



PREA Standards In Focus

Standard in Focus

Prevention Planning

§ 115.12, 115.112, 115.212, 115.312 Contracting with other entities for the confinement of inmates (residents or detainees)

(a) A public agency that contracts for the confinement of its inmates (residents or detainees) 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.

(b) Any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards.

Purpose

- Ensure that people who are confined in facilities pursuant to a contract with a PREA compliant local, state, or federal entity share the same protections from sexual abuse and sexual harassment as anyone held in those PREA compliant local, state, or federal facilities. This is accomplished by requiring public agencies that contract with outside entities for the confinement of their inmates, detainees, or residents to impose a contractual obligation to comply with the PREA standards.
- Placing oversight responsibility on agencies that contract with private agencies or other entities for the confinement of their inmates, detainees, or residents further ensures that people who are confined pursuant to a contract with a PREA compliant jurisdiction share the same protections from sexual abuse and sexual harassment. The contracting agency must verify that the facility(ies) are meeting compliance through audits and actively monitor the contract for compliance between audits.

Implementation

- Ensure that this provision's required language for adoption of and compliance with the PREA standards has been reviewed, discussed, and agreed upon with the contracted entity prior to entering into or renewing the contract.
- Assess all agreements that allow the public agency to place its inmates, detainees, or residents in another entity's facilities in return for remuneration to determine whether they amount to a contract for beds. Note that these agreements may be informal and not always reduced to writing.
- Review PREA audit results to ensure that all contracted facilities are being audited according to the schedule the standards require and are in full compliance with the standards. If a facility under contract with the public agency requires corrective action to become compliant, or does not meet the standards upon issuance of a Final Report, the public agency must require that the contracting facility make all necessary remedial changes to come into compliance with the PREA standards.

- Monitor the facility's compliance with PREA, including in years when the facility does not receive a PREA Audit, in a manner that assures the public agency that the contract facility is compliant. Thorough and appropriate contract monitoring could include a review of documentation demonstrating ongoing PREA compliance, an annual or semi-annual visit to the facility to make observations regarding compliance, and/or interviews with staff and inmates, residents, or detainees. The public agency should outline the role of the contract monitor to ensure that he or she has access to all information necessary to determine whether the facility under contract is compliant with the PREA standards. It is important that the contract be negotiated in a manner that allows for active monitoring.

Challenges

- Verifying PREA compliance is a challenge even for a highly skilled DOJ-certified PREA auditor. Contract monitors charged with the responsibility of assessing ongoing compliance with PREA in off-audit years may require some specialized PREA training. Contract monitors are not PREA certified auditors and contract monitoring in no way replaces an audit. However, monitoring such contracts will require an understanding of the PREA requirements and may require additional personnel to be able to conduct meaningful reviews (i.e., site visits, documentation reviews, interviews).
- Identifying all the public agency's contracts may be a challenge, particularly if the agency has arrangements that function like contracts to hold inmates, detainees, or residents but where there is no written contract. Review the extensive Frequently Asked Questions (FAQ) guidance from the Department of Justice regarding what constitutes a contract under Standard 115.12. (Links to FAQ guidance can be found at the end of this document.) If a particular arrangement for the confinement of inmates, detainees, or residents is not described in current FAQ guidance and raises questions, contact the PREA Resource Center for guidance.
- Monitoring a contract facility's systems, or, even more challenging, the systems of multiple contract facilities, when the public agency has different systems to establish PREA compliance, may present a challenge for the contract monitor. Just as a PREA auditor needs to be skilled in measuring compliance in varied facility types with diverse operational practices, the contract monitor must similarly be able to assess compliance with the contract in its agency's contract facilities, which may also be different facility types with varied operational practices.
- Determining when it is appropriate to terminate a contract if a facility cannot adequately demonstrate full compliance with the PREA standards requires the agency to assess the contract facility's progress on compliance, timeline for compliance, and make a judgement about the point at which that facility is no longer meeting its obligations under its contract. In cases where a contract facility cannot comply with PREA, the public agency will have to remove inmates, detainees, or residents from that facility and find alternatives to remain compliant with the PREA standards.

Best Practices

- Contract monitor(s) are recommended to receive some specialized training in PREA compliance to enable them to make meaningful assessments about whether the contracted facility is maintaining its PREA compliance status in non-audit years. These assessments are not audits, but will require understanding of the PREA requirements.
- Contract monitor(s) should visit contracting facilities annually in off-audit years to review compliance with PREA standards by making observations, interviewing staff and inmates, detainees, or residents and reviewing documentation that demonstrates sustained compliance. The agency's agreement with the contract facility should delineate the scope of access the contract monitor will have to avoid disagreements.

