Frequently Asked Questions

The final Department of Justice (DOJ) Prison Rape Elimination Act (PREA) Standards became effective on August 20, 2012. Since then, DOJ, which was responsible for promulgating the final Standards, has provided interpretive guidance in the form of Frequently Asked Questions (FAQs) to address questions of first impression when they raise issues that are broadly relevant to the application and interpretation of the Standards. On this page, you will find all FAQs issued by DOJ to date. DOJ will continue to meet and resolve questions of first impression and the guidance it develops will be posted as it becomes available.

The Department of Justice (DOJ) has provided interpretive guidance on the PREA Standards in the form of responses to Frequently Asked Questions (FAQ). Interpretive guidance is regularly issued by federal agencies to help clarify perceived ambiguities in a federal regulation's meaning. These responses to FAQs are the DOJ's official position, and they reflect the fair and considered judgment of the experts across DOJ. The DOJ explains its understanding of the PREA Standards so that those parties who are most affected - PREA auditors, the corrections community, and state and local officials - can operate with the benefit of a common understanding. PREA auditors are trained by DOJ to use these FAQs to guide their findings of compliance with the PREA Standards. Thus, these FAQs should be read alongside the PREA Standards in order to understand how compliance determinations will be made.

For more information on where DOJ frequently asked questions (FAQs) come from or what the authority is for the DOJ to issue these FAQs, please view this archived webinar.

Please note that Standards referenced throughout this FAQ often apply to multiple sets of PREA Standards. Along with different standard numbers, the different sets of standards use different terminology to refer to the population they house including "inmate," "detainee," and "resident." When referencing a standard that applies equally to all facilities covered under PREA, the language in the question and answer will, unless specified, refer to the Adult Prisons & Jails standard numbers and use the term "inmate" to refer generally to the populations in those facilities. The FAQ search functionality uses the standard numbering from the Adult Prisons and Jails, regardless of the specific setting. When a standard is selected, the search will identify all FAQs related to that standard across all standard settings.

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Oct 24, 2023

Q: Can you please clarify the parameters of conducting a search of a transgender or intersex inmate/resident?

A: An agency cannot search or physically examine transgender or intersex inmates/residents/detainees for the sole purpose of determining their genital status. As noted in PREA Standards 115.15(d), 115.115(d), 115.215(d), and 115.315(d), if an inmate's, resident's, or detainee's genital status is unknown, an agency can determine it through conversations with the inmate/resident/detainee, 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. Additionally, agencies must provide training to security staff in how to conduct cross-gender pat-down searches and searches of transgender and intersex inmates/residents/detainees. See Standards 115.15, 115.115, 115.215, and 115.315. Security staff must conduct these searches in a professional and respectful manner; in the least intrusive manner possible, and consistent with security needs. Id.

Operationally, four options are in current practice for searches of transgender or intersex inmates/residents/detainees: 1) searches conducted only by medical staff; 2) pat searches of adult inmates conducted by female staff only, especially given there is no prohibition on the pat searches female staff can perform (except in juvenile facilities); 3) asking inmates/residents/detainees to identify the gender of staff with whom they would feel most comfortable conducting the search, and 4) searches conducted in accordance with the inmate's gender identity. Agencies or facilities that conduct searches based solely on the gender designation of the facility without considering other factors such as the gender identity or expression of the individual inmate or the inmate's preference regarding the

gender of the person conducting the search, would not be compliant with Standards 115.15, 115.115, 115.215, and 115.315.

Revised October 24, 2023. Original posting date February 7, 2013

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STANDARD: 115.15

CATEGORIES: LGBTI Inmates/Residents/Detainees/Staff, Searches

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Sep 08, 2023

Q: Standard 115.73 (c) requires that following an inmate's allegation that a staff member has committed sexual abuse against the inmate, the agency shall subsequently inform the inmate (unless the agency has determined that the allegation is unfounded) whenever: (1) The staff member is no longer posted within the inmate's unit; (2) The staff member is no longer employed at the facility; (3) The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or (4) The agency learns that the staff member has been convicted on a related to sexual abuse within the facility. For purposes of this FAQ, what does the standard mean by "**posted**" in an inmate's unit?

A: For the purposes of this FAQ, a "post" is considered an established work assignment within a facility that an employee may be given for an entire shift or part of a shift that may include a specific physical location(s) within the facility. These posts may be assigned, or selected at the beginning of each shift, or staff may bid on these posts as part of a collective bargaining agreement. Agencies should be mindful of the requirements of standard 115.66 (a) and its relatedness to this question. For example, Doe Correctional Facility requires two correctional officers to work on units A, B, and C on all shifts. Accordingly, each correctional officer that works those units is considered to be posted to those units. To comply with the standard that a staff member to be "no longer posted" on an inmate's unit would mean that the staff shall not be assigned to a post on the living unit of the inmate.

Agencies and facilities should be mindful that not all "posts" may have one physical location but if the inmates' living unit is a part of the post assignment, they should not be permitted to work that specific post. An example of this type of post would be a correctional officer who is considered a "floating" or "rover" officer who goes between units A and B, to assist other officers on those units.

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STANDARD: 115.66, 115.73

CATEGORIES:

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Aug 21, 2023

Q: If following a state or local law, administrative policy, labor agreement, directive, or any other rule prevents an agency from complying with a PREA Standard, should the agency or facility be considered compliant or non-compliant with the Standard for following the conflicting law, policy, agreement, directive, or rule?

A: An agency should be considered to be noncompliant with a PREA Standard if the agency elects to follow another authority and therefore fails to comply with the Standard. It makes no difference whether the other authority was adopted before or after the date of the promulgation of the PREA Standards.

The PREA Standards were designed to operate in conjunction with state and local laws.

Some PREA Standards expressly permit agencies to comply with state or local laws if there is a conflict with the PREA Standards (e.g., Standard 115.89(d) (requiring agencies to maintain sexual abuse data "for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.") and Standard 115.261(c)(requiring medical and mental health practitioners to report sexual abuse "unless otherwise precluded by Federal, State, or local law")).

Some PREA Standards expressly require agencies to comply with applicable state and local laws while complying with the PREA Standards (e.g., Standard 115.17(c)(2) (requiring agencies to follow state and local laws while contacting prior institutional employers for information on substantiated allegations of sexual abuse before hiring individuals who may have contact with inmates) and Standard 115.313(a)(9)(requiring agencies to follow applicable state or local laws, regulations, or standards when determining adequate staffing levels and determining the need for video monitoring)).

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STANDARD: **CATEGORIES:** Compliance

Jun 14, 2023

Q: How do agencies determine if an agency staff member or staff member of a community-based organization is qualified?

A: 115.21(h) provides that "a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general." Appropriateness should be based on factors such as temperament, background, interest level, listening skills, empathy, cultural competence, and schedule availability and not merely the person's position such as psychology or counseling staff. In addition, it should be voluntary to take on this role.

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STANDARD: 115.21

CATEGORIES:

Jun 14, 2023

Q: Standard 115.21(d) provides that agencies must attempt to provide victim advocates. If they are unable to do so, they can provide a qualified staff member from a community-based organization or a qualified agency staff member. How can agencies identify an appropriate community-based organization?

A: The regulations do not define "community-based organization." The intent of the standard is for agencies to partner with a non-profit or tribal organization that serves sexual assault victims even if it is not the sole focus of the organization or a nonprofit organization that has a related purpose. Examples are other victim service agencies, culturally specific organizations, LGBTQ organizations, and other multi-service organizations. Factors in determining the appropriateness of an organization include who the organization serves, what services they offer, any experience they have with sexual assault victims, and any training the staff has received on sexual assault.

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STANDARD: 115.21

CATEGORIES:

Jun 14, 2023

Q: When a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) cannot be made available to perform a Sexual Assault Forensic Examination, Standard 115.21 requires that the examination be performed by "other qualified medical practitioners." What are the criteria for determining whether someone is a "qualified medical practitioner" who can perform the examination in this circumstance?

A: Standard 115.5 defines a "medical practitioner" as "*a health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice.*" The definition goes on to provide that a "qualified medical practitioner" refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

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The Office on Violence Against Women (OVW) has published "National Training Standards for Sexual Assault Medical Forensic Examiners" available on the OVW website (**www.justice.gov/ovw**) at **Training Sexual Assault Forensic Edition (justice.gov)** . Appendix C provides minimum training recommendations for all providers delivering care to the patient who has been sexually assaulted and/or abused, when there is not a SANE or SAFE available. Qualified medical practitioners should have at least successfully completed this training or its equivalent, although DOJ recommends that they complete more in-depth training. The International Association of Forensic Nurses (IAFN) with OVW support has produced a training, "No SANE in Sight" that incorporates these minimum requirements. This training is available at **No SANE In Sight - IAFN (forensicnurses.org)** free of charge and takes about 2 hours to complete. State sexual assault coalitions **(Local Resources | OVW | Department of Justice)** may have information on additional training available in the state, including trainings that provide more in-depth information and information specific to state protocols.

For juvenile facilities, the medical training should also include an understanding of child physical and mental/emotional development.

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STANDARD: 115.21

CATEGORIES:

May 01, 2023

Q: How should transgender staff and non-binary staff be classified for the purposes of complying with cross-gender viewing and search prohibitions established in PREA Standard 115.15?

A: The PREA Standards do not provide specific guidance regarding the classification of transgender and nonbinary staff; however, it is important to note that the PREA Standards do not prohibit facilities from classifying transgender employees consistent with their gender identity with regard to all aspects of their employment, including those related to PREA Standard 115.15. For example, it does not violate the PREA standards for a staff member who is a transgender man to conduct strip searches of male inmates.

If for a reason other than the PREA Standards, a facility does not classify a transgender employee consistent with their gender identity, facilities should make an individualized

determination based on the gender identity of the staff member and not solely based on the staff member's sex assigned at birth, the gender designation of the facility or housing unit to which the staff member is assigned, the related and required job duties of the specific staff member, the limits to cross-gender viewing and searches in PREA Standard 115.15, and the goal of the PREA Standards to prevent trauma and sexual abuse. This determination should be made at the request of, and in conjunction with, the transgender or non-binary staff member. Agencies should be aware that the determination of assignment in the facility may change at the request of and in conjunction with the employee as part of an ongoing adjustment process or as the staff member gains experience living consistently with their gender identity.

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Note: this FAQ replaces the FAQ from 04/23/2014 regarding transgender staff.

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STANDARD: 115.15

CATEGORIES: Searches

Jan 20, 2023

Q: PREA Standard 115.22(a) requires an administrative "*or*" (emphasis added) criminal investigation to be completed for all allegations of sexual abuse and sexual harassment. Are there circumstances under which both an administrative ***and*** a criminal investigation of an allegation of sexual abuse or sexual harassment must be completed?

A: Yes. Because criminal investigations and administrative investigations review different aspects of the alleged sexual abuse or harassment (suspected criminal activity and suspected agency policy violations, respectively), there are circumstances where both a criminal ***and*** administrative investigation will be required.

Criminal investigations must be completed any time criminal activity has been suspected of taking place regarding sexual abuse or harassment allegations. In general, most criminal investigations will not consider what specific policy violations occurred and a criminal investigation thus will not satisfy PREA Standards: **115.73(c), 115.76 , 115.78, and 115.86**. For example, a state department of corrections (DOC) prison using a state police agency to criminally investigate an allegation of inmate-on-inmate sexual abuse, may only review if the sexual abuse that occurred meets the definition of rape in the state's criminal code to bring criminal charges. The state police will not consider what state DOC policies or rules were violated that contributed to the sexual abuse occurring.

During a criminal investigation, if a criminal investigation brings charges, but no conviction, **or**, if a criminal investigation does not bring any criminal charges against the alleged suspect, then, in these two circumstances, the agency must conduct a separate administrative investigation. It is not acceptable for the agency to determine that an allegation of sexual abuse is administratively unfounded or unsubstantiated based solely o the fact that no criminal charges were brought, or that no criminal conviction was won. This is not acceptable because PREA Standard 115.72 requires a lower standard of proof (i.e., a preponderance of the evidence) to be applied to substantiate an allegation of sexual abuse in an administrative investigation. This standard of proof is lower than the standard of proof (i.e., beyond a reasonable doubt) required to convict in a criminal case.

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When a criminal investigation of an allegation of sexual abuse concludes with a criminal *conviction*, an administrative investigation is also required. It may be possible to substantiate the allegation without conducting a separate administrative investigation, because the 'preponderance of the evidence' standard of proof required to substantiate an allegation is lower than the 'beyond a reasonable doubt' standard of proof that is required for a criminal conviction. However, since there are a number of PREA Standards that require the agency to scrutinize potential rule and policy violations, as well as practice failures, by staff that contributed to an incident of sexual abuse, a criminal investigation is not likely to identify relevant administrative violations, and policy and practice failures.

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STANDARD: 115.22

CATEGORIES: Investigations

Jul 19, 2022

Q: Standard 115.52 (d)(1) states: "The agency shall 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." If the agency has a grievance appeals process with one or more levels of appeal following an initial decision on the grievance, what stage of that process constitutes a "final agency decision?"

A: The "final agency decision" must be issued at the highest level of appeal available to the inmate who has filed the grievance, and it must be issued within 90 days of the initial filing of the grievance, not counting the time the inmate takes to prepare an appeal at any level. (See Standard 115.52 (d)(2), which states: "Computation of the 90-day time period shall not include time consumed by inmates in preparing any administrative appeal.") The purpose of Standard 115.52 (d)(1) and (d)(2) is to ensure that inmates can "exhaust" administrative

remedies within a timeframe that reasonably allows them to move through the grievance process without missing a state or federal statute of limitations.

Standard 115.52 (d)(3) states: “The agency may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The agency shall notify the inmate in writing of any such extension and provide a date by which a decision will be made.”

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STANDARD: 115.52

CATEGORIES:

Jul 19, 2022

Q: PREA Standard 115.52 (a) states: “An agency shall be exempt from this Standard if it does not have administrative procedures to address inmate grievances regarding sexual abuse.” What does an agency need to demonstrate in order to qualify for this exemption, if it has an inmate grievance process?

A: An agency that has an inmate grievance process or any other administrative remedies process is only exempt from Standard 115.52 if it can demonstrate that as a matter of written agency policy, grievances related to sexual abuse or allegations of sexual abuse (i.e., allegations of sexual abuse, a fear of sexual abuse, or allegations of mishandling of an incident of sexual abuse) are immediately converted to investigations that are outside of the agency’s administrative remedies process, and are not considered by the agency to be grievances.

In order to be exempt from compliance with Standard 115.52, it must be clear in written agency policy that the agency does not have an administrative procedure for inmates to exhaust, with regard to incidents or allegations of sexual abuse (i.e., allegations of sexual abuse, a fear of sexual abuse, or allegations of mishandling of an incident of sexual abuse). If the agency does not have a written policy that is consistent with what is described in this FAQ, the agency is not exempt from the requirements in Standard 115.52.

If the agency is exempt from Standard 115.52, inmates must be provided notice that grievances related to sexual abuse or allegations of sexual abuse (i.e., allegations of sexual abuse, a fear of sexual abuse, or allegations of mishandling of an incident of sexual abuse) are immediately converted to investigations that are outside of the agency’s administrative remedies process and are not considered by the agency to be grievances. This notice to inmates can be provided in a number of ways, including in inmate handbooks and other written resources and notices to which inmates have regular access, and during the inmate education required by Standard 115.33, which states:

(a) During the intake process, inmates shall receive information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.

(b) Within 30 days of intake, the agency shall provide comprehensive education to inmates either in person or through video regarding 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.

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(c) Current inmates who have not received such education shall be educated within one year of the effective date of the PREA Standards and shall receive education upon transfer to a different facility to the extent that the policies and procedures of the inmate's new facility differ from those of the previous facility.

(d) The agency shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills.

(e) The agency shall maintain documentation of inmate participation in these education sessions.

(f) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats.

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STANDARD: 115.52

CATEGORIES:

Jul 19, 2022

Q: PREA Standard 115.52 (a) and (b) use the language "grievances regarding sexual abuse" or "grievances regarding an allegation of sexual abuse." What constitutes a grievance "regarding" sexual abuse or an allegation of sexual abuse?

A: For Standard 115.52 (a) and (b), a grievance regarding an incident or allegation of sexual abuse is any grievance that is about a potential or past incident, or allegation, of sexual abuse. A grievance that alleges a fear of imminent sexual abuse, a grievance that alleges an incident of sexual abuse, or a grievance that alleges the mishandling of a report of sexual abuse are all grievances "regarding allegations of sexual abuse."

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STANDARD: 115.52

CATEGORIES:

Jun 08, 2021

Q: When must confinement facilities offer pregnancy tests to victims of sexually abusive vaginal penetration while incarcerated?

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A: PREA Standard 115.83(d) provides that inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests. PREA Standard 115.83(e) provides that victims who are pregnant as a result of such penetration shall receive timely information about, and access to, all lawful pregnancy-related medical services. In order for facilities to provide timely information and access to services, they must also provide timely testing. Timely testing shall be consistent with the community level of care, as described in PREA Standard 115.83(c).

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STANDARD: 115.83

CATEGORIES:

May 10, 2021

Q: What is meant by the term "objective screening instrument" in PREA Standard 115.41?

A: PREA Standard 115.41 requires facilities to assess all inmates "for their risk of being sexually abused by other inmates or sexually abusive toward other inmates" and such assessments shall be conducted using an ***objective screening instrument***." (emphasis added).

The Department made clear in the PREA Notice of Final Rule that the "standard provides that the agency shall attempt to ascertain specific information about the [resident, inmate, or detainee] and that the agency develop an objective, rather than subjective, ***process*** for ***using*** that information..." See 77 Fed. Reg. 37106, 37154 (June 20, 2012) (emphasis added). Objective screening instruments have been used in corrections and other disciplines for decades in order to create uniformity, accuracy, and transparency in internal decision-making processes.[1] Such instruments lead to a presumptive determination of risk, and are "point-additive," "decision-tree," or "software-based algorithm."

While a PREA-compliant objective screening instrument must consider various enumerated factors, the Department of Justice made clear that the standards do not "mandate the weight to be assigned to any of the enumerated factors in making placement and classification decisions." See 77 Fed. Reg. 37106, 37154 (June 20, 2012). The standards require the following factors to be included in the objective risk-screening determinations for risk of victimization: (1) Whether the inmate has a mental, physical, or developmental disability; (2) The age of the inmate; (3) The physical build of the inmate; (4) Whether the inmate has previously been incarcerated; (5) Whether the inmate's criminal history is

exclusively nonviolent; (6) Whether the inmate has prior convictions for sex offenses against an adult or child; (7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming; (8) Whether the inmate has previously experienced sexual victimization; (9) The inmate's own perception of vulnerability; and (10) Whether the inmate is detained solely for civil immigration purposes. See 28 C.F.R. § 115.41(d).

In addition, an objective screening instrument must consider: "prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency, in assessing inmates for risk of being sexually abusive." See 28 C.F.R. § 115.41(e).

Additional Considerations for PREA-Compliant Objective Screening Instruments

Objective screening instruments are "rules-based" and include the following essential features:

1. Developing and implementing a uniform list of risk factors and assigning reasonable weights for each risk factor based on available evidence and reasonably informed assumptions.[2]
2. Assigning objective outcome thresholds based on the totality of weighted risk factors (weighted inputs lead to presumptive outcome determinations).
3. Using a uniform process to obtain information on the applicability of each risk factor to individual inmates.
4. Making an objective risk determination based on the aggregate of the inmate's individual weighted risk factors.[3]

Agencies may include additional relevant factors in their screening instrument(s) based on the availability of additional known risk factors as they become available. For example, additional risk factors may be identified based on agency- and facility-specific sexual abuse incident data. The Bureau of Justice Statistics also publishes data on individual-level characteristics associated with a heightened risk of victimization that an agency may use to identify additional risk factors or inform the weight to be assigned to individual risk factors. Agencies may use one screening instrument to assess both risk of sexual abusiveness and victimization or use separate instruments. It is important to know that an inmate may be both at heightened risk of victimization and abusiveness.

While objective screening instruments are designed to arrive at an objectively presumptive outcome, an agency may override the presumptive outcome based on unusual or unanticipated circumstances. However, override determinations are often subjective and should be limited. Overrides greater than 15-20 percent may transform an objective system into a largely subjective system. In cases where agencies override a large percentage of objective determinations, the agency should consider reassessing their screening instrument and individual factor weightings to accommodate the reasons many determinations are being overturned.

Agencies should attempt to tailor their objective screening instruments to the unique characteristics (e.g., specialized populations, inmate demographics, program type) of their various facility types. For example, the factor weighting appropriate for a minimum-security

prison may create considerable over-screening in a sex-offender treatment facility. Similarly, agencies should also periodically reassess their screening instrument over time, as the nature of their facility populations may shift. The goal of an objective classification system is to, in an any given confined population, identify the most vulnerable and most predatory inmates, and keep those inmates separate. See 28 C.F.R. § 115.42(a). If an objective screening instrument identifies 100 percent or zero percent of a population as vulnerable; o conversely predatory; the system may not accomplish this goal.

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[1] See, e.g., James Austin, Ph.D., Objective Jail Classification Systems, National Institute of Corrections (Feb. 1998) **https://www.michigan.gov/documents/corrections/Objective_Jail_Classification_Systems_-_A_Guide_for_Jail_Administrators_294757_7.pdf** ; Jack Alexander Ph.D., Handbook for Evaluating Objective Prison Classification Systems, National Institute of Corrections (June 1992) **https://www.ncjrs.gov/pdffiles1/Digitization/139891NCJRS.pdf** ; David Steinhart, Juvenile Detention Alternatives Initiative, Annie E. Casey Foundation (2006); **https://www.aecf.org/m/resourcedoc/aecf-juveniledetentionriskassessment1-2006.pdf#page=4** ; Keith Cooprider, Pretrial Risk Assessment and Case Classification: A Case Study Control, Federal probation Journal (Vol. 73, No. 1) **https://www.uscourts.gov/sites/default/files/73_1_2_0.pdf** ("the practice of objective risk assessment is a basic principle of the Evidence-Based Practice (EBP) initiative...").

[2] The Bureau of Justice Statistics periodically publishes PREA-related data collection reports, among other things, identifying victim-characteristic correlation to victimization: **https://www.bjs.gov/index.cfm?ty=tp&tid=20**

[3] "Validation" is another positive, yet costly, feature of an objective system. The Department chose not to include a validation requirement in its standards. See e.g., 77 Fed. Reg. 37106, 37151 (June 20, 2012); **https://www.prearesourcecenter.org/node/3246**.

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STANDARD: 115.41

CATEGORIES: Screening

Feb 06, 2020

Q: Are rape crisis centers or other victim service providers appropriate entities to serve as external reporting entities, pursuant to PREA Standard 51(b)?

A: Generally, no. PREA Standard 51(b) provides that: "The agency shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request." The purpose of this provision is to provide inmates with a way to

report sexual abuse or harassment to someone outside of the corrections agency. The focus of this standard is on reporting of sexual abuse and sexual harassment, not on providing support to victims.

Rape crisis centers and other victim service providers have a mission of providing support and services to victims. Under federal law, if such centers and providers are funded at least in part, either as a direct recipient or as a subrecipient, by the Violence Against Women Act (VAWA, 34 U.S.C. 12291(b)(2)), the Family Violence Prevention and Services Act (FVPSA, 42 U.S.C. 10406(c)(5)), or the Victims of Crime Act Victim Assistance Program (VOCA Assistance, 28 C.F.R. § 94.115), they are required to keep identifying information about victims confidential. The only limited exceptions to this requirement are when the victim signs an informed, written, time-limited release, or when release is required by a legal (court or statutory) mandate. This requirement to keep confidential identifying information about victims conflicts with the requirement of PREA Standard 51(b) to be able to immediately forward reports of sexual abuse and sexual harassment to agency officials.

Although the federal funding/grant restrictions identified above do *allow* for anonymous reporting, the restrictions do not permit the provider to immediately forward all information about an allegation (including the inmate's identity) to agency officials in cases where the inmate does *not* request anonymity. In order to immediately forward all information about an allegation (including the inmate's identity) to agency officials in cases where the inmate does not request anonymity, the provider would need an immediate written release, which is unlikely to be feasible in the confinement facility context.

Most rape crisis centers and victim service providers receive federal FVPSA, VAWA, and/or VOCA Assistance funds. Many victim services providers may not realize that they are receiving these federal funding streams, because these programs are funded by formula grants that are awarded to local programs by states or territories. Even for those rape crisis centers and victim service providers that are not federally funded, there are often *state* confidentiality or privilege laws that apply. For more information about the VAWA confidentiality provision, see **https://www.justice.gov/ovw/page/file/1006896/download** .

