

Compliance with the PREA Standards for Facilities That House Youth

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 20th, 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>.

This document is designed to help agency officials and facility administrators understand the scope of the PREA standards for facilities that house youth by summarizing the key provisions and providing a checklist of requirements to help guide implementation efforts. Officials should read the PREA standards and commentary in full to understand the requirements that apply to their facilities.

Which facilities are subject to compliance with the PREA standards?

The PREA standards apply to certain categories of facilities. For example, the standards establish a set of standards for “juvenile facilities,” defined as facilities “primarily used for the confinement of juveniles pursuant to the juvenile justice system or criminal justice system.” The Justice Department made clear that facilities such as group homes fall within the juvenile facility standards, not the adult community confinement facility standards.

For the purposes of PREA, a “juvenile” is any person under the age of 18 “unless under adult court supervision and confined or detained in a prison or jail.” In states with extended age of juvenile court jurisdiction, the juvenile standards still apply to facilities that confine youth over the age of 18, so long as the facility confines *primarily* youth under the age of 18. The standards for adult prisons, jails, and lockups also contain special provisions for youth housed in those criminal justice facilities pursuant to the adult criminal justice system, which are discussed later in this document.

Under the PREA standards, State governors must certify that all facilities “under the operational control of the State’s executive branch” fully comply with the PREA standards, including facilities operated by private entities on behalf of the State. Otherwise, the State may lose five percent of any Department of Justice grant funds that it receives for “prison purposes.” The Department of Justice has not yet specified which funding streams could be in jeopardy for non-compliance. Additionally, correctional accreditation organizations that receive any federal funding must ensure that their standards conform to the PREA standards.

Note: Even though a facility such as a county-operated juvenile detention center does not officially fall within the scope of the governor’s certification, an agency and facility administrators may be subject to litigation for noncompliance with the standards to the extent that courts interpret the PREA standards as “generally accepted professional standards.”

What do the PREA standards require for youth in juvenile facilities?

Prevention Planning – Summary

PREA Policy and Coordination

The PREA standards require agencies and facilities to take steps to establish zero-tolerance cultures toward sexual abuse and sexual harassment. In addition to establishing a written policy that outlines the agency’s approach to sexual misconduct prevention, detection and response, the agency must identify staff to coordinate and monitor those efforts. Each agency must designate an upper-level agency PREA coordinator who has sufficient time and authority to engage in those activities. At the facility level, the standards require agencies to designate PREA compliance managers at each facility operated by the agency.

Hiring and Promotion

The standards require that agencies do not hire, promote, or contract with individuals who may have contact with youth if they have a history of certain sexual misconduct. Agencies must use interviews, criminal background checks, and information from child abuse registries when making those determinations.

Facility Design and Contracting

The standards require that any new or upgraded facilities consider sexual misconduct prevention in their design. Additionally, if an agency contracts with private agencies or other entities to operate facilities, the agency must include the obligation to comply with the PREA standards in any new or renewal contracts, as well a provision for monitoring to ensure compliance.

Searches of Youth

Facilities must ensure that staff do not engage in cross-gender pat-down, strip, or body cavity searches, unless performed by a medical professional or confronted with exigent circumstances. The standards do not permit strip searches of transgender and intersex youth solely for the purpose of determining genital status.

Supervision of Youth

Administrators must make arrangements for youth to avoid being viewed by staff of the opposite gender when unclothed and ensure that staff of the opposite gender announce their presence when entering a housing unit. They must also implement a policy and practice of having supervisors conduct and document unannounced rounds on night and day shifts. Additionally, each facility must develop staffing plans that will ensure sufficient level of direct supervision to protect youth from abuse. The standards establish a minimum staffing ratio of 1:8 during the day and 1:16 during sleeping hours, which facilities must comply with by October 1, 2017. The Justice Department is asking for additional commentary on that figure, which may be revised.

Special Accommodations

Facilities must also make accommodations for youth with disabilities and limited English proficient youth so that they are able to participate in and benefit from efforts related to sexual misconduct prevention, detection, and response.

Prevention Planning – Checklist

General Requirements (§§ 115.311-12)

- Ensure that the agency has a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining how the agency will prevent, detect, and respond to that conduct.
- Designate an upper-level agency-wide PREA Coordinator with sufficient time and authority to develop, implement, and oversee the agency's efforts to comply with the PREA standards.
- Designate a PREA compliance manager who has sufficient time and authority to coordinate the facility's PREA compliance efforts at each facility operated by the agency.
- Include the obligation to comply with the PREA standards in any new or renewal contracts with private agencies or other entities that operate facilities, as well a provision for agency contract monitoring to ensure compliance.

Staffing (§ 115.313)

- Develop, implement, and document a staffing plan that provides for adequate levels of direct supervision to protect youth against sexual abuse and, where applicable, video monitoring.
 - Consider the list of factors in § 115.313(a) when developing the staffing plan.

