victim, witnesses, and conducts any re-interviews prior to interviewing the alleged perpetrator. In other words, the criminal and administrative investigative protocols are similar.

ETC Policy 6.1.10 entitled PREA Investigations, page 2, section Procedure for Investigations C(4) and (5) addresses 115.271(e).

According to the investigative interviewee, credibility assessments are based on how stories coincide with physical evidence and totality of circumstances. An examination of motive also ensues in any credibility assessment. The criminal investigative interviewee adds that victim, witness, alleged perpetrator credibility is determined to be credible until proven otherwise. The criminal investigative interviewee also asserts he and other JCSD investigators gather physical evidence, exercise quality control over indirect/circumstantial evidence, and make credibility determinations accordingly.

According to the interviewee, criminal investigations are not conducted by ETC PREA investigators but rather, JCSD investigators. Accordingly, under no circumstances would ETC administrative sexual abuse investigators require a resident who alleges sexual abuse to submit to a polygraph examination or truth-telling device as a condition for proceeding with an investigation.

In regard to credibility assessments relative to staff and resident witnesses, both investigative staff interviewees assert credibility is established on whether or the degree to which their statement matches the totality of evidence. The interviewees further relate they would not, under any circumstances, require a resident who alleges sexual abuse to submit to a polygraph examination or truth-telling device as a condition for proceeding with an investigation.

ETC Policy 6.1.10 entitled PREA Investigations, page 1, section Procedure for Investigations A(1)(a) and page 2, C(6) addresses 115.271(f).

As referenced in the narrative for 115.271(c), the investigation is written in report format, providing detail regarding the reporting resident or employee's narrative, line(s) of questioning, physical/circumstantial/indirect evidence, synopsis of records, victim/witness/perpetrator and evidence credibility as compared against the time line and facts, and the PREA Investigator's findings.

To assess and determine whether staff actions or failures to act contributed to the sexual abuse, the investigative interviewee considers what staff knew or should have known, did staff deliberately turn a blind eye, and was there any neglect. He would check training records as part of the above determination.

The auditor finds the aforementioned two reports are consistent with the above description and standard.

According to the COO, zero allegations of sexual abuse/harassment were forwarded to JCSD for criminal investigation during the last 12 months.

The investigative interviewee asserts both the criminal and administrative reports contain the same general information. A detailed physical evidence analysis is included in the criminal report as the law enforcement investigator collects and analyzes physical evidence in sexual abuse/harassment cases.

The criminal investigative staff interviewee asserts criminal investigations are documented. In actuality, the reports are similar to the administrative reports completed by the interviewee and as described above in the narrative for 115.271(f).

Pursuant to the PAQ, the COO self reports substantiated allegations of conduct that appear to be criminal are referred for prosecution. The COO further self reports zero allegations of conduct that appear to be criminal were referred for prosecution since the last PREA audit.

According to the investigative interviewee, he would refer sexual abuse/harassment cases for criminal investigation when there appears to be a statutory violation. JCSD refers such cases for prosecution.

The criminal investigative interviewee asserts all sexual abuse investigations are reviewed by the county attorney for prosecution consideration. The fact pattern is assessed against the criminal code, as well as, a determination is made regarding evidentiary probable cause.

Pursuant to the PAQ, the COO self reports the agency retains all written reports pertaining to the administrative or criminal investigation of alleged sexual abuse or sexual harassment for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.

ETC Policy 6.1.10 entitled PREA Investigations, page 2, section Procedure for Investigations D addresses 115.271(i).

ETC Policy 6.1.10 entitled PREA Investigations, page 1, section Policy addresses 115.271(j).

According to the investigative staff interviewee, sexual abuse cases are referred to JCSD and the facility PREA investigator continues his/her administrative investigation. This pertains to situations wherein a staff member alleged to have committed sexual abuse terminates employment prior to a completed investigation into his/her conduct. In regard to the situation wherein a resident victim who alleges sexual abuse or sexual harassment or an alleged resident abuser leaves the facility prior to a completed investigation into the incident, the investigation also continues.

The investigative staff interviewee asserts he continues the investigation regardless of whether a staff member alleged to have committed a sexual abuse act terminates employment prior to a completed investigation into his/her conduct and/or when a victim who alleges sexual abuse/harassment or an alleged abuser leaves the facility prior to a completed investigation into the incident. Of note, the criminal investigative interviewee also validates the above.

ETC Policy 6.1.10 entitled PREA Investigations, page 2, section Procedure for Investigations C(2) addresses 115.271(l).

According to the COO, he/she contacts the investigating entity (ordinarily JCSD investigators) for updates. He is also an administrative sexual abuse/harassment investigator. Contacts and attempted contacts with

the JCSD investigator(s) are documented. The BACS PC asserts there would be contact between the facility investigator and JCSD investigators.

The investigative interviewee also asserts, in terms of his role with outside investigators, he works as a liaison, documenting and collecting additional non-physical evidence, advising appropriate parties of the progress of the investigation, and checking on the status of the investigation.

In view of the above, the auditor finds ETC substantially compliant with 115.271.

## Standard 115.272: Evidentiary standard for administrative investigations

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.272 (a)

- Is it true that the agency does not impose a standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated?  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the agency imposes a standard of preponderance of the evidence or a lower standard of proof when determining whether allegations of sexual abuse or sexual harassment are substantiated.

ETC Policy 6.1.10 entitled PREA Investigations, page 2, section Procedure for Investigations E addresses 115.272(a).

The sexual abuse/harassment interviewee describes the requisite administrative preponderance of the evidence required for an administrative finding as 51% (more likely to have occurred than not) while the criminal evidence requisite is 75%- 90% (beyond a reasonable doubt).

The criminal investigative interviewee's statement regarding the evidence standard in a criminal matter is generally probable cause for prosecution referral in a criminal matter. It is noted that the criminal standard for conviction in a criminal matter is "beyond a reasonable doubt."

The auditor's review of the two previously referenced investigations reveals substantial compliance with 115.272(a).

In view of the above, the auditor finds ETC substantially compliant with 115.272.

