



PREA Standards In Focus

Standard in Focus

Prevention Planning

§ 115.15, 115.115, 115.215, 115.315 Limits to Cross-Gender Viewing and Searches

- (a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.
- (b) As of August 20, 2015, or August 20, 2017 for a facility whose rated capacity does not exceed 50 inmates, the facility shall not permit cross-gender pat-down searches of female inmates, absent exigent circumstances. Facilities shall not restrict female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision.
- (c) The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female inmates.
- (d) The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit.
- (e) The facility shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. If the inmate's genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.
- (f) The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

Purpose

To limit intimate bodily contact of inmates by staff and enable bodily privacy for both male and female inmates in order to prohibit abuse and trauma that might arise from that contact or viewing.

Implementation

- All prisons and jails, regardless of their size, must comply with the prohibitions against cross-gender pat-searches of female inmates. This provision of the standard was phased in: Small facilities (i.e., rated capacity not to exceed 50 inmates) had to be compliant with this standard by August 20, 2017. Larger facilities (i.e., rated capacity exceeding 50 inmates) were to be compliant as of August 20, 2015. Now, all prisons and jails must prohibit cross-gender pat-down searches of female inmates, absent exigent circumstances. All cross-gender pat searches of female inmates must be documented. A female's access to programming and other opportunities cannot be restricted in order to comply with this standard.

- Facilities must have an established practice prohibiting conduct of cross-gender strip searches or cross-gender visual body cavity searches except in exigent circumstances (i.e., temporary and unforeseen) or when performed by medical practitioners. All cross-gender strip or visual body cavity searches must be documented.
- It is important when determining whether a circumstance is “exigent,” such that it would allow cross-gender pat searches of female inmates or cross-gender strip or body cavity searches of male or female inmates, that facility staff understand what “temporary” and “unforeseen” mean in this context. For example, a typical staff shortage is not an exigent circumstance since staff shortages are often not unforeseen (they may happen frequently so that the facility should expect them), and a shortage may not be temporary if it is the result of the long-term absence of some staff. However, a riot that requires staff to respond to a temporary and unforeseen emergency would constitute an exigent circumstance. A natural disaster that prevents staff from reporting to work, or requires emergency measures within the facility, would also be an exigent circumstance.
- The facility must demonstrate that its policies, procedures and practices allow inmates to shower, perform bodily functions, and change clothes without being viewed by non-medical staff of the opposite gender except in exigent circumstances or when viewing is incidental to routine cell checks. To further this protection, opposite gender staff must announce their presence when entering an inmate housing unit, thus allowing inmates to “cover up”. To the extent that cameras are focused on an area in which inmates are likely to be undressed or toileting, such as showers, bathrooms, and individual cells, the cameras should only be monitored by officers or nonmedical administrators of the same gender as the inmates viewed through the camera.
- The facility must have an established practice that prohibits transgender or intersex inmates from being physically examined for the sole purpose to determine the inmate’s genital status.
- Facility security staff must be trained in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner. These searches also must be done in the least intrusive manner possible, consistent with security needs. It is never appropriate for a transgender or intersex inmate to be searched by both a male officer and a female officer, with the male officer searching the parts of the body that are anatomically male and the female officer searching parts of the body that are anatomically female. A case-by-case determination of the most appropriate staff member to conduct the search is necessary and should take into consideration the gender expression of the inmate.
- Inmates must be given the information they need in order to cover up when opposite-gender staff members, both custody and non-custody staff (includes e.g. clinicians, case workers, senior staff making supervisory rounds), are working in their housing areas. To ensure this, the facility must have a requirement and practice that opposite-gender staff announce their presence so that inmates can cover up. When the status quo of the gender-supervision on a housing unit changes from exclusively same gender, to mixed- or cross-gender supervision, the opposite-gender staff is required to verbally announce their arrival on the unit. Additional systems may be needed to supplement the verbal cross-gender announcement in units with inmates who are deaf or hard of hearing; however, additional or alternative systems are not sufficient alone and cannot replace the announcement.

Challenges

- Implementing the ban on cross-gender pat searches of female inmates in facilities where this may have been the normal practice for many years. Changing practices and routines that have been institutionalized over an extended period of time can prove challenging and requires extensive training and thorough understanding of the standards and the reason for the new procedures. It will be necessary for supervisory staff to observe and monitor practice to ensure the prohibitions are normalized and institutionalized.

