Developing Strategies to Comply with the PREA Standards

Compliance

The United States Department of Justice (DOJ) recognizes that local **jails** are unique with regard to compliance with the PREA standards. PREA required the Attorney General to promulgate standards for a wide range of confinement **facilities**, and Congress specifically mentioned **jails**, police **lockups**, and other **facilities**.

In the preamble to the National Standards to Prevent, Detect, and Respond to Prison Rape, the DOJ states: "PREA does not require State and local **facilities** to comply with the Department's standards, nor does it enact a mechanism for the Department to direct or enforce such compliance; instead, the statute provides certain incentives for such confinement **facilities** to implement the standards." The incentives referred to in the standards are provided through Federally-funded corrections programs, few of which are available directly to **jails**.

PREA Standard 115.12 requires that **agencies** enter into new contracts (or contract renewals) only with **facilities** that are compliant with the standards. Thus, local **agencies** that are not compliant may face loss of their contracts with the state or other PREA-compliant **agencies**. In addition, states themselves may independently decide, at their discretion, to require local **facilities** to comply or may create financial incentives to encourage compliance. Furthermore, it is possible that private litigants may cite noncompliance as evidence that the **facility** is constitutionally deficient.

Finally, in a state that operates unified systems, the state must, in order to avoid the financial consequences of noncompliance, demonstrate that all state-operated **facilities**, including **jails**, are in compliance.

Jails not impacted by the financial incentives should make a conscious decision to comply or not with the standards. **Jails** may choose to comply with the standards for many reasons, including but not limited to:

(1) ensuring the sexual safety of **inmates** and **staff**;
(2) recognizing that prevention of **inmate** sexual assault and **abuse** is a core component of **jail** security operations;
(3) mitigating against litigation as the PREA standards are now considered accepted correctional practice;
(4) demonstrating to all stakeholders the **agency's** commitment to prevention of sexual assault;
(5) promoting thorough investigative practices to protect both **staff** and **inmates**; and/or
(6) ensuring that **staff** are appropriately trained in sexual assault prevention and response.

Zero-Tolerance; PREA Coordinator

Should the **jail** determine it is in the best interests of **inmates**, **staff**, and the community to comply with the standards, here are highlights of administrative-related standards.

PREA Standard 115.11 requires the **agency** to establish a zero-tolerance policy for **sexual abuse** and **sexual harassment**. This policy outlines the **agency's** approach to preventing, detecting, and responding to such conduct. This standard also requires that the **agency** employ or designate an upper-level, **agency**-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee **agency** efforts to comply with the PREA standards in all of its **facilities**. Where an **agency** operates more than one **facility**, each **facility** must designate a PREA compliance manager with sufficient time and authority to coordinate the **facility's** efforts to comply with the PREA standards.

In the overview of the PREA National Standards[1] (pp. 23-24), the DOJ notes that the PREA coordinator should have access to **agency** and **facility** leadership on a regular basis and have the authority to work with other **staff**, managers, and supervisors to effect change if necessary. The PREA compliance manager need not be "upper-level," but should have access to **facility staff**, managers, and supervisors in order to guide implementation within the **facility**.

Contracting With Other Entities for Confinement of Inmates

Standard 115.12 requires that if an **agency** contracts with outside entities to hold the **agency's inmates** it includes in any new contract or contract renewal that organization's obligation to comply with the PREA standards.

Supervision and Monitoring

Standard 115.13 requires that each **agency** develop, implement, and document a staffing plan that provides adequate levels of staffing and video monitoring (where applicable). Facilities must document times when they deviate from the plan and review the plan at least once per year. Facilities must also have a policy and practice of having specified supervisory **staff** conduct and document unannounced rounds that must occur on both night and day shifts.

The DOJ provides significant guidance for this standard related to the implementation of the staffing plan, use of monitoring technology, and the conduct of unannounced rounds in the overview of the standards (pp. 27-30, 38-40).

[1] All references to the final PREA standards (including page numbers) utilize the final rule located here.

Hiring and Promotion Decisions

Standard 115.17 prohibits the **agency** from hiring, promoting, or contracting with anyone (that will have direct contact with **inmates**) who has engaged in, been convicted of, or been civilly or administratively adjudicated for engaging in **sexual abuse** in confinement settings. The standard requires the **agency** to conduct criminal background checks, conduct a check of the state's child abuse registry, and make its best efforts to contact prior institutional employers to obtain this information. These checks must be repeated for all **employees** at least every five years.