## Standard 115.273: Reporting to residents

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.273 (a)

- Following an investigation into a resident's allegation that he or she suffered sexual abuse in an agency facility, does the agency inform the resident as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded? X  Yes  No

#### 115.273 (b)

- If the agency did not conduct the investigation into a resident's allegation of sexual abuse in the agency's facility, does the agency request the relevant information from the investigative agency in order to inform the resident? (N/A if the agency/facility is responsible for conducting administrative and criminal investigations.) X  Yes  No  NA

#### 115.273 (c)

- Following a resident's allegation that a staff member has committed sexual abuse against the resident, unless the agency has determined that the allegation is unfounded, or unless the resident has been released from custody, does the agency subsequently inform the resident whenever: The staff member is no longer posted within the resident's unit? X  Yes  No
- Following a resident's allegation that a staff member has committed sexual abuse against the resident, unless the agency has determined that the allegation is unfounded, or unless the resident has been released from custody, does the agency subsequently inform the resident whenever: The staff member is no longer employed at the facility? X  Yes  No
- Following a resident's allegation that a staff member has committed sexual abuse against the resident, unless the agency has determined that the allegation is unfounded, or unless the resident has been released from custody, does the agency subsequently inform the resident whenever: The agency learns that the staff member has been indicted on a charge related to sexual abuse in the facility? X  Yes  No
- Following a resident's allegation that a staff member has committed sexual abuse against the resident, unless the agency has determined that the allegation is unfounded, or unless the resident has been released from custody, does the agency subsequently inform the resident whenever: The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility? X  Yes  No

#### 115.273 (d)

- Following a resident's allegation that he or she has been sexually abused by another resident, does the agency subsequently inform the alleged victim whenever: The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility? X  Yes  No
- Following a resident's allegation that he or she has been sexually abused by another resident, does the agency subsequently inform the alleged victim whenever: The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility? X  Yes  No

#### 115.273 (e)

- Does the agency document all such notifications or attempted notifications? X  Yes  No

#### 115.273 (f)

- Auditor is not required to audit this provision.

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the agency has a policy requiring that any resident who makes an allegation he or she suffered sexual abuse in an agency facility is informed, verbally or in writing, as to whether the allegation has been determined to be substantiated, unsubstantiated or unfounded, following an investigation by the agency. The COO further self reports the agency completed one administrative investigation of alleged resident sexual abuse (more appropriately determined to be sexual harassment based on definition) during the last 12 months. The auditor finds one additional administrative investigation of alleged sexual abuse (the auditor finds the subject-matter of the allegation is a policy-based issue centering on strip searches upon admission to ETC and the same is not based on the allegation of a physical act of staff/resident sexual abuse) was completed by an ETC investigator within the last 18 months. According to the BACS PC, the former victim was verbally apprised regarding the investigative outcome in accordance with 115.273(a).

ETC Policy 6.1.10 entitled PREA Investigations, page 2, section Reporting to Residents A addresses 115.273(a).

It is noted the standard provision applies only to allegations of sexual abuse suffered in an agency facility. The ETC policy addresses reporting to the alleged victim of both sexual abuse and sexual harassment investigative outcomes. Clearly, the policy and implementation of the same exceeds standard expectations. Accordingly, the auditor finds that ETC exceeds standard expectations with respect to 115.273.

The auditor's review of documentation regarding the sexual harassment case validates verbal notification on the date of investigation conclusion. Memorandums describe the content of the notification.

According to the COO, the facility does notify a resident who makes an allegation of sexual abuse when the allegation has been determined to be substantiated, unsubstantiated, or unfounded following an investigation. With the aforementioned investigations, although the fact pattern in one case was more reflective of sexual harassment and the other investigation was not reflective of a sexual abuse/harassment matter, the completed verbal notification to one resident victim was effected in accordance with 115.273(a).

The investigative interviewee asserts agency procedure requires that a resident who makes an allegation of sexual abuse must be informed as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded following an investigation. Either the investigator or the COO makes the notification.

Pursuant to the PAQ, the COO self reports if an outside entity conducts such investigations, the agency requests the relevant information from the investigative entity in order to inform the resident of the outcome of the investigation. The COO further self reports zero sexual abuse/harassment investigations were conducted by non-facility investigators during the last 18 months.

Pursuant to the PAQ, the COO self reports following a resident's allegation that a staff member has committed sexual abuse against the resident, the agency/facility subsequently informs the resident (unless the agency has determined the allegation is unfounded) whenever:

The staff member is no longer posted within the resident's unit;  
The staff member is no longer employed at the facility;  
The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or  
The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.  
The COO further self reports there has been no substantiated or unsubstantiated complaint(s) (e.g., not unfounded) of sexual abuse committed by a staff member against a resident in an agency facility in the last 12 months.

ETC Policy 6.1.10 entitled PREA Investigations, page 3, section Reporting to Residents C(1-4) addresses 115.273(c).

Pursuant to the PAQ, the COO self reports following a resident's allegation that she has been sexually abused by another resident in an agency facility, the agency subsequently informs the alleged victim whenever:

The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or  
The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.

ETC Policy 6.1.10 entitled PREA Investigations, page 3, section Reporting to Residents D(1 and 2) addresses 115.273(d).

The auditor finds the resident-on resident allegation to be more reflective of sexual harassment, as opposed to, sexual abuse. Additionally, there is no evidence the alleged perpetrator was indicted or convicted of a sexual abuse charge in conjunction with the allegation.

Pursuant to the PAQ, the COO self reports the agency has a policy that all notifications to residents described under this standard are documented. As reflected in the narrative for 115.271(a), two allegations were articulated and one verbal notification pursuant to 115.272(a) was facilitated.

ETC Policy 6.1.10 entitled PREA Investigations, page 3, section Reporting to Residents E addresses 115.273(e).

In view of the above, the auditor finds that ETC exceeds standard expectations with respect to 115.273.

## DISCIPLINE

### Standard 115.276: Disciplinary sanctions for staff

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.276 (a)

- Are staff subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies?  Yes  No

#### 115.276 (b)

- Is termination the presumptive disciplinary sanction for staff who have engaged in sexual abuse?  Yes  No

#### 115.276 (c)

- Are disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories?  Yes  No

#### 115.276 (d)

- Are all terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, reported to: Law enforcement agencies unless the activity was clearly not criminal?  Yes  No
- Are all terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, reported to: Relevant licensing bodies?  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports staff is subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.

ETC Policy 6.1.9 entitled PREA Findings, Sanctions, and False Reporting, page 2, section Procedure H addresses 115.276(a).

Pursuant to the PAQ, the COO self reports zero facility staff violated agency sexual abuse/harassment policies during the last 12 months.

ETC Policy 6.1.9 entitled PREA Findings, Sanctions, and False Reporting, page 2, section Procedure H(1) addresses 115.276(b).

