



U.S. Department of Justice

Office of Justice Programs

Office of the Assistant Attorney General

Washington, D.C. 20531

September 16, 2019

Dear Governor:

The Prison Rape Elimination Act (PREA) was passed in 2003 with unanimous support from both parties in Congress and signed into law by President George W. Bush. Eliminating prison rape remains a high priority of the U.S. Department of Justice (DOJ) because sexual abuse is a crime, and should not be the punishment for a crime.

The National PREA Standards (Standards), which address both sexual abuse and sexual harassment, took effect on August 20, 2012. The Standards apply to federal, state, and local confinement facilities (including adult prisons and jails, juvenile facilities, lockups, and community confinement facilities), and can be found at 28 C.F.R. Part 115. The ultimate goal of the Standards is to achieve sustained, system-wide change that keeps inmates, residents, and detainees safe from sexual abuse and sexual harassment.

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).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 FY 2020, 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) Program³ and (2) the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Formula Grants Program.⁴

Compliance Requirements

DOJ understands that your task of assessing statewide PREA compliance is not an easy one. For that reason, DOJ has developed the enclosed PREA Certification and Assurance Submission Worksheet and frequently asked questions (FAQ) document, which will also be made available on the PREA Resource Center website at <https://www.prearesourcecenter.org/>. The worksheet and

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

² The abeyance option introduced in the PREA amendment under the Justice for All Reauthorization Act of 2016 (Pub. L. No. 114-324) will sunset on December 16, 2019. Therefore, the certification and assurance submission deadline for fiscal year (FY) 2019 on October 15, 2018 was the final opportunity for Governors to select the abeyance option. The final disposition of funds held in abeyance will be determined based on Governors' certification and assurance submissions for Audit Year 3 of Cycle 2, which is due on October 15, 2019 and will impact FY 2020 grant funds.

³ Additional information regarding the JAG Program and PREA can be found here: www.bja.gov/Programs/JAG-PREA-FAQ.pdf.

⁴ Additional information regarding the OJJDP Program and PREA can be found here: www.ojjdp.gov/programs/GrantDistributions.html

FAQs are intended to aid Governors in their certification and assurance decisions by detailing what questions and issues should be considered. The worksheet will also assist in the compilation of information and documentation that will provide support for either decision.

Governors must submit either a certification or an assurance and additional required and supporting materials to DOJ by **October 15, 2019** regarding the state's PREA compliance status from August 20, 2018 through August 19, 2019. Please note that under the PREA amendment to the Justice for All Reauthorization Act (JFARA), signed into law on December 16, 2016 (Pub. L. No. 114-324), there were important changes to the certification and assurance reporting requirements. Please see the enclosed PREA Certification and Assurance Submission Worksheet and the PREA Amendment Justice for All Reauthorization Act of 2016 Fact Sheet, available at https://www.bja.gov/publications/JFARA-Fact-Sheet_Updated-2017.03.01.pdf, for detailed information on the reporting requirements and other changes to the PREA statute.

What to Consider when Making a Certification Determination

When making a determination of whether to submit a certification of full compliance with the Standards, the following considerations and requirements apply:

- “The Governor’s certification shall apply to 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.” See 28 C.F.R. § 115.501(b). **IMPORTANT:** When making a certification determination, a Governor must assess compliance for **all** facilities in the state that are covered under the PREA certification/assurance process, including, but not limited to, those facilities audited during the most recent audit year.
- In determining whether the state is in full compliance, “the Governor shall consider the results of the most recent agency audits.” See 28 C.F.R. § 115.501(a).
- All confinement facilities subject to the Standards must be audited by a DOJ-certified auditor at least once every 3 years, with one-third of each facility type operated by an agency, or private organization on behalf of an agency, to be audited each year. See 28 C.F.R. § 115.401.
- Pursuant to formal guidance issued by the DOJ PREA Working Group, DOJ intends audits to be a primary, but not the only, factor in determining whether a state is in full compliance. Neither the PREA statute nor the Standards restrict the sources of information that Governors may use in deciding whether to certify full compliance with the Standards.
- DOJ recognizes that in some states, sexual abuse and sexual harassment investigations are conducted by agencies that are different than the agencies that confine inmates, residents, and/or detainees. Formal guidance issued by the DOJ PREA Working Group on December 3, 2013 (See <http://www.prearesourcecenter.org/node/3278>) indicates that “To the extent that these state agencies investigate sexual abuse or sexual harassment in covered confinement facilities, compliance with the National PREA Standards by these agencies also falls within the scope of the Governor’s certification.” Therefore, in order for Governors to submit a certification of full compliance, these external state investigative agencies must be fully compliant with the PREA Standards that apply to them. For additional guidance and information, refer to the enclosed, “PREA Compliance Checklist for External State Investigative Agencies: Prisons and Jails” that was developed by DOJ to serve as a tool for Governors and others to assess compliance with the PREA Standards by these external agencies.
- A certification applies to the timeframe covering the most recent audit year; therefore, before a certification can be submitted, all covered facilities within your state must have been in full

compliance with all the Standards, including the audit Standard (28 C.F.R. § 115.401(a) and (b)), as of August 19, 2019. Only audits completed by August 19, 2019 may be considered when determining compliance with Standard 115.401(a) and (b).

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.

Governors should also be aware that due to changes introduced in the PREA amendment under the Justice for All Reauthorization Act of 2016, the assurance option will sunset six years following the date of enactment of the Act, in December 2022. The 2016 PREA amendment also provides that 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.

Enhancing the Quality and Integrity of PREA Audits

Governors and other stakeholders with responsibilities under PREA should be aware of ongoing efforts underway at DOJ to increase the quality and rigor of PREA audits. DOJ has developed a PREA Audit Oversight Function that is designed to both support PREA auditors in improving their auditing skills, and hold them accountable for a high standard of audit quality and integrity. Furthermore, on August 3, 2017, DOJ released a PREA Auditor Handbook, which articulates DOJ's expectations for all DOJ-certified PREA auditors, establishes clear guidelines and requirements for auditor conduct and methodology, and enhances auditors' ability to conduct high quality, objective, transparent, comprehensive, and reliable PREA audits.