- Comply with the staffing plan except during limited and discrete “exigent circumstances” and fully document any deviations. “Exigent circumstances” is defined as “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.”
- At least once a year, consult with the PREA coordinator and determine whether any adjustments are needed to the staffing plan, staffing patterns, video monitoring, and other resources needed to adhere to the staffing plan.
- In secure juvenile facilities, maintain at least a minimum staff-to-youth ratio of 1:8 during waking hours and 1:16 during sleeping hours, except during limited and discrete circumstances that are fully documented.
 - Only include security staff in these ratios, who are “employees primarily responsible for the supervision and control of inmates, detainees, or residents in housing units, recreational areas, dining areas, and other program areas of the facility.”
 - If a facility is required to maintain more stringent staffing ratios through law or policy, it must continue to maintain those ratios.
 - **Note:** This provision is subject to modification after a new notice and comment period and does not take effect until October 1, 2017.
- Implement a policy and practice of having supervisors conduct and document unannounced rounds on night and day shifts.

Searches of Youth (§ 115.315)

- Prohibit cross-gender strip searches, visual body cavity searches, and pat-down searches except in exigent circumstances or when performed by a medical professional, and document and justify any deviations from this rule.
- Ensure that youth can 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 incidental to routine cell checks.
- Require that staff of the opposite gender announce themselves when entering a housing unit or area.
- Prohibit searches of transgender and intersex youth solely for the purpose of determining genital status.
- Train staff in conducting professional, respectful, and minimally intrusive cross-gender pat-down searches and searches of transgender and intersex youth.

Accommodations for youth with disabilities and limited English proficient youth (§ 115.316)

- Ensure that residents with disabilities have an equal opportunity to participate in or benefit from efforts to prevent, detect, and respond to sexual misconduct.
 - Provide access to interpreters when necessary.
 - Ensure that written materials are provided in a way that ensures effective communication.

- Take reasonable steps to ensure that limited English proficient (LEP) youth have meaningful access to the agency's efforts to prevent, detect, and respond to sexual misconduct.
 - Do not rely on youth interpreters, readers, or assistants, except when an extended delay could compromise the youth's safety, first-responder duties, or an investigation of a youth's allegations.

Hiring, Promotion, and Contracting (§ 115.317)

- Do not hire, promote, or contract with anyone who may have contact with youth if they have engaged in sexual abuse in a secure facility or other institution; or have been convicted, criminally adjudicated, or civilly adjudicated for engaging or attempting to engage in sexual activity in the community "facilitated by force, overt or implied threats of force, or coercion if the victim did not consent or was unable to consent or refuse."
 - Ask all applicants and employees who may have contact with youth whether they have engaged in any such conduct when engaging in hiring, promotions, or staff reviews and impose an affirmative duty on staff to report such conduct.
 - Make the provision of false information or material omissions grounds for termination.
- Consider any incidents of sexual harassment when making hiring and promotion decisions or when enlisting the services of any contractor who may have contact with youth.
- Before hiring new employees who may have contact with youth, perform a criminal background check, consult any child abuse registry maintained by the state or locality, and make the best efforts to contact all prior institutional employers about substantiated allegations of sexual abuse or resignations during open investigations, consistent with applicable laws.
- Perform criminal background checks and consult child abuse registries before enlisting services of a contractor who may have contact with youth.
- At least every five years, conduct criminal background checks of employees and contractors who may have contact with youth or have a system in place for capturing that information.
- Provide information on substantiated allegations of sexual misconduct to prospective employers of former staff upon request, consistent with applicable law.

Facility Upgrades (§ 115.318)

- When designing or acquiring any new facility or planning substantial modifications or expansions of existing facilities, or when installing and updating video or other surveillance technology, consider the effect on the agency's ability to protect youth from sexual abuse.

Investigations and Evidence Collection - Summary

Agencies that conduct their own sexual abuse investigations must follow uniform and developmentally-appropriate evidence collection protocols. Forensic examinations must be provided free of charge and must be performed by sexual assault forensic examiners or sexual assault nurse examiners when possible. Agencies must also have clear policies to ensure that sexual misconduct allegations are referred to agencies with the authority to conduct criminal investigations and completed. Finally, agencies must make victim advocates available to youth, preferably advocates from local rape crisis centers.

Investigations and Evidence Collection – Checklist

Evidence Collection and Forensic Medical Examinations (§ 115.321)

- If an agency is responsible for investigating sexual abuse allegations, follow a uniform evidence protocol that maximizes usable physical evidence.
- If the agency is not responsible for investigating sexual abuse allegations, request that the investigating agency follow these requirements of this section.
- Ensure that the facility's response protocol is developmentally appropriate.
 - For adolescents, use or adapt the protocol from the Justice Department's National Protocol for Sexual Assault Medical Forensic Examinations or a similarly comprehensive and authoritative protocol.
 - For pre-pubescent youth, use a similarly comprehensive protocol.
- Offer youth who experience sexual abuse access to free forensic medical examinations.
 - Ensure that examinations are performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible; if unavailable, use a qualified medical practitioner.
 - Document the agency's efforts to provide SAFEs or SANEs.
- Make a victim advocate available to youth who experience sexual abuse.
 - Obtain victim advocates from a rape crisis center; if unavailable, document efforts to obtain that advocate and provide services through a qualified staff member from a community-based organization or a qualified agency staff member who has been screened for appropriateness to serve in the role and has received education on sexual assault and forensic examinations.
 - Ensure that the victim advocate, as requested by the victim, accompanies and supports youth through the investigation and response.

