

Responding to Sexual Abuse of Youth in Custody: Addressing the Needs of Boys, Girls, and Gender Nonconforming Youth Notification of Curriculum Use
April 2014

The enclosed Responding to Sexual Abuse of Youth in Custody: Addressing the Needs of Boys, Girls, and Gender Nonconforming Youth curriculum was developed by the Project on Addressing Prison Rape at American University, Washington College of Law as part of contract deliverables for the National PREA Resource Center (PRC), a cooperative agreement between the National Council on Crime and Delinquency (NCCD) and the Bureau of Justice Assistance (BJA). The Prison Rape Elimination Act (PREA) standards served as the basis for the curriculum's content and development with the goal of the Responding to Sexual Abuse of Youth in Custody: Addressing the Needs of Boys, Girls, and Gender Nonconforming Youth curriculum being to satisfy specific PREA standard requirements.

It is recommended that the Responding to Sexual Abuse of Youth in Custody: Addressing the Needs of Boys, Girls, and Gender Nonconforming Youth curriculum be reviewed in its entirety before choosing which modules to use. Any alterations to the original materials require either acknowledgement during their presentation or removal of the PRC and Project on Addressing Prison Rape logos.

BJA is currently undergoing a comprehensive review of the enclosed curriculum for official approval, at which point the BJA logo may be added.

Note: Use of the enclosed curriculum, either in part or whole, does not guarantee that an auditor will find a facility "meets standards." Rather, an auditor will take into consideration the curriculum used as part of their overall determination of compliance.

Notice of Federal Funding and Federal Disclaimer – This project was supported by Grant No. 2010-RP-BX-K001 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice nor those of the National Council on Crime and Delinquency (NCCD), which administers the National PREA Resource Center through a cooperative agreement with the Bureau of Justice Assistance.





**Training Curriculum:
Responding to Sexual Abuse of Youth in Custody:
Addressing the Needs of Boys, Girls and Gender Non-Conforming Youth**

Module 2: The Prison Rape Elimination Act of 2003

**The Project on Addressing Prison Rape
February 2014**

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Objectives

- Review the Prison Rape Elimination Act of 2003 (PREA) and the final national standards.
- Identify why gender responsive strategies are important in responding to sexual abuse of youth.
- Develop ways to proceed in light of PREA.



What is PREA?

- **Prison Rape Elimination Act (PREA).**
- The aim of the Act is to create “**zero tolerance**” for prison rape by using a variety of tools
- The initial version of PREA only sought to address **male rape**. In the initial congressional hearing, most of the survivors were male. Initial legislation **failed to include sexual violence against women**, which was more likely to be staff initiated.
- In its second iteration, **PREA included staff sexual misconduct**, but **continued to focus heavily on male-on-male** rape.
- PREA passed **unanimously** in both houses of Congress in **2003**.



PREA Purposes

Increase **accountability** of prison officials who fail to detect, prevent, reduce and punish prison rape

Protect 8th amendment rights of federal, state and local prisoners

Establish **grant** programs

Reduce costs of prison rape on interstate commerce



PREA Purposes

Establish **zero tolerance**

Make **prevention** a top priority

Develop **national standards** for detection, prevention, reduction and punishment

Increase available **data** and **information** on **incidence** in order to improve management and administration

Standardize definitions used for collecting data on the incidence of rape in custody



Major Sections

Section 4: **Collection** of prison rape statistics, data and research (BJS)

Section 5: Prison Rape **Prevention and Prosecution** (NIC)

Section 6: **Grants to Protect Inmates and Safeguard Communities** (BJA)

Section 7: National Prison Rape Elimination **Commission**

Section 8: Adoption and Effect of **National Standards**

Section 9: **Accreditation** organizations must adopt standards or lose federal funds



Key Milestones

- 2003:** PREA legislation passes
- 2004:** First meeting of the National Prison Rape Elimination Commission (NPREC)
- 2004-2009:** Information gathering and hearings held by the NPREC
- June 2009:** Report and draft standards published by NPREC
- 2009-2012** Establishment and Convening of PREA Work Group