As the quality and rigor of PREA audits increase, it is important to be aware that facilities that received a finding of full compliance with no corrective action in Audit Cycle 1 may be required to go through corrective action during the second audit that occurs in Audit Cycle 2. Recognizing the number and complexity of the requirements in the PREA Standards, DOJ purposefully included corrective action in the Standards to serve as a helpful tool for facilities and agencies to work in collaboration with their PREA auditor to achieve sustained, system-wide change that keeps inmates, residents, and detainees safe from sexual abuse and sexual harassment. Corrective action should therefore be perceived as an opportunity to promote a zero tolerance culture toward sexual abuse and harassment and not as a failure by confinement facilities and agencies seeking PREA compliance.

Submitting a Certification or Assurance

As indicated above, **October 15, 2019** is the deadline for Governors to submit either a certification or assurance for Audit Year 3 of the second three-year PREA audit cycle, together with the information included in the enclosed PREA Certification and Assurance Submission Worksheet.

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

These and any other supporting materials must be sent to the PREA Management Office 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 Worksheet by **October 15, 2019**, your state will be subject to a loss of 5 percent of each of the FY 2020-covered grant funds referenced earlier, as required under 34 U.S.C. § 30307(e)(2).

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 <https://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 <http://www.prearesourcecenter.org/training-technical-assistance/request-for-assistance>.

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,



Katherine T. Sullivan
Principal Deputy Assistant Attorney General

Enclosures:

- PREA Certification Form
- PREA Assurance Form
- PREA Certification and Assurance Submission Worksheet
- Facility Audit Activity Table
- 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
Caren Harp, Administrator, Office of Juvenile Justice and Delinquency Prevention, OJP
Jon Adler, Director, Bureau of Justice Assistance, OJP
Patricia Nation, Office of the Assistant Attorney General, OJP

**Certification Regarding Adoption of and Full Compliance with
the National Standards to Prevent, Detect, and Respond to Prison Rape
*2019 Governor’s Certification for Audit Year 3 of Cycle 2***

Pursuant to 34 U.S.C. § 30307(e)(2), I certify to the U.S. Department of Justice (DOJ):

As of August 19, 2019, the state¹ named below had adopted, and was in full compliance with, the National Standards to Prevent, Detect, and Respond to Prison Rape, 28 C.F.R. Part 115.

If, after the date of signature of this certification, credible information should come to the attention of the undersigned (or his or her successor) that casts reasonable doubt on the accuracy of this certification, the same shall conduct a reassessment and determine whether this certification was accurate. If the certification is determined not to have been accurate, the undersigned or a designee will:

1. Within 15 days, notify DOJ, at PREACompliance@usdoj.gov, of the existence of the inaccuracy.
2. Within 15 days of providing such notice,
 - a. Submit an assurance signed by the chief executive (using the form provided by DOJ) indicating that the state will expend not less than 5 percent of its covered DOJ grant funds for fiscal year (FY) 2020 to adopt, and achieve full compliance with, the National Prison Rape Elimination Standards (28 C.F.R. Part 115) so as to ensure that a certification may be submitted in future years;
 - b. Agree to return 5 percent of its covered DOJ grant funds for FY 2020 as calculated by DOJ; or
 - c. Take other appropriate action as instructed by the awarding agency.

Signature of Chief Executive

Printed Name of Chief Executive

Name of State

Date

¹ In this document, “state” refers to states, U.S. territories, and the District of Columbia.

A false statement in this certification or in the grant application that it supports may be subject to criminal prosecution, including under 18 U.S.C. § 1001 and 34 U.S.C. § 10272. DOJ grants, including certifications provided in connection with such grants, are subject to review by the DOJ component that issued the grant and/or by the DOJ Office of the Inspector General.

**Assurance of Intention to Adopt and Achieve Full Compliance with
the National Standards to Prevent, Detect, and Respond to Prison Rape
2019 Governor's Assurance for Audit Year 3 of Cycle 2**

Pursuant to 34 U.S.C. § 30307(e)(2)(A)(ii), I assure the U.S. Department of Justice (DOJ) that, subject to the exception checked below (if applicable), the state¹ named below intends to adopt and achieve full compliance with the National Standards to Prevent, Detect, and Respond to Prison Rape (28 C.F.R. Part 115) so as to ensure that a certification of full compliance may be submitted in future years, which includes a commitment that not less than 5 percent of its covered DOJ grant funds for fiscal year (FY) 2020 will be used for this purpose.

Check the box below **only** if it applies to your state.

As of August 19, 2019, the state named below had adopted, and was in full compliance with, the National Standards to Prevent, Detect, and Respond to Prison Rape insofar as those standards apply to *juvenile facilities*, as defined in 28 C.F.R. § 115.5, but was not in full compliance with one or more standards insofar as those standards apply to non-juvenile facilities. Accordingly, grants issued by the Office of Juvenile Justice and Delinquency Prevention are not subject to the required set-aside of funds for PREA purposes and shall not be used for purposes of the above assurance.

If the state has checked the exception above, and if it happens that after the date of signature of this assurance, credible information should come to the attention of the undersigned (or his or her successor) that casts reasonable doubt on the accuracy of the information relied upon in checking the exception, the same shall conduct a reassessment and determine whether this selection of such exception was accurate. If the selection of the exception is determined not to have been accurate, the undersigned or a designee will:

1. Within 15 days, notify DOJ, at PREACompliance@usdoj.gov, of the existence of the inaccuracy.
2. Within 15 days of providing such notice,
 - a. Submit a revised assurance signed by the chief executive;
 - b. Agree to return 5 percent of the state's covered DOJ grant funds for FY 2020 as calculated by DOJ; or
 - c. Take other appropriate action as instructed by the awarding agency.

Signature of Chief Executive

Printed Name of Chief Executive

Name of State

Date

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

PREA Certification and Assurance Submission
WORKSHEET
Governor's Certification/Assurance for Audit Year 3 of Cycle 2

The Prison Rape Elimination Act (PREA) amendment under the Justice for All Reauthorization Act (JFARA) of 2016 (Public Law 114-324) includes several reporting requirements for states¹ submitting certifications and assurances, as well as additional provisions designed to enhance transparency regarding states' ongoing work to implement the National PREA Standards (Standards). Prior to signing the PREA Certification or Assurance Form, carefully read the information included in this worksheet to ensure that all of the requirements and considerations for making a certification or assurance determination are addressed.

