

Power Hour: Chat with a PREA Expert
on PREA Standard 115.17 -
Hiring and promotion decisions

March 6, 2019

Welcome and Introductions



Michelle Duhart

Senior Project Manager

Training and Technical Assistance

**The National Prison Rape Elimination
Act Resource Center (PRC)**

The National PREA Resource Center - Mission

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.

Logistics - Technical Support

Technical Support

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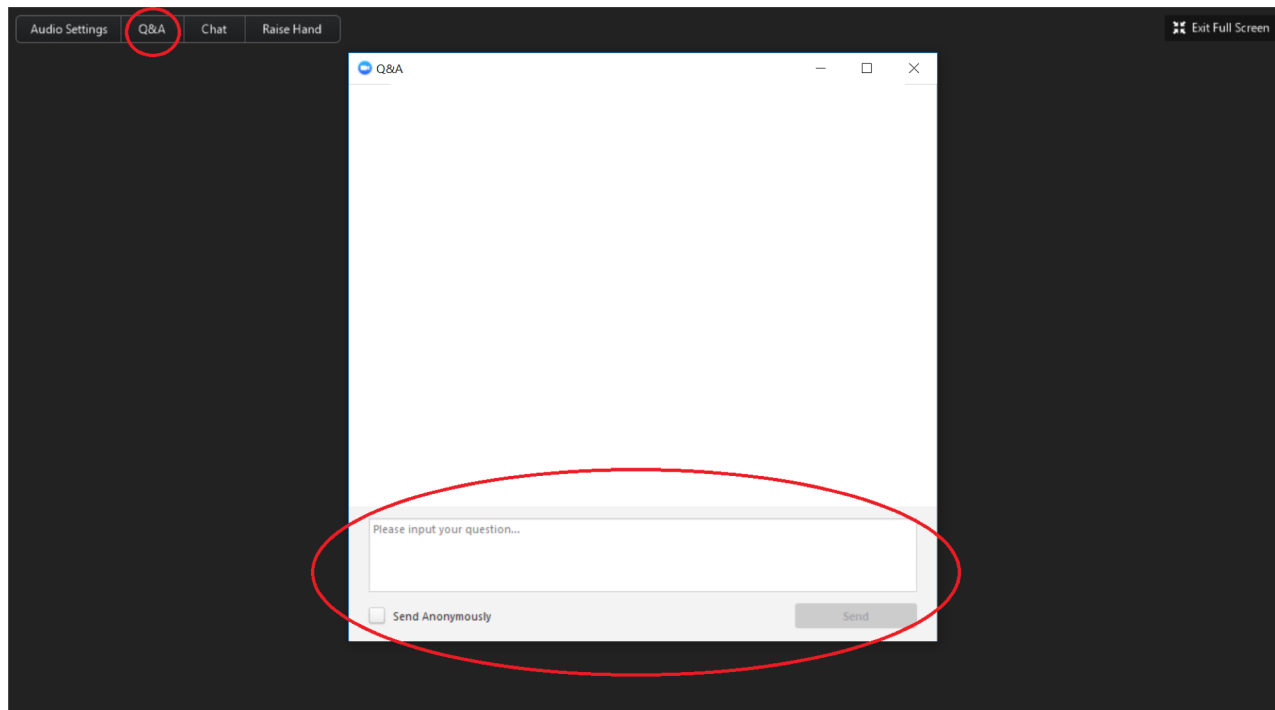
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Logistics – Submitting Questions

Submitting Questions

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Presenter



Marion Morgan

Senior Program Manager

Auditor Field Training Program

**The National Prison Rape Elimination
Act Resource Center (PRC)**

Certified PREA Auditor – Adult and
Juvenile Facilities

NATIONAL
PREA
RESOURCE
CENTER

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Hiring and Promotion Decisions

Purpose of the Standard

To prevent staff sexual misconduct by ensuring that individuals who have a prior history of being sexually abusive are not hired or contracted into positions where they may have contact with inmates; and to ensure that the agency is aware of any substantiated acts of sexual abuse or sexual harassment perpetrated by existing staff to prevent the promotion of that staff and to ensure that any other appropriate action be taken to protect inmates.

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Hiring and Promotion Decisions

Standard Requirements

- (a) The agency shall not hire or promote anyone who may have contact with inmates, and shall not enlist the services of any contractor who may have contact with inmates, who— i. Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997); ii. Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or iii. Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.
- (b) The agency shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with inmates.
- (c) Before hiring new employees who may have contact with inmates, the agency shall: i. Perform a criminal background records check; and ii. Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.
- (d) The agency shall also perform a criminal background records check before enlisting the services of any contractor who may have contact with inmates.

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Standard Requirements

- (e) The agency shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates or have in place a system for otherwise capturing such information for current employees.
- (f) The agency shall ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.
- (g) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination
- (h) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

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Hiring and Promotion Decisions

Implementation

- The agency must implement hiring and promotion practices, and devise methods to collect and document information that will demonstrate compliance with the requirements reflected in the standard.
 - In most cases, these practices and methods will be communicated through the agency's policy and procedures manual. Confirmation that these practices and/or policies are being implemented will usually be captured in employment applications and interview notes, personnel reviews, and evidence of criminal background and records checks.
 - Achieving compliance with the standard may entail reviewing, updating, and incorporating the requirements into current practices and policies, and ensuring the staff responsible for hiring and promoting are familiar with the standard and these changes.