Pursuant to the PAQ, the COO self reports disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) are commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories. The COO further self reports in the last 12 months, zero staff from the facility have been disciplined, short of termination, for violation of agency sexual abuse or sexual harassment policies.

ETC Policy 6.1.9 entitled PREA Findings, Sanctions, and False Reporting, pages 2 and 3, section Procedure H(2) addresses 115.276(c).

Pursuant to the PAQ, the COO self reports all terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, are reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies. The COO further self reports in the last 12 months, zero facility staff members were referred to law enforcement or licensing boards prior to employment termination.

ETC Policy 6.1.9 entitled PREA Findings, Sanctions, and False Reporting, page 3, section Procedure H(3) addresses 115.276(d).

In view of the above, the auditor finds ETC substantially compliant with 115.276.

## Standard 115.277: Corrective action for contractors and volunteers

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.277 (a)

- Is any contractor or volunteer who engages in sexual abuse prohibited from contact with residents?  Yes  No
- Is any contractor or volunteer who engages in sexual abuse reported to: Law enforcement agencies unless the activity was clearly not criminal?  Yes  No
- Is any contractor or volunteer who engages in sexual abuse reported to: Relevant licensing bodies?  Yes  No

#### 115.277 (b)

- In the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer, does the facility take appropriate remedial measures, and consider whether to prohibit further contact with residents?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)

**Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports agency policy requires that any contractor or volunteer who engages in sexual abuse be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies. The COO further self reports agency policy requires that any contractor or volunteer who engages in sexual abuse be prohibited from contact with residents.

In the last 12 months, no contractors or volunteers were reported to law enforcement agencies and relevant licensing bodies for engaging in sexual abuse of residents. The COO further asserts there were no allegations of sexual abuse lodged against contractors or volunteers during the last 12 months.

ETC Policy 6.1.9 entitled PREA Findings, Sanctions, and False Reporting, page 3, section Procedure H(4) addresses 115.277(a).

Pursuant to the PAQ, the COO self reports the facility takes appropriate remedial measures and considers whether to prohibit further contact with residents in the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer.

ETC Policy 6.1.9 entitled PREA Findings, Sanctions, and False Reporting, page 3, section Procedure H(5) addresses 115.277(b).

According to the COO, in the case of any violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer, privileges would be suspended pending the results of an investigation. If substantiated, privileges would be terminated on a permanent basis.

In view of the above, the auditor finds ETC substantially compliant with 115.277.

## **Standard 115.278: Interventions and disciplinary sanctions for residents**

### **All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### **115.278 (a)**

- Following an administrative finding that a resident engaged in resident-on-resident sexual abuse, or following a criminal finding of guilt for resident-on-resident sexual abuse, are residents subject to disciplinary sanctions pursuant to a formal disciplinary process? X Yes  No

#### **115.278 (b)**

- Are sanctions commensurate with the nature and circumstances of the abuse committed, the resident's disciplinary history, and the sanctions imposed for comparable offenses by other residents with similar histories? X Yes  No

#### **115.278 (c)**

- When determining what types of sanction, if any, should be imposed, does the disciplinary process consider whether a resident's mental disabilities or mental illness contributed to his or her behavior? X Yes  No

#### **115.278 (d)**

- If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, does the facility consider whether to require

the offending resident to participate in such interventions as a condition of access to programming and other benefits? X  Yes  No

#### 115.278 (e)

- Does the agency discipline a resident for sexual contact with staff only upon a finding that the staff member did not consent to such contact? X  Yes  No

#### 115.278 (f)

- For the purpose of disciplinary action does a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred NOT constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation? X  Yes  No

#### 115.278 (g)

- If the agency prohibits all sexual activity between residents, does the agency always refrain from considering non-coercive sexual activity between residents to be sexual abuse? (N/A if the agency does not prohibit all sexual activity between residents.) X  Yes  No  NA

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- X  **Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports residents are subject to disciplinary sanctions only pursuant to a formal disciplinary process following an administrative finding that the resident engaged in resident-on-resident sexual abuse. The COO further self reports residents are subject to disciplinary sanctions only pursuant to a formal disciplinary process following a criminal finding of guilt for resident-on-resident sexual abuse.

According to the COO, there were no substantiated administrative findings of resident-on-resident sexual abuse that occurred at the facility during the last 12 months.

While there were no incident(s) of sexual abuse, as described in 115.278(a) during the last 12 months, the auditor reviewed one disciplinary hearing report in follow-up to an administrative investigation conducted during 2019. The disciplinary matter was handled by MDOC staff and the same appears to have been conducted pursuant to the requirements of 115.278. According to the COO, there were no substantiated administrative findings of resident-on-resident sexual abuse that occurred at the facility during the last 12 months.

ETC Policy 6.1.9 entitled PREA Findings, Sanctions, and False Reporting, page 1, section Procedure C addresses 115.278(a).

ETC Policy 6.1.9 entitled PREA Findings, Sanctions, and False Reporting, pages 1 and 2, section Procedure C(1-3) addresses 115.278(b).

According to the COO, disciplinary sanctions available for residents following an administrative or criminal finding that the resident engaged in resident-on-resident sexual abuse are prosecution and transfer to a secure facility/recommended removal from the ETC program. The resident would be removed

from the program pending review of a separate administrative recommendation and simultaneously, the disciplinary sanction imposed by MDOC.

MDOC staff conduct a disciplinary hearing for major violations and impose sanctions accordingly. Assurance that sanctions are commensurate with the nature and circumstances of the abuse committed, the resident's disciplinary history, and the sanctions imposed for comparable offenses by other residents with similar histories, falls under the purview of MDOC. Similarly, consideration of whether a resident's mental disabilities or mental illness contributed to the behavior, when determining a sanction, likewise falls under the purview of MDOC.

The auditor's review of the MDOC policy regarding the conduct of resident administrative disciplinary proceedings reveals while not specifically articulated in the same, some factors regarding assessment of mental disability or mental illness in terms of the imposition of sanctions, appear to be covered.

ETC Policy 6.1.9 entitled PREA Findings, Sanctions, and False Reporting, page 2, section Procedure D(1) addresses 115.278(c).

The auditor has determined that MDOC staff conduct administrative misconduct hearings for major rule violations pursuant to contract with ETC. Accordingly, ETC plays no role in terms of the conduct of such hearings. However, ETC staff conduct hearings for minor rule violations and accordingly, they consider 115.278 requirements.