REPORTING REQUIREMENTS FOR SUBMITTING A CERTIFICATION OR ASSURANCE

In addition to submitting either a signed PREA Certification or Assurance Form, Governors must submit to the Department of Justice (DOJ) the following documentation required by the PREA amendment by **October 15, 2019**:

- 1. A list of facilities under the state executive branch's operational control, including a list of those facilities that were audited during Audit Year 3 of Cycle 2.** To assist Governors with fulfilling this requirement, enclosed is the Facility Audit Activity Table that has been prepopulated with information about those facilities known to be under the operational control of the executive branch in each state, based on previously reported information.² Note that an electronic version of this table will be emailed to Governors' criminal justice policy advisors, the state administering authorities for the impacted DOJ grant programs, and the state adult and juvenile correctional administrators. The electronic table can also be requested by contacting the PREA Management Office at PREACompliance@usdoj.gov.

For each facility listed in the table, Governors must provide information on all PREA audit activity for Audit Year 3 of Cycle 2 (August 20, 2018 – August 19, 2019), including:

- a. *Facility information.* DOJ has prepopulated each state's Facility Audit Activity Table with the facility name, facility type, parent agency, and the name of the contract entity if the facility is operated by a private entity on behalf of the state executive branch. DOJ recognizes that the facilities under the state executive branch's operational control may vary slightly from year to year, in addition to other changes that may arise (e.g., changes to facility names or contract entities). Please document any errors identified in the table by following steps c–d below.
- b. *Final report location.* Standard 115.403(f) provides that, "The agency shall ensure that the auditor's final report is published on the agency's website if it has one, or is otherwise made readily available to the public." For agencies that have a website, provide the link for each facility audit report. If the agency does not have a website, provide information on how the audit report is made available to the public. See the frequently asked questions (FAQs) issued by the DOJ PREA Working Group for additional information (www.prearesourcecenter.org/node/5262). Agencies should not remove an audit report covering an audit from the first PREA audit cycle from their websites and replace it with an audit report for the same confinement facility conducted during the second PREA audit cycle. Both audit reports should be published on the agency's website if it has one, or otherwise be made readily available to the public.
- c. *Inaccurate facility information.* As described above, if any of the prepopulated facility information, including facility name, facility type, parent agency, and/or the name of the contract entity if the facility is operated by a private entity on behalf of the state executive branch is inaccurate, please indicate "Yes" in the table.
- d. *Description of inaccurate facility information.* Briefly describe any inaccuracies identified in the Facility Audit Activity Table's prepopulated information.

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

² For states that have not previously reported this information, the Facility Audit Activity Table was prepopulated based on information collected online from corrections agency websites.

**PREA Certification and Assurance Submission
WORKSHEET**

Governor's Certification/Assurance for Audit Year 3 of Cycle 2

- 2. All final audit reports for facilities under the state executive branch's operational control that were audited during Audit Year 3 of Cycle 2.** DOJ is required to make these final audit reports available online to the public. See 34 U.S.C. § 30307(e)(2)(F). Following are the steps to take on how to submit these reports:
- (1) Save each final PREA audit report as a distinct PDF file. DOJ appreciates any assistance in making these PDF files compliant with Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794(d)).³
 - (2) Name each final PREA audit report file as follows: "STATE_FACILITY NAME_YEAR2CYCLE2." Only final PREA audit reports completed during Audit Year 3 of Cycle 2 (August 20, 2018 – August 19, 2019) should be submitted in order to fulfill this requirement. The facility name on each file should be consistent with the names provided by DOJ in the Facility Audit Activity Table.
 - (3) Review the final audit reports for any personally identifying information (PII). Except for information specifically requested in the audit reports (i.e., information about the facility's chief executive officer, facility PREA compliance manager, agency chief executive officer, and PREA coordinator), remove any PII from reports prior to sending.
- 3. A proposed schedule for completing audits of all the facilities under the state executive branch's operational control for the next 3 audit years.** Provide a written statement describing a proposed schedule for completing the audits, including audits of facilities operated by private entities on behalf of the state executive branch. This information may be supplemented by or presented in a table format like the Facility Audit Activity Table. The audit years included in this requirement are:
- Audit Year 1 of Cycle 3: August 20, 2019 – August 19, 2020
 - Audit Year 2 of Cycle 3: August 20, 2020 – August 19, 2021
 - Audit Year 3 of Cycle 3: August 20, 2021 – August 19, 2022

ADDITIONAL CONSIDERATIONS FOR SUBMITTING A CERTIFICATION

The following information request applies only to Governors who submit a certification of full compliance with the Standards to DOJ:

- 1. PREA Compliance of External State Investigative Agencies.** For all Governors who submit a certification of full compliance to DOJ, indicate whether any state agencies investigate sexual abuse or sexual harassment in one of the five facility types covered by the Standards. Where such arrangements exist, DOJ requests that Governors identify these external state investigative agencies and provide information regarding these agencies' compliance with the Standards. For additional information, please refer to the FAQ issued by the DOJ PREA Working Group (<http://www.prearesourcecenter.org/node/3278>) and to the PREA Compliance Checklist for External State Investigative Agencies: Prisons and Jails attached to the correspondence issued by DOJ to all state and territorial Governors on September 16, 2019.

REPORTING REQUIREMENTS FOR SUBMITTING AN ASSURANCE

In addition to the PREA Assurance Form, Governors submitting assurances must submit *all of the above requirements for Governors submitting certifications or assurances* along with the following, pursuant to 34 U.S.C. § 30307(e)(2)(C):

- 1. An explanation of any barriers the state faces to completing the required audits.** Provide a brief written statement describing the barriers to completing audits of facilities under the state executive branch's operational control, including facilities operated by private entities on behalf of the state's executive branch.
- 2. An explanation of the state's current degree of implementation of the Standards.** Provide a brief written statement of your state's PREA implementation progress by describing, for example, facility- or agency-level adoption of the Standards in policy and practice; inmate/detainee/resident education related to PREA; planning, analysis, and training focused on enhancing staff support and training related to the Standards; or preparation for PREA audits.

³ For more information on creating accessible electronic documents and 508 compliance, please see <https://section508.gov/content/build/create-accessible-documents>.

