



U.S. Department of Justice

Washington, D.C. 20531

February 25, 2016

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 and are found at 28 C.F.R. Part 115, took effect on August 20, 2012, and apply to DOJ, state, and local confinement facilities (including adult prisons and jails, juvenile facilities, lockups, and community confinement facilities).

As you may know, PREA contains mandates that may affect grant funding your state/jurisdiction receives from DOJ. The statute provides that, if a governor is not able to certify to DOJ that the state/jurisdiction 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/jurisdiction to achieve and certify full compliance with the Standards in future years. See 42 U.S.C. § 15607(e)(2). If the governor is not able to certify to DOJ that the state/jurisdiction is in full compliance with the Standards and elects not to submit an assurance to DOJ, the state/jurisdiction will be subject to the loss of 5 percent of certain DOJ grant funds that it would otherwise receive. In Fiscal Year (FY) 2016, there are three DOJ grant programs (or portions thereof) subject to this statutory provision. Two are administered by the Office of Justice Programs: (1) BJA's Edward Byrne Memorial Justice Assistance Grant Program, and (2) the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Juvenile Justice and Delinquency Prevention Act Formula Grant Program. The third grant program is administered by the Office on Violence Against Women (OVW): the Services, Training, Officers, and Prosecutors (STOP) Violence Against Women Formula Grant Program.

To fulfill this requirement, governors must submit either a certification or an assurance to DOJ, and any supporting materials, by **March 31, 2016**. Details regarding important changes to the certification/assurance timeline and what information to consider when making a certification determination are described below.

DOJ remains committed to assisting jurisdictions nationwide to work towards compliance with the Standards. Since 2004, the Office of Justice Programs' Bureau of Justice Assistance (BJA) has provided over \$60 million to state, local, tribal, and territorial governments to assist them in these important activities. In 2010, DOJ established the National PREA Resource Center (PRC) through a cooperative agreement with BJA to provide training and technical assistance for those in the field working to come into compliance with the Standards. As the final year of the first three-year PREA audit cycle draws to a close, we are pleased to report that PREA implementation activities are underway across the nation, and there have been PREA audits

conducted in all 50 states and all types of correctional facilities covered by the Standards. As of the date of this letter, DOJ has certified more than 700 PREA auditors, and DOJ, through the PRC, will conduct an additional auditor training in 2016.

Important Changes to the Timeline for a Governor to provide DOJ with a Certification or Assurance

In previous years, the deadline for the submission of PREA certifications and assurances was May 15; however, this date is incongruent with the audit year, which is established in the Standards to end on August 19 each year. This incongruity required governors to submit a certification or an assurance prior to the end of the audit year based on incomplete audit data.

In order to streamline these processes and address the challenges and concerns voiced to DOJ by governors and others who have responsibilities related to PREA, DOJ is implementing an amended timeline in 2016 for a governor to provide DOJ with a certification or assurance. Beginning in 2016, the due date for certification and assurance submissions will occur at the beginning of the federal fiscal year that follows the completion of each audit year. **In order to implement this timeline change, 2016 will be a transition year when governors will make two certification and/or assurance submissions.**

- **2016 Governor's Re-Certification/Assurance for Audit Year 2.** For the first submission in 2016, governors are being asked to provide a certification or assurance to DOJ for Audit Year 2 (August 20, 2014 – August 19, 2015) of the first 3-year audit cycle. This transition year provides states/jurisdictions with a second opportunity to provide DOJ with a certification or assurance for Audit Year 2, but with the significant benefit of having a full audit year of audit data. This submission—the first in 2016, but the second focused on Audit Year 2—will impact FY 2016 DOJ grant awards. **This submission is due on March 31, 2016.**
- **2016 Governor's Certification/Assurance for Audit Year 3.** For the second submission in 2016, governors are being asked to provide a certification or assurance to DOJ for Audit year 3 (August 20, 2015 – August 19, 2016) of the first 3-year audit cycle, and these submissions will impact FY 2017 grant funds. This second submission will be due on **October 15, 2016.** Governors will receive a second letter from DOJ in summer 2016 with additional instructions.

Attached to this letter is a diagram illustrating the above changes to the PREA certification/assurance timeline.

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/jurisdiction 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/jurisdiction 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/jurisdiction 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.
- 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/jurisdiction must be in full compliance with all the Standards, including the audit standard (28 C.F.R. § 115.401(b)), by the end of the audit year on August 19. Only audits completed by August 19 may be considered when determining compliance with Standard 115.401(b).

Following each year’s certification/assurance deadline, DOJ engages in a standard process to review certifications submitted by each state/jurisdiction. In addition to the requirements listed above, governors are encouraged to consider any findings from DOJ’s certification review process that would impact his/her decision of whether to submit a certification or assurance to DOJ.