Referrals for Allegations of Sexual Misconduct (§ 115.322)

- Ensure the completion of administrative or criminal investigations for all allegations of sexual abuse and sexual harassment.

- If a separate agency is responsible for criminal investigations, describe the responsibilities of the agency and investigating entity.
- Any state entity responsible for administrative or criminal investigations of sexual misconduct in juvenile facilities must have policies governing the conduct of the investigations.
- Adopt a policy to ensure that allegations of sexual misconduct are referred for investigation to agencies with the legal authority to conduct a criminal investigation, unless the allegation does not involve potentially criminal behavior.
 - Publish the policy on the agency’s website or make it available via other means.
 - Document all referrals under the policy.

Training and Education – Summary

Staff and Volunteer Training

Staff who may have contact with youth must receive training on a range of topics within one year of the PREA standards’ effective date, including reporting responsibilities, the dynamics of sexual abuse and harassment and juvenile facilities, how to detect and respond to actual or threatened abuse, effective communication with lesbian, gay, bisexual, transgender, intersex (LGBTQI), and gender non-conforming youth, and other topics. Staff must receive refresher training on those topics every two years. Agency investigators, mental health care, and medical staff must also receive training on these topics, as well as specialized training related to their role in the prevention, detection, and response process. Similarly, agencies must train volunteers and contractors who may have contact with youth, with the extent of the training depending on the level of interaction with youth.

Youth Education

The PREA standards also require that facilities educate youth on sexual misconduct. At intake, facilities must inform youth, in an age-appropriate fashion, of the agency’s zero-tolerance policy and the way to report incidents. Within 10 days, the facility must provide a comprehensive, age-appropriate education regarding the right to be free from abuse, and policies and procedures for reporting and response. The education must be accessible to limited English proficient youth and youth with disabilities, and information must be available to youth on an ongoing basis through posters, handbooks, or other formats.

Training and Education – Checklist

Staff Training (§ 115.331)

- Train all employees who may have contact with youth on:
 - The agency’s zero-tolerance policy for sexual abuse and sexual harassment;

- How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
- Youth's right to be free from sexual abuse and sexual harassment;
- The right of residents and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
- The dynamics of sexual abuse and sexual harassment in juvenile facilities;
- The common reactions of juvenile victims of sexual abuse and sexual harassment;
- How to detect and respond to signs of threatened and actual sexual abuse and how to distinguish between consensual sexual contact and sexual abuse between residents;
- How to avoid inappropriate relationships with residents;
- How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming residents; and
- How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities;
- Relevant laws regarding the applicable age of consent.
- Ensure that all existing employees are trained on these topics within one year of the standards' effective date, that staff receive refresher training every two years, and that staff receive information on current sexual abuse and harassment policies during the years that they do not receive refresher trainings.
- Document that employees understand the trainings they receive through employee signature or electronic verification.
- Tailor trainings to the needs and attributes of youth in juvenile facilities and to the gender of youth in the facilities.
- Provide additional training to staff who are reassigned from a facility exclusively serving one gender to a facility that exclusively serves the other gender.

Volunteer and Contractor Training (§ 115.332)

- Train all volunteers and contractors who have contact with youth on their responsibilities under the agency's sexual misconduct prevention, detection, and response policies and procedures.
 - Level and type of training must be based on services provided and level of contact with youth.
 - At minimum, all should be notified of the agency's zero-tolerance sexual misconduct policy and how to report incidents.
- Document that volunteers and contractors understand the training that they received.

Youth Education (§ 115.333)

- During intake, provide youth with age-appropriate information on the agency's zero-tolerance sexual misconduct policy and how to report incidents.
- Within 10 days of intake, provide comprehensive, age-appropriate education to youth in person or through video regarding right to be free from sexual misconduct and retaliation from reporting incidents, as well as policies and procedures for responding to incidents.
 - Educate current residents within one year of the standards' effective date.
 - Educate youth upon transfer to a different facility if policies and procedures of new facility differ.
- Provide education in formats accessible to all youth, including limited English proficient youth, youth with disabilities, and youth with limited reading skills.
- Maintain documentation of youth participation in education.
- Ensure that information from education session is readily available through posters, handbooks, or other written formats.

Investigator Training (§ 115.334)

- If agency conducts its own sexual abuse investigations, provide investigators with training for new staff under § 115.331.
- Provide specialized training on conducting investigations in confinement settings, including techniques for interviewing juvenile 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.
- Document training of agency investigators.
- Ensure that any state entity that investigates sexual abuse in juvenile facilities provides training to its investigators.

Medical and Mental Health Care Training (§ 115.335)

- Train full- and part-time medical and mental health care practitioners who work regularly in facilities on:
 - How to detect and assess signs of sexual abuse and sexual harassment;
 - How to preserve physical evidence of sexual abuse;
 - How to respond effectively and professionally to juvenile victims of sexual abuse and sexual harassment; and
 - How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.
- Provide staff with either training for employees or contractors and volunteers, depending on practitioner's status within agency.
- If medical staff conduct forensic examinations, provide with training on examinations.
- Document training, whether received through the agency or elsewhere.

