

# BUREAU OF JUSTICE ASSISTANCE FACT SHEET

## ANNUAL GOVERNORS' PRISON RAPE ELIMINATION ACT CERTIFICATION AND ASSURANCE SUBMISSION

### About the Prison Rape Elimination Act

Ending sexual abuse and sexual harassment in confinement facilities benefits all Americans. Sexual abuse makes facilities dangerous for staff, inmates, residents, and detainees.<sup>1</sup> This serious problem also consumes large amounts of taxpayer dollars for medical treatment and investigations, and undermines rehabilitative efforts, which in turn threatens public safety when inmates are released. The Prison Rape Elimination Act (PREA) states: "Prison rape endangers the public safety by making brutalized inmates more likely to commit crimes when they are released." See: 34 U.S.C. § 30307.

PREA is intended to make confinement facilities free from sexual abuse and its threat. It requires the U.S. Department of Justice (DOJ) to prioritize the prevention and elimination of this serious problem. PREA also mandates that correctional facilities across the country implement policies that have "zero tolerance" for sexual abuse and practices to prevent, address, and respond to it. See: 34 U.S.C. § 30307.

### Certification and Assurance Overview

Each year, PREA gives state and territorial Governors and the Mayor of the District of Columbia the option to submit

to DOJ either a certification that all confinement facilities under their operational control are in full compliance with the National Standards to Prevent, Detect, and Respond to Prison Rape (Standards) or to issue an assurance that they will use not less than 5 percent of certain DOJ grant funds to come into full compliance with the Standards in the future. See: 34 U.S.C. § 30307.

States and territories that do not submit a certification or an assurance are subject to a 5 percent reduction in certain DOJ grant funds that they would otherwise receive. There are two DOJ grant programs (or portions thereof) subject to this statutory provision: (1) the Bureau of Justice Assistance's Edward Byrne Memorial Justice Assistance Grant Program and (2) the Office of Juvenile Justice and Delinquency Prevention's Juvenile Justice and Delinquency Prevention Act Formula Grant Program.

### Certification and Assurance Submission Process

The Governors' annual certification and assurance submissions apply to the most recent PREA audit year ending on August 19. The annual deadline for certification and assurance submissions is October 15. In the late summer of each year, DOJ issues a letter to all state and territorial Governors and the Mayor of the District of Columbia detailing their options under PREA and providing instructions for how to submit a certification or assurance to



<sup>1</sup> The National PREA Standards apply to all prisons and jails, juvenile facilities, community confinement facilities, and police lockups across the country. The individuals who are confined in these different types of correctional facilities are referred to in the standards as "inmates," "residents," and "detainees." Throughout this document, the term "inmates" is used to describe these different incarcerated populations.

DOJ. A timeline for the annual Governors’ certification and assurance submission process is at the bottom of page 1.

## State of the PREA Nation

Since the first submissions in 2014, there has been an upward trend in the number of states and territories submitting certifications of full compliance, whereas the number of jurisdictions opting to submit neither a certification nor an assurance has decreased. The Bureau of Justice Assistance’s State PREA Submission website provides a map that reflects Governors’ submissions for each audit year in a 3-year cycle and links to final PREA audit reports on confinement facilities identified by state and territorial Governors as under their operational control. See: <https://data.ojp.usdoj.gov/stories/s/e58i-aehtm>.

## What to Consider When Making a Certification Determination

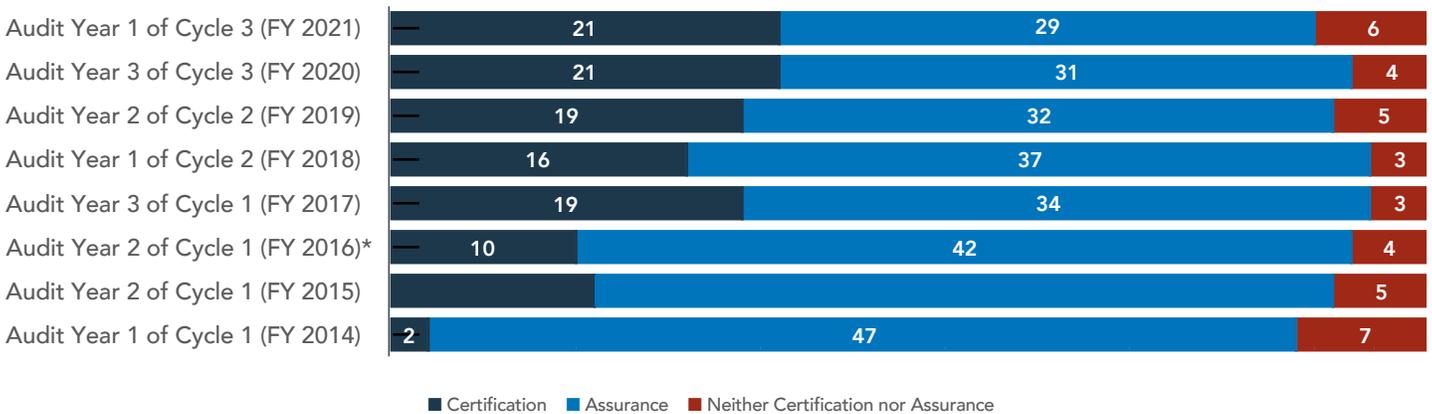
When deciding whether or not to submit a certification of full compliance with the Standards, the following considerations and requirements apply:

