
Summary of Comments
Draft NPREC Standards for the Prevention, Detection, Response, and Monitoring of
Sexual Abuse in Juvenile Facilities

August 2008

Through the Prison Rape Elimination Act (PREA) of 2003, Congress formed the National Prison Rape Elimination Commission (NPREC), a bipartisan panel authorized to study federal, state, and local government policies and practices related to sexual abuse in lockups, jails, prisons, and juvenile and community corrections facilities and recommend standards to be adopted by the United States Attorney General. Using expert development committees, specialized research staff, and stakeholder insights, the NPREC developed a set of draft national standards for the prevention of and response to sexual abuse in juvenile facilities, with matching compliance checklists to represent the standards' contents and help to evaluate progress toward meeting the PREA benchmarks. The NPREC recently requested public comment on the draft juvenile facility standards.

Our organizations, the Campaign for Youth Justice, Youth Law Center, and Center for Children's Law and Policy, are committed to removing youth from adult facilities and improving the conditions of confinement for youth held in juvenile facilities. Earlier this summer we provided comments on the NPREC's draft adult facility standards. Attached are our recommendations to the NPREC regarding its draft juvenile facility standards.

We offer only a fraction of the suggestions that we submitted for the adult standards, because we believe that the draft juvenile facility standards comprehensively address the prevention, detection, response and monitoring of sexual misconduct in juvenile facilities. Our specific suggestions are attached in a chart which identifies the specific cite, rationale, and suggested language change for each of our recommendations. We wish to highlight in this introduction some more global issues in the standards.

First, the Glossary section includes descriptions of terms that go beyond definitions and begin to be prescriptive. We believe that the appropriate place for prescriptive comments is in the standards themselves. The glossary should be limited to clarifying the meaning of terms used in the standards, so that users of these standards are able to locate all facilities' obligations in the standards themselves.

Second, we notice that there is a great deal of important information in the discussion sections following the standards. While the discussion sections are appropriate places to more fully explain the standards, they should not incorporate additional expectations not covered by the standards. As the Commission revises the standards, we recommend that it review the material in the discussions and move any appropriate requirements into the standards themselves.

Third, we are glad to see in the training and education discussions in part II(A) specific mention of ensuring that staff, volunteers and residents know how to report incidents of sexual abuse. However,

we believe that standards TR-2 and 3 should not stop at ensuring that information is provided on the agency's zero tolerance policy. We recommend that you include in the standards, and not only the discussion, the need to ensure that residents and visitors know how to report victimization from the time they first enter the facility.

Finally, we recognize that some standards may not adequately protect youth who are, or are perceived to be, lesbian, gay, bisexual, or transgender (LGBT). There is evidence to suggest that sexual violence against LGBT youth in juvenile justice facilities is a pervasive problem that often goes unaddressed. Many LGBT youth in juvenile justice facilities report being harassed, assaulted, raped, and beaten by other residents as well as by facility staff. In addition to our attached recommendations, we encourage the Commission to consult the resources available from the Equity Project, a national initiative to ensure fairness, dignity, and respect for LGBT youth in delinquency courts (available online at www.equityproject.org), and the comments submitted separately by the National Center for Lesbian Rights and others to ensure that LGBT youth are not treated as sexual predators and instead take the necessary precautions to keep these youth safe.

We commend the Commission on its careful attention to this important issue in juvenile facilities, and appreciate the opportunity to provide our suggestions.

Standard Statement or Discussion PDF Page Where It Appears	Concern(s)	Suggested Revision <u>Underlining</u> indicates the suggested action to take, or suggested language to be added. Strikethrough indicates language suggested for removal.
Glossary: Action Plan (p. 9)	The definitions do not include an entry for “action plan,” a term used frequently in the document.	A suggested definition of “action plan” could come from Compliance Checklist 3 (PDF p. 46): “An action plan sets benchmarks for achieving full compliance with the PREA standards, includes strategies for overcoming staff resistance to change, and develops a communication plan to inform all staff, residents, other stakeholders, and the community about the strategies and goals for achieving full compliance.”
Glossary: Allegation (p. 9)	The definition of the parties who can receive and those who can make allegations to trigger an official response is too narrow.	<u>Amend</u> the definition to read: “Information related to sexual abuse that is provided to a staff member or volunteer <u>agency personnel, facility staff or volunteers, medical or mental health practitioners, or law enforcement.</u> Allegations include tips and grievances. An allegation triggers the agency’s official response, which includes the initiation of an investigation. Allegations can be made by <u>anyone, including</u> staff, observers, victims, witnesses, <u>victim’s acquaintances,</u> and family members who have evidence or suspicion that sexual abuse has occurred.”
Glossary: Certification of compliance (p. 9)	The definition mentions progress since “the second audit or any subsequent audits,” which does not make sense because the agency might not have ever been audited before.	<u>Amend</u> the second sentence of the definition of “Certification of Compliance” to read: “Where full compliance has not been reached, the statement describes progress toward compliance since <u>the agency’s implementation of its initial action plan or the agency’s response to its prior audit(s),</u> as well as the agency’s <u>updated, current</u> action plan to achieve compliance, with concrete and specific benchmarks.”
Glossary: Credibility Assessment (p. 10)	The definition for credibility assessment should be written with more affirmative language in order to make it stronger.	<u>Amend</u> the second line to read: When assessing the credibility of confined sexual abuse victims and witnesses, investigators must set aside any biases they have against residents and <u>must</u> make a conscious effort not to disregard their statements because of their status as residents <u>to take seriously all statements and complaints of sexual abuse.</u>
Glossary: Forensic interview (p. 10)	Some situations may call for slightly leading questions in order to help youth articulate details that may be painful to discuss. Therefore, the term non leading should be removed and replaced with	<u>Amend</u> the definition to read: An investigative interview of a youth that is conducted in a neutral and non-leading manner using open-ended questioning <u>devised to extract honest and accurate information, performed</u> by an investigator trained in techniques designed to best elicit truthful information from the youth while minimizing additional trauma to the youth.

