



FREQUENTLY ASKED QUESTIONS FOR JUVENILE DEFENDERS

I. The Prison Rape Elimination Act

1. What is PREA?

The acronym “PREA” stands for the Prison Rape Elimination Act. PREA was passed unanimously in both houses of Congress in 2003 and signed into law by President Bush. The law establishes a zero tolerance policy for sexual assault in custody and requires the United States Department of Justice (DOJ) to promulgate standards that detect, prevent, reduce and punish sexual assault in custody.

PREA also created the National Prison Rape Elimination Commission which completed a study of cause, consequences and prevention of sexual abuse in custody and issue draft Standards to the Attorney General. The Attorney General based his final Standards on those proposed by the National Prison Rape Elimination Commission.

The final PREA Standards address inmate-on-inmate and staff-on-inmate sexual abuse. The Standards cover all confinement facilities including prisons, jails, lockup, community confinement facilities and juvenile facilities. All federal confinement facilities, including military confinement facilities, Department of Homeland Security, and Health and Human Services facilities must comply with the Standards immediately upon their enactment.

2. When does PREA take effect?

The Standards became applicable to the Bureau of Prisons and other federal confinement facilities on August 20, 2012. The first audit of confinement facilities began on August 20, 2013 and requires 1/3 of all confinement facilities to be audited within a year. The next 1/3 of facilities



will be audited in the year after that, and by August 20, 2016, all confinement facilities will have been audited.

Several Standards give states additional time to comply. For example, Juvenile Standard § 115.31(c) sets out minimum staffing ratios of 1:8 during awake hours and 1:16 during sleeping hours. This Standard does not go into effect until October 1, 2017 unless other laws, regulations or a judicial consent decree require those ratios.

3. Why should I learn about PREA?

PREA is an important step in ensuring that youth and adults in custody are protected from sexual assault and harassment. This legislation, and the data collected about the causes, consequences and prevalence of sexual assault in custody is useful in understanding the risks of victimization of youth in custody.

4. Are the PREA Standards applicable to every facility in every state?

The PREA Standards were immediately binding on all federal confinement facilities, and private facilities that confine federal inmates, detainees, and residents. While the PREA Standards apply to every facility in every state, states are not required to comply with the Standards. Therefore, state and local agencies must voluntarily implement the Standards.

Further, there is a financial incentive to comply with the Standards. State Governors who do not certify full compliance with PREA will lose 5% of DOJ grant funding unless the Governor can show that the 5% of grant funding will be used to bring that agency up to full compliance.

5. What are the rates of sexual victimization of youth in custody?

According to the 2012 Bureau of Justice Statistics Report on *Sexual Victimization in Juvenile Facilities*, an estimated 2.5% of youth (450 nationwide) reported an incident involving another youth, and 7.7% (1,390) reported an incident involving facility staff in the last 12 months. In total, this 9.5% of youth in custody reporting sexual victimization is about three times the national rate for adults reporting sexual victimization.

6. What are the rates of sexual victimization of youth confined in adult facilities?

There are wide variances in the estimates of the rate of victimization of youth confined in adult facilities. According to the 2011-12 Bureau of Justice Statistics Report on *Sexual Victimization in Prison and Jails*, 1.8% of juveniles aged 16 and 17 held in adult prisons and jails reported being sexually victimized by another inmate. 3.2% of juveniles aged 16 and 17 held in adult prisons and jails reported being sexually victimized by staff.



However, in the 2005 and 2006 Bureau of Justice Statistics Report on *Sexual Violence Reported by Correctional Authorities*, a reported 20.6% of victims of substantiated incidents of inmate-on-inmate sexual violence in adult jails in 2005 were under the age of 18, and 13% of such victims in 2006 were under 18, despite the fact that inmates under 18 accounted for less than one percent of the total jail population in both years. Further, according to the 2005-2008 Bureau of Justice Statistics *Survey of Sexual Violence*, from 2005 through 2008, 1.5% of victims of substantiated incidents of inmate-on-inmate sexual violence in State prisons were under 18, even though inmates under 18 constituted less than 0.2% of the State prison population.

7. What are the rates of sexual victimization of LGBT youth compared to heterosexual youth?

According to the 2012 Bureau of Justice Statistics Report on *Sexual Victimization in Juvenile Facilities*, 14.3% of youth who identified as gay, lesbian, bisexual or other, and 8.9% of heterosexual youth reported being sexually victimized by both staff and youth. Youth who identified as gay, lesbian, bisexual, or other reported a substantially higher rate of youth-on-youth victimization (10.3%) than heterosexual youth (1.5%). There were similar rates of abuse by staff reported by youth who identified as gay, lesbian, bisexual, or other (7.5%) and heterosexual youth (7.8%).