**PREA Certification and Assurance Submission
WORKSHEET**
Governor's Certification/Assurance for Audit Year 3 of Cycle 2

ADDITIONAL CONSIDERATION FOR SUBMITTING AN ASSURANCE

The following consideration applies only to Governors who submit an assurance to DOJ:

1. When completing the Assurance Form, Governors should specify if a state is in full compliance with the Standards as they apply to juvenile facilities but out of compliance only with regard to adult facilities. If this is the case, the state will not be subject to the 5 percent reduction in the Office of Juvenile Justice and Delinquency Prevention Formula Grant funding. The PREA Assurance Form allows Governors to indicate whether this circumstance applies to his or her state.

CERTIFICATION AND ASSURANCE CHECKLIST AND SUBMISSION INSTRUCTIONS

1. Please review the following checklist to ensure that all requirements and considerations for submitting a certification or assurance have been addressed.

Certification Checklist

- Signed Certification Form
- Completed Facility Audit Activity Table listing all facilities under the state executive branch's operational control, including those facilities that were audited during Audit Year 3 of Cycle 2
- Final audit reports for all facilities under the state executive branch's operational control audited during Audit Year 3 of Cycle 2
- Proposed schedule for completing audits of all facilities under the state executive branch's operational control during the next 3 audit years
- PREA Compliance Checklist for External State Investigative Agencies: Prisons and Jails

Assurance Checklist

- Signed Assurance Form
- Completed Facility Audit Activity Table listing all facilities under the state executive branch's operational control, including those facilities that were audited during Audit Year 3 of Cycle 2
- Final audit reports for all facilities under the state executive branch's operational control audited during Audit Year 3 of Cycle 2
- Proposed schedule for completing audits of all facilities under the state executive branch's operational control during the next 3 audit years
- An explanation describing any barriers the state faces to completing the required audits
- An explanation describing the state's current degree of implementation of the Standards

2. Submit the above materials to the PREA Management Office at PREACompliance@usdoj.gov by **October 15, 2019**. Include "STATE Audit Year 3 of Cycle 2 [Assurance/Certification]" in the subject line of the email and alert DOJ on how many emails in total you will be sending (e.g., 1:3 for 1 of 3 total emails). The maximum file attachment size per email is 25MB. To reduce the number of emails, we recommend that you first compress the files into one or more zipped folders.⁴

⁴ Instructions for file compression using Microsoft Windows can be found at: <https://support.microsoft.com/en-us/help/14200/windows-compress-uncompress-zip-files>.

PREA Certification and Assurance Submission
FREQUENTLY ASKED QUESTIONS (FAQs)
Governor's Certification/Assurance for Audit Year 3 of Cycle 2

INTRODUCTION

The frequently asked questions (FAQs) below include a combination of questions related to the National PREA Standards (Standards) that were addressed by the Department of Justice (DOJ) PREA Working Group and made available on the National PREA Resource Center website as FAQs (see www.prearesourcecenter.org/frequently-asked-questions) and questions related to Governors' certification and assurance submissions that were answered by DOJ's PREA Management Office. Please note that the information below does not represent exhaustive guidance for making a certification or assurance determination. In addition, members of the PREA Management Office are available to answer additional questions by email at PREACompliance@usdoj.gov.

FAQs FOR A GOVERNOR'S CERTIFICATION OR ASSURANCE DETERMINATION – AUDIT YEAR 3 OF CYCLE 2

- 1** **Q:** Certifications and assurances must be submitted to DOJ by October 15, 2019. If a Governor submits a certification of full compliance to DOJ, to what date does the certification apply?
- A:** Certifications of full compliance with the Standards apply to August 19, 2019, which was the last day of the third year of the second PREA audit cycle. The Certification Form that is due on October 15, 2019 states:

As of August 19, 2019, the state named below had adopted, and was in full compliance with, the National Standards to Prevent, Detect, and Respond to Prison Rape, 28 C.F.R. Part 115.

- 2** **Q:** To what facilities do certifications of full compliance with the Standards apply?
- A:** A certification of full compliance with the Standards applies to **all** facilities under the state¹ executive branch's operational control. A Governor should only submit a certification of full compliance if 100 percent of the facilities under his or her operational control were in full compliance with the Standards as of August 19, 2019.

The DOJ PREA Working Group recently released two FAQs that may be helpful to states in their efforts to determine the facilities to which the Standards apply.

- An FAQ that clarifies whether a juvenile facility's receipt of, or eligibility to receive, Medicaid funding impacts the determination of whether or not the facility is covered under the PREA Standards can be found here: www.prearesourcecenter.org/node/6083.
- An update to an existing FAQ that provides further guidance on how to determine whether a facility is "primarily used for" a particular purpose under the PREA Standards can be found here: www.prearesourcecenter.org/node/3233.

- 3** **Q:** What are an agency's auditing requirements for the third and final year of the second three-year PREA audit cycle, which ended on August 19, 2019?
- A:** In order to be in full compliance with the PREA Auditing Standards (See 28 C.F.R. § 115.401), an agency must have completed audits of **all** of its confinement facilities by August 19, 2019.

Standard 115.401(a) states: "During the three-year period starting on August 20, 2013, and during each three-year period thereafter, the agency shall ensure that each facility

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

PREA Certification and Assurance Submission
FREQUENTLY ASKED QUESTIONS (FAQs)
Governor's Certification/Assurance for Audit Year 3 of Cycle 2

operated by the agency, or by a private organization on behalf of the agency, is audited at least once.”

Additionally, in order to submit a certification of full compliance for Audit Year 3 of the second three-year audit cycle, **all** facilities under the operational control of the state’s executive branch, including facilities operated by private entities on behalf of the executive branch, must have **completed** an audit and achieved **full compliance** on or before August 19, 2019.

- 4 **Q:** On what basis can the Governor make a certification determination? Is it the audit finding alone, or should the Governor base a certification determination on other evidence? If other evidence is applicable for a certification determination, what are some examples of this evidence?
- A:** All confinement facilities subject to the Standards must be audited by a DOJ-certified auditor at least once every 3 years, with one-third of each facility type operated by an agency, or private organization on behalf of an agency, to be audited each year. See 28 C.F.R. § 115.401.