Screening – Summary

Information Gathering Upon Intake

Within 72 hours of a youth's arrival, facilities must use an objective instrument to obtain information that will help protect the youth from being the victim of or engaging in sexual misconduct. The facility must take steps to prevent improper disclosure of this information. Staff must make housing and programming assignments using this information.

Housing and Use of Isolation

The PREA standards make clear that facilities may not make automatic assignments of LGBTQI youth to particular housing units based solely on their status. Facilities may not isolate youth with the goal of keeping them safe unless there are no less restrictive measures available. Youth who are isolated have a number of rights and protections under the PREA standards, including the opportunity for large muscle exercise, access to required educational programming or special education services, daily visits from a medical or mental health clinician, and access to programming to the extent possible. Additionally, administrators must review the need for ongoing isolation at least every 30 days.

Screening – Checklist

Obtaining Information from Youth (§ 115.341)

- Obtain and use information about youth's personal history and behavior to reduce risk of sexual abuse by or upon another youth within 72 hours of arrival and periodically thereafter.
- Ensure that assessments are performed using an objective screening instrument that captures information in § 115.341(c) using information from intake, medical and mental health screenings, court records, case files, and other relevant documentation.
- Implement controls on the dissemination of responses to questions asked during assessment to prevent improper disclosure.

Classification (§ 115.342)

- Use information ascertained in § 115.341 and during youth's stay to make housing and programming assignments with goal of keeping all youth safe from sexual abuse.
- Only isolate youth as a last resort when other less restrictive measures cannot keep them safe, and only as long as necessary to find alternative means of keeping youth safe.
 - During any period of isolation, provide youth with large muscle exercise, required educational programming or special education services, daily visits

- from medical or mental health clinician, and access to programming to the extent possible.
 - During any period of isolation, document the basis for facility's concern for the youth's safety and the reason why no other alternative arrangement is possible
 - Review the continuing need for isolation every 30 days.
- Do not automatically place lesbian, gay, bisexual, transgender, or intersex (LGBTQI) youth in particular assignments solely because of LGBTQI status.
- Decide assignments of transgender and intersex youth to male or female housing units on a case-by-case basis, giving the youth's preferences serious consideration and reviewing the assignments at least twice each year for safety.
- Give transgender and intersex youth the opportunity to shower separately from other youth.

Reporting – Summary

Agencies must present youth with multiple internal ways to report misconduct and related concerns privately, as well as at least one external reporting mechanism. Facilities may not place any time limit on youth grievances regarding sexual misconduct and cannot require youth to exhaust informal grievance processes before filing a formal grievance. Agencies must respond to those grievances within 90 days of filing, although they are permitted a 70 day extension if necessary. Youth who are subject to a substantial risk of imminent abuse must also have access to an emergency grievance process with short time frames. The agency must establish and distribute public information about its system for receiving reports from third parties such as other youth, family members, attorneys, and advocates. Agencies may not discipline youth for filing grievances unless they determine that the youth filed the grievance in bad faith.

Facilities must offer youth access to outside victim advocates for emotional support services related to sexual abuse by, for example, entering into memoranda of understanding with community service providers and making contact information available for emotional support services.

Reporting – Checklist

Youth Reporting (§ 115.351)

- Provide multiple internal ways for youth to privately report sexual misconduct, retaliation for reporting misconduct, and staff neglect of responsibilities contributing to misconduct.
- Provide at least one way to report misconduct to a public or private entity that is not part of the agency and that is able to immediately forward reports to agency officials
 - Youth can remain anonymous upon request.

- Youth detained for immigration purposes receive information on contacting consular officials and Department of Homeland Security.
- Ensure that staff accept reports made verbally, in writing, anonymously, and from third parties and promptly document any verbal reports.
- Provide youth with tools to make a written report.
- Provide a method for staff to privately report sexual misconduct involving youth.

Exhaustion of Administrative Remedies (§ 115.352)

- For youth grievances involving sexual abuse:
 - Do not impose time limit on submission.
 - Do not require youth to use informal grievance process or to attempt to resolve issue with staff.
 - Ensure that youth can submit a grievance without giving it to the staff member who is the subject of the grievance.
 - Ensure that a grievance is not referred to a staff member who is the subject of the complaint.
- Issue a final decision on the merits of grievances involving sexual abuse within 90 days of filing.
 - Time does not include time consumed by youth preparing administrative appeals.
 - Agency may claim up to 70 day extension if original timeframe is insufficient to render a decision, but must notify youth in writing of extension and anticipated decision date.
 - **Note:** If youth does not receive response within time period, youth can consider it as a denial.
- Permit third parties, including other youth, staff, family members, attorneys, and outside advocates to file requests for administrative remedies related to allegations of sexual abuse, including on behalf of residents.
 - If a third party other than a parent or guardian files a report on behalf of a youth, the facility may require that the alleged victim agree with the request and that the victim pursue administrative remedies.
 - If a youth declines to have the request processed, the agency must document the refusal.
 - Youth may not refuse processing of grievances filed by parents or legal guardians.
- Establish emergency grievance procedures for youth subject to substantial risk of imminent abuse.
 - Ensure that emergency grievance is forwarded to someone who can take immediate action.
 - Provide an initial response within 48 hours.
 - Provide a final decision within 5 calendar days, documenting determination of whether youth is at substantial risk of imminent sexual abuse and the action taken in response.