8. Is PREA applicable if my client is in a group home or a residential treatment center?

Yes. The Juvenile Standards apply when a facility (whether it is a group home, residential treatment center, or another similar placement) is *primarily used* to place youth in the juvenile justice system. To determine whether a place is *primarily used* to place youth in the juvenile justice system, you can look at that facility's residents for a period of one year, and if juvenile justice youth make up the greatest number of residents placed in that facility, then PREA would apply. This is the case even if that placement is run by a private entity or corporation.

9. Is PREA applicable if my client is on probation?

No. PREA Standards are not applicable unless your client is in a residential placement while on probation. While The PREA Commission proposed standards that would apply to non-residential placements, the Attorney General ultimately decided not to propose standards for non-confinement settings. Notwithstanding the absence of standards to govern this conduct, sexual victimization of youth and adults in custody – including on probation-- violates state criminal laws and should be reported to the agency and to law enforcement authorities.

10. My client is under 18 and in a community placement with other youth adjudicated delinquent. Should that placement follow the Juvenile Standards or Community Confinement Standards? What is the difference?



Your client's community placement should follow the Juvenile Standards. A juvenile facility is a facility *primarily used* for the confinement of juveniles under the juvenile justice system. All juvenile community confinement facilities are governed by the Standards for Juvenile Facilities.

A community confinement facility is defined as *a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential re-entry centers), other than a juvenile facility, in which individuals reside as part of a term of imprisonment or as a condition of pre-trial release or post-release supervision, while participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during nonresidential hours.*

Community confinement facilities are governed by the Community Confinement Standards. If your client was under adult court supervision and was sentenced to serve in a community confinement facility by the adult court, then that placement will follow the Community Confinement Standards.

The differences between these standards are slight, but important. The Juvenile Standards protect your male and female clients from cross gender pat searches, while the Community Confinement Standards only protect female inmates from cross gender pat searches. Further, the Juvenile Standards mandate a staff to youth ratio, while the Community Confinement Standards do not.

11. How can I use PREA to help my client in disposition?

While PREA does not create an independent cause of action, PREA can be a valuable tool for any defender fighting for their client in a disposition phase. In a recent panel discussion on the ten year anniversary of PREA, U.S. District Court Judge Reggie Walton urged defense counsel to use PREA to convey why custody would not be an appropriate place for your client. He suggested that defense counsel use the data and reports generated by PREA to support alternative placements and programs.

PREA Standards require extensive facility specific data collection. In the disposition phase of a juvenile adjunction or sentencing in adult court, you can use this data to argue against a specific placement if that placement has a high incidence of sexual misconduct. Further, if your client is amongst the most vulnerable populations, or if your client has a history of trauma, defenders can use this information to convince a judge of a safer placement option. While these are difficult conversations to have with your client and the judge, it is a useful and available option to help protect them from abuse.

II. Youthful Inmates

1. Do youthful inmates have to be housed separately from adults?

Yes. Youthful inmates are defined in the PREA Prisons and Jail Standards as “any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail.” Even in jurisdictions where the age of adult criminal responsibility is below the age of 18, youthful inmates cannot be housed with adults. PREA Standard § 115.14 provides that a youthful inmate cannot be placed

in a housing unit where (s)he will have *sight, sound, or physical contact with adult inmates through a shared dayroom or any other common space, shower area, or sleeping quarters*. Sight and sound separation of youthful inmates and adults must be upheld in areas outside of housing units as well, unless the agency provides direct staff supervision. PREA allows for the use of isolation after an agency determines no other available means of separation is available. Defenders can still challenge the isolation determination and advocate for the client's interest.

2. If my client has been placed in isolation so the agency can comply with the sight and sound separation requirement of PREA, will (s)he still have access to daily exercise and education?

Yes. PREA Standard § 115.14(c) provides that *absent exigent circumstances, agencies shall not deny youthful inmates daily large-muscle exercise and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible*. Defenders can use this language to help ensure their client's receive the services and rights they deserve, but please note, that defenders should continue to challenge the use of isolation even if clients have access to daily exercise and education.

3. What can I do if the agency is not complying with sight and sound separation of my client from adults in that prison or jail?

If an agency is non-compliant with PREA Standards, there are a few options available to you. PREA Standard §115.11(b) requires that an upper-level agency wide PREA Coordinator be designated to develop, implement, and oversee agency efforts to become PREA compliant. Report the incident to this person or the PREA Compliance Manager if that facility has one. Further, you can use the Standards in conversations and complaints to the Warden or Director of the facility.

If the agency does not cooperate and protect your client, you can use the PREA Standards to support a motion to the judge or in an emergency hearing to move your client to a different placement. If your client is being held pre-trial, the PREA Standards can support a 5th or 14th Amendment violation of your client's Due Process Rights. If your client is post-disposition, you can make an 8th Amendment claim and use the Standards to ensure that the law against housing adults and youthful inmates together is upheld. Remember that PREA does not create an independent cause of action. You may use it, however, to show a violation of your client's existing rights.