- If DOJ is in possession of state- or jurisdiction-specific information that may influence a governor’s certification determination for the first submission in 2016, DOJ will convey such information in a memorandum attached to this letter. If the state/jurisdiction submits a certification of full compliance after receipt of this information, the governor will be asked to respond to any potential areas of noncompliance identified by DOJ in the memorandum and provide evidence of full compliance in a signed written statement.
- Following the first submission deadline in 2016, DOJ will review all certifications it receives. 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 jurisdictions in supporting and maintaining full PREA compliance.

We understand that your task of assessing state- or jurisdiction-wide PREA compliance is not an easy one. For that reason, we have developed the attached PREA compliance worksheet, which will also be made available on the PREA Resource Center website at www.prearesourcecenter.org. The worksheet is 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.

Submitting a Certification or Assurance

As indicated above, **March 31, 2016** is the deadline for the 2016 Governor's Re-Certification/Assurance for Audit Year 2, in which a Certification or Assurance Form for Audit Year 2 must be received by BJA's PREA Management Office (PMO). DOJ requests that, in addition to submitting either a signed Certification or Assurance Form by the above deadline, each governor submit the information outlined in the attached PREA Certification and Assurance Submission Worksheet. The PREA Certification or Assurance Form, information completed as part of the PREA Certification and Assurance Submission Worksheet, and any other supporting materials can be sent to:

PREA Management Office
Bureau of Justice Assistance
U.S. Department of Justice
810 Seventh Street NW
Washington, D.C., 20531

Executed forms and all supporting materials may also be emailed to PREACompliance@usdoj.gov. If the PMO does not receive a signed copy of either form by March 31, 2016, your state/jurisdiction will be subject to a loss of 5 percent of each of the FY 2016-covered grant funds referenced above as required under 42 U.S.C. § 15607(e)(2).

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

DOJ looks forward to continuing to collaborate with you as we work together to implement the National PREA Standards and combat sexual abuse and sexual harassment in confinement facilities. Thank you for your continued commitment to this important issue, and for your efforts in your State/jurisdiction to promote and support implementation of the Standards.

Sincerely,



Karol Mason
Assistant Attorney General
Office of Justice Programs



Bea Hanson
Principal Deputy Director
Office on Violence Against Women

Attachments:

- PREA Certification Form
- PREA Assurance Form
- PREA Certification/Assurance Timeline Transition Diagram
- PREA Certification and Assurance Submission Worksheet
- Memorandum on DOJ Certification Review Findings (if applicable)

cc: State Administering Authorities for OJP and OVW grant programs

Governors' Criminal Justice Policy Advisors

Robert L. Listenbee
Administrator
Office of Juvenile Justice and Delinquency Prevention

Denise E. O'Donnell
Director
Bureau of Justice Assistance

**Certification Regarding Adoption of and Full Compliance with
the National Standards to Prevent, Detect, and Respond to Prison Rape
2016 Governor's Certification for Audit Year 2**

Pursuant to 42 U.S.C. §15607(e)(2), I certify to the U.S. Department of Justice (DOJ):

As of August 19, 2015, the state/jurisdiction 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 via the email address below of the existence of the inaccuracy; and
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/jurisdiction will expend not less than 5 percent of its covered DOJ grant funds for FY 2016 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 2016 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/jurisdiction

Date

This form must be received by the Department of Justice, PREA Management Office, by March 31, 2016. A signed, electronic version of this form may be sent to PREACompliance@usdoj.gov.

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 42 U.S.C. § 3795a. 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 to Utilize Department of Justice Grants to Achieve Full Compliance with
the National Standards to Prevent, Detect, and Respond to Prison Rape
2016 Governor's Assurance for Audit Year 2**

Pursuant to 42 U.S.C. §15607(e)(2), I assure the U.S. Department of Justice (DOJ) that, subject to the exceptions checked below (if applicable), the state/jurisdiction named below will use not less than 5 percent of its covered DOJ grant funds for FY 2016 to enable the state/jurisdiction 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.

Check the boxes below only if they apply to your state/jurisdiction.

1. ___ As of August 19, 2015, the state/jurisdiction 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, insofar as those standards implicate juvenile facilities, as defined in 28 C.F.R. Part 115, but was not in full compliance with one or more standards insofar as those standards implicate 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.

2. ___ As of August 19, 2015, the state/jurisdiction named below had adopted, and was in full compliance with, the National Standards to Prevent, Detect, and Respond to Prison Rape, 28 CFR Part 115, except to the extent that full compliance would require new construction. Accordingly, grants issued by the Office on Violence Against Women are not subject to the required set aside of funds for PREA purposes and shall not be used for the purposes of the above assurance.