While MDOC policy has been provided regarding assessment of whether the resident's mental disabilities or mental illness contributed to his/her behavior when determining the type of sanction, if any, should be imposed, the following does generically address the issue:

P&P Policy 140-1, page 10 stipulates before making any decision, the Hearing Officer should be informed of the offender's:

- criminal history background;
- treatment history;
- whether the offender is a DOC or MSP commitment;
- conditions of sentence;
- Previous behavior in the PRC;
- Previous programming such as TSCTC; Connections Corrections; PRC; ISP etc.;
- Length of time the offender has been in the program; and
- Time until discharge or parole.

Pursuant to the PAQ, the COO self reports the facility offers therapy, counseling, or other interventions designed to address and correct the underlying reasons or motivations for abuse. The COO further self reports if the facility offers therapy, counseling, or other interventions designed to address and correct the underlying reasons or motivations for abuse, the facility considers whether to require the offending resident to participate in such interventions as a condition of access to programming or other benefits.

Two mental health practitioners are LCSWs while one additional practitioner is an LCPC and another is an LCPC candidate.

ETC Policy 6.1.9 entitled PREA Findings, Sanctions, and False Reporting, page 2, section Procedure D(2) and (3) addresses 115.278(d).

According to the mental health interviewee, consideration whether to offer therapy, counseling, or other intervention services designed to address and correct the underlying reasons or motivations for sexual abuse to offending resident(s) would occur. Therapies and treatment may include one-on-one counseling, group therapy, and/or community referrals. Additionally, consideration as to whether participation is required as a condition of access to programming or other benefits would ensue however, the same is generally voluntary.

As previously indicated, the perpetrator of sexual abuse would, more than likely, be moved to a secure facility by virtue of COO recommendation and MDOC decision. Accordingly, the auditor finds the majority of this provision to be contingent upon the decision-making process with MDOC and, more than likely, not applicable to ETC.

Pursuant to the PAQ, the COO self reports the agency disciplines residents for sexual conduct with staff only upon finding that the staff member did not consent to such contact.

ETC Policy 6.1.9 entitled PREA Findings, Sanctions, and False Reporting, page 2, section Procedure G addresses 115.278(e).

The BACS PC asserts zero residents have been disciplined for sexual contact with staff during the last 12 months.

Pursuant to the PAQ, the COO self reports the agency prohibits disciplinary action for a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred, even if an investigation does not establish evidence sufficient to substantiate the allegation.

ETC Policy 6.1.9 entitled PREA Findings, Sanctions, and False Reporting, page 2, section Procedure E addresses 115.278(f).

Pursuant to the PAQ, the COO self reports the agency prohibits all sexual activity between residents. The COO further self reports if the agency prohibits all sexual activity between residents and disciplines residents for such activity, the agency deems such activity to constitute sexual abuse only if it determines that the activity is coerced.

ETC Policy 6.1.9 entitled PREA Findings, Sanctions, and False Reporting, page 2, section Procedure F addresses 115.278(g).

In view of the above, the auditor finds ETC substantially compliant with 115.278.

## MEDICAL AND MENTAL CARE

### Standard 115.282: Access to emergency medical and mental health services

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.282 (a)

- Do resident victims of sexual abuse receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment?  
X  Yes  No

#### 115.282 (b)

- If no qualified medical or mental health practitioners are on duty at the time a report of recent sexual abuse is made, do security staff first responders take preliminary steps to protect the victim pursuant to § 115.262? X  Yes  No
- Do security staff first responders immediately notify the appropriate medical and mental health practitioners? X  Yes  No

### 115.282 (c)

- Are resident victims of sexual abuse offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate? X  Yes  No

### 115.282 (d)

- Are treatment services provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident? X  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- X  **Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports resident victims of sexual abuse receive timely, unimpeded access to emergency medical treatment and crisis intervention services. The COO further self reports the nature and scope of such services are determined by medical and mental health practitioners according to their professional judgment. Additionally, medical and mental health staff maintain secondary materials (e.g., form, log) documenting the timeliness of emergency medical treatment and crisis intervention services that were provided; the appropriate response by non-health staff in the event health staff are not present at the time the incident is reported; and the provision of appropriate and timely information and services concerning contraception and sexually transmitted infection prophylaxis.

ETC Policy 6.1.5 entitled PREA- Medical and Mental Health, page 1, section Procedure B addresses 115.282(a).

As zero sexual abuse incidents invoked such medical procedures during the last 12 months, no completed documents have been reviewed. However, the auditor reviewed documents that would be completed in the event of a sexual abuse incident. Specifically, an ETC PREA Response Checklist Medical Response form reflects times and dates of implementation of certain medical steps within the response context. The document also references the incident by case number, resident name, location of the incident. Specific medical services and treatment would be maintained in the affected resident's medical file.

According to both the medical and mental health interviewees, resident victims of sexual abuse receive timely and unimpeded access to emergency medical treatment and crisis intervention services. Both interviewees further assert such services are rendered almost immediately and based on the situation. The nature and scope of these services would be initially determined according to their professional judgment if summoned to the facility however, if transferred to a hospital, medical judgment becomes the purview of the hospital provider(s). The majority of services are rendered at the hospital.

ETC Policy 6.1.5 entitled PREA- Medical and Mental Health, page 1, section Procedure B addresses 115.282(b). Additionally, ETC Policy 6.1.11 entitled PREA Coordinated Response, pages 1 and 2, section Procedure A(1)(a), (f), (h), and (j) addresses 115.282(b).

Both the security staff first responder and non-security staff first responders correctly identified the four steps of the first responder protocol.

The PREA Checklist completed by the shift supervisor serves as a platform for documentation of date(s) and time(s) for each step of the incident time line, inclusive of medical.

Pursuant to the PAQ, the COO self reports resident victims of sexual abuse while incarcerated are offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate. The COO further self reports medical and mental health staff maintain secondary materials (e.g., form, log) documenting the time lines of emergency medical treatment and crisis intervention services that were provided; the appropriate response by non-health staff in the event health staff are not present at the time the incident is reported; and the provision of appropriate and timely information and services concerning contraception and sexually transmitted infection prophylaxis.

The auditor's review of a letter from the provider of forensic examinations reveals substantial compliance with 115.282(c).

The medical staff interviewee asserts victims of sexual abuse are offered timely information about and access to emergency contraception and sexually transmitted infection prophylaxis, by the nurse practitioner at ETC. The medical interviewee asserts this information may be provided as part of the forensic examination.

