

Key Differences between the PREA Standards for Adult Prisons and Jails and the PREA Standards for Juvenile Facilities

Passed in 2003, the Prison Rape Elimination Act (PREA) is the first federal civil statute focused specifically on addressing sexual violence in juvenile facilities, jails, prisons, lockups, and other facilities. PREA established the National Prison Rape Elimination Commission, which held hearings about sexual misconduct in custody, issued reports on the problem of sexual victimization in secure facilities, and proposed standards for the prevention, detection, and response to sexual misconduct in criminal and juvenile justice settings. PREA also provided for data collection, technical assistance, early funding to assist states, and periodic reviews of facilities with high and low rates of victimization.

PREA required the Department of Justice to issue standards outlining the steps that facilities must take to address sexual misconduct prevention, detection, and response. On June 20, 2012, the Department of Justice officially published the final standards for four types of facilities: juvenile facilities, adult prisons and jails, lockups, and community confinement facilities. The final standards and the Justice Department commentary are available at <http://www.gpo.gov/fdsys/pkg/FR-2012-06-20/pdf/2012-12427.pdf>.

PREA standards for juvenile facilities and adult prisons and jails are mostly the same, but there are some substantive differences. This fact sheet outlines those differences.

Key Differences

Prevention Planning

- Prisons and jails must document and justify any deviation from the facility staffing plan, but juvenile facilities may only deviate from the staffing plan during limited and discrete exigent circumstances.¹ (§115.13(b); §115.313(b))
- Prisons and jails are permitted to determine their staffing ratios, but secure juvenile facilities² must establish and maintain minimum staffing ratios of 1:8 during waking hours and 1:16 during sleeping hours by August 1, 2017.³ (§115.13(c); §115.313(c))

¹ *Exigent circumstances* means any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.

² *Secure juvenile facility* means a juvenile facility in which the movements and activities of individual residents may be restricted or subject to control through the use of physical barriers or intensive staff supervision. A facility that allows residents access to the community to achieve treatment or correctional objectives, such as through educational or employment programs, typically will not be considered a secure juvenile facility.

³ The Department of Justice requested additional commentary on the juvenile facility staffing ratio and the types of facilities to which it should apply. Therefore, this standard may change.

- Standards for prisons and jails specific to youthful inmates⁴ require the facilities to:
 - Maintain sight, sound, and physical separation between adults and youth in housing units;
 - Only permit contact between youth and adult inmates under direct staff supervision outside of the housing unit; and
 - Make their best efforts to avoid isolating youth to achieve separation absent exigent circumstances, but if the youthful inmate is isolated he or she cannot be denied daily large muscle exercise, legally required special education services, programming and work opportunities. (§115.14)
- Juvenile facilities cannot conduct cross-gender pat-down searches except in exigent circumstances, but standards for prisons and jails:
 - Only prohibit cross-gender pat-down searches of *female* inmates absent exigent circumstances; and
 - Prohibit restricting female inmates' access to regularly available programming or out of cell opportunities to comply with this standard.⁵ (§115.15(b); §115.313(b))
- Standards specific to juvenile facilities require:
 - Consultation with any child abuse registry maintained by the State or locality where the employee would work before hiring an employee who may have contact with residents. (§115.317(c)(2))
 - Employees who may have contact with residents be trained on the relevant laws on the applicable age of consent. (§115.331(a)(11))
- Within 30 days of intake, prisons and jails have to provide inmates comprehensive education regarding sexual abuse, but juvenile facilities have to provide residents with a comprehensive education program within 10 days of intake. (§115.33(b); §115.333(b))

Screening for Risk of Sexual Victimization and Abusiveness

- Intake screening in jails and prisons differ from intake screening in juvenile facilities in the following ways:
 - Only prisons and jails consider whether the inmate is detained for civil immigration purposes;
 - Only juvenile facilities consider any other information that might indicate that a resident is at a heightened need for supervision, safety precautions, or separation from other residents; and
 - Only prisons and jails consider whether the inmate has prior convictions for sexual offenses. (§115.41(d); §115.341(c))
- Prisons and jails must make individual determinations about how to keep each inmate safe, but juvenile facilities are restricted from using isolation in the following ways:
 - Residents can only be isolated as a last resort when the least restrictive measures are inadequate to keep the residents safe; and
 - During isolation, residents cannot be denied daily large muscle exercise or legally

⁴ *Youthful inmate* means any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail.

⁵ This standard does not go into effect until August 20, 2015 or August 20, 2017 for a facility whose rated capacity does not exceed 50 inmates.

required educational programming and they must receive daily visits from medical or mental health staff. (§115.42(b); §115.342(b))

- Juvenile facilities may not use a resident's identification or status as lesbian, gay, bisexual, transgender, or intersex (LGBTI) as an indicator of being sexually abusive. Prisons and jails do not have a similar standard. (§115.42(g); §115.342(c))

Reporting

The following standards are specific to juvenile facilities:

- Residents must be provided with the tools necessary to make a written report. (§115.351(d))
- The parent or legal guardian of a youth resident may file a grievance regarding allegations of sexual abuse on behalf of the resident without the child agreeing to have the request filed. (§115.352(e)(4))
- Youth must have reasonable and confidential access to attorneys or other legal representation and reasonable access to parents or guardians. (§115.353(d))

Official Response Following an Inmate/Resident Report

- Only juvenile facilities are required to ensure that all staff comply with any applicable mandatory child abuse reporting laws. (§115.361(b))
- Upon receiving an allegation of sexual abuse, the juvenile facility head must promptly inform the alleged victim's parents or legal guardians, caseworker, or attorney within 14 days of receiving the allegation. (§115.361(e))

Investigations

- Juvenile facilities are prohibited from terminating an investigation of sexual abuse or harassment solely because the source of the allegation recants the allegation, but there is no comparable standard for prisons and jails.

Discipline

- Disciplinary sanctions for youth in juvenile facilities differ from disciplinary sanctions in adult prisons and jails in that if isolation is used as a sanction against a youth in a juvenile facility, the child must receive:
 - daily large muscle exercise;
 - legally required educational programming or special education services;
 - daily visits from medical or mental health care clinician; and
 - access to other programs and work opportunities to the extent possible. (§115.78(b); §115.378(b))
- Prisons and jails may condition an offending inmate's participation in therapy, counseling or other interventions on his or her access other programming or benefits, but juvenile facilities may not. (§115.78(d); §115.378(d))