Also remember this legislation and the Standards promulgated represent the minimum requirements of what facilities should be doing to protect your client. Some states have practices that exceed the PREA Standards, so it is also important to research the law in your state.

III. Cross Gender Searches

1. Does PREA impose any limitations to cross-gender searches of juvenile inmates?



Yes. The Juvenile Facility Standard § 115.315 prohibits cross-gender pat-down, strip searches, or body cavity searches in juvenile facilities, except in exigent circumstances or when performed by medical practitioners. These Standards apply to both male and female youth. PREA requires all staff be trained on how to conduct professional and respectful cross gender searches, in the least intrusive manner possible.

2. Does the Act impose similar limitation on female staff pat-searching male youthful inmates?

No. Youthful inmates are in the custody of adult facilities, and therefore the Adult Prison and Jail Standards apply. Those Standards only limit cross-gender pat-searches for female inmates; there is no Standard banning cross-gender pat-searches for male inmates. Males under 18 years old can be pat searched by female staff in adult prisons and jails, but not in juvenile facilities.

Standard §115.15(a) of the Prison and Jail Standards maintain a limitation on cross gender strip and body cavity searches for all inmates absent exigent circumstances or when performed by a medical professional.

IV. Agency Obligations

1. If I have a transgender client who was just taken into custody in a juvenile facility, what are the obligations of the agency under PREA?

PREA Standard §115.315(e) provides that facilities shall not search or physically examine a transgender or intersex inmate, detainee or resident for the sole purpose of determining the youth's genital status. Agencies can determine genital status by speaking with the youth, or reviewing medical records. The options for searching transgender youth include asking the youth what gender staff member they prefer to be searched by or having youth only searched by medical staff.

Standard §115.342 also designates that agencies should consider whether such placement ensures the youth's health and safety when assigning transgender youth to a male or female placement. Transgender youth may shower privately if they choose to and the facility is prohibited from using youth's LGBTI status as an indicator of sexual abusiveness.

2. If my client reports an incident of sexual abuse to a staff member, what are staff and agency reporting obligations?

PREA Standard §115.361 requires all staff (including medical and mental health practitioners) to immediately report *any knowledge, suspicion, or information they receive regarding an incident of sexual abuse or sexual harassment that occurred in a facility*. The agency must also require that staff comply with applicable mandatory reporting laws of the state. Once an allegation is reported by a staff member, the facility head must promptly report the allegation to the appropriate agency office and to your client's

parents or legal guardians, *unless the facility has official documentation showing the parents or legal guardians should not be notified.*

3. If my client is vulnerable to sexual abuse, is the agency obligated to protect my client?

Yes. *Within 72 hours* of your client's arrival to the facility and periodically throughout their confinement, the agency shall obtain and use information about your client's personal history and behavior to reduce the risk of sexual abuse by other youth. The information used for this assessment can include but is not limited to prior sexual victimization, gender nonconforming appearance, identification as LGBT, physical size and stature, mental illness, and any disabilities. *If the agency learns your client is subject to a substantial risk of imminent sexual abuse, the agency must take immediate action to protect your client.*

4. If my client reports an incident of sexual abuse, is the agency obligated to protect my client from retaliation?

Yes. Standard § 115.367 outlines the agency's responsibility to protect your client from retaliation by other inmates or staff. The agency must employ multiple protective measures including a housing change or transfer for your client or the abuser, removal of the alleged abuser from contact with your client, and emotional support services for your client if (s)he fears retaliation for reporting the sexual abuse or sexual harassment. The agency must also monitor the conduct or treatment of your client for at least 90 days (or longer if the initial monitoring indicates a need for continuance) to see if there are changes that may suggest a possible retaliation by inmates or staff, and if so, the agency must act promptly to remedy any such retaliation.

5. Can the agency place my client in solitary confinement as a protective measure?

Under PREA, Yes. The agency can place your client in involuntary segregated housing but only after it determines there is no available alternative means of separation from likely abusers and only until an alternative means of separation from likely abuse can be arranged (this should not ordinarily exceed 30 days). Whether your client is in an adult or juvenile facility, § 115.14(c) and §115.342 of the PREA Standards mandate *access to daily large-muscle exercise and any legally required educational programming or special education services.* Further, your client shall have *access to other programs and work opportunities to the extent possible.*

However, just because PREA allows for the use of isolation after an agency determines no other available means of separation, this does not preclude a defender from challenging the determination and advocating for the client's interest.