It is very unlikely that a rape crisis center or other victim service provider will be able to carry out the requirements of PREA Standard 51(b) without violating state or federal laws.

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STANDARD: 115.51

CATEGORIES: Contracting, Contract Services, Compliance

Feb 06, 2020

Q: What is the difference between "anonymous" reporting as used in PREA Standard 115.51(b), "confidential" as used in PREA Standard 115.53, and "privately report" as used in PREA Standard 115.51(d)?

A: PREA Standard 51(b) requires agencies to "provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain ***anonymous*** upon request." The term "anonymous" as used here means that the inmate must have the ability (*at the inmate's request*) to keep his or her identity protected from disclosure to agency and facility personnel. However, the external reporting entity must be able to immediately forward the *substance* of the allegation back to agency officials. Also, when the inmate does *not* affirmatively request anonymity, the external reporting entity must be able to immediately report the *entirety* of the allegation back to agency officials. See also, https://www.prearesourcecenter.org/node/3285.

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PREA Standard 115.53(a) requires facilities to "provide inmates with access to outside victim advocates for emotional support services related to sexual abuse…" and "shall enable reasonable communication between inmates and these organizations and agencies, ***in as confidential manner as possible***." The Department of Justice acknowledges that a limited number of agency and facility officials may need to know the identity of the inmate utilizing these services. For example, when these services are provided in-person through the inmate visitation process, certain facility personnel will need to know the nature of the visits. However, in these instances, staff should protect this information from internal dissemination to the greatest extent possible. In addition, it is almost always possible for facilities to maintain complete confidentiality with respect to the *substance* of communications between the inmate and the outside emotional support service provider. In addition, PREA Standard 115.53(b) requires facilities to "inform inmates, 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."

PREA Standard 115.51(d) requires agencies to "provide a method for staff to ***privately report*** sexual abuse and sexual harassment of inmates." The term "privately report" as used here requires that staff must have an avenue to make a report in a manner that other staff (without a need-to-know) are not made aware of such a report.

As stated in the PREA Notice of Final Rule: "In requiring agencies to provide a method for staff to report sexual abuse and sexual harassment 'privately,' the Department means that agencies must enable staff to report abuse or harassment directly to an investigator, administrator, or other agency entity without the knowledge of the staff member's direct colleagues or immediate supervisor." In addition, "[a] private reporting mechanism may provide a level of comfort to staff who are concerned about retaliation, especially where the staff member reports misconduct committed by a colleague." See 77 Fed. Reg. 37157 (June 20, 2012).

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STANDARD: 115.51, 115.53

CATEGORIES: Compliance

Feb 03, 2020

Q: What inmate education and information must be available to inmates before an external reporting mechanism may be considered compliant with PREA Standard 115.51(b) and PREA Standard 115.33?

6:30

A: PREA Standard 115.33(a) requires that "[d]uring the intake process, inmates shall receive information explaining…how to report incidents or suspicions of sexual abuse or sexual harassment." PREA Standard 115.33(f) requires that agencies "ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats."

One item that is generally considered to be "key information" is the ability of inmates to "to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing inmates to remain anonymous upon request." See PREA Standard 115.51(b).

Pursuant to these Standards, the general requirements include:

- Clear and accurate information about which reporting mechanisms satisfy the external reporting requirement;
- Information must be readily accessible to inmates and available from multiple sources (e.g. signs, admission and orientation materials, etc.);
- Information must be consistent among the multiple sources; and
- How to utilize the reporting mechanisms, if the inmate wishes to remain anonymous.

By contrast, the following three examples illustrate scenarios that are ***not*** consistent with these standards:

1. The facility informs inmates only that they "may report sexual abuse or sexual harassment by: (1) telling any staff member, (2) filing a grievance, (3) sending a note to the PREA Compliance Manager, or (4) contacting the PREA hotline at 555-555-5555."

This does not satisfy PREA Standard 115.33 or PREA Standard 115.51(b) because the facility does not indicate which avenue, if any, is the external reporting entity. While an inmate could "guess" that the PREA hotline is an external reporting entity, it is at least equally likely that the PREA hotline is an internal agency contact. In addition, there is no indication of how the inmate may request anonymity.

2. The facility informs inmates only that they "may report sexual abuse or sexual harassment to the State OIG, an external entity, by calling the PREA hotline at #55. Inmates may request anonymity – that their identity will not be provided to agency personal." However, inmates are required to enter their identification number prior to gaining access to any call, and facility signage above the phones indicates that "all calls are subject to monitoring and recording by facility staff."

This does not satisfy PREA Standards 115.33 or PREA Standard 115.51(b) because inmates are provided with conflicting information, and there is no reasonable basis to believe that the State OIG permits anonymity.

3. The facility provides all inmates with a handbook at intake that, among other things, informs them that they "may report sexual abuse or sexual harassment by writing to the State OIG, an external reporting entity, at 555 Maple Lane, Capital, State 55555. To do so, inmates must request a prepaid envelope from their Unit Manager. All outgoing mail is subject to inspection by staff. Mail will not be accepted without the inmate's name and identification number on the envelope."

6:30

This does not satisfy PREA Standard 115.33 or PREA Standard 115.51(b) because there is no information informing inmates about their ability, or how, to request anonymity. In addition, the procedures listed in the handbook would lead most inmates to believe that their report could ***not*** be anonymous.

It is important to note that some agencies change their mechanism for inmates to make external reports pursuant to PREA Standard 51(b) over the course of time. When this happens, agencies should ensure that older signage, handbooks, and other educational materials are updated appropriately. It is not uncommon for facilities to maintain legacy information for inmates describing two or more different external reporting mechanisms, even while some of those mechanisms no longer exist. The presence of conflicting and outdated information for inmates on this issue creates confusion and diminishes the effectiveness of this important reporting avenue, and could potentially lead a PREA auditor to find noncompliance.

Finally, inmate education materials and staff training often provide conflated and confusing information regarding how inmates may access the external reporting entity pursuant to PREA Standard 115.51(b), and how to access outside confidential support services pursuant to PREA Standard 115.53. These standards serve different purposes, and each has distinct requirements (e.g., anonymity versus confidentiality). In addition, confidential emotional support service providers are typically not appropriate entities to serve as the external reporting entity. Accordingly, it is important that educational materials make clear the purpose and mechanisms for each of these services, so they are not conflated.

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STANDARD: 115.33, 115.51

CATEGORIES: Inmate Education

Feb 03, 2020

Q: What is the difference between the post-incident victim advocacy required in PREA Standard 115.21, and the outside confidential support services required in PREA Standard 115.53?

A: PREA Standard 115.21(e) requires agencies to provide a victim advocate to, when requested by the victim, "accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals." If a rape crisis center is not available to provide this service, the agency must provide a qualified staff member of a community-based organization, or a qualified agency staff member. The purpose of the standard is to provide victims with in-person advocacy and support during the forensic medical exam and investigatory interview. This is comparable with services that are generally available to victims in the community when they seek forensic exams or report sexual assaults.

6:30

PREA Standard 115.53, by contrast, focuses on longer-term or ongoing counseling and support for victims, which could be provided by phone or mail, or offered in person. This standard is also intended to provide victims with a way to reach out to a provider to request support. Specifically, this standard requires the facility to:

1. Provide victims with mailing addresses and phone numbers (including toll-free hotlines where available) for victim advocacy or rape crisis organizations, and enable communication between inmates and victim service providers in "as confidential a manner as possible;"
2. Inform inmates of the extent to which their communications with victim service providers will be monitored, and the extent to which reports of sexual abuse will be forwarded to authorities, in accordance with mandatory reporting laws; and
3. Attempt to enter into agreements with victim service providers to provide inmates with confidential sexual abuse support services.

One example of how facilities and agencies have met these requirements is by signing an agreement with a local rape crisis center to respond to hotline calls and provide advocates on-site at certain dates/times. On-site advocates can meet with individual victims and facilitate support groups. The focus of this on-site work is helping victims to recover from the longer-term trauma and emotional impact related to being a victim of sexual abuse.

While the victim advocacy requirements of PREA Standard 115.21 are generally triggered after an inmate makes a report of sexual abuse within a facility, agencies are required to provide ***all*** inmates with access to outside confidential support services under PREA Standard 115.53, ***whether or not*** they make allegations of sexual abuse.

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STANDARD: 115.21, 115.53

CATEGORIES: Compliance

Oct 31, 2019 Q: What does "confinement" mean in the context of PREA and juvenile facilities?

A: The term "Juvenile facility" is defined in the PREA standards as "a facility primarily used for the confinement of juveniles pursuant to the juvenile justice system or criminal justice

system." See PREA standard 115.5. Emphasis added. The term "confinement" is broad in scope.

The Department of Justice (DOJ) interprets the term "confinement" in the PREA juvenile facilities context to include placement of a juvenile, either directly or as a condition of disposition or sentencing, in a residential (overnight) facility, pursuant to delinquency or criminal justice involvement, where the juvenile may face a juvenile justice or criminal justice consequence or sanction for unauthorized departure from the facility.[1]

The PREA standards include explicit coverage for facilities providing rehabilitation and treatment services. For example, "community confinement facilities" include facilities that provide services such as a "community treatment center... [a] mental health facility, [an] alcohol or drug rehabilitation center, [facilities that provide] vocational training, treatment, and educational programs..." See PREA standard 115.5. When a facility meets the definition of both a "community confinement facility" and "juvenile facility," the "juvenile facility" standards apply. **See related FAQ**.

The PREA standards also explicitly include coverage for facilities that are not "secure." The juvenile facility standards apply to facilities falling under the broad definition of "juvenile facility." By contrast, the term "secure juvenile facility" is a narrower subset of all "juvenile facilities," and applies in both hardware-secure and staff-secure settings. See PREA standard 115.5. The standards place two additional requirements on "secure juvenile facilities," including a minimum staffing ratio requirement, and a requirement for unannounced supervisory rounds. See PREA standards 115.313(c)&(e). The juvenile facility standards also include explicit references to traditionally non-secure facilities, such as "group homes," if such homes otherwise qualify under the definition. See PREA standard 115.315(d).[2]

The PREA statute defines a "prison" to include, among other things, "any juvenile facility used for the custody or care of juvenile inmates." See 34 U.S.C. s. 30309(7)(b). Emphasis added. The inclusion of the phrase "or care" suggests an acknowledgment that states identify a variety of purposes for confining juveniles within the spectrum of delinquency interventions, including rehabilitation and treatment.

Federal courts routinely find and uphold determinations that placements of youth pursuant to juvenile justice and criminal justice systems in treatment and rehabilitation facilities to fall within the meaning of "confinement," for purposes of applying federal sentencing guidelines. [3]

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[1] By contrast, DOJ has explicitly exempted traditional foster care from coverage under the PREA standards, even when used exclusively to house justice-involved youth. **See the related FAQ**.

[2] "In facilities (such as group homes) that do not contain discrete housing units, staff of the opposite gender shall be required to announce their presence when entering an area where residents are likely to be showering, performing bodily functions, or changing clothing."

[3] See U.S. v. Hanley, 906 F.2d 1116 (6th Cir., June 28, 1990) (delinquency related commitment to Michigan Department of Social Services, and placement in Shiloh Family Home considered prior "confinement"); U.S. v. Kirby, 893 F.2d 867 (6th Cir., Jan. 16, 1990) (custodial commitment to Kentucky Cabinet for Human Resources for seven months considered "imprisonment," federal law applies to determination); U.S. v. McNeal, 175 Fed. Appx. 546 (3rd Cir. Apr. 11, 2006) (delinquency related commitment to Abraxas Leadership Development Program considered "confinement," and a sentence to a juvenile detention institution, or to the custody of a state agency, where a juvenile is not free to leave for more than 60 days, was sentenced to "confinement"); U.S. v. Davis, 929 F.2d 930 (3rd Cir., Apr. 2, 1991) (indeterminate sentence to Glen Mills School "where he was not free to leave" was sentenced to "confinement"); U.S. v. Williams, 891 F.2d 212 (9th Cir., Dec. 6, 1989) ("juveniles who are sentenced to juvenile hall are not free to leave...although the purpose of juvenile sentencing is rehabilitative rather than strictly punitive, the effect is nonetheless to deprive the juvenile of liberty...[W]e find that commitment to juvenile hall is a form of confinement.").

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STANDARD: 115.5

CATEGORIES: Definitions, Youthful Inmates

Aug 02, 2019

Q: Does a juvenile facility's receipt of, or eligibility to receive, Medicaid funding administered by the United States Department of Health and Human Services impact the determination of whether or not the facility is covered under the PREA standards?

A: No. Applicability of the PREA standards is determined exclusively by whether a facility meets the definition of one of the five covered facility types defined in the standards: Prisons, Jails, Lockups, Juvenile Facilities, and Community Confinement Facilities.

The term "Juvenile facility" is defined in the PREA standards as "a facility primarily used for the confinement of juveniles pursuant to the juvenile justice system or criminal justice system." (See 28 C.F.R. § 115.5.)

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STANDARD: 115.5

CATEGORIES: Youthful Inmates

Aug 02, 2019

Q: What determines whether a facility is "primarily used for" a particular purpose under the PREA standards?

6:30

A: The simplest way to make this determination is to determine whether, over a period of one year, the facility holds more people for that purpose than for any other purpose.

For facilities whose populations vary significantly from year to year, agencies may require some predictability for three-year PREA audit cycle planning and scheduling purposes. In such cases, agencies may rely on the facility's historical "primary use" calculation over the prior three-year period. Agencies may make this calculation based on: (1) the annual calculation for the prior three-year period (e.g., the primary use in two or more years of the prior three-year period), or (2) the aggregated average daily population use over the entirety of the prior three-year period.

For facilities that have been open fewer than three years, the agency may rely on the "primary use" of a facility since the facility opened.

Revised August 2, 2019. Original posting date July 9, 2013.

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STANDARD: 115.5

CATEGORIES: Covered Facilities, Definitions

Aug 02, 2019

Q: Is a public agency that contracts with another public or private agency for the confinement of inmates, detainees, or residents out of compliance with Standard 115.12/112/212/312 if the contracted facility is determined to be noncompliant with one or more provisions of the PREA Standards by either its required triennial audit, or by the contracting agency's contract monitoring?

A: PREA standards 115.12, 115.112, 115.212, and 115.312 require that new or renewed contracts for the placement of inmates include both a requirement to comply with PREA, and that the contracting agency conduct contract monitoring "to ensure that the contractor is complying with the PREA Standards."

On February 19, 2014, during the first half of the first auditing year, the Department of Justice (DOJ) provided guidance that (at the time of issue) contracted facilities needed not "be immediately and perfectly compliant with the Standards," in order for the contracting agency to be considered in full compliance. Rather, DOJ determined that it was sufficient for

the contracted facility to “be actively and effectively working toward achieving compliance with all the Standards” and that the contracting agency fully document the progress toward full compliance. This guidance was not intended to provide an avenue for noncompliant contracted facilities to be utilized by agencies in perpetuity.

As such, as of August 20, 2022,[1] contracting agencies shall ensure that any facility that has been contractually required to comply with PREA for at least 36 months has achieved full compliance with the PREA standards, and will maintain compliance as a condition for continued use of such facility by the contracting agency.

For a discussion regarding the contract monitoring obligations of a contracting agency, click here.

Revised August 2, 2019. Original posting date February 19, 2014.

[1] By way of reference, the Justice for All Reauthorization Act of 2016 provides generally that as of 2022, state agencies will no longer be able to utilize the “assurance” option to avoid losing a portion of certain federal grant funds. See Public Law No: 114-324.

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STANDARD: 115.12

CATEGORIES: Contracting

Aug 02, 2019

Q: Standards 115.41(f) and 115.241(f) require that the facility “reassess the inmate’s/resident’s risk of victimization or abusiveness based on any additional, relevant information received by the facility since the intake process” and that it do so no more than 30 days after intake. The question is whether this standard subsection requires that EVERY inmate be reassessed within 30 days of arrival at the facility to determine whether any relevant new information exists; OR, alternatively, whether it requires that some process be in place to capture new information that arrives at the facility within 30 days and, when new information arrives, it prompts a reassessment?

A: The standard requires both. First, there is a general and continuing obligation to conduct a screening reassessment whenever warranted upon receipt of additional relevant information. Specifically, standard 115.41(g) requires that "[a]n inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness." This continuing obligation extends through the duration of the inmate's incarceration.

By contrast, the standards also require an affirmative reassessment within a set time period, but no later than 30 days of intake. Specifically, standard 115.41(f) requires that "[w]ithin a set time period, not to exceed 30 days from the inmate's arrival at the facility, the facility will reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening" (emphasis added).

While standard 115.41(f) requires an affirmative reassessment within 30 days, the reassessment need not "start from scratch." For example, as noted in the PREA Notice of Final Rule, a facility may generally rely upon information previously gathered, so long as the reassessment "captures any changes in risk factors that may have occurred subsequent to the facility's prior gathering of information regarding that inmate."

While a facility may (and should) have a system in place for capturing additional or new information from a variety of sources (e.g., mental health assessment, disciplinary history, or allegations of relevant threats or victimization), the 30-day affirmative reassessment requires, at a minimum, that screening staff consult available sources (including the inmate) to determine whether any previously unknown triggering event or information has become available and to document such review. In short, as opposed to the "passive" requirements under standards 115.41(g), standard 115.41(f) requires screening staff to affirmatively "look and inquire."

Some risk factors are subject to change within the first 30-days after intake and may only be determined by making affirmative inquiry of the inmate. For example, the "inmate's own perception of vulnerability" can only be known by the inmate. See standard 115.41(d)(9). In addition, the inmate may have experienced unreported sexual victimization during this time period. See standard 115.41(d)(8). Accordingly, all 30-day reassessment requires consultation with the inmate.

As noted in the PREA Notice of Final Rule, "[t]he final standard requires that inmates who remain in custody undergo a more extensive classification process [within 30 days]." This requirement recognizes that information relevant to the risk and classification needs will become available as staff interview, assess, and observe the inmate, and as the facility receives information from other agencies and sources.

Revised August 2, 2019. Original posting date June 20, 2014.

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STANDARD: 115.41

CATEGORIES: Screening

Mar 20, 2019

Q: For purposes of ensuring that employees and contractors have received required background checks and PREA training, how should agencies determine whether an individual "may have contact with" inmates/residents/detainees?

6:30

A: An individual may have contact with inmates/residents/detainees if, within the scope of that person's official or unofficial duties or privileges, it is reasonably foreseeable that the person will have physical, visual, or auditory contact with a confined person over any period of time.

An individual may, at one point in time, not fall into the category above. However, a change in that person's job duties, privileges, or policies and procedures may result in him or her having contact with inmates, residents, or detainees. If such a change occurs, the requirements for background checks and PREA training become immediately applicable to that individual.

"Contact" for purposes of the standards described below may include being in the same enclosure with an inmate/resident/detainee (e.g., dayroom, cell, courtyard, hallway, clinic, intake, etc.), being able to visually observe an inmate/resident/detainee (e.g., via live video feeds, one-way or two-way glass, etc.), or converse with an inmate/resident/detainee (e.g., through talking or shouting, via intercom, etc.).

Relevant PREA Standards

The PREA standards prohibit agencies from hiring or promoting anyone "***who may have contact with inmates*** [or] enlist the services of any contractor who may have contact with inmates" if the individual has committed certain disqualifying acts. See standard 115.17(a)/117(a)/217(a)/317(a). In addition, the PREA standards require agencies to "consider any incidents of sexual harassment in determining whether to hire or promote anyone, or enlist the services of any contractor, ***who may have contact with inmates***." See standard 115.17(b)/117(b)/217(b)/317(b).

The PREA standards require agencies to conduct a "criminal background records check" and "contact prior institutional employers" before hiring new employees "***who may have contact with inmates***" and conduct a criminal background records check before enlisting the services of any contractor ***who may have contact with inmates***." See standard 115.17(c-d)/117(c-d)/217(c-d)/317(c-d). Agencies are also required to "either conduct criminal background records checks at least every five years of current employees and contractors ***who may have contact with inmates*** or have in place a system for otherwise capturing such information for current employees." See standard 115.17(e)/117(e)/217(e)/317(e). In

addition, agencies must inquire of "all applicants and employees ***who may have contact with inmates*** directly about" [enumerated proscribed conduct] in the course of certain triggering events. See standard 115.17(f)/117(f)/217(f)/317(f).

The PREA standards require agencies to "train all employees ***who may have contact with inmates***" about certain enumerated topics related to sexual safety and to provide periodic "refresher training" and "refresher information." See standard 115.31/131/231/331. The PREA standards also require agencies to "ensure that all volunteers and contractors ***who have contact with inmates***" to receive training on certain enumerated topics." See standard 115.32/132/232/332.

6:30

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STANDARD: 115.17, 115.31, 115.32

CATEGORIES: Background Checks, Definitions, Training

Nov 14, 2018

Q: How do I find out more about the Department of Justice grant programs that will be impacted if my governor does not submit a certification of compliance or an assurance?

A: The DOJ offices operating these grant programs have each released FAQs regarding the impact of PREA on their programs. Click the links below to access the corresponding grant program FAQ:

Bureau of Justice Assistance Edward Byrne Memorial Justice Assistance Grants (JAG) FAQ

Office of Juvenile Justice and Delinquency Prevention's Title II Part B Formula Grants FAQ

Revised November 14, 2018, January 30, 2017, and April 19, 2016. Original posting date June 3, 2015.

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STANDARD: 115.501

CATEGORIES: Governor's Certification, Penalty

Jul 20, 2018

Q: Are there criminal records background check and training requirements for individuals who have regular contact with inmates, residents, or detainees, and who provide recurring services to the agency, or on behalf of the agency? Such services are provided inside facilities

pursuant to an informal arrangement, agreement, or understanding, rather than a written, formal contract or agreement.

6:30

A: In instances where services are provided to a PREA-covered confinement facility by another entity or individual on a recurring basis, the individuals providing those services are subject to the criminal records background check and training requirements of standards 115.17 (115.117/ 115.217/115.317) and 115.32 (115.132/115.232/115.332).

Examples of such services include, but are not limited to, the following: the provision of vocational training, counseling, general education classes, reentry planning guidance, medical or dental treatment, and/or mental/behavioral health treatment. In some cases, these services are provided pursuant to state or local law. Generally, however, they are provided under a memorandum of understanding or an intergovernmental or interagency agreement. In keeping with the Department of Justice's broad interpretation of the term "contract" for purposes of providing interpretive guidance on the PREA standards, the individuals providing these services are required to receive training equivalent to that provided to individuals providing services under a formal contract.

July 20, 2018 Update: Some practitioners have misconstrued this guidance to mean that agency staff, contractors, and volunteers are only required to submit to an agency criminal records background check and applicable agency-required training if they have *regular and recurring* contracts with inmates, residents, and detainees. Instead, this guidance is intended to make a distinction between employees, contractors, and volunteers as unambiguously defined in the standards on the one hand, and service providers who have no formal direct relationship with the confining agency on the other hand. In the former situation, these requirements apply to any person "who *may* have contact" with inmates. In the latter situation (covered by this FAQ), service providers having no formal or direct relationship with an agency must be subject to criminal background checks and training requirements only if they have regular or recurring contacts with inmates inside the facility.

Revised July 20, 2018 and September 28, 2015. Original posting date December 2, 2014

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STANDARD: 115.17, 115.32

CATEGORIES: Background Checks, Contract Services, Training

Jul 20, 2018

Q: If prior objective risk screenings under PREA Standard 115.41 (or other information known to an agency) indicate that an inmate has previously experienced sexual victimization, how should screening staff approach the issue during subsequent screenings and reassessments, so

as to be sensitive to the potential for retraumatizing the inmate?

6:30

A: PREA Standard 115.41 requires facilities to screen inmates for risk of sexual victimizatio or sexual predation during intake at a facility and upon transfer to another facility. Risk screening reassessments are required within "a set time period, not to exceed 30 days from the inmate's arrival at the facility," and when warranted due to certain events listed in the Standard. One of the factors that must be taken into consideration during risk determinations is "[w]hether the inmate has previously experienced sexual victimization." See PREA Standard 115.41(d)(8).

