

The Department of Justice Office of the Inspector General (OIG) today released a report on the Department's progress in implementing the Prison Rape Elimination Act (PREA). PREA required the Attorney General to promulgate regulations that adopt national standards for the detection, prevention, reduction, and punishment of prison rape. On June 20, 2012, the Department of Justice published the National Standards to Prevent, Detect, and Respond to Prison Rape (Standards). The OIG progress report identified several emerging issues with the Department's implementation of the Standards.

The DOJ is responsible for the implementation of the Standards, including management of the audit process in which facilities demonstrate compliance with the Standards to an independent auditor. Several DOJ components also have management and operational obligations under PREA. The Office of Justice Programs (OJP) has been assigned responsibility to manage PREA implementation, and DOJ components with operational responsibilities under PREA include the Federal Bureau of Prisons (BOP), the U.S. Marshals Service (USMS), the Federal Bureau of Investigation (FBI), and the OIG. A PREA Working Group has also been formed, in part to resolve questions regarding interpretations of the Standards.

The issues identified in today's report include the following:

- The USMS uses intergovernmental agreements (IGAs) that allow it to house federal detainees in state and local detention facilities. The Standards require new or renewed USMS IGAs with state and local detention facilities to include language that obligates these facilities to comply with the Standards. However, because the USMS's IGAs are typically of an indefinite length, IGA facilities that do not ask for rate increases or other modifications to existing IGAs could continue indefinitely to hold federal detainees without any obligation to comply with the Standards.
- The Standards also require that agencies using IGAs and other contract facilities conduct monitoring "to ensure that the contractor is complying with the PREA Standards." Guidance from the PREA Working Group states that these facilities must demonstrate "substantive progress" toward achieving compliance but USMS officials expressed uncertainty to the OIG about what would constitute this and what would cause them to deem an IGA facility to be out of compliance with PREA. These uncertainties may contribute to inconsistency when assessing compliance and an unduly lenient interpretation of "substantive progress" could result in slower implementation of the Standards.
- The Standards place requirements on external investigative agencies, including those from DOJ, that conduct investigations of sexual abuse in confinement settings, related to uniform evidence protocols, specialized training, and the conduct of investigations. Until recently, DOJ components' compliance with these standards was evaluated by independent PREA auditors, but new interpretive guidance from the PREA Working Group has led to independent auditors no longer making these assessments, and no other mechanism is currently in place to make these assessments. We also found that the USMS cannot ensure its compliance with these external investigative standards because it does not have an adequate system to identify all USMS investigations where the requirements apply.

- With regard to PREA audits at BOP institutions, we identified several possible issues, including likely difficulties implementing the cross-gender pat-down standard, challenges locating outside organizations capable of providing sexual assault support services, and inconsistencies among independent PREA auditors' preliminary assessments of BOP institutions.
- Other potential issues identified include challenges with development of an online auditing tool, and the need for increased communication with DHS about the interaction of the Standards with DHS's separate standards.

Because the DOJ's implementation of PREA is in its early stages, the OIG did not make formal recommendations to the DOJ about how to address the challenges identified in the report. However, the OIG encourages the DOJ and its relevant components to take action to address the issues described in the report in order to decrease the potential for these challenges to become increasingly significant as the number of PREA audits increase at federal, state, and local facilities across the country. The Office of the Inspector General is committed to ensuring that DOJ components satisfy their important management and operational responsibilities under PREA, and we will continue to monitor PREA implementation.

The report released today can be found on the OIG's website at:
<http://www.justice.gov/oig/reports/2014/e151.pdf>.