- **Note:** Agency may only discipline youth for filing a grievance related to sexual abuse when it demonstrates that the youth filed it in bad faith.
- **Note:** This provision only applies to agencies that have administrative procedures to address grievances involving sexual abuse.

Youth Access to Outside Support Services and Legal Representation (§ 115.353)

- Provide youth with access to outside victim advocates for emotional support services related to sexual abuse.
 - Provide, post, or otherwise make accessible mailing addresses and telephone numbers, including toll free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies.
 - Enable reasonable communication between youth and those entities in as confidential a manner as possible, informing youth to the extent to which reports may be forwarded to authorities in accordance with mandatory reporting laws.
 - Maintain or attempt to enter into memoranda of understanding with community service providers who can offer emotional support to victimized youth.
 - Provide youth with reasonable and confidential access to legal representation.
 - Provide youth with reasonable access to parents or legal guardians.

Third-Party Reporting (§ 115.354)

- Establish a method of receiving third-party reports of sexual misconduct.
- Publicly distribute information on reporting sexual misconduct on behalf of youth.

Responding to Misconduct – Summary

Under the PREA standards, staff must immediately report knowledge, suspicion, or information regarding sexual misconduct that occurs in a facility, and staff neglect or violation of responsibilities that may have contributed to sexual misconduct. Staff must also comply with mandatory reporting laws, but may not reveal information outside of the disclosures required by law and policy. Medical and mental health staff must also follow reporting rules and inform youth of any limitations on confidentiality because of their duty to report misconduct.

An agency receiving an allegation of sexual abuse must promptly forward allegations of sexual abuse to the appropriate agency officials and the victim’s parents or legal guardians. Agencies must notify attorneys of youth under the supervision of the juvenile court and caseworkers of youth involved in the child welfare system no later than two weeks after an allegation. For reports of victimization that occurred in other facilities,

administrators must notify the appropriate investigative agency and either the facility head or relevant agency within 72 hours.

Agencies must develop a written plan to coordinate responses to sexual abuse allegations among staff first responders, medical and mental health staff, investigators, and facility administrators. Staff who first respond to allegations must take steps to separate victims and abusers and preserve evidence. If youth are isolated for their protection, staff must give youth the opportunity for large muscle exercise, access to required educational programming or special education services, daily visits from a medical or mental health clinician, and access to programming to the extent possible. Additionally, administrators must review the need for ongoing isolation at least every 30 days.

Staff must not tolerate retaliation against youth or staff who report misconduct or cooperate with investigations. Facilities must monitor the conduct and treatment of youth who have been victimized for at least 90 days to ensure that no such retaliation takes place.

Responding to Misconduct – Checklist

Staff and Agency Reporting Duties (§ 115.361)

- Require staff to immediately report knowledge, suspicion, or information regarding sexual misconduct that occurs in a facility, and staff neglect or violation of responsibilities that may have contributed to sexual misconduct, according to agency policy.
- Comply with applicable mandatory child abuse reporting laws.
- Prohibit staff from revealing information related to sexual abuse reports apart from mandatory reporting obligations and disclosures to supervisors or others pursuant to agency policy.
- Require medical and mental health practitioners to report sexual abuse according to the provisions listed above.
- Ensure that medical and mental health care staff inform youth of their duty to report and the limitations of confidentiality at the initiation of services.
- Require facility head or designee to promptly report any allegations of sexual abuse to the appropriate agency office, as well as alleged victim's parents or legal guardians (unless facility has notification that parents shouldn't be notified).
 - If youth is involved in the child welfare system, make report to case worker instead of parents or legal guardians.
 - If youth is under jurisdiction of juvenile court, also report to attorney of record within 14 days.
- Report all allegations of sexual misconduct to facility investigators.

Agency Protection Duties (§ 115.362)

- Take immediate action to protect youth when informed that he or she is subject to a substantial risk of imminent sexual abuse.

Reporting to Other Facilities (§ 115.363)

- If notified that a youth was sexually abused while confined in another facility, notify both the head of the facility or appropriate agency where the abuse occurred and the appropriate investigative agency no later than 72 hours after receiving the allegation.
- Document any notifications.

Staff First Responders (§ 115.364)

- Ensure that first staff members to respond to sexual abuse allegations:
 - Separate alleged victim and abuser.
 - Preserve and protect any crime scene for evidence collection.
 - Request that victims not take any actions that could destroy physical evidence.
- If first staff to respond is not security staff, responder must request that victim not take actions to destroy evidence, then notify security staff.

Coordinated Response (§ 115.365)

- Develop a written plan to coordinate actions among staff first responders, medical and mental health staff, investigators, and facility administrators.

Preservation of Ability to Protect Youth (§ 115.366)

- Do not enter or renew any collective bargaining agreement or other agreement that limits the ability to remove alleged abusers pending the outcome of an investigation or determination of whether and what kind of discipline is warranted.