Pursuant to the PAQ, the COO self reports treatment services are provided to every victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

ETC Policy 6.1.5 entitled PREA- Medical and Mental Health, page 2, section Procedure C(3) addresses 115.282(d).

In view of the above, the auditor finds ETC substantially compliant with 115.282.

## **Standard 115.283: Ongoing medical and mental health care for sexual abuse victims and abusers**

### **All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### **115.283 (a)**

- Does the facility offer medical and mental health evaluation and, as appropriate, treatment to all residents who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility? X  Yes  No

#### **115.283 (b)**

- Does the evaluation and treatment of such victims include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody? X  Yes  No

#### **115.283 (c)**

- Does the facility provide such victims with medical and mental health services consistent with the community level of care? X  Yes  No

#### **115.283 (d)**

- Are resident victims of sexually abusive vaginal penetration while incarcerated offered pregnancy tests? (N/A if "all-male" facility. *Note: in "all-male" facilities, there may be residents who identi-*

fy as transgender men who may have female genitalia. Auditors should be sure to know whether such individuals may be in the population and whether this provision may apply in specific circumstances.) X  Yes  No  NA

#### 115.283 (e)

- If pregnancy results from the conduct described in paragraph § 115.283(d), do such victims receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services? (N/A if “all-male” facility. *Note: in “all-male” facilities, there may be residents who identify as transgender men who may have female genitalia. Auditors should be sure to know whether such individuals may be in the population and whether this provision may apply in specific circumstances.*) X  Yes  No  NA

#### 115.283 (f)

- Are resident victims of sexual abuse while incarcerated offered tests for sexually transmitted infections as medically appropriate? X  Yes  No

#### 115.283 (g)

- Are treatment services provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident? X  Yes  No

#### 115.283 (h)

- Does the facility attempt to conduct a mental health evaluation of all known resident-on-resident abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners? X  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- X  **Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the facility offers medical and mental health evaluation and, as appropriate, treatment to all residents who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.

ETC Policy 6.1.5 entitled PREA- Medical and Mental Health, page 2, section Procedure C(1) addresses 115.283(a).

According to the BACS PC, residents who report sexual abuse at another confinement facility are offered mental health care and they have the option to deny the same. The BACS PC further asserts affected residents are offered a meeting with a mental health practitioner which would occur within 14 days of the report. If the resident does request such a meeting, a mental health staff member is notified immediately and the meeting occurs as soon as possible but, within the prescribed time frame.

Of note, all ETC residents participate in a mental health evaluation as part of their program, regardless of history of sexual abuse.

The auditor's review of two emails dated February 18, 2020 reveals one resident reported sexual abuse at another facility and desired to meet with a mental health practitioner. A third email reflects a mental health practitioner met with the resident the following day and the resident stated the incident occurring at the other facility has been adequately addressed.

The auditor's review of relevant documents reveals substantial compliance with 115.283(a).

ETC Policy 6.1.5 entitled PREA- Medical and Mental Health, page 2, section Procedure C(1) addresses 115.283(b).

According to the medical staff interviewee, evaluation and treatment of residents who have been victimized would entail treatment of immediate health issues. A female staff member would be present in the examination room. The interviewee takes and records vitals while calming the victim.

The BACS PC asserts that during the last 24 months, zero residents, as described in 115.283(b), have been released from custody and requisite materials followed them.

ETC Policy 6.1.5 entitled PREA- Medical and Mental Health, page 2, section Procedure C(2) addresses 115.283(c).

Both medical and mental health staff interviewees advise care is provided consistent with the community level of care. As noted throughout the medical/mental health provisions in this report, initial care, as described in the narrative for 115.283(b), may be provided by ETC medical staff if time allows for them to report to the facility. At any rate, care would be transferred to a community hospital for SAFE/SANE examination and any follow-up care.

Pursuant to the PAQ, the COO self reports female victims of sexually abusive vaginal penetration while incarcerated are offered pregnancy tests.

ETC Policy 6.1.5 entitled PREA- Medical and Mental Health, page 2, section Procedure C(3) addresses 115.283(d).

Pursuant to the PAQ, the COO self reports if pregnancy results from the conduct described in 115.283(d), such victims would receive timely and comprehensive information about and timely access to all lawful, pregnancy-related medical services.

BACS Policy 1.3.5.12 entitled PREA, page 23, section 115.283(e) addresses 115.283(e).

The medical interviewee asserts if pregnancy results from sexual abuse while incarcerated, victims are given timely information and access to all lawful pregnancy-related services. Provision of education would be provided by the ETC Nurse Practitioner, with a notation in the medical file regarding provision of the same. Provision of such information may also be provided in conjunction with the forensic examination.

Pursuant to the PAQ, the COO self reports resident victims of sexual abuse while incarcerated are offered tests for sexually transmitted infections as medically appropriate.

ETC Policy 6.1.5 entitled PREA- Medical and Mental Health, page 3, section Procedure C(4) addresses 115.283(f).

Pursuant to the PAQ, the COO self reports treatment services are provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

ETC Policy 6.1.5 entitled PREA- Medical and Mental Health, page 2, section Procedure C(3) addresses 115.283(g).

Pursuant to the PAQ, the COO self reports the facility attempts to conduct a mental health evaluation of all known resident-on-resident abusers within 60 days of learning of such abuse history, and offers treatment when deemed appropriate by mental health practitioners.

ETC Policy 6.1.5 entitled PREA- Medical and Mental Health, page 3, section Procedure C(5) addresses 115.283(h).

The BACS PC asserts during the last 24 months, ETC has not received any known resident-on-resident sexual abuse (The same is not based on voyeurism or the physical act of staff/resident sexual abuse). The same is not based on voyeurism or the physical act of staff/resident sexual abuse). The same is not based on voyeurism or the physical act of staff/resident sexual abuse). abusers.

The mental health staff interviewee asserts she reviews all incoming psychology files and facilitates a mental health evaluation, generally within two weeks of arrival. If a sexual abuser is detected, the same is part of the assessment.

The interviewee further asserts zero resident-on-resident sexual abusers have been housed at ETC during the last 36 months.

In view of the above, the auditor finds ETC substantially compliant with 115.283.

