

**Department of Justice
Office of Justice Programs
Office of Juvenile Justice and Delinquency
Prevention**

**Frequently Asked Questions
Regarding the
OJJDP Title II, Part B, Formula Grants Program
Prison Rape Elimination Act Reallocation Reduction**



OJJDP

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Title II PREA Reallocation Overview

Why is Department of Justice (DOJ) grant funding affected by state efforts to comply with the National Standards to Prevent, Detect, and Respond to Prison Rape?

The PREA statute provides that a state whose governor does not certify full compliance with DOJ's National Standards to Prevent, Detect, and Respond to Prison Rape (PREA Standards), 34 U.S.C. 30307(e), is subject to the loss of 5 percent of any DOJ grant funds that it would otherwise receive for prison purposes, unless the governor submits to the Attorney General an assurance that such 5 percent will be used by the state solely to adopt and achieve full compliance with the PREA Standards in future years.

In addition, the Justice for All Reauthorization Act (JFARA) of 2016, which was enacted on December 16, 2016, includes an amendment to the PREA statute. This change provides an option for governors who submitted an assurance to choose whether affected grant funds will be reallocated to the state to use for PREA compliance purposes or will be held in abeyance by DOJ's Office of Justice Programs pending future action by the state (See 34 U.S.C. §30307(e)). The abeyance option was available beginning in FY2017 through FY2019 and provided opportunities for states to claim funds within three years following the enactment of JFARA. (Please note, governors no longer have the option to hold funds in abeyance.) For additional information regarding abeyance, please visit the [Bureau of Justice Assistance PREA page](#).

How does this PREA requirement apply to Title II funds?

Any DOJ grant funding that may be used by states for prison purposes is affected by the PREA statute. Because Title II funding can be used for a variety of prison purposes, a 5 percent reduction to a state's Title II funding will be applied each year a governor does not certify full compliance with the PREA standards.

Who is eligible to apply for PREA reallocation funds?

Designated State Agencies (DSAs) for states, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, and American Samoa that have submitted an assurance to DOJ that at least 5 percent of Title II funds will be used to achieve full compliance with the PREA Standards are eligible to apply for PREA reallocation funds.

If the governor does not certify full compliance, how would the 5 percent reduction of a state's TITLE II funding be assessed?

States that do not have a certification of full compliance for juvenile facilities would have the 5 percent PREA reduction assessed against the remaining portion of a state's Title II funding after compliance determinations have been made, but it would exclude the mandatory variable pass-through (VPT) amount and monies allocated for the State Advisory Group (SAG).

Below is an illustration of how the PREA reduction is assessed:

If a state is to receive an a PREA reduction, the 5 percent would be calculated as follows:

If there are any determinations of non-compliance with the core requirements, 20% is then subtracted from the remaining share of the state's Title II funds for each instance of non-compliance.

The 5% SAG allocation is then subtracted from the state's remaining share of Title II funding.

The mandatory 66 2/3 pass-through amount is subtracted from the state's remaining share of Title II funding.¹

The 5 percent PREA reduction is then assessed on the remaining amount.

If a state uses the 5 percent PREA reallocation, will that be included in the standard state Title II award?

The 5 percent PREA reallocation will not be included in the state Title II award, to facilitate separate tracking of PREA activities. For a state that submits an assurance that not less than 5 percent of its DOJ funding for prison purposes will be used solely to adopt and achieve full compliance with the PREA Standards and chooses to receive its funds in the form of a PREA reallocation award, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) will provide guidance and require a separate funding application be submitted that details the specific PREA-related activities to be carried out using these funds.

When did the PREA reduction take effect?

The first year of the 5 percent reduction was fiscal year 2014, which began on October 1, 2013 and ended on September 30, 2014. States have an ongoing obligation to work toward and achieve compliance with the PREA Standards; therefore, the PREA reduction will be applied each year that the governor does not certify full compliance with the PREA Standards.

When is the governor's certification or assurance due to DOJ?

The deadline for submission of either a certification regarding adoption and full compliance with the PREA Standards or an assurance of intention to adopt and achieve full compliance with the PREA Standards is **October 15** each year.

What options does the governor have with regards to PREA compliance?

Pursuant to the PREA statute, the governor has the following options:

- (1) Submit a certification that all confinement facilities under his or her operational control are in full compliance with the PREA Standards.
- (2) Submit an assurance which gives the governor the option to use not less than 5 percent of impacted DOJ funds to work toward and achieve full compliance with the PREA Standards in the future, resulting in a reallocation of impacted DOJ grant funds; or

¹ Unless a pass-through waiver is granted by the OJJDP Administrator, the JJDP Act at 34 U.S.C. § 11133(a)(5) requires states to pass-through at least 66 and 2/3 percent of Title II Formula Grants Program funds to units of local government, local private agencies, and eligible Indian tribes.