An FAQ issued by the DOJ PREA Working Group on February 7, 2013 states:

Pursuant to PREA Standard 115.501(a), governors shall make their certification of compliance taking into consideration the results of the most recent agency audit results. DOJ intends audits to be a primary, but not the only, factor in determining compliance. For example, audit results for a particular period may show the selected one third of audited facilities in compliance; however, the governor may have determined that other facilities under his/her control are, in fact, not in compliance with the standards.

Neither the PREA statute nor the PREA standards restrict the sources of information governors may use in deciding whether or how to certify compliance.

See the full FAQ here: www.prearesourcecenter.org/node/3277.

- 5 **Q:** Why are PREA audits a primary, but not the only, source of information that Governors shall rely on to make certifications of full compliance with the Standards?
- A:** PREA audits are not the only source of information that Governors should rely on to make certifications. Because PREA compliance is fluid, Governors must monitor and account for changes in compliance that may occur after a PREA audit is completed. Even if an audit reveals that a facility is in full compliance with the Standards on a given date, information may come to the attention of the Governor that the facility has fallen out of compliance following the completion of the audit.

In addition, the Standards require one-third of each type of facility (i.e., prisons and jails, community confinement facilities, lockups, and juvenile facilities) operated by an agency, or by a private organization on behalf of the agency, to be audited each year. As such, during the first 2 years of each 3-year audit cycle, a Governor may only have audit data from a portion of the confinement facilities under his or her operational control with which to inform his or her certification decision. It is, therefore, important for Governors to have other methods for determining compliance in those facilities that have not yet been audited during the current audit cycle.

PREA Certification and Assurance Submission
FREQUENTLY ASKED QUESTIONS (FAQs)
Governor's Certification/Assurance for Audit Year 3 of Cycle 2

- 6 **Q:** Does a Governor's certification cover state investigative agencies?
- A:** DOJ recognizes that in some states, sexual abuse and sexual harassment investigations are conducted by agencies that are different than the agencies that confine inmates, residents, and/or detainees. An FAQ issued by the DOJ PREA Working Group on December 3, 2013 states:

To the extent that these state agencies investigate sexual abuse or sexual harassment in covered confinement facilities, compliance with the National PREA Standards by these agencies also falls within the scope of the Governor's certification.

Therefore, in order for Governors to submit a certification of full compliance, these external state investigative agencies must be fully compliant with the Standards that apply to them. For additional guidance and information, refer to the attached PREA Compliance Checklist for External State Investigative Agencies: Prisons and Jails that was developed by DOJ to as a tool for governors and others to assess compliance with the Standards by these external agencies.

See the full FAQ here: www.prearesourcecenter.org/node/3278.

- 7 **Q:** How does the juvenile staffing ratio requirement impact a Governor's certification determination for Audit Year 3 of Cycle 2?

- A:** An FAQ issued by the DOJ PREA Working Group on May 9, 2017 states:

As required under Standard 115.313(c), "...Any facility that, as of the date of publication of this final rule, is not already obligated by law, regulation, or judicial consent decree to maintain the staffing ratios set forth in this paragraph shall have until October 1, 2017, to achieve compliance." Thus, for many or most juvenile facilities, the juvenile staffing ratio requirement will not take effect until October 1, 2017, just over a month into Audit Year 2 of PREA Audit Cycle 2, which begins on August 20, 2017 and ends on August 19, 2018. Therefore, compliance with the juvenile staffing ratio will first impact each governor's certification determination for Audit Year 2 of Audit Cycle 2, which will be due to the Department on October 15, 2018.

In order for a governor to submit a certification of full compliance with the PREA Standards for Audit Year 2 of Cycle 2, all facilities under the operational control of the executive branch, including facilities operated by private entities on behalf of the state's or territory's executive branch, must be in full compliance with all of the PREA Standards by August 19, 2018, which will include full compliance with Standard 115.313.

For example, in a given state or territory, some juvenile facilities may have been audited during Audit Year 1 of Audit Cycle 2 (August 20, 2016 – August 19, 2017), prior to the effective date of the juvenile staffing ratio requirement on October 1, 2017, and been found in full compliance. If these facilities have not yet implemented the juvenile staffing ratio requirement under Standard 115.313(c) by the end of Audit Year 2 of Audit Cycle 2 on August 19, 2018, these facilities would have met their auditing obligations under Standard 115.401. However, they would not be considered fully compliant with the PREA Standards because of their lack of compliance with the staffing ratio requirement in Standard 115.313(c). See the full FAQ here: www.prearesourcecenter.org/node/5283.

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8 **Q:** At what stage in the audit process is an audit considered complete for the purposes of meeting the requirement that one-third of an agency's facilities be completed by the end of each year in the auditing cycle?

A: An FAQ issued by the DOJ PREA Working Group on August 15, 2016 states:

Starting on August 20, 2016, which is the first day of the first year of the second three year audit cycle, for the purpose of the PREA Standards, the audit is considered complete upon issuance of the initial audit report or 45 days after the conclusion of the auditor's on-site visit to the facility, whichever one comes first.

Accordingly, only audits completed by August 19, 2019 may be considered when determining compliance with Standard 115.401(b) for Audit Year 3 of Cycle 2.

See the full FAQ here: www.prearesourcecenter.org/node/3228.

9 **Q:** Can a PREA audit be considered complete on the last day of an auditor's onsite visit to a facility?

A: No. Once a PREA auditor completes his or her onsite visit to a facility, this initiates the post-onsite phases of the PREA audit in which the auditor reviews all the evidence collected in order to make compliance determinations for each Standard. Pursuant to an FAQ issued by the DOJ PREA Working Group on August 15, 2016, auditors are required to submit an interim report, or final report if the facility is found to be in full compliance, to the audited facility within 45 days of completion of the onsite audit (see www.prearesourcecenter.org/node/3226).

As described in FAQ #8 above, "...the audit is considered complete upon issuance of the initial audit report or 45 days after the conclusion of the auditor's on-site visit to the facility, whichever one comes first."

In addition, the onsite phase of a PREA audit is just one phase in the middle of a multistep process that may last as long as 10 months. Depending on the auditor's compliance findings, there may be up to four phases of the PREA audit, which are described in detail in the PREA Auditor Handbook, available here: www.prearesourcecenter.org/node/5341.