Key Milestones

- | | |
|-------------------------|--|
| May 17, 2012: | Final DOJ standards released |
| June 20, 2012: | Final standards published in the Federal Register |
| August 20, 2012: | Standards applicable to BOP |
| 2013-2014: | First audit cycle |
| May 15, 2014: | First Governor certification due to the PREA Compliance Office |



Key Principles

PREA encompasses **any** federal confinement facility whether run by the government or a private organization on behalf of the government

These standards are the floor - they are minimum standards

- States **can and are encouraged to** do more particularly if your state has set higher requirements

Must protect the constitutional rights of those in custody



What We Know

BJS DATA and NPREC FINDINGS



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BJS Data

Administrative survey collections: Juveniles

2004 (reported with adult numbers)

http://www.wcl.american.edu/endsilence/documents/BeckandHughes_BJSReport2004.pdf?rd=1

2005-6

<http://www.wcl.american.edu/endsilence/documents/sexviolencejuvenilecorrauth2005-6.pdf?rd=1>

Victim self reports: Juveniles

2007

<http://www.wcl.american.edu/endsilence/documents/SexualVictimizationinJuvenileFacilitiesReportedbyYouth2008-9.pdf?rd=1>

2012

<http://www.wcl.american.edu/endsilence/documents/2012YouthBJSReport.pdf>



BJS Findings: Sexual Victimization Reported by Juvenile Correctional Authorities, 2005-6

More than 2,000 allegations of sexual violence reported each year in juvenile facilities

- The estimated total number of allegations for the nation was:
 - 2,047 in 2005 (16.7%)
 - 2,025 in 2006 (16.8%)

About 1 in 5 allegations of sexual violence were substantiated



BJS Findings: Sexual Victimization Reported by Youth, 2012

An estimated 9.5% of adjudicated youth in state juvenile facilities and state contract facilities reported experiencing one or more incidents of sexual victimization by another youth or staff in the past 12 months or since admission, if less than 12 months.

- About 2.5% of youth reported an incident involving another youth
- About 7.7% reported an incident involving facility staff

Youth who identified their sexual orientation as gay, lesbian, bisexual, or other **reported a substantially higher rate** of youth-on-youth victimization (10.3%) than heterosexual youth (1.5%).

Among youth who reported victimization by staff **89.1% were males reporting sexual activity with female staff** and **3.0% were males reporting sexual activity with both male and female staff.**



BJS Findings: Sexual Victimization Reported by Youth, 2012

Thirteen facilities were identified as high-rate based on the prevalence of sexual victimization by youth or staff.

- Rates in each of these facilities had rates at least **35% higher** than the average rate of sexual victimization among facilities nationwide
- Two of the high-rate facilities had sexual victimization rates of **30% or greater**.

14 facilities were identified as low-rate where less than half the average rate among all facilities listed in the survey.



Prevalence and RIA Findings: Final PREA Standards (p 10-11)

In 2008, more than 209,400 persons were victims in prison, jails and juvenile facilities

At least 78,500 prison and jail inmates and 4,300 youth in juvenile facilities were victims of the most serious forms of sexual abuse



The National Prison Rape Elimination Commission

9 members authorized (8 served)

Charge:

- Conduct legal and factual study of the effects of prison rape in the US
- Recommend national standards
 - Consultation with accreditation organizations
 - Can't impose something that would mandate substantial increased costs to agency
 - Hold hearings
- Issue report w/in 2 years of initial meeting



Findings

Protecting inmates from sexual abuse remains a challenge correctional facilities across the country.

Sexual abuse is not an inevitable feature of incarceration -- leadership matters.

Certain individuals are more at risk of sexual abuse than others.



Findings

Few correctional facilities are subject to the kind of rigorous internal monitoring and external oversight that would reveal why abuse occurs and how to prevent it.

Many victims cannot safely and easily report sexual abuse, and those who speak out often do so to no avail.

Victims are unlikely to receive the treatment and support known to minimize the trauma of abuse.



Findings

Juveniles in confinement are **much more likely** than incarcerated adults to be sexually abused, and they are particularly at risk when confined with adults.

Individuals under correctional supervision in the community are at risk for sexual abuse.

A large and growing number of detained immigrants are in danger of sexual abuse.



