Developing Strategies to Comply with PREA Standards

Compliance

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 these are directly available to **juvenile** correctional **agencies** that are operated by counties, municipalities, or private companies.[1]

As a result, some **juvenile agencies** and **facilities** may find themselves not impacted by the financial incentive structure that the PREA law establishes and therefore, *technically*, are not required to comply with the standards. However, affected **agencies** and **facilities** will include:

- state **juvenile** correctional **agencies**;
- those who contract with their state's **juvenile** correctional **agency** to house **juveniles** under the jurisdiction of the state **juvenile** correctional **agency**, or
- those who contract with a Federal **agency** to house **juveniles** under the supervision of a Federal **agency**.

In these circumstances, local **juvenile agencies** can expect language regarding compliance with the PREA standards to be included in future contracts.

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

(1) ensuring the sexual safety of youth and **staff**;
(2) recognizing that prevention of youth sexual assault and **abuse** is a core component of **facility** 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 youth; and/or
(6) ensuring that **staff** are appropriately trained in sexual assault prevention and response.

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[1] For example, such programs might include State Criminal Alien Program (SCAP); Justice Assistance Grants (JAG); Byrne Grants; justice re-investment and reentry programs.

Zero Tolerance; PREA Coordinator

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

PREA Standard 115.311 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[2] (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 Residents

Standard 115.312 requires that if an **agency** contracts with outside entities to hold the **agency's residents**, it includes in any new contract or contract renewal that organization's obligation to comply with the PREA standards.

Supervision and Monitoring

Standard 115.313 requires that each **agency** develop, implement, and document a staffing plan that provides adequate levels of staffing and video monitoring (where applicable). **Facilities** must comply with the staffing plan except during limited and discrete **exigent circumstances**, must fully document times when they deviate from the plan, and must assess the plan on an annual basis. All **secure facilities** must maintain **security staff** ratios of a minimum of 1:8 during waking hours and 1:16 during **resident** sleeping hours by October 1, 2017. **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).

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[2] All references to the final PREA standards utilize the final rule located here.

Hiring and Promotion Decisions

Standard 115.317 prohibits the **agency** from hiring, promoting, or contracting with anyone (that will have direct contact with **residents**) 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 115.318 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 **residents** 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).

Resident Access to Outside Confidential Support Services

Standard 115.353 expects the **agency** to provide **residents** 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 **residents** and these organizations, as well as inform **residents** (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. Additionally, **facilities** should also provide **residents** with reasonable and confidential access to their attorneys, and to parents or legal guardians. Finally, **agencies** are required to maintain or attempt to enter into agreements with community service providers to provide **residents** with confidential emotional support services related to the **resident'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 **resident'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 Residents from Contact with Abusers

Standard 115.366 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 **residents** 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 115.376 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 115.377 states that any **contractor** or **volunteer** who engages in **sexual abuse** shall be prohibited from contact with **residents** 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 in prohibition of further contact with **residents** when appropriate.

Resources

- National Institute of Corrections and The Moss Group. *Prison Rape Elimination Act (PREA) Considerations for Policy Review.* (http://www.mossgroup.us/policy.html)
- 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)