Upgrades to Facilities and Technologies

Standard 115.18 requires the **agency** to consider the effect any design, acquisition, expansion or modification of physical plant or monitoring technology might have on the **agency's** ability to protect **inmates** from **sexual abuse**.

The DOJ provides guidance for this standard by listing a variety of methods that **agencies** may use to document this consideration for audit purposes (pp. 69-70).

Inmate Access to Outside Confidential Support Services

Standard 115.53 expects the **agency** to provide **inmates** who allege **sexual abuse** while in the **agency's** custody with access to outside victim advocates and provide, post, or otherwise make accessible specific contact information for victim advocacy or rape crisis organizations. Further, **agencies** are to enable reasonable communication between **inmates** and these organizations as well as inform **inmates** (prior to giving them access) of the extent to which **agency** policy governs monitoring of their communications and when reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws. Finally, **agencies** are required to maintain or attempt to enter into agreements with community service providers to provide **inmates** with confidential emotional support services related to the **inmate's sexual abuse** while in custody.

The DOJ provides guidance for this standard, noting that victims of **sexual abuse** should be provided with this information and given the ability to contact service providers regardless of the **inmate's** past status as an abuser. The DOJ also provides guidance regarding documentation of efforts to enter into agreements for auditing purposes (pp. 112-114).

Preservation of Ability to Protect Inmates from Contact with Abusers

Standard 115.66 prohibits the **agency** from entering into or renewing collective bargaining agreements that limit the **agency's** ability to remove alleged **staff** sexual abusers from contact with **inmates** pending the outcome of an investigation.

The DOJ provides guidance for this standard by clarifying the intent of the standard and defining the limits of the standard related to other agreements that the **agency** might enter into (pp.125-126).

Disciplinary Sanctions for Staff

Standard 115.76 states that **staff** should be subject to significant disciplinary sanctions for sustained violations of **sexual abuse** and **harassment** policies. Termination should be the presumptive sanction for a **staff** person found guilty of **sexual abuse**, and such conduct should be reported to law enforcement and licensing agencies.

The DOJ provides guidance for this standard by recognizing that the **agency** may not always be the final determiner of **employee** terminations. Also, DOJ provides clarifying examples of what kinds of conduct could constitute a violation of **agency** policies (pp. 134-136).

Corrective Action for Contractors and Volunteers

Standard 115.77 states that any **contractor** or **volunteer** who engages in **sexual abuse** shall be prohibited from contact with **inmates** and shall be reported to law enforcement and relevant licensing bodies, where applicable. Other violations of the **agency's sexual abuse** or **harassment** policies could result in remedial measures and prohibition of further contact with **inmates** when appropriate.

Resources

- U.S. Department of Justice, National Institute of Corrections. *Staffing Analysis Workbook for Jails 2nd Edition* (http://static.nicic.gov/Library/016827.pdf)
- National Institute of Corrections and The Moss Group. *Prison Rape Elimination Act (PREA) Considerations for Policy Review* (http://www.mossgroup.us/policy.html)
- The Center for Innovative Public Policies, Inc. *Policy Development Guide for Sheriffs and Jails 2002* (http://nicic.gov/Library/017925)
- Evaluation of Colorado PREA Program – February 2009 (http://nicic.gov/Library/023997)
- The Project on Addressing Prison Rape. *Fifty State Survey of State Mandatory Reporting Laws* (http://www.wcl.american.edu/endsilence/statesurveys.cfm)
- The Project on Addressing Prison Rape. *Fifty State Survey of State Criminal Laws Prohibiting the Sexual Abuse of Individuals under Custodial Supervision* (http://www.wcl.american.edu/endsilence/statesurveys.cfm)
- The Project on Addressing Prison Rape. *Fifty State Survey of Sexual Assault Laws* (http://www.wcl.american.edu/endsilence/statesurveys.cfm)

- The Project on Addressing Prison Rape. *Fifty State Survey of Child Exploitation Laws* (http://www.wcl.american.edu/endsilence/statesurveys.cfm)
- The Project on Addressing Prison Rape. *Fifty State Survey of Adult Sex Offender Registration Laws* (http://www.wcl.american.edu/endsilence/statesurveys.cfm)
- The Project on Addressing Prison Rape. *Fifty State Survey of Juvenile Sex Offender Registration Laws* (http://www.wcl.american.edu/endsilence/statesurveys.cfm)
- The Project on Addressing Prison Rape. *Fifty State Survey of Official Misconduct Statutes* (http://www.wcl.american.edu/endsilence/statesurveys.cfm)