

Power Hour:
Chat with a PREA Expert

*PREA Standard 115.12 – Contracting with Other
Entities for the Confinement of Inmates*

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Welcome and Introductions



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Act Resource Center (PRC)

The National PREA Resource Center

The mission of the PRC is to assist adult prisons and jails, juvenile facilities, lockups, community corrections 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.

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Presenter



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What is a “Contract?”

Not defined in the Standards.

In the PREA context, the Department has consistently construed “the term ‘contract’ broadly to include, among other things, formal or informal arrangements, intergovernmental services agreements, and other types of agreements...” See FAQ Sept. 28, 2015.

Basic legal definition:

An agreement between two or more persons or entities in which there is a promise to do something in return for a valuable benefit known as consideration.

Standard Requirements

- (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.

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

What is NOT covered by this standard?

Facilities operated by a private organization **on behalf of** the confinement agency.

These facilities are generally **considered to be the confinement-agency's facility** for purposes of PREA, and have **identical PREA obligations as the other parent-agency's facilities**.

Reference:

§115.401(a)&(b) (audit timeline)

§115.501(b) (state certifications; operational control)

What is the difference?

A facility operated by a private organization “on behalf of an agency” is generally **controlled by the parent** confining agency. Typically, such a facility has a **dedicated (or primarily dedicated) inmate population** in the **legal custody of the parent** agency. In addition, such facilities generally operate within the confines of the **parent agency’s policies, procedures, and practices**. Such facilities are usually **owned by (or controlled by) the parent** agency. The parent agency typically contracts with private correctional entities **to operate** the facilities for finite and/or renewable durations.

What is the difference?

By contrast, a mere “contract for the confinement of inmates” between a public agency and a private (or another public) agency pursuant to standard 115.12 is generally an arrangement to confine inmates for a fixed or variable fee or on a per diem basis. This arrangement is typically considered a rental of bed space for holding inmates. Contracted facilities in this category will often rent bed space or confine inmates from multiple external public agencies. While the contract may impose a number of requirements or standards on the contracted agency, it is generally a **much lower level of operational control than a facility “operated on behalf of” the contracting agency** as described in the paragraph above.

FAQ <https://www.prearesourcecenter.org/node/3275>

What is the difference in effect?

Facilities operated by a private organization **on behalf of** the confinement agency are counted as the parent-agency's facility for most PREA purposes, and thus have the same compliance obligations.

A parent agency may not be considered fully compliant with the Standards if these facilities are not fully compliant.

What types of arrangements are NOT included?

The Department has made clear that certain types of arrangements do not constitute “contracts for confinement” under this standards.

1. Certain temporary placements to address a function of the judicial system or law enforcement agency.
2. Certain interstate compacts.
3. Certain statutory obligations where an agency has no discretion as to use of particular facilities.

1. Certain temporary placements...

When a local facility houses inmates transferred **temporarily** from another facility or agency **for a function necessitated by the judicial system or law enforcement** agency, such as **adjudication of parole or probation violations or for a court appearance or testimony**, the arrangement does not, in and of itself, constitute a contract for the confinement of inmates for the purposes of Standard 115.12... even if the local jurisdiction is paid a per diem or otherwise compensated pursuant to state statute or informal agreement. The state/agency need not require PREA compliance by the local facilities to maintain arrangements with regard to **temporary** housing for the purpose of **[adjudication of] probation or parole violations or temporary transfers for court appearances or testimony**.

<https://www.prearesourcecenter.org/node/3270>

2. Certain interstate compacts...

Interstate transfers of inmates between public confinement agencies pursuant to the Interstate Agreement on Detainers (18 U.S.C. App. 2) or pursuant to existing national or regional Interstate Compacts for Corrections (**authorized by state statutes**) are exempt from the requirements set forth in standards 115.12, 115.212, and 115.312 **where: (1) compensation for day-to-day inmate expenses is achieved only through reciprocal transfers of inmates; and (2) the transfers are primarily initiated by the inmate or with the consent of the inmate.**

<https://www.prearesourcecenter.org/node/3269>

3. Certain statutory requirements...

When a **state agency** has [a statutory obligation to place inmates in local facilities, but has] **no discretion regarding which local or private confinement facility a state inmate is placed in**, then the arrangement does not constitute a confinement of inmates for the purposes of 115.12 (115.212 and 115.312), even if the state pays the local jurisdiction a per diem pursuant to state statute or informal agreement.

By contrast, if the state statute provides a state agency **discretion over which** local confinement facility to place the inmate in, and the state provides financial compensation to the local facility or agency, then the arrangement would be considered a contract under the standards.

<https://www.prearesourcecenter.org/node/3271>

Standard Requirements (Again)

- (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.

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

Naming Conventions

- “**Contracting agency**” shall refer to the originating agency – the agency sending an inmate to a contracted placement.
- “**Contracted facility**” shall refer to the facility where the inmates are ultimately placed.
- “**PREA**” shall refer, generally, to the Standards promulgated under the Act.

Purpose of the Standard

This standard places **oversight responsibility on public agencies** that contract with private agencies or other entities for the confinement of their inmates, detainees, or residents by requiring the public agencies to impose a contractual obligation to comply with the PREA standards.