- “The Governor’s certification 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.” See: 28 C.F.R. § 115.501(b). Therefore, when making a certification determination, the Governor must assess compliance for all facilities under their operational control, including, but not limited to, those facilities audited during the most recent audit year.

- In determining whether the state is in full compliance, “the Governor shall consider the results of the most recent agency audits.” See: 28 C.F.R. § 115.501(a).
- All confinement facilities subject to the Standards must be audited by a DOJ-certified auditor at least once every 3 years, with one-third of each facility type operated by an agency, or private organization on behalf of an agency, to be audited every year. See: 28 C.F.R. § 115.401.
- A certification applies to the timeframe covering the most recent audit year; therefore, before a certification can be submitted, all facilities under the executive branch’s operational control must have been in full compliance with all the Standards, including the audit Standard 28 C.F.R. § 115.401(b), as of August 19. Only audits completed by August 19 for a given audit year may be considered when determining compliance with Standard 115.401(b).

## Governors' Certification and Assurance Submissions



\* Prior to FY 2016, the deadline for Governors to submit certifications and assurances was in early May, months before the end of the audit year on August 19. In order to shift the submission deadline to occur after the end of the audit year, DOJ implemented a transition year in 2016 requesting that Governors make two certification and assurance submissions for Audit Year 2 of Cycle 1.

- Pursuant to formal guidance issued by the DOJ PREA Working Group in the form of frequently asked questions (FAQs) on the PREA Resource Center website, DOJ intends audits to be a primary, but not the only, factor in determining whether a state is in full compliance. Neither the PREA statute nor the Standards restrict the sources of information that Governors may use in deciding whether to certify full compliance with the Standards. See: <https://www.prearesourcecenter.org/frequently-asked-questions/what-basis-can-governor-make-certification-decision-it-audit-finding>.
- DOJ recognizes that in some states, sexual abuse and sexual harassment investigations are conducted by agencies different from the agencies that confine inmates. Formal guidance indicates that: “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.” See: <https://www.prearesourcecenter.org/frequently-asked-questions/does-governors-certification-regarding-full-compliance-national-prea>. Therefore, in order for Governors to submit a certification of full compliance, these external state investigative agencies must be fully compliant with the PREA Standards that apply to them. DOJ developed the PREA Compliance Checklist for External State Investigative Agencies: Prisons and Jails to serve as a tool for Governors and others to assess compliance with the PREA Standards by these external agencies. This resource is available as an attachment to the annual DOJ PREA Certification and Assurance Letter to all State and Territorial Governors and the Mayor of the District of Columbia, which is posted to the Bureau of Justice Assistance PREA website. See <https://bja.ojp.gov/program/prison-rape-elimination-act-prea/overview>.
- **The Bureau of Justice Assistance PREA website**—provides links to past DOJ PREA certification and assurance letters and information on the impact of PREA on DOJ grants. See: <https://bja.ojp.gov/program/prison-rape-elimination-act-prea/overview>.
- **FAQs on the Bureau of Justice Assistance’s Edward Byrne Memorial Justice Assistance Formula Grant Program and PREA.** See: [https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/JAG-PREA-FAQ\\_0.pdf](https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/JAG-PREA-FAQ_0.pdf).
- **FAQs on the Office of Juvenile Justice and Delinquency Prevention’s Juvenile Justice and Delinquency Prevention Act Formula Grant Program and PREA.** See: [https://ojjdp.ojp.gov/states/Explanation-of-Formula-Grant-Distributions#\\_Prison\\_Rape\\_Elimination](https://ojjdp.ojp.gov/states/Explanation-of-Formula-Grant-Distributions#_Prison_Rape_Elimination).
- **Justice for All Reauthorization Act of 2016 PREA Amendment Fact Sheet**—provides stakeholders with obligations under PREA with an overview of the PREA amendment’s key provisions under the Justice for All Reauthorization Act of 2016. It also addresses how the amendment will impact efforts across the country to implement the PREA Standards, including impacts to the Governors’ annual certification and assurance submission, and important information regarding DOJ’s ongoing efforts to implement these new requirements. See: [https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/jfara-fact-sheet\\_updated-2017.03.01.pdf](https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/jfara-fact-sheet_updated-2017.03.01.pdf).
- **PREA FAQs**—issued by the DOJ PREA Working Group to provide guidance to auditors, agencies, and facilities on how to interpret the Standards. FAQs relevant to the Governors’ certification and assurance submission include, but are not limited, to:
  - The basis for the Governors’ certification determination. See: <https://www.prearesourcecenter.org/frequently-asked-questions/what-basis-can-governor-make-certification-decision-it-audit-finding>.
  - Governors’ options under the PREA statute. See: <https://www.prearesourcecenter.org/frequently-asked-questions/does-prea-require-governor-submit-certification-compliance-and-if-so>.