Adoption and Effect of National Standards

One year after National Prison Rape Elimination Commission issued report-- AG will publish its final rule with standards

- 90 days after publication -- transmission to state departments of correction
- FBOP immediately covered by rule
- Possible reduction of 5% each year for failure to meet the standard
- DOJ to publish annual report on non-compliance



Initial Agency Prep -- Before Final Standards

- Self assessments of current practices
- Training for staff
- Request for technical assistance
- Culture surveys and assessments
- Early adoption of NPREC draft standards



DOJ Standards

Differences -- DOJ standards and NPREC standards:

- Immigration detention, probation and parole, cross gender supervision, consensual sex, audit and compliance

Final standards released **May 17, 2012**

Published in Federal Register **June 20, 2012**

Applicable **August 20, 2012**



Where We Are Now: The National PREA Standards

PRISON RAPE ELIMINATION ACT



JUVENILE FACILITY STANDARDS

United States Department of Justice Final Rule

National Standards to Prevent,
Detect, and Respond to Prison Rape
Under the Prison Rape Elimination Act (PREA)

28 C.F.R. Part 115
Docket No. OAG-131
RIN 1105-AB34
May 17, 2012



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Standards on Prevention Planning [115.311-115.318]

Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.

Contracting with other entities for the confinement of residents.

Supervision and monitoring.

Limits to cross-gender viewing and searches.

Residents with disabilities and residents who are limited English proficient.

Hiring and promotion decisions.

Upgrades to facilities and technologies.



Supervision and Monitoring (115.313)

(c) 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.



Standards on Responsive Planning [115.321-115.322]

Evidence protocol and forensic medical examinations.

Policies to ensure referrals of allegations for investigations.



Policies to Ensure Referrals of Allegations for Investigations (115.322)

(a) The agency **shall ensure that an administrative or criminal investigation is completed** for all allegations of sexual abuse and sexual harassment.

(b) The agency shall **have in place a policy to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations**, unless the allegation does not involve potentially criminal behavior. The agency shall **publish such policy on its website or, if it does not have one, make the policy available through other means**. The agency shall document all such referrals.



Policies to Ensure Referrals of Allegations for Investigations (115.322)

(c) If a separate entity is responsible for conducting criminal investigations, such publication **shall describe the responsibilities of both the agency and the investigating entity.**

(d) Any State entity responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in juvenile facilities shall **have in place a policy governing the conduct of such investigations.**

(e) Any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in juvenile facilities **shall have in place a policy governing the conduct of such investigations.**



Standards on Training and Education [115.331-115.335]

Employee training.

Volunteer and contractor training.

Resident education.

Specialized training: Investigations.

Specialized training: Medical and mental health care.



Resident Education (115.333)

(a) During the **intake process**, residents shall receive **information explaining, in an age appropriate fashion, 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 10 days of intake**, the agency shall provide comprehensive age-appropriate education to residents 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.

(c) Current residents 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 resident's new facility differ from those of the previous facility.



Resident Education (115.333)

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

(e) The agency shall maintain **documentation** of resident 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 residents through **posters, resident handbooks, or other written formats**.



Standards on Screening for Risk of Sexual Victimization and Abusiveness [115.341-115.342]

Screening for risk of victimization and
abusiveness

Use of screening information

Protective custody



Obtaining Information from Residents (115.341)

(a) **Within 72 hours** of the resident's arrival at the facility and periodically throughout a resident's confinement, the agency shall **obtain and use information about each resident's personal history and behavior to reduce the risk of sexual abuse by or upon a resident.**

(b) Such assessments shall be conducted using an objective screening instrument.



Obtaining Information from Residents (115.341)

(c) At a minimum, the agency shall attempt to ascertain information about:

- (1) Prior sexual victimization or abusiveness;
- (2) 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;
- (3) Current charges and offense history;
- (4) Age;
- (5) Level of emotional and cognitive development;
- (6) Physical size and stature;
- (7) Mental illness or mental disabilities;
- (8) Intellectual or developmental disabilities;
- (9) Physical disabilities;
- (10) The resident's own perception of vulnerability; and
- (11) Any other specific information about individual residents that may indicate heightened needs for supervision, additional safety precautions, or separation from certain other residents.