This 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.**

Implementation -- Contracting

- 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 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.**

Implementation – Contract Monitoring

- **Review audit results** to ensure that all contracted facilities are in full compliance with the standards. If a contract facility requires corrective action or does not meet the standards upon issuance of a Final Report, the agency must require that the contracting facility **make all necessary remedial changes** to come into compliance with the PREA standards.
- The agency must monitor the facility's compliance with PREA and should outline the role of the contract monitor to ensure that they have **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.**

FAQ re Compliance Monitoring (2013)

Q. [W]hat level of contracting monitoring is actually required by the contracting agency?

A. In years when the contract facility is audited, review of the audit report will meet the monitoring requirements. In other years, monitoring may be done in the same manner the agency verifies compliance with other contract terms, which may vary (e.g. on-site agency staff, inspections, documentation, etc.). Whatever monitoring method used should provide the agency assurances that the contractor is complying with the PREA standards.

<https://www.prearesourcecenter.org/node/3267>

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**.
- **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.

Challenges

- **To determine 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, and make a judgement about the point at which that facility is no longer meeting its obligations under its contract.

Early 2014 DOJ Guidance

Q. Is a public agency that contracts with another public or private agency for the confinement of inmates... out of compliance with Standard 115.12... if the contracted facility is determined to be noncompliant with one or more provisions of the PREA Standards...?

A. Not necessarily. ... The Standard does not require that the contracted facility be immediately and perfectly compliant with the Standards. Rather, **the contracted facility must demonstrate a commitment to be PREA compliant and be actively and effectively working toward achieving compliance with all the Standards. The contracted agency should be able to demonstrate... substantive progress toward achieving such compliance, and the progress should be documented.**

<https://www.prearesourcecenter.org/node/3268>

Early 2014 DOJ Guidance

However, agencies may not rely on the 2014 guidance *indefinitely*.

For example, an agency contracting with a noncompliant facility in 2014 may not continue to place inmates, detainees, or residents into such facility **over multiple audit cycles** despite the facility having made slow, incremental, and documented steps toward achieving compliance.

The Department will likely issue guidance on this issue **in the near future**.

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.

Audit issues

- The auditor must **verify that the compliance monitor has fulfilled all monitoring obligations.**
- Auditors must ensure that **all agreements that amount to contracts**, and even where written contracts do not exist, **impose the requirements** that the contracted facility comply with PREA and impose a contract monitoring responsibility on the agency.
- **Auditors may need to consult external sources of information to determine if there are undisclosed applicable contracts.**
- If a contracted facility has **failed a PREA audit**, the auditor will have to **determine the circumstances in which an agency will terminate the contract** and the 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

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>
- **Standards in Focus** on the National PREA Resource Center Webpage:
<https://www.prearesourcecenter.org/StandardsinFocus>
- **PREA Essentials** on the National PREA Resource Center Webpage:
<https://www.prearesourcecenter.org/training-technical-assistance/PREA-essentials>

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/>

Questions & Answers



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LEGAL



In this section of the library you will find information about the Prison Rape Elimination Act of 2003 and related laws and legal issues.

See all Legal articles >

NEWS COVERAGE



In this section of the library you will find all PREA-related news articles, including news about the law, implementation of standards, and federal and local initiatives.

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RESEARCH



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RESOURCES



In this section of the library you will find tools such as training materials, handbooks, policy development toolkits, and a list of resources for survivors.

See all Resources articles >

STANDARDS



In this section of the library you will find the federal PREA standards and information about the development, implementation, compliance with, and enforcement of the standards.

See all Standards articles >



BREAKING NEWS: The Department of Justice's national PREA standards were released on May 17, 2012. Read the final standards [here](#).

Welcome!

The PREA Resource Center (PRC) is working to address sexual safety in confinement, and to assist state and local jurisdictions with implementation of the Department of Justice [national PREA standards](#). Visit the library for research and guidance on implementation of the standards; the Training and Technical Assistance section of the website to learn about the PRC's four strategies for assisting the field with PREA implementation; and [sign up for upcoming webinars here](#).

Need Help?

The PREA Resource Center provides training and technical assistance to adult and juvenile corrections and law enforcement agencies seeking to prevent, detect, and respond to sexual abuse in confinement.

[REQUEST ASSISTANCE >](#)

Resources for survivors and their families are available [here](#).



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Field Initiated TTA Request

Request for Assistance

Fill out the form below in order to request PREA-related training and/or technical assistance for your jurisdiction or agency.

Name of jurisdiction/agency making request

Name and position/title of person making request

Contact Information of Requester

Address:

City/Town:

State:

ZIP:

Email:

Phone:

Point of contact for the jurisdiction/agency:

Statement of Problem:

Describe, as specifically as possible, the condition or issue for which the TTA is requested.

Previous Efforts:

Have there been any previous attempts to address the condition or issue for which the TTA is requested? If so, what strategy(ies) were taken and what were the results?

Training and Technical Assistance:

Describe what type of training or technical assistance you would like to receive.

Targeted Audience/Recipients:

Search the PREA
Library for Articles
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Keyword

SEARCH

Sign Up for Updates

The PREA Resource Center will provide information on upcoming events, new resources to our library, and PREA-related issues in the news through its newsletter. Sign up to receive our newsletter via email.

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

<https://www.prearesourcecenter.org/>

For more information about the
National PREA Resource Center,
visit www.prearesourcecenter.org.

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

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Bureau of Justice Assistance

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