While facilities are required to consider prior sexual victimization during each risk screening, the Standards do not specify any particular manner in which to make such an inquiry, nor do they require that the question be posed in the same manner every time. If an inmate has already reported a history of prior sexual victimization during a previous risk screening by the agency or facility, screening staff could ask during subsequent screenings if the inmate has "previously experienced sexual victimization" *that he or she has not already reported* to the confining agency or facility. Screening staff must include sexual victimization reported during prior risk screenings, as well as any previously undisclosed sexual victimization, in the risk screening tool.

This process avoids requiring an inmate to repeatedly report the details of a traumatic event, while: (1) providing the inmate an opportunity to disclose an incident of victimization that occurred after the prior risk screening; and (2) providing the inmate an opportunity to disclose an incident that the inmate did not feel comfortable reporting during prior risk screenings.

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STANDARD: 115.41

CATEGORIES: Screening

Jun 20, 2018

Q: In secure juvenile facilities, must security staff be present during medical and mental health assessments and consultations for purposes of meeting the minimum staffing ratio requirements? Also, must security staff be present during clinical group therapy sessions?

A: If the medical or mental health assessment, consultation, or group therapy session is conducted by a medical practitioner or mental health practitioner and such services require, pursuant to that practitioner's license or certification, patient-practitioner confidentiality, then security staff need not be present during these services. The absence of security staff during the provision of these services will not be considered a violation of the minimum

staffing ratio requirement in PREA Standard 115.313(c). However, the PREA Standards also do not prohibit the presence of security staff.

Who counts as a medical practitioner, a mental health practitioner, and security staff pursuant to the PREA Juvenile Facility Standards?

6:30

Medical Practitioner is defined as a "health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice." See PREA Standard 115.5. Examples of such practitioners may include L.P.N., R.N., B.S.N., P.A., N.P., M.D., etc.

Mental Health Practitioner is defined as a mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice." See PREA Standard 115.5. Examples of such practitioners may include L.C.S.W., LPC, Psy.D., etc.

Security Staff is defined as "employees primarily responsible for the supervision and control of… residents in housing units, recreational areas, dining areas, and other program areas of the facility." See PREA Standard 115.5. In another FAQ, the Department of Justice explains that certain additional categories of staff not typically thought of as "security staff" may also be included in the minimum staffing ratios under certain conditions.

See **https://www.prearesourcecenter.org/node/3254**. For the Department of Justice's FAQ on how auditors evaluate compliance with the minimum staffing ratios, see **https://www.prearesourcecenter.org/node/5414**.

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STANDARD: 115.5, 115.13

CATEGORIES: Definitions, Staffing Ratio

May 18, 2018

Q: Do the PREA Standards require that the terminology and/or definitions that a correctional agency uses in policies, lesson plans, educational materials, and other documentation for terms defined by the PREA Standards, including "sexual abuse" and "sexual harassment," match precisely the definitions in Standard 115.5 and Standard 115.6?

A: No. Agencies need not use the precise verbiage of the definitions specified in the PREA Standards when using those terms in policies, lesson plans, educational materials, or other documentation relevant to the PREA Standards. So long as, when referencing a term defined in Standard 115.5 and Standard 115.6, the agency documentation and definitions accurately and completely reflect all of the information contained in the PREA Standard

definitions, the agency need not quote the definitions in Standard 115.5 and Standard 115.6 verbatim.

Agencies should be mindful to use respectful and appropriate language, and avoid terminology that could be viewed as offensive, outdated, or a slur. The importance of appropriate and professional language should be conveyed through PREA training and educational materials.

6:30

Finally, if agencies choose to deviate from the definitions of "sexual abuse" and "sexual harassment" laid out in PREA Standard 115.6, they should take care not to minimize the weight of these terms with lesser terms such as "sexual misconduct," "undue familiarity," or "official misconduct." If state law uses such lesser terms in prohibiting conduct that is defined as "sexual abuse" or "sexual harassment" by the PREA Standards, the criminal code may be cited, specifically noting the underlying conduct constitutes a violation of the PREA Standards. For example: "The offense conduct for a criminal violation of 'undue familiarity' also constitutes 'sexual abuse' under the PREA Standards."

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STANDARD: 115.5, 115.6

CATEGORIES: Definitions

Apr 18, 2018 **Q:** The PREA Standards provide many obligations that are "facility specific," such as staffing plans, the auditing timeline, coordinated response plans and, in most cases, a facility-based PREA Compliance Manager. When institutions have multiple components or serve diverse populations, how does the term "facility" apply for purpose of compliance with the PREA Standards?

A: The PREA Standards define "facility" as "a place, institution, building (or part thereof), set of buildings, structure, or area (whether or not enclosing a building or set of buildings) that is used by an agency for the confinement of individuals." See PREA Standard 115.5.

Because the definition of "facility" may include, on the one hand, a part of a building and, on the other hand, a set of buildings, the standards are not highly prescriptive on this determination. Agencies have some discretion with respect to how they define "facility" for purposes of PREA.

In most cases, the determination about what constitutes a "facility" will be common sense and obvious. For example, a (fictional) single ten-story building known as the Sunshine County Jail that houses adult inmates who are pre-adjudication or serving short sentences, with housing units containing a variety of security levels acting under one set of policies and procedures, and that is overseen by a single warden will be considered one jail "facility."

As institutions become more complex, the determination about what constitutes a “facility” also becomes more complex. For example, assume that the Sunshine County Jail also has one small Annex building for work-release inmates across the street from the main building, and a court-holding area on the second floor of the Sunshine County Courthouse three blocks away from the main building. In this case, some may assume that all three areas are part of the one “facility” known as the Sunshine County Jail, while others may believe that there are three facilities: a jail, a lockup, and a community confinement facility.

The PREA Standards do not dictate which determination is correct. Rather, the Department of Justice has identified a number of factors that agencies should consider when making such determinations. While not exhaustive, the factors below provide suggested guidance on whether to classify an institution as a single “facility” or multiple “facilities.”

Factors Indicating Single “Facility”	**Factors Indicating Separate "Facilities"**
Single Responsible Agency	Multiple Responsible Agencies
Single Superintendent/Warden	Multiple Superintendents/Wardens
Same Policies and Procedures	Different Policies and Procedures
Same/Similar Inmate Populations	Distinct/Different Inmate Populations
More Inmate Mingling	Less Inmate Mingling
Many Staff Interchangeable	Few Staff Interchangeable
Unified Mission	Different Missions
Geographically Close	Geographically Distant
Identical Inmate Reporting Mechanisms	Different Inmate Reporting Mechanisms

First, regardless how a specific facility is defined, it should be defined consistently for all PREA purposes. For example, if the three Sunshine County Jail buildings are defined as one “facility” for purposes of having a single “facility-specific” staffing plan, then it should be defined the same way for purposes of determining the agency’s PREA audit schedule, during any given three-year PREA Audit Cycle.While agencies have some discretion in determining what constitutes a “facility,” there are a number of caveats necessary to remain consistent with the PREA Standards.

Second, an agency may not define “facilities” in order to defeat or avoid the requirements in the PREA Standards. For example, if the main building in the Sunshine County Jail contains two housing units on the second floor for youthful inmates (inmates under age 18), the agency may not define those two housing units as a separate “juvenile facility” in order to avoid the separation requirements of the “Youthful Inmate Standard.” This PREA Standard (115.14) is applicable in prisons, jails, and lockups, but not in juvenile facilities.

Third, agencies do not have discretion with respect to determining which set of facility standards applies to its defined facilities. The PREA Standards define each of the five facility types, and the determination of which set of standards apply to a defined “facility” is determined by the facility’s “primary use.” See PREA Standard 115.5. For example, the vast majority of individuals confined at the Sunshine County complex are considered to be “inmates” under the PREA Standards. Assuming that Sunshine County defines all three of its buildings as a single “facility,” then the Prison and Jail PREA Standards apply to the entire facility – and not the less onerous Lockup PREA Standards.

Fourth, agencies should be aware that the larger and more inclusive the agency's use of the term "facility" is, the more difficult, complex, time-consuming (and hence, more costly) the audits of those facilities may be. Accordingly, agencies should avoid being over inclusive in their use of the term "facility."

6:30

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STANDARD: 115.5

CATEGORIES: Definitions

Apr 18, 2018 **Q:** It is sometimes necessary for local facilities to temporarily hold inmates who are transferred from other facilities or agencies, either pursuant to a state statute (with or without a per diem or other financial consideration), or through informal contracts (or a contract providing only for the payment of the per diem), in order to address a function of the judicial system or law enforcement agency, such as adjudication of parole or probation violations or if a state inmate is returned temporarily to the local facility for a court appearance or testimony. Do these arrangements constitute contracts for the confinement of inmates pursuant to PREA Standard 115.12 (Standard 115.212 and Standard 115.312)?

A: When a local facility houses inmates transferred temporarily from another facility or agency for a function necessitated by the judicial system or law enforcement agency, such as adjudication of parole or probation violations or for a court appearance or testimony, the arrangement does not, in and of itself, constitute a contract for the confinement of inmates for the purposes of Standard 115.12 (Standard 115.212 and Standard 115.312), even if the local jurisdiction is paid a per diem or otherwise compensated pursuant to state statute or informal agreement. The state/agency need not require PREA compliance by the local facilities to maintain arrangements with regard to temporary housing for the purpose of probation or parole violations or temporary transfers for court appearances or testimony.

Revised April 18, 2018. Original posting date February 19, 2014.

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STANDARD: 115.12

CATEGORIES: Contracting, Definitions

Oct 03, 2017 **Q:** Is comparing the total number of security staff with the total number of residents in a secure juvenile facility an acceptable way to calculate whether the facility is complying with the minimum staffing ratios required by PREA Standard 115.313(c)?

6:30

A: No. Standard 115.313(c) states: "Each secure juvenile facility shall maintain staff ratios of a minimum of 1:8 during resident waking hours and 1:16 during resident sleeping hours, except during limited and discrete exigent circumstances, which shall be fully documented. Only security staff shall be included in these ratios. Any facility that, as of the date of publication of this final rule, is not already obligated by law, regulation, or judicial consent decree to maintain the staffing ratios set forth in this paragraph shall have until October 1, 2017, to achieve compliance." For additional information regarding who may be counted as security staff, see this FAQ: **www.prearesourcecenter.org/node/3254**.

Because the minimum staffing ratios enumerated in Standard 115.313(c) apply to the supervision of every juvenile resident in a facility, compliance will depend on the location of each resident, or group of residents, and the location of security staff at any given time. In order to calculate whether a facility is complying with the required staffing ratios, it is necessary to:

- Determine how juvenile residents are housed and programmed within the facility;
- Examine how security staff members are deployed throughout the facility;
- Review historical juvenile resident placement and staffing deployment; and
- Observe actual supervision practices in the facility.

The following hypothetical example, focused on juvenile facility "Alpha," illustrates why comparing the total number of security staff with the total number of residents in a secure facility is not an acceptable way to calculate whether a facility is complying with the minimum staffing ratios required by PREA Standard 115.313(c), and demonstrates how compliance with the required ratios depends on the location of residents and security staff in a facility at any given time.

Juvenile facility "Alpha" currently has 80 residents and 10 security staff on duty during non-sleeping hours.

- On Alpha facility's housing unit A, there are currently 16 residents during non-sleeping hours, and there are two security staff posted on this unit actively supervising the 16 residents, creating a ratio of 1:8.
- On Alpha facility's housing unit B, there are currently 14 residents during non-sleeping hours, and there are two security staff posted on this unit actively supervising the 14 residents, creating a ratio of 1:7.
- On Alpha facility's housing unit C, there are currently 18 residents during non-sleeping hours, and there are two security staff posted on this unit actively supervising the 18 residents, creating a ratio of 1:9. For 30 minutes during each 8-hour shift during non-

sleeping hours, a roaming security staff member enters housing unit C and actively supervises the 18 juveniles, along with the two security staff members who are already posted there. This briefly creates a ratio of 1:6.

Although juvenile facility Alpha has 80 residents and 10 security staff during non-sleeping hours, it is not in compliance with Standard 115.313(c) because of the staffing ratio on housing unit C during non-sleeping hours. Although the roaming security staff member briefly increases the ratio to 1:6 on unit C, this unit has a 1:9 ratio when the roaming staff is not present.

The hypothetical example above also illustrates that juvenile facilities which comply with the required staffing ratios for short periods of time are not in compliance with Standard 115.313(c). Compliance with this standard must be "institutionalized" throughout the facility over a sustained period of time. For more information regarding what institutionalized means, see this FAQ: **www.prearesourcecenter.org/node/3217**.

Security staff members supervising juvenile residents via remote video monitoring do not count in the minimum ratio requirements. Video monitoring and/or control room staff typically cannot hear residents, promptly respond to cries for help, are typically responsible for monitoring countless youth in multiple locations, and often have a myriad of other duties such as controlling movement and answering telephones. However, security staff members in security cages may count, if these staff are dedicated to supervising juvenile residents in a single unit, have a meaningful line of sight into the unit without the assistance of technology (e.g., video monitors), can hear the residents, and are able to respond immediately to any emergencies.

Relevant Definitions from the PREA Standards

Standard 115.5 defines "secure juvenile facility" as a 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 with access to the community to achieve treatment or correctional objectives, such as through educational or employment programs, typically will not be considered to be a secure juvenile facility."

Standard 115.5 defines "security staff" as "employees primarily responsible for the supervision and control of... residents in housing units, recreational areas, dining areas, and other program areas of the facility."

PREA Standard 115.5 defines "exigent circumstances" as meaning "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."

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STANDARD: 115.13

CATEGORIES: Compliance, Definitions, Staffing Ratio

Aug 17, 2017 **Q:** Is an agency compliant with Standard 115.42(g) or Standard 115.242(f) if it places Lesbian, Gay, Bisexual, Transgender, or Intersex (LGBTI) inmates or residents in a dedicated facility, housing unit, or wing solely on the basis of such identification or status, absent a consent decree, legal settlement, or legal judgment?

6:30

Standard 115.42(g) states:
"The agency shall not place LGBTI inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such 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 such inmates."

A: No. Placement in a dedicated facility, housing unit, or wing that houses only LGBTI inmates or residents violates Standard 115.42(g) or Standard 115.242(f), unless it was established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates. In practical terms, placement is based "solely" on LGBTI status when only LGBTI inmates or residents are eligible for such placement. This is true whether such placement is made pursuant to policy or in practice, and regardless of whether an inmate volunteers for—or requests to be placed in—such a facility, housing unit, or wing.

For example, because they are evidence of de facto placement based solely on status, absent a consent decree, legal settlement, or legal judgment, a facility, housing unit, and wing are prohibited under Standard 115.42(g) or Standard 115.242(f) if they:

- House only vulnerable LGBTI inmates or residents;
- House only another subset of LGBTI inmates or residents; and/or
- Otherwise exclude all non-LGBTI inmates or residents

Some agencies and facilities have had success establishing housing units or wings reserved for inmates or residents who are designated as potentially vulnerable through the screening process. In addition to LGBTI inmates, who are at an increased risk for sexual abuse and sexual harassment, these units or wings may, for example, house male inmates who are small in stature, inmates who have a gender non-conforming appearance, a disability, and a past history of being sexually abused. It is important to ensure that these units or wings for vulnerable inmates or residents do not include individuals who screen positively as likely perpetrators of abuse. For example, a convicted sex offender may be designated as vulnerable because of his charges or other factors, and may require protective custody, but he would not be an appropriate candidate for a vulnerable persons' unit or wing, if screening

information indicates that he may be sexually aggressive towards other inmates. A strong screening and classification system enables these units or wings to provide increased safety for vulnerable inmates without requiring restrictive measures, such as 22-hour in-cell confinement, that are often found in protective custody.

6:30

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STANDARD: 115.42

CATEGORIES: LGBTI Inmates/Residents/Detainees/Staff, Placement Decisions, Screening

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Aug 17, 2017

Q: Is there a limit to the number of years that a state can submit an assurance without a reduction in Department of Justice (DOJ) grant funding?

A: Pursuant to the PREA amendment under the Justice for All Reauthorization Act (JFARA), signed into law on December 16, 2016 (Pub. L. No. 114-324), the assurance option will sunset six years following JFARA's date of enactment. See 34 U.S.C. §30307(e)(2)(D)(ii). Therefore, the last year that governors will have the option to submit an assurance to DOJ will be for Audit Year 3 of Cycle 3, ending on August 19, 2022, which will impact FY2023 DOJ grant funds.

The PREA amendment under JFARA also provides that for two years following the assurance sunset in December 2022, a governor who can certify that the state has audited at least 90% of facilities under the operational control of the executive branch may request that the Attorney General allow submission of an emergency assurance. See 34 U.S.C. §30307(e)(2)(D)(iii). Therefore, the last year that governors will have the option to request and submit an emergency assurance to DOJ will be for Audit Year 2 of Cycle 4, ending on August 19, 2024, which will impact FY2025 DOJ grant funds.

Revised August 17, 2017. Original posting date May 16, 2014.

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STANDARD: 115.501

CATEGORIES: Governor's Certification

May 09, 2017

Q: Facility-to-facility notifications of an allegation of abuse that occurred at an inmate's prior facility pursuant to Standard 115.63(a) must be made to "the head of the facility or appropriate office of the agency where the alleged abuse occurred." What constitutes "an appropriate office at the agency?"

6:30

A: Standard 115.63(a) does not define what an "appropriate office" would be in this context. The intent of the standard is to urge facility heads to send the notification to an individual or office that will ensure the prior facility takes immediate steps to investigate the allegation appropriately and promptly. While the Department declines to provide an exhaustive list of individuals and offices that may be appropriate recipients of the allegation, notifications made to the facility head, the facility's PREA Compliance Manager, the agency's PREA Coordinator, and the Office of the Agency Head would be presumptively valid recipients.

For more information about Standard 115.63(a) and who must make the notification of an incident of sexual abuse that took place at a prior facility, please click **here**.

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STANDARD: 115.63

CATEGORIES: Information Sharing

May 09, 2017

Q: Does Standard 115.63(a) require that notification of an incident of sexual abuse that took place at a prior facility be made directly from the head of the facility receiving the allegation, or can some other designated person make the notification?

A: The notification must, at a minimum, be: (1) Made at the direction of the facility head, and (2) Appear to a third party to have originated with the facility head. For example, the facility head could instruct his or her administrative assistant to send the notification on the facility head's letterhead and with the facility head's signature, or to send the notification from the facility head's email address. By contrast, the facility's PREA Compliance Manager could not send the notification from his or her email address and merely copy the facility head.

The intent of the standard is to ensure that the person receiving the report of sexual abuse at the prior facility understands the seriousness and gravity of the allegation, and that the communication originated at the highest level of the reporting facility. For more information

about Standard 115.63(a) and who should receive the report of sexual abuse at the prior facility, please click **here**.

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STANDARD: 115.63

CATEGORIES: Information Sharing

6:30

May 09, 2017

Q: What are the implications for a secure juvenile facility that gets audited and meets full compliance prior to October 1, 2017, but was not audited on Standard 115.313(c) and does not meet the staffing ratio requirement after October 1, 2017? What information does the governor need about compliance with Standard 115.313(c) to certify the state's or territory's compliance?

A: As required under Standard 115.313(c), "...Any facility that, as of the date of publication of this final rule, is not already obligated by law, regulation, or judicial consent decree to maintain the staffing ratios set forth in this paragraph shall have until October 1, 2017, to achieve compliance." Thus, for many or most juvenile facilities, the juvenile staffing ratio requirement will not take effect until October 1, 2017, just over a month into Audit Year 2 of PREA Audit Cycle 2, which begins on August 20, 2017 and ends on August 19, 2018. Therefore, compliance with the juvenile staffing ratio will first impact each governor's certification determination for Audit Year 2 of Audit Cycle 2, which will be due to the Department on

October 15, 2018. In order for a governor to submit a certification of full compliance with the PREA Standards for Audit Year 2 of Cycle 2, all facilities under the operational control of the executive branch, including facilities operated by private entities on behalf of the state's or territory's executive branch, must be in full compliance with all of the PREA Standards by August 19, 2018, which will include full compliance with Standard 115.313.

For example, in a given state or territory, some juvenile facilities may have been audited during Audit Year 1 of Audit Cycle 2 (August 20, 2016 – August 19, 2017), prior to the effective date of the juvenile staffing ratio requirement on October 1, 2017, and been found in full compliance. If these facilities have not yet implemented the juvenile staffing ratio requirement under Standard 115.313(c) by the end of Audit Year 2 of Audit Cycle 2 on August 19, 2018, these facilities would have met their auditing obligations under Standard 115.401. However, they would not be considered fully compliant with the PREA Standards because of their lack of compliance with the staffing ratio requirement in Standard 115.313(c).

For more information regarding the sources of information that governors should consider when making a PREA certification determination, please click **here**.

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STANDARD: 115.13, 115.401

CATEGORIES: Compliance, Governor's Certification, Staffing Ratio

6:30

Apr 20, 2017

Q: Do the PREA Standards require an agency to post final PREA audit reports on its website?

A: Yes.

PREA Standard 115.403(f) states, "The agency shall ensure that the auditor's final report is published on the agency's Web site if it has one, or is otherwise made readily available to the public." Therefore, if an agency website exists, all final audit reports must be published on it. Publishing final audit reports on an agency website does not preclude the agency from making the report available by other additional means if it chooses to do so.

If an agency does not have a website, the PREA Standards require that the agency make all final PREA audit reports readily available to the public by other means (unless and until an agency website becomes operational).

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STANDARD: 115.403

CATEGORIES: Auditing, Audit Process

Dec 02, 2016

Q: What does "separate" mean in the context of the screening standards, which require that agencies shall use screening information to inform housing and programming decisions "with the goal of keeping separate those inmate/residents at high risk of being sexually victimized from those at high risk of being sexually abusive"?

A: The PREA standards require agencies to obtain and assess information from and about inmates and residents in order to identify individuals who are at a heightened risk of being sexually victimized while in confinement, and those who are at a heightened risk of being sexually abusive while in confinement. The adult prison and jail standards and the community confinement standards specifically require that such screening information be used "with the goal of keeping separate" those inmate/residents at high risk of being sexually victimized from those at high risk of being sexually abusive." See Standards 115.42(a) and 115.242(a). The meaning of the term "separate" is generally informed by the

unique facts and circumstances of a facility, but the goal should be to keep those inmates as *separate as reasonably possible*.

For example, facilities that are comprised of a single dormitory housing unit would be unable to house the two risk categories of inmates in separate housing units. In such a case, inmates at high risk of being abusive and abused should generally be bunked at opposite sides of the dormitory. Additionally, potentially vulnerable inmates should be bunked in areas more likely to receive additional staff supervision.

6:30

Similarly, in facilities with a single housing unit, but multi-person cells (two or more inmates per cell), vulnerable inmates should be kept in separate cells from potentially abusive inmates.

By contrast, facilities with multiple housing units provide far more options for keeping vulnerable and abusive inmates separate. In such cases, agencies should generally keep vulnerable inmates in separate housing units from inmates at risk for abusiveness. In cases where there are many housing units (e.g., more than ten), auditors will require compelling justification for any commingling within a housing unit.

In programming, education, and work areas, the goal should also be to keep such inmates separate. The Department of Justice recognizes that such separations may not always be feasible outside of housing units. In those cases, agencies should, at a minimum, prohibit unsupervised contact between vulnerable and potentially abusive inmates. Even supervised contact between these categories of inmates should be accompanied by heightened supervision and safeguards against sexual abuse and sexual harassment.

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STANDARD: 115.42

CATEGORIES: Placement Decisions, Screening

Oct 21, 2016 **Q:** Does standard § 115.41 (§ 115.241, § 115.341) require facilities to affirmatively inquire of the inmates/residents about their lesbian, gay, bisexual, transgender, or intersex (LGBTI) status, in addition to making a subjective determination about perceived status?

A: Yes. **In adult facilities**, Standards 115.41 and § 115.241 require that "[a]ll inmates/residents shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other inmates/residents or sexually abusive toward other inmates/residents." The inmate/resident screening shall consider, at a minimum, and among several other factors "[w]hether the inmate/resident is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming." See 28 C.F.R. § 115.41(d)(7) and § 115.241(d)(7).

Similarly, **in juvenile facilities**, Standard 115.341 requires that the agency shall conduct a risk screening that "attempt[s] to ascertain information about… [among other factors,] any gender nonconforming appearance or manner or identification as lesbian, gay, bisexual, transgender, or intersex, and whether the resident may therefore be vulnerable to sexual abuse." See 28 C.F.R. § 115.341(c)(2).

