



U.S. Department of Justice

Office of Justice Programs

Office of the Assistant Attorney General

Washington, D.C. 20531

September 3, 2021

Dear Governor:

Eliminating prison rape remains a high priority of the U.S. Department of Justice (DOJ). The Prison Rape Elimination Act (PREA), which passed in 2003, addresses both sexual abuse and sexual harassment, in federal, state, and local confinement facilities (including adult prisons and jails, juvenile facilities, lockups, and community confinement facilities). The PREA Standards, found at 28 C.F.R. Part 115, help DOJ and its stakeholders to achieve and maintain changes in policies and practices that keep inmates, residents, and detainees safe from sexual abuse and sexual harassment.

As such, PREA contains mandates that may affect DOJ grant funding to your state.¹ The statute provides that if a Governor is not able to certify to DOJ that the state is in full compliance with the Standards, the Governor has the option to submit an assurance to DOJ **that not less than 5 percent** of certain DOJ grant funds will be used solely for the purpose of enabling the state to achieve and certify full compliance with the Standards in future years. See 34 U.S.C. § 30307(e)(2). If the Governor is not able to certify to DOJ that the state is in full compliance with the Standards and elects not to submit an assurance to DOJ, the state will be subject to the loss of 5 percent of certain DOJ grant funds that it would otherwise receive. In Fiscal Year (FY) 2022, there will be two DOJ grant programs (or portions thereof) subject to this statutory provision. These two grant programs are administered by the Bureau of Justice Assistance's (BJA) Edward Byrne Memorial Justice Assistance Grant (JAG) Program² and the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Formula Grants Program.³

To be in compliance, Governors must submit either a certification or an assurance to DOJ, along with the additional materials outlined in the attached PREA Certification and

¹ In this letter, "state" refers to states, U.S. territories, and the District of Columbia.

² Additional information regarding the JAG Program and PREA can be found here: www.bja.gov/Programs/JAG-PREA-FAQ.pdf.

³ Additional information regarding the OJJDP Program and PREA can be found here: https://ojjdp.ojp.gov/states/Explanation-of-Formula-Grant-Distributions#_Prison_Rape_Elimination.

Assurance Submission Instructions document, regarding their state's PREA compliance status during the period of August 20, 2020 through August 19, 2021, by October 15, 2021.⁴ These and any other supporting materials must be sent to DOJ's PREA Management Office (PMO) at PREACompliance@usdoj.gov.

If the PREA Management Office does not receive a signed copy of either form and the required documentation listed in the PREA Certification and Assurance Submission Instructions by October 15, 2021, your state will be subject to a loss of 5 percent of each of the FY 2022-covered grant funds referenced earlier, as required under 34 U.S.C. § 30307(e)(2).

DOJ understands that COVID-19 will have a continuing impact on correctional agencies' PREA implementation efforts and may affect agencies' ability to comply with the PREA audit requirements in the Standards. Ensuring the safety and well-being of everyone in confinement facilities is of the utmost importance to DOJ, and DOJ's PREA Management Office will attempt to minimize any adverse consequences to agencies and facilities that are unable to comply in a timely fashion with PREA requirements because of efforts to address, manage, and mitigate the effects of COVID-19, to the extent permissible under statutory and regulatory requirements. The PMO does not have the authority to temporarily suspend or alter the requirements in the PREA statute or promulgated standards. As such, the PREA statute requires that in order for a Governor to submit a certification of full compliance with the PREA standards, all covered facilities under his or her operational control must be in full compliance with the Standards. This includes compliance with the audit standard (28 C.F.R. § 115.401(a) and (b)), as of the end of the audit year on August 19.

Next year, by statute, the assurance option will no longer be available for consideration by a Governor. For two years following the assurance sunset, Governors who can certify that at least 90 percent of facilities under the operational control of the executive branch have been audited, may request that the Attorney General allow submission of an emergency assurance.⁵ DOJ is committed to working with Governors, state correctional administrators, PREA coordinators, and other stakeholders to assist agencies and facilities with achieving full compliance so that as many Governors as possible are able to submit a certification of full compliance with the PREA Standards after the final sunset date.

For more information about certification and assurance, including the meaning of "operational control," please see the FAQ page of the PREA Resource Center website at www.prearesourcecenter.org/frequently-asked-questions. If you have any questions concerning PREA implementation, or the enclosed materials, please send inquiries to the PREA Management Office at PREACompliance@usdoj.gov. Requests for PREA implementation training or technical assistance may be directed to the PREA Resource Center at www.prearesourcecenter.org/request-for-assistance.

⁴ Following each year's certification/assurance deadline, DOJ engages in a standard process to review certifications submitted by each state. If DOJ identifies information as part of this review process that raises questions about or contradicts a Governor's certification submission, DOJ will send a notification detailing its findings and requesting additional information. DOJ's certification review process is intended to assist states in supporting and maintaining full PREA compliance.

⁵ For more information, visit the PREA Amendment Justice for All Reauthorization Act of 2016 Fact Sheet here: www.bja.gov/publications/JFARA-Fact-Sheet_Updated-2017.03.01.pdf.

DOJ looks forward to continuing to work together to implement the National PREA Standards and combat sexual abuse and sexual harassment in the Nation's confinement facilities. Thank you for your continued commitment to this important issue, and for your state's efforts to promote and support implementation of the Standards.

Sincerely,



Amy L. Solomon
Acting Assistant Attorney General

Enclosures:

- PREA Certification Form
- PREA Assurance Form
- PREA Certification and Assurance Submission Instructions
- PREA Certification and Assurance Worksheet
- PREA Certification and Assurance Frequently Asked Questions
- PREA Compliance Checklist for External State Investigative Agencies: Prisons and Jails

cc: Governor's criminal justice policy advisor
State administering authority for OJP grant programs
Adult correctional administrator
Juvenile correctional administrator
Statewide PREA coordinator for adult facilities
Statewide PREA coordinator for juvenile facilities
Chyrl Jones, Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, OJP
Kristen Mahoney, Acting Director, Bureau of Justice Assistance, OJP