10 **Q:** As a result of a PREA audit, if a facility takes corrective action to come into compliance with the Standards during the onsite audit phase—or during the 45-day window between the end of the onsite audit phase and the completion of the interim and/or final audit report—should this corrective action be included and described in the auditor's final report?

A: Yes. Standard 115.403(d) states:

Audit reports shall describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each audited facility, and shall include recommendations for any required corrective action.

PREA auditors are trained and required by DOJ to document in both the interim and final reports all steps that a facility or agency takes to come into compliance with the Standards, regardless of when these corrective action steps are taken by the agency or facility.

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11 **Q:** There are facilities under my state executive branch's operational control that completed a PREA audit on or prior to the end of Audit Year 3 of Cycle 2 on August 19, 2019. Following completion of the audit, the facilities underwent corrective action to address the areas of noncompliance identified by the PREA auditor. The facilities addressed all required corrective actions; however, the final audit reports were not submitted to the audited facilities until after August 19, 2019. Can my Governor still submit a certification of full compliance on October 15, 2019, which states that all confinement facilities under the state executive branch's operational control were in full compliance with the Standards as of August 19, 2019?

A: The determination of whether or not to submit a certification or an assurance to DOJ will require a case-by-case assessment of each facility that completed an audit during Audit Year 3 of Cycle 2 but required corrective action that may have taken place after August 19, 2019. The clearest evidence to support full compliance is a final audit report, dated on or before August 19, 2019, with a finding of full compliance. However, DOJ recognizes that a facility may have completed, and verified with the auditor, all necessary corrective action steps by August 19, 2019, although the final audit report was not submitted to the audited facility until after August 19, 2019. The Governor will have to determine whether such facilities completed all corrective action steps and achieved full compliance as of August 19, 2019.

If a Governor submits a certification of full compliance on October 15, 2019, and one or more facilities under his or her operational control completed audits during Audit Year 3 of Cycle 2 that required corrective action but did not receive a final audit report indicating full compliance until after August 19, 2019, DOJ recommends that the Governor submit a thorough written explanation of how such facilities were fully compliant with the Standards as of August 19, 2019. Specifically, the written explanation should describe when the corrective action was completed by the facility, as well as when and how the auditor verified compliance with the corrective action. Such a written explanation will help DOJ in its review of certifications, and may limit the follow-up questions and requests for additional information that DOJ sends to Governors.

12 **Q:** Between August 20, 2019, which was the first day of Audit Year 1 of Cycle 3, and October 15, 2019, which is the due date for certifications and assurances from Governors, there are confinement facilities under the state executive branch's operational control that went into corrective action. Can the Governor still submit a certification of full compliance on October 15, 2019 which affirms that, as of August 19, 2019, all confinement facilities under the state executive branch's operational control were in full compliance with the Standards?

A: Corrective action periods that are initiated between August 20, 2019 and October 15, 2019 will raise questions by DOJ regarding whether or not such confinement facilities were in full compliance with the Standards as of August 19, 2019. In such cases, DOJ recommends that the Governor submit a thorough written explanation that clarifies how the facility or facilities where corrective action is occurring were, in fact, in full compliance with the Standards on August 19, 2019. Such a written explanation will help DOJ in its review of certifications, and may limit the follow-up questions and requests for additional information that DOJ sends to Governors.

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INFORMATION ON PREA COMPLIANCE FOR EXTERNAL STATE INVESTIGATIVE AGENCIES

The National PREA Standards (Standards) include requirements that address an agency's responsibility for ensuring that all allegations of sexual abuse and sexual harassment are investigated. While many agencies conduct their own sexual abuse and sexual harassment investigations, some agencies rely on external state investigative agencies; therefore, it is important to be aware that these external agencies are subject to the Governor's certification. A frequently asked question (FAQ) issued by the Department of Justice (DOJ) PREA Working Group on December 3, 2013 (see www.prearesourcecenter.org/node/3278) states, "To the extent that these state agencies investigate sexual abuse or sexual harassment in covered confinement facilities, compliance with the National PREA Standards by these agencies also falls within the scope of the Governor's certification."

The DOJ PREA Working Group also issued an FAQ on February 19, 2015 (see www.prearesourcecenter.org/node/3230) stating that PREA auditors are not required to audit the investigative policies and practices of external state investigative agencies, but rather are responsible for assessing the policies and practices of the confining agency being audited to determine whether it has met its own obligations under the relevant Standards (see www.prearesourcecenter.org/node/3229). In light of this guidance, the checklist below was developed by DOJ to serve as a tool for Governors and other stakeholders to assess compliance with the Standards by external state investigative agencies.

All four facility types covered by the Standards include requirements for external state investigative agencies that conduct sexual abuse and sexual harassment investigations in confinement facilities: prisons and jails (§115.21, §115.22, §115.34, and §115.71), lockups (§115.121, §115.122, §115.134, §115.171, and §115.178), community confinement facilities (§115.221, §115.222, §115.234, and §115.271), and juvenile facilities (§115.321, §115.322, §115.334, and §115.371). In order for Governors to submit a certification of full compliance, external state investigative agencies must be fully compliant with the Standards that apply to them. If there are state¹ agencies that investigate sexual abuse or sexual harassment in one of the five facility types covered by the Standards, DOJ encourages Governors to complete this compliance checklist for each external agency prior to making a certification determination.

NOTE: The following checklist applies to the Prisons and Jail Standards only. Checklists for lockups, community confinement facilities, and juvenile facilities are not yet available; however, agencies are encouraged to use the checklist developed for prisons and jails as a model for the types of information that should be considered when making a compliance determination.

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

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PRISONS AND JAIL STANDARDS: COMPLIANCE CHECKLIST INSTRUCTIONS

There are four Prisons and Jail Standards (§115.21, §115.22, §115.34, and §115.71) with which external state investigative agencies must comply. Each Standard is provided below, followed by a series of compliance questions with “yes/no” responses and a list of corroborating documentation. When responding to each question, consult the list of corroborating documentation to ensure that each response is sufficiently supported by the identified documentation. A “yes” response indicates that the agency is in compliance with a particular provision. A “no” response indicates that the agency is out of compliance with a provision and, therefore, does not meet the Standard.

At the end of the guiding compliance questions, there is an opportunity to list the total “yes” and “no” responses for each Standard, followed by an overall compliance determination of “Exceeds Standard,” “Meets Standard,” or “Does Not Meet Standard.” A finding of “Meets Standard” may only be selected if all responses are “yes.”