For both adult and juvenile facilities, the enumerated factors require both an objective (is) and a subjective (is perceived to be) determination. The objective determination requires that an inmate/resident be affirmatively afforded an opportunity to self-identify as LGBTI, if the inmate/resident chooses to do so. In addition, staff should consider any other relevant knowledge or information regarding inmates'/residents' LGBTI status. The subjective component—whether an inmate/resident appears gender nonconforming—necessarily requires a determination based on the perception of the screening staff.

Perception is important because if the screener perceives that an inmate/resident might be considered LGBTI and/or gender nonconforming, then other inmates/residents (and staff) may have the same perception. Specifically, gender nonconformity is usually something that can be determined by staff, though that perception is not to be substituted for an inmate's/resident's own self-identification. Please note: an affirmative response does not require any specific course of action based on this one factor. It is one piece of information that should be evaluated in conjunction with the other factors listed in the PREA standards concerning the overall assessment of the inmate/resident. Inmates/residents may feel reluctant to provide screening staff with information regarding their identification as LGBTI due to, among other possible reasons, a fear that disclosure of such information may make the inmate/resident more vulnerable to sexual or physical abuse, or harassment. Accordingly, the standards require the agency to implement appropriate controls on the dissemination of screening information within the facility and to protect sensitive information. See 28 C.F.R. § 115.41(i), § 115.241(i), and § 115.341(e).While agencies are required to ask the inmate/resident if he or she chooses to identify as gay, lesbian, bisexual, transgender, and/or intersex, it is clear that the agency may not compel the inmate/resident to answer. Specifically, the adult facility standards provide that inmates may not be disciplined for refusing to answer (or for not disclosing) certain enumerated factors, including whether they identify as LGBTI. See 28 C.F.R. § 115.41(h) and § 115.241(h). While there is no specific corollary in the juvenile facility standards, it would be counterproductive and harmful to punish young residents for refusing to provide this sensitive information.

The standards require that inmates/residents be assessed for these and other risk factors "during an intake screening within 72 hours[1] of arrival at the facility, using an objective screening instrument." See 28 C.F.R. §§ 115.41(a)-(c), §§ 115.241(a)-(c), and §§ 115.341(a)-(c). The standards further require that the agency use the information from the intake risk screening to inform housing, bed, work, education, and program assignments. See 28 C.F.R. § 115.42(a), § 115.242(a), and § 115.342(a). However, the standards do not mandate exactly when, where, how, or who should conduct the intake screening. If a particular facility determines that some or all sensitive screening inquiries should be asked by medical personnel or in an interview separate from the larger intake screening process, the facility administration may choose to structure the intake screening in an alternate manner that provides for appropriate privacy and candor. So long as the intake screening is conducted using an objective screening instrument, includes all of the required information, is

completed within 72 hours, and is used to inform the inmate's/resident's risk status, facilities have the discretion regarding the most appropriate setting and screening personnel for asking inmates/residents sensitive screening questions.

The Department of Justice (DOJ) recognizes that some agencies may be hesitant (for any number of reasons) to affirmatively ask inmates/juvenile residents whether they identify as LGBTI. However, as indicated in the PREA Notice of Final Rule, DOJ remains of the view tha appropriately trained intake staff should be competent to ask inmates/residents sensitive questions in a professional and effective manner. Both the adult facility and juvenile facility standards require agencies to train staff on "[h]ow to communicate effectively and professionally with inmates/residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates..." See 28 C.F.R. § 115.31(a)(9), § 115.231(a)(9), and § 115.331(a)(9). Effective and professional communication requires a basic understanding of sexual orientation, gender identity, gender expression, and how sex is assigned at birth. It also requires staff to be aware of their own gaps in knowledge and cultural beliefs, and how these factors may impact the ability to conduct effective interviews and assessments. An effective training will encourage open dialogue with staff, so that these issues can be addressed in a respectful and nonjudgmental manner, with a focus on encouraging behaviors that support staff members' ability to meet their professional responsibilities. In addition, recognizing the sensitive nature of these issues with juvenile populations, the juvenile facility standards requires that "[s]uch training... be tailored to the unique needs and attributes of residents of juvenile facilities..." See 28 C.F.R. § 115.331(b).

The following webinars may be helpful:

Asking Adults and Juveniles About Their Sexual Orientation: Practical Considerations for the PREA Screening Standards

Understanding LGBTI Inmates and Residents

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[1] The adult prison and jail standards and the adult community confinement standards require such screening to take place "ordinarily" within 72 hours, while the juvenile facility standards require that the screening take place within 72 hours.

Revised October 21, 2016. Original posting date June 19, 2014.

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STANDARD: 115.41

CATEGORIES: LGBTI Inmates/Residents/Detainees/Staff, Screening

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Sep 27, 2016 **Q:** Does the case-by-case determination required by Standard 115.42(c) in making housing and programmatic

placements for transgender and intersex inmates need to take place within a particular timeframe?

6:30

A: Standard 115.42(c) does not have an explicit timeframe requirement by which to make an initial case-by-case determination. However, at a minimum, determinations should be made in accordance with the timeframes required for the initial screening for risk of victimization and abusiveness in Standard 115.41(b) (ordinarily within 72 hours of arrival), the screening reassessment in Standard 115.41(f) (reassessment within 30 days of arrival), and the ongoing reassessment in Standard 115.401(f) (when "triggering events" occur). Standard 11.42(a) requires all information obtained during screenings and reassessments to inform housing and programming decisions. In all stages of the risk screening process for transgender and intersex inmates, individualized housing and placement decisions must be made based on consideration of all information available at the points in time identified above.

In addition, Standard 115.42(d) requires placement decisions to be reassessed during the twice-yearly progress reviews for transgender and intersex inmates. More frequent reviews based upon the needs of individual inmates are encouraged as a best practice.

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STANDARD: 115.42

CATEGORIES: LGBTI Inmates/Residents/Detainees/Staff, Placement Decisions, Screening

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Aug 15, 2016 **Q:** Should an auditor's final report reflect deficiencies that were found in the interim report and actions taken to correct them during the corrective action period?

A: Starting on August 20, 2016, which is the first day of the first year of the second three year audit cycle, auditors are required to submit a report to the audited agency within 45 days of completion of an on-site audit. It is expected that if an auditor determines that a facility does not meet one or more of the standards, this report will be considered an "interim report," triggering a 180-day corrective action period, and the auditor will include in the report recommendations for any required corrective action and shall jointly develop with the agency a corrective action plan to achieve compliance. The auditor is required to "take necessary and appropriate steps to verify implementation of the corrective action, such as reviewing updated policies and procedures or re-inspecting portions of a facility." At the completion of the corrective action period, the auditor has 30 days to issue a "final report" with final determinations. Section 115.404 (d) states that, "After the 180-day corrective action period ends, the auditor shall issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action." The final report, which is a public document that the agency is required to post on its web site or otherwise

make publicly available, should include a summary of the actions taken during the corrective action period to achieve compliance.

Revised August 15, 2016. Original posting date April 23, 2014

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STANDARD: 115.403, 115.404

CATEGORIES: Auditing, Audit Process, Information Sharing

6:30

Aug 15, 2016

Q: At what stage in the audit process is an audit considered complete for the purposes of meeting the requirement that one-third of an agency's facilities be completed by the end of each year in the auditing cycle?

A: Starting on August 20, 2016, which is the first day of the first year of the second three year audit cycle, for the purpose of the PREA standards, the audit is considered complete upon issuance of the initial audit report or 45 days after the conclusion of the auditor's on-site visit to the facility, whichever one comes first.

Revised August 15, 2016. Original posting date June 20, 2014

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STANDARD: 115.401, 115.403, 115.404

CATEGORIES: Auditing, Audit Process

Mar 24, 2016

Q: Does a policy that houses transgender or intersex inmates based exclusively on external genital anatomy violate Standard 115.42(c) & (e)?

A: Yes. Standard 115.42(c) states:

In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.

In addition, Standard 115.42(e) states:

A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.

Being transgender is a known risk factor for being sexually victimized in confinement settings. The standard, therefore, requires that facility, housing, and programming assignments be made "on a case-by-case basis." Any written policy or actual practice that assigns transgender or intersex inmates to gender-specific facilities, housing units, or programs based solely on their external genital anatomy violates the standard. A PREA-compliant policy must require an individualized assessment. A policy must give "serious consideration" to transgender or intersex inmates' own views with respect to safety. The assessment, therefore, must consider the transgender or intersex inmate's gender identity – that is, if the inmate self-identifies as either male or female. A policy may also consider an inmate's security threat level, criminal and disciplinary history, current gender expression, medical and mental health information, vulnerability to sexual victimization, and likelihood of perpetrating abuse. The policy will likely consider facility-specific factors as well, including inmate populations, staffing patterns, and physical layouts. The policy must allow for housing by gender identity when appropriate.

6:30

A PREA auditor must examine a facility or agency's actual practices in addition to reviewing official policy. A PREA audit that reveals that all transgender or intersex inmates in a facility are, in practice, housed according to their external genital status raises the possibility of non-compliance. The auditor should then closely examine the facility's actual assessments to determine whether the facility is conducting truly individualized, case-by-case assessments for each transgender or intersex inmate. The auditor will likely need to conduct a comprehensive review of the facility's risk screening and classification processes, specific inmate records, and documentation regarding placement decisions.

The Department recognizes that the decision as to the most appropriate housing determination for a transgender or intersex inmate is complicated. Facilities may consider several methods to make these assessments. Best practices include informing decisions on appropriate housing through consultation by facility administration, classification and security staff, and medical and mental health professionals. However, a facility should not make a determination about housing for a transgender or intersex inmate based primarily on the complaints of other inmates or staff when those complaints are based on gender identity.

Importantly, the facility shall not place transgender inmates in involuntary segregated housing without adhering to the safeguards in Standard 115.43.

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STANDARD: 115.42, 115.43

CATEGORIES: Compliance, LGBTI Inmates/Residents/Detainees/Staff, Screening

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Mar 17, 2016 **Q: 1a.** Does the standard that requires the facility to enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia apply

equally to viewing that is done remotely via recorded or live video camera feed?

1b. Does this standard apply to opposite-gender staff who may view inmates in their beds or cells either through direct viewing or remotely by video camera?

1c. If the cross-gender viewing prohibitions do apply to remote viewing and viewing inmates in their beds, please explain the effect, if any, on cross-gender staffing of dormitory settings and cross-gender viewing of video cameras in dormitory settings.

A: (The following response answers all three questions.)

Yes. The intent of PREA Standards 115.15, 115.115, 115.215, and 115.315 (limits to cross-gender viewing and searches), subsection (d) is to provide inmates with the ability to shower, use the toilet, and change their clothes without being viewed by nonmedical staff of the opposite gender. The standard also functions to ensure that inmates have the information they need in order to cover up when opposite-gender staff members are working in their housing areas. The exception for viewing incidental to routine cell checks acknowledges that opposite-gender staff will work in housing areas and may see an inmate naked in his/her cell while conducting routine cell checks, but this is paired with the requirement that opposite-gender staff announce their presence to enable inmates to cover up during those periods if they do not wish to be viewed. Therefore, to the extent that cameras are focused on an area in which inmates are likely to be undressed or toileting, such as showers, bathrooms, and individual cells, the cameras should only be monitored by officers or nonmedical administrators of the same gender as the inmates viewed through the camera.

Practically, most cameras in correctional facilities are focused on common areas, including dayrooms, hallways, recreation areas, etc. In dormitory units, cameras may be in the common area that includes inmate beds. Cameras are rarely located within shower or toilet areas. It is acknowledged that there is a diminished expectation of privacy in the open area of a dormitory setting or other common areas of correctional facilities. In addition, most facilities have rules prohibiting inmates from disrobing or being unclothed in common areas. If this is the case and these rules are enforced, cameras focused on common areas, including dormitory sleeping units, may be monitored by either gender.

Finally, in order to maintain the ability to conduct thorough and effective investigations and incident reviews involving sexual abuse, sexual harassment, and other misconduct, appropriately trained internal and external investigators, and senior facility and agency administrators are not prohibited by this rule from viewing any cross-gender recorded camera footage in conjunction with an investigation or incident review. Other staff are not prohibited from viewing cross-gender recorded camera footage, as long as the footage does

not depict inmates showering, performing bodily functions, changing clothes, or in a state of undress of partial undress.

Revised March 17, 2016. Original posting date March 26, 2014.

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STANDARD: 115.15

CATEGORIES: Cross-Gender Supervision

Dec 18, 2015 **Q:** How do the requirements of standard 115.15(d) apply to inmates who have been placed on suicide watch? Is there a distinction between suicide watches being conducted via video and those under in-person observation?

A: The definition of "suicide watch" varies across corrections agencies. Suicide watch generally refers to placing an actively suicidal inmate on a heightened level of monitoring due to high risk of imminent suicidal action.

Actively suicidal inmates should be subject to constant observation. Some agencies also consider suicide watch to include situations where constant monitoring may not be clinically indicated. For example, inmates may require frequent, periodic, and unpredictable observations not to exceed 5 or 15 minute intervals. While suicide watch should be conducted under the direction of a mental health staff member, suicide precautions are often initiated by correctional staff before a mental health evaluation can occur. Continual observation is essential to ensure inmate safety before a mental health professional can assess the situation.

Regardless of the definition of suicide watch, the PREA standards do not prohibit cross gender staff from being assigned to conduct a suicide watch. The relevant portion of standard 115.15(d) states, "The facility shall implement policies and procedures that enable inmates 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."

Therefore, a cross gender staff can be assigned to suicide watch, including constant observation, so long as the facility has procedures in place that enable an inmate on suicide watch to avoid exposing himself or herself to nonmedical cross gender staff. This may be accomplished by substituting same gender correctional staff or medical staff to observe the periods of time when an inmate is showering, performing bodily functions, or changing clothes. It may also be accomplished by providing a shower with a partial curtain, other privacy shields, or, if the suicide watch is being conducted via live video monitoring, by digitally obscuring an appropriate portion of the cell. Any privacy accommodations must be implemented in a way that does not pose a safety risk for the individual on suicide watch. The privacy standards apply whether the viewing occurs in a cell or elsewhere.

The exceptions for cross gender viewing under exigent circumstances or, for inmates who are not on constant observation, when incidental to routine cell checks apply to suicide watch as well. Because safety is paramount when conducting a suicide watch, if an immediate safety concern or inmate conduct makes it impractical to provide same gender coverage during a period in which the inmate is undressed, such isolated instances of cross gender viewing do not constitute a violation of the standards. Any such incidents should be rare and must be documented.

6:30

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STANDARD: 115.15

CATEGORIES: Cross-Gender Supervision, Definitions

Dec 18, 2015

Q: What constitutes "sufficient time and authority" for the purpose of meeting this requirement with regard to both PREA Coordinators and PREA Compliance Managers pursuant to standard 115.11?

A: Correctional work is complex, and the nature of the correctional environment includes an element of unpredictability. Furthermore, "sufficient time" may vary considerably from agency to agency, based on a variety of factors, such as the size of the facility and the agency, and the nature of the population housed. Therefore, a minimum number of hours cannot be set which meets the needs of every agency and facility.

Instead, PREA Coordinators and PREA Compliance Managers must have some amount of time allotted specifically for the completion of their PREA responsibilities, even if this involves the formal transfer of non-PREA duties to other staff. Additionally, the opportunity must be available to have requests for additional PREA-related time considered by the agency's most senior leader or chief executive officer (in the case of agency-level PREA Coordinators) or the facility's most senior leader or chief executive officer (in the case of facility-level PREA Compliance Managers). For PREA Coordinators, PREA responsibilities required by the standards include developing, implementing, and overseeing agency efforts to comply with the PREA standards in all of its facilities. See standard 115.11(b). For PREA Compliance Managers, PREA responsibilities required by the standards include coordinating the facility's efforts to comply with the PREA standards. See standard 115.11(b).

In terms of authority, some differences exist between PREA Coordinators at the agency level and PREA Compliance Managers at the facility level. At the agency level, PREA Coordinators must, at a minimum, have:

- Direct access to the agency's most senior leader or chief executive officer (e.g., Director, Secretary, Commissioner, Administrator, etc.);
- Direct access to the agency's executive or senior leadership team; and
- The influence necessary to create and implement agency-wide policies, procedures, and practices, without any interference from other levels of bureaucracy or supervision,

and in accordance with the PREA standards and interpretative guidance issued by DOJ.

To maximize the effectiveness and influence of agency-level PREA Coordinators, some agencies have made PREA Coordinators deputies to the agency's most senior leader or chief executive officer, and members of the agency's executive or senior leadership team.

6:30

In regards to sufficient authority for PREA Compliance Managers at the facility level, these individuals must, at a minimum, have:

- Direct access to the facility's most senior leader or chief executive officer (e.g., Director, Warden, Superintendent, etc.);
- Direct access to the facility's executive or senior leadership team;
- Direct access to the agency's PREA Coordinator;
- Comprehensive knowledge of the overall operations of the facility, and the various departments/divisions within the facility;
- Full access to all relevant information related to the facility's compliance with the PREA standards (e.g., PREA policies and procedures, data collected regarding the incidence and prevalence of sexual abuse and sexual harassment in the facility, sexual abuse and sexual harassment investigative files, relevant portions of training and personnel files, etc.); and
- The influence necessary to lead, coordinate, guide, and monitor successful ongoing implementation of policies and procedures that comply with the PREA standards across all departments/divisions within the facility, with support from other levels of facility bureaucracy or supervision, and in accordance with the PREA standards and interpretative guidance issued by DOJ.

To maximize the effectiveness and influence of facility-level PREA Compliance Managers, some adult facilities have designated Assistant Wardens (or their equivalents) as their PREA Compliance Managers, or designed a full-time PREA Compliance Manager position at the Assistant Warden (or equivalent) level. Similarly, some juvenile confinement facilities have designated Assistant Directors or Assistant Administrators (or their equivalents) as their PREA Compliance Managers, or designated a full-time PREA Compliance Manager position at the Assistant Director or Assistant Administrator (or equivalent) level.

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STANDARD: 115.11

CATEGORIES: Compliance, Definitions

Dec 16, 2015 **Q:** Within what timeframe must an agency post a copy of the final report of an audit of one of its facilities on its website, if it has one, or otherwise make the report available, to be compliant with standard 115.403(f)?

A: 90 days after the auditor issues the final audit report, the agency must publish the final report on its website if it has one, or otherwise must make it readily available to the public. This requirement applies regardless of whether the agency is appealing the results of the final audit report.

Appeals must be lodged within 90 days of the auditor's final determination. See standard 115.405(a). In cases where the agency is appealing the results of a final report, when the agency publishes the final report on its website if it has one or otherwise makes it readily available to the public, the agency may note that it is being contested and under appeal.

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STANDARD: 115.403

CATEGORIES: Auditing, Audit Process

Nov 18, 2015

Q: What are the agency's reporting obligations under standard 115.361(e) in cases where a juvenile is an emancipated youth?

A: Agencies should follow their local and/or state laws related to emancipated youths when determining to whom notifications of allegations of sexual abuse or sexual harassment must be made in instances where alleged victims are such youths. For example, if a guardian ad litem has been appointed to represent an emancipated youth and that individual is still active in that youth's case when an allegation of sexual abuse or sexual harassment is made, it may be necessary for a report to be made to the guardian ad litem.

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STANDARD: 115.61

CATEGORIES: Compliance, Definitions

Oct 26, 2015

Q: In order to comply with standard 115.41(a) & (b), are there any circumstances when an inmate might be held at a facility for a short period of time, but longer than 72-hours, or transferred to another facility within the same agency after spending a short period of time at the first facility, and a PREA screening or re-screening would not be required?

A: No. An initial PREA screening must be conducted during **all** intake screenings, which should ordinarily occur within 72 hours, and upon transfer to another facility. However,

according to the preamble of the PREA standards Notice of Final Rule, a facility "is free to rely on information previously gathered with regard to a returning inmate" if the facility ensures "that its assessment captures any changes in risk factors that may have occurred subsequent to the facility's prior gathering of information regarding that inmate." See Vol. 77, *Federal Register, No. 119*, p. 37150.

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STANDARD: 115.41

CATEGORIES: Screening

Oct 26, 2015 **Q:** How must agencies "distribute publicly" information on how third-parties can report allegations of sexual abuse and sexual harassment, in accordance with standard 115.54?

A: Standard 115.54 states, "The agency shall establish a method to receive third-party reports of sexual abuse and sexual harassment and **shall distribute publicly information** on how to report sexual abuse and sexual harassment on behalf of an inmate." (emphasis added)

The preamble of the PREA standards Notice of Final Rule states, "[t]he agency may, in its discretion, make such information [about third-party reporting] readily available through a website, posting at the facility, printed pamphlets, and other appropriate means." See Vol. 77, *Federal Register, No. 119*, p. 37163. Generally, agencies are posting information about the third-party reporting process on their websites.

Implicit in standard 115.54 is the requirement that the public can reasonably access the information on how to make a report of sexual abuse or sexual harassment on behalf of an inmate. It is not sufficient for an agency to be willing and able to receive such reports. Further, it is not sufficient for the public to have the general ability to utilize generalized agency contact information (such as a main contact number) to make such a report. Rather, the **specific methods** to make such reports must be readily available and reasonably conspicuous to the public.

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STANDARD: 115.54

CATEGORIES: Compliance, Definitions

Sep 29, 2015 **Q:** Does the provision in standard 115.17(f) that requires the agency to ask employees who may have contact with inmates directly about previous misconduct described in

paragraph (a) of the standard, "in any interview or written self-evaluation conducted as part of reviews of current employees," still apply if the agency does not interview nor provide employees with an opportunity to self-evaluate as part of their review process? And, if so, does an ongoing affirmative duty to report said misconduct as an employee of the agency satisfy this requirement?

A: Standard 115.17(f) states, "The agency shall ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct."

If the agency does not use written applications, written self-evaluations, or conduct interviews under the circumstances indicated in standard 115.17(f), it has no obligation under this standard to begin these practices. However, the agency does have the obligation to establish a continual affirmative duty to disclose misconduct. The agency must impose on employees the affirmative duty to report any misconduct described in standard 115.17(a) [i.e., paragraph (a) of the standard] at any time that it occurs.

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STANDARD: 115.17

CATEGORIES: Compliance

Sep 29, 2015 **Q:** Do the prohibitions in the PREA standards against cross-gender pat searches of female inmates, and male and female juvenile residents; cross-gender strip and visual body cavity searches; and cross-gender viewing of inmates', residents', and detainees' breasts, buttocks, and genitalia extend to confinement facility staff who are supervising inmates, residents, or detainees (referred to inmates in the answer below) outside of confinement facilities?

A: Yes. In general, confinement facility staff who supervise inmates outside of facilities are required to comply with the PREA standards, and the opposite gender prohibitions identified in this question apply to such staff.

However, nothing in the standards prohibits male staff members from supervising female inmates, or female staff from supervising male inmates. The standards only make clear that agencies, "enable inmates 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 pursuant to routine cell checks]." See 28 C.F.R. § 115.15(a) and (b).

The Department of Justice has received specific questions regarding prohibitions related to the supervision of female inmates who are pregnant and undergoing related medical procedures in external hospital settings. Male staff members may supervise such inmates. However, male staff are not permitted under the PREA standards to observe disrobed female inmates undergoing procedures during which they can view females' breasts, buttocks, or genitalia. In such cases, accommodations could be made – through the use of privacy screens, curtains, or other, similar measures – that allow female inmates to receive medical care while male facility staff members remain in near proximity and carry out their supervisory responsibilities effectively, without viewing females' breasts, buttocks, or genitalia.

In addition, absent exigent circumstances, male staff members are not permitted under the standards to conduct cross-gender pat searches,[1] or cross-gender strip and visual body cavity searches outside of facilities. An exigent circumstance is defined in the standards 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." See 28 C.F.R. § 115.5.

[1]This cross-gender pat down prohibition for male staff members applies as of August 20, 2015, or August 20, 2017 for facilities whose rated capacity does not exceed 50 inmates.

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STANDARD: 115.15

CATEGORIES: Searches, Cross-Gender Supervision

Sep 28, 2015 **Q:** Are clergy employed by, or who volunteer in, a correctional facility bound by the mandatory staff reporting provision in standard 115.61(a)? Is there any protection for confidential communication with clergy, and is there any special consideration for confidentiality within confessional communication?

A: In general, staff clergy in confinement facilities are required 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; retaliation against inmates or staff who reported such an incident; and any staff

neglect or violation of responsibilities that may have contributed to an incident or retaliation." See 28 C.F.R. § 115.61(a).

