



Standing Up to Sexual Misconduct

An Advocacy Toolkit to End the Sexual Abuse of Children in
Juvenile Facilities

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CENTER FOR
Children's
Law *and* Policy

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Introduction

Imagine sitting down to the evening news and seeing a story that one in ten children at your local high school reported being victims of sexual abuse that occurred at their school.

You would be shocked. You would demand an immediate investigation into how such incidents could have occurred. You would also demand swift and certain consequences for those who engaged in the abuse, as well as those who allowed it to happen on their watch. You would react this way because children should never be the victims of sexual abuse, let alone experience abuse on such a widespread scale at a government-run institution.

Now imagine the same situation, except that the report is of sexual abuse at your local juvenile detention facility. Would your community have the same sense of shock and outrage? Would the public demand the same level of accountability from officials responsible for operating those facilities? Who would take action?

In the most recent survey conducted by the U.S. Department of Justice, [one in ten youth in juvenile facilities throughout the country reported being sexually victimized at that facility](#). In a number of facilities around the country, those rates are significantly higher.

Fortunately, there are new advocacy opportunities to reverse this alarming statistic. Congress passed the Prison Rape Elimination Act (PREA) in 2003. PREA is the first federal civil statute focused specifically on addressing sexual violence in juvenile facilities, jails, prisons, and other facilities. The Act establishes a nationwide zero-tolerance standard for sexual misconduct in custodial settings. It also provides resources and requirements aimed at helping jurisdictions achieve that goal, and it mandated development of national standards designed to help facilities prevent, detect, and respond to sexual misconduct.

PREA's passage represented an important milestone in keeping youth safe from sexual abuse. However, many jurisdictions have yet to achieve the law's vision of facilities free from sexual abuse. This slow pace of reform may stem from a lack of initiative among government officials, insufficient information about the law's mandates, lack of knowledge about helpful resources in the field, or a failure to acknowledge the problem of sexual misconduct.

Regardless of the reason for the lack of progress, there is no excuse for inaction. Your advocacy can make a difference and help prevent the victimization of children in your community. This toolkit is designed to equip you with knowledge and tools to secure important reforms that will make facilities safe from sexual victimization.

Children rarely have the voice to advocate for reform of the systems charged with their care. I hope that you will take this opportunity to be the voice of those who have been victims and stand up to end sexual misconduct in juvenile justice facilities once and for all.

A handwritten signature in black ink, appearing to read 'Jason Szanyi', with a stylized flourish at the end.

Jason Szanyi
Staff Attorney
Center for Children's Law and Policy
202-637-0377 x108
jszanyi@cclp.org

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About This Toolkit

This toolkit is designed to equip advocates with the knowledge, tools, and resources to promote practices that will help end the sexual abuse and harassment of children in juvenile justice facilities.

In 2003, Congress passed the Prison Rape Elimination Act (PREA), the first federal civil statute focused specifically on addressing sexual violence in juvenile facilities, jails, prisons, and other facilities. PREA established a nationwide zero-tolerance standard for sexual misconduct¹ in custodial settings. Importantly, PREA also required the U.S. Department of Justice to issue a set of standards – binding on all juvenile facilities throughout the country – that are aimed at helping facilities prevent, detect, and respond to sexual misconduct.

The PREA standards, released in June 2012, establish a number of requirements for juvenile facilities. These requirements are designed to ensure that officials take necessary steps to minimize opportunities for sexual victimization to occur. However, the standards also hold the promise of making facilities safer places for children overall. Nevertheless, many jurisdictions have yet to recognize these benefits and fully implement the PREA standards in their juvenile facilities.

This toolkit uses PREA’s passage and the issuance of the PREA standards to identify new advocacy opportunities to address the problem of sexual misconduct and to improve conditions of confinement for youth in custody. This is not a comprehensive guide to all of the intricacies of PREA implementation. Instead, it focuses on concrete steps that advocates can take to achieve significant reforms in key areas.

The toolkit contains two parts. The first part focuses on providing essential information that will equip advocates to promote implementation of the PREA standards in their communities. It does so by:

- Providing background information on PREA and the Justice Department standards;
- Outlining the key requirements of the PREA standards for juvenile facilities in plain English;
- Explaining the most recent nationwide data on sexual victimization in juvenile facilities, as well as highlighting state-based data and publicized incidents of sexual abuse of children in juvenile facilities;
- Answering commonly asked questions; and

¹ This toolkit uses the term “sexual misconduct” as shorthand for sexual abuse and sexual harassment.

- Identifying ways of securing commitments from public officials to implement the PREA standards.

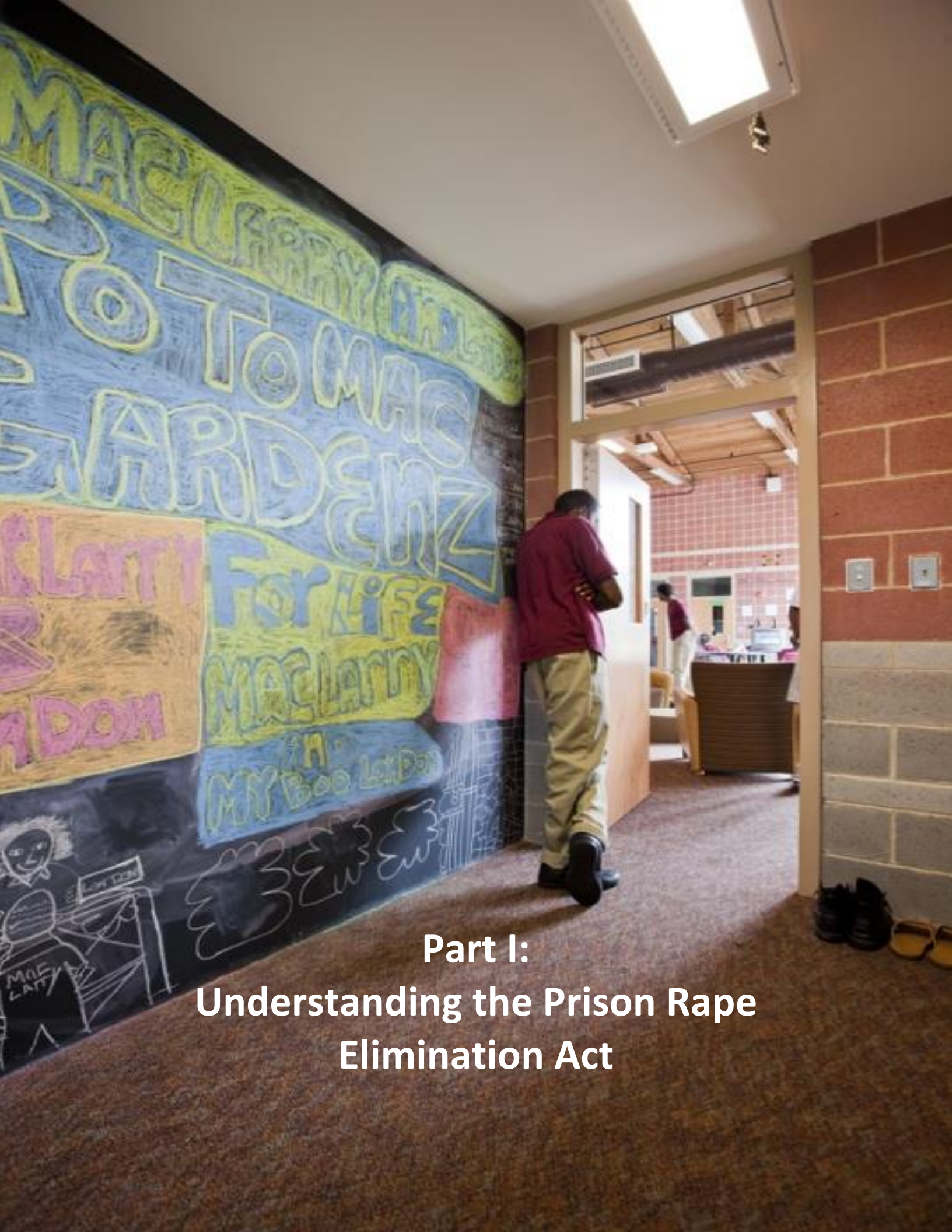
The second part of the toolkit focuses on strategies that advocates can pursue to:

- Make it easier for youth, family members, and third parties to report problems;
- Educate youth about sexual misconduct and their right to be safe;
- Increase protections for lesbian, gay, bisexual, transgender and gender non-conforming, and intersex youth;
- Train staff, volunteers, contractors, and others at juvenile facilities about the problem of sexual misconduct and their responsibilities; and
- Ensure that officials investigate all allegations of sexual misconduct and connect youth with rape crisis services in the community.

The selection of these five issues should not imply that other aspects of PREA compliance are less important or not worth pursuing. They are, however, areas with readily available tools with the potential to make facilities safer places for kids.

The toolkit provides a blueprint for how advocates can achieve these policy and practice improvements. After providing a brief explanation of why the area is important to creating environments free of sexual misconduct, the toolkit outlines what the PREA standards require, tools and resources from the field to assist with implementation, and a checklist of next steps that advocates can take to push for reform.

For questions about any of the content contained in or referenced by this toolkit, please contact Jason Szanyi, Staff Attorney, Center for Children's Law and Policy: 202-637-0377 x108 or jszanyi@cclp.org.



**Part I:
Understanding the Prison Rape
Elimination Act**

What Is the Prison Rape Elimination Act (PREA)?

Passed in 2003, the Prison Rape Elimination Act (PREA) is the first federal civil statute focused specifically on addressing sexual violence in juvenile facilities, jails, prisons, lockups, and other facilities. Passed with bipartisan support, PREA established the National Prison Rape Elimination Commission, which held hearings about sexual misconduct in custody, issued reports on the problem of sexual victimization in secure facilities, and proposed standards for the prevention, detection, and response to sexual misconduct in criminal and juvenile justice settings. The law provided for data collection on sexual victimization in custodial settings, technical assistance to agencies and facilities, funding opportunities, and periodic reviews of facilities with the highest and lowest rates of victimization.

PREA also required the Department of Justice to issue binding national standards, described in more detail below, outlining the steps that facilities must take to address sexual misconduct prevention, detection, and response for individuals in the custody of the juvenile or adult criminal justice systems.

While this toolkit focuses on the standards for juvenile facilities, President Obama has [issued a memorandum](#)² stating that his Administration interprets PREA to apply to all federal agencies with “confinement facilities,” and he has charged agencies with such facilities to develop and propose their own standards. As of the time of the publication of this toolkit, agencies were at various stages of development of their standards. However, once an agency’s standards are released, advocates who are working with youth in the custody of the Department of Health and Human Services, the Bureau of Indian Affairs, or other agencies may be able to incorporate those standards into their advocacy.