§ 115.21 Evidence protocol and forensic medical examinations	
Relevant Standard Language	<ul style="list-style-type: none"> (a) To the extent the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. (b) The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice’s Office on Violence Against Women publication, “A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,” or similarly comprehensive and authoritative protocols developed after 2011. (c) The agency shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs. (d) The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.

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§ 115.21 Evidence protocol and forensic medical examinations		
	<p>(e) As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.</p> <p>(f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (e) of this section.</p> <p>(g) The requirements of paragraphs (a) through (f) of this section shall also apply to:</p> <p style="padding-left: 20px;">(1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in prisons or jails; and</p> <p style="padding-left: 20px;">(2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in prisons or jails.</p> <p>(h) For the purposes of this section, a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.</p>	
Guiding Compliance Questions for § 115.21	1. The state entity or Department of Justice component is responsible for conducting (administrative or criminal) investigations of sexual abuse allegations (including inmate-on-inmate sexual abuse or staff-on-inmate sexual abuse).	YES or NO
	2. When conducting an investigation of allegations of sexual abuse, the state entity or Department of Justice component follows a uniform evidence protocol. <i>If YES, respond to questions (a)-(c) below.</i>	YES or NO
	(a) The protocol maximizes the potential for obtaining usable physical evidence for administrative proceedings.	YES or NO
	(b) The protocol is developmentally appropriate for youth.	YES, NO, or Not Applicable
	(c) The protocol, as appropriate, was adapted from or otherwise based on the most recent edition of the DOJ's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011. <i>If NO, list the source that was used to develop the protocol:</i>	YES or NO

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§ 115.21 Evidence protocol and forensic medical examinations		
	3. The state entity or Department of Justice component offers all inmate victims who experience sexual abuse access to forensic medical examinations, where evidentiarily or medically appropriate.	YES or NO
	4. Forensic medical examinations are offered without financial cost to the victim.	YES or NO
	5. Where possible, examinations are conducted by SAFEs or SANEs. <i>If examinations are not always conducted by SAFEs or SANEs, describe why not and by whom they are conducted:</i> _____	YES or NO
	6. When SANEs or SAFEs are not available, a qualified medical practitioner performs forensic medical examinations.	YES or NO
	7. The facility documents efforts to provide SANEs or SAFEs.	YES or NO
	8. In the past 12 months, list the total number of:	
	• Forensic medical exams conducted:	_____
	• Forensic medical exams performed by SANEs/SAFEs:	_____
	• Forensic medical exams performed by other qualified medical practitioners:	_____
	9. The state entity or Department of Justice component attempts to make a victim advocate from a rape crisis center available to the victim.	YES or NO
	<i>(a) If YES, these efforts are documented.</i>	YES or NO
	10. If and when a rape crisis center is not available to provide victim advocate services, the state entity or Department of Justice component provides a qualified staff member from a community-based organization or a qualified agency staff member.	YES or NO
	11. If requested by the victim, a victim advocate, a qualified agency staff member, or a qualified community-based organization staff member accompanies and supports the victim through the forensic medical examination process and investigatory interviews, and provides emotional support, crisis intervention, information, and referrals.	YES or NO

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§ 115.21 Evidence protocol and forensic medical examinations	
Corroborating Documentation for § 115.21	<p>The Uniform Evidence Protocol followed by the state entity or Department of Justice component must be reviewed for compliance.</p> <p>If the source of the protocol is other than DOJ's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," then the alternative source must be reviewed for appropriateness.</p> <p>Documentation of efforts to provide SANES/SAFEs.</p> <p>Corroborating documentation from the forensic medical exam provider that services were free to the victim or otherwise paid for by the agency or government entity responsible.</p> <p>Documentation to corroborate that all inmate victims of sexual abuse have access to forensic medical examinations, where evidentiarily or medically appropriate.</p> <p>Any available documentation that delineates the responsibilities of outside medical and mental health practitioners.</p> <p>Documentation of agreements with a rape crisis center for victim advocacy services or documentation of efforts to obtain an agreement.</p> <p>Documentation of agreements with a community-based organization to provide victim advocacy services.</p> <p>Documentation of staff member qualifications if agency staff are used to provide victim advocacy services.</p> <p>Agreement/memorandum of understanding (MOU) between the correctional agency and the state entity or Department of Justice component that conducts sexual abuse and/or sexual harassment investigations for the agency.</p>
Summary of Compliance Determination for § 115.21	<p>Summary of responses to compliance questions for Standard 115.21:</p> <p style="padding-left: 40px;">Total number of "yes" responses: _____</p> <p style="padding-left: 40px;">Total number of "no" responses: _____</p> <p>Based on the responses to the questions above and a review of the relevant documentation, select the appropriate finding for Standard 115.21 below:</p> <p style="padding-left: 20px;"><input type="checkbox"/> Exceeds Standard</p> <p style="padding-left: 20px;"><input type="checkbox"/> Meets Standard</p> <p style="padding-left: 20px;"><input type="checkbox"/> Does Not Meet Standard</p>

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§ 115.22 Policies to ensure referrals of allegations for investigations		
Relevant Standard Language	<p>(a) The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.</p> <p>(b) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The agency shall publish such policy on its website or, if it does not have one, make the policy available through other means. The agency shall document all such referrals.</p> <p>(c) If a separate entity is responsible for conducting criminal investigations, such publication shall describe the responsibilities of both the agency and the investigating entity.</p> <p>(d) Any State entity responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.</p> <p>(e) Any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.</p>	
Guiding Compliance Questions for § 115.22	The state entity or Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails has in a place a policy governing the conduct of such investigations.	YES or NO
Corroborating Documentation for § 115.22	State entity or Department of Justice component's policy governing investigations of sexual abuse or sexual harassment in prisons or jails.	
Summary of Compliance Determination for § 115.22	<p>Summary of response to the compliance question for Standard 115.22:</p> <p style="padding-left: 40px;">Total number of "yes" responses: _____</p> <p style="padding-left: 40px;">Total number of "no" responses: _____</p> <p>Based on the response to the question above and a review of the relevant documentation, select the appropriate finding for Standard 115.22 below:</p> <p style="padding-left: 40px;"><input type="checkbox"/> Exceeds Standard</p> <p style="padding-left: 40px;"><input type="checkbox"/> Meets Standard</p> <p style="padding-left: 40px;"><input type="checkbox"/> Does Not Meet Standard</p>	