(3) Submit neither and accept a 5 percent reduction in such grants.

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

Other than the standard described above requiring governors to “consider” the audit findings, neither the PREA statute nor the PREA Standards restrict the sources of information governors may use in deciding whether or how to certify compliance.

It is important to note that if a governor submits an assurance to DOJ that no less than 5 percent of the state’s DOJ funding for prison purposes will be used to support implementation of the PREA Standards, the state will not lose the funds, but the funds will be reallocated to a PREA-specific award.

Governor’s Certification

To what facilities in the state does the governor’s PREA certification apply?

PREA standards state, “The Governor’s certification [of full compliance with the 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)) A “facility” is defined as “a place, institution, building (or part thereof), set of buildings, structure, or an area (whether or not enclosing a building or set of buildings) that is used by an agency for the confinement of individuals.” Some standards apply specifically at the facility level, while others apply at the agency level.

This definition of facility includes local detention and correctional facilities as well as state correctional facilities; however, not all facilities within a state are subject to the governor’s certification. The governor’s certification does not encompass those facilities outside the operational control of the governor; namely, those facilities that are under the operational control of counties, cities, or other municipalities, or privately operated facilities not operated on behalf of the state’s executive branch. The term “operational control” is not defined in the PREA Standards. The determination of whether a facility is under the operational control of the executive branch is left to a governor’s discretion, subject to the following guidance. Generally, there are several factors that may be taken into consideration in determining whether a facility is under the “operational control” of the executive branch:

- Does the executive branch have the ability to mandate PREA compliance without judicial intervention?
- Does the state have a unified correctional system?
- Does the state agency contract with a facility to confine inmates or residents on its behalf, other than inmates or residents being temporarily held for transfer to or release from a state facility?

The above list is not exhaustive, but it covers the majority of situations that governors may face in determining whether a facility or contractual arrangement is subject to the governor’s certification.

Please note that the PREA Standards require that any public agency that contracts for confinement with private agencies or other entities, including other government agencies, (1) include in any new contract or contract renewal the entity's obligation to adopt and comply with the PREA Standards, and (2) provide for agency contract monitoring to ensure that the contractor is complying with the PREA Standards. (28 C.F.R. §§ 115.12, 115.112, 115.212, 115.312.) A state confinement agency that fails to comply with these requirements is, by the terms of the PREA Standards, not PREA compliant.

What if a state is not fully compliant with the PREA Standards, but working toward full compliance?

Under 34 U.S.C. § 30307(e)(2), the State may provide an assurance that 5 percent of DOJ funds that can be used for prison purposes will be used to achieve full compliance with the PREA Standards, so that a certification of compliance may be submitted in future years.

Assurance

Information on submission requirements is provided annually to states in August.

When does the Assurance option expire?

JFARA, which was enacted on December 16, 2016, includes an amendment to the PREA statute. See 42 U.S.C. §15607(e)(2)(A)(ii). The PREA amendment made the following changes to the assurance option:

- The assurance option will sunset on December 16, 2022. Therefore, the final opportunity for governors to submit an assurance to DOJ is for Audit Year 3 of Cycle 3 (August 20, 2021 – August 19, 2022), **which impacted FY 2023 DOJ grant funds**. The deadline for this certification/assurance submission was October 17, 2022.
- The PREA amendment also provides that, for two years following the sunset of the assurance, a governor who can certify that the state has had audits for at least 90 percent of facilities under the operational control of the governor may request that the Attorney General allow submission of an emergency assurance. Therefore, following the sunset of the assurance on December 16, 2022, governors who meet the above criteria have two opportunities to submit an emergency assurance.
 1. The first opportunity is for Audit Year 1 of Cycle 4 (August 20, 2022 – August 19, 2023), which impacts FY 2023 DOJ grant funds. The deadline for this certification or emergency assurance submission is October 16, 2023.
 2. The second and final opportunity is for audit Year 2 of Cycle 4 (August 20, 2023 – August 19, 2024), which impacts FY 2024 DOJ grant funds. The deadline for this certification or emergency assurance submission is October 15, 2024.

DOJ's PREA Management Office receives and reviews the annual submissions by Governors and will contact the Governor's Office if any questions arise about the certification or assurance. For

more information about the Governor's certification, visit the [Bureau of Justice Assistance PREA page](#) and the [National PREA Resource Center page](#).

See the Annual Governors' PREA Certification and Assurance Submission [Fact Sheet](#) for additional information on the annual certification and assurance submission process.