You can view the full text of the PREA legislation by [following this link](#).³ For more details about PREA’s background and information about its passage, [click here to download a paper](#)⁴ written by Brenda V. Smith, Professor at the Washington College of Law at American University and one of the individuals who served on the National Prison Rape Elimination Commission.

What We Know about the Extent of Sexual Victimization in Juvenile Facilities

In June 2013, the Bureau of Justice Statistics (BJS) published a special report entitled Sexual Victimization in Juvenile Facilities Reported by Youth, 2012. The report was the

² <https://www.whitehouse.gov/the-press-office/2012/05/17/presidential-memorandum-implementing-prison-rape-elimination-act>.

³ <http://www.prearesourcecenter.org/sites/default/files/library/prea.pdf>.

⁴ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1129810.

second of its kind published by BJS. It captured survey results from 8,707 youth in facilities owned or operated by a state juvenile correctional authority and adjudicated youth held under state contract in locally- or privately-operated juvenile facilities. The survey was restricted to facilities that housed youth for at least 90 days, contained more than 25% adjudicated youth, and housed at least 10 adjudicated youth. This means that the study did not survey most youth being held pre-adjudication in local detention facilities.

Researchers asked youth about their experiences with sexual victimization, from kissing through forced intercourse, with staff and other youth, during the past year at the facility. Some of the study's key findings were that:

- **One in ten youth** (9.5%) reported being sexually victimized at their juvenile facility.
- Youth were **three times as likely** to report sexual abuse by a staff member as they were to report abuse by other youth.
- Lesbian, gay, and bisexual youth were sexually victimized by other youth at **seven times the rate** of straight youth.

The Center for Children's Law and Policy has prepared [a short summary of the study's findings](#),⁵ including highlights of some of the key trends. [You can also read the full BJS report](#),⁶ which breaks down victimization rates by state and by facility.

The BJS studies are important because they provide the first nationwide data on the reported prevalence of sexual victimization in juvenile facilities. Although there are some limitations to the studies – for example, the studies only asked about certain types of sexual misconduct, they are based solely on youth self-report, and they only surveyed youth in a portion of all juvenile facilities – they represent the most comprehensive and up-to-date information available.

What PREA Requires Juvenile Facilities to Do

On June 20th, 2012, the Department of Justice officially published binding national standards for four types of facilities: juvenile facilities, adult prisons and jails, lockups, and community confinement facilities. You can download a full version of the standards with the Justice Department commentary [here](#).⁷ A version of the PREA juvenile facility

⁵ <http://cclp.org/documents/PREA/Fact Sheet -- 2012 BJS Sexual Victimization Study.pdf>.

⁶ <http://www.bjs.gov/content/pub/pdf/svjfry12.pdf>.

⁷ <http://www.gpo.gov/fdsys/pkg/FR-2012-06-20/pdf/2012-12427.pdf>.

standards without the accompanying commentary is available [here](#).⁸ It is important to note that while there is a separate set of standards for community confinement facilities, all custodial juvenile facilities, including group homes and residential treatment facilities, are governed by the juvenile facility standards.

The 50 individual juvenile facility standards contain requirements in a wide range of areas, from intake procedures to medical and mental health services for victims of abuse to data collection and reporting. Although it is important for those working on PREA implementation to read and understand the details in all of the standards, the Center for Children’s Law and Policy has prepared a [summary document](#)⁹ that can be helpful in understanding the scope of the requirements.

Answers to Advocates’ Frequently Asked Questions about PREA

Since the PREA standards’ release in 2012, a number of questions have arisen about their interpretation and applicability. The PREA Resource Center (PRC), [a website maintained by the National Council on Crime and Delinquency and the Bureau of Justice Assistance](#),¹⁰ serves as a clearinghouse for PREA implementation. The PRC website includes a [Frequently Asked Questions page](#)¹¹ where officials from the PRC and the Department of Justice respond to inquiries from the field. The FAQ page is a key resource beyond the four corners of the PREA standards, as the Department of Justice has a working group that reviews questions from the field and agrees on the interpretive guidance offered in the responses. The questions below represent some of the most commonly asked questions about PREA and the juvenile facility standards.

Which juvenile facilities have to comply with the PREA standards?

The PREA standards apply to all “juvenile facilities,” regardless of whether a facility is state- or locally-operated. The PRC FAQ page clearly states that the “[PREA standards apply equally to locally operated facilities, such as . . . juvenile detention centers](#).”¹² Thus, all “juvenile facilities” in the country are subject to the PREA standard’s requirements. Some individuals in the juvenile justice field have misunderstood the scope of the requirements, either believing that they only apply to state facilities, or that they do not apply to contracted entities like group homes and residential treatment facilities. There is a difference between state-operated and local facilities in that state facilities are subject to financial penalties for non-compliance with the PREA standards, which are outlined

⁸ <http://www.prearesourcecenter.org/sites/default/files/content/preafinalstandardstype-juveniles.pdf>.

⁹ <http://cclp.org/documents/PREA/PREA%20Quick%20Ref.pdf>.

¹⁰ <http://www.prearesourcecenter.org/>.

¹¹ <http://www.prearesourcecenter.org/faq>.

¹² <http://www.prearesourcecenter.org/faq/applicability-of-the-standards-to-individual-settings>.

below. However, the Justice Department intended for the PREA standards to be binding on all juvenile facilities, regardless of the potential financial penalties for non-compliance.

What is a “juvenile facility” for the purpose of compliance with the PREA standards?

The PREA standards define a “juvenile facility” as “a facility **primarily** used for the confinement of juveniles pursuant to the juvenile justice system or criminal justice system.” 28 CFR § 115.5 (emphasis added). According to the PREA Resource Center, the easiest way to make this determination “is to determine whether, over a period of one year, the facility holds more people for that purpose than for any other purpose.” This means that it does not matter what type of agency or organization operates a facility. If the majority of youth held at the facility are youth held pursuant to the juvenile justice system, it is a “juvenile facility” and is covered by the PREA standards.

The PREA standards do not define what constitutes “confinement,” but the commentary that accompanies the PREA standards makes clear that the definition is broader than just secure juvenile detention and correctional facilities. Community confinement settings such as group homes are “juvenile facilities” for the purpose of the PREA standards. See 77 Fed. Reg. 37114 (June 20, 2012). The PRC has stated that [foster homes are not considered juvenile facilities](#)¹³ for the purpose of PREA.

The PREA juvenile facility standards do not apply to youth who are charged and convicted as adults and placed in adult jails and prisons. The PREA standards for jails and prisons do contain a number of protections for youth housed in adult facilities, and they can provide leverage for advocacy to remove youth from adult prisons and jails. [The Campaign for Youth Justice has prepared advocacy materials](#)¹⁴ on this issue.

Is there a financial penalty if a facility does not comply with the PREA standards?

It depends. Each year, PREA requires governors to submit a certification to the Department of Justice for all facilities “under the operational control of the State’s executive branch.” Although the PREA standards do not define the term “operational control,” [the PREA Resource Center has provided guidance on which facilities fall within its scope](#).¹⁵

Governors have three options when submitting a certification: (1) submit a certification that the state is in full compliance, in which case no funding will be lost; (2) submit an assurance that not less than five percent of grants received from the Department of Justice for “prison purposes” will be used for work on PREA compliance; or (3) accept a

¹³ <http://www.prearesourcecenter.org/faq/applicability-of-the-standards-to-individual-settings>.

¹⁴ <http://www.campaignforyouthjustice.org/prison-rape-elimination-act>.

¹⁵ <http://www.prearesourcecenter.org/faq/governors-certification>.

five percent reduction in such grants. Thus, if a governor does not submit a certification of full compliance or an assurance, the Justice Department can withhold five percent of Justice Department “prison” funds.

Right now, three grant programs are subject to the five percent reduction. Two are administered by the Office of Justice Programs: the Bureau of Justice Assistance’s Edward Byrne Memorial Justice Assistance Grant Formula Program and the Office of Juvenile Justice and Delinquency Prevention’s Juvenile Justice and Delinquency Prevention Act Formula Grant Program. A third funding stream is administered by the Office on Violence Against Women: the STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant Program.

There are additional details about the funding reductions, including some specific guidance about the allowable use of certain funding streams to achieve PREA compliance, [on the PRC website](#).¹⁶

The first governor’s certification was due on May 15, 2014. During the first certification, most states submitted an assurance that they would work toward PREA compliance. Only two states – New Hampshire and New Jersey – submitted a certification of full compliance. Seven states – Arizona, Florida, Idaho, Indiana, Nebraska, Texas, and Utah – originally declined to submit certifications, although Nebraska later submitted an assurance. As of May 2015, three additional states that had previously declined to submit any kind of certification – Indiana, Florida, and Texas – [submitted assurances that they were working toward PREA compliance](#),¹⁷ and a number of other states shifted from submitting assurances to certifications of full compliance.

What about locally-operated juvenile facilities and privately-operated facilities? Are they at risk of losing funding for non-compliance?

The funding reductions only apply to facilities “under the operational control of the State’s executive branch.” However, if a state contracts with a private entity or local agency for the confinement of youth in the juvenile justice system, the PREA standards require that the state include an obligation to adopt and comply with the PREA standards in any contract with that facility, as well as include a provision for monitoring to ensure that the facility is complying with the standards. If a state fails to follow these requirements for contracted facilities, a governor will not be able to certify full compliance with the PREA standards. [The PRC provides additional guidance on the types of relationships that may constitute a contractual relationship between a state and a locally-operated or private juvenile justice facility](#).¹⁸

¹⁶ <http://www.prearesourcecenter.org/faq/governors-certification>.

¹⁷ <https://www.bja.gov/Programs/15PREA-AssurancesCertifications.pdf>.

¹⁸ <http://www.prearesourcecenter.org/faq/governors-certification>.

If a locally-operated or private facility does not contract with the state for the confinement of youth, there is no federal financial penalty for non-compliance. However, as mentioned above, the Department of Justice intended for the standards to apply to all juvenile facilities, regardless of whether there is a loss of funding. There are also a number of other reasons to comply with the PREA standards, outlined below.

If a facility is not facing a financial penalty for noncompliance, what arguments can I make to promote PREA compliance?

Even if a facility is not subject to the governor's certification, there are a number of other reasons why officials should be working toward PREA compliance.

- **Youth have a right to be safe, and adults caring for them have a responsibility to take measures to protect them from harm.** The PREA standards came about as a result of years of research, expert opinion, and lessons from the field about the best ways to prevent, detect, and respond to sexual misconduct. Officials should take advantage of the best knowledge available to meet their obligation to protect the youth in their care.
- **Accrediting bodies that receive federal funding must incorporate PREA's requirements into their accreditation process.** Under the law, organizations such as the American Correctional Association (ACA) must include PREA compliance in their accreditation process, as it is a recipient of federal funds. Many juvenile facilities seek to obtain or maintain ACA accreditation. Those facilities are now required to comply with the PREA standards to obtain or maintain that designation.
- **In litigation over sexual misconduct, courts may look to the PREA standards to determine whether a facility's policies and practices substantially departed from "generally accepted professional standards."** In most jurisdictions, liability stemming from conditions of confinement in juvenile facilities turns on whether officials' actions represented a substantial departure from generally accepted professional practices. *See Youngberg v. Romeo*, 457 US 307 (1982). In the commentary accompanying the PREA standards, the Justice Department noted that courts may look to the PREA standards as generally accepted professional practice in future litigation over sexual misconduct. Thus, a facility's failure to implement the PREA standards could make it liable for harms to youth in their care stemming from sexual misconduct.