Obtaining Information from Residents (115.341)

(d) This information shall be ascertained through conversations with the resident during the intake process and medical and mental health screenings; during classification assessments; and by reviewing court records, case files, facility behavioral records, and other relevant documentation from the resident's files.

(e) The agency shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the resident's detriment by staff or other residents



Standards on Reporting [115.351-115.354]

Resident reporting.

Exhaustion of administrative remedies.

Resident access to outside support services and legal representation.

Third-party reporting.



Third-party Reporting (115.354)

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 a resident.**



Standards on Official Response [115.361-115.368]

Staff and agency reporting duties.

Agency protection duties.

Reporting to other confinement facilities.

Staff first responder duties.

Coordinated response.

Preservation of ability to protect inmates/ residents from contact with abusers.

Agency protection against retaliation.

Post-allegation protective custody.



Coordinated Response (115.365)

The facility shall develop a **written institutional plan to coordinate actions taken in response to an incident of sexual abuse** among staff first responders, medical and mental health practitioners, investigators, and facility leadership.



Standards on Investigations [115.371-115.373]

Criminal and administrative agency investigations.

Evidentiary standard for administrative investigations.

Reporting to residents.



Reporting to Residents (115.373)

(a) Following an investigation into a resident's allegation of sexual abuse suffered in an agency facility, the agency **shall inform the resident as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.**

(b) If the agency did not conduct the investigation, it shall **request the relevant information** from the investigative agency in order to inform the resident.



Reporting to Residents (115.373)

(c) Following a resident's allegation that a staff member has committed sexual abuse against the resident, the agency shall subsequently inform the resident (unless the agency has determined that the allegation is unfounded) whenever:

- (1) The staff member is no longer posted within the resident'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 charge related to sexual abuse within the facility.



Reporting to Residents (115.373)

(d) Following a resident's allegation that he or she has been sexually abused by another resident, the agency shall subsequently inform the alleged victim whenever:

(1) The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility;

or

(2) The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.

(e) All such notifications or attempted notifications shall be documented.

(f) An agency's obligation to report under this standard shall terminate if the resident is released from the agency's custody.



Standards on Discipline [115.376-115.378]

Disciplinary sanctions for staff.

Corrective action for contractors and volunteers.

Interventions and disciplinary sanctions for residents.



Interventions and Disciplinary Sanctions for Residents (115.378)

(a) A resident may be subject to disciplinary sanctions only pursuant to a formal disciplinary process following an administrative finding that the resident engaged in resident-on-resident sexual abuse or following a criminal finding of guilt for resident-on-resident sexual abuse.

(b) Any disciplinary sanctions shall be commensurate with the nature and circumstances of the abuse committed, the resident's disciplinary history, and the sanctions imposed for comparable offenses by other residents with similar histories. In the event a disciplinary sanction results in the isolation of a resident, agencies shall not deny the resident daily large-muscle exercise or access to any legally required educational programming or special education services. **Residents in isolation shall receive daily visits from a medical or mental health care clinician. Residents shall also have access to other programs and work opportunities to the extent possible.**



Interventions and Disciplinary Sanctions for Residents (115.378)

(c) The disciplinary process shall consider whether a **resident's mental disabilities or mental illness** contributed to his or her behavior when determining what type of sanction, if any, should be imposed.

(d) If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to offer the offending resident participation in such interventions. The agency may require participation in such interventions as a condition of access to any rewards-based behavior management system or other behavior-based incentives, but not as a condition to access to general programming or education.



Interventions and Disciplinary Sanctions for Residents (115.378)

(e) The agency may discipline a resident for sexual contact with staff only upon a finding that the staff member did not consent to such contact.

(f) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

(g) An agency may, in its discretion, prohibit all sexual activity between residents and may discipline residents for such activity. **An agency may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced**



Standards on Medical and Mental Health Care [115.381-115.383]

Medical and mental health screenings; history of sexual abuse.

Access to emergency medical and mental health services.

Ongoing medical and mental health care for sexual abuse victims and abusers.



Access to Emergency Medical and Mental Health Services (115.382)

(a) Resident victims of sexual abuse shall receive **timely, unimpeded access to emergency medical treatment and crisis intervention services**, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.