Protection Against Retaliation (§ 115.367)

- Establish a policy to protect all youth and staff who report misconduct or cooperate with investigations from retaliation, and designate staff members to monitor retaliation
- Employ multiple protection measures for youth and staff.
- For at least 90 days following a report of sexual abuse, monitor conduct and treatment of youth and staff who reported and were victimized and respond promptly to any retaliation.
 - Continue monitoring beyond 90 days if necessary.
 - Take appropriate measures to those who express fear of retaliation.

Post-Allegation Protective Custody (§ 115.368)

- During any period of isolation, provide youth with large muscle exercise, required educational programming or special education services, daily visits from medical or mental health clinician, and access to programming to the extent possible.
- During any period of isolation, document the basis for facility's concern for the youth's safety and the reason why no other alternative arrangement is possible
- Review the continuing need for isolation every 30 days.

Investigations – Summary

Agencies that conduct their own investigations into sexual misconduct allegations must do so promptly, thoroughly, and objectively, using investigators with specialized training for work with investigations involving victimized youth. Investigations must be summarized in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings. When appropriate, the agency must refer activity to outside entities for criminal prosecution. If an outside entity conducts investigations, the agency must cooperate with investigators and stay informed about the proceedings.

Youth must receive information about the outcome of the investigation. In the case of staff-on-youth abuse, the youth must be informed when staff are no longer posted on a youth's unit, the staff is no longer employed, or the staff has been indicted or convicted on a charge relating to sexual abuse in a facility.

Investigations – Checklist

Criminal and Administrative Agency Investigations (§ 115.371)

- For agencies that conduct own investigations of sexual misconduct, conduct investigations promptly, thoroughly, and objectively for all allegations.
 - Include effort to determine whether staff actions or failures to act contributed to abuse.
 - Document investigations in written reports that include description of evidence, reasoning behind credibility assessments, and facts and findings.
 - Document criminal investigations in written reports containing thorough descriptions and copies of documentary evidence.
 - Retain all reports for as long as alleged abuser is incarcerated or employed, plus five years, unless youth commits abuse and applicable law requires shorter retention period.
- Use investigators who have specialized trainings in sexual abuse investigations involving youth.
- Ensure that investigators gather and preserve direct and circumstantial evidence, interview relevant parties, and review prior complaints against alleged abuser.

- Do not terminate investigations solely because report is withdrawn or because alleged abuser or victim is no longer employed.
- Do not conduct compelled interviews if there is a likelihood of criminal prosecution without consulting prosecutors.
- Assess credibility of alleged victim, suspect, or witness on an individual basis, not based on person's status as youth or staff.
- Refer substantiated allegations that appear to be criminal for prosecution.
- If outside agencies investigate sexual abuse, cooperate with investigators and stay informed about process.

Evidentiary Standard for Administrative Investigations (§ 115.372)

- Do not impose a standard higher than preponderance of the evidence for sexual misconduct investigations.

Reporting to Youth (§ 115.373)

- After investigation of abuse by agency or outside entity, inform youth of whether allegation was substantiated, unsubstantiated, or unfounded.
- For allegations of staff abuse that are substantiated or unsubstantiated, inform youth when:
 - The staff member is no longer posted on the youth's unit;
 - The staff member is no longer employed at the facility; or
 - The agency learns that the staff member has been indicted or convicted for a charge related to sexual abuse within the facility.
- For allegations of abuse by other youth, inform youth when the youth has been indicted or convicted for a charge related to sexual abuse within the facility.
- Document all notifications under this section.

Discipline – Summary

Staff Discipline

Agencies must sanction staff for violating sexual misconduct policies. The PREA standards make termination the presumptive sanction for substantiated cases of sexual abuse, and prohibit contractors or volunteers who engage in sexual abuse from having contact with youth.

Youth Discipline

With respect to youth, the standards do not mandate particular forms of discipline, but permit staff to consider discipline alongside interventions such as therapy and counseling. Youth who are disciplined must only receive sanctions pursuant to a formal process and administrative or criminal finding of involvement, and the sanction must consider whether a youth's disability or mental illness contributed to the behavior. Youth may not be disciplined for sexual contact with staff unless there is a finding that

the staff member did not consent, nor may they be disciplined for making allegations of abuse unless the allegations were made in bad faith. Youth who are isolated must receive a range of procedural protections, including daily large muscle exercise, access to education, daily visits from medical or mental health clinicians, and opportunities to access other programming. Facilities may not treat consensual sexual activity among youth as sexual abuse for the purposes of the PREA standards' requirements.

Discipline – Checklist

Sanctions for Staff (§ 115.376)

- Administer sanctions up to and including termination for violating sexual misconduct policies, making sanctions commensurate with nature of acts, the staff member's disciplinary history, and sanctions imposed for comparable offenses.
- Make termination the presumptive sanction for staff who engage in sexual abuse.
- Report all terminations for violations of sexual misconduct policies and resignations by staff who would have been terminated to law enforcement (unless clearly not criminal) and relevant licensing bodies.

Corrective Action for Contractors and Volunteers (§ 115.377)

- Prohibit contractors or volunteers who engage in sexual abuse from contact with youth and report such behavior to law enforcement (unless clearly not criminal) and relevant licensing bodies.
- Take other appropriate remedial measures.