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Hiring and Promotion Decisions

Implementation Cont'd

- The agency may not hire or promote any employee or enlist the services of any contractor who may have contact with inmates, which includes anyone who provides recurring services to the agency, if the agency knows that person to have a history of sexual abuse described in the standard. That includes:
 - Having engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (this means there is some administrative adjudication substantiating that the sexual abuse occurred in an institution, defined as state facilities for people who are mentally ill, disabled, or retarded, or chronically ill or handicapped; residential care or treatment facilities for juveniles; and facilities that provide skilled nursing, or intermediate or long-term care, or custodial or residential care);
 - Having been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse;
 - Having been civilly or administratively adjudicated to have engaged in any of the activity described above.

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Hiring and Promotion Decisions

Implementation Cont'd

- Agencies are required to consider any incidents of sexual harassment in determining whether to hire, promote, or contract with anyone who may have contact with inmates. This consideration must be formal and documented in each case in a manner that an auditor can review.
- Prior to hiring new employees or enlisting contractors who may have contact with inmates, agencies must conduct a criminal background records check, which at a minimum means the agency must access the standardized criminal records databases maintained and widely used by law enforcement agencies. For prospective employees, the agency must also make best efforts to contact all previous institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of sexual abuse.
- The agency must directly ask all applicants for a new position or a promotion who may have contact with inmates about any previous incidents of institutional or community sexual abuse in interviews or written applications. The agency must take similar steps with employees up for review by directly asking them about any prior incidents in interviews or written self-evaluations. In addition to these measures, employees must be required by the agency to affirmatively disclose any sexual misconduct.

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Hiring and Promotion Decisions

Implementation Cont'd

- The presumptive disciplinary action for failing to disclose information regarding prior sexual misconduct or providing false information shall be termination.
- Unless prohibited by law, the agency is required to provide information regarding substantiated incidents of sexual abuse or sexual harassment involving a former employee when contacted by a new prospective employer of that person. This requirement aims to address the fact that staff may resign from one correctional facility (in lieu of being terminated) because of an incident or investigation of staff sexual abuse or harassment and seek employment at another correctional facility.

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Hiring and Promotion Decisions

Challenges

- Dedicating staff resources to ensure screenings of prospective employees and contractors are thorough and timely.
- Devising measures to ensure that current employers and contractors are automatically screened at 5-year intervals.
- Maintaining clear and detailed records of employee conduct—both for ensuring that any incidents of sexual abuse or harassment are considered during employee reviews and for being prepared for any request regarding the employee's conduct from a future prospective employer.
- Obtaining and providing information about substantiated allegations of sexual abuse or sexual harassment involving former employees, because many **agencies have policies** that prohibit them from providing such information.

(h) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

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Hiring and Promotion Decisions

Best Practices

- The PREA Coordinator should become familiar with hiring and promotion practices and ensure not only that practices are compliant, but that compliant practices are adequately documented.
- Hiring staff/human resource departments within correctional agencies should coordinate with internal investigators to determine who will conduct criminal, administrative, and institutional investigations and background checks and decide how information will be communicated and maintained.
- Staff who conduct interviews with applicants and managers who conduct reviews with employees should be trained on how to ask individuals about prior sexual misconduct.

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Hiring and Promotion Decisions

Audit issues

- Auditors will review policies, application materials, personnel review materials, contracts for services, and investigation and/or personnel files. They will also conduct interviews with investigators, hiring staff, and current employees and ask questions about how hiring and promotion decisions are made.

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Standard Variations

In addition to Prisons and Jails, the requirements in §115.17 apply to Lockups (§115.117), Community Confinement Facilities (§115.217), and Juvenile Facilities (§115.317).

The following variations in the standard are noted for **Juvenile Facilities**:

- In addition to conducting criminal records background checks of all potential employees and contractors, the agency must, in the case of potential employees, consult the child abuse registry maintained by the State or locality in which the employee would work, and in the case of potential contractors, consult any applicable child abuse registries.
- Best practice would be to consult child abuse registries in states where the applicant previously worked.

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Resources

- **Frequently Asked Questions** (FAQs) on the PREA Resource Center (PRC) Website
- **PREA Essentials** on the National PREA Resource Center Webpage
- **Auditor Compliance Tool** on the National PREA Resource Center Webpage
- **Auditor Report Template** on the National PREA Resource Center Webpage
- Always check the following sources for excellent training on PREA.
 - **National Institute of Corrections** (NIC)
 - **End Silence: The Project on Addressing Prison Rape**
- For a comprehensive list of archived webinars and resources related to this standard, please check the relevant **PREA Standard in Focus**.

Questions & Answers



For More Information

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

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

Michela Bowman

PRC Co-Director

mbowman@prearesourcecenter.org

Jenni Trovillion

PRC Co-Director

jtrovillion@prearesourcecenter.org

Michelle Duhart

Sr. Program Manager

Training & Technical Assistance

mduhart@prearesourcecenter.org

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