If the state/jurisdiction has checked Box 1 and/or 2, and 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 Box 1 and/or 2, the same shall conduct a reassessment and determine whether this selection of such box(es) was accurate. If the selection of one or both boxes is determined not to have been accurate, the undersigned or a designee will:

1. Within 15 days, notify DOJ via the email address below of the existence of the inaccuracy; and
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 its covered DOJ grant funds for FY 2016 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/jurisdiction

Date

This form must be received by the Department of Justice, PREA Management Office, by March 31, 2016. A signed, electronic version of this form may be sent to PREACompliance@usdoj.gov.

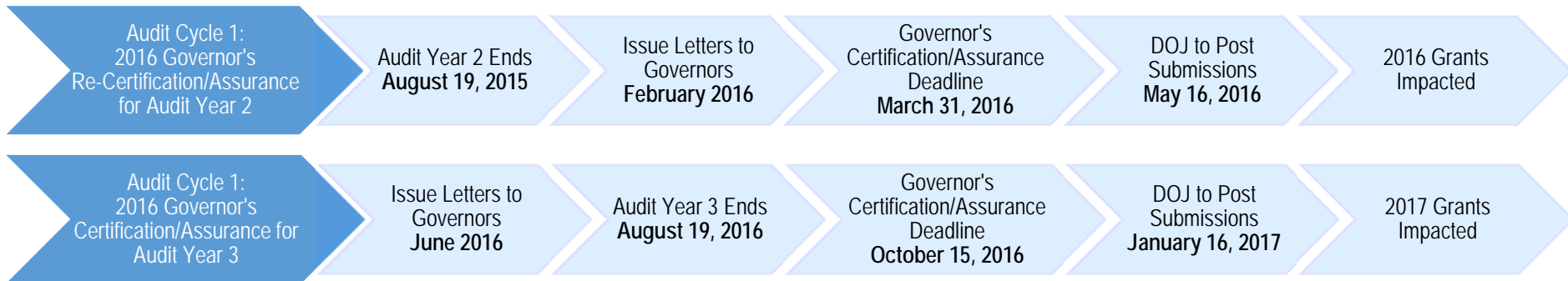
A false statement in this certification or in the grant application that it supports may be subject to criminal prosecution, including under 18 U.S.C. § 1001 and 42 U.S.C. § 3795a. DOJ grants, including certifications provided in connection with such grants, are subject to review by the DOJ component that issued the grant and/or by the DOJ Office of the Inspector General.

PREA Certification/Assurance Timeline Transition

PREA Certification/Assurance Timeline: 2014-2015



PREA Certification/Assurance Timeline: 2016 Transition



**PREA Certification and Assurance Submission
WORKSHEET**
2016 Governor's Re-Certification/Assurance for Audit Year 2

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.

CONSIDERATIONS FOR SUBMITTING A CERTIFICATION OR ASSURANCE

DOJ requests that, in addition to submitting either a signed Certification or Assurance Form by March 31, 2016, each governor also provides the following supporting materials:

1. **Facility Audit Activity.** Provide a list of all confinement facilities in the state/jurisdiction that are considered to be under the operational control of the executive branch, including facilities operated by private entities on behalf of the state/jurisdiction's executive branch. The list should also include information on PREA audit activity for each facility, including:
 - a. *Facility type.* The list should be categorized by one of the four confinement facility types covered by the Standards, which are jails and prisons, community confinement facilities, lockups, and juvenile facilities.
 - b. *Agency.* Provide the responsible agency name for each facility.
 - c. *Audit status.* Indicate whether the audit is: 1) Scheduled, 2) In progress, 3) Completed, or 4) None if no audit is currently scheduled. For guidance on how to determine when an audit is considered complete, please see the formal guidance issued by the DOJ PREA Working Group located on the PREA Resource Center website (<http://www.prearesourcecenter.org/node/3228>).
 - d. *Site review date(s).* This refers to the days that the auditor spends on site at a facility to examine the physical plant; observe correctional practices; collect and review documentation; and conduct interviews with inmates, staff, and others who provide paid or volunteer services at the facility. If the site review is scheduled, but has not yet been completed, provide the anticipated date(s) of the site review.
 - e. *Audit completion date.* If the audit has been completed, use the PREA Working Group guidance referenced above to determine the date of completion.
 - f. *Auditor's compliance determination.* This only applies to those audits that have been completed. A finding of full compliance means that a DOJ-certified PREA auditor determines that a facility meets or exceeds every provision of every standard. A facility found to be out of compliance means there was a finding of "Does Not Meet Standard" with one or more standards.
 - g. *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." Where PREA audit reports are posted to the agency 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.

