

PREA and the Penalty on State and Local Government

- The Prison Rape Elimination Act (PREA) seeks to eliminate sexual abuse in correctional facilities by setting standards for the physical space, the training of personnel, and the assignment of personnel in the facility (e.g., opposite gender interactions).
- All public and private prisons, jails and lock-ups must meet the PREA standards. A state is in compliance when prison facilities under its operational control meet the PREA standards.
- Governors certify compliance, based in large part on audits done by Department of Justice (DOJ)-certified auditors. The first audits are underway in Bureau of Prison facilities. State facility audits are expected to begin in 2014.
- The statute envisions a three-year audit cycle, whereby audits are conducted on one-third of the state's facilities each year. Therefore, a state could be expected to complete the first audits by 2017.
- States could not begin the certification process until now because, despite the statute being passed 10 years ago, DOJ has just recently issued guidance, audit instructions and training.
- The penalty for noncompliance is 5 percent of any DOJ grant funds "that it would otherwise receive for prison purposes," a term that is undefined in statute. DOJ may interpret this to mean any grant program eligible to be used for prison construction, administration or programming, which could include the Byrne Justice Assistance Grant program, the Juvenile Justice and Delinquency Prevention Act's Title II formula grants, the Juvenile Accountability Block Grant, and the Office on Violence Against Women's STOP grants.
- The Byrne JAG statute, for instance, allows grant funds to be used across the criminal justice system for a wide variety of purposes. Yet, according to annual data collected by the National Criminal Justice Association from its members, the State Administering Agencies (SAAs), only a small portion of Byrne JAG grants are used for correctional services. Byrne JAG funding is guided by a statewide strategic plan, with strong emphasis on adopting evidence-based programs and testing innovative approaches to crime reduction. The building improvements, staffing and training necessary to meet the PREA standards are more appropriately funded by state appropriation, reserving Byrne JAG for testing innovative approaches to fighting crime and preventing victimization.
- Funding for the justice assistance grant programs has dropped by 43 percent since FY10. Withdrawing an additional 5 percent from the field will accelerate the loss of crime-fighting initiatives and divert funding away from necessary support for law enforcement, crime victims, community corrections, treatment services, and juvenile programming.
- Finally, states' experience with the Sex Offender Registration and Notification Act (SORNA) suggests that when the cost of compliance exceeds the penalty, states are forced to accept the penalty. Four years after the deadline, only 16 states and three territories are in compliance with SORNA.