However, state and local law, and certain religious doctrine include specific requirements for making mandatory and discretionary reports of abuse and, by contrast, requiring that certain inmate-clergy communication remain confidential. Accordingly, certain religious communications between inmates and clergy (e.g., confessionals) may be exempted from the reporting requirements under this standard if the staff clergy is prohibited by law or doctrine from making such a report.

6:30

If, by contrast, clergy are not prohibited by law or doctrine to report such information to the facility, then the clergy *is* required to report under this standard. In such case, clergy should inform a counseled inmate of the clergy's duty to report, and the limitations of confidentiality, at the initiation of services.

Additionally, agencies implementing the PREA staff reporting requirements under standard 115.61 should do so in a manner consistent with the federal Religious Land Use and Institutionalized Persons Act, the Religious Freedom Restoration Act, and other appropriate authorities.

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STANDARD: 115.61

CATEGORIES: Compliance, Definitions, Information Sharing

Sep 28, 2015

Q: Do the PREA standards require that agencies conduct criminal records background checks on, and provide PREA-related contractor or volunteer training for, public defenders, other attorneys, interns working with public defenders or other attorneys, or law students practicing as attorneys under a practice agreement, pursuant to legal representation, before they may enter a confinement facility?

A: No. Standard 115.17 (115.117/115.217/115.317) requires generally that agencies perform a criminal background records check (and in the case of juvenile facilities, consult applicable child abuse registries) before enlisting the services of any contractor. In addition, agencies are required to provide PREA-related training to contractors and volunteers pursuant to standard 115.32 (115.132/115.232/115.332).

Legal counsel are not contractors enlisted by the agency. Therefore, the listed standards do not apply to them.

Revised September 28, 2015. Original posting date October 22, 2014.

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STANDARD: 115.17, 115.32

CATEGORIES: Training, Non-Facility Staff, Background Checks

6:30

Sep 28, 2015 **Q:** Are teachers and other education workers in a PREA-covered facility subject to the criminal background records check of standard 115.17 (115.117/115.217/115.317), or the employee and contractor training requirements of standards 115.31 (115.131/115.231/ 115.331) and 115.32 (115.132/115.232/115.332)?

A: Education workers who are employees of the confining agency are subject to the criminal background records check requirements of standard 115.17 (115.117/115.217/115.317) and are subject to the employee training requirements of standard 115.31 (115.131/115.231/115.331).

Education workers who are not employees of the confining agency but who provide services in a PREA-covered facility on a recurring basis are considered contractors of the agency, notwithstanding the absence of a formal written contract between the education staff or the educational agency and the confining agency.

The Department has consistently indicated that, for purposes of the PREA Standards, it intends to construe the term "contract" broadly to include, among other things, formal or informal arrangements, intergovernmental services agreements, and other types of agreements to provide services to the agency. Accordingly, non-employee education staff are subject to the criminal background records check requirements of standard 115.17 (115.117/ 115.217/ 115.317) and are subject to the contractor training requirements of standard 115.32 (115.132/ 115.232/ 115.332).

If, however, a teacher or other education worker is not an employee of the confining agency and does not provide services on a recurring basis in the facility (for instance, a guest speaker or a one-time instructor who does not have unsupervised contact with inmates/residents/detainees), the PREA Standards referenced above do not require a criminal background records check or PREA training.

Revised September 28, 2015. Original posting date September 23, 2014.

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STANDARD: 115.17, 115.31, 115.32

CATEGORIES: Definitions, Training, Non-Facility Staff

Sep 28, 2015 **Q:** Many corrections agencies, particularly community confinement agencies, place their inmates or residents in employment settings off-site. In many cases, there is no explicit contractual arrangement between the correctional agency and the employer. However, these employers have significant contact with inmates or residents. In some cases, inmates or residents are sent to other correctional facilities during the day to work. Are there any circumstances in which off-site supervisors would be subject to either the criminal background records check requirements of standard 115.17 (115.117/115.217/115.317) or the contractor training requirements of standard 115.32 (115.132/115.232/115.332)?

6:30

A: In interpreting the standards requiring training and background checks for non-facility staff who have significant contact with inmates or residents, it is appropriate to limit those requirements to individuals who provide services on the facility campus. Inmates or residents who go off-site for work, programming, or other services often are under the supervision of facility staff while off-site. In other cases, the inmates or residents have unsupervised access to the community while off-site, such as in a work-release program. In either of these situations, inmates or residents should have the opportunity to report or seek assistance with regard to any off-site abuse or violations, either when the inmate or resident is out in the community or when the inmate or resident returns to the facility. Moreover, requiring background checks and training for all off-site providers or employers could severely limit the inmates' or residents' access to these programs.

Revised September 28, 2015. Original posting date July 3, 2014.

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STANDARD: 115.17, 115.32

CATEGORIES: Non-Facility Staff, Background Checks

Sep 28, 2015 **Q:** Under what circumstances would medical and mental health care providers who provide services to inmates or residents off-site (only) be subject to the criminal background records check requirements of standard 115.17 (115.117/115.217/115.317), the contractor training requirements under standard 115.32

(115.132/115.232/115.332), and/or the specialized training requirements for medical and mental health care providers in standard 115.35 (115.232/115.332)? Must a formal contract for services exist for these requirements to be triggered? Are the specialized training requirements ever triggered in the case of off-site medical or mental health providers, for instance, when there is no health care available at the facility and so all health care is provided off-site?

6:30

A: Medical and mental health care providers who provide services to inmates or residents off-site (only) are not subject to the criminal background records check requirements in standard 115.17 (115.117/115.217/115.317), the contractor training requirements under standard 115.32 (115.132/115.232/115.332), and/or the specialized training requirements for medical and mental health care providers in standard 115.35 (115.235/115.335). Generally, inmates and residents are taken off-site for medical or mental health care when the required services are not available at the correctional facility. In many rural or isolated locations, the facility's access to medical and mental health specialists, even off-site, is very limited. As such, requiring facilities to only utilize off-site medical or mental health providers who have complied with the PREA background check and training requirements could impede inmate access to necessary medical and mental health care. When inmates or residents are taken off-site for medical or mental health care, they are generally transported and supervised by correctional staff, though they should have private contact with the medical or mental health provider during an examination or therapy session. Should an off-site medical or mental health provider engage in inappropriate or abusive behavior towards an inmate, the inmate will have the opportunity to report the incident upon leaving the provider's office.

Revised September 28, 2015. Original posting date June 20, 2014.

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STANDARD: 115.17, 115.32, 115.35

CATEGORIES: Non-Facility Staff, Background Checks

Jun 03, 2015

Q: What is the distinction between a facility that is under the operational control of the state's executive branch via a contract, and therefore subject to the governor's certification or assurance, and a facility with which the state contracts for beds, and is therefore subject to the requirements of standard 115.12 but not deemed to be under the governor's operational control?

A: A facility operated by a private organization "on behalf of an agency" is generally controlled by the parent confining agency. Typically, such a facility has a dedicated (or primarily dedicated) inmate population in the legal custody of the parent agency. In addition, such facilities generally operate within the confines of the parent agency's policies procedures, and practices. Such facilities are usually owned by (or controlled by) the parent agency. The parent agency typically contracts with private correctional entities to operate the facilities for finite and/or renewable durations.

6:30

By contrast, a mere "contract for the confinement of inmates" between a public agency and a private (or another public) agency pursuant to standard 115.12 is generally an arrangement to confine inmates for a fixed or variable fee or on a per diem basis. This arrangement is typically considered a rental of bed space for holding inmates. Contracted facilities in this category will often rent bed space or confine inmates from multiple external public agencies. While the contract may impose a number of requirements or standards on the contracted agency, it is generally a much lower level of operational control than a facility "operated on behalf of" the contracting agency as described in the paragraph above.

It should be noted that, pursuant to standard 115.12, any new contract or contract renewal must include the contracted entity's obligation to comply with PREA and to allow for appropriate contract monitoring.

See also related FAQs in the 115.12 and *Contracting* categories.

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STANDARD: 115.12, 115.501

CATEGORIES: Contracting, Covered Facilities, Definitions, Governor's Certification

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Jun 03, 2015

Q: What constitutes "repeated" to satisfy the definition of "Sexual harassment"?

A: Sexual harassment includes—

(1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and

(2) Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

"Repeated," in the context of this provision, means more than one incident. Please note that the seriousness of the conduct should be taken into account in determining the appropriate

commensurate response by the agency or facility. Serious misconduct along these lines, even if committed once, should still be addressed by the agency or facility.

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STANDARD: 115.6

CATEGORIES: Definitions

6:30

Jun 03, 2015

Q: How can the PREA Resource Center help?

A: The PREA Resource Center (PRC) is designed to offer assistance to state and local agencies working to address sexual abuse in their confinement facilities, adult and juvenile. One of our primary purposes is to help with implementation of the standards, but we have a broader mission to help address the issue of prison rape by providing a forum for exchanging ideas and sharing examples of innovation and emerging best practices. The **PREA Essentials** page is a great starting place for reviewing the standards, including common issues and resources specific to various standard sections. The PRC website offers a full library with research and tools to help agencies learn about the issue and to learn about strategies for preventing, detecting, and responding to sexual abuse in confinement. In addition, the library contains tools to help agencies develop PREA policies and implement the standards. To search the library, click **here**. The PRC library also contains links to resources for **survivors**.

The PRC offers training and technical assistance in a variety of forms. We host webinars on topics relevant to standards implementation and addressing sexual abuse in confinement in general. You can find a listing of webinars and other upcoming and archived events **here**. Where there is need, the PRC responds to individual requests for technical assistance from agencies and facilities. To learn more about our training and technical assistance, click **here**.

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STANDARD: **CATEGORIES:** Compliance

Jun 03, 2015

Q: What are the PREA standards and when are they effective?

A: The Prison Rape Elimination Act (PREA) was passed in 2003. The law created the National Prison Rape Elimination Commission (NPREC) and charged it with developing standards for the elimination of sexual abuse in confinement. The law required the Department of Justice (DOJ) to review the NPREC standards, make revisions as necessary, and pass the final standards into law.

The final rule was published in the **federal register** on June 20, 2012, and became effective on August 20, 2012. Certain standards do not go into effect until a later date. The standard that governs external audits provides that the first audit cycle begins on August 20, 2013, and, to be in compliance, that jurisdictions must have at least one third of their facilities audited within the subsequent 12-month period ending August 20, 2014. The restrictions o cross-gender pat-down searches of female inmates in prisons, jails, and community confinement facilities (115.15(b) and 115.215(b)) went into effect on August 20, 2015, for facilities whose rated capacity is 50 or more inmates, and do not go into effect until August 21, 2017, for facilities whose rated capacity does not exceed 50. The standard on minimum staffing ratios in secure juvenile facilities (115.313(c)) does not go into effect until October 1, 2017, unless the facility is already obligated by law, regulation, or judicial consent decree to maintain the minimum staffing ratios set forth in that standard.

6:30

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STANDARD: 115.15, 115.13

CATEGORIES: Final Rule, Act

Mar 25, 2015

Q: Does the use of a virtual scanner by an opposite-gender staff person violate the prohibition against cross-gender viewing and/or cross-gender strip searches?

A: Section 115.15(a) states, “The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.” The regulations define “strip search” as “a search that requires a person to remove or arrange some or all clothing so as to permit a visual inspection of the person’s breasts, buttocks, or genitalia.” See standard 115.5. The standards also state, “The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender reviewing their breasts, buttocks, or genitalia, except in exigent circumstances.” See standard 115.15(d).

Whether or not a virtual scanner or other electronic search complies with this provision will depend on the technology involved. For example, some technologies provide images similar to an x-ray, with no discernable body contours. Other technologies only provide an image representing a human form, with no actual body images. The cross-gender use of these technologies complies with the PREA standards.

Other technologies can be more detailed and will provide outlines of breasts, buttocks, or genitalia. Cross-gender use of these technologies by non-medical staff would not comply with the PREA standards, unless used with privacy filters that can blur body contours. If used by cross-gender staff during exigent circumstances without the appropriate filters, the search must be documented under standard 115.15(c).

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STANDARD: 115.15

CATEGORIES: Searches, Cross-Gender Supervision

Mar 25, 2015

Q: Can the standard 115.11/311 requirement that an agency with more than one facility designate a PREA Compliance Manager for each facility be met by the designation of regional PREA Compliance Managers who have responsibility for more than one facility, or must each facility designate its own individual PREA Compliance Manager who has no corresponding responsibilities at another facility?

6:30

A: Each facility must designate its own PREA Compliance Manager "with sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards." See standard 115.11(c)/311(c). Both the PREA standards and the explanatory text in the Notice of Final Rule (NFR) make clear that the PREA Compliance Manager should be a facility-based individual. For example, the NFR provides that "the final standard requires each facility in a multi-facility agency to have its own PREA compliance manager." See 77 Fed. Reg. 37106, 37117 (emphasis added).

The Department is aware of some agencies that have created "regional" compliance managers for the purpose of overseeing and/or implementing the PREA standards for multiple facilities. These regional managers do not satisfy the requirement that each facility have its own PREA Compliance Manager. However, it does not violate the standards for an agency to create regional managers with responsibility for PREA implementation, so long as each agency also has an appropriate PREA Coordinator, and each facility has its own PREA Compliance Manager. Indeed, in many large agencies, the creation of a regional manager with PREA implementation responsibilities may assist agencies in the efficient implementation of the standards agency wide.

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STANDARD: 115.11

CATEGORIES: Compliance, Definitions

Mar 18, 2015

Q: When does the obligation under standard 115.283(g) to provide ongoing treatment to a victim of sexual abuse in confinement at no cost to the victim end? Specifically, if a resident of a community confinement facility reports having been sexually abused while in confinement

(prison, jail, or in the community confinement facility itself) and requires ongoing medical or mental health care, does the obligation to provide it at no cost to the victim extend beyond the victim's residence in a community confinement facility? And do the same guidelines apply to prisons and jails under standard 115.83 and juvenile facilities under standard 115.383?

6:30

A: The financial obligation of the community confinement agency/facility to provide ongoing treatment to a victim of sexual abuse in confinement ends with the release of the resident from the facility, even if that victim is still under post-release supervision (i.e., probation or parole). The same guideline applies to prisons and jails under standard 115.83 and juvenile facilities under standard 115.383. That is, the financial obligation of a prison, jail, or juvenile facility to provide ongoing treatment to a victim of sexual abuse in confinement ends with the release of the inmate or resident from the facility.

At a minimum, agencies/facilities must provide, as appropriate, treatment plans and, when necessary, **referrals** for continued care to sexual abuse victims upon their release from custody, including, but not limited to, mental health treatment plans and mental health practitioner referrals. Agencies/facilities are encouraged to provide sexual abuse victims released from custody with additional referrals to community-based services, including, but not limited to, local victim assistance and compensation programs and health insurance advocates who can assist sexual abuse victims with obtaining Medicaid or other forms of health insurance.

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STANDARD: 115.83

CATEGORIES: Definitions

Mar 18, 2015

Q: What is the scope of the requirement in standard 115.401(j)? To what extent can and will this provision be enforced?

A: Relevant Standard:
(j) The auditor shall retain and preserve all documentation (including, e.g., video tapes and interview notes) relied upon in making audit determinations. Such documentation shall be provided to the Department of Justice upon request.

Existing FAQ:
How long must the documents that auditors relied on for making audit determinations be retained? These documents must be retained for 12 months following the deadline for any

agency audit appeal. Because audit appeals must be lodged within 90 days of the auditor's final report, auditors must retain these documents for 15 months following the issuance of the final audit report. Longer document retention may be required in particular instances if so requested by the US Department of Justice.

This standard clearly establishes that it is ***the auditor*** who is responsible for retaining and preserving all documentation relied upon in making audit determinations. This includes both documentation relied upon in finding that a facility does not comply with a standard, as well as documentation relied upon in finding that a facility does meet or exceed a standard. ***If an auditor fails to comply with this provision, the auditor will be subject to actions that bear on the auditor's continued DOJ certification status (e.g., retraining, restrictions on a certification, decertification, or denial of application for recertification)***.

The Department of Justice is in the process of finalizing an Online PREA Audit Instrument that agencies and auditors may choose to utilize for securely retaining the documents and information that could be used to satisfy the auditor's document retention pursuant to standard 115.401(j). ***The following guidance is provisional and subject to change once the Online PREA Audit Instrument becomes available and fully functional***:

An auditor "retains and preserves" all documentation when: 1) the auditor has the continued ability to identify and access the documentation for 15 months following the issuance of the final audit report; and 2) the auditor can, upon request, provide the documentation to the Department of Justice or direct that the documentation be provided to the Department of Justice.

Auditors will typically review and evaluate documentation in two separate circumstances: 1) off-site, before conducting an audit (and potentially post-audit, if needed) and 2) on-site, during an audit. Each circumstance is discussed separately below.

A. Documents that an auditor receives off-site, either before or after an audit.

The **PREA Compliance Audit Instrument Checklist of Policies/Procedures and Other Documents** lists many documents and categories of documents that an auditor may request and receive from the facility or agency pre-audit. This checklist is not exhaustive. The PREA standards clearly state that an auditor "shall be permitted to request and receive copies of any relevant documents (including electronically stored information)." 28 C.F.R. § 115.401(i).

An auditor may also receive pre-audit documents from other sources, including inmates or community members. This category of documents is straightforward: An auditor must retain and preserve any documents that the auditor has physically or electronically received outside of an on-site audit for the 15-month retention period referenced above.

An auditor currently has the following options for preserving this documentation:

paper copies or other physical format (e.g., video);

any electronic format in the auditor's physical control (e.g., documents scanned to a computer, thumb drive, or disc); and

any secure electronic format that is accessible to the auditor (e.g., the forthcoming Online PREA Audit Instrument or other secure cloud-based storage).

In selecting a combination of one or more of the formats enumerated above, an auditor must ensure that he or she will be able to readily identify and access all documentation as needed for 15 months after the issuance of the final audit report, and be able to provide it upon request by the Department of Justice.

B. Documents that an auditor receives or reviews on-site, during an audit.

The **PREA Compliance Audit Instrument Checklist of Policies/Procedures and Other Documents** also lists many documents and categories of documents that an auditor will review during the on-site audit. To the extent practicable, auditors are encouraged to employ one or more of the methods listed above in A.1-3 to retain and preserve much of the on-site documentation for the 15-month retention period. However, some documentation may be extremely burdensome to physically copy or scan. An auditor may consider contracting with the agency or facility, whereby the agency or facility maintains physical possession of the documentation but allows the auditor continued access to the documentation, if needed, and the agency or facility also agrees to allow the documentation to be provided to the Department of Justice, if the Department requests the documents pursuant to standard 115.401(j).

This latter option raises several issues:

The auditor must have the ability to identify the documentation. As an initial matter, then, the auditor must take and maintain scrupulous notes regarding which documentation he or she reviewed during the audit. For example, the auditor could note “training files of every employee hired during the year 201X” or list the actual names of each employee whose training file the auditor reviewed. By contrast, a note of “reviewed 15 training files” would not be sufficient to identify the underlying documentation.

Once the auditor has ensured that his or her notes sufficiently identify the documentation, the auditor must ensure that, for the entire retention period, he or she has the continued ability to identify the documentation. That is, the auditor must understand the facility or agency’s record-keeping system so that the auditor could readily identify, find, and retrieve the documentation for up to 15 months after submission of the final audit report.

Once the auditor has ensured preliminary and continued identification of the documents, the auditor must ensure that he or she will have continued access to the identified documents during the 15-month retention period. The auditor may choose to ensure his or her continued access to the documentation by adding a clause to the auditing contract requiring the agency to provide the on-site documentation to the auditor and the Department of Justice upon written request with reasonable notice during the 15-month retention period.

Finally, the auditor must ensure that he or she can provide the documentation to the Department of Justice upon request, either personally or by directing the agency or facility to do so within the 15-month retention period. Again, the auditor may accomplish this by adding a contract clause stating that the agency or facility agrees to provide the identified documentation to either the auditor or the Department of Justice.

It is important to note that, regardless of any contractual relationship the auditor may enter into with an agency or facility, ***it is the auditor who retains ultimate responsibility for his or***

her compliance with this standard. If an auditor fails to retain and preserve all relevant documentation for the 15-month retention period, or fails to provide the documentation to the Department of Justice upon request, he or she will face actions that could bear on the auditor's continued DOJ certification status.

6:30

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STANDARD: 115.401

CATEGORIES: Auditing, Audit Process, Information Sharing

Mar 18, 2015 **Q:** How long must an agency and facility be in compliance with a particular standard or provision before an auditor should find that a facility meets a standard?

A: A demonstrated record of sustained compliance with a standard during the one-year period preceding the audit will be sufficient to demonstrate audit compliance. Shorter periods of compliance may or may not result in an auditor's finding of meets or exceeds a standard subject to the guidance below.

In general, auditors will need to see that compliance with a particular standard has become "institutionalized" at the facility. That is to say that a "quick fix" on the day of an on-site tour should almost never be sufficient for the auditor to find compliance. A short period of compliance during an otherwise sustained period of noncompliance should generally result in a finding of "does not meet standard." By contrast, a discrete period of noncompliance during a period of otherwise sustained compliance should not, by itself, result in a finding of "does not meet standard." The length of time required to demonstrate sustained compliance will depend upon the requirements of the individual provision being assessed. In any event, the auditor should be provided with sufficient evidence that the facility's technical and short-term compliance has been "institutionalized" at the facility.

The following is an example of institutionalization: If a facility or an auditor determines that a new external reporting mechanism is required to comply with standard 115.51(b), the mere creation of a satisfactory avenue for external reporting will effect several other standard requirements. The auditor may determine that the new external reporting mechanism should be included in the written policies outlining the agency's approach to preventing, detecting, and responding to sexual abuse. See 28 C.F.R. § 115.11(a). The auditor may determine that employees, contractors, and volunteers need to be trained on the new reporting mechanism. See 28 C.F.R. §§ 115.31 and 115.32. This will generally require modification, approval, and implementation of the training curriculum. Inmates must receive information on the new reporting mechanism during intake and as part of the 30-day comprehensive inmate education. See 28 C.F.R. § 115.33. The auditor may determine that the inmate education curriculum must be modified, approved, and implemented before these requirements are satisfied. Further, because existing inmates had not been previously provided with comprehensive inmate education setting forth an appropriate avenue for external reporting, all inmates must be informed of the new reporting mechanism. See 28

C.F.R. § 115.33(c). If the new external reporting mechanism also serves as the avenue for the facility to receive third-party reports, then the new reporting mechanism must be reflected on the publicly distributed information pursuant to standard 115.54.

It is important to note that, while a facility corrective action period may last for up to 180 days following the auditor's issuance of the interim audit report, some corrective action will not require the full 180 days to complete and verify. Indeed, minor or technical violations with the standards may be remedied prior to the 30-day deadline for the auditor to issue the interim audit report—if, unlike the example provided above, the standard at issue does not implicate other related standards.

6:30

The standards require that each facility be audited at least once during the three-year audit cycle. See 28 C.F.R. § 115.401(a). Further, the standards require an auditor to review, at a minimum, a sampling of relevant documents and information for the most recent one-year period. See 28 C.F.R. § 115.401(g). Prior to the start of the first audit cycle, the Department of Justice issued the following guidance on this question:

DOJ recognizes that audits conducted toward the beginning of the first audit cycle, which began August 20, 2013, will take into consideration the fact that facilities will have spent a significant period of time institutionalizing the standards. By contrast, a short period of compliance during the end of the audit review period (meaning closer to August 2014 or thereafter) would not be sufficient to achieve compliance. DOJ is working with the PRC to define specific measures auditors will use to assess compliance. Additional information will be forthcoming soon. See **Existing FAQ**.

This revised and expanded FAQ includes the "additional information" referenced in that previously issued FAQ.

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STANDARD: 115.401

CATEGORIES: Auditing, Compliance

Feb 19, 2015

Q: In regard to standards 115.21, 115.22, 115.34, and 115.71, what is required of agencies being audited, auditors, and external entities that conduct investigations of sexual abuse and harassment, and how will these obligations be audited?

A: There has been confusion in the field and among the auditor community about the requirements of standards 115.21, 115.22, 115.34, and 115.71 as they pertain to investigators who are *external* to the agency being audited. The following guidance is offered to auditors and agencies subject to a PREA audit in order to clarify what obligations auditors and audited agencies have vis-à-vis those provisions that obligate external investigative agencies to comply.

