

# POWER HOUR

Chat with a PREA Expert

DOJ

Frequently Asked Questions  
(FAQs)

November 29, 2022

**IMPACT/JUSTICE**

NATIONAL  
**PREA**  
RESOURCE  
CENTER



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## National PREA Resource Center Mission

The mission of the PRC is to assist adult prisons and jails, juvenile facilities, lockups, community confinement, and tribal facilities in their efforts to eliminate sexual abuse by increasing their capacity for prevention, detection, monitoring, responses to incidents, and services to victims and their families.

# Logistics

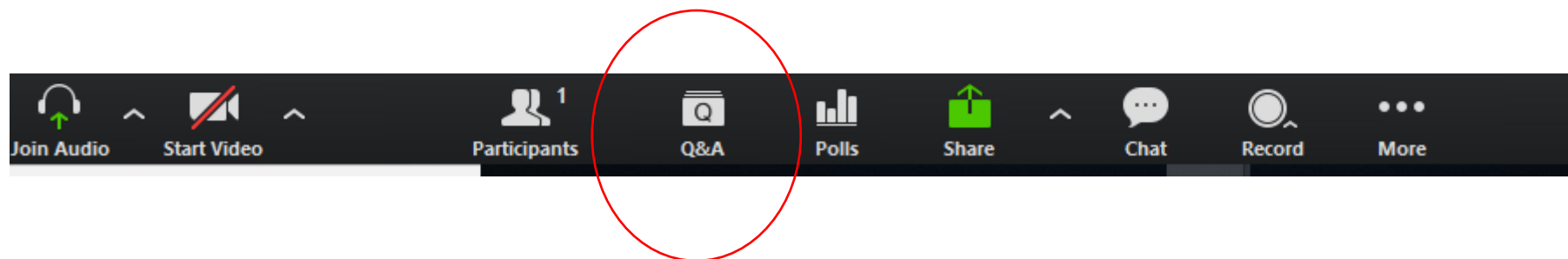
## Technical support

- Please contact the ZoomPro webinar support line at (888) 799-9666; select “2” when prompted to get support with technical difficulties.
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# Logistics

## Submitting questions

- To submit a question during the webinar, use the Q&A feature on your webinar toolbar, as seen below.
- Presenters will address the questions at the end of the presentation.





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# Learning objectives

At the conclusion of this webinar, participants will be able to:

1. Explain the history, purpose, and legal authority for issuing DOJ FAQs.
2. Understand how questions that are addressed in FAQs originate and how the DOJ develops responses.
3. Describe some examples of FAQs that are important for the field to understand.
4. Apply DOJ FAQs appropriately to implementation strategies and auditing practices.

# Why do we have PREA FAQs and how did they come about?



## PREA Final Rule is a Department of Justice regulation

- The Standards were developed as part of a rulemaking process governed by administrative law.
- Interpretive questions arose almost as soon as the PREA Standards were issued in May 2012, as is expected with any new law or rule.
- At the first PREA auditor certification training in the spring of 2013, the majority of interpretive questions could not be answered without guidance from the DOJ.
- Frequently Asked Questions arise from differing or conflicting interpretations, unique circumstances, unanticipated challenges of applying legal language to real world situations, and common misunderstandings.
- It would be impossible for auditors to audit consistently and agencies to comply consistently with the Standards without interpretive guidance to answer these questions.

# What is the purpose of interpretive guidance?



## Interpretive guidance is regularly issued by federal agencies.

- Clarifies ambiguities and perceived ambiguities in a regulation's meaning.
- Helps create uniformity in interpretation.
- Helps those affected by regulations to predict outcomes.
- Explains an agency's understanding of regulations and how it will apply and enforce them.

# Why does interpretive guidance carry weight?

**Congress is presumed to have given federal agencies authority to interpret their regulations.**

- “Because applying an agency's regulation to complex or changing circumstances calls upon the agency's unique expertise and policymaking prerogatives, we presume that the power authoritatively to interpret its own regulations is a component of the agency's delegated lawmaking powers.” *Martin v. Oshrc*, 499 U.S. 144 (1991).
- This is because “the agency that promulgated a rule is in the ‘better position [to] reconstruct’ its original meaning.” *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019) (Kagan, J, plurality opinion) (citing *Martin*).



# When does agency interpretation matter in a court?

Courts follow agency interpretation when it:

- Is rendered as an official position.
- Is related to the agency's substantive expertise.
- Reflects fair and considered judgment.

*Kisor v. Wilkie*, 139 S. Ct. 2400 (2019)



# Why should facilities follow FAQ guidance?

**Because complying with the PREA Standards includes following it.**

- Auditors are required to follow FAQs as part of their certification.
- DOJ trains auditors to assess compliance with the PREA Standards, which are federal regulations.
- If your facility has a situation that matches an FAQ, auditor will determine compliance with the Standard guided by FAQ.
- Therefore, it is important for facilities to track and follow FAQs relevant to their situations.



# How does DOJ issue PREA FAQs?

## Through the DOJ PREA Working Group

- The Working Group includes representatives from many parts of DOJ, including BOP, OVW, DAG's office, BJA/PMO, OJJDP, and Civil Rights Division, US Marshals Service, OVC.
- PRC identifies issues needing further interpretation for the field.
- New questions with background information circulated among Working Group.
- Group meets, discusses, and agrees on interpretation.
- Working Group member drafts and circulates FAQ.
- Group revises and finalizes.
- FAQ issued and posted on PRC website.
- FAQ effective as soon as adopted by DOJ unless indicated otherwise.



