



U.S. Department of Justice

Office of Justice Programs

Office of the Assistant Attorney General

Washington, D.C. 20531

September 12, 2022

The Honorable **FULL NAME**
Governor of **STATE**
ADDRESS 1
ADDRESS 2
CITY, STATE ZIP

Dear Governor **NAME:**

Eliminating prison rape remains a high priority of the U.S. Department of Justice (DOJ). The Prison Rape Elimination Act (PREA) 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 (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 persons who are confined safe from sexual abuse and sexual harassment.

As such, PREA contains mandates that may affect DOJ grant funding to your state.¹ The PREA Statute (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 form 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, 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) 2023, 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) Title II Formula Grants Program.³

To comply with the PREA Statute, Governors must submit either a certification or an assurance form to DOJ along with the additional materials outlined in the attached PREA

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

² Additional information regarding BJA's 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.

Certification and Assurance Submission Instructions document. Certifications and assurances submitted by Governors this year apply to states' PREA compliance status during the period of August 20, 2021, through August 19, 2022.⁴ All certifications and assurances, and the required supporting materials, must be emailed to DOJ's PREA Management Office (PMO) at PREACompliance@usdoj.gov.

If the PMO does not receive a signed copy of either the certification or assurance form and the required documentation listed in the attached PREA Certification and Assurance Submission Instructions by October 17, 2022, your state will be subject to a loss of 5 percent of each of the FY 2023-covered grant funds referenced above, as required under 34 U.S.C. § 30307(e)(2).

DOJ understands that the COVID-19 pandemic may have a lingering impact on correctional agencies' PREA implementation efforts that may affect their 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. As a result, the PMO will, to the extent permissible under the statutory and regulatory requirements, attempt to minimize any adverse consequences to agencies and facilities that are unable to comply in a timely fashion with the PREA requirements because of efforts to address, manage, and mitigate the effects of the COVID-19 pandemic. The PMO does not have the authority to temporarily suspend or alter the requirements in the PREA Statute or Standards. As such, the Statute requires that in order for a Governor to submit a certification of full compliance with the Standards, all covered facilities under their 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, 2022.

By Statute, this is the final year the assurance option will be available to Governors. For the next 2 years (i.e., for submissions to be made on October 15, 2023, and October 15, 2024), Governors who can certify that at least 90 percent of facilities under the operational control of the executive branch have been audited at least once 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 starting on October 15, 2025, when the emergency assurance option will be eliminated by Statute.

For more information about the requirements related to the certification and assurance options, including the meaning of "operational control," please see the FAQ page of the PREA Resource Center at www.prearesourcecenter.org/frequently-asked-questions. Questions concerning PREA implementation or the enclosed materials should be emailed to the PMO at PREACompliance@usdoj.gov. Requests for PREA implementation training or technical

⁴ Following each year's certification/assurance deadline, DOJ engages in a standard process to review certifications submitted by each state. As part of this review process, if DOJ identifies information 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.

assistance may be directed to the PREA Resource Center at <http://www.prearesourcecenter.org/request-for-assistance>.

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

Sincerely,



Maureen A. Henneberg
Deputy 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
Liz Ryan, Administrator, Office of Juvenile Justice and Delinquency Prevention
Karhlton Moore, Director, Bureau of Justice Assistance