Interventions and Sanctions for Youth (§ 115.378)

- Only subject youth to sanctions pursuant to a formal disciplinary process following an administrative or criminal finding.
- Ensure that any disciplinary sanctions are commensurate with the nature and circumstances of the abuse, the youth's disciplinary history, and sanctions for similar offenses.
- When determining a sanction:
 - Consider whether disability or mental illness contributed to behavior.
 - Consider whether to offer interventions such as therapy or counseling.
- Do not require participation in therapy or counseling as condition to general programming or education.
- Do not discipline youth for sexual contact with staff unless there is a finding that the staff member did not consent.
- Do not discipline youth for allegations of abuse unless it was not made in good faith based on a reasonable belief that conduct occurred.
- Do not categorize consensual sexual activity among youth as sexual abuse.
- If youth are isolated, ensure that they receive:
 - Daily large muscle exercise.

- Access to legally-required educational programming and special education services.
- Daily visits from medical or mental health clinicians.
- Opportunities to access other programs and work opportunities.

Medical and Mental Health Care – Summary

Under the PREA standards, facilities must provide youth with medical and mental health care related to victimization or abusiveness in certain situations. If an intake screening indicates that a youth has experienced prior sexual victimization or has engaged in abuse prior to entering a facility, staff must ensure that the youth is offered follow-up meeting with a medical or mental health practitioner within 14 days.

For youth who are victimized in an institution, the facility must ensure that youth have timely and unimpeded access to emergency medical and crisis intervention services. This includes access to emergency contraception and prophylaxis for sexually transmitted infections, which must be provided free of charge. Facilities must offer and, as appropriate, provide follow-up medical and mental health treatment to victims of institutional sexual abuse free of charge and without conditioning those services on participation in an investigation.

Medical and Mental Health Care – Checklist

Screenings (§ 115.381)

- If intake screening indicates youth has experienced prior sexual victimization or has engaged in abuse, ensure that youth is offered follow-up meeting with medical or mental health practitioner within 14 days.
- Obtain informed consent from youth before reporting information about prior victimization that did not occur in an institutional setting if youth is under 18.
- Limit information related to victimization or abusiveness that occurred in an institutional setting to those who need to know to make treatment, security, and management decisions, or as otherwise required by law.

Access to Services (§ 115.382)

- Ensure that youth have timely unimpeded access to emergency medical and crisis intervention services.
- Ensure that medical and mental health practitioners are immediately notified upon report of recent abuse.
- Offer youth timely information about and access to emergency contraception and sexually transmitted infection prophylaxis when medically appropriate.
- Offer services for free and regardless of participation with investigation.

Ongoing Medical and Mental Health Care (§ 115.383)

- Attempt to conduct mental health evaluation of all known youth-on-youth abusers within 60 days of learning of abuse history and offer treatment if deemed appropriate by mental health staff.
- Offer evaluation and, as appropriate, treatment to youth who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility, including, as appropriate:
 - Follow-up services.
 - Treatment plans.
 - Referrals for continued care after transfer or departure.
- Offer mental health services consistent with community level of care.
- Offer pregnancy tests and timely information on lawful pregnancy-related medical services.
- Offer treatment for sexually transmitted infections.
- Offer services for free and regardless of participation with investigation.

Data Collection and Review – Summary

Agencies must conduct a sexual abuse incident review at the conclusion of each sexual abuse investigation, even when an allegation is determined to be unsubstantiated. The review should ordinarily take place within 30 days and must consider a range of factors, including whether the allegation or investigation indicates needed policy or practice changes, whether the incident or allegation was motivated by race; ethnicity; LGBTQI identification, status, or perceived status; gang affiliation; or other group dynamics, physical barriers that may enable abuse; and the adequacy of staffing levels during different shifts. Facilities must implement the recommendations for corrective action or document their reasons for not doing so.

In addition to reviewing individual incidents, agencies must collect accurate, uniform data for every allegation of sexual abuse in agency-operated and privately-operated facilities, which must be aggregated and publicly released at least once a year. Agencies must use these aggregate data to identify problems, take corrective action, and prepare annual reports on PREA compliance that detail the agency's efforts to take corrective action. The agency must make those reports available on its website or, if no website is available, through other means.

Data Collection and Review – Checklist

Sexual Abuse Incident Review (§ 115.386)

- Conduct incident reviews within 30 days of conclusion of investigation of sexual abuse.
- Include upper-level management in review team, with input from line supervisors, investigators, and medical and mental health practitioners.
- Ensure that review team considers:
 - Whether the allegation or investigation indicates needed policy or practice changes.
 - Whether the incident or allegation was motivated by race; ethnicity; LGBTQI identification, status, or perceived status; gang affiliation; or other group dynamics.
 - Physical barriers that may enable abuse.
 - The adequacy of staffing levels during different shifts.
 - Whether video technology should be deployed or augmented.
- Prepare report of findings and recommendations for improvement, which must be submitted to the facility head and PREA compliance manager.
- Implement the recommendations for improvement or document reasons for not doing so.

Data Collection (§ 115.387)

- Collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions, including, at a minimum, the data necessary to answer the questions from the most recent Justice Department Survey of Sexual Violence.
- Aggregate data at least annually.
- Obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of youth.
- Provide the previous calendar year's data to the Justice Department upon request.