## DATA COLLECTION AND REVIEW

### Standard 115.286: Sexual abuse incident reviews

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.286 (a)

- Does the facility conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded? X  Yes  No

#### 115.286 (b)

- Does such review ordinarily occur within 30 days of the conclusion of the investigation? X  Yes  No

#### 115.286 (c)

- Does the review team include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners? X  Yes  No

#### 115.286 (d)

- Does the review team: Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse? X  Yes  No
- Does the review team: Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; gang affiliation; or other group dynamics at the facility? X  Yes  No
- Does the review team: Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse? X  Yes  No
- Does the review team: Assess the adequacy of staffing levels in that area during different shifts? X  Yes  No
- Does the review team: Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff? X  Yes  No
- Does the review team: Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to §§ 115.286(d)(1) - (d)(5), and any recommendations for improvement and submit such report to the facility head and PREA compliance manager? X  Yes  No

#### 115.286 (e)

- Does the facility implement the recommendations for improvement, or document its reasons for not doing so? X  Yes  No

## Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the facility conducts a sexual abuse incident review at the conclusion of every criminal or administrative sexual abuse/harassment investigation, unless the allegation has been determined to be unfounded. The COO further self reports in the last 18 months, one unfounded criminal and/or administrative investigation of alleged sexual abuse/harassment was completed at the facility. Additionally, a substantiated resident on resident sexual abuse investigation was completed however, the auditor finds the same to be more reflective of sexual harassment.

ETC Policy 6.1.7 entitled PREA Data Collection, Aggregation and Review, page 1, section Procedure A(1)(a) addresses 115.286(a).

Pursuant to the PAQ, the COO self reports the facility ordinarily conducts a sexual abuse incident review within 30 days of conclusion of the criminal or administrative sexual abuse/harassment investigation. The COO further self reports in the last 18 months, one criminal and/or administrative investigation of alleged sexual abuse/harassment was completed at ETC however, a SART was not completed within 30 days of conclusion of the investigation as the investigation was determined to be Unfounded.

ETC Policy 6.1.7 entitled PREA Data Collection, Aggregation and Review, page 1, section Procedure A(1)(b) addresses 115.286(b).

As previously mentioned, one additional administrative sexual abuse investigation (fact pattern more indicative of sexual harassment) was facilitated during the last 18 months. The auditor's review of the sexual abuse incident review (SART) reveals the same was facilitated outside the 30-day window from conclusion of the investigation. The auditor finds no basis for a non-compliance finding regarding 115.286(b) as the standard stipulates the review is ordinarily completed within 30 days of investigation conclusion. The auditor finds the 11 day delay in facilitating the SART to be reasonable.

While there is no finding in regard to 115.286(a), the auditor admonishes ETC staff to ensure any future SART reviews are conducted in accordance with 115.286(b). This will be imperative in terms of any future audits.

Pursuant to the PAQ, the COO self reports the sexual abuse incident review team includes upper-level management officials and allows for input from line supervisors, investigators, and medical or mental health practitioners.

ETC Policy 6.1.7 entitled PREA Data Collection, Aggregation and Review, page 1, section Procedure A(1)(c) addresses 115.286(c).

The COO asserts the aforementioned policy identifies the total of the SART Review team. It may not be possible to assemble all players, as identified, for each review.

Pursuant to the auditor's review, the aforementioned SART review participants were the COO, DD, SC, BACS PC, three mental health representatives, and the victim's case manager. The auditor finds the same to be commensurate with both ETC policy and 115.286(c).

The COO further asserts that ETC does have a SART team. The same does include the composition of staff as required in policy.

Pursuant to the PAQ, the COO self reports the facility prepares a report of its findings from sexual abuse incident reviews, including but not necessarily limited to, determinations made pursuant to the following considerations:

- (1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
- (2) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
- (3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
- (4) Assess the adequacy of staffing levels in that area during different shifts; and
- (5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff and any recommendations for improvement, and submits such report to the facility head and PREA Coordinator.

ETC Policy 6.1.7 entitled PREA Data Collection, Aggregation and Review, pages 1 and 2, section Procedure A(1)(d) addresses 115.286(d).

The aforementioned ETC SART Checklist addresses all of the requisite components of 115.286(d) and the same were adequately addressed with known facts and observations.

The COO asserts the SART considers what was done correctly and what mistakes were made. Additionally, corrective actions, if any are required, are assessed.

The COO also stated the SART:

- (1) Considers whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
- (2) Considers whether the incident or allegation was motivated by race, ethnicity, gender identity, lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status, or gang affiliation, or was motivated or otherwise caused by other group dynamics at the facility;
- (3) Examines the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
- (4) Assesses the adequacy of staffing levels in that area during different shifts; and
- (5) Assesses whether monitoring technology should be deployed or augmented to supplement supervision by staff.

A report is compiled addressing the above and any recommendations for improvement with the same and is submitted to the COO and BACS PC. The SART interviewee also confirmed these issues are considered during the SART review.

The BACS PC advises that a report is prepared of SART findings including any determinations regarding the factors previously identified in this provision. The reports are forwarded to the PC and she is routinely involved in SART reviews. She completed the report previously mentioned in the narrative for 115.286(b).

No trends have been identified. If deficiencies are identified subsequent to the PREA Coordinator's review or participation in the SART, she makes recommendations and discusses the same with the COO.

Pursuant to the PAQ, the COO self reports the facility implements the recommendations for improvement or documents its reasons for not doing so.

ETC Policy 6.1.7 entitled PREA Data Collection, Aggregation and Review, page 2, section Procedure A(1)(e) addresses 115.286(e).

The BACS PC asserts the recommendation regarding camera installation has not been implemented with respect to one SART. The BACS PC asserts that she conducted recommended training in follow-up to the second SART however, the documentation substantiating the same cannot be located.

In view of the latter issue, the auditor finds ETC non-compliant with 115.286(e). Accordingly, the auditor imposes a 180-day corrective action period wherein ETC will substantiate institutionalization of 115.286(e) requirements. The corrective action completion date is May 18, 2021.

To demonstrate standard compliance, the BACS PC will provide training to all members of the ETC SART team regarding the expectations of 115.86(e). The BACS PC will provide a copy of the training plan, as well as, training documentation certifying participant completion of the training, to the auditor.

In addition to the above, the BACS PC will provide to the auditor a copy of all substantiated/unsubstantiated sexual assault/harassment investigations, as well as, relevant SART Reports between the time of receipt of this report and the aforementioned date. Upon completion of these steps, the auditor will consider closure of this finding.