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§ 115.34 Specialized training: Investigations		
Relevant Standard Language	<p>(a) In addition to the general training provided to all employees pursuant to § 115.31, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.</p> <p>(b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.</p> <p>(c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.</p> <p>(d) Any State entity or Department of Justice component that investigates sexual abuse in confinement settings shall provide such training to its agents and investigators who conduct such investigations.</p>	
Guiding Compliance Questions for § 115.34	1. State entity or Department of Justice component policy requires that investigators are trained in conducting sexual abuse investigations in confinement settings.	YES or NO
	2. The specialized training in sexual abuse investigations in confinement settings includes techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.	YES or NO
	3. The state entity or Department of Justice component maintains documentation showing that investigators have completed the required specialized training.	YES or NO
Corroborating Documentation for § 115.34	State entity or Department of Justice component training policy.	
	State entity or Department of Justice component training curriculum.	
	State entity or Department of Justice component training records/logs of investigative staff.	
	Documentation that state entity or Department of Justice component investigators have completed the required specialized training.	
Summary of Compliance Determination for § 115.34	<p>Summary of responses to compliance questions for Standard 115.34:</p> <p style="padding-left: 40px;">Total number of “yes” responses: _____</p> <p style="padding-left: 40px;">Total number of “no” responses: _____</p> <p>Based on the responses to the questions above and a review of the relevant documentation, select the appropriate finding for Standard 115.34 below:</p>	

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	<input type="checkbox"/> Exceeds Standard <input type="checkbox"/> Meets Standard <input type="checkbox"/> Does Not Meet Standard

§ 115.71 Criminal and administrative agency investigations	
Relevant Standard Language	<p>(a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.</p> <p>(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to § 115.34.</p> <p>(c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.</p> <p>(d) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.</p> <p>(e) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff. No agency shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.</p> <p>(f) Administrative investigations:</p> <ol style="list-style-type: none"> (1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and (2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings. <p>(g) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.</p> <p>(h) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.</p> <p>(i) The agency shall retain all written reports referenced in paragraphs (f) and (g) of this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.</p>

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§ 115.71 Criminal and administrative agency investigations		
	<p>(j) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.</p> <p>(k) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.</p> <p>(l) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.</p>	
Guiding Compliance Questions for § 115.71	1. When a state entity or Department of Justice component investigates allegations of sexual abuse and sexual harassment in confinement, it does so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.	YES or NO
	2. When the state entity or Department of Justice component investigates allegations of sexual abuse in confinement, it uses investigators who have received special training in sexual abuse investigations pursuant to § 115.34.	YES or NO
	3. When the state entity or Department of Justice component investigates allegations of sexual abuse in confinement, the investigators gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data.	YES or NO
	4. When the state entity or Department of Justice component investigates allegations of sexual abuse in confinement, the investigators interview alleged victims, suspected perpetrators, and witnesses and review prior complaints and reports of sexual abuse involving the suspected perpetrator.	YES or NO
	5. When the state entity or Department of Justice component investigates allegations of sexual abuse in confinement and the quality of evidence appears to support criminal prosecution, the investigating body conducts compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.	YES or NO
	6. When the state entity or Department of Justice component investigates allegations of sexual abuse in confinement, the credibility of an alleged victim, suspect, or witness is assessed on an individual basis and not determined by the person's status as inmate or staff.	YES or NO
	7. When the state entity or Department of Justice component investigates allegations of sexual abuse in confinement, the investigators do not require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.	YES or NO

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§ 115.71 Criminal and administrative agency investigations		
	8. When the state entity or Department of Justice component conducts administrative investigations into allegations of sexual abuse in confinement, those investigations: (a) Include an effort to determine whether staff actions or failures to act contributed to the abuse.	YES or NO
	(b) Are documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind the credibility assessments, and investigative facts and findings.	YES or NO
	9. When the state entity or Department of Justice component conducts criminal investigations into allegations of sexual abuse in confinement, those investigations are documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.	YES or NO
	10. When the state entity or Department of Justice component investigates allegations of sexual abuse in confinement, substantiated allegations of conduct that appear to be criminal are referred for prosecution.	YES or NO
	11. The state entity or Department of Justice component retains all written reports pertaining to the administrative or criminal investigation of alleged sexual abuse or sexual harassment for as long as the alleged abuser is incarcerated or employed by the agency, plus 5 years.	YES or NO
	12. When the state entity or Department of Justice component investigates allegations of sexual abuse in confinement, the departure of the alleged abuser or victim from the employment or control of the facility or agency where the abuse took place does not provide a basis for terminating an investigation.	YES or NO
	13. The number of substantiated allegations of conduct that appear to be criminal that were referred for prosecution since August 20, 2012 or since the last PREA audit, whichever is later:	_____
Corroborating Documentation for § 115.71	State entity or Department of Justice component policy related to criminal and administrative investigations.	
	State entity or Department of Justice component investigative records/reports for allegations of sexual abuse or sexual harassment in confinement.	
	State entity or Department of Justice component training records.	
	State entity or Department of Justice component investigative reports, record retention schedule, and copies of case records detailing allegations of sexual abuse in confinement.	
	Cases involving substantiated allegations of sexual abuse in confinement following an investigation conducted by a state entity or Department of Justice component and documentation indicating that they were referred for prosecution.	

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Governor's Certification/Assurance for Audit Year 3 of Cycle 2

§ 115.71 Criminal and administrative agency investigations	
Summary of Compliance Determination for § 115.71	<p>Summary of responses to compliance questions for Standard 115.71:</p> <p style="margin-left: 40px;">Total number of “yes” responses: _____</p> <p style="margin-left: 40px;">Total number of “no” responses: _____</p> <p>Based on the responses to the questions above and a review of the relevant documentation, select the appropriate finding for Standard 115.71 below:</p> <ul style="list-style-type: none"><input type="checkbox"/> Exceeds Standard<input type="checkbox"/> Meets Standard<input type="checkbox"/> Does Not Meet Standard