

November 2017

Law and Justice Interim Committee (LJIC)
Rachel Weiss, Research Analyst

COMMITTEE ISSUE: PRISON RAPE ELIMINATION ACT

BACKGROUND

The Prison Rape Elimination Act, or PREA, was enacted in 2003 by a unanimous vote of Congress and signed by President George W. Bush. The legislation establishes a “zero-tolerance standard” for rape in United States prisons and prioritizes the prevention of prison rape in state and local facilities. PREA also required data collection according to standardized definitions to help improve facilities’ management practices. National standards implementing the act were adopted in federal rules by the U.S. Department of Justice (US DOJ) and became effective in August 2012.

To monitor and assess compliance with the standards, a state must conduct an audit on each of its correctional facilities every 3 years. The audits occur in a 3-year cycle, meaning the state audits one-third of the facilities each year. The governor must certify annually that the state’s facilities, including those operated by private entities on behalf of the state, are compliant. According to the Montana Department of Corrections’ 2017 Biennial Report, Montana is in full compliance with PREA standards. The governor has until October 16, 2017, either to certify that the state is in compliance or to submit an assurance that the state will spend not less than 5% of certain federal grant funds to enable full compliance in future years. The US DOJ has until January 2018 to post those submissions.

CONTENT OF STANDARDS

The federal PREA standards apply to federal, state, and local facilities, including juvenile facilities and adult prisons and jails. A US DOJ press release announcing the standards states that goals for the standards are “to prevent, detect, and respond to sexual abuse.”

The prevention standards cover topics ranging from:

- screening inmates for risk of abusing other inmates or being abused;
- hiring, training, and deploying staff in a manner to prevent, detect, and respond appropriately to sexual abuse; and
- preventing juveniles from being housed or left unsupervised with adult offenders.

The standards related to detection of sexual abuse require correctional facilities to:

- inform inmates of PREA policies and how to report abuse as well as to ensure that inmates with disabilities or limited English proficiency have access to the information;
- maintain multiple methods for inmates and staff to report abuse, including anonymously and to an organization that is not part of the correctional jurisdiction; and
 - prevent retaliation against inmates or staff who report abuse.

The response standards relate to how a facility must respond to sexual abuse or reports of it and require the facility to:

- provide victims with medical and mental health care and access to victim advocates;
- establish and follow evidence protocols, provide free forensic rape exams to victims, and fully investigate claims of sexual abuse;
- discipline the perpetrator – staff or inmate – if an investigation substantiates a sexual abuse complaint; and
- maintain records of abuse incidents for use in future prevention efforts.

In addition, each facility must designate an individual to coordinate the facility’s PREA efforts, and a correctional jurisdiction, such as a state, may not enter into a contract with an outside entity that does not also comply with the standards.

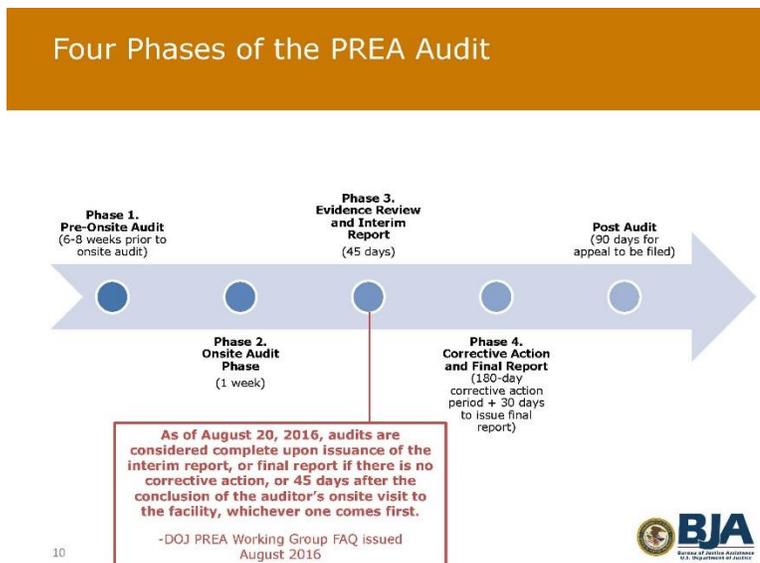
AUDIT PROCESS

To ensure that correctional facilities have implemented and remain compliant with the standards, PREA requires facilities to be audited every 3 years. The audit must be conducted by a trained and certified auditor. The process includes a review of data and records provided by the facility, a site visit, and interviews with staff and inmates. The auditor must interview certain staff and inmates – such as the staff PREA coordinator and an inmate who reported sexual abuse – but also randomly selected staff and inmates. The actual numbers depend on the audited facility’s size.