### **March 13, 2021 Update:**

**The auditor's review of a mock sexual abuse scenario [Sexual Assault Response Team (SART) Report] reveals substantial compliance with 115.286(e) requirements. The SART review was also completed in a timely and comprehensive manner and the same was documented.**

**The auditor notes that in view of the lack of investigations and consequently, SART Reports since completion of the Interim PREA Audit Report, he agreed to implementation of a mock scenario as corrective action.**

**The auditor's review of a Power Point Presentation regarding the nuances of 115.286(e) reveals substantial compliance with requisite corrective action. Four BACS Staff Development and Training Record Forms reveal the training was provided to ETC and BACS stakeholders.**

**The auditor finds all corrective action has been completed and accordingly, compliance with 115.286(e) has been achieved.**

In view of the above, the auditor finds ETC substantially compliant with 115.286.

## **Standard 115.287: Data collection**

### **All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### **115.287 (a)**

- Does the agency collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions? X  Yes  No

#### **115.287 (b)**

- Does the agency aggregate the incident-based sexual abuse data at least annually? X  Yes  No

#### **115.287 (c)**

- Does the incident-based data include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice?  Yes  No

#### 115.287 (d)

- Does the agency maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews?  Yes  No

#### 115.287 (e)

- Does the agency also obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its residents? (N/A if agency does not contract for the confinement of its residents.)  Yes  No  NA

#### 115.287 (f)

- Does the agency, upon request, provide all such data from the previous calendar year to the Department of Justice no later than June 30? (N/A if DOJ has not requested agency data.)  Yes  No  NA

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the agency collects accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions. The COO further self reports the standardized instrument includes, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.

ETC Policy 6.1.7 entitled PREA Data Collection, Aggregation and Review, page 2, section Procedure A(2)(a-k) addresses 115.287(a)/(c).

The auditor's review of a statistical compilation document entitled 2019 Annual PREA Statistical Report, reveals the same meets the majority of criteria required by 115.287(a)/(c).

According to the BACS PC, an SSV has not been requested for 2019.

Pursuant to the PAQ, the COO self reports the agency aggregates the incident-based sexual abuse data at least annually.

The auditor verified the aforementioned statistical compilation documents do reflect annual aggregation.

Pursuant to the PAQ, the COO self reports the agency maintains, reviews, and collects data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.

ETC Policy 6.1.7 entitled PREA Data Collection, Aggregation and Review, page 2, section Procedure A(3) addresses 115.287(d).

The auditor's articulation throughout this report regarding documents reviewed serves as substantiation of ETC compliance with 115.287(d).

Pursuant to the PAQ, the COO self reports ETC does not contract for confinement of its residents. Accordingly, the auditor has determined 115.287(e) is not applicable to ETC.

Pursuant to the PAQ, the COO self reports the agency has not provided the Department of Justice with data from the previous calendar year as the same has not been requested. Accordingly, the auditor finds 115.287(f) not applicable to ETC.

In view of the above, the auditor finds ETC substantially compliant with 115.287.

## Standard 115.288: Data review for corrective action

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.288 (a)

- Does the agency review data collected and aggregated pursuant to § 115.287 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by: Identifying problem areas? X  Yes  No
- Does the agency review data collected and aggregated pursuant to § 115.287 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by: Taking corrective action on an ongoing basis? X  Yes  No
- Does the agency review data collected and aggregated pursuant to § 115.287 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by: Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole? X  Yes  No

#### 115.288 (b)

- Does the agency's annual report include a comparison of the current year's data and corrective actions with those from prior years and provide an assessment of the agency's progress in addressing sexual abuse X  Yes  No

#### 115.288 (c)

- Is the agency's annual report approved by the agency head and made readily available to the public through its website or, if it does not have one, through other means? X  Yes  No

#### 115.288 (d)

- Does the agency indicate the nature of the material redacted where it redacts specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility? X  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the agency reviews data collected and aggregated pursuant to 115.287 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, and training, including:

- Identifying problem areas;
- Taking corrective action on an ongoing basis; and
- Preparing an annual report of its findings from its data review and any corrective actions for each facility, as well as, the agency as a whole.

ETC Policy 6.1.7 entitled PREA Data Collection, Aggregation and Review, page 3, section Data Review for Corrective Action (2)(a-c) addresses 115.288(a).

The auditor's review of the 2018 and 2019 ETC Annual PREA Reports reflects a comparison of data from 2014 through 2019 with a recapitulation of findings regarding investigations by year. Additionally, the annual PREA report addresses the annual staffing plan, camera surveillance, policies, and training endeavors. The auditor finds these PREA annual reports are sufficient as the same capture facility efforts to enhance sexual safety at ETC.

According to the CEO, incident-based sexual abuse data is used to assess and improve sexual abuse prevention, detection, and response policies, practices, and training through review of annual reports, assessing patterns, assessing camera surveillance, and assessing staffing needs. This provides a guide to enhancing resident sexual safety at ETC.

According to the BACS PC, she does review data collected and aggregated pursuant to 115.287 in order to assess and improve the effectiveness of ETC's sexual abuse prevention, detection, and response policies and training. She retains all investigative reports in a locked cabinet in her office. Requisite information is extracted from investigative reports and other sources.

Her primary role in the process includes collection of aggregated data, identification of trends, and making changes in training, policy, and/or staffing. The BACS PC asserts annual reports are generated from each individual facility.

It is noted the auditor did observe the aforementioned locked file cabinet in the BACS PC's Office throughout the on-site review.

Pursuant to the PAQ, the COO self reports the annual report includes a comparison of the current year's data and corrective actions with those from prior years. The COO further self reports the annual report provides an assessment of the agency's progress in addressing sexual abuse.

As mentioned in the narrative for 115.288(a), each annual report includes demographics for the previous several years, as well as, any corrective measures taken.

Pursuant to the PAQ, the COO self reports the agency makes its annual report readily available to the public at least annually through its website. The COO further notes the annual reports are approved by the agency head.

Pursuant to the auditor's review of the aforementioned ETC Annual Reports, the BACS PC , ETC COO, and BACS CEO signed and dated the same. Additionally, the auditor notes the ETC Annual Reports are posted on the BACS website.

The BACS CEO asserts she does approve annual reports written pursuant to this standard.

Pursuant to the PAQ, the COO self reports the agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of the facility. The COO further self reports the agency indicates the nature of the material redacted.

The auditor did not find any evidence of redaction in the ETC Annual Report.

The BACS PC asserts any personal identifiers or sensitive security/safety information would be redacted from the Annual Report. It would be practice to indicate the nature of the material redacted from the report.