The information in this FAQ is consistent with and expands upon the FAQ that focuses on whether an auditor can find an entity being audited to be compliant with the PREA Standards if an entity external to the confining agency, which conducts criminal investigations of sexual abuse in the facility being audited, is not compliant with the external investigative entity's obligations under the standards. To review this FAQ, please click **here**.

Responsibilities of Audited Agencies and Auditors under Standard 115.21

Under standard 115.21, the agency (a private, federal, state, county, or other local entity) being audited must demonstrate to the auditor that it has attempted to gain compliance from an external entity that conducts criminal investigations of sexual abuse with requirements (a) through (e) of that standard—that is, the agency being audited must have requested that the external entity responsible for investigations comply with all those provisions described in (a) through (e) of standard 115.21.

Auditors may find that the private, federal, state, county, or other local entity being audited has attempted to confirm that an external investigator is complying with (a) through (e) of the standard, and was unable to get such confirmation. In that case, the agency being audited can be found compliant with the standard, if they have documented these efforts.

Responsibilities of Audited Agencies and Auditors under Standard 115.22

The requirements of standard 115.22 work in a way that is consistent with standard 115.21. If an external entity conducts criminal investigations of sexual abuse for the agency (a private, federal, state, county, or other local entity) being audited, the agency must have a policy in place that makes explicit both the responsibilities of the agency in a criminal investigation and the corresponding responsibilities of the external investigating entity. The agency being audited also must publish that policy on its website or make it available through other means if the agency has no website of its own. There is no exception here—the policy must be in place, as it is an agency policy, not the policy of the external investigator, and the agency can describe the respective roles and responsibilities in its own policy, regardless of whether the external investigating entity has a corresponding policy of its own.

Auditors must confirm that a policy is in place that makes explicit both the responsibilities of the agency in a criminal investigation and the corresponding responsibilities of the external investigating entity, and that the agency has published that policy on its website or has made it available through other means if the agency has no website of its own.

Responsibilities of Audited Agencies and Auditors under Standard 115.34

Standard 115.34 describes the specialized training that the agency being audited must provide to its investigators in order to be PREA compliant. This standard further requires that, "any State entity or Department of Justice component that investigates sexual abuse in confinement settings must provide such training to its agents and investigators who conduct such investigations."

The obligation of the agency being audited is to provide the required specialized training to its own investigators if they conduct sexual abuse investigations, whether administrative or criminal. External State and Department of Justice investigative entities that conduct

investigations of sexual abuse in confinement bear a separate obligation to train their agents and investigators per the standard, and that obligation does not lie with the agency being audited. Auditors should not assess compliance with these training requirements by external entities.

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Responsibilities of Audited Agencies and Auditors under Standard 115.71

Standard 115.71(a)-(j) sets out the requirements for both administrative and criminal investigations of sexual abuse and sexual harassment, and describes when, how, and by what standards those investigations should be conducted. standard 115.71(a)-(j) also reiterates the requirement that investigators who conduct those investigations must have received specialized training described in standard 115.34.

Standard 115.71(k) requires that any external State entity or Department of Justice component that conducts these investigations in a confinement setting do so according to the requirements laid out in this standard.

Standard 115.71(l) requires that the facility being audited cooperate with any outside investigative agency conducting sexual abuse investigations in the facility and must remain informed about the progress of the investigation.

The obligations under standard 115.71 of the agency being audited are to ensure that:

Its own investigators comply with this standard;
It cooperates with external investigators; and
It remain informed about any investigation being conducted by external investigators.

It is the responsibility of auditors to assess whether these obligations are being met by the agency being audited.

The obligation placed on external State entities and Department of Justice component investigators conducting sexual abuse investigations in a confinement facility to comply with the requirements laid out in this standard rests with the State entity or Department of Justice component. Auditors should not assess compliance with these obligations by external entities.

Summary of Implications for Auditors

Consistent with the requirements stated above of standards 115.21,115.22, 115.34, and 115.71, and as articulated in the FAQ that can be accessed by clicking **here**, the Department of Justice (DOJ) has determined that auditors should not:

Assess whether external entities that conduct criminal investigations of sexual abuse and sexual harassment for the agency being audited are in compliance with the PREA Standards. The sole focus of the audit is to determine whether the agency (a private, federal, state, county, or other local entity) being audited is in compliance with the standards.

Include in interim or final audit reports information about compliance with the standards on the part of external entities that conduct criminal investigations of sexual abuse and sexual harassment. The sole focus of these reports is to document whether the agency (a private, federal, state, county, or other local entity) is in compliance with the standards.

Affirmative Obligations of External Entities that Conduct Investigations to Comply with the PREA Standards

Standards 115.21, 115.22, 115.34, and 115.71 do impose affirmative obligations to comply on both external State entities and Department of Justice (DOJ) components that conduct sexual abuse investigations in confinement. Nothing in this guidance changes that obligation. However, confirming compliance with these standards by external entities durin a corrections facility/agency audit is beyond the scope of that audit. DOJ is working to develop tools to assist these external entities, state and territorial governors who are responsible for certifying full compliance with the PREA Standards, and others to assess whether these external entities are in compliance with their affirmative obligations under the standards.

6:30

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STANDARD: 115.21, 115.22, 115.34, 115.71

CATEGORIES: Auditing, Compliance, Investigations

Jan 14, 2015

Q: What methods of communication may satisfy the external reporting mechanisms required by standards 115.51, 115.251, and 115.351 (b)? What are the required parameters of anonymity set forth by the standards for inmates who wish to make such reports anonymously?

A: The standards do not specify the precise reporting mechanisms required to satisfy these standards. However, the PREA Notice of Final Rule (NFR) makes clear that the Department intended to provide agencies with a degree of flexibility with respect to methods of reporting. See 77 Fed. Reg. 37156-57 (June 20, 2012). Accordingly, so long as the avenue(s) for external reporting provides all inmates (and residents) access to an external reporting entity allowing inmates to communicate in a manner that does not reveal the substance of the communication to agency or facility officials, and safeguards to the greatest extent possible the fact that the inmate utilized such mechanism, the reporting method may satisfy this requirement. A telephone, inmate correspondence, and email all may be acceptable avenues for inmates to contact the appropriate external entity.

The NFR also makes clear that the standards require the external reporting entity to accept anonymous reports, and also requires the entity to conceal the *identity* of the reporting inmate from agency and facility officials when the inmate requests anonymity. *Supra*. However, if the external entity knows the identity of the reporting inmate and the entity has a legal obligation to report allegations of sexual abuse to another external entity (such as law enforcement officials, or a social services agency in the event of a child abuse allegation), then the external reporting entity may reveal the identity of the reporting inmate to another *external* entity if required by law.

Finally, because the standards expressly permit the reporting inmate to maintain anonymity with respect to agency and facility officials, agencies must take great care to avoid reporting mechanisms that would necessarily expose the identity of the reporting inmate to facility staff and administrators.

6:30

Illustration One: A facility provides, as its only avenue for inmate external reporting, a mailing address to an external agency willing and able to fulfill the requirements of the standard. All regular outgoing inmate correspondence is subject to opening and inspection by facility staff. Further, all outgoing inmate correspondence must include a return address for the inmate including the inmate's name.

To comply with the standard, the facility should ensure that inmate correspondence addressed to the designated external reporting entity remains unopened. Further, if the facility requires the name of the sending inmate on the letter, the facility should maintain strict policies and procedures that prohibit mailroom staff from revealing to other staff or administrators the fact that the named inmate sent correspondence to the sexual abuse reporting entity.

Illustration Two: A facility maintains a disciplinary isolation unit where inmates have extremely limited access to common areas and programming. Generally, in order for inmates in this unit to obtain access to the telephone, email, or materials for composing and sending correspondence, the inmate must request access from security staff supervising the housing unit.

To comply with the standard, all inmates (including those inmates in restrictive housing) must be afforded an avenue reasonably designed to safeguard knowledge within the facility about the fact that an inmate is making an external report of sexual abuse.

If correspondence is the only external reporting mechanism for inmates, then the facility may provide inmates in this unit with regular and timely access to a "lock box" rather than requiring the inmate to provide the correspondence to the unit's security staff. Such a lock box should only be accessible by a designated agency official or selected officials. Similarly, if a hotline is the only external reporting mechanism, then configuration of the telephone should not make obvious that any inmate using the telephone system is making an allegation of sexual abuse. For example, if the hotline is a dedicated phone, then the phone should also be used for other purposes besides reporting sexual abuse.

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STANDARD: 115.51

CATEGORIES: Definitions

Jan 14, 2015

Q: Does my agency have to audit exactly one third of its facilities each year? We are on an ACA audit schedule and ACA does not audit exactly one third of our agencies per year. Do we need to change the auditing schedule to comply with PREA?

A: Standard 115.401 focuses on audit frequency, timeframes, and specifies, and requires that the agency shall ensure that each facility operated by the agency, or by a private organization on behalf of the agency, is audited at least once during each three-year period. The standards require an audit during each one-year period of at least one-third of each facility type (prison, jail, juvenile facility, overnight lockup, and community confinement facility) operated by an agency or by a private organization on behalf of an agency.

There are two other FAQs that focus on what happens if an agency does not audit exactly one-third of its facilities each year, as follows:

Please click **here** to read the FAQ that describes what happens to an agency's three-year audit timeline if it fails to have the required minimum of one-third of its facilities audited by August 19, 2014.

Please click **here** to read the FAQ that addresses whether there is a time limit to the number of years that a state can submit an Assurance without a reduction in Department of Justice (DOJ) grant funding.

While agencies are not prohibited from coordinating the timing of ACA audits with PREA audits, agencies must audit one-third of each type of facility as specified in Standard 115.401(b), irrespective of the timing of any ACA audit schedule.

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STANDARD: 115.401

CATEGORIES: Auditing

Oct 22, 2014 Q: How is "housing unit" defined for the purposes of the PREA Standards?

A: 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 inmates 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 inmates 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 ar managed as distinct housing units.

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STANDARD: 115.15

CATEGORIES: Cover-Up Rule, Definitions

Oct 22, 2014

Q: Do employees who have contact with inmates need to be trained pursuant to standard 115.31 prior to being placed in positions that put them in contact with inmates?

A: Standard 115.31 outlines the topics on which all employees who have contact with inmates must be trained. All employees must receive training on these topics prior to having contact with inmates, except in very rare circumstances where a slight delay may be reasonable and the employee will not have unsupervised contact with inmates until the required training occurs. If, for example, a new employee who has not yet been trained finds himself or herself in a first-responder situation after a sexual assault has occurred, the consequences for the victim and for the investigation could be very serious and possibly beyond remedy. If the new employee does not know how to preserve physical evidence and finds himself or herself in a situation where there is physical evidence of a sexual assault, that evidence could be irrevocably lost because of the individual's lack of training.

The Department does, however, recognize that in some agencies and facilities, comprehensive PREA training that goes beyond the basic training required in standard 115.31 may be conducted periodically and, as a result, agencies and facilities would have to leave open positions vacant for long periods of time if they waited to fill them until new staff members participated in comprehensive PREA training. The Department recognizes that open positions that are left vacant for long periods of time may have a negative impact on facility safety and security.

In light of these challenges, the Department has determined that while training on the specific topics outlined in standard 115.31 must occur before new staff members have contact with inmates (except as outlined above), agencies and facilities can implement effective ways to ensure that such training occurs, so that vacant positions are not left open for long periods of time. For example, agencies and facilities may offer pre-service orientation training that focuses on a host of issues critical to interacting with inmates and supporting safety and security in confinement settings, including all of the topics identified in standard 115.31. While more comprehensive, in-depth training may be provided later, the pre-service training must cover all of the topics identified in standard 115.31, including

providing new staff members with a clear understanding of their roles and responsibilities related to preventing, detecting, and responding to sexual abuse in the confinement settings. Such pre-service orientation training can be reinforced and enhanced by on-the-job training, where experienced and knowledgeable staff members partner and work with new hires to educate them further about the topics in standard 115.31. More comprehensive PREA training then could be provided at the next opportunity, but no later than the time required under standard 115.31(c).

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STANDARD: 115.31

CATEGORIES: Training

Oct 22, 2014

Q: When a strip search or visual body cavity search is conducted by same-gender staff or medical staff of either gender, what restrictions are there on supervisors or other staff and personnel of the opposite gender observing the search?

A: Opposite-gender supervisors, staff, or other nonmedical personnel should generally not be permitted to observe the conduct of a same-gender strip search or visual body cavity search (absent exigent circumstances). In cases where supervisors who are opposite gender to the inmate being strip searched (either live or via video monitoring) are required to supervise or observe the strip search, a facility should use a privacy screen or other similar device to obstruct cross-gender viewing of an inmate's breasts, buttocks, or genitalia. The privacy screen or other similar device need only be of sufficient height and position to obstruct viewing of the listed areas. In cases where other opposite-gender staff or personnel are in the vicinity of the strip search, similar precautions should also be used, unless the opposite-gender staff or personnel are of sufficient distance where the contours of the breasts, genitalia, or buttocks are not readily distinguishable. This interpretative guidance is not intended to require gender-specific staff posts.

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STANDARD: 115.15

CATEGORIES: Searches, Cross-Gender Supervision

Sep 23, 2014

Q: Is it ever appropriate for auditors to require the installation of cameras as part of a corrective action plan?

A: No, with respect to adult confinement facilities. Generally, no, with respect to juvenile facilities. In juvenile facilities that include specific camera coverage in their staffing plan, the absence of such camera coverage may appropriately provide the basis for an auditor to either insist on the camera requirements in their staffing plan or require that the staffing plan be amended. Note that there are different requirements regarding the deployment of video monitoring technology among the four sets of standards.

Prisons, Jails, Lockups, and Community Confinement Facilities

In adult facilities (adult prisons and jails; lockups; and community confinement facilities), the standards require facilities to develop and document staffing plans that provide for "adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse." See 28 C.F.R. §§ 115.13(a), 113(a), and 213(a). These standards require that facilities consider several enumerated factors in the development of the staffing plan, including, among other things, the physical layout of the facility. See also 28 C.F.R. §§ 115.13(a)(5) ("including 'blind spots'"). In adult facilities, agencies are required to make "best efforts" to comply with the staffing plan and/or to "document and justify" deviations from it.

The adult standards also require agencies to reassess the adequacy of the "facility's deployment of video monitoring systems and other monitoring technologies…[w]henever necessary, but no less frequently than once each year…" See 28 C.F.R. §§ 115.13(c), 113(c), and 213(c).

Finally, the adult standards require agencies "[w]hen installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology…to consider how such technology may enhance the agency's ability to protect inmates from sexual abuse." See 28 C.F.R. §§ 115.18(b), 118(b), and 218(b).

Within this context, agencies have considerable discretion regarding how best to allocate resources devoted toward developing and implementing their staffing plans. For example, in developing an adequate staffing plan, an agency may choose to emphasize higher staffing levels rather than comprehensive video monitoring. Indeed, best practices suggest that video monitoring is not an adequate substitute for sufficient numbers of staff. In any event, so long as the above requirements are complied with (e.g., make best efforts to comply, document and justify deviations, and consider how technology may enhance protections), then the failure to incorporate or add video monitoring technology does not cause a facility to be out of compliance with the standards. Accordingly, it is not appropriate for an auditor to specifically require the addition of video cameras as a condition of finding compliance.

Juvenile Facilities

Unlike the adult facility standards, the juvenile facility standards require agencies to "implement…a staffing plan that provides…where applicable, video monitoring, to protect residents against sexual abuse." See 28 C.F.R. § 115.313(a). The staffing plan must take into consideration, among other things, "the facility's physical plant (including 'blind spots' or areas where staff or residents may be isolated)…" Further, the juvenile facility standards provide that the agency "shall comply with the staffing plan except during limited and discrete exigent circumstances, and shall fully document deviations from the plan during such circumstances." See 28 C.F.R. § 115.313(b) (emphasis added).

By contrast, while adult facility standards require agencies to develop an adequate staffing plan, and to make best efforts and/or to document and justify deviations, the juvenile facility standards require agencies to comply with the staffing plan, absent exigent circumstances.

However, as discussed above with respect to the development of the staffing plan, agencie have considerable discretion regarding how best to allocate resources devoted toward developing and implementing their staffing plans. In developing an adequate staffing plan, an agency may choose to emphasize higher staffing levels rather than comprehensive video monitoring. For example, where an auditor or an agency identifies a "blind spot" that imposes considerable danger of the occurrence of sexual abuse, an agency may choose to reallocate existing staff or add staff to the area in question, rather than to install a new video camera in the area.

Accordingly, so long as the above requirements are met, the absence of a particular video monitoring system or camera would not preclude agency compliance with this standard, and it would be inappropriate for an auditor to specifically insist on the installation of a video camera (as opposed to other enhanced protective measures) in order to find compliance. However, if the staffing plan developed pursuant to this standard requires specific camera coverage, and that coverage is either not provided or inoperable, then it may be appropriate for the auditor to insist on agencies either complying with the staffing plan (absent exigent circumstances) or amending their staffing plan.

Please note the requirements for a periodic staffing plan reassessment and for consideration of the effect of video monitoring technology when installing or enhancing systems is substantively the same between adult and juvenile facilities. See 28 C.F.R. § 115.313(d) and 318(b).

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STANDARD: 115.13, 115.18

CATEGORIES: Auditing, Compliance

Sep 23, 2014 Q: What is meant by "the use of physical barriers" and "intensive staff supervision" in the definition of a Secure Juvenile Facility in standard 115.5?

A: Standard 115.5 defines, in part, secure juvenile facility to mean "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."

This definition generally includes both hardware-secure facilities and staff-secure facilities. A hardware-secure facility means a facility that relies primarily on the use of construction and hardware such as locks, bars, and fences to restrict freedom. A staff-secure facility means a facility with continuous staff or contractor presence, and (1) a facility operated or structured so as to ensure that entrances and exits from the facility are under the exclusive

control of the staff of the facility, or (2) a facility where staff or contractor duties include physical intervention to prevent residents from the unauthorized exit from the facility.

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STANDARD: 115.5

CATEGORIES: Covered Facilities, Definitions

6:30

Aug 27, 2014

Q: Is an agency that holds inmates on behalf of another agency pursuant to a contract responsible for posting the data and reports described in standards 115.87, 115.88, and 115.89 on its own website, in addition to reporting that information to the agency with which it holds the contract?

A: Yes. Standards 115.87, 115.88, and 115.89 require the agency to collect and post certain data and reports on its website or, if it does not have a website, to make the data available through other means.

"Agency" (standard 115.5) means the unit of a State, local, corporate, or nonprofit authority, or of the Department of Justice, with direct responsibility for the operation of any facility that confines inmates, detainees, or residents, including the implementation of policy as set by the governing, corporate, or nonprofit authority.

Therefore, a contracting agency is required to do the following with the data described in standards 115.87, 115.88, and 115.89:

Provide the data to the parent agency in the contractual relationship; and

Post the data on its website or, if it does not have a website, to make it available through other means.

The parent agency in the contractual relationship is also required to post the data from the contracting agency on its website or, if it does not have a website, to make it available through other means.

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STANDARD: 115.12, 115.87, 115.88, 115.89

CATEGORIES: Contracting, Definitions

Aug 27, 2014

Q: What constitutes a "relevant licensing body" for the purposes of satisfying the required notifications in

standards 115.76, 115.77, 115.176, 115.177, 115.276, 115.277, 115.376, and 115.377?

A: A "relevant licensing body" is an entity (e.g., medical board, board of social work, board o mental health, bar association, etc.) that licenses an individual to conduct work in a specific profession.

6:30

[View detail page]

STANDARD: 115.76, 115.77

CATEGORIES: Definitions

Aug 12, 2014 **Q:** Under what circumstances may former sex offenders, as identified in PREA standards 115.17(a)/117(a)/217(a)/317(a), be hired or contracted with by a confining agency when that former offender is utilized in programs to aid in rehabilitative programming for inmates, detainees, or residents?

A: The prohibition against hiring, promoting, or contracting with individuals who have a history of sexually abusive conduct is intended to serve the important public safety goal of protecting inmates from individuals who are likely to have a heightened risk of committing future acts of sexual abuse. Given the unique nature of the correctional setting, and the vulnerability of some individuals in the inmate population, the hiring/contracting limitation generally provides an appropriate protection for inmates.

Promoting effective policies to aid former prisoners in reentering society is also important public policy. The Attorney General has directed Department components involved in proposing new and revising or updating existing regulations or policy guidance to consider whether the regulation or guidance could impose a barrier to successful reentry. If so, the components must also consider whether the regulation or guidance can be more narrowly tailored, without impeding public safety or other legitimate government interests.

Pursuant to the Attorney General's directive, the Department hereby provides the following policy guidance regarding the interpretation and scope of the hiring, promoting, and contracting provisions of sections 115.17(a)/115.117(a)/115.217(a)/115.317(a) to remove potential impediments to successful reentry, without jeopardizing public safety for inmates in correctional settings:

An agency may hire or contract with an individual who would otherwise be prevented from such employment or contracting without violating the standards only if the agency head or designee1: (1) determines that the individual does not pose a safety threat, based on considerations such as the length of time that has passed since the activity described in

standard 115.17(a)(1)-(3), the evidence of rehabilitation on the part of the individual, or other relevant factors, and documents all relevant factors and rationale leading to the safety threat determination; (2) considers the individual to be important to the success of a specialized inmate rehabilitative program; and (3) does not permit the individual to have contact with inmates without staff supervision (e.g., circumstances where an individual would have the opportunity to potentially sexually abuse an inmate, due to the ability to privately interact with, or to supervise, inmates). For example, a presentation by an ex-offender, to a group of inmates, under constant in-person supervision, would be acceptable under this section, so long as the above requirements have been met.

[1] The designee may not hold a position lower than a facility head.

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STANDARD: 115.17

CATEGORIES: Non-Facility Staff, Background Checks

Aug 04, 2014

Q: What screening is required for detainees in lockups that are never placed in a holding cell with other detainees?

A: The determining factor in this situation is whether the detainee will be confined in a cell or room with another detainee. If a detainee is never placed in a holding cell with another detainee and is never placed in an area with other detainees absent continuous staff supervision, then no screening for risk of sexual abusiveness or victimization is required. This is so, regardless of whether the detainee is housed overnight or whether the facility is used to house detainees overnight.

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STANDARD: 115.41

CATEGORIES: Screening, Placement Decisions

Jun 11, 2014

Q: When a confining agency maintains relationships with one or more facilities that are operated by a private organization on behalf of the agency and with a private organization with whom it contracts for the confinement of inmates, what is the confining agency's obligation under the auditing standards and the audit count calculation?

A: A facility "operated… by a private organization on behalf of an agency" is required to be audited in accordance with the agency's audit schedule, and will count as an agency's facility for purposes of determining the "one-third" annual audit calculation.

A mere "contract facility" pursuant to standard 115.12 does not count in the contracting agency's audit requirements. However, the contracted agency is considered its own "agency" for purposes of PREA, and has its own independent obligations to comply with the PREA standards (including the auditing standards). This obligation becomes explicit when a contracting agency enters into, or renews its contract with a contracted facility pursuant to the standards.

If a public agency maintains relationships with both types of agencies, the agency should determine which facilities fall within each of the two categories, and include only the former category within its audit timelines and obligations.

See also related FAQs by clicking **here** or by searching for Categories *Auditing*, *Compliance*, and *Contracting*.

View detail page

STANDARD: 115.12, 115.401

CATEGORIES: Auditing, Contracting, Covered Facilities, Definitions, Governor's Certification

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Jun 11, 2014 Q: Can an answering service be used to satisfy the requirement in standard 115.51 (b) that the agency provide an outside reporting mechanism?

A: No. Section 115.51 (b) states that, "The agency shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request." A number of state agencies have reported to DOJ and the PREA Resource Center (PRC) that they have had difficulty finding an outside agency willing to take reports of sexual abuse from its prisons and have, as a means of satisfying the requirement in standard 115.51 (b), sought to hire an answering service to take such calls with the understanding that the answering service would then relay the report back to the agency immediately. This does not satisfy the requirement of the standard because an answering service is not a "public or private entity or office that is not part of the agency." The intent of the standard is to provide inmates with a means to report to an entity or office with some autonomy. It is anticipated that availability of such an entity or office will increase the likelihood that victims will report sexual abuse within confinement facilities. An answering service in this context is, essentially, no more than an agent of or a contractor to the agency.

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STANDARD: 115.51

CATEGORIES: Definitions

Jun 11, 2014

Q: Do any of the conflict rules governing who can conduct an audit of a given agency's facilities apply to the staff they hire to help them conduct that audit?

