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PREA Compliance and Governor Certification

March 14, 2014
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*With the Bureau of Justice Assistance and the PREA
Resource Center*

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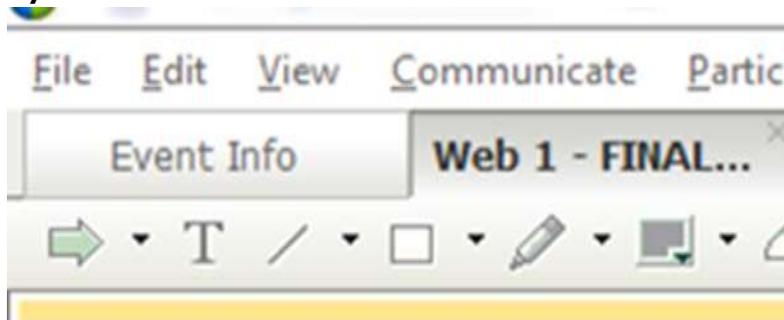
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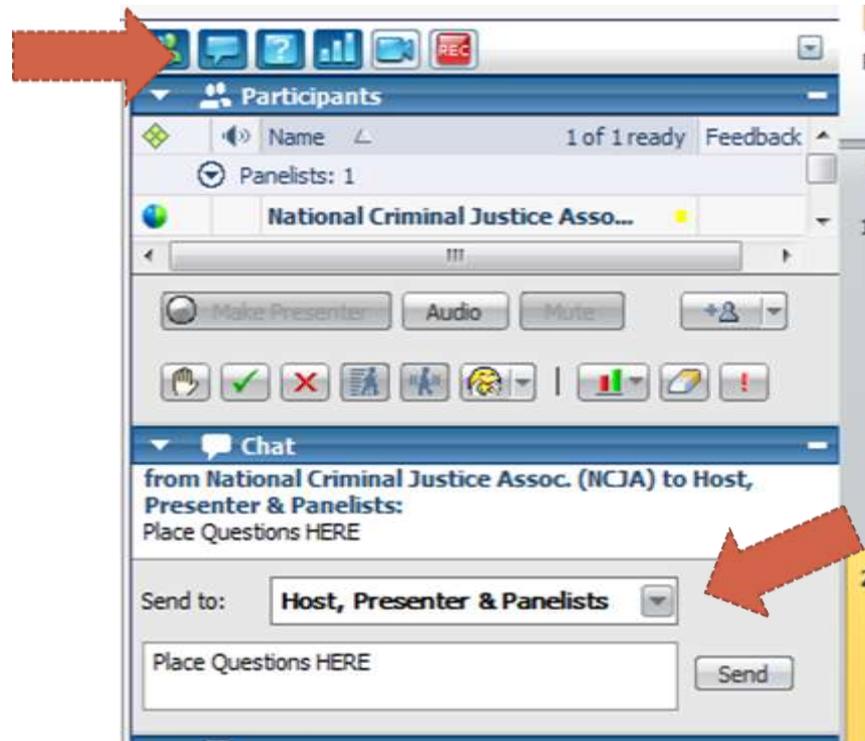
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BJA
Bureau of Justice Assistance
U.S. Department of Justice



NCCD | National Council on
Crime & Delinquency

NCJA and NGA present:
PREA Compliance and Governor
Certification

with the Bureau of Justice Assistance and
the National PREA Resource Center
March 14, 2014

Presentation Agenda

- Welcome and Introductions
 - Jeff McLeod, National Governors Association
 - Mary Lou Leary, Principal Deputy Assistant Attorney General, Office of Justice Programs, US Department of Justice
- Brief overview of PREA and its requirements
- Details on the Governor's certification process and the potential grant reductions
- The latest information on PREA audits
- Review of the resources available
- Participant questions

Presenters

- Ruby Qazilbash, Associate Deputy Director for Justice Systems, Bureau of Justice Assistance
- Tracey Trautman, Deputy Director for Programs, Bureau of Justice Assistance
- Will Bronson, Deputy Associate Administrator Budget and Administration Division, Office of Juvenile Justice and Delinquency Prevention
- Kim Galvan, Program Manager, Office on Violence Against Women
- Jenni Trovillion, Co-Director, National PREA Resource Center

PREA Purposes and Requirements

PREA's Purpose

To prevent, detect, and respond to sexual abuse in confinement

But sexual abuse is never a laughing matter, nor is it punishment for a crime. Rather, it is a crime, and it is no more tolerable when its victims have committed crimes of their own. Prison rape can have severe consequences for victims, for the security of correctional facilities, and for the safety and well-being of the communities to which nearly all incarcerated persons will eventually return.

