

§ 115.22 Policies to ensure referrals of allegations for investigations

- a. The BCDC will ensure an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment. [115.22 (a)-1]
 - 1. For procedures see §115.71 Criminal and Administrative Agency Investigations
- b. The BCDC will ensure criminal allegations of sexual abuse or sexual harassment are referred to the Burleigh County Sheriff's Department unless the allegation does not involve potentially criminal behavior. [115.22 (b)-1]
 - 1. A Uniform Incident Report State of North Dakota (01-14) form will be completed on all allegations of sexual abuse or sexual harassment documenting the referral to the Burleigh County Sheriff's Department. [115.22 (b)-3]
- c. BCDC PREA information is available on the Burleigh County Sheriff's Department website. [115.22 (b)-2]

§ 115.71 Administrative versus Criminal Agency Investigations

- a. Upon receipt of a report of a PREA violation, BCDC will conduct a thorough and objective administrative investigation within 24 hours, or as circumstances dictate, including third-party and anonymous reports. [115.71 (a)-1]
 - 1.) Administrative investigations will be conducted by employees who have completed PREA investigation training.
 - 2.) Administrative investigations must include an effort to determine whether staff actions or failures to act contributed to the abuse; and
 - 3.) Must be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings. [115.71 (f)]
- b. During the course of an administrative investigation, if it is determined that criminal prosecution is a possibility, the BCDC shall suspend the administrative inquiry. Then, the Jail Administrator or designee will be notified to contact BCSD's Investigations Division to have a PREA investigator, who has received Department of Justice approved sexual abuse investigation training, investigate the allegation. [115.71 (b)]
- c. BCSD investigators shall gather and preserve direct and circumstantial evidence, including available physical and DNA evidence and available

electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator. [115.71 (c)]

- d. Information obtained from compelled interviews will only be shared with the criminal investigation process as authorized by the Jail Administrator.
- e. The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff. The BCDC may not require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation. [115.71 (e)]
- f. Criminal investigations must be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible. [115.71 (g)]
- g. Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution. [115.71 (h)-1]
- h. The BCDC shall retain all administrative and criminal written reports referenced for as long as the alleged abuser is incarcerated or employed by the agency, plus five years. [115.71 (i)-1]
- i. Investigations are completed regardless of employee status or inmate custody status. [115.71 (j)]
- j. When outside entities conduct investigations of sexual abuse, all staff shall cooperate with outside investigators and shall remain informed about the progress of the investigation. [115.71 (l)]