6:30

A: The same restrictions regarding auditor conflict of interest also apply to staff who auditors hire to help conduct the audit. Consistent with PREA Standard 115.402: 1) the auditor cannot be part of, or under the authority of, the agency (but may be part of, or authorized by, the relevant state or local government); 2) an auditor cannot be a person who has received financial compensation from the agency being audited (except for compensation received for conducting prior PREA audits) within three years prior to the agency's retention of the auditor; and 3) the agency cannot employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent PREA audits.

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STANDARD: 115.402

CATEGORIES: Auditing, Audit Process

Jun 11, 2014

Q: Does the opposite-gender "announcement" requirement in 115.15(d) conflict with the requirement in 115.13(d) that supervisory staff conduct unannounced rounds to deter staff sexual abuse and sexual harassment?

A: No. Section 115.13(d) determines *when* rounds within an institution should occur; section 115.15(d) sets forth the requirements of *how* rounds should be conducted in housing units.

Section 115.13(d) requires both a policy and practice of having intermediate-level or higher level supervisors conducting and documenting unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts. The term "unannounced" in this standard is intended to ensure that *staff* are not unnecessarily alerted to the periodic arrival on a housing unit of management personnel. Accordingly, this section specifically prohibits staff from alerting other staff members that these rounds are occurring, unless such announcement is related to legitimate operational functions. Supervisory staff performing rounds at unexpected, non-routine times helps deter incidents of sexual abuse and sexual harassment.

Section 115.15 (d), on the other hand, requires a facility to implement policies and procedures that enable inmates 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. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit. The announcement in this standard is intended to put *inmates* on notice as to the presence of opposite-gender staff on the unit. This regulation is meant to balance privacy concerns of the inmate population with the security and operational needs of the facility.

6:30

Accordingly, intermediate-level or higher level supervisors performing the unannounced supervisory rounds pursuant to 115.13(d) are not exempt from the cross-gender announcement required pursuant to 115.15(d). Click **here** for additional information regarding the cross-gender announcement requirement.

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STANDARD: 115.15

CATEGORIES: Cross-Gender Supervision, Cover-Up Rule

May 16, 2014

Q: May a governor submit an Assurance even if the state will not be conducting any PREA audits?

A: During the initial three year audit cycle, which ends on August 19, 2016, a governor may submit an Assurance without conducting any PREA audits. If necessary, additional guidance will be provided on whether the Department of Justice will continue to accept Assurances in the absence of PREA audits beyond the initial three year audit cycle.

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STANDARD: CATEGORIES: Auditing, Governor's Certification

Apr 23, 2014

Q: What happens to an agency's three-year audit timeline if an agency fails to have the required minimum of one-third of its facilities audited by August 19, 2014?

A: The standards require generally that an agency must have "at least one-third" of its facilities audited during each one-year period, which began on August 20, 2013; and that all facilities must be audited by the conclusion of each three-year period, which began on the same date. See 28 C.F.R. § 115.401(a)&(b). Compliance with the audit timeline is evaluated both on a year-to-year basis and at the conclusion of the three-year audit cycle. Failure to comply with the audit timeline during the initial year of an audit cycle does not preclude compliance during years two and three of an audit cycle. Similarly, failure to comply with the audit timeline during the first two years of an audit cycle does not preclude compliance

during the final year of each audit cycle. It is important to note that, for purposes of complying with standard 115.401(a) (requiring audits of each facility during the three-year audit cycle), agencies must ensure that each facility is audited at least once by August 19, 2016, and during every three-year anniversary thereafter.

6:30

a. By way of hypothetical, what happens if an agency has seven facilities but receives no audits by the conclusion of the first year of the first audit cycle (by August 19, 2014)?

The agency would not be fully compliant with the PREA standards as of August 20, 2014. However, the agency may still become fully PREA compliant during the second year and the third year of the audit cycle. For purposes of the audit cycle, compliance is determined during each specific audit cycle year. So if this agency obtains three facility audits (at least one-third) between August 20, 2014 and August 19, 2015, then the agency would be PREA compliant with the audit cycle during that year.

During the final year of the audit cycle (ending August 19, 2016), however, the agency would be required to have all four remaining facilities audited. This is because an agency has a separate obligation under the standards to ensure that "each facility" must be audited "at least once" during the three-year audit cycle (concluding on August 19, 2016). See 28 C.F.R. § 115.401(a).

b. As another hypothetical, what happens if an agency has only one facility but receives no audit by the conclusion of the first year of the first audit cycle (by August 19, 2014)?

Because the standards require that an agency have "at least" one-third of its facilities audited during each year of the three-year audit cycle, an agency with a single facility is required to receive an audit during the initial year of the audit cycle to be compliant as of August 19, 2014. In other words, an agency with a single facility cannot be said to have had at least one third of its facilities audited by August 19, 2014, if it has had no facility audits. However, a single-facility agency could become fully compliant at any point during the remainder of the three-year audit cycle (concluding on August 19, 2016) subject to a successful audit of that facility. So for example, a single-facility agency that is not compliant as of the conclusion of the first year of the audit cycle because it had received no audits by August 19, 2014, could nevertheless become fully compliant with the audit standards if it receives an audit one month later (early in the second year of the audit cycle) and would remain compliant with this standard through the remainder of the first audit cycle.

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STANDARD: 115.401

CATEGORIES: Auditing, Audit Process, Compliance

Apr 23, 2014 **Q:** In adult prisons and jails, can inmates over the age of 17 provide inmate peer education to youthful inmates (age 17 and under)?

A: Under certain defined parameters, yes. In adult prisons and jails, *youthful inmates* are generally prohibited from having contact with inmates over the age of 17. See 28 C.F.R. §115.14. However, *youthful inmates* may have contact with inmates over the age of 17 outside of housing units if there is *direct staff supervision*. *Direct staff supervision* means that security staff are in the same room with, and within reasonable hearing distance of, th resident or inmate. See 28 C.F.R. § 115.5. Accordingly, the adult prison and jail standards do not prohibit inmate peer education by inmates over the age of 17 to younger inmates if the education occurs outside inmate housing units and there is *direct staff supervision* during the education process.

6:30

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STANDARD: 115.14, 115.33, 115.5

CATEGORIES: Definitions, Inmate Education, Youthful Inmates

Apr 23, 2014

Q: Can an auditor find a federal Bureau of Prisons, state, county, or other local or private facility compliant with the PREA standards if an entity external to the confining agency, which conducts criminal investigations of sexual abuse in the facility being audited, is not compliant with the external investigative entity's obligations under standards 115.21, 115.22, 115.34, and 115.71?

A: Yes, provided that the confining agency and facility being audited has met its own specific obligations under these standards. For example, standard 115.21(f) requires the confining agency to request that the relevant external investigating entity follow the PREA standards regarding a uniform evidence protocol and forensic medical evaluations.

The four PREA standards referenced above explicitly apply to DOJ and state entities that are responsible for investigating allegations of sexual abuse in adult prisons, jails, lockups, community corrections facilities, and juvenile facilities. See, standards 115.21(g)(2), 115.22(e), 115.34(d), and 115.71(k)&(l).

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STANDARD: 115.21, 115.22, 115.34, 115.71

CATEGORIES: Auditing, Audit Process, Compliance, Investigations

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Apr 23, 2014

Q: Can inmate peer educators be used to deliver the inmate information and education requirements of standard 115.33? If so, under what circumstances and are there any limitations?

A: Peer education models have been successful in certain confinement settings because sensitive information may be more readily accepted when presented by someone that inmates can identify with, such as a fellow inmate. Sexual abuse is a difficult subject to talk about. It may be easier for inmates to learn about it from their peers, rather than from a staff member. Inmates may be more likely to trust in policies and practices conveyed through peer-led classes than those delivered by staff. Peer educators can make the education presentations more relatable and easier to understand for their peers. PREA standard 115.33 requires generally that inmates receive certain information regarding the agency's sexual abuse- and sexual harassment-prevention policies and procedures during the intake process, and comprehensive inmate education regarding sexual abuse and harassment prevention and response mechanisms within 30 days of intake.

The PREA standards provide some limitations on an agency's use of inmate assistants. Specifically, in the context of sexual abuse allegations, incident response, and investigations, the standards prohibit the reliance:

On inmate interpreters, inmate readers, or other types of inmate assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first-response duties under standard 115.64, or the investigation of the inmate's allegations. See 28 C.F.R. § 115.16(c).

However, DOJ has determined that a properly developed and executed inmate peer education program does not violate this provision for purposes of providing the inmate education required by standard 115.33. Consistent with the theme of the PREA standards requiring staff, contractors, and volunteers who have contact with inmates to be screened, trained, and supervised, so too must any inmate peer educators. Inmate peer educators must be effectively screened for appropriateness, be effectively trained in the requirements of the standard, utilize an effective inmate education curriculum, and be effectively supervised by qualified staff.

When determining compliance with standard 115.33 where an agency relies upon an inmate peer education program, DOJ-certified auditors will examine the effectiveness of the program by, among other things, interviewing inmate recipients of the peer education training program to ensure that the recipients received training consistent with the requirements of the standard.

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STANDARD: 115.16, 115.33, 115.64

CATEGORIES: Inmate Education

Apr 23, 2014 **Q:** In adult prisons and jails, can adult inmates provide inmate peer education to juvenile inmates?

A: No. Under the Juvenile Justice and Delinquency Prevention Act (JJDPA), juveniles may not have sight or sound contact with adult inmates *in any institution*. See 42 USC 5601 et seq. Moreover, in any facility that houses juvenile residents, adult inmate trustees may not have sight or sound contact with residents in a juvenile facility. Thus, should an agency that oversees adult and juvenile commitments for a given state decide to utilize peer educators from its adult prison system, such peer educators could not educate juvenile residents, in either a juvenile facility or an adult facility. Even where a state agency does not have jurisdiction over adult and juvenile corrections, a program whereby adult inmates are transported to a juvenile prison to provide face-to-face peer education on any topic would violate the JJDPA.

6:30

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STANDARD: 115.14, 115.15, 115.33

CATEGORIES: Definitions, Inmate Education, Youthful Inmates

Apr 23, 2014

Q: Standard 115.42, "Use of Screening Information," requires that transgender inmates be allowed to shower separately. What constitutes "separate" for the purposes of complying with this standard?

A: Section 115.42(f) states, "Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates." This standard was adopted to provide additional protections for these inmates, given the unique risks these populations face while incarcerated. The separation required by the regulation will be dependent on the layout of the facility, and may be accomplished either through physical separation (e.g., separate shower stalls) or by time-phasing or scheduling (e.g., allowing an inmate to shower before or after others). In any event, facilities should adopt procedures that will afford transgender and intersex inmates the opportunity to disrobe, shower, and dress apart from other inmates.

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STANDARD: 115.42

CATEGORIES: Definitions, LGBTI Inmates/Residents/Detainees/Staff, Placement Decisions

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Mar 28, 2014

Q: Does the agency and/or jurisdiction responsible for placing a resident in a community-based residential facility matter for the purpose of qualifying that facility as a "community confinement facility" under the standards?

A: No. The agency and/or jurisdiction responsible for placing residents is irrelevant for this purpose. The key factor in determining whether a facility qualifies as a "community confinement facility" under the standards is whether residents are placed there as a result of criminal justice contact. For example, if a community-based residential facility is primarily used for residents who are on probation—which, in some states, is a local function not overseen by the department of corrections—and who are required to be in that facility, the facility would qualify as a "community confinement facility" under the standards.

6:30

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STANDARD: 115.5

CATEGORIES: Covered Facilities, Final Rule, Definitions

Mar 26, 2014

Q: What constitutes "overnight" for purposes of PREA Standard 115.193, which states that "[a]udits need not be conducted of individual lockups that are not utilized to house detainees overnight?"

A: As a general matter, the term "overnight" is construed as a period of seven or more continuous hours between 8:00 p.m. and 8:00 a.m. In situations where the facility has only a remote chance of meeting the above time period threshold, or does so only in rare circumstances (less than one time per month on average), the facility will not be considered "overnight."

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STANDARD: 115.93

CATEGORIES: Auditing, Definitions

Mar 24, 2014

Q: How long must the documents that auditors relied on for making audit determinations be retained?

A: These documents must be retained for 12 months following the deadline for any agency audit appeal. Because audit appeals must be lodged within 90 days of the auditor's final report, auditors must retain these documents for 15 months following the issuance of the final audit report. Longer document retention may be required in particular instances if so requested by the US Department of Justice.

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STANDARD: 115.401

CATEGORIES: Auditing, Audit Process, Information Sharing

Feb 24, 2014 **Q:** Which federal grant programs will the five percent penalty for non-compliance affect?

6:30

A: As described in the February 11, 2014 letter to governors regarding implementation of the National PREA Standards, in Fiscal Year 2014, there are three DOJ grant programs (or portions thereof) subject to the five percent penalty for non-compliance. Two are administered by the Office of Justice Programs: (1) the Bureau of Justice Assistance's Edward Byrne Memorial Justice Assistance Grant Formula Program, and (2) the Office of Juvenile Justice and Delinquency Prevention's Juvenile Justice and Delinquency Prevention Act Formula Grant Program. One is administered by the Office on Violence Against Women: the STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant Program.

Please note that legal restrictions on the uses of OJJDP Formula Grant and STOP Grant funds may make them unavailable to States for addressing certain areas of non-compliance with the PREA Standards. If a State is in full compliance with the standards as they apply to the State's juvenile facilities, and out of compliance only with regard to adult facilities, it could not lawfully spend OJJDP Formula Grant funds to come into compliance. Because it would be impossible to use this money to come into compliance, the State would not be subject to the five-percent reduction in OJJDP Formula Grant funding. Likewise, STOP Grant funds are limited in that they cannot be used for new construction, even if that is necessary to bring a State into full compliance with the PREA Standards. If a State is in full compliance except for a deficiency that requires new construction, it could not lawfully spend STOP Grant funding to come into compliance, and the State, therefore, would not be subject to the five percent reduction in STOP Grant Funds. The PREA Standards Assurance Form, attached to the February 11, 2014 letter to governors from Assistant Attorney General Karol V. Mason and Office on Violence Against Women Principal Deputy Director Bea Hanson, requires governors to indicate whether either or both of these circumstances apply to their States.

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STANDARD: **CATEGORIES:** Governor's Certification

Feb 19, 2014 **Q:** In some states inmates are confined in local facilities pursuant to state statute (with or without a per diem or other financial consideration) and without a formal written contract (or a contract providing only for the payment of the per diem). Do these arrangements constitute contracts for the confinement of inmates pursuant to Standard 115.12 (115.212 and 115.312)?

A: When a state agency has no discretion regarding which local or private confinement facility a state inmate is placed in, then the arrangement does not constitute a confinement of inmates for the purposes of 115.12 (115.212 and 115.312), even if the state pays the local jurisdiction a per diem pursuant to state statute or informal agreement. By contrast, if the state statute provides a state agency discretion over which local confinement facility to place the inmate in, and the state provides financial compensation to the local facility or agency, then the arrangement would be considered a contract under the standards.

6:30

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STANDARD: 115.12

CATEGORIES: Contracting, Definitions

Feb 19, 2014

Q: Many states are part of interstate compacts for the transfer of inmates between state confinement agencies. Do these interstate compacts constitute contracts for the confinement of inmates pursuant to 115.12 (115.212 and 115.312)?

A: Interstate transfers of inmates between public confinement agencies pursuant to the Interstate Agreement on Detainers (18 U.S.C. App. 2) or pursuant to existing national or regional Interstate Compacts for Corrections (authorized by state statutes) are exempt from the requirements set forth in standards 115.12, 115.212, and 115.312 where: (1) compensation for day-to-day inmate expenses is achieved only through reciprocal transfers of inmates; and (2) the transfers are primarily initiated by the inmate or with the consent of the inmate.

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STANDARD: 115.12

CATEGORIES: Contracting, Definitions

Feb 19, 2014

Q: What is required by the cross-gender announcement in Standard 115.15(d) (adult prisons and jails; and 115.315(d) (juvenile facilities with discrete housing units)?

A: In adult prisons and jails, and in juvenile facilities with discrete housing units, “staff of the opposite gender” are required to “announce their presence when entering an inmate housing unit.” This is sometimes referred to as the “cover-up rule” and is intended to put inmates on notice when opposite-gender staff may be viewing them. The announcement is

required any time an opposite-gender staff enters a housing unit; however, the Department has determined that the purpose of the Standard may be fully realized by requiring the announcement only when an opposite-gender staff enters a housing unit where there is not already another cross-gender staff present. Accordingly, the Department has determined that compliance with the Standard will be achieved when an announcement is made, as follows:

When the status quo of the gender-supervision on a housing unit changes from exclusively same gender, to mixed- or cross-gender supervision, the opposite-gender staff is required to verbally announce their arrival on the unit. The announcement is required for both custody and non-custody staff, and may include, for example, a clinician or case worker who spends time on the unit, or senior staff making supervisory rounds.

Note, a distinct buzzer, bell, or other noisemaking device may be substituted for a verbal announcement, so long as: (1) the buzzer emits a distinctive sound that is noticeably different from other common noisemakers; (2) inmates are adequately educated on the meaning of the buzzer sound and understand its purpose; and (3) the buzzer is not also used for other events at the facility. If used, such buzzers should be used in the identical manner that verbal announcements as required by the above guidance (e.g., when opposite-gender staff enter a housing unit).

The Department has received a number of inquiries about whether the following activities would constitute compliance:

Posting a notice on the housing unit informing the inmates that they may be subject to cross-gender supervision at any time.

Making a single announcement at the beginning of each shift indicating that inmates may be subject to cross-gender supervision at any time.

Making a single announcement at the beginning of a shift indicating that an opposite-gender staff is assigned to the unit for that particular shift.

Toggling a certain color light or flickering the lights in the unit as a signal to the inmates that opposite-gender staff may be on the unit.

The Department has determined that, while these other practices may be helpful supplements to the required verbal announcement, none of them is sufficient to comply with the Standard and compliance measure, as articulated above.

The Department also notes that there is no precise verbal language required by the cross-gender announcement Standard; only that the language put inmates or residents on sufficient notice that an opposite-gender staff member is entering the housing unit. Hence, such language as “man on the unit” or “Officer Smith on the unit” may both meet this requirement.

Consistent with Standard 115.16 and 115.316, the agency shall take appropriate steps to ensure that inmates 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. Accordingly, additional systems may be needed to supplement the verbal cross-gender announcement in units with inmates who are deaf or hard of hearing.

[1] In lockups and community confinement facilities, and in juvenile facilities that do not have discrete housing units, opposite-gender staff are only required to "announce their presence when entering an area where" detainees and residents "are likely to be showering, performing bodily functions, or changing clothing." 28 C.F.R. §§ 115.115(c), 115.215(d), and 115.315(d).

6:30

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STANDARD: 115.15

CATEGORIES: Cross-Gender Supervision, Cover-Up Rule

Dec 05, 2013

Q: Can PREA auditors engage support staff to assist with completing PREA audits?

A: PREA auditors may employ staff to provide assistance, including conducting interviews, but the DOJ-certified auditor is ultimately responsible for the final audit. In addition, the certified auditor is required to be present for, and supervise, the entirety of the on-site portion of the audit; to be the counterparty in an agency's contractual engagement for the conduct of the audit; and to sign and certify the interim and final audit reports. Failure to adequately supervise such support staff could have consequences for the responsible auditor, up to and including decertification by the Department of Justice.

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STANDARD: 115.401

CATEGORIES: Auditing, Audit Process

Dec 03, 2013

Q: Does a Governor's certification regarding full compliance with the National PREA Standards cover State investigative agencies?

A: Certain standards apply to any State agency that conducts investigations relating to sexual abuse or sexual harassment in a covered confinement facility. See 28 C.F.R. §§ 115.21(g)(1), 115.121(f)(1), 115.221(g)(1), and 115.321(g)(1); 115.22(d), 115.122(c), 115.222(d), and 115.322(d); 115.34(d), 115.134(d), 115.234(d), and 115.334(d); and 115.71(k); 115.171(k); 115.271(k); and 115.371(l); and 115.178(c). These standards cover investigatory policies, training, and procedures; evidence protocols; and forensic examinations. To the extent that these state agencies investigate sexual abuse or sexual

harassment in covered confinement facilities, compliance with the National PREA standards by these agencies also falls within the scope of the Governor's certification.

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STANDARD: 115.501

CATEGORIES: Auditing, Governor's Certification, Definitions

6:30

Dec 03, 2013

Q: I understand that reciprocal auditing is not permitted, but what about "circular auditing?"

A: Circular auditing, in which a consortium of three or more States, or three or more local jurisdictions, agrees to perform audits at facilities in other consortium States, is permissible, with a few caveats. First, the circular auditing schedule must be developed so that no audits would be considered impermissible reciprocal audits (click **here** for more information on reciprocal audits). Second, no audits can be allowed in cases in which the auditor's agency contracts for space in the facility being audited.

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STANDARD: 115.402

CATEGORIES: Auditing, Audit Process

Nov 27, 2013

Q: In determining whether to certify that my State is in "full compliance" with the National PREA Standards, how do I determine which facilities are "under the operational control of the State's executive branch"?

A: The National PREA Standards state that "The Governor's certification [of full compliance with the PREA standards] shall apply to all facilities in the State under the operational control of the State's executive branch, including facilities operated by private entities on behalf of the State's executive branch." 28 C.F.R. § 115.501(b). A "facility" is defined as "a place, institution, building (or part thereof), set of buildings, structure, or an area (whether or not enclosing a building or set of buildings) that is used by an agency for the confinement of individuals." Id. at standard 115.5. Some standards apply specifically at the facility level, while others apply at the agency level.

The definition of facility includes local detention and correctional facilities as well as State correctional facilities; however, not all facilities within a State are subject to the Governor's certification. The Governor's certification does not encompass those facilities outside the operational control of the governor; namely, those facilities that are under the operational

control of counties, cities, or other municipalities, or privately-operated facilities not operated on behalf of the State's executive branch.

The term "operational control" is not defined in the National PREA Standards. The determination of whether a facility is under the operational control of the executive branch is left to a governor's discretion, subject to the following guidance.

Generally, there are several factors that may be taken into consideration in determining whether a facility is under the "operational control" of the executive branch:

Does the executive branch have the ability to mandate PREA compliance without judicial intervention?

Is the State a unified correctional system?

Does the State agency contract with a facility to confine inmates/residents on behalf of the State agency, other than inmates being temporarily held for transfer to, or release from, a State facility?

The above list is not exhaustive but it covers the majority of the situations that Governors may face in determining whether a facility or contractual arrangement is subject to the Governor's certification.

Please note that the standards require that any public agency that contracts for the confinement of its inmates with private agencies or other entities, including other government agencies, (1) include in any new contract or contract renewal the entity's obligation to adopt and comply with the PREA standards, and (2) provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards. 28 C.F.R. §§ 115.12, 115.112, 115.212, 115.312. A State confinement agency that fails to comply with these requirements is, by the terms of the standards, not PREA compliant.

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STANDARD: 115.501

CATEGORIES: Governor's Certification, Definitions

Jul 11, 2013

Q: Does the Health Insurance Portability and Accountability Act (HIPAA) limit the ability of medical professionals to report information to a facility related to sexual abuse of an inmate? Does HIPAA limit an agency's ability to disclose medical information to a PREA auditor?

A: No. The HIPAA regulations expressly allow medical providers to provide to a facility with lawful custody of an inmate any information necessary for (among other things) "[t]he health and safety of such individual or other inmates" or "[t]he administration and

maintenance of the safety, security, and good order of the correctional institution." 45 C.F.R. § 164.512(k)(5)(i).

Disclosures made pursuant to a PREA audit are also permissible under HIPAA pursuant to the regulatory exception for "health oversight activities." 45 C.F.R. § 164.512(d). The HIPAA regulations allow disclosure to "a health oversight agency for oversight activities authorized by law, including audits," where necessary for appropriate oversight of (among other things) "[e]ntities subject to government regulatory programs for which health information is necessary for determining compliance with program standards" or "[e]ntities subject to civil rights laws for which health information is necessary for determining compliance." 45 C.F.R. § 164.512(d)(1). The HIPAA regulations define "health oversight agency" to include any person or entity operating under the authority of a public agency who is legally authorized "to oversee . . . government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant." 45 C.F.R. § 164.501. Because a PREA auditor qualifies as a health oversight agency, and the auditor's work qualifies as a health oversight activity, HIPAA poses no bar to the disclosure of relevant information to the auditor. Although information may be disclosed to a certified PREA auditor, any public report or statement released by the PREA auditor must not include protected health information.