- Ensuring that at the completion of training, all security staff in a facility fully understand how to conduct cross-gender pat searches and searches of transgender and intersex inmates in a professional and respectful manner. If the facility has a policy and practice of searches conducted in accordance with the inmate's gender identity or asking inmates to identify the gender of staff with whom they would feel most comfortable conducting the search, specialized and detailed training on such policies/practices is especially critical in order for security staff to conduct these searches professionally and respectfully according to agency policy. Putting this training into practice is often difficult because it represents a significant shift in the way searches are conducted.
- Ensuring the cross-gender announcements are effective, especially in very large facilities where a verbal announcement may be insufficient to warn inmates that opposite gender staff are entering the area. Refer to the FAQ from 2/19/14 on the examples of announcements that are compliant with this standard. The primary way to comply with the standard is by making an audible verbal announcement. However, a buzzer or bell may be acceptable if it is understood by all inmates to announce the entry of an opposite-gender staff person onto the housing unit, it cannot be confused with other sounds heard by inmates, and it is not a sound used for any other purpose.
- Implementing the cross-gender announcement in men's facilities when it has not previously been the practice, particularly when the perception of female staff is that the announcement in some way diminishes their ability to be effective or puts them in uncomfortable or even dangerous positions in relation to inmates. Ensure the cross-gender announcement is conducted in a manner that is not more obtrusive or frequent than required. In some cases, challenges arise because of already existent culture problems in the institution. Cross-gender announcements have been accepted practice in women's facilities for decades and have been effectively implemented in men's facilities without significant difficulty by many agencies. Agencies and facilities that have encountered problems or resistance from staff should seek technical assistance from the PRC by going to www.prearesourcecenter.org/training-technical-assistance/request-for-assistance.

Best Practices

- Facilities should have policy and practice that prohibits cross-gender strip and visual body cavity searches except in exigent circumstances or when performed by medical practitioners (see the discussion of exigent circumstances above). Policy should require documentation of these searches.
- Operationally, four options are in current practice for searches of transgender or intersex inmates/residents/detainees:
 - 1) searches conducted only by medical staff;
 - 2) pat searches of adult inmates conducted by female staff only, especially given there is no prohibition on the pat searches female staff can perform (except in juvenile facilities);
 - 3) asking inmates/residents/detainees to identify the gender of staff with whom they would feel most comfortable conducting the search; and
 - 4) searches conducted in accordance with the inmate's gender identity. See FAQ from 12/2/16.
- Frequent, quality training for staff on conducting searches in a professional manner is essential, especially when searches involve transgender or intersex individuals. If the facility has a policy that allows inmates to express their preference regarding the gender of the staff member to conduct their search, it is important that staff are well trained and understand this procedure.
- There are some best-practice strategies for ensuring the smooth implementation of this standard and, in particular, the announcement provision. They include quality training for staff regarding the purpose of this standard, modeling from leadership, and a repeated articulation for staff of the benefit to institutional culture when inmates can expect some bodily privacy.

Audit Issues

- Determining whether facilities that house female inmates prohibit cross-gender pat-down searches, absent exigent circumstances. The auditor will have to look at instances when cross-gender pat searches of female inmates took place and verify that the circumstances were indeed exigent, as described above.
- Determining if facilities are restricting female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this standard.
- Assessing whether facility staff have been properly and effectively trained on search policy, procedure and practice related to strip searches, bodily cavity searches, pat searches and searches of transgender and intersex inmates. This requires reviewing training curricula and logs, and interviewing staff and inmates.
- Observing whether inmates have the required privacy in housing units and cells when showering, toileting and changing clothes. This includes determining through observations and interviews of staff and inmates whether cross-gender announcements are the regular practice of the facility.
- Determining whether opposite-gender staff are monitoring cameras to the extent that cameras are focused on an area in which inmates are likely to be undressed or toileting, such as showers, bathrooms, and individual cells. An auditor will observe control rooms where camera feeds are viewed and determine whether inmate toilets, showers, or changing areas are visible to staff, and, if so, will also look at the staffing of those areas to ensure that opposite-gender staff are not viewing cameras where they may see inmates using the toilet, showering, or undressing.

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.