-DOJ Final Rule

PREA Basics

The Prison Rape Elimination Act of 2003 passed unanimously through both houses of Congress

- PREA applies to:
 - » Prisons and jails
 - » Juveniles
 - » Lockups
 - » Community confinement
- PREA created:
 - » Data collection efforts
 - » A grant program
 - » A bipartisan commission
 - » A mandate to DOJ to promulgate regulations

PREA Timeline

- 2003:** Passage of PREA legislation
- 2009:** DOJ receives the commission's draft standards and begins the rulemaking process
- 2012:** DOJ issues final standards, which are immediately applicable to the Federal Bureau of Prisons
- 2013:** First three year audit cycle begins August 20, 2013
- 2014:** Federal fiscal year 2014 is the first year for potential grant reductions through DOJ grants to states

PREA's Relevant Components

The **statute** establishes

- Annual Governor certification requirement
- DOJ grants reallocation or reduction
- Timeline for first reallocations or reductions – FY2014 grants

The **standards** establish

- Audit process wherein facilities seeking PREA compliance must be audited at least every three years
- One third of each facility type operated by an agency, or private organization on behalf of an agency, audited each year
- Timeline for audit cycle – began August 2013

Governor's Certification and DOJ Grant Impacts

Governor's Certification

What are the Governor's options?

Per the PREA statute:

- 1) submit a certification that the state is in full compliance
- 2) submit an assurance that not less than five percent of its DOJ funding for prison purposes shall be used only for the purpose of enabling the state to adopt and achieve full compliance with the PREA standard

or

- 3) accept a five percent reduction in such grants



Governor's Certification

When is the certification due?

For FY2014 – due May 15, 2014

Why then?

Latest it can occur after which DOJ must run formulas to calculate the FY2014 grant program allocations

Governor's Certification

To whom does the Governor's certification apply?

- All facilities in the State under the **operational control** of the State's executive branch, including facilities operated by private entities on behalf of the State's executive branch
- Does not encompass those facilities outside the operational control of the governor; namely, those facilities that are under the operational control of counties, cities, or other municipalities, or privately-operated facilities not operated on behalf of the State's executive branch

Governor's Certification

What is the definition of operational control?

- Not defined in standards
- Guidance to consider:
 - Does the executive branch have the ability to mandate PREA compliance without judicial intervention?
 - Is the State a unified correctional system?
 - Does the State agency contract with a facility to confine inmates/residents on behalf of the State agency, other than inmates being temporarily held for transfer to, or release from, a State facility?

Governor's Certification

What information does the Governor reply upon?

- Most recent agency audit results
- Audits are a primary, but not the only, factor
- Other relevant information
 - Self audits/assessments using available instrument

Grant Funding Impact

What grant programs are impacted in reallocation or reduction?

In FY2014:

Office of Justice Programs

1. BJA's Edward Byrne Memorial Justice Assistance Grant (JAG) Formula Program
2. Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Juvenile Justice and Delinquency Prevention Act Formula Grant Program

Office on Violence Against Women

1. STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant Program

Grant Funding Impact - BJA

Justice Assistance Grant (JAG) reduction:

- The 5% reduction will be assessed only on the State's JAG grant funds, minus any mandatory Variable Pass Through amounts.
- States that implement PREA have an ongoing obligation for compliance so the reduction will be applied each year the Governor does not certify full compliance with the PREA standards.
- If a Governor provides an assurance that 5% of funds will be used to achieve full compliance with the standards, BJA will provide a separate grant application to SAAs for these funds.