- **PREA compliance will ensure that a facility is prepared and doing all that it can to prevent incidents, even if nothing has ever happened at a facility.** One common reason that officials offer for not working on PREA compliance is that they have not experienced incidents of sexual misconduct in their facilities. However, federal statistics suggest that sexual misconduct is a bigger problem than we may think, and incidents may go unreported. Also, incidents can occur even in well-run facilities. Knowing how to respond quickly and appropriately is crucial. PREA compliance ensures that a facility is not caught scrambling if and when officials receive an allegation of sexual misconduct.
- **PREA is an opportunity to equip staff with new skills to help them work more effectively with youth.** As outlined in Part II of this toolkit, PREA requires that staff receive training on twelve topics, including how to communicate with lesbian, gay, bisexual, transgender, and intersex (LGBTI) youth, the dynamics of sexual abuse and sexual harassment in juvenile facilities, and how to avoid inappropriate relationships with youth. See 28 CFR § 115.331. Staff may not have received much, if any, training on these topics, and this knowledge can help them be more effective in interactions with the youth.
- **Implementation of the PREA standards offers an opportunity to strengthen partnerships with other child-serving organizations and systems.** As part of PREA implementation work, officials can build connections to individuals and organizations that will help them better serve youth in their care. For example, by reaching out to local rape crisis officials to arrange for victim advocacy services for youth who alleged to have been abused, officials can begin conversations about other programming or services that the rape crisis center can offer for youth in the facility. For example, rape crisis advocates may be able to educate youth about dating violence, sexually transmitted infections, or other topics of relevance to adolescents. Similarly, consulting with child welfare professionals who are responsible for investigating and responding to sexual abuse can help a facility understand more about how best to work with victimized youth. Those individuals may also be willing to help train staff.
- **PREA compliance is now included in the Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative (JDAI) detention facility assessment standards.** [Over 250 jurisdictions in 39 states and the District of Columbia participate in JDAI.](#)¹⁹ Those jurisdictions are expected to assess and improve conditions in their juvenile detention facilities using a set of standards that were developed by the Center for Children’s Law and Policy and the Youth Law Center. [The JDAI standards, which were revised in June 2014, now incorporate the PREA](#)

¹⁹ <http://jdaihelpdesk.org/SitePages/jdai-sites.aspx>.

[regulations for juvenile facilities](#).²⁰ This means that facilities in JDAI sites should be working toward PREA compliance as part of the jurisdiction's JDAI reform work.

Officials in my community say that it would be too expensive to comply with PREA. Is there funding or other assistance available to help?

PREA allowed for Congressional appropriations to support PREA compliance work in communities around the country. The Justice Department and the PREA Resource Center have issued a number of Requests for Proposals encouraging jurisdictions to apply for funding to assist with PREA implementation. Officials should [sign up for the PREA Resource Center listserv to be notified of any future funding opportunities](#).²¹

Additionally, the PREA Resource Center allows jurisdictions to submit requests for technical assistance on aspects of PREA implementation. Officials can submit requests for help by [following this link](#).²² The National Institute of Corrections has also supported the development of a step-by-step PREA implementation toolkit for juvenile facilities, [which officials can download here](#).²³

Advocates can also respond to concerns about any anticipated costs associated with compliance by emphasizing that many aspects of the PREA standards do not entail a financial cost to develop or implement. Additionally, the potential financial cost associated with litigation over sexual misconduct may be much greater than any funding required to implement the PREA standards.

Five Steps You Can Take to Make Sexual Misconduct Prevention a Priority

(1) Learn what your juvenile justice facilities are doing to comply with PREA.

The first step in advocating for reforms is to understand what, if anything, officials have done since the issuance of the PREA standards. You can request a meeting with a facility director or agency PREA coordinator to inquire about the status of implementation of the standards. The following questions can serve as a framework for that discussion. Part II of this toolkit also contains questions to ask about specific aspects of implementation, such as reporting systems, youth education, and staff training.

²⁰ [http://jdaihelpdesk.org/condtech/1 Juvenile Detention Facility Assessment 2014 Update.pdf](http://jdaihelpdesk.org/condtech/1%20Juvenile%20Detention%20Facility%20Assessment%202014%20Update.pdf).

²¹ <http://www.prearesourcecenter.org/about/mailling-list-sign-up>.

²² <http://www.prearesourcecenter.org/training-technical-assistance/request-for-assistance>.

²³ <http://nicic.gov/library/026881>.

Key Questions to Ask about PREA Compliance

- Does the agency have a written policy that outlines the agency’s approach to sexual misconduct prevention, detection, and response?
 - *If the answer is “yes,” ask for a copy of the policy to review for compliance with the PREA standards.*
 - *If the answer is “no,” ask whether someone is tasked with developing that policy, and if so, who it is.*
- Has the agency conducted a PREA compliance audit yet?
 - *If the answer is “yes,” ask for the audit report.*
 - *If the answer is “no,” ask when the agency expects to complete its first audit.*
- What changes has the agency made to policies or practices to comply with the PREA standards?
- What are the biggest challenges facing the agency in its work to comply with the PREA standards? What is the agency’s plan to overcome these challenges?
- Have there been any reports of sexual abuse or sexual harassment in the agency’s facilities during the past year? If so, what steps did officials take to respond to those incidents and prevent incidents from happening in the future?

If you are unable to obtain this information through meetings with public officials, you may be able to use your state’s freedom of information laws to obtain information on PREA compliance work. Professor Sheila Bedi of Northwestern University School of Law has [prepared a sample list of documents to request as part of litigation over sexual misconduct](#).²⁴ This list may be helpful as the basis for a public information request.

(2) Raise the profile of the problem of sexual misconduct in juvenile facilities through media outreach.

Although PREA’s passage has raised awareness of the sexual abuse of those in custody, much of the public is not aware of the scope of the problem. News coverage on the problem of sexual victimization of youth in juvenile facilities coupled with a discussion of

²⁴ <https://www.prisonlegalnews.org/news/publications/sample-prea-discovery-requests-and-depo-outlines-npap-2014/>.

an agency's lack of progress implementing the PREA standards may help move officials toward full implementation of the standards. For ideas on how to frame messages for the media, you can visit the website of Just Detention International (JDI), a human rights organization that is dedicated to ending sexual abuse of individuals in custody. [JDI's website contains a list of recent news articles on sexual misconduct](#),²⁵ including [letters to the editor](#)²⁶ and editorial board statements from major newspapers such as the [New York Times](#)²⁷ and the [Washington Post](#).²⁸

(3) Urge public officials to make PREA implementation a priority.

Because there is no federal monitor tasked with ensuring that all juvenile facilities comply with the PREA standards, advocates play a critical role in holding state and local officials accountable. Some strategies to ensure that public officials make PREA implementation a priority include:

- Sharing the national statistics on victimization of youth in juvenile facilities with agency officials and lawmakers. As described above, you can [use the fact sheet prepared by the Center for Children's Law and Policy](#)²⁹ summarizing the most recent federal survey of sexual victimization in juvenile facilities to highlight key trends from the data. The Bureau of Justice Statistics surveys of juvenile facilities also contain state-by-state and facility-by-facility victimization statistics that you may be able to cite to bring local attention to the issue. [You can view the full version of the most recent BJS survey here](#).³⁰
- Using recent news stories about incidents of sexual misconduct in juvenile facilities to add a sense of urgency to implementation. Although nationwide statistics on victimization can be valuable, public officials may feel a greater need to take action if they hear about problems that have emerged in other jurisdictions. You can leverage recent coverage of sexual abuse in juvenile justice facilities to draw attention to the issue, even if the incident did not occur in your county or state. [Recent national news coverage](#)³¹ and coverage of incidents in many states has helped illustrate the scope of the problem. The list below references news coverage of incidents in a number of jurisdictions during the last three years. You can also search for recent news articles through services such as

²⁵ <http://www.justdetention.org/en/jdinews/2014/main.aspx>.

²⁶ http://www.justdetention.org/en/jdinews/2014/04_21_14.aspx.

²⁷ http://www.justdetention.org/en/jdinews/2013/09_09_13_2.aspx.

²⁸ http://www.justdetention.org/en/jdinews/2014/06_05_14.aspx.

²⁹ <http://cclp.org/documents/PREA/Fact Sheet -- 2012 BJS Sexual Victimization Study.pdf>.

³⁰ <http://www.bjs.gov/content/pub/pdf/svjfry12.pdf>.

³¹ http://www.slate.com/articles/news_and_politics/politics/2014/09/woodland_hills_youth_development_center_the_dark_secret_of_juvenile_detention.html.

LexisNexis or [Google News](#).³²

- **Alaska:** [McLaughlin Youth Center](#)
 - **Arizona:** [Adobe Mountain School](#)
 - **California:** [Kern County Juvenile Hall](#), [San Bernardino Juvenile Hall](#), [Iris Garret Juvenile Justice Correctional Complex](#)
 - **Florida:** [Broward Girl's Academy](#), [Thomson Academy](#), [Eckerd's Youth Development Center](#), [Palm Beach Juvenile Correctional Facility](#)
 - **Georgia:** [DeKalb Regional Youth Detention Center](#), [Paulding Regional Youth Detention Center](#)
 - **Idaho:** [Idaho Department of Juvenile Corrections-Nampa](#)
 - **Illinois:** [Robert W. Depke Center](#), [Illinois Youth Center in Joliet](#), [Illinois Youth Center in Kewanee](#)
 - **Louisiana:** [Bridge City Center for Youth](#)
 - **Michigan:** [North Homes Residential Treatment and Correctional Facility](#)
 - **New Mexico:** [Lincoln Pines Youth Center](#)
 - **Ohio:** [Scioto Juvenile Correctional Facility](#)
 - **South Carolina:** [Birchwood Juvenile Detention Center](#)
 - **Tennessee:** [Woodland Hills Youth Development Center](#)
 - **Texas:** [Bexar County Juvenile Detention Center](#)
 - **Utah:** [Journey Impact Ranch](#)
 - **West Virginia:** [Ronald Mulholland Juvenile Detention Center](#)
- Review your juvenile justice agency's most recent published data on sexual victimization in juvenile facilities. Although not all agencies have complied with PREA's requirement to post data annually on sexual victimization in juvenile facilities operated by the agency and in facilities with which it contracts, many agencies have done so. [A summary of the most recent data posted by each state as of June 2015 can be downloaded here](#),³³ along with links to the source material. These figures can help call attention to the need to implement the PREA standards in agencies that have not yet begun working on that issue, or can help expedite reforms where progress has been slow.