- **Lockups:** The following differences are noted:
 - No phased in effective dates.
 - No prohibition against cross-gender pat searches of any detainees (male or female).
 - Lockups typically do not have housing units. Therefore, the facility is required to have policies and procedures that require staff of the opposite gender to announce their presence when entering an area where detainees are likely to be showering, performing bodily functions, or changing clothing
- **Community Confinement:** The following differences are noted:
 - Community Confinement facilities typically do not have housing units per se. Therefore, the facility is required to have policies and procedures that require staff of the opposite gender to announce their presence when entering an area where residents are likely to be showering, performing bodily functions, or changing clothing.
- **Juvenile Facilities:** The following differences are noted:
 - No phased in effective dates.
 - Cross-gender pat-down searches of juvenile residents, both male and female, are prohibited except in exigent circumstances.
 - In facilities (such as group homes) that do not contain discrete housing units, staff of the opposite gender shall be required to announce their presence when entering an area where residents are likely to be showering, performing bodily functions, or changing clothing.

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 115.15 for the many related FAQ responses provided by DOJ to ensure your agency is aware of limits to cross-gender viewing and searches. The FAQs to date are as follows:
 - December 2, 2016. *Parameters of conducting a search of transgender or intersex inmates*
<https://www.prearesourcecenter.org/node/3257>
 - March 17, 2016. *Multiple questions regarding viewing*
<https://www.prearesourcecenter.org/node/3315>
 - December 18, 2015. *Viewing issues with inmates under “suicide watch”*
<https://www.prearesourcecenter.org/node/3833>
 - September 29, 2015. *Searches by confinement facility staff outside confinement facilities*
<https://www.prearesourcecenter.org/node/3600>
 - June 2, 2015. *What are the PREA standards and when are they effective?*
<https://www.prearesourcecenter.org/node/3198>
 - March 25, 2015. *Use of virtual scanner by opposite-gender staff*
<https://www.prearesourcecenter.org/node/3260>
 - October 22, 2014. *How is “housing unit” defined?*
<https://www.prearesourcecenter.org/node/3270>
 - October 22, 2014. *Observing strip search or visual body cavity search*
<https://www.prearesourcecenter.org/node/3258>
 - June 11, 2014. *Opposite-gender announcement requirement*
<https://www.prearesourcecenter.org/node/3263>
 - April 23, 2014. *Transgender staff*
<https://www.prearesourcecenter.org/node/3261>
 - April 23, 2014. *Inmates providing peer education to juvenile inmates*
<https://www.prearesourcecenter.org/node/3265>
 - February 19, 2014. *Cross-gender announcement requirements and examples*
<https://www.prearesourcecenter.org/node/3262>
 - July 3, 2013. *Search of transgender or intersex inmate by both male and female officers*
<https://www.prearesourcecenter.org/node/3259>
 - February 7, 2013. *Adult cross-gender viewing and searches*
<https://www.prearesourcecenter.org/node/3256>

- **PREA Essentials on the National PREA Resource Center Webpage**
www.prearesourcecenter.org/training-technical-assistance/PREA-essentials
- **Archived Webinars on the PRC Website**
 - December 9, 2014. *Understanding LGBTI Inmates and Residents*
<https://www.prearesourcecenter.org/training-and-technical-assistance/webinars/2670/understanding-lgbti-inmates-and-residents>
 - September 25, 2014. *Committing to Safety and Respect for LGBTI Youth and Adults in Correctional Settings: Lessons From the Field*
<https://www.prearesourcecenter.org/training-and-technical-assistance/webinars/2572/prea-action-committing-safety-and-respect-lgbti>
 - June 26, 2014. *Cross Gender Supervision and Legal Liability*
<https://www.prearesourcecenter.org/training-and-technical-assistance/webinars/2370/cross-gender-supervision-and-legal-liability>
 - December 18, 2012. *PREA Standards and Policy Development Guidelines for Lesbian, Gay, Bisexual and Transgender Individuals in Custody*
<https://www.prearesourcecenter.org/training-and-technical-assistance/webinars/1143/prea-standards-and-policy-development-guidelines>
 - November 13, 2012. *PREA Standards and Policy Development Guidelines for Lesbian, Gay, Bisexual and Transgender Youth in Custody*
<https://www.prearesourcecenter.org/training-and-technical-assistance/webinars/1094/prea-standards-and-policy-development-guidelines>
- **Training Resource:**
 - June 9, 2015. Guidance in Cross-Gender and Transgender Pat Searches, The Moss Group, Inc.
<https://www.prearesourcecenter.org/library/resources/policy-practice>
- **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/>

Notice of Federal Funding and Federal Disclaimer – This project was supported by Grant No. 2015-RP-BX-K001 awarded by the Bureau of Justice Assistance to Impact Justice. 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 Impact Justice, which administers the National PREA Resource Center through a cooperative agreement with the Bureau of Justice Assistance.