Grant Funding Impact - BJA

Justice Assistance Grant (JAG) reduction:

- Authorized uses of funds for full compliance include preparing for and conducting audits, training and education and screening.
- BJA has additional information on penalty calculations and other questions available on our website:
https://www.bja.gov/ProgramDetails.aspx?Program_ID=59

Grant Funding Impact-OJJDP

OJJDP affected programs:

- Juvenile Justice and Delinquency Prevention Act (JJDP A) Formula Grant Program
 - Juvenile Accountability Block Grant (JABG) would also be impacted should there be an appropriation in the future
- PREA Implementation plan:
 - PREA reduction for non-compliance will be taken from the portion of JJDP A funding that the state retains, to include P&A (JJDP A requires 66 2/3 for localities, 33 1/3 state retained funding).
- Funds from states that do not provide DOJ with a Certification or Assurance comply with PREA (or submit assurances) will be distributed proportionally to the other states that submit a certification or assurance.

Grant Funding Impact-OJJDP

- Once the state submits assurances, OJJDP will invite those states to submit a separate application for those funds to be used towards PREA compliance activities.
- OIG may well monitor DOJ's use of grant funds to ensure we're acting in accordance with PREA.
- Important to note:
 - If a state is compliant with the standards as they apply to the state's juvenile facilities, and out of compliance only with adult facilities, the state would not be subject to the 5% reduction in OJJDP Formula Grant funding.

Grant Funding Impact-OJJDP

JJDPA PREA Reduction Example

State of X receives \$100,000 in JJDPA Formula grant funds:

- 5% may be used for the State Advisory Group
 - » ~\$5,000.00
- \$95,000.00 left for programming

- State must provide 66 2/3 of funds to localities
 - » ~\$62,700.00

- 33 1/3 state retained portion
 - » ~\$32,300.00

- PREA reduction would occur on 5% of state retained portion of \$32,300.00
 - » ~\$1,615.00 would be the PREA reduction

Grant Funding Impact-OJJDP

JABG PREA Reduction Example

State of X receives \$100,000 in JABG program funds (no JABG appropriation in FY14):

- States must pass through 75% of the total JABG funds to eligible units of local government.
 - ~\$75,000 must be sent to local governments
- PREA reduction would occur on state retained funds.
 - ~\$25,000 in state retained funds
- PREA reduction would occur on 5% of state retained funds.
 - ~\$1,250.00 would be the PREA reduction

OVW STOP Violence Against Women Formula Program

- PREA reallocation/reduction = 4.75% of total award because funds set aside to courts is excluded
- New purpose area for “developing, enlarging, or strengthening programs addressing sexual assault against men, women, and youth in correctional and detention settings.” 42 U.S.C. § 3796gg(b)(17).

OVW STOP Program Cont.- limits

- Focus of program is ages 11 and up- if there is a juvenile facility with under 11, STOP funds must be pro-rated (for example, if half are under 11 then STOP can support half of the cost of needed improvements)
- STOP can not be used for construction. If the only thing the state needs to do to come into full compliance with PREA involves construction, it will not be subject to the reduction/reallocation of STOP.

OVW STOP- cont.

For more information, see

<http://www.ovw.usdoj.gov/docs/stop-prea-faq.pdf>

PREA Audit Process

Audit Cycle Timeline

Audit Cycle

August 2013

- First audit cycle began August 20, 2013

August 2014

- First year of the first cycle concludes; second year begins

August 2015

- Second year of the first cycle concludes; third year begins

August 2016

- Third year of the first cycle concludes; second audit cycle begins

Audit Mechanics

Retaining an Auditor

- Certified PREA auditors will perform the PREA audits as an independent contractor unless they have or create an arrangement to conduct audits through another entity, such as their current employer, an external governmental entity, the American Correctional Association (ACA), or other accreditation body
- Circular audits are permissible
- DOJ is not involved with the contracting, scheduling, or fee schedules associated with PREA audits

Audit Instrument Documents

Document List

- Process Map
- Checklist of Documentation
- Pre-Audit Questionnaire
- Auditor Compliance Tool
- Instructions for PREA Audit Tour
- Interview Protocols
- Auditor Report Template

The following link will take you to the audit section of the PRC website, which contains all necessary documents and an explanation of each:

