

Understanding the Impact of the Prison Rape Elimination Act (PREA) Standards on 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. The law 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 the Bureau of Justice Statistics (BJS) to examine the prevalence of sexual misconduct in juvenile facilities. To meet this requirement, BJS surveyed youth in 195 juvenile confinement facilities across the country. Over one in eight youth reported experiencing one or more incidents of sexual victimization by another youth or facility staff from 2008 to 2009.

Finally, 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>.

What do the standards mean for facilities that house youth?

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?

Officials should read the PREA standards and commentary in full to understand the requirements that apply to their facilities. This section provides a summary of the key requirements in each area. It is intended for individuals who wish to understand the new standards but who do not have responsibility for implementing the details of the requirements.

Prevention Planning

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 benefit from efforts related to sexual misconduct prevention, detection, and response.

Response

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.

Training and Education

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.

Screening

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.

Reporting

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.

Responding to Misconduct

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 actions 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.

Investigations

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.

Discipline

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.

Medical and Mental Health Care

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.

Data Collection and Review

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.

Audits

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.

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:

Dana Shoenberg, Deputy Director
Jason Szanyi, Staff Attorney
Center for Children’s Law and Policy
1701 K Street, NW, Suite 1100, Washington, DC 20006
Phone: (202) 637-0377, x107 (Dana), x108 (Jason)
Email: dshoenberg@cclp.org; jszanyi@cclp.org
www.cclp.org