³² <https://news.google.com/>.

³³ <https://www.dropbox.com/s/j7fufvbhco0g2w5/50 States PREA Information Abridged.pdf?dl=0>.

- Testifying before your county council or state legislature on the need for implementation of the PREA standards. Raising the importance of sexual misconduct in juvenile facilities as part of a public hearing can help lawmakers understand the need to devote resources to this issue. You can find testimony calling for implementation of the PREA standards that can serve as a framework for written and oral advocacy [here](#).³⁴

(4) Advocate for creating or strengthening monitoring and oversight mechanisms for juvenile facilities.

PREA requires that officials identify an independent entity, outside of the agency or facility, that can receive reports of sexual misconduct, allow youth to remain anonymous upon request, and forward reports to facility officials for investigation. 28 CFR § 115.351. The PREA standards include this requirement, in part, so that youth who are reluctant to speak out about victimization to staff of the facility where the incident occurred still have an opportunity to tell someone.

In addition to identifying a suitable reporting channel, such as a state child abuse hotline, advocates can use this requirement as an entry point for a broader conversation about the need for strong independent monitoring and oversight of conditions of confinement. Independent monitoring systems have many benefits, including:

- Identifying safety and security concerns before they become systemic issues that lead to legal liability;
- Generating critical information for facility managers and agency officials that can help guide improvements to services for youth;
- Providing insights into needed policy and practice changes; and
- Increasing accountability and raising public awareness of the needs of youth in the juvenile justice system.

Advocates can use PREA implementation as an opportunity to discuss how to create or strengthen an independent monitoring system for juvenile facilities. The Center for Children’s Law and Policy has [prepared a fact sheet on independent monitoring systems](#),³⁵ including best practices of effective systems and examples of strong oversight bodies.

³⁴ <http://ijjc.illinois.gov/publications/2013-testimony-illinois-house-restorative-justice-committee>.

³⁵ <http://cclp.org/documents/Conditions/Fact Sheet -- Independent Monitoring Systems for Juvenile Facilities.pdf>.

(5) Offer tools and resources to help officials comply with the standards.

In some situations, officials have not made progress on PREA implementation because they have not known where to begin or what resources are available to assist with implementation. Additionally, some implementation resources that are available – such as education materials for those in custody – are geared toward adult jails and prisons and are not appropriate for youth in juvenile facilities. Part II of this toolkit is designed to equip advocates with resources and a step-by-step guide to achieve reforms in five key areas.

Vehicles for Advocacy

The responsibility to operate facilities free of sexual misconduct ultimately falls on the public officials responsible for running and overseeing those facilities: facility administrators and agency directors. Those individuals are natural targets for outreach and advocacy. However, they are not the only audiences that can be helpful in prioritizing reform work in this area. The following list contains other individuals and organizations that may be receptive to messages about youth safety and that may be willing to take action if they are made aware of the problem.

- **State legislators** who represent districts where facilities are located or who are on committees charged with overseeing such facilities.
- **Mayors and county councilmembers** in jurisdictions with local detention facilities who may be concerned about potential liability. In states with county associations, those associations may also be receptive to messages.
- **Judges** who regularly send youth to local or state facilities and who may be unaware of victimization rates.
- **Local juvenile justice reform collaboratives**, such as those formed to manage reforms as part of the Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative (JDAI).
- **State Advisory Groups**, which are state-based appointed bodies created as part of the federal Juvenile Justice and Delinquency Prevention Act and charged with providing input into the use of federal juvenile justice funding.
- **State Protection and Advocacy organizations**, which have the authority to provide legal representation and other advocacy services, under all federal and state laws, to all people with disabilities. This includes youth in juvenile

facilities.

- **LGBT advocacy groups**, which may be unaware of the rates of victimization of lesbian, gay, and bisexual youth in federal surveys.
- **Rape crisis or sexual assault advocacy groups**, which, similarly, may be unaware of victimization rates in juvenile justice facilities.



**Part II:
Opportunities for Advocacy**

How to Use These Materials

This part of the toolkit is focused on strategies that advocates can pursue to:

- Strengthen reporting channels for youth, family members, and third parties;
- Educate youth about sexual misconduct, their right to be safe, and how to report a problem;
- Increase protections for lesbian, gay, bisexual, transgender and gender non-conforming, and intersex youth;
- Train facility staff and others who have contact with youth in juvenile facilities about the problem of sexual misconduct and their responsibilities; and
- Ensure that officials investigate all allegations of sexual misconduct and connect youth with rape crisis services in the community.

The toolkit explains why each area is important to effective sexual misconduct prevention, detection, and response systems. Then, the toolkit outlines what the PREA standards require for each issue, questions designed to obtain information about current policies and practices and identify potential red flags, tools and resources from the field to assist with implementation, and a list of next steps that advocates can take.

Although the PREA standards provide leverage for advocates to achieve important policy and practice changes, the PREA standards' requirements do not always reflect the most progressive practices in the field. For example, the PREA standards require staff to decide assignments of transgender and intersex youth to male or female housing units on a case-by-case basis, giving the youth's preferences serious consideration. However, some agencies have chosen to go further than this, stating that the presumed default for a youth's housing shall be according to the youth's gender identity, not his or her birth sex. In a number of places in this toolkit, you will find similar recommendations that go beyond the PREA standards. It is important to remember that the PREA standards are a floor – facilities can choose to go above and beyond them.

Moreover, while a number of the standards establish requirements specific to allegations of sexual abuse, advocates can argue to expand those policies and practices to a broader range of situations. For example, the PREA standards state that facilities may not require youth to use an informal grievance procedure or otherwise try to resolve with staff incidents of alleged sexual abuse. This practice makes sense not only for allegations of sexual abuse, but also for any grievance involving allegedly abusive staff conduct. Advocates can use the PREA standards as a basis for extending the standards' protections to a broader range of circumstances. This approach will help ensure that the PREA standards have the greatest potential for improving the overall safety and well-being of youth and staff.

Issue #1: Strengthening Reporting Channels for Youth, Family Members, and Third Parties

Youth in juvenile facilities must know where to turn if they encounter problems or if they experience sexual misconduct. In well-run facilities, youth have several ways of reporting problems that are accessible, confidential, and responsive. In addition, those facilities have taken steps to protect youth from retaliation by staff or other youth, which can deter youth from reporting.

Even in generally well-run facilities, however, youth may not always feel comfortable reporting a problem to officials. They may share information with family members or other third-parties such as defense attorneys, mentors, or a service provider. For this reason, family members and third parties also need to know how to report incidents to facility officials.

Strong reporting systems ensure that officials learn about problems when they arise and take quick and appropriate action. Reporting systems help ensure that what may be relatively minor incidents do not escalate into more systemic problems. For these reasons, an effective reporting system is the cornerstone of a coordinated system of preventing, detecting, and responding to sexual misconduct.

What does PREA require?

The PREA standards related to reporting opportunities for youth, family members, and third parties appear at 115.351, 115.352, and 115.354. Under the standards:

- Youth must have multiple internal ways to report sexual misconduct, staff neglect or violation of responsibilities that may have contributed to that misconduct, and retaliation by youth or staff for reporting misconduct.
- Youth must also have access to at least one way of reporting sexual misconduct to an agency or office that is not part of the agency responsible for running the facility. That outside entity must be able to receive and forward reports to the facility and allow youth to remain anonymous if they request.
- Youth must have access to the tools necessary to make a written report, including writing implements and forms or other paper.
- Agencies must establish a mechanism to receive third-party reports of sexual abuse and sexual harassment and publicly distribute information on how to

report sexual abuse and sexual harassment on behalf of youth.

- Facility staff must:
 - Accept verbal reports of sexual misconduct and promptly document them.
 - Accept anonymous reports of sexual misconduct.
 - Accept reports from family members and other third parties, such as attorneys.
 - Allow third parties to assist youth in reporting sexual misconduct.
Note: Under the PREA standards, facilities are allowed to condition investigation of grievances filed by third parties other than parents or legal guardians upon the youth's consent to have the request filed on his or her behalf. Facilities may also require the youth to personally pursue the steps in the facility's grievance process. If a facility chooses to do either of these things, though, officials must always document a youth's decision to decline to move forward with an investigation.

- Facility staff cannot:
 - Require youth to use an informal grievance process or otherwise try to resolve with staff incidents of alleged sexual abuse.
 - Require youth to submit a grievance involving alleged sexual abuse to a staff member who is the subject of the complaint.
 - Refer grievances to staff members who are the subject of the complaint.
 - Discipline youth for filing grievances related to sexual abuse unless the facility demonstrates that the youth filed the grievance in bad faith.

PREA also establishes time frames by which officials must respond to grievances related to sexual abuse. The facility must have an emergency grievance procedure for youth who are at substantial risk of imminent risk of sexual abuse, whereby staff forward the grievance to someone who can take immediate corrective action, provide an initial response within 48 hours, and provide a final agency decision within 5 calendar days.

For other grievances related to sexual abuse, the PREA standards require a final decision on the merits within 90 days from initial filing (not including time consumed by youth preparing any administrative appeals), with the possibility of an extension of up to 70 days upon written notification to youth and notification of the date by which a decision will be made. These timeframes, while allowable by PREA, also appear in the standards for adult prisons and jails, where lengths of stay can be significantly longer than those in juvenile facilities. Advocates can and should argue that shorter timeframes are more appropriate for the shorter-term nature of juvenile facilities and the shorter tolerance adolescents have for delay. Another argument is that rapid response is necessary to

protect the youth. Additionally, a more rapid timeframe, ensures that officials learn of problems before they have the opportunity to escalate.

The PREA standards also require that officials take reasonable steps to ensure that youth with limited English proficiency and youth with disabilities have meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual misconduct. 115.316. This means that the facility must take steps to make its reporting systems accessible to these youth.

Questions to Ask

- What are the different ways youth and third parties can report sexual misconduct?
- Does the agency have a written reporting or grievance policy? Does it align with PREA's requirements?
- How does the facility educate youth and third parties of their right to make a report and explain the ways of doing so?
- If a youth wants to make a report in writing, how can he or she do so? How do youth obtain writing implements and forms?
- Are there locked boxes throughout the facility where youth can submit something in writing without having to give it to a staff member?
- Is information about reporting avenues written in a way that is accessible to youth with limited literacy or learning disabilities? Is the information translated for youth and family members with limited English proficiency?
- What are the timelines for resolving reports of sexual misconduct?
- What information do youth receive following investigation of a report of sexual misconduct? What about family members and third parties?
- Are youth ever disciplined for making reports of sexual misconduct?
- Does the facility have at least one way for youth to report abuse, neglect, harassment, or retaliation to a public or private entity or office that is not part of the agency that operates the facility? Is the entity able to receive and immediately forward youth reports of sexual abuse and sexual harassment to facility officials and also willing to allow youth reporters to remain anonymous?