- Contract monitor(s) should thoroughly review all contract facility PREA audit reports to verify compliance, ensure audits are conducted according to the required schedule, and use audit results as a basis for monitoring sustained compliance in off-audit years.

Audit Issues

- Verifying that the compliance monitor has confirmed compliance with the terms of the contract to adopt and comply with the PREA standards. This requires the agency to demonstrate its contract monitoring process in a manner the PREA auditor can meaningfully assess.
- Ensuring that all agreements that amount to contracts under this standard (see FAQ Guidance on 115.12 for a discussion of agreements that amount to contracts even when they are not reduced to a written contract) impose the requirement that the contracted facility comply with PREA and impose a contract monitoring responsibility on the agency. Probe all such arrangements even where written contracts do not exist.
- Probing the agency's decision-making process regarding the continuation of a contract if a contract facility has failed a PREA audit or failed to demonstrate full compliance with PREA to the public agency's contract monitor. The auditor will also have to determine under what circumstances the agency will terminate the contract. The standard does not require that the contract immediately be terminated, but as the goal is to ensure the safety of those who are housed at that facility, the PREA auditor will need to assess whether the contracted facility will ultimately achieve PREA compliance and whether the monitoring process is robust enough to demonstrate that compliance.

Standard Variations

The following variations in standards are noted for Lockups, Community Confinement Facilities and Juvenile Facilities. The variations are discussed in summary fashion below and the reader should consult the full text of the specific set of standards to ensure complete understanding of the differences.

Community Confinement: The following differences are noted:

The Community Confinement standards include a third provision in Subsection (c):

- Only in emergency circumstances in which all reasonable attempts to find a private agency or other entity in compliance with the PREA standards have failed, may the agency enter into a contract with an entity that fails to comply with these standards. In such a case, the public agency shall document its unsuccessful attempts to find an entity in compliance with the standards.

Resources

Frequently Asked Questions (FAQs) on the PREA Resource Center (PRC) Website:

<https://www.prearesourcecenter.org/frequently-asked-questions>

- The Department of Justice has issued extensive guidance that describes which arrangements between public agencies and private entities amount to a contractual agreement under this standard and which do not. Visit the PRC FAQ page and search for guidance under the standard 115.12 for the many related FAQ responses provided by DOJ to ensure your agency is aware of all of its contracts for beds. The FAQs to date are as follows:
 - June 3, 2015. *Facilities under the governor's operational control*
<https://www.prearesourcecenter.org/node/3275>

- August 27, 2014. *Must contract agency post PREA information on its website*
<https://www.prearesourcecenter.org/node/3272>
- June 11, 2014. *Contract facilities and facilities operated by private organization*
<https://www.prearesourcecenter.org/node/3276>
- February 19, 2014. *Noncompliant contract facilities*
<https://www.prearesourcecenter.org/node/3268>
- February 19, 2014. *Interstate compact transfers*
<https://www.prearesourcecenter.org/node/3269>
- February 19, 2014. *Informal contracts and arrangements*
<https://www.prearesourcecenter.org/node/3270>
- February 19, 2014. *Confinement without contracts and per diem arrangements*
<https://www.prearesourcecenter.org/node/3271>
- July 9, 2013. *Level of contract monitoring required*
<https://www.prearesourcecenter.org/node/3267>

➤ **PREA Essentials on the National PREA Resource Center Webpage**
www.prearesourcecenter.org/training-technical-assistance/PREA-essentials

➤ **Standard sample contract language:**

The agency's Contract Administrator or designee shall have inserted in the agency's standard contract template (new and existing) for the provision of inmate/resident/detainee beds the following language:

“The Contractor shall comply with the Final Rule of the Prison Rape Elimination Act (PREA) of June 20, 2012 (Federal Law 42 U.S.C. 15601) and all applicable PREA standards and the agency's policies. Contractor shall make itself familiar with and at all times shall observe and comply with all PREA regulations which in any manner affect the performance under this Contract. The Contractor must subject itself to a Department of Justice (DOJ) PREA Audit at least once every three (3) years beginning August 20, 2013 and will be solely responsible for paying for a PREA Audit as required by this contract. Failure to comply with the PREA standards and related policies of said entity (contracting agency name here) may result in termination of the contract”.

➤ **Additional Training Resources:** Always check the following sources for excellent training on PREA.
National Institute of Corrections (NIC) - <http://nicic.gov/training/prea>
End Silence: The Project on Addressing Prison Rape - <https://www.wcl.american.edu/endsilence/>

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