Facility Audit Activity Example

PREA Audits of Facilities Under the Operational Control of the Executive Branch in [STATE/JURISDICTION NAME]								
Facility Name	Facility Type	Agency	Audit Status	Audit Year	Audit Completion Date	Site Review Date(s)	Compliance Determination	Link to Final Report
EXAMPLE 1	Prison	Agency A	Completed	Year 2	10/4/2014	9/2/2014 – 9/4/2014	Full Compliance	examplestateagency/PREAreports.gov
EXAMPLE 2	Juvenile Facility	Agency B	Completed	Year 2	12/16/2014	11/9/2014 – 11/11/2014	Out of Compliance	N/A – facility under corrective action
EXAMPLE 3	Community Confinement	Agency C	In progress	Year 3	N/A	3/21/2016 – 3/23/2016	N/A	N/A
EXAMPLE 4	Lockup	Agency D	Scheduled	Year 3	N/A	7/7/2016 – 7/8/2016	N/A	N/A
EXAMPLE 5	Jail	Agency E	None	N/A	N/A	N/A	N/A	N/A

**PREA Certification and Assurance Submission
WORKSHEET**

2016 Governor's Re-Certification/Assurance for Audit Year 2

2. ***Forthcoming Audit Schedule.*** Provide a written statement describing a proposed schedule for completing an audit of all facilities in the state/jurisdiction that are considered to be under the operational control of the executive branch, including facilities operated by private entities on behalf of the state/jurisdiction's executive branch, during the following 3 audit years. This information may be supplemented by or presented in a table format like the facility audit activity table example above.

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. ***Response to Information from DOJ Regarding PREA Compliance.*** If the governor received a memorandum from DOJ attached to the correspondence dated February 25, 2016 from the Office of Justice Programs Assistant Attorney General, Karol Mason, and Office on Violence Against Women Principal Deputy Director, Bea Hanson, indicating that there are questions regarding full compliance with the Standards in the state/jurisdiction, and the governor wishes to submit a certification this year, DOJ requests that he/she submit a signed written statement that responds to all potential areas of noncompliance identified by DOJ and provides evidence to support full compliance.
2. ***Determination of PREA Compliance for Facilities Not Yet Audited.*** DOJ requests that the governor provide a signed written statement which describes how he/she determined that facilities not yet audited in the relevant audit cycle are in full compliance with the PREA Standards.¹ **NOTE:** DOJ does not prescribe the method or process by which a governor assesses compliance in those facilities that have not completed an audit. The governor may rely upon one or a combination of methods (e.g., mock or practice audits, individual facility assessments conducted by the agency PREA Coordinator and/or facility PREA Compliance Manager) that provide a reasonable measure of certainty regarding facility compliance with the Standards.
3. ***PREA Compliance of State Investigative Agencies.*** DOJ requests that governors of states/jurisdictions where external agencies perform sexual abuse and sexual harassment investigations in confinement facilities that are under the executive branch of government identify these investigative agencies and provide information regarding these agencies' compliance with the Standards. Please refer to the formal guidance issued by the DOJ PREA Working Group for additional information (<http://www.prearesourcecenter.org/node/3278>).

CONSIDERATIONS FOR SUBMITTING AN ASSURANCE

The following considerations apply only to governors who submit an assurance to DOJ.

When completing the Assurance Form, governors should note that legal restrictions on the uses of the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Juvenile Justice and Delinquency Prevention Act Formula Grant Program and the Office on Violence Against Women (OVW): the STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant Program may make them unavailable to the state/jurisdiction for addressing certain areas of noncompliance with the PREA Standards.

- ***OJJDP Formula Grant Funds.*** If a state/jurisdiction is in full compliance with the Standards as they apply to the juvenile facilities, and out of compliance only with regard to adult facilities, it could not lawfully spend OJJDP Formula Grant funds to come into compliance. Because it would be impossible to use this money to come into compliance, the state/jurisdiction would not be subject to the 5 percent reduction in OJJDP Formula Grant funding.
- ***STOP Grant Funds.*** STOP Grant funds are limited in that they cannot be used for new construction, even if that is necessary to bring a state/jurisdiction into full compliance with the Standards. If a state/jurisdiction is in full compliance except for a deficiency that requires new construction, it could not lawfully spend STOP Grant funding to come into compliance, and the state/jurisdiction, therefore, would not be subject to the 5 percent reduction in STOP Grant funds.

The PREA Assurance Form requires governors to indicate whether either or both of these circumstances apply to the state/jurisdiction.

¹ "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).