You can also talk to youth about their experiences with the facility's reporting or grievance process.

- What do you do if you have a problem at the facility? How do you know what to do?
- Have you ever had a problem at the facility that you reported to someone? What was it about? What happened?

- Does anyone use the grievance process or reporting system? If no, why not?
- Do youth ever get punished for filing a grievance or reporting a problem?

Red Flags

- No written policy on reporting or grievances, or a policy that does not include specifics of how the system works (e.g., timeframes, who is responsible for receiving and responding to complaints).
- Language in youth or parent orientation materials that is written above a fifth-grade reading level.
- Lack of understanding of the grievance process among youth, family members, and third parties.
- Language in written materials suggesting that youth may be disciplined for filing grievances, or that youth are expected to attempt to resolve all grievances with staff before making a formal complaint.
- A lack of boxes and grievance forms in accessible locations around a facility.
- Few or no grievances submitted by youth or third parties (a lack of grievances often suggests that youth do not trust the grievance process, or that it hasn't been made accessible to them).
- Lack of information posted about how youth and third parties can report.
- Concerns raised by youth about not wanting to be a “snitch” or a fear of retaliation or discipline for making a complaint.
- No reporting channel that is independent of the facility.

Tools and Resources

- [PREA Grievances and Reporting Tool](https://www.dropbox.com/s/bhhj2a9vo3treeh/Grievances%20Tool.docx?dl=0).³⁶ This document outlines the PREA requirements for grievances and reporting by youth and third parties, explaining key considerations for each aspect of the PREA standards. It also includes references to best practices above and beyond the standards that individuals can reference in their advocacy. Advocates can compare existing policies side-by-side with this tool to identify where changes are needed.
- [Sample Grievance Policy](https://www.dropbox.com/s/8url23nysyb8pvb/Sample%20Grievance%20Policy.docx?dl=0).³⁷ This is a draft grievance policy that was created by the Center for Children’s Law and Policy to reflect PREA’s requirements and other considerations underlying an effective grievance or reporting system. The policy contains spaces where facilities can fill in appropriate information, as well as comment bubbles that describe key considerations when adapting the policy for use in an agency or facility.

³⁶ [https://www.dropbox.com/s/bhhj2a9vo3treeh/Grievances Tool.docx?dl=0](https://www.dropbox.com/s/bhhj2a9vo3treeh/Grievances%20Tool.docx?dl=0).

³⁷ <https://www.dropbox.com/s/8url23nysyb8pvb/Sample%20Grievance%20Policy.docx?dl=0>.

- [Sample Youth Grievance Form, Agency Tracking Sheet, and Youth Notification Form](#).³⁸ These three documents are adapted from forms in use in various agencies as part of their PREA compliance work. The first page is the form provided for youth to make written complaints about conditions or treatment at a facility. The second form is for the agency’s internal purposes, allowing it to track and analyze data on grievances that are filed. The third form is what officials can provide to youth as documentation that they have responded to a youth’s complaint and that the youth has either accepted the resolution or decided to appeal the issue to a more senior staff member.
- [Sample Family Member Education Flyer](#).³⁹ This flyer, developed by the Center for Children’s Law and Policy in consultation with the New York City Administration for Children’s Services, is designed to educate family members about the ways of reporting problems or concerns.

Your Next Steps

- Obtain an agency or facility grievance policy and analyze it for compliance with the PREA standards and best practices using the PREA Grievance and Reporting Tool listed above.
- Request data on grievances that are filed and analyze them using the questions outlined above.
- Request material used to educate youth and third parties about their right to report problems at the facility to determine whether it is accessible to individuals with limited literacy, disabilities, and limited English proficiency.
- Schedule a meeting with the facility superintendent to ask the questions posed above and educate that person about PREA’s requirements.
- Offer the Sample Grievance Policy as an example that a facility can use to work toward a stronger grievance and reporting system.
- In facilities with grievance materials that are complex or difficult to comprehend, offer the Sample Youth Grievance Form and Youth Notification Forms as examples of more youth-friendly materials that can be adapted for that facility.

³⁸ [https://www.dropbox.com/s/slcq3lw3whuaxbn/Grievance Form.docx?dl=0](https://www.dropbox.com/s/slcq3lw3whuaxbn/Grievance%20Form.docx?dl=0).

³⁹ [https://www.dropbox.com/s/moph46kr21e2lqq/Family Member Flyer.docx?dl=0](https://www.dropbox.com/s/moph46kr21e2lqq/Family%20Member%20Flyer.docx?dl=0).

Issue #2: Educate Youth about Sexual Misconduct, Their Right to Be Safe, and How to Report a Problem

In order for youth to be able to report harassment, abuse, or concerns in a juvenile facility, they must understand what their rights are, the rules about what is and what is not acceptable behavior for youth and staff, and the ways that they can keep themselves safe. Additionally, youth need to understand how they can report complaints, what will happen if they do, and how the facility will protect them from retaliation if they make a report.

The PREA standards require that facilities educate youth on a range of topics related to sexual misconduct prevention, detection, and response. However, educating youth about sexual misconduct in a developmentally appropriate way that does not re-traumatize youth with a history of abuse can be challenging. Some agencies have focused on creating educational materials that focus on the technical language of PREA and the standards, which means that many youth may not understand the most important messages: the right to be safe, the ways to report problems, and the right to be free from retaliation for making a report.

This section of the toolkit focuses on ensuring that youth receive appropriate education about sexual misconduct prevention, detection, and response.

What do the PREA standards say?

The PREA standards related to youth education appear in standard 115.333. Facilities must educate youth about sexual misconduct prevention, detection, and response in three ways:

- (1) Upon admission, providing youth with age-appropriate information about the agency's zero-tolerance policy and the way to report incidents. This can be accomplished by reading a short script at or around the time of intake and providing the youth with something in writing.
- (2) Within ten days of admission, providing youth with a comprehensive, age-appropriate education regarding the right to be free from sexual misconduct, the facility's policies and procedures for reporting and responding to incidents, and the youth's right to be free from retaliation for reporting incidents.

- (3) Throughout the youth’s stay, making key information continuously and readily available or visible to youth through posters, handbooks, or other written formats.

The PREA standards also require that the youth education be accessible to all youth, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as youth who have limited reading skills.

Beyond these requirements, PREA does not include any specifics about the format (e.g., video, staff-led), length, or content of this component of the facility’s youth education program. This has led to wide variability in the quality of materials that are used in juvenile facilities around the country. For example, a number of facilities have developed materials that are not age-appropriate. These materials may focus on using the term “Prison Rape Elimination Act” and the language of the PREA standards themselves, or they may have been adapted materials from adult facilities. Others use imagery or words that evoke fear, sadness, or hopelessness.

Officials do not need to use the term “Prison Rape Elimination Act,” the technical details of the standards, or the verbatim definitions of sexual abuse and sexual harassment in youth education materials. In fact, using such language may frighten youth and may mean that it is less likely that youth will understand important information. For example, consider the PREA standards’ definition of staff-on-youth sexual harassment on the left and a translation into simpler language on the right.

Language from PREA	Language for Youth Education Materials
<p>Sexual harassment includes repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.</p>	<p>Sexual harassment can include someone saying things about your body or body parts, how you look or dress, or who you like or date. It also includes making sexual comments or gestures.</p>

Another common problem is that facilities may not have focused on making their youth education materials engaging. Some agencies have created a youth education video that they show during orientation to help satisfy PREA’s requirements. Videos can be helpful in terms of standardizing important information, but a lack of interactivity may mean that

youth tune them out. This is particularly true if the video is one part of a long orientation presentation.

Facilities should identify a skilled facilitator to lead the youth education program. Even videos require a staff member to introduce the subject, ensure that youth have understood the key points, and answer any questions that youth may have. Facilitators must also know what to do if a youth discloses sexual misconduct during a youth education session, as well as how to handle youth's reactions to material.

Questions to Ask

- What does your facility do to educate youth about sexual misconduct prevention, detection and response?
- Upon admission, how do you inform youth about the agency's prohibition on sexual misconduct and the way to report incidents? Who delivers this information? Do they know how to handle a disclosure if a youth reports sexual abuse?
- How do you provide youth with a comprehensive, age-appropriate education regarding the right to be free from sexual misconduct, the facility's policies and procedures for reporting and response, and the right to be free from retaliation for reporting incidents within ten days of admission? Who delivers this information? Do they know how to handle a disclosure if a youth reports abuse?
- What written materials do you have available to reinforce the key messages in your youth education program?
- Who documents youth participation in the sexual misconduct education program? What happens if a youth is at court or an appointment outside of the facility during the regularly scheduled orientation session?
- What are the languages spoken by youth and family members? How do you ensure that the youth education program, including written materials, are understandable to youth and family members who do not speak English?
- Have you asked youth for feedback on the youth education program? What have they said about what they liked or didn't like? What questions did they have about the content?

Advocates should also talk to youth about what they know about the facility's rules surrounding sexual misconduct.

- What were you told about your right to be safe at this facility when you arrived? What about during the first 10 days of your stay?
- What would you do if someone did or said something that made you uncomfortable?

- What are the different ways you can report a problem at the facility?
- Who talked to you about your right to be safe? Did they do a good job of explaining the rules and how you can get help? What, if anything, would you change?

Red Flags

- Inconsistent knowledge among youth of their right to be safe, the different ways of reporting a problem, how the facility responds to problems, and the right to be free from retaliation for reporting a problem or helping with an investigation.
- Youth education programs that do not contain any interactivity or opportunities to ask questions (e.g., screening a video during a youth’s intake without any facilitation).
- Language or imagery that may unnecessarily confuse or frighten youth (e.g., “prison rape,” using the verbatim definitions of sexual abuse in the PREA standards).
- Use of educational materials from an adult jail or prison.
- Adoption of another jurisdiction’s materials without adapting them to reflect policies and procedures at the facility.
- Language in educational materials that is written above a fifth-grade reading level.
- Lack of documentation of youth participation in education sessions.

Tools and Resources

- [Brief Orientation Script](https://www.dropbox.com/s/q1j2aaiffcu7uxe/Brief%20Script%20to%20Read%20Upon%20Admission%20-%20Generic.docx?dl=0).⁴⁰ This script is designed to be read to youth during the intake process to convey basic information. Facility officials can fill in reporting avenues and adapt this language as they see fit.
- [“Let’s Text about Safety” Youth Education Palm Card \(English and Spanish\)](https://www.dropbox.com/s/lhf57nfp5zg7dms/NYC%20ACS%20youth%20education%20pamphlet%20-%20English%20and%20Spanish.pdf?dl=0).⁴¹ This handout, developed by the New York City Administration for Children’s Services in collaboration with Just Detention International and the Center for Children’s Law and Policy, provides youth with information on the agency’s efforts to prevent, detect, and respond to sexual misconduct. The palm card can serve as an example of youth-friendly, developmentally appropriate educational material for juvenile justice facilities. Agency officials can adapt this example or use it as a basis for developing new written materials.