What can a state do with its remaining Title II PREA reallocation funds if, after providing DOJ with an assurance, the state later comes into full compliance with the PREA Standards?

Per the PREA statute, any state that submits an assurance to the Office of Justice Programs (OJP) that it will reallocate 5 percent of certain formula grant funds (including Title II formula funds) to come into compliance with the PREA Standards will be allowed to retain those funds, which would otherwise have been forfeited as a penalty for PREA non-compliance. Once that state comes into full compliance with the PREA Standards, the governor should provide the PREA Management Office with that state's certification of full compliance with PREA.

Upon receipt of that certification, OJJDP will lift the PREA limitation on the Title II funds, and the state will be allowed to use any remaining Title II PREA reallocation funds for any of the lawful purposes under the Title II statute. Of course, a state could choose to continue to use its Title II PREA reallocation funds for the purpose of maintaining PREA compliance. For example, a state could continue to pay for ongoing PREA facility audit requirements, should it choose to do so.

As a process, after proof of certification, if a state chooses to use its remaining Title II PREA reallocation funds for general Title II purposes, it can submit a change of scope Grant Award Modification (GAM) in the online Just Grants System. As part of the change of scope GAM, a copy of the governor's certification should be provided. Once the change of scope GAM has been approved by OJJDP, the state can then submit a GAM request to reallocate its funds to other approved Title II purpose area.

Allowable Use of Funds

What can PREA Reallocation funds be used for?

Allowable activities may focus on addressing one or more of the major provisions of the PREA Standards, which include:

- General prevention planning
- Supervision and monitoring
- Staffing of juvenile facilities
- Youthful inmates in adult facilities
- Cross-gender searches and viewing
- Training and education
- Screening
- Reporting
- Responsive planning
- Investigations
- Discipline

- Medical and mental health care
- Grievances
- Lesbian, gay, bisexual, transgender, intersex (LGBTI), and gender nonconforming inmates
- Inmates with disabilities and limited English proficient (LEP) inmates.

Proposed PREA implementation activities for jurisdictions that submitted an assurance should be tied to a specific [Juvenile Facility Standards](#) and are strongly encouraged to implement policies, procedures, and practices that are required by the PREA Standards and create cultures of “zero tolerance” of sexual abuse and sexual harassment in confinement facilities.

For additional information see: [DOJ Grants Financial Guide](#).

Are the costs associated with preparing for and conducting PREA audits an allowable use of the 5 percent reallocation?

Yes. States may use the 5 percent reallocation on activities to help them achieve compliance with the National PREA Standards to Prevent, Detect, and Respond to Prison Rape (PREA Standards), including preparing for and conducting audits.

Can PREA Reallocation funds be used for construction or renovation projects?

Construction and/or renovation projects related to penal or correctional institutions are allowable under this program to support continued implementation of the PREA standards and promote sexual safety in confinement.

Please note, any project that involves construction and/or renovation will be subject to environmental analysis requirements pursuant to the National Environmental Policy Act (NEPA).

If the governor submits an assurance, can the state use PREA reallocation funds for non-PREA Title II purpose areas?

No. If the governor submits an assurance that at least 5 percent of Title II funds will be used only for the purpose of enabling the state to adopt and achieve full compliance with the PREA Standards in future years, the entire 5 percent must be used for PREA purposes.

Can management & administration funds be deducted from the PREA reallocation funds?

PREA reallocation funds cannot be used for administrative costs, including indirect costs, which are administrative in nature.

Does my agency need to submit materials that we plan to publish, which are funded by PREA reallocation funds, to OJJDP for review?

Yes. You must submit to OJJDP for review and approval any curricula, training materials, proposed publications, reports, or any other written materials, including web-based materials and website content, which will be published using DOJ grant funds, at least 30 working days prior to the targeted dissemination date. Any written, visual, or audio publications, with the exception of press releases,

whether published at the grantee's or government's expense, shall contain the following statement: “This project was supported by Grant <AWARD NUMBER> awarded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this publication/ program/ exhibition are those of the author(s) and do not necessarily reflect those of the Department of Justice.” The current edition of the DOJ Grants Financial Guide provides guidance on allowable printing and publication activities.

Resources

Who can I contact for more information regarding PREA implementation?

PREA Management Office: PREACompliance@usdoj.gov

For additional information concerning PREA, visit the [National PREA Resource Center](#)

Where can I find additional PREA Resources?

[National PREA Standards](#)

[Juvenile Facility Standards](#)

[PREA Auditor Handbook](#)

[PREA Standards in Focus](#)

[JFARA Fact Sheet](#)