After analyzing the data and information, the auditor has a set number of days to write a report. If that report includes a

finding that the facility does not meet one or more of the standards, the need for corrective action related to the standard is noted in an interim report. The facility then works with the auditor to remedy the problem if possible. After a 30-day period to allow the facility time to correct any deficiencies noted in the interim report, the auditor issues a final report.

A 2017 letter from the U.S. Department of Justice to the nation’s governors about PREA specifically notes the standards’ “number and complexity” and that the ability of facilities to engage in corrective action with the auditor before a final report was intentional. The federal agency “views corrective action as an opportunity to enhance safety and promote a zero tolerance culture towards sexual abuse and sexual harassment.”



10

Figure 1: Webinar slide from the Bureau of Justice Assistance, U.S. Department of Justice

If a facility does not meet a standard in the interim report but then corrects the problem, the final audit report describes the initial problem along with the facility’s efforts to correct it. For example, in a 2016 audit of the Montana Women’s Prison (MWP) the auditor noted in the initial report that the MWP’s policies about grievance procedures did not meet PREA standards in two ways. Because the state’s PREA coordinator later provided documentation to the auditor that the policy had been revised in a manner consistent with the PREA standards, the final report recorded both the initial problem and

November 2017

Prison Rape Elimination Act
Law and Justice Interim Committee (LJIC)
Rachel Weiss, Research Analyst

the corrective action taken to remedy it. In that report, the prison met all of the 43 required standards after taking steps to correct this problem and eight others that had been noted in the initial report.

In the 2016 audit of the Montana State Prison (MSP), the interim report noted that the facility was not meeting the standard related to screening of inmates for abuse and victimization in part because its screening form did not include information related to the inmate's criminal history and the inmate's perception of vulnerability to abuse. After the prison staff updated the form, the final report noted the prison met the standard. After taking corrective action for that problem and eight others, the final report documented that the MSP met or exceeded all of the applicable 43 standards.

MONTANA FACILITY AUDITS

The Montana Department of Corrections website provides copies of the PREA reports for 7 facilities that were audited during the department's first 3-year audit cycle. That cycle extended from August 2013 to August 2016. The website also provides the first completed report for the second 3-year cycle that extends from August 2016 to August 2019 and the annual report detailing the state's PREA compliance activities. That report summarizes each facility's audit results and provides data about numbers of sexual abuse allegations made in the facilities. It is attached at the end of this paper.

November 2017

Prison Rape Elimination Act

Law and Justice Interim Committee (LJIC)

Rachel Weiss, Research Analyst

SOURCES USED

- Sources from the National PREA Resource Center
 - “Audit Process,” *National PREA Resource Center*, www.prearesourcecenter.org/audit/audit-process-and-appeals
 - “Prison Rape Elimination Act,” *National PREA Resource Center*, www.prearesourcecenter.org/about/prison-rape-elimination-act-prea
 - Public Law 108-79, *National PREA Resource Center*, www.prearesourcecenter.org/sites/default/files/library/prea.pdf
- Sources from the U.S. Department of Justice
 - Emily N. Chonde and Tom Talbot, “The PREA Auditor Handbook,” webinar slides, *Bureau of Justice Assistance, U.S. Department of Justice*, www.prearesourcecenter.org/sites/default/files/library/PREA%20Auditor%20Handbook%20Overview%20Webinar%20for%20the%20Field.pdf
 - “Justice Department Releases Final Rule to Prevent, Detect and Respond to Prison Rape,” Press Release, *U.S. Department of Justice*, www.justice.gov/opa/pr/justice-department-releases-final-rule-prevent-detect-and-respond-prison-rape
 - PREA Letter to Governors, *U.S. Department of Justice*, September 12, 2017, www.prearesourcecenter.org/sites/default/files/library/2017_PREACertification%26AssuranceAuditYear1Cycle2_GovLetter%26Attachments.pdf
- Sources from the Montana Department of Corrections
 - “Major Accomplishments,” 2017 Biennial Report, *Montana Department of Corrections*, www.cor.mt.gov/Portals/104/Resources/Reports/2017BiennialReport.pdf
 - “The Prison Rape Elimination Act (PREA),” *Montana Department of Corrections*, www.cor.mt.gov/prea
 - “Prison Rape Elimination Act 2016 Annual Report,” and “July 2017 Addendum,” *Montana Department of Corrections*, www.cor.mt.gov/Portals/104/Resources/Reports/PREA/PREAAnnualReport2016.pdf and www.cor.mt.gov/Portals/104/Resources/Reports/PREA/2016%20Addendum.pdf
 - PREA Audit Reports provided by the Montana Department of Corrections at www.cor.mt.gov/prea

CL0106 7306RWXA.docx