6. What can I do if my client informs me that (s)he has been sexually abused while in custody?

Inform your client of the responsibilities and obligations of the agency to keep him or her safe. Check your state's mandatory reporting laws to make sure you are not required to report the abuse. Determine if



your client wants to report the incident. If your client wants to report the incident but is not comfortable reporting the incident himself, you can make a third-party report. PREA Standard § 115.354 require agencies to establish a method to receive third-party reports of sexual abuse and sexual harassment. Once the incident is reported, follow-up to ensure the agency is complying with the PREA Standards, including keeping your client safe from abuse and retaliation, providing alternative means of separation other than segregated housing when possible, and allowing your client access to programs and privileges if (s)he is in segregated housing.

If the agency is not cooperating, then use the Standards in a motion to the judge or an emergency hearing seeking an alternative placement.

7. My client does not speak English, is the agency required to provide an interpreter if (s)he reports an incident of sexual abuse while in custody?

Yes. The agency must take steps *to provide interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.* The agency cannot rely on other inmates to interpret except where an extended delay in obtaining an effective interpreter could compromise your client's safety, performing first-response duties, or the investigation of your client's allegations.

V. Available Resources

There are robust resources available free-of-charge to explain PREA and issues of sexual assault in custody. Some important websites include:

- Project on Addressing Prison Rape: <http://www.wcl.american.edu/endsilence/>
 - History of PREA and all PREA and National Prison Rape Elimination Commission documents, 50-state surveys, checklists, maps, webinars, graphic novels, case law digests, news, training, curricula, links to other important websites
- National PREA Resource Center: www.prearesourcecenter.org
 - PDF's of the Prison Rape Elimination Act, Final Rule, and Standards, training, technical assistance, regional meetings, PREA Institute(s), webinars, general information, office hours, links to other resources
- Office of Juvenile Justice and Delinquency Prevention: www.ojjdp.ncjrs.org
- National Institute of Corrections: <http://nicic.gov/PREA>
- United States Department of Health & Human Services: www.hhs.gov
- United States Department of Justice: www.doj.gov



- The Campaign For Youth Justice: <http://www.campaignforyouthjustice.org/preac.html>

As of today, there are no PREA trainings or curriculum specific to juvenile defenders, but ample resources provide in-depth information and analysis of the Juvenile Standards and statistics on the prevalence of sexual abuse of youth in custody and the vulnerability of youth to sexual assault while in custody. Below is a list of some of the available information.

- Webinar: *Responding to Sexual Abuse of Youth in Custody: Addressing the Needs of Boys, Girls and Gender Non-Conforming Youth*. Available at: <http://www.wcl.american.edu/endsilence/webinars.cfm>
- Training: *Responding to Sexual Abuse of Youth in Custody: Responding to the Needs of Boys, Girls and Gender Non-Conforming Youth*. Available at: http://www.wcl.american.edu/endsilence/juvenile_training.cfm
- Handbook: National Institute of Corrections: *Addressing Sexual Violence Against Youth in Custody: Youth Workers' Handbook on Identifying and Addressing Sexual Violence in Juvenile Justice Settings*. Available at: <http://static.nicic.gov/Library/026309.pdf>
- Data Collection Surveys:
 - Bureau of Justice Statistics: *Sexual Victimization in Juvenile Facilities Reported by Youth*, 2012. Available at: <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4656>
 - Bureau of Justice Statistics: *Survey of Sexual Violence (SSV)*, 2005-08. Available at <http://www.bjs.gov/index.cfm?ty=dcdetail&iid=406>
 - Bureau of Justice Statistics: *Sexual Victimization in Juvenile Facilities Reported by Youth*, 2008-09. Available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=2113>
 - Bureau of Justice Statistics: *Sexual Violence Reported by Correctional Authorities*, 2006. Available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1151>
 - Bureau of Justice Statistics: *Sexual Violence Reported by Correctional Authorities*, 2005. Available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1152>

Additionally, the Project on Addressing Prison Rape has published graphic novels for youth in custody entitled *End Silence: Youth Speaking out about Sexual Abuse in Custody*. These materials are a great tool to teach your clients about inappropriate versus appropriate behavior of staff and other youth, and what to do if they are in a situation of sexual abuse or harassment. Many jurisdictions are already using the graphic novels to meet the PREA Standard on resident education. These graphic novels are available in PDF form by using the following links:



- Billy Speaks Out.
<http://www.wcl.american.edu/endsilence/documents/BillySpeaksOutFINALFeb292012.pdf>
- Sheila's Dilemma.
<http://www.wcl.american.edu/endsilence/documents/SheilasDilemmaFINALApril2012.pdf>
- Carlo's Question.
<http://www.wcl.american.edu/endsilence/documents/CarlosQuestionFINALJune2012.pdf>
- Mary's Friend.
<http://www.wcl.american.edu/endsilence/documents/MarysFriendFINALJuly2012.pdf>
- Charlie's Report.
<http://www.wcl.american.edu/endsilence/documents/CharliesReportFINALJuly2012.pdf>

