



U.S. Department of Justice

Office of Justice Programs

Office of the Assistant Attorney General

Washington, D.C. 20531

February 11, 2014

Dear Governor:

The Prison Rape Elimination Act (PREA) was passed in 2003 with unanimous support from both parties in Congress. Eliminating prison rape is a priority of the U.S. Department of Justice (DOJ) because we believe that sexual abuse is a crime, and should not be the punishment for a crime. On June 20, 2012, after extensive notice-and-comment rulemaking and consultation with State and local corrections officials and other stakeholders, DOJ published a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison rape, as directed by PREA. The National PREA Standards, which are found at 28 C.F.R. Part 115, took effect on August 20, 2012, and apply to DOJ, State, and local confinement facilities, including adult prisons and jails, juvenile facilities, police lockups, and community corrections facilities. To assist States and localities with the implementation of the National PREA Standards, DOJ, through the Bureau of Justice Assistance, funded the National PREA Resource Center to provide training and technical assistance, as well as to serve as a single-stop resource for leading research and tools for all those in the field working to come into compliance with the National PREA Standards.¹

As you may know, PREA contains mandates that may affect grant funding your State receives from DOJ in Fiscal Year 2014. The statute provides that, if a Governor is not able to certify to DOJ that the State is in full compliance with the National PREA Standards, the Governor has the option to submit an assurance to DOJ that not less than five percent of certain DOJ grant funds will be used solely for the purpose of enabling the State to achieve and certify full compliance with the standards in future years. 42 U.S.C. § 15607(e)(2). If the Governor is not able to certify to DOJ that the State is in full compliance with the National PREA Standards and elects not to submit an assurance to DOJ, the State is subject to the loss of five percent of certain DOJ grant funds that it would otherwise receive.

In Fiscal Year 2014, there are three DOJ grant programs (or portions thereof) subject to this statutory provision. Two are administered by the Office of Justice Programs: (1) the Bureau

¹ The National PREA Resource Center's website is www.prearesourcecenter.org. The final rule, including the National PREA Standards, can be found at <http://www.prearesourcecenter.org/sites/default/files/library/2012-12427.pdf>.

of Justice Assistance's Edward Byrne Memorial Justice Assistance Grant Formula Program, and (2) the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Juvenile Justice and Delinquency Prevention Act Formula Grant Program. One is administered by the Office on Violence Against Women: the STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant Program.

The current fiscal year, which ends September 30, 2014, is the first year during which these DOJ grant funds will be subject to the five-percent reduction in the event that a State does not certify compliance with the National PREA Standards, or provide an assurance that the State is using at least five percent of such grant funding to achieve full compliance.

Attached you will find a PREA Standards Certification form and a PREA Standards Assurance form. These should be used to indicate, respectively, either that your State is in full compliance with the National PREA Standards, or that your State will use not less than five percent of the covered grant funds to achieve full compliance with the National PREA Standards in the future.

You should note that legal restrictions on the uses of OJJDP Formula Grant and STOP Grant funds may make them unavailable to the State for addressing certain areas of noncompliance with the PREA standards. If a State is in full compliance with the standards as they apply to the State's juvenile facilities, and out of compliance only with regard to adult facilities, it could not lawfully spend OJJDP Formula Grant funds to come into compliance. Because it would be impossible to use this money to come into compliance, the State would not be subject to the five-percent reduction in OJJDP Formula Grant funding. Likewise, STOP Grant funds are limited in that they cannot be used for new construction, even if that is necessary to bring a State into full compliance with the PREA standards. If a State is in full compliance except for a deficiency that requires new construction, it could not lawfully spend STOP Grant funding to come into compliance, and the State therefore would not be subject to the five-percent reduction in STOP Grant funds. The PREA Standards Assurance form requires you to indicate whether either or both of these circumstances apply to your State.

May 15, 2014 is the deadline for one of these two forms (either a Certification or an Assurance form), signed by the Governor, to be received by the PREA Management Office, Bureau of Justice Assistance, 810 Seventh Street NW, Washington, D.C., 20531. Executed forms may be e-mailed to PREACompliance@usdoj.gov.

If the PREA Management Office does not receive a signed copy of either form by May 15, 2014, your State will be subject to a loss of five percent of each of the FY 2014 covered grant funds referenced above as required under 42 U.S.C. § 15607(e)(2).

A Governor's PREA Certification of full compliance with the National PREA Standards "shall apply to all facilities in the State under the operational control of the State's executive branch, including facilities operated by private entities on behalf of the State's executive branch." 28 C.F.R. § 115.501(b). In determining whether the State is in full compliance, "the Governor shall consider the results of the most recent agency audits." 28 C.F.R. § 115.501(a).