## Certification and Assurance Resources

The following resources provide important information about the Governors’ PREA certification and assurance process and requirements:

- Determining facilities under the operational control of the executive branch. See: <https://www.prearesourcecenter.org/frequently-asked-questions/determining-whether-certify-my-state-full-compliance-national-prea> and <https://www.prearesourcecenter.org/frequently-asked-questions/what-distinction-between-facility-under-operational-control-states>.
- Operational control and the PREA auditing Standard requirements. See: <https://www.prearesourcecenter.org/frequently-asked-questions/when-confining-agency-maintains-relationships-one-or-more-facilities-are>.
- Sunset of the assurance option. See: <https://www.prearesourcecenter.org/frequently-asked-questions/there-limit-number-years-state-can-submit-assurance-without-reduction>.
- Impact of PREA on DOJ grant programs:
  - Which federal grant programs will the five percent penalty for noncompliance affect? See: <https://www.prearesourcecenter.org/frequently-asked-questions/which-federal-grant-programs-will-five-percent-penalty-non-compliance>.
  - 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”? See: <https://www.prearesourcecenter.org/frequently-asked-questions/would-five-percent-reduction-federal-grant-funds-be-applied-all-funds>.
  - What are the financial consequences to a state if it is not in compliance with the Standards? See: <https://www.prearesourcecenter.org/frequently-asked-questions/what-are-financial-consequences-state-if-it-not-compliance-standards>.
- Implications of the juvenile staffing ratio requirement in Standard 115.313(c) on the Governors’ certification determination. See: <https://www.prearesourcecenter.org/node/5283>.
- When an audit is considered complete for purposes of complying with the PREA auditing Standard. See: <https://www.prearesourcecenter.org/frequently-asked-questions/what-stage-audit-process-audit-considered-complete-purposes-meeting>.
- Agencies’ requirement to make the auditor’s final audit report publicly available. See: <https://www.prearesourcecenter.org/node/5262>.
- PREA compliance for external state investigative agencies. See: <https://www.prearesourcecenter.org/frequently-asked-questions/does-governors-certification-regarding-full-compliance-national-prea>.
- **PREA Standards for the five covered facility types**
  - Prisons and Jail Standards: <https://www.prearesourcecenter.org/implementation/prea-standards/prisons-and-jail-standards>.
  - Lockup Standards: <https://www.prearesourcecenter.org/implementation/prea-standards/lockup-standards>.
  - Community Confinement Standards: <https://www.prearesourcecenter.org/implementation/prea-standards/community-confinement-standards>.
  - Juvenile Facility Standards: <https://www.prearesourcecenter.org/implementation/prea-standards/juvenile-facility-standards>.
- **Prison Rape Elimination Act.** Public Law 108-79-Sept. 4, 2003: <https://www.prearesourcecenter.org/resource/prison-rape-elimination-act-public-law-108-79-sept-4-2003-full-text-law>.
- **PREA Resource Center Request for Assistance—** to request PREA-related training and/or technical assistance for your jurisdiction or agency, visit: <https://www.prearesourcecenter.org/request-for-assistance>.

## Contact Us

Contact DOJ’s PREA Management Office or the National PREA Resource Center for additional information and assistance.

DOJ’s PREA Management Office may be contacted by email at [PREACompliance@usdoj.gov](mailto:PREACompliance@usdoj.gov).

National PREA Resource Center may be contacted via its website at <https://www.prearesourcecenter.org/about/contact-us>.

## ABOUT BJA

The Bureau of Justice Assistance (BJA) helps to make American communities safer by strengthening the nation's criminal justice system. BJA's grants, training and technical assistance, and policy development services provide government jurisdictions (state, local, tribal, and territorial) and public and private organizations with the cutting edge tools and best practices they need to support law enforcement, reduce violent and drug-related crime, and combat victimization.

To learn more about BJA, visit <https://bja.ojp.gov>, or follow us on Facebook ([www.facebook.com/DOJBJA](http://www.facebook.com/DOJBJA)) and Twitter ([@DOJBJA](https://twitter.com/DOJBJA)). BJA is part of the Department of Justice's Office of Justice Programs.