(b) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, staff first responders shall take preliminary steps to protect the victim pursuant to § 115.362 and shall immediately notify the appropriate medical and mental health practitioners.



Access to Emergency Medical and Mental Health Services (115.382)

(c) Resident **victims** of sexual abuse while incarcerated shall be offered **timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis**, in accordance with professionally accepted standards of care, where medically appropriate.

(d) **Treatment services** shall be **provided to the victim without financial cost** and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.



Standards on Data Collection and Review [115.386-115.389]

Sexual abuse incident reviews.

Data collection.

Data review for corrective action.

Data storage, publication, and destruction.



Data Review for Corrective Action (115.388)

(a) The agency shall **review data** collected and aggregated pursuant to § 115.387 **in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including:**

- (1) Identifying problem areas;
- (2) Taking corrective action on an ongoing basis; and
- (3) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.



Data Review for Corrective Action (115.388)

(b) Such report shall **include a comparison of the current year's data and corrective actions** with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.

(c) The agency's report shall be approved by the agency head and made readily available to the public through its website or, if it does not have one, through other means.

(d) The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted



Audit

June 20, 2012	Publication in federal register begins public comment period for select standards.
August 20, 2012	Begins audit clock
2012- 2013	Develop audit tool; develop audit training; train auditors; and certify auditors
2013	Audits term begins (one year)
2014	Complete audits of 1/3 of all facilities



Standards on Audit and Compliance

Frequency and scope of audits. (115.401)

Auditor qualifications. (115.402)

Audit contents and findings. (115.403)

Audit corrective action plan. (115.404)

Audit appeals. (115.405)

State determination and certification of full compliance.
(115.501)



Audit Contents and Findings (115.403)

(a) Each audit shall include a **certification by the auditor that no conflict of interest** exists with respect to his or her ability to conduct an audit of the agency under review.

(b) Audit reports shall state whether agency-wide policies and procedures comply with relevant PREA standards.

(c) For each PREA standard, the auditor shall determine whether the audited facility reaches one of the following findings: Exceeds Standard (substantially exceeds requirement of standard); Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period); Does Not Meet Standard (requires corrective action). The audit summary shall indicate, among other things, the number of provisions the facility has achieved at each level.



Audit Contents and Findings (115.403)

(d) Audit reports shall **describe the methodology, sampling sizes, and basis for the auditor's conclusions** with regard to each standard provision for each audited facility, and shall **include recommendations for any required corrective action**.

(e) Auditors shall **redact any personally identifiable inmate or staff information from their reports**, but shall provide such information to the agency upon request, and may provide such information to the Department of Justice.

(f) The agency shall ensure that **the auditor's final report is published on the agency's website** if it has one, or is otherwise made readily available to the public.



What Now?



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How to Proceed

- Understand that everyone has work to do, don't get discouraged if you are just beginning
- Get the right people at the table as you would when any other big issue to address comes up
 - Critical to have buy in from top to bottom
- Have an understanding of what PREA does and does not do and what your obligations are



How to Proceed

- Read the standards and go through them carefully
 - List the standards
 - Compare to your current practice
 - What if anything do you need to do
 - Note any questions
- Get guidance from other experts in your agency and field



Get Started

Do your own work– you know your agency best

Reach out for help

- PRC will triage you to resources and people



Where You Can Get Assistance

- Grants and cooperative agreements from BJA
- National PREA Resource Center
 - <http://www.prearesourcecenter.org>
 - Training, technical assistance, regional meetings, PREA institute(s), webinars, general information, office hours
- Work of other agencies in this area
 - NIC <http://nicic.gov/>
 - OJJDP <http://www.ojjdp.gov/>



Where You Can Get Assistance

Other Work

- Posters
- Curricula
- Pamphlets
- Handbooks



Notes of Caution

Before you pay for something see what is already out there or what you can do in house

NO ONE but a certified DOJ PREA auditor can certify that what you are doing complies with the standards



Summary

1. PREA's Purpose
 - Zero tolerance
 - Increase ability to safely report
 - Outside trauma counseling
2. Prevalence of sexual victimization in correctional facilities;
 - Female staff offenders
 - Vulnerable groups
3. Responsibilities and obligations of the agency