The National PREA Standards provide that all confinement facilities subject to the standards must be audited by a DOJ-certified auditor at least once every three years, with one-third of each facility type operated by an agency, or private organization on behalf of an agency, to be audited each year. The first audit cycle began on August 20, 2013. DOJ intends audits to be a primary, but not the only, factor in determining whether a State is in full compliance. Neither the PREA statute nor the National PREA Standards restrict the sources of information that Governors may use in deciding whether to certify whether a State is in full compliance with the National PREA Standards.

If you have any questions concerning PREA implementation or the attached forms, please send inquiries to the PREA Management Office at PREACompliance@usdoj.gov. Requests for PREA implementation training or technical assistance may be directed to the PREA Resource Center at www.prearesourcecenter.org/training-technical-assistance/request-for-assistance.

DOJ looks forward to continuing to collaborate with you as we work together to implement the National PREA Standards and combat sexual abuse in confinement facilities.

Sincerely,



Karol V. Mason
Assistant Attorney General
Office of Justice Programs

Attachment

**Certification Regarding Adoption and Full Compliance with
the National Standards to Prevent, Detect, and Respond to Prison Rape
2014**

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

As of the date of signature of this certification (in no case later than May 15, 2014), the State/jurisdiction named below has adopted, and is in full compliance with, the National Standards to Prevent, Detect, and Respond to Prison Rape, 28 C.F.R. Part 115.

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

- 1) Within 15 days, notify DOJ via the email address below of the existence of the inaccuracy;
and
- 2) Within 15 days of providing such notice,
 - A) submit an Assurance signed by the Chief Executive (using the form provided by DOJ) indicating that the State/jurisdiction will expend not less than 5% of its covered DOJ grant funds for FY 2014 to adopt, and achieve full compliance with, the National Prison Rape Standards (28 C.F.R. Part 115), so as to ensure that a certification may be submitted in future years; or
 - B) agree to return 5% of its covered DOJ grant funds for FY 2014 as calculated by DOJ.

Signature of Chief Executive

Printed name of Chief Executive

Name of State/Jurisdiction

Date

**This form must be received by the Department of Justice, PREA Management Office by May 15, 2014.
Email a signed version of this form to: PREACompliance@usdoj.gov**

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

**Assurance to Utilize Department of Justice Grants to Achieve Full Compliance with
the National Standards to Prevent, Detect, and Respond to Prison Rape**

2014

Pursuant to 42 U.S.C. § 15607(e)(2), I assure the U.S. Department of Justice (DOJ) that, subject to the exceptions checked below (if applicable), the State/jurisdiction named below will use not less than 5 percent of its covered DOJ grant funds for FY 2014 to enable the State/jurisdiction to adopt, and achieve full compliance with, the National Standards to Prevent, Detect, and Respond to Prison Rape (28 C.F.R. Part 115), so as to ensure that a certification of full compliance may be submitted in future years.

1. ___ the State/jurisdiction named below has adopted, and is in full compliance with, the National Standards to Prevent, Detect, and Respond to Prison Rape, 28 C.F.R. Part 115, insofar as those standards implicate juvenile facilities, as defined in 28 C.F.R. § 115.5, but is not in full compliance with one or more standards insofar as those standards implicate non-juvenile facilities. Accordingly, grants issued by the Office of Juvenile Justice and Delinquency Prevention are not subject to the required set aside of funds for PREA purposes and shall not be used for purposes of the above Assurance.

2. ___ the State/jurisdiction named below has adopted, and is in full compliance with, the National Standards to Prevent, Detect, and Respond to Prison Rape, 28 C.F.R. Part 115, except to the extent that full compliance would require new construction. Accordingly, grants issued by the Office on Violence Against Women are not subject to the required set aside of funds for PREA purposes and shall not be used for purposes of the above Assurance.

If the State/jurisdiction has checked Box 1 and/or 2, and after the date of signature of this assurance, credible information should come to the attention of the undersigned (or his or her successor) that casts reasonable doubt on the accuracy (as of the date of signature) of the information relied upon in checking Box 1 and/or 2, the same shall conduct a reassessment and determine whether this selection of such box(es) was accurate as of the date of signature. If the selection of one or both boxes is determined not to have been accurate, the undersigned or a designee will:

- 1) Within 15 days, notify DOJ via the email address below of the existence of the inaccuracy;
and
- 2) Within 15 days of providing such notice, submit a revised Assurance, signed by the Chief Executive.

Signature of Chief Executive

Printed name of Chief Executive

Name of State/Jurisdiction

Date

**This form must be received by the Department of Justice, PREA Management Office by May 15, 2014.
Email a signed version of this form to: PREACompliance@usdoj.gov**

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