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STANDARD: 115.401

CATEGORIES: Auditing

Jul 09, 2013

Q: Do the PREA standards apply to adult psychiatric forensic mental health care facilities or hospitals operated by non-correctional agencies where individuals have been committed following a court finding of not guilty by reason of insanity or where they are held pending competency restoration?

A: No. An adult hospital or mental health care facility that is not operated by a correctional agency (or under the authority of a correctional agency) is not covered under the PREA Standards. This is true even if the hospital or mental health care facility houses some portion of residents pursuant to the criminal justice system.

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STANDARD: **CATEGORIES:** Covered Facilities, Final Rule, Definitions

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Jul 09, 2013

Q: If a facility meets the definition of "lockup" but only holds juveniles, do the juvenile facility standards apply,

or do the lockup standards apply?

A: The lockup standards apply.

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STANDARD: 115.5

CATEGORIES: Covered Facilities, Final Rule, Definitions

6:30

Jul 09, 2013 **Q:** Are foster homes that contract with juvenile justice agencies (as opposed to institutional residential placements) covered by the PREA standards?

A: Foster homes are not covered by the standards.

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STANDARD: 115.5

CATEGORIES: Covered Facilities, Final Rule, Definitions

Jul 09, 2013 **Q:** What is the threshold number of criminal justice residents in a community facility to implicate the community confinement standards?

A: A community facility that is *not primarily used for* the confinement of residents in the adult criminal justice system is not covered by the community confinement facility standards.

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STANDARD: 115.5

CATEGORIES: Covered Facilities, Definitions, Final Rule

Jul 09, 2013 **Q:** Are facilities that exclusively house civilly-committed sex offenders (who have been convicted, served their prison sentence, and are deemed to be too dangerous to release to the community) covered by the PREA standards?

A: No. Civilly-committed individuals are not considered inmates, residents, or detainees for purposes of determining whether a particular facility is covered under the standards.

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STANDARD: 115.5

CATEGORIES: Covered Facilities, Final Rule, Definitions

6:30

Jul 09, 2013

Q: Who counts as "security staff" for purposes of the minimum staffing ratio Standard for secure juvenile facilities?

A: The Standards provide, inter alia, that [e]ach secure juvenile facility shall maintain staff ratios of a minimum of 1:8 during resident waking hours and 1:16 during resident sleeping hours, except during limited and discreet exigent circumstances..." 28 C.F.R. § 115.313(c). Only security staff shall be included in these ratios. Id.

The Standards define "security staff" as employees primarily responsible for the supervision and control of... residents in housing units, recreational areas, dining areas, and other program areas of the facility. 28 C.F.R. § 115.5. This definition is intended to approximate the manner in which the term "direct-care staff" is typically used by many juvenile facilities.

Typically, only direct-care staff will count in the minimum mandatory ratios. Direct-care staff supervisors may generally be counted within the minimum ratios to the extent they are presently assigned to primarily or exclusively supervise residents.

Other persons whose duties involve supervision and control of residents for a portion of the day may count towards these ratios while they are actively supervising and controlling residents, assuming that they have received appropriate training. Appropriate training generally includes training on the supervision and control of delinquent youth including, among other things, verbal de-escalation techniques, age-appropriate defensive tactics, and crisis intervention.

For example, a teacher who has received appropriate training may be included in the ratio during the time in which he or she is leading a class, as opposed to preparing a lesson plan. Similarly, a warden or other facility management official will count toward the ratio during the periods of the day when he or she is supervising residents rather than engaging in administrative activities.

Social workers, case managers, clinical staff, and administrative support staff will generally not count toward the minimum staffing ratios, except in circumstances in which they are supervising or controlling a group of residents, and only then if they have received appropriate training.

Contractors and volunteers (who have received a criminal records background check) may count to the extent that their responsibilities and training otherwise qualify.

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STANDARD: 115.13

CATEGORIES: Definitions, Staffing Ratio

6:30

Jul 09, 2013

Q: Is reciprocal auditing conducted by employees of two confinement agencies permissible?

A: An auditor who is employed by one correctional agency may not conduct an audit of another correctional agency if an auditor employed at the time by the latter agency has concluded an audit of the former agency within the prior twelve months.

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STANDARD: 115.402

CATEGORIES: Auditing, Audit Process

Jul 09, 2013

Q: If a facility for youth is not primarily used for youth in the juvenile justice system but, rather, social services youth, may the facility be considered either a “juvenile facility” or “community confinement facility” under the standards?

A: No. A facility for juveniles that is not primarily used for the confinement of youth in the juvenile justice system is not covered by the PREA standards.

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STANDARD: 115.5

CATEGORIES: Covered Facilities, Definitions, Final Rule

Jul 09, 2013

Q: In accordance with Standards 115.12, 115.112, 115.212, and 115.312, what level of contracting monitoring is actually required by the contracting agency?

A: In years when the contract facility is audited, review of the audit report will meet the monitoring requirements. In other years, monitoring may be done in the same manner the agency verifies compliance with other contract terms, which may vary (e.g. on-site agency

staff, inspections, documentation, etc.). Whatever monitoring method used should provide the agency assurances that the contractor is complying with the PREA standards.

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STANDARD: 115.12

CATEGORIES: Contracting, Definitions

6:30

Jul 03, 2013

Q: Would a five percent reduction in federal grant funds be applied to all funds within the designated grant program or only those budgeted "for prison purposes"?

A: The reduction of federal funds would apply to all DOJ funding that the state could use for prison purposes. This includes dollars that could be used for prison purposes but that the state intended to use for other purposes. See 34 U.S.C. § 30307(e). In any event, it is important to note that "prison" is defined broadly by the statute to cover "any confinement facility" and includes the five covered facility types included in the four sets of standards. See 34 U.S.C. § 30307(e).

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STANDARD: **CATEGORIES:** Governor's Certification, Penalty

Jul 03, 2013

Q: Is it ever appropriate for a transgender or intersex inmate or resident to be searched by both a male officer and a female officer, the male officer searching the parts of the body that are anatomically male and the female officer searching parts of the body that are anatomically female?

A: No. The gender of the staff member searching a transgender or intersex inmate or resident will depend on the specific needs of the individual inmate or resident and on the operational concerns of the facility. Under most circumstances, this will be a case-by-case determination, which may change over the course of incarceration and should take into consideration the gender expression of the inmate or resident.

Making accommodations, if necessary, to search individuals according to gender identity would not violate the prohibitions on cross-gender searches in standards 115.15 (a)-(c) and standards 115.315 (a)-(c). Further, standards 115.15(f) and 115.315(f) state that the agency shall train security staff in how to conduct searches of transgender and intersex inmates or residents in a professional and respectful manner and in the least intrusive

manner possible consistent with security needs. Requiring two officers to search transgender inmates or residents would be more intrusive than necessary.

For more information on addressing the needs of transgender or intersex inmates, please see the National Institute of Corrections resource page at http://nicic.gov/lgbti .

6:30

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STANDARD: 115.15

CATEGORIES: Searches, LGBTI Inmates/Residents/Detainees/Staff

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Jul 02, 2013 Q: What facilities are covered under PREA and the PREA standards?

A: PREA directed the attorney general to promulgate standards for all confinement facilities including, but not limited to, local jails, police lockups, and juvenile facilities. See 34 U.S.C. § 30309(7). DOJ has promulgated standards for prisons and jails (28 C.F.R. §§ 115.11 – 115.93), lockups (28 C.F.R. §§ 115.111 – 115.193), residential community confinement facilities (28 C.F.R. §§ 115.211 – 115.293), and juvenile facilities (28 C.F.R. §§ 115.311 – 115.393).

Additionally, on May 17, 2012, the President directed "all agencies with federal confinement facilities that are not already subject to the Department of Justice's final rule" to develop rules or procedures that comply with PREA.

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STANDARD: 115.5

CATEGORIES: Act, Covered Facilities, Final Rule

Apr 14, 2013 Q: What information is forthcoming on the audit?

A: Click here for the latest information on audits.

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STANDARD: 115.401

CATEGORIES: Auditing

Mar 14, 2013 Q: Please provide recommendations for identifying an auditor while maintaining appropriate independence

from the state criminal justice department. What role, if any, should the state criminal justice department play in identifying the auditor? Will the DOJ publish a list of certified PREA auditors?

6:30

A: Prospective auditors will apply to be PREA-certified auditors. Only DOJ can certify auditors. In order to be certified, auditors must 1) meet a number of qualifications; 2) submit to a criminal records background check; and 3) pass DOJ-developed auditor training. DOJ held auditor trainings approximately every other month throughout calendar year 2014, and three auditor trainings in 2015. For future dates click **here**. A complete list of PREA-certified auditors is maintained publicly on the PRC website **here**.

DOJ has not placed restrictions on how agencies choose auditors. Each agency should develop its own process, consistent with PREA Standard 115.402, which provides that 1) the auditor cannot be part of, or under the authority of, the agency (but may be part of, or authorized by, the relevant state or local government); 2) an auditor cannot be a person who has received financial compensation from the agency being audited (except for compensation received for conducting prior PREA audits) within three years prior to the agency's retention of the auditor; and 3) the agency cannot employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent PREA audits.

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STANDARD: 115.402

CATEGORIES: Auditing, Audit Process

Mar 14, 2013Q: Does PREA require the governor to submit a certification of compliance, and if so, when is the first certification of compliance due to the Department of Justice?

A: Pursuant to the PREA statute, the governor has three options: 1) submit a certification that the state is in full compliance; 2) submit an assurance that not less than five percent of its DOJ funding for prison purposes shall be used only for the purpose of enabling the state to adopt and achieve full compliance with the PREA standards; or 3) accept a five percent reduction in such grants. The first certification is due to the Office of Justice Programs by May 15, 2014. For more information on the certification process, click **here** to access the letter sent from the Department of Justice to all state governors.

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STANDARD: 115.501

CATEGORIES: Governor's Certification, Compliance

Mar 14, 2013Q: What are the financial consequences to a state if it is not in compliance with the standards?

6:30

A: The PREA statute provides that a state whose governor does not certify full compliance with the standards is subject to the loss of five percent of any DOJ grant funds that it would otherwise receive for prison purposes, unless the governor submits an assurance that such five percent will be used only for the purpose of enabling the state to achieve and certify full compliance with the standards in future years. 34 U.S.C. § 30307(e). For more information on the certification process, click **here** to access the letter sent from the Department of Justice to all state governors.

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STANDARD: 115.501

CATEGORIES: Compliance, Governor's Certification

Mar 14, 2013Q: Is there a validated and objective screening instrument to assess risk of sexual victimization?

A: PRC has not identified a national validated PREA-specific risk assessment tool currently in operation. DOJ chose not to include a validation requirement for risk assessment tools in the final standards, recognizing that the cost of the validation process is often prohibitive for small agencies. Instead, DOJ decided that objectivity is the most important component of risk assessment tools in the final standards. Standards 115.41, 115.241, and 115.341 address the elements that must be a part of *objective* risk assessment tools. DOJ takes the position that all staff, with appropriate training, can complete the risk assessment for incoming inmates.

The National PREA Resource Center, in conjunction with its partner, **The Vera Institute for Justice** , released a document providing guidance on how to objectively screen for risk of sexual victimization and abusiveness and use of the collected information. You can access this document **here**.

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STANDARD: 115.41

CATEGORIES: Screening

Feb 07, 2013 **Q:** Do community corrections standards apply to juvenile community confinement settings?

6:30

A: No. Juvenile community confinement facilities are covered by the juvenile facility standards. See 28 C.F.R. § 115.5 (definition of community confinement facility). The community confinement facility standards do not apply to juvenile community confinement facilities.

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STANDARD: 115.5

CATEGORIES: Covered Facilities, Final Rule, Definitions

Feb 07, 2013 **Q:** In which fiscal year will the five percent penalty for non-compliance begin?

A: Federal fiscal years begin on October 1. The first year of the non-compliance penalty period is fiscal year 2014, which will commence on October 1, 2013, and end on September 30, 2014.

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STANDARD: **CATEGORIES:** Governor's Certification, Penalty

Feb 07, 2013 **Q:** Do the standards apply to facilities that hold youth in the custody of a juvenile justice agency if those youth are not the totality of the population held in that particular facility? For example, are contracted secure juvenile facilities; contracted halfway houses, group homes, and community correctional facilities; and state department of social services secure facilities that provide services to juveniles who are under juvenile court jurisdiction through a contract with the state juvenile justice agency all covered? If so, to what extent?

A: The PREA standards make clear that a juvenile facility is one that is primarily used for the confinement of juveniles. If a majority of a facility's residents are under the age of 18 (unless

under adult court supervision and confined or detained in a prison or jail), it will fall within the scope of the juvenile facility standards, even if non-delinquent youth are part of the facility's population. One example is a facility that houses 10 youth and only two of those youth are under the jurisdiction of juvenile justice agencies. According to the standard, because less than a majority of the youth in that facility are in the custody of the juvenile justice department, the facility does not need to comply with PREA juvenile facility standards. For example, if the facility is used to house individuals "as part of a term of imprisonment or as a condition of pre-trial release or post-release supervision..." then the community confinement standards would apply. See 28 C.F.R. § 115.5 (definition of community confinement facility).

In addition, as in all custodial settings, agencies have state and federal legal obligations to protect those in custody, irrespective of obligations under PREA.

Finally, PREA Standard 115.312 provides that "a public agency that contracts for the confinement of its residents with private agencies or other entities, including other government agencies, shall include in any new contract or contract renewal the entity's obligation to adopt and comply with the PREA standards and any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards."

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STANDARD: 115.5

CATEGORIES: Covered Facilities, Final Rule, Definitions

Feb 07, 2013

Q: On what basis can the governor make a certification decision? Is it the audit finding alone, or should the governor base certification on other items? If other items are applicable for a certification, what are some examples of these items?

A: Pursuant to PREA Standard 115.501(a), governors shall make their certification of compliance taking into consideration the results of the most recent agency audit results. DOJ intends audits to be a primary, but not the only, factor in determining compliance. For example, audit results for a particular period may show the selected one third of audited facilities in compliance; however, the governor may have determined that other facilities under his/her control are, in fact, not in compliance with the standards.

Neither the PREA statute nor the PREA standards restrict the sources of information governors may use in deciding whether or how to certify compliance.

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STANDARD: 115.501

CATEGORIES: Auditing, Governor's Certification

Feb 07, 2013 **Q:** Do the standards apply to non-confinement community correctional settings such as probation and parole?

6:30

A: No, the PREA standards do not apply to non-confinement community corrections functions such as probation and parole supervision. The PREA standards do apply to residential community confinement facilities such as halfway houses operated by community corrections agencies. The PREA standards apply to confinement facilities defined in Standard 115.5 General Definitions as "a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential reentry centers), other than a juvenile facility, in which individuals reside as part of a term of imprisonment or as a condition of pre-trial release or post-release supervision, while participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during nonresidential hours." DOJ declined to adopt recommendations to adopt a set of standards that included pre-trial release, probation, and parole.

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STANDARD: **CATEGORIES:** Covered Facilities, Definitions

Feb 07, 2013 **Q:** What types of staff count toward an agency's staffing ratio?

A: Only *security staff* are included in the minimum staffing ratio requirement. The PREA standards define security staff as "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." 28 C.F.R. 115.5 (definitions).

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STANDARD: 115.13

CATEGORIES: Staffing Ratio

Feb 07, 2013 **Q:** Please explain the adult cross-gender viewing and searches standard.

A: At its most basic, the standard has three parts. First, it prohibits all cross-gender strip and body cavity searches except in exigent circumstances and disallows the use of cross-gender pat searches for female inmates in jails, prisons, and community confinement facilities (the juvenile facility standards prohibit cross-gender pat searches of both male and female residents). Second, it provides for a "knock and announce" practice when an opposit gender staff member enters a housing unit and, more generally, provides that facilities are t implement policies and procedures that enable inmates 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. Third, the standard also provides protection from intrusive searches for the purpose of determining gender for transgender or intersex inmates.

6:30

As a practical matter, many agencies already do only same-gender pat-down searches. For example, some juvenile agencies have BFOQ positions based on the privacy rights of girls, and some adult jails that house immigration detainees who are Muslim have banned female staff from searching those detainees. Other agency practices consistent with this standard include knock and announce policies, the use of privacy shields in shower and bathroom areas, and staffing patterns that ensure the availability of male and female staff to perform searches when necessary.

Furthermore, in crafting the final rule, DOJ determined that at least at least 27 states ban the practice, and that it is common practice in several other states for male officers to perform pat-down searches of female prisoners only under exigent circumstances. DOJ believes that adopting such a practice furthers PREA's mandate without compromising security in corrections settings, infringing impermissibly on the employment rights of officers, or adversely affecting male inmates.

In order to mitigate agency burdens for implementing the staffing changes that PREA standards may require for jails, prisons, and community confinement facilities, DOJ has provided that agencies will have additional time to come into compliance with this particular standard (August 2015, or August 2017 for facilities whose rated capacity is less than 50 inmates).

DOJ is aware that a prohibition on certain cross-gender searches and viewing will not solve the problem of sexual abuse in totality. DOJ is hopeful that adequate training of staff on conducting searches in a professional and respectful manner will decrease the likelihood of reports of sexual abuse due to an intrusive or improperly conducted search.

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STANDARD: 115.15

CATEGORIES: Searches, Cross-Gender Supervision, Cover-Up Rule

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Feb 07, 2013 **Q:** Do all inmates under the age of 18, regardless of court adjudication, need to be housed and managed in an area

totally separate from adult inmates while residing in an adult jail or prison?

6:30

A: PREA Standard 115.14 provides that *youthful inmates*, which the standards define as "any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail," must be housed separately from adult inmates in a jail or prison but may be managed together outside of a housing unit if supervised directly by staff. Standard 115.114 provides analogous but abbreviated standard requirements for lockups.

The standard includes three requirements. First, no youthful inmate may be placed in a housing unit where he/she will have contact with any adult inmate through use of a shared day room or other common space, shower area, or sleeping quarters. Second, outside of housing units, agencies must either maintain "sight and sound separation" between youthful inmates and adult inmates—i.e., prevent adult inmates from seeing or communicating with youth—or provide direct staff supervision when youthful inmates and adult inmates are together. Third, agencies must make their best efforts to avoid placing youthful inmates in isolation to comply with this provision. Finally, absent exigent circumstances, agencies must comply with this standard in a manner that affords youthful inmates daily large-muscle exercise and any legally required special education services, and provides access to other programs and work opportunities to the extent possible.

Persons under 18 who are charged with status offenses and/or delinquent offenses are not covered by Standard 115.14, but they are covered by the Juvenile Justice and Delinquency Prevention Act (JJDPA) and regulations promulgated pursuant to the JJDPA. These requirements ensure that states do not securely detain status offenders in adult facilities and severely limit the time in which accused delinquent youth may spend in adult facilities; status offending and delinquent youth must always be sight and sound separated from adult inmates in prisons, jails, and lockups. More information about JJDPA requirements is available at **www.ojjdp.gov/compliance** .

In crafting this standard, DOJ was cognizant of agency concerns regarding cost, feasibility, and preservation of state law prerogatives related to youthful inmates. Accordingly, this standard affords facilities and agencies flexibility in devising an approach to separate youthful inmates. In particular, agencies can achieve compliance by 1) confining all youthful inmates to a separate housing unit; 2) transferring youthful inmates to a facility within the agency that enables them to be confined to a separate unit; 3) entering into a cooperative agreement with an outside jurisdiction to enable compliance; or 4) ceasing to confine youthful inmates in adult facilities as a matter of policy or law. Agencies may, of course, combine these approaches as they see fit.

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STANDARD: 115.14

CATEGORIES: Definitions, Youthful Inmates

Feb 07, 2013 Q: What is adequate staffing?

6 : 30

A: The PREA standards do not mandate specific minimum staffing ratios for adult and non-secure juvenile settings. Instead, the PREA rule provides guidance on how agencies can determine adequate staffing levels to protect inmates, residents, and detainees from sexual abuse. For prisons, jails, and juvenile facilities, the standards require that agencies consider 1) generally accepted practices; 2) judicial findings of inadequacy; 3) findings of inadequacy from federal investigative agencies; 4) findings of inadequacy from internal or external oversight bodies; 5) all components of the facility's physical plant (including "blind spots," or areas where staff or residents may be isolated); 6) composition of the inmate/resident population; 7) number and placement of supervisory staff; 8) number and types of programs occurring on a particular shift; 9) applicable state or local laws, regulations, or standards; 10) prevalence of substantiated and unsubstantiated incidents of sexual abuse; and 11) any other relevant factors. 28 C.F.R. §§ 115.13(a) and 115.313(a). The lockup and community confinement standards provide a similar, albeit abbreviated, list of factors.

In secure juvenile facilities, DOJ defined minimum staffing ratios under PREA Standard 115.313 (c) as 1:8 during resident waking hours and 1:16 during resident sleeping hours. Agencies may depart from these minimum ratios during limited and discrete exigent circumstances, which are fully documented for audit purposes. Id. DOJ noted that many states and localities, as a matter of law or policy, already have minimum staffing ratios in juvenile settings; some state and local facilities exceed the minimum staffing ratios proscribed in the PREA standards and are strongly encouraged to maintain those ratios. In order to provide agencies with sufficient time to readjust staffing levels and, if necessary, request additional funding, the standard provides that any facility that is not already obligated by law, regulation, or judicial consent decree to maintain the required minimum staffing ratios has until October 1, 2017, to achieve compliance. Id.

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STANDARD: 115.13

CATEGORIES: Staffing Ratio

Feb 07, 2013 Q: What are appropriate ways to use PREA screening information? Should we base housing decisions on the PREA risk screening information?

A: PREA screening information should be used to inform agency or facility decisions regarding a particular inmate/resident's housing unit, security level, and programming needs and interventions. For example, if, upon intake, an inmate/resident is a risk of committing predation, an agency would not place him/her in a two-person room with an inmate/resident

who classified as at risk for victimization. Agencies should note, however, that DOJ, in its final standards, directed agencies to implement appropriate controls on the dissemination of information gathered during assessment so that the information is not used to the inmate/resident's detriment. See, for example, Standard 115.41(i).

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STANDARD: 115.41, 115.42

CATEGORIES: Screening, Placement Decisions

Feb 07, 2013 Q: Do the standards apply to locally operated facilities?

A: Yes. PREA standards apply equally to locally operated facilities, such as lockups, jails, juvenile detention centers, and locally operated residential community confinement facilities. The statute imposes certain financial consequences on states that do not comply with the standards. However, for local facilities or facilities not operated by the state, PREA provides no direct federal financial penalty for not complying.

If a local facility has a contract to hold state or federal inmates, however, it may lose that contract if it does not comply with PREA standards. If a governor should certify compliance, he/she must certify that all facilities under the state's authority, including all local facilities the state contracts with to hold inmates, are in compliance. Furthermore, states that operate unified systems must demonstrate that all state-operated facilities, including jails, comply with the PREA standards.

Finally, all agencies, state or local, have obligations under federal and state constitutions to provide safety for individuals in their custody. While PREA does not create any new cause of action, private civil litigants might assert noncompliance with PREA standards as evidence that facilities are not meeting constitutional obligations.

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STANDARD: **CATEGORIES:** Covered Facilities, Final Rule, Act

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Feb 07, 2013 Q: Is PREA Standard 115.14 Youthful Inmates applicable to juvenile settings? Often juvenile settings can house youth committed to the department of juvenile justice until age 21. Do youth in juvenile custody need to be sight and sound separated if they are over 18?

A: No. Individuals confined in juvenile facilities are defined as “residents” and may reside in juvenile facilities until the age allowable by state law, which in most states is 21, and in some as high as 25. The PREA standards do not provide for any sight and sound separation of residents in juvenile facilities either because of age or court of conviction. Neither the standard on youthful inmates (115.14) nor the standard for youthful detainees (115.114) is applicable in juvenile facilities. The Youthful Inmate standard requiring separation of those under age 18 from those over 18 is “setting specific,” applicable only in prisons, jails, and lockups. Even where state law provides for automatic prosecution in adult court of individuals at age 16 (e.g., NC, NY) and age 17 (e.g., GA, NH, IL, LA, MD, MA, MI, SC, TX, WI) when those persons are detained or confined in an adult prison, jail, or lockup, such individuals must be sight and sound separated from those over the age of 18.

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STANDARD: 115.14

CATEGORIES: Youthful Inmates

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