⁴⁰ [https://www.dropbox.com/s/q1j2aaiffcu7uxe/Brief Script to Read Upon Admission - Generic.docx?dl=0](https://www.dropbox.com/s/q1j2aaiffcu7uxe/Brief%20Script%20to%20Read%20Upon%20Admission%20-%20Generic.docx?dl=0).

⁴¹ [https://www.dropbox.com/s/lhf57nfp5zg7dms/NYC ACS youth education pamphlet - English and Spanish.pdf?dl=0](https://www.dropbox.com/s/lhf57nfp5zg7dms/NYC%20ACS%20youth%20education%20pamphlet%20-%20English%20and%20Spanish.pdf?dl=0).

- [“Safe is Safe” Youth Education Video](#)⁴² and [Facilitator’s Guide](#).⁴³ These materials, also from the New York City Administration for Children’s Services, were developed in collaboration with film students at the City University of New York’s Brooklyn College, Just Detention International, and the Center for Children’s Law and Policy. The video represents a creative and youth-friendly approach to a sexual misconduct education program, and it can encourage officials to think about ways of developing more engaging youth education materials. The facilitator’s guide is designed to help staff lead a discussion that reinforces key messages after watching the video.
- [New Mexico Youth Education Video](#)⁴⁴ and [Facilitator’s Guide](#).⁴⁵ These materials, developed as part of a collaboration among the New Mexico Association of Counties, officials in several New Mexico Counties, and staff of the Center for Children’s Law and Policy, represent another approach to a creative and youth-friendly approach to a sexual misconduct education program. The facilitator’s guide is designed to help staff lead a discussion that reinforces key messages after watching the video.

Your Next Steps

- Ask your agency or facility administrator how they educate youth about sexual misconduct prevention, detection, and response. Ask how they developed their program and whether they have asked for feedback on it.
- Obtain youth education materials and observe a youth education session at the facility, looking out for the red flags listed above. In facilities that use overly technical or frightening language, suggest alternatives that convey the same messages in a more developmentally appropriate way.
- Interview youth about what they know about their right to be safe, the ways of reporting, and the right to be free from retaliation. Note any areas where youth seemed to be confused or missing key information and share those observations with facility administrators.
- Offer the youth education materials listed above as examples of youth-friendly and developmentally appropriate resources and offer ways of incorporating aspects of these samples into existing resources.
- Explore whether facility administrators are willing to collaborate with a local film school or other community-based organization to develop an engaging youth education video.

⁴² https://www.dropbox.com/sh/dxf9hirzy30aawg/AAC8_2pAusnJdruwscy6LKRLa?dl=0.

⁴³ [https://www.dropbox.com/s/n4hd1ll528ghpt5/Safe is Safe Review - Facilitator Guide.docx?dl=0](https://www.dropbox.com/s/n4hd1ll528ghpt5/Safe%20is%20Safe%20Review%20-%20Facilitator%20Guide.docx?dl=0).

⁴⁴ <http://www.nmcounties.org/homepage/insurance/loss-prevention-2/training-videos/prea-youth-education-video/>.

⁴⁵ http://www.prearesourcecenter.org/sites/default/files/content/prea_youth_ed_guide_final.pdf.

- Encourage the facility to enlist youth to help create posters and other materials that will reinforce key components of the youth education program.

Issue #3: Increase Protections for Lesbian, Gay, Bisexual, Transgender and Gender Non-Conforming, and Intersex Youth

As mentioned in the introduction to this toolkit, data on sexual misconduct in juvenile facilities shows that certain populations are particularly vulnerable to abuse. For example, the most recent nationwide survey conducted by the Bureau of Justice Statistics found that youth who identified as lesbian, gay, or bisexual were sexually victimized by other youth at seven times the rate of straight youth.

Lesbian, gay, bisexual, transgender and gender non-conforming, and intersex (LGBTI) youth in juvenile facilities may encounter harassment by youth and staff because they identify as such. Youth who are perceived to be LGBTI may face similar mistreatment. If left unchecked, this harassment can escalate into physical or sexual abuse.

Mistreatment of LGBTI youth can stem from a variety of causes. Staff may not have been trained on the unique needs and considerations associated with LGBTI youth in the juvenile justice system. This may stem from a belief that staff do not need such training because facilities have not encountered many, if any, LGBTI youth even though recent research shows that LGBT youth represent 20% of youth in detention.⁴⁶ Without such training, staff may not have the knowledge and skills to work with LGBTI youth in a professional and respectful way. They may also lack the skills to redirect youth who are engaging in harassment and abuse of LGBTI youth.

Facilities may also lack policies on crucial issues related to LGBTI youth. For example, if a youth discloses identification as gay or transgender to a facility staff member, but the youth's parents do not yet know, how will the facility preserve the confidentiality of that information when communicating with the youth's parents, the juvenile court judge, and other juvenile justice officials? A lack of policies, or policies that do not reflect best practices, can lead to serious harm.

What do the PREA standards say?

Because of the heightened rates of victimization, the PREA standards contain a number of special provisions related to LGBTI youth.

First, the standards contain definitions of the terms transgender, gender non-conforming, and intersex (115.5):

⁴⁶ http://www.equityproject.org/wp-content/uploads/2015/01/Equity_Curriculum_Lesson5_032015.pdf.

- *Transgender* means a person whose gender identity (i.e., internal sense of feeling male or female) is different from the person’s assigned sex at birth.
- *Gender Non-Conforming* means a person whose appearance or manner does not conform to traditional societal gender expectations.
- *Intersex* means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

The PREA standards do not reference “questioning” youth, which commonly represents the “Q” in the acronym “LGBTQ.” Questioning youth are those youth who are going through a process of questioning or who are unsure of their sexual orientation. Although the PREA standards do not include this term, agencies can choose to include this group of youth when outlining protections required for LGBTI youth under PREA. As with any requirement, the PREA standards represent the minimum of what is required, and administrators can choose to go above and beyond the standards so long as they meet those minimum requirements.

PREA’s protections for LGBTI youth appear in various parts of the standards. However, the requirements generally fall within four categories: (1) staff training on LGBTI youth, (2) housing and classification decisions, (3) searches and supervision, and (4) reviews of incidents involving alleged sexual abuse.

(1) Staff Training on LGBTI Youth

The PREA standards require that facilities train all employees who may have contact with youth on how to communicate effectively and professionally with residents, including LGBTI residents. 115.331. Although the standards do not specify the length and format of such training, there are a number of sample training curricula available on this issue, referenced below.

(2) Housing and Classification Decisions

When youth arrive at a facility, the PREA standards require that staff gather a range of information within 72 hours to make housing and programming decisions. One piece of information is whether any gender nonconforming appearance or manner, or identification or perceived identification as LGBTI, may make a youth vulnerable to sexual abuse. 115.341. Facilities can gather this information by training staff to ask all youth a set of questions about sexual orientation, gender identity, and gender expression in a professional and non-judgmental way. Resources referenced below can help facilities follow experts’ recommendations about how to do so.

As part of this process, the PREA standards prohibit staff from automatically placing LGBTI youth in particular housing assignments solely because of their perceived or actual sexual orientation or gender identity, and they prohibit staff from considering LGBTI identification or status as an indicator of a youth's likelihood to abuse others. 115.342. Staff must decide assignments of transgender and intersex youth to male or female housing units on a case-by-case basis, giving the youth's preferences serious consideration and reviewing the assignments at least twice each year for safety. A number of juvenile justice agencies have gone beyond this minimum requirement, stating that youth are to be housed according to their gender identity unless consultation with the youth or other safety or security needs warrant a different placement. Sample policies that articulate this expectation are included in the resources below.

The PREA standards also include protections designed to prevent youth from being placed in solitary confinement as part of an effort to keep youth safe or to isolate or punish youth who have engaged or may engage in abusive behavior. Facilities may not isolate youth with the goal of keeping them safe unless there are no less restrictive measures available. Youth who are isolated have a number of rights and protections under the PREA standards, including the opportunity for large muscle exercise, access to required educational programming or special education services, daily visits from a medical or mental health clinician, and access to programming to the extent possible. Additionally, administrators must review the need for ongoing isolation at least every 30 days. 115.342, 115.378. A number of juvenile justice agencies have stronger limits on isolation than those that appear in the PREA standards. Some prohibit use of isolation beyond a brief period where necessary to respond to an immediate threat to the safety of the youth or others.

Finally, transgender and intersex youth must also be offered the opportunity to shower separately from other youth. 115.342.

(3) Searches and Supervision

The PREA standards prohibit staff from searching or physically examining transgender or intersex youth solely for purpose of determining their genital status. 115.315. Additionally, the standards require that staff receive training on conducting searches of transgender and intersex residents, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs. 115.315.

The PREA standards for juvenile facilities prohibit cross-gender searches of all youth, including transgender and intersex youth, except in limited exigent circumstances. 115.315. In the case of transgender youth, the PREA Resource Center instructs facilities [to ask youth to identify the gender of staff with whom they would feel most comfortable](#)

[conducting the search in this situation](#)⁴⁷ and to honor that request absent exigent circumstances.

(4) Review of Sexual Abuse Incidents

In the wake of alleged sexual abuse at a facility, the PREA standards require administrators to conduct an incident review for both substantiated and unsubstantiated allegations. 115.386. The standards do not require administrators to conduct reviews for “unfounded” allegations where an investigation was conducted and an investigator determined that an incident did not occur, although facilities may choose to go above and beyond the PREA standards and complete an incident review in those situations anyway.

As part of these incident reviews, a review team must consider a number of factors, including whether incidents were motivated by gender identity or lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status. The team’s recommendations for improvement must be implemented unless a facility administrator documents why such improvements cannot be implemented.

Questions to Ask

- What type of training have staff received on working with LGBTQI youth? Who developed the training curriculum or where did they obtain it?
- Does the agency have an LGBTQI youth policy? If so, who developed it and how did they create it?
- Does the facility gather information on sexual orientation, gender identity, or gender expression? If so, what questions are asked and who asks them?
- What are the facility’s policies regarding housing and programming for LGBT youth? Are transgender youth housed according to their assigned sex at birth, their gender identity, or according to some other decisionmaking process? Are youth offered an opportunity to provide input into the housing and programming decision?
- How does the facility handle searches of transgender and intersex youth? Are youth offered the option to choose the gender of the staff member they feel most appropriate conducting searches? If so, when does that happen and how does the facility document it?
- Are transgender and intersex youth offered the opportunity to shower separately from other youth?
- Do staff feel like they have the skills to work effectively with LGBTQI youth?
- Has the facility experienced any challenges related to LGBTQI youth?

⁴⁷ <http://www.prearesourcecenter.org/faq#n1069>.