# Examples

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# 115.51(b) - External reporting entities

## Are rape crisis centers or other victim service providers appropriate entities to serve as external reporting entities, pursuant to Standard 115.51 (b)?



- DOJ answered, “Generally, no.” The lengthy response can be accessed on the PRC website.
- This FAQ did not create a new rule, nor change the existing Standard.
- Confusion and lack of clarity led to a practice over time that puts rape crisis centers in conflict with existing law, and exacerbated misapplication of both Standards 115.51 (b) and 115.53.
- FAQ clarified existing laws and aimed to clear up longstanding confusion about the difference between the requirements in 115.51 (b) and 115.53.

# 115.41(f) and 241(f) - Reassessment of risk

**115.41(f): Within a set time period, not to exceed 30 days from the inmate's arrival at the facility, the facility will reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.**



- Facility must reassess risk based on new relevant information received since intake.
- Must do so not more than 30 days after intake.
- Question: must every incarcerated person be reassessed or only those for whom new information has arrived?

# 115.41(f) and 241(f) - FAQ



## Answer: The Standard requires both.

- 115.41(g) requires reassessment whenever new information arrives.
- 115.41(f) requires affirmative reassessment, but not from scratch. Must look and inquire about new information, including talking to the incarcerated person.
- FAQ explains:
  - Some risk factors can change in first 30 days.
  - Some information can only be learned by talking with the incarcerated person.
  - DOJ recognized in issuing the Standard that more information will become available after opportunity to interview, assess, and observe, and as it arrives from other agencies.

## Stories and Tips

- FAQs can help clear up differences of interpretation between auditors and agency personnel.
- PREA auditors must:
  - “Conduct audits according to the methodology provided in this Handbook, the PREA Auditor Candidate Training, FAQs issued by the DOJ PREA Working Group, and any other continuing education and guidance provided by the PMO and PRC...”
  - “Continually seek to maintain and improve their professional knowledge, skills and competence, including maintaining familiarity with all FAQs...”
- PREA Coordinators and Compliance Managers must review FAQs and think about which apply.

# Questions & Answers



# PRC is Hiring!

Current Openings - <https://impactjustice.org/about-us/careers/#current-openings>

- Senior Program Specialist, National PREA Resource Center  
Audit Oversight
- Senior Program Associate, National PREA Resource Center  
Culture Change/Training & Support

Application deadline for both - December 8, 2022

# PRC library

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**FEATURED RESOURCE**

**WEBINAR**

**Power Hour: Chat with a PREA Expert on Standard 115.32**

**STANDARDS:**

115.32

**FACILITY:** Community Confinement  
Juvenile Facility (+2)

**TERMS:** Volunteers  
Contractors (+2)

**WEBINAR**

**PRC Website Revision: Overview and Q&A**

**STANDARDS:**

None

**FEATURED RESOURCE**

**WEBINAR**

**Developing a PREA-Compliant Language Access Plan for Incarcerated...**

**STANDARDS:**

115.16, 115.21, 115.51, 115.53

**FACILITY:** Community Confinement  
Juvenile Facility

**TERMS:** Accessibility  
Limited English proficient

**TOOL: AUDIT**

**Audit Report Template - Juvenile Facilities**

**STANDARDS:**

115.401

**FACILITY:** Juvenile Facility

**TERMS:** Audit  
Audit Instrument (+2)

## Implementation

Implementation | Training | Request for assistance

PREA Standards

PREA toolsets

PREA in action

Training

PREA Academy

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Webinars

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Request for assistance

Request Assistance

### Request for assistance

Please fill out the form below in order to request PREA-related training and/or technical assistance for your jurisdiction or agency. The more detail provided in your request will improve the PREA Resource Center's (PRC) ability to meet your needs. For jurisdictions less familiar with PREA, the PRC would encourage you to browse the resources on the [Where to begin page](#). If your jurisdiction has general questions or comments for the PRC you can communicate those through the [Contact us form](#).

To submit information on complaints or concerns about the conduct of a DOJ-certified PREA auditor, please refer to the [Auditor feedback form](#).

The PRC collects the information below in order to efficiently route and respond to inquiries. While all fields are not required, please fill out as much information as possible so that we may better assist you.

# Request assistance

Jurisdictions can request assistance by completing a web form on the PRC website under the “Implementation” tab and clicking “Request for assistance” under “Training.”



The screenshot shows a web browser window with the address bar displaying "prearesourcecenter.org/mailling-list-signup". The page title is "Mailing List Signup". The form contains the following fields and elements:

- First name\*
- Last name\*
- Phone
- Email\*
- Confirm email\*
- Do you wish to name your employer?\*
- 

# Sign up for our PRC Newsletter

Jurisdictions can sign up for the PRC Newsletter by completing a web form on the PRC website under the “How to use this site” tab and going to Frequently Asked Questions and clicking “Subscribe to our newsletter.”

# Dana Shoenberg

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For more information about the National PREA Resource Center, visit [www.prearesourcecenter.org](http://www.prearesourcecenter.org).

To ask a question, please visit our [Contact us](#) page.

**Thank you!**

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# Notice of federal funding and federal disclaimer

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