<http://www.prearesourcecenter.org/node/1754>

Corrective Action Period

Corrective Action

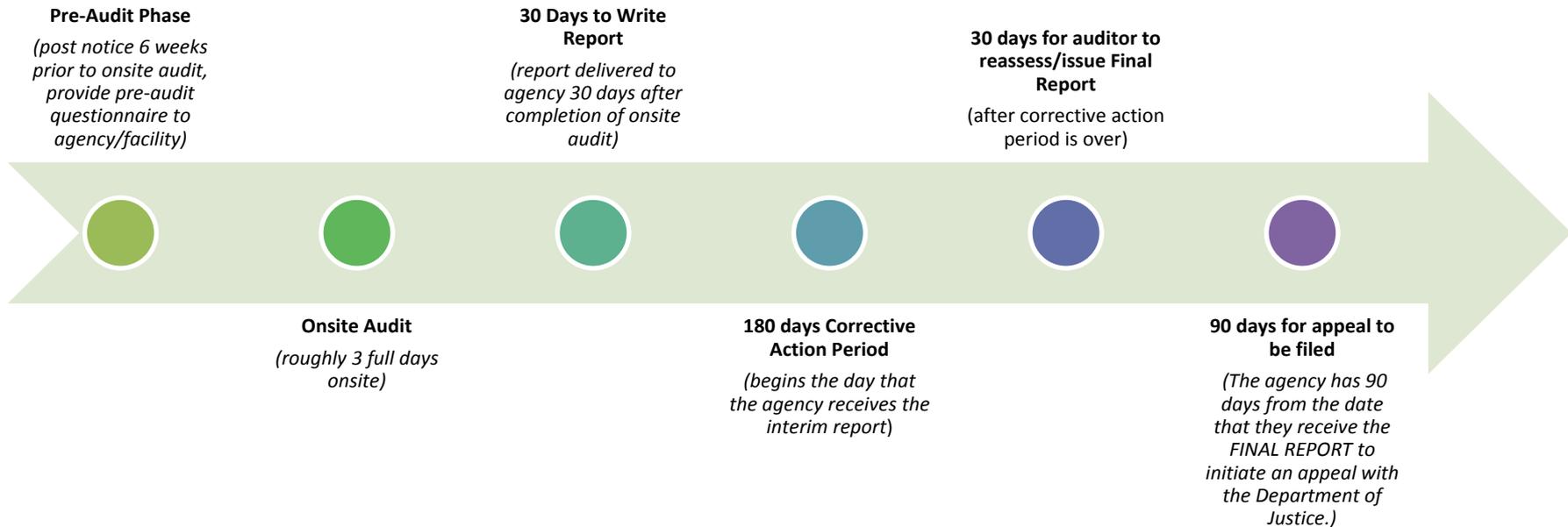
- Upon receipt of the auditor's report if the facility has not met all of the standards, a 180-day corrective action period begins
- Agency and auditor shall jointly develop a plan to achieve compliance
- Agency must correct all issues and auditor shall verify compliance within the period
- If the agency does not achieve compliance upon verification, it can request another audit once it believes it has achieved compliance

Audit Appeal

Appeals

- Agency may lodge an appeal with DOJ regarding any audit finding
- Must be lodged within 90 days of the auditor's final determination
- If DOJ determines there is good reason for re-evaluation, there may be a re-audit
 - Agency bears cost of the re-audit
- Findings of the appeal are final – these findings cannot be appealed

Auditing Timeline



Public Availability of Reports

Audit Reports

- Final audit reports are considered public information
- Agency is required to publish the auditor's final report on its website, or make it otherwise available to the public if no website

Auditor Certification

Certification

To be certified, auditors must

- ✓ Meet specified qualifications
- ✓ Pass a criminal background records check
- ✓ Complete a 40-hour PREA auditor certification training session
- ✓ Pass final examination

Auditors are certified by facility-type based on qualifications (multiple certifications possible)

- Adult Prisons/Jails
- Community Confinement
- Juvenile
- Lockup

Auditor Application Processing

Applications to date as of March 10, 2014:

- 583 submitted
- 846 in process

Application processing considerations:

- Professional qualifications
- Building state capacity
- Availability to conduct audits
- Geographic location
- Standards certification type

Auditor Training Update

Training Information

- 40-hour training and post-training examination
- 4 trainings completed to date
- 287 candidates trained to date
- 113 certified to date
- Additional trainings in 2014
 - June 9-13 – Kansas City, MO
 - July 14-18 – Kansas City, MO
 - September 29-October 3 – Columbia, SC
 - November 3-7 – Columbia, SC

The National PREA Resource Center

What is the PRC?