Red Flags

- Little or no staff training on LGBTQI youth.
- No written policy on LGBTQI youth.
- Confusion or lack of distinction among staff among the concepts of sexual orientation, gender identity, and gender expression.
- Denial of the need to focus on LGBTQI youth because of a perceived lack of youth who identify as such at the facility.
- Automatic classification policies that place LGBT youth in isolation, medical or mental health units, or special handling/management units.
- Automatic classification and housing of transgender youth according to sex assigned at birth, or a practice of doing so without considering gender identity or the youth's belief about where he or she would be safest.
- Policies that do not allow for searches of transgender youth by staff of the same gender as youth, or policies that do not allow youth to express a preference as to the gender of staff that will search them.
- Absence of LGBTQ-affirming materials at the facility.

Tools and Resources

- [The Equity Project](#).⁴⁸ This Equity Project is an initiative to ensure that lesbian, gay, bisexual and transgender youth in juvenile justice systems are treated with dignity, respect, and fairness. The website contains a wealth of resources, including [sample juvenile agency policies on LGBTQI youth](#),⁴⁹ [a free comprehensive staff training curriculum](#),⁵⁰ and [other resources](#).⁵¹
- [Policy Review and Development Guide: Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Custodial Settings](#).⁵² This guide, prepared in consultation with experts on LGBTQI youth in custody, outlines key considerations for many aspects of facility operations. Chapter 2 focuses on LGBTQI youth in juvenile facilities and can help administrators identify needed changes to policies and practices.
- [Sample Transgender and Intersex Youth Search Form](#).⁵³ Agencies can adapt this search form to provide documentation that they are asking transgender and intersex youth about the preferred gender of staff member to search them while at the facility.

⁴⁸ http://www.equityproject.org/wp-content/uploads/2015/01/Equity_Curriculum_Lesson5_032015.pdf.

⁴⁹ <http://www.equityproject.org/type/policy/>.

⁵⁰ <http://www.equityproject.org/training-type/curricula/>.

⁵¹ <http://www.equityproject.org/resources/>.

⁵² <http://nicic.gov/library/027507>.

⁵³ [https://www.dropbox.com/s/26ct1ev0fc33tl4/Search Request Form.docx?dl=0](https://www.dropbox.com/s/26ct1ev0fc33tl4/Search%20Request%20Form.docx?dl=0).

- [LGBTQI Youth Interview Guidelines](#).⁵⁴ Prepared by the National Council on Crime and Delinquency, this guide outlines questions that facilities should ask to obtain information about a youth’s sexual orientation, gender identity, and gender expression. It also contains guidance on how to ask these questions in a professional and affirming manner.
- [Know Your Rights: Laws, Court Decisions, and Advocacy Tips to Protect Transgender Prisoners](#).⁵⁵ This guide, published jointly by the American Civil Liberties Union and the National Center for Lesbian Rights, outlines useful resources for advocates who are working to improve treatment of transgender individuals in custodial settings.

Your Next Steps

- Ask your agency or facility administrator for their policy and training materials on LGBTQI youth and determine whether they align with the policies and training materials posted on the Equity Project website.
- Talk to youth at facilities about how well the facility staff work with LGBTQI youth and what changes, if any, they would make if they were in charge of running the facility.
- Work with agencies to develop or update policies and training materials using the sample policies and training materials provided above.
- Offer the sample transgender and intersex search form to ensure that facilities are offering those youth the opportunity to express a preference for the gender of staff who will search them.
- Offer the LGBTQI Youth Interview Guidelines to ensure that agencies are gathering accurate information about LGBTQI youth in a professional and affirming manner.
- Connect agency officials with LGBTQI advocacy organizations in the community who may be able to provide assistance with policies, trainings, and programming.

⁵⁴ [https://www.dropbox.com/s/26ct1ev0fc33t4/Search Request Form.docx?dl=0](https://www.dropbox.com/s/26ct1ev0fc33t4/Search%20Request%20Form.docx?dl=0).

⁵⁵ <http://www.prearesourcecenter.org/sites/default/files/library/knowyourrightsaclunclr.pdf>.

Issue #4: Train Facility Staff and Others Who Have Contact with Youth in Juvenile Facilities about the Problem of Sexual Misconduct and Their Responsibilities

A large part of successful efforts to prevent, detect, and respond to sexual misconduct in juvenile facilities involves making sure that everyone understands their role in keeping everyone at a facility safe. This means knowing all of the facility's rules designed to prevent incidents, learning how to spot red flags that may indicate a problem, and understanding how to respond appropriately if and when a youth discloses alleged misconduct.

For this reason, the PREA standards require that facility staff who may have contact with youth receive training on a range of different topics. The standards also recognize that individuals other than facility staff members may have contact with youth in custody, and those individuals may be the ones to receive a report of misconduct. For example, a youth may confide in a facility chaplain or volunteer who comes in to provide programming. These individuals need to know what the facility's rules are and how to respond if they are the recipients of a report of misconduct. Moreover, those who have specialized responsibilities in the wake of a sexual misconduct allegation, such as medical and mental health practitioners and investigators, must have additional expertise to ensure that they meet their responsibilities.

Developing training materials for these different groups from scratch can seem like an intimidating proposition. However, facility administrators can draw upon sample materials from jurisdictions around the country to ensure that these different groups have the knowledge and skills that they need to play their part in a facility's sexual misconduct prevention, detection, and response efforts.

What do the PREA standards say?

PREA requires different types and levels of training for different individuals who may have contact with youth in a juvenile facility. These groups include facility staff, volunteers and contractors, medical and mental health personnel, and certain individuals who are responsible for investigating incidents involving sexual misconduct.

Facility Staff

Facility staff who may have contact with youth must receive training on a range of topics, including:

- The facility's zero-tolerance policy for sexual abuse and sexual harassment;

- How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
- Residents' right to be free from sexual abuse and sexual harassment;
- The right of residents and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
- The dynamics of sexual abuse and sexual harassment in juvenile facilities;
- The common reactions of juvenile victims of sexual abuse and sexual harassment;
- How to detect and respond to signs of threatened and actual sexual abuse, and how to distinguish between consensual sexual contact and sexual abuse between residents;
- How to avoid inappropriate relationships with residents;
- How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, gender nonconforming, and intersex residents;
- How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities; and
- Relevant laws regarding the applicable age of consent.

Facilities must document that staff receive and understand this training, provide refresher training on these topics every two years, and provide staff with information on current policies in the years in which they do not receive refresher training. 115.331. A separate standard, 115.315(f) requires that security staff receive training on conducting cross-gender pat-down searches, and searches of transgender and intersex residents, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

Although the PREA standards do not specify the length, format, or content for staff training, staff must receive training on these topics.

Volunteers and Contractors

In addition to training for facility staff, the PREA standards require all volunteers and contractors who have contact with youth to be trained on their responsibilities under the agency's sexual misconduct prevention, detection and response policy. 115.332. The length and type of training can vary depending on the type of services that a volunteer provides and his or her level of contact with youth. For example, volunteers or contractors who are frequent visitors to the facility and those who may be in a position of having unsupervised interactions with youth would require more in-depth training than a guest speaker who is supervised by staff and who only visits the facility a handful of times. However, at a minimum everyone needs to be notified about the facility's zero tolerance policy and how to report sexual misconduct. Additionally, facilities must

maintain documentation that volunteers and contractors understand the training that they receive.

The PREA standards define the term “volunteer” as “an individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency.” 115.5. The definition of “contractor,” which is similar, is “a person who provides services on a recurring basis pursuant to a contractual agreement with the agency.” These relatively broad definitions can apply to a wide range of individuals who have contact with youth in the facility. The PREA Resource Center has also noted that teachers and administrators at a facility school are considered “contractors” for the purpose of PREA’s training requirements, even if the educators do not have any formal contractual relationship with the facility itself.

Because PREA defines “volunteer” and “contractor” as an individual who has a “recurring” engagement with the facility, individuals who have contact with youth only once, for example, to provide a one-time performance or to repair a piece of equipment in a single visit, are not required to receive any training. However, facilities may still want to ask one-time volunteers and contractors to review a summary of the facility’s zero-tolerance policy and methods of reporting and sign an acknowledgement form. This step, while not required by the PREA standards, ensures that all individuals have some basic knowledge of how to report if they observe something or if a youth discloses to them.

Other Specialized Training Requirements

The PREA standards also contain specialized training requirements for medical and mental health staff (115.335), as well as certain individuals who are responsible for investigating alleged sexual abuse (115.334). Although these trainings are beyond the scope of this toolkit, [the PREA Resource Center maintains a website with training resources and tools designed to meet these standards](#).⁵⁶

Questions to Ask

- What has the facility done to comply with PREA’s staff training requirements? Have all facility staff received training on all of the required topics outlined in the PREA standards?
- Does the facility have contractors who have contact with youth? If so, what has the facility done to train those individuals according to PREA’s requirements?
- How does the facility ensure that all volunteers understand the facility rules related to sexual misconduct and how to respond if they receive a report of alleged misconduct? Who conducts that training? When does it occur relative to when a person comes to volunteer his or her time at the facility?

⁵⁶ <http://www.prearesourcecenter.org/node/1912>.

- Have medical and mental health staff received the specialized training required by the PREA standards?
- Have staff responsible for investigations into sexual abuse received the specialized training required by the PREA standards?
- Where did the facility obtain its training materials? Were they developed in-house or were they obtained from another jurisdiction?
- Are there particular areas where staff or administrators feel that they could use additional training resources (e.g., working with LGBTQI youth)?

Red Flags

- No staff training curriculum or no plans for development of a curriculum.
- Reliance solely on online training curricula.
- Use of dated training materials or training materials that are not developmentally appropriate (e.g., training curricula from an adult department of corrections).
- Staff with limited knowledge of PREA or sexual misconduct prevention, detection, and response efforts.
- No plans to educate volunteers or contractors about sexual misconduct.

Tools and Resources

- [Sample Staff Training Curriculum](#).⁵⁷ This staff training curriculum, developed as part of a collaboration among the New Mexico Association of Counties, officials in several New Mexico Counties, and staff of the Center for Children’s Law and Policy, is designed to cover the staff training topics outlined in 115.331. The training is broken into five modules with accompanying handouts, exercises, and discussion materials. Although some of the training material is tailored to laws and rules in New Mexico, the training contains easy reference points for those wishing to adapt the content for their own agency or facility.
- [Sample Volunteer Training Materials](#).⁵⁸ These volunteer training materials, developed by the New York City Administration for Children’s Services in collaboration with the Center for Children’s Law and Policy, provide volunteers with essential information on the agency’s efforts to prevent, detect, and respond to sexual misconduct. The training materials include a brochure, a PowerPoint to be delivered in-person to volunteers, and an acknowledgment form that volunteers can sign to document receipt and understanding of their responsibilities. Administrators can adapt these materials for use in their own agency or facility.