Data Review for Corrective Action (§ 115.388)

- Review aggregated data to assess and improve effectiveness of sexual abuse prevention, detection, and response policies, practices and training by:
 - Identifying problem areas.
 - Taking corrective action on an ongoing basis.
 - Preparing an annual report of findings and correction actions for each facility and the agency as a whole.
- Include comparison of current year's data and corrective actions with prior years' and include assessment of progress.
- Make report public after approval by agency head through a website or other means.

Data Storage, Publication, and Destruction (§ 115.389)

- Ensure data are securely retained.

- Make aggregated, non-identifiable data available to the public at least annually through website or other means.
- Maintain data collected pursuant to § 115.387 for at least 10 years from date of collection unless law requires otherwise.

Audits – Summary

The PREA standards require agencies to ensure that each facility operated by the agency, or by a private organization on behalf of the agency, receive an audit once during every three-year period. The first three-year period begins on August 20th, 2013. At least one-third of facilities must be audited annually by an independent entity, defined as: (1) a member of a correctional monitoring body that is not part of or under the authority of the agency, (2) a member of an auditing entity such as an inspector general or ombudsperson's office that is external to the agency, or (3) other outside individuals with relevant experience.

Auditors must be trained and certified to perform audits by the Department of Justice, and they must use an audit instrument developed by the Justice Department. Auditors will determine compliance with individual standards using a three-tiered ranking system: exceeds standard, meets standard, and does not meet standard. Agencies that do not meet the requirements for one or more standard must develop and implement a corrective action plan within 180 days.

Agencies must ensure that auditors have access to all areas of audited facilities and any requested documents or information. The auditor must also be able to interview youth, staff, and administrators. Agencies must publish the audit results on the agency's website or, if a website is not available, make the audit available through other means.

Audits – Checklist

Frequency and Scope (§ 115.401)

- Ensure that each facility operated by the agency or by a private organization on behalf of the agency is audited once during the three-year audit period.
- Audit at least one-third of facilities each year.
- Ensure that the auditor reviews agency-wide policies, procedures, reports, audits, and accreditations and, at a minimum, a sampling of documents and other records from the most-recent one year period.
- Guarantee the auditor access to all areas of audited facilities and any requested documents or electronic information.
- Ensure that the auditor interviews a representative sample of youth, staff, and administrators and can conduct private interviews with youth.
- Ensure that the auditor reviews a sampling of videotapes or other electronic data.

- Ensure that the auditor retains and preserves all documentation relied upon.
- Permit youth to send confidential information to auditors.
- Ensure that auditors attempt to communicate with community-based or victim advocates who may have insight into relevant facility conditions.

Auditor Qualifications (§ 115.402)

- Ensure that auditors are conducted by either:
 - A member of a correctional monitoring body that is not part of or under the authority of the agency.
 - A member of an auditing entity such as an inspector general or ombudsperson's office that is external to the agency.
 - Other outside individuals with relevant experience.
- Ensure that auditors are certified by the Department of Justice.
- Do not enlist auditors who have received financial compensation for reasons other than conducting prior PREA audits within three years prior to the agency's retention of the auditor.
- Do not employ, contract with, or otherwise financially compensate the auditor for three years following the agency's retention of the auditor, except for subsequent PREA audits.

Audit Contents and Findings (§ 115.403)

- Include auditor certification that no conflict of interest exists.
- State whether agency-wide policies and procedures comply with individual PREA standards using designations of Exceeds Standard (substantially exceeds requirement of standard); Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period); Does Not Meet Standard (requires corrective action).
- Describe the methodology, sample sizes, and basis for conclusions for each standard for each audited facility.
- Include recommendations for corrective action.
- Redact personally identifiable information from report but provide to agency and Department of Justice upon request.
- Publish the auditor's report on the agency's website or make it available to the public.

Audit Contents and Findings (§ 115.404)

- For findings of "Does Not Meet Standard" for one or more standard, begin a 180-day corrective action period and develop a corrective action plan with the auditor.
- Ensure that the auditor takes steps to verify implementation of the corrective action plan.
- Ensure that auditor issues final determination of compliance on standards requiring corrective action.

Audit Appeals (§ 115.405)

- Lodge an appeal with the Department of Justice regarding any findings it believes to be incorrect within 90 days of auditor's final determination

What do the PREA standards require for youth in adult prisons, jails, and lockups?

Officials should read the PREA standards and commentary in full to understand the requirements that apply to youth in adult prisons, jails, and lockups. This section summarizes the key requirements regarding youth in those facilities.

For youth under the age of 18 in adult jails and prisons, agencies must place youth in a housing unit that is separated by sight, sound, and physical contact with any adult inmate. This includes shared dayrooms, shower areas, sleeping quarters, and other common space. In areas outside of housing units, agencies must maintain sight and sound separation between youth and adults, or provide direct staff supervision of youth. Finally, agencies must make the "best efforts" to avoid placing youth in isolation to comply with this requirement. If youth are isolated, facilities may not deny youth large muscle exercise and special education services absent "exigent circumstances," and staff must give youth access to other programs and work opportunities to the extent possible.

For youth under the age of 18 in adult lockups, facilities must hold youth separately from adult detainees.

For more information, please contact:

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