Mission and Methods

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

- Website and resource library
- Training and technical assistance (TTA)
- Grant program
- Audit Support and Auditor training

PRC's Audit Work

- Development of audit instrument and online tool
- Communications regarding the audit process
- Training auditors
- Running an auditor application program
 - » Reviewing qualifications and facilitating background checks
 - » Referring qualified and trained individuals to DOJ for certification

TTA Provision

Targeted TTA

- Curricula
- Videos
- Toolkits
- Fact Sheets
- Caselaw surveys and guides
- Other resources like PREA Essentials

Field Initiated TTA

- Customized assistance, onsite or remote

Note: E-Learning courses available from the National Institute of Corrections

Curricula Update

Released:

- Specialized training – investigations
- Specialized training – medical and mental health
- PREA for tribal facilities
- Inmate education video and facilitator's guide

Forthcoming in early 2014:

- Human resources and administrative investigations
- Employee training
 - Cross-gender pat search video and facilitator's guide
- Gender responsive strategies – adults
- Gender responsive strategies – juveniles
- Victim services

TTA Providers – 2014-2015

Providers

- American Jail Association
- American University – Project on Addressing Prison Rape
- International Association of Chiefs of Police
- Just Detention International
- National Association of State Mental Health Program Directors
- The Moss Group
- Vera Institute of Justice

Resource Development 2014-2015

- Individuals with disabilities
- Minimizing use of protective custody
- PREA coordinator contacts and listserve management
- Outreach to jails and law enforcement
- Inmate education
- External reporting and support services
- Staffing plans
- Youthful inmates
- Trauma related to sexual abuse in confinement
- Cross-gender supervision
- Field-initiated TTA

Key Resource: The Department of Justice has released responses to the most frequently asked questions about the PREA standards.

[Click here to read the FAQ](#)



PRC's Juvenile PREA Coordinators' Conference, June 2012

Search the PREA Library for Articles and Resources:

SEARCH



LEGAL ▶

Information about the Prison Rape Elimination Act of 2003 and related laws and legal issues.



POLICY & PRACTICE ▶

Sample PREA-related policies and PREA policy development guides.



RESOURCES ▶

Tools such as training materials, handbooks, policy development toolkits, and a list of resources for survivors.



NEWS COVERAGE ▶

All PREA-related news articles, including news about the law, implementation of standards, and federal and local initiatives.



RESEARCH ▶

Federally funded and academic reports and articles on a range of PREA-related topics.



STANDARDS ▶

Federal PREA standards and information about the development, implementation, compliance with, and enforcement of the standards.

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](#).

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](#).

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.

Email

[SIGN UP ▶](#)

For More Information

For more information about the **National PREA Resource Center**, visit www.prearesourcecenter.org. Direct questions to info@prearesourcecenter.org

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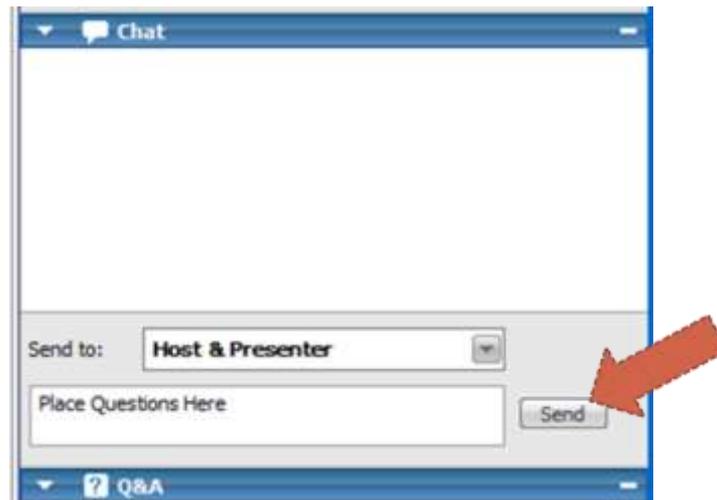
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Q & A

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