⁵⁷ <https://www.dropbox.com/sh/5wi4b77i3umwzd4/AAAkmgtrM80KbgyGMv7z6F7Ka?dl=0>.

⁵⁸ <https://www.dropbox.com/sh/t37oi38maxhcocw/AADoXtn8Z6ZoC4p35cU1lj7a?dl=0>.

- [Sample Teacher Training Materials](#).⁵⁹ As mentioned above, the PREA standard consider educators and administrators who are working in juvenile facilities to be “contractors” for the purpose of PREA’s training requirements. These three training modules, developed by the New York City Administration for Children’s Services in collaboration with the Center for Children’s Law and Policy, were designed to be delivered during in-service training periods. Administrators can adapt these materials for use with education staff in their own agency or facility. Because this training curriculum is more in-depth than the volunteer training materials listed above, this curriculum may also be more appropriate for volunteers who have more frequent interactions with youth.

Your Next Steps

- Ask your agency or facility administrator how they train staff, volunteers, and contractors about sexual misconduct prevention, detection, and response. Ask how they developed their training materials and whether they have asked for feedback on it.
- Obtain staff, volunteer, and contractor training materials and observe training sessions at the facility, looking out for the red flags listed above.
- Interview staff about their responsibilities related to sexual misconduct prevention, detection and response. For example, what would they do if a youth disclosed alleged sexual abuse by another staff member? By another youth? How would they keep youth safe who do make such an allegation? Note any areas where staff seem to be confused or missing key information and share those observations with facility administrators.
- Offer the training materials listed above as examples of engaging and accessible curricula that administrators can adapt for their own use instead of having to develop such materials from scratch.
- Encourage administrators to enlist outside help for review of training materials and delivery of such trainings. For example, a local rape crisis provider may be willing to present on the common reactions of victims of sexual abuse, the reason why it is important to protect the confidentiality of information related to allegations of sexual abuse, and other topics.

⁵⁹ <https://www.dropbox.com/sh/erg3sosuaoo6axx/AAAv5vzcMFe3ihKYFea8nB4da?dl=0>.

Issue #5: Ensure Thorough Investigations for All Allegations of Sexual Misconduct and Connect Youth with Rape Crisis Services in the Community

When officials face allegations of sexual misconduct in juvenile facilities, their first response is to promise a full investigation. However, many agencies have not fully thought through the mechanics of *how* those investigations will proceed, particularly if the agency has not handled any recent sexual misconduct allegations.

Investigations into alleged sexual abuse of youth in juvenile facilities can be far from straightforward. Determining how to respond raises a series of important questions that facility officials may not have answered before. For example:

- Who will speak to a youth and staff about an allegation? How much information will they try to gather? If facility officials ask too many questions, they may render evidence inadmissible in a future prosecution.
- Who investigates various types of sexual misconduct that may occur? Officials may know that an allegation of sexual abuse warrants a referral to the state's child abuse registry, but it almost always calls for a referral to law enforcement also. Staff sexual harassment of youth may not rise to the level of a law enforcement referral, but it may require reports to other entities, such as the state child abuse registry. Reporting channels may be different depending on whether the alleged abuser is a staff member, youth, or other adult at the facility. Officials need to know who to notify in the different range of situations that may arise.
- What happens in the case of overlapping investigations? In cases of sexual abuse, staff may refer incidents to multiple agencies, such as local law enforcement, the state child abuse registry, an oversight entity charged with managing conditions in juvenile facilities, and an agency's own internal investigators. Officials need to know which investigation will take precedence and how entities will work together to avoid re-traumatizing youth through repeated interviews.
- Who will provide support to youth during an investigation? Sexual abuse is a traumatic experience for youth, and the PREA standards require agencies to make victim advocates available during investigations. These advocates must come from a rape crisis center unless the agency cannot secure a commitment from their local rape crisis center and have documented their attempt to secure such an agreement. However, facility officials may have little or no knowledge of rape crisis services in their community, and they may be unsure how to begin outreach

to those organizations.

- What happens in cases involving willing sexual activity among youth? The PREA standards make it clear that officials must not consider willing sexual activity among youth as sexual abuse for the purposes of PREA. Officials need to determine who will make a determination of whether sexual contact among youth was voluntary, what training may be necessary to make that determination, and what the facility's response will be to willing behavior.

These are just some of the questions raised by investigations into alleged sexual misconduct. Officials must have answers to these important questions and others in order to respond quickly and appropriately to reports of sexual abuse and sexual harassment. This section provides advocates with tools to help ensure that officials have a coordinated and responsive process.

What do the PREA standards say?

The PREA standards contain numerous requirements related to investigations, which are [detailed in this tool on reporting and investigations](#).⁶⁰ Rather than restate all of the details of the PREA standards here, the summary below highlights some of the most significant requirements.

- Ensure there are investigations of every allegation of sexual misconduct, including anonymous reports and allegations made by third parties. Criminal allegations must be investigated by an entity with the legal authority to conduct those investigations and refer appropriate cases for prosecution. 115.322, 115.371.
- Publish the agency policy outlining responsibilities for different kinds of investigations on an agency website or make it available through other means if no website exists. 115.322.
- Ensure that any agency officials responsible for investigations into sexual abuse receive specialized training to do so, and that any state agency responsible for investigations receives the same specialized training. 115.334, 115.371.
- Stay informed about investigations by outside entities and notify youth if the alleged perpetrator is no longer posted on the youth's unit, is no longer employed by the facility, or has been indicted or convicted on a charge related to sexual abuse within the facility. 115.371, 115.373.

⁶⁰ [https://www.dropbox.com/s/u483jh9ubwaihks/Reporting and Investigations Tool.docx?dl=0](https://www.dropbox.com/s/u483jh9ubwaihks/Reporting%20and%20Investigations%20Tool.docx?dl=0).

- Report allegations of sexual abuse to a youth's parents or legal guardians unless there is official documentation that they should not be notified, as well the youth's child welfare caseworker if the youth is under the guardianship of the child welfare system. If the youth is still under the jurisdiction of the juvenile court, staff must also notify the youth's attorney. 115.361.
- Provide youth who experience sexual abuse access to forensic medical examinations conducted by qualified medical professionals (Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs)), unless the facility has documented that SAFEs or SANEs are not available. 115.321.
- Make victim advocates available to youth during investigations to provide emotional support, crisis intervention, information, and referrals. These advocates must come from a rape crisis center unless the agency cannot secure a commitment from their local rape crisis center, have documented their attempt to do so, and have identified a qualified substitute from a community-based organization or the agency itself. 115.321.
- Keep information about sexual abuse reports confidential unless reporting to designated supervisors or agencies, or unless necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions.

Questions to Ask

- Which agencies or entities are responsible for investigating different types of sexual misconduct (e.g., staff-on-youth sexual abuse, staff-on-youth sexual harassment, youth-on-youth sexual abuse, youth-on-youth sexual harassment)? What training do those entities have to conduct investigations into sexual misconduct?
- How do those entities coordinate when there are multiple ongoing investigations (e.g., child abuse investigation, law enforcement investigation, facility internal investigation) so as to avoid unnecessary re-traumatization of youth through multiple interviews?
- Does the agency have a written policy on investigations posted on its website? Was it developed before or after the release of the PREA standards? Does it meet the PREA standards' requirements?
- How do officials determine when to refer allegations to law enforcement? How do staff gather enough information without jeopardizing the integrity of a potential future criminal investigation?

- Has the facility ever referred willing sexual activity among youth to law enforcement? How does the agency ensure that it does not refer non-criminal willing sexual activity among youth to law enforcement?
- Who provides victim advocacy services to youth who allege to have been sexually abused? Are they from a local rape crisis center? If not, what attempts were made at the facility to secure victim advocacy services from local rape crisis centers. Why were they unsuccessful?
- Who conducts forensic medical examinations of youth who allege to have been sexually abused? Do they have training to conduct such examinations of youth?

Red Flags

- No written policy that outlines responsibilities of agencies for investigations into sexual misconduct.
- Little or no differentiation in the investigation process between various different types of sexual misconduct (e.g., staff-on-youth sexual abuse, staff-on-youth sexual harassment, youth-on-youth sexual abuse, youth-on-youth sexual harassment).
- Lack of outreach to local rape crisis organizations to secure victim advocacy services.
- Policies to report all sexual activity among youth, including willing sexual activity, to law enforcement.

Tools and Resources

- [Reporting and Investigations Tool](#).⁶¹ This document outlines the PREA requirements for investigations of different types of sexual misconduct, explaining key considerations for each aspect of the PREA standards. Advocates can do a side-by-side comparison of current investigations procedures and policies with this tool to identify any discrepancies and needed changes.
- [Responses to Sexual Misconduct Planning Matrix](#).⁶² This document outlines the different types of sexual misconduct or sexual activity that may occur at a juvenile facility. It also contains fields for officials to fill in how they will respond to each different type of misconduct, as not all incidents should be referred to law enforcement or the state's child abuse registry (e.g., willing sexual activity among youth). Advocates can work with officials to fill in this grid to ensure that the facility has a differentiated and appropriate response to sexual misconduct and sexual activity among youth.

⁶¹ [https://www.dropbox.com/s/u483jh9ubwaihks/Reporting and Investigations Tool.docx?dl=0](https://www.dropbox.com/s/u483jh9ubwaihks/Reporting%20and%20Investigations%20Tool.docx?dl=0).

⁶² [https://www.dropbox.com/s/m2thfaddvhkr8w9/Responses to Misconduct Spreadsheet.docx?dl=0](https://www.dropbox.com/s/m2thfaddvhkr8w9/Responses%20to%20Misconduct%20Spreadsheet.docx?dl=0).

- [Summary of Sexual Misconduct in Juvenile Facilities for Rape Crisis Providers.](#)⁶³
This fact sheet is designed to educate rape crisis counselors and other professionals who provide services to those who have been sexually abused about the problem of sexual victimization in juvenile facilities. Advocates can use this document as a tool to help educate local providers and encourage them to partner with juvenile justice facilities to provide victim advocacy services, youth education, and staff training.

Your Next Steps

- Search your juvenile justice agency's website for a publicly posted policy or procedure outlining how the agency will respond to incidents of sexual misconduct involving youth, including any agreements with outside law enforcement agencies.
- Analyze agency investigation policies and procedures for compliance with the PREA standards and best practices using the PREA Reporting and Investigations Tool listed above. Identify any areas of discrepancy and raise them with agency officials.
- Reach out to local rape crisis providers to educate them about PREA and the problem of sexual victimization in juvenile facilities.
- Ask juvenile facility officials what arrangements they have made for victim advocates for youth who allege to have been sexually abused. If no arrangements have been made, or if agency officials are relying on their own staff to serve as victim advocates, facilitate a meeting between your local rape crisis provider and agency officials to explore a potential partnership.

⁶³ <https://www.dropbox.com/s/ac2k5i4hxla3gon/No Safe Place Rape Crisis Fact Sheet.pdf?dl=0>.