In view of the above, the auditor finds ETC substantially compliant with 115.288.

## Standard 115.289: Data storage, publication, and destruction

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.289 (a)

- Does the agency ensure that data collected pursuant to § 115.287 are securely retained?  
 Yes  No

#### 115.289 (b)

- Does the agency make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its website or, if it does not have one, through other means?  Yes  No

#### 115.289 (c)

- Does the agency remove all personal identifiers before making aggregated sexual abuse data publicly available?  Yes  No

#### 115.289 (d)

- Does the agency maintain sexual abuse data collected pursuant to § 115.287 for at least 10 years after the date of the initial collection, unless Federal, State, or local law requires otherwise?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Pursuant to the PAQ, the COO self reports the agency ensures that incident-based and aggregate data are securely retained.

ETC Policy 6.1.7 entitled PREA Data Collection, Aggregation and Review, page 3, section Procedure: B(1) addresses 115.289(a).

According to the BACS PC, she does review data collected and aggregated pursuant to 115.287 in order to assess and improve the effectiveness of ETC's sexual abuse prevention, detection, and response policies and training. As previously mentioned, she retains all investigative reports in a locked cabinet in her office. Requisite information is extracted from investigative reports and other sources.

Her primary role in the process includes collection of aggregated data, identification of trends, and making changes in training, policy, and/or staffing.

It is noted the auditor did observe the aforementioned locked file cabinet in the BACS PC's Office throughout the on-site review.

Pursuant to the PAQ, the COO self reports agency policy requires that aggregated sexual abuse data from facilities under its direct control and private facilities with which it contracts is made readily available to the public, at least annually, through its website.

ETC Policy 6.1.7 entitled PREA Data Collection, Aggregation and Review, page 3, section Procedure: B(2) addresses 115.289(b).

The auditor's review of the BACS/ETC website validates the requisite information is maintained therein.

Pursuant to the PAQ, the COO self reports before making aggregated sexual abuse data publicly available, the agency removes all personal identifiers.

ETC Policy 6.1.7 entitled PREA Data Collection, Aggregation and Review, page 4, section Procedure: B(3) addresses 115.289(c).

The auditor's review of all aggregated data reflected on the aforementioned website reveals no issues relative to personal identifiers being included in any data.

Pursuant to the PAQ, the COO self reports the agency maintains sexual abuse data collected pursuant to 115.287 for at least 10 years after the date of initial collection, unless federal, state, or local law requires otherwise.

ETC Policy 6.1.7 entitled PREA Data Collection, Aggregation and Review, page 4, section Procedure: B(4) addresses 115.289(d).

The auditor found no deviations from either policy or standard in regard to 115.289(d).

In view of the above, the auditor finds ETC substantially compliant with 115.289.

## AUDITING AND CORRECTIVE ACTION

### Standard 115.401: Frequency and scope of audits

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.401 (a)

- During the prior three-year audit period, did the agency ensure that each facility operated by the agency, or by a private organization on behalf of the agency, was audited at least once? (*Note: The response here is purely informational. A "no" response does not impact overall compliance with this standard.*)  Yes  No

#### 115.401 (b)

- Is this the first year of the current audit cycle? (*Note: a "no" response does not impact overall compliance with this standard.*)  Yes  No
- If this is the second year of the current audit cycle, did the agency ensure that at least one-third of each facility type operated by the agency, or by a private organization on behalf of the agency, was audited during the first year of the current audit cycle? (N/A if this is **not** the *second* year of the current audit cycle.)  Yes  No  NA
- If this is the third year of the current audit cycle, did the agency ensure that at least two-thirds of each facility type operated by the agency, or by a private organization on behalf of the agency, were audited during the first two years of the current audit cycle? (N/A if this is **not** the *third* year of the current audit cycle.)  Yes  No  NA

#### 115.401 (h)

- Did the auditor have access to, and the ability to observe, all areas of the audited facility?  
 Yes  No

#### 115.401 (i)

- Was the auditor permitted to request and receive copies of any relevant documents (including electronically stored information)?  Yes  No

#### 115.401 (m)

- Was the auditor permitted to conduct private interviews with residents?  Yes  No

#### 115.401 (n)

- Were residents permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel?  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)

- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

ETC staff were extremely facilitative throughout the pre-audit, on-site, and post-audit phases of this endeavor. The BACS PC and other ETC staff ensured that all staff and resident interviews were expedited. Additionally, all PAQ information and follow-up informational/documentary needs were addressed in a timely manner.

In regard to post audit informational/documentary needs, by agreement between the auditor and ETC, provision of the same was delayed in view of key staff absence from the facility. Upon return, requested information was provided in an expeditious manner.

In summary, responsiveness was exceptional and critical to the conduct of the audit.

## Standard 115.403: Audit contents and findings

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.403 (f)

- The agency has published on its agency website, if it has one, or has otherwise made publicly available. The review period is for prior audits completed during the past three years PRECEDING THIS AGENCY AUDIT. The pendency of any agency appeal pursuant to 28 C.F.R. § 115.405 does not excuse noncompliance with this provision. (N/A if there have been no Final Audit Reports issued in the past three years, or in the case of single facility agencies that there has never been a Final Audit Report issued.)  Yes  No  NA

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

NAA.

## AUDITOR CERTIFICATION

I certify that:

- The contents of this report are accurate to the best of my knowledge.
- No conflict of interest exists with respect to my ability to conduct an audit of the agency under review, and
- I have not included in the final report any personally identifiable information (PII) about any resident or staff member, except where the names of administrative personnel are specifically requested in the report template.

### Auditor Instructions:

Type your full name in the text box below for Auditor Signature. This will function as your official electronic signature. Auditors must deliver their final report to the PREA Resource Center as a searchable PDF format to ensure accessibility to people with disabilities. Save this report document into a PDF format prior to submission.<sup>1</sup> Auditors are not permitted to submit audit reports that have been scanned.<sup>2</sup> See the PREA Auditor Handbook for a full discussion of audit report formatting requirements.

**K. E. Arnold**

**April 2, 2021**

**Auditor Signature**

**Date**

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<sup>1</sup> See additional instructions here: <https://support.office.com/en-us/article/Save-or-convert-to-PDF-d85416c5-7d77-4fd6-a216-6f4bf7c7c110> .

<sup>2</sup> See *PREA Auditor Handbook*, Version 1.0, August 2017; Pages 68-69.  
PREA Audit Report, V6  
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