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Glossary: Forensic interview (p. 10) cont.	language that would allow for slightly leading questions that would furnish truthful and accurate answers.	
Glossary: Full compliance (p. 10)	The definition says that full compliance means consistent application of the PREA standards "for a sustained period of time," which is too ambiguous.	<u>Add</u> this definition: "Full compliance is achieved when a facility conforms to 100% of the standards for a period of at least 1 year. On any standard to which the facility does not conform, facility staff and administrators should develop a corrective action plan."
Glossary: Lockup (p. 11)	Outside of the terms own definition within the glossary, the term is not mentioned within the standards or the checklists.	The term Lockup should be removed from the Glossary.
Glossary: Miranda warning (p. 11)	The definition for Miranda warnings states that if there is a chance that a resident will be subject to future criminal proceedings he or she must always be advised of his or her Miranda rights but residents should have to be advised of their Miranda rights for delinquency petitions as well.	<u>Amend</u> the last sentence to read: Since a resident will always be considered "in custody," if there is any chance that resident may be the subject of a future criminal prosecution <u>or delinquency petition</u> , he or she must always be advised of his or her Miranda rights.
Glossary: Physical body cavity search (p. 11)	The definition provided for physical body cavity search under the juvenile standards is not as protective as the definition provided within the standards for adult facilities.	<u>Adopt</u> the adult standard definition which is: A physical intrusion into a body cavity, defined as stomach, rectal cavity, vagina, mouth, nose, or ears, for the purpose of discovering drugs, weapons, or other dangerous contraband concealed in the body cavity. Physical body cavity searches of residents may only be conducted by authorized medical practitioners and must be conducted privately under sanitary conditions. Physical body cavity searches of residents may be conducted on reasonable suspicion that the resident is secreting drugs or weapons or if his or her appearance and conduct suggests a likelihood of having engaged in prohibited behavior but should only be conducted when absolutely necessary to protect the overriding security needs of the facility. Nonmedical staff of the gender opposite from the resident being searched may not be present during the search.

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Glossary: Preponderance of the evidence (p. 12)	The definition given is not the one commonly referred to and may cause confusion. A preponderance of the evidence is generally described as evidence sufficient to make it more likely than not that the fact the claimant seeks to prove is true, as described in the end of the discussion for IN-2	Amend the first sentence of definition to state: The standard of proof in most civil cases in which the party bearing the burden of proof must present evidence that is more credible and convincing than the evidence presented by the other party <u>evidence that it is more likely than not that the allegations are true.</u>
Glossary: Resident-on-resident sexually abusive contact (p. 12)	The definition of “sexually abusive contacts” currently requires coercion “by threats of violence.” Other types of abusive coercion should qualify.	Amend the definition for Resident-on-resident sexually abusive contact to read: Touching (either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks) without penetration by a resident of another resident without the latter’s consent, or with a resident who is coerced into sexual contact by threats of violence <u>of harm, physical or otherwise</u> , or with a resident who is unable to consent or refuse.
Glossary: Resident-on-resident sexually abusive penetration (p. 12)	The definition of “sexually abusive penetration” currently requires coercion “by threats of violence.” Other types of abusive coercion should qualify.	Amend the first sentence for Resident-on-resident sexually abusive penetration to read: Penetration by a resident of another resident without the latter’s consent, or with a resident who is coerced into sexually abusive penetration by threats of violence <u>of harm, physical or otherwise</u> , or with a resident who is unable to consent or refuse.
Glossary: Staff-on-resident indecent exposure (p. 13)	The definition of this specific form of indecent exposure should not use the term indecent exposure to help define it.	Amend the definition to read: Occurrences of indecent exposure <u>The display</u> by a staff member of his or her genitalia, buttocks, or breasts in the presence of a resident.
Glossary: Staff-on-resident sexual harassment (p. 13)	The definition requires “repeated” verbal statements or comments to constitute harassment, but in some cases, a single statement or comment may constitute harassment.	Remove the word “repeated” before “verbal statements or comments” in the definition of “staff-on-resident sexual harassment.” <u>RATIONALE</u> for removal of “repeated”: Residents may be more likely than free persons to tolerate verbal abuse that comes from someone with authority because in a confinement setting they are expected to obey authority without first judging its propriety or fairness. If a resident works up the nerve to report harassment, he/she should not have to wait for a second occurrence before it is stopped. She/he may later be

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Glossary: Staff-on-resident sexual harassment (p. 13) cont.		unwilling to renew a complaint because of her/his fear of consequences, or may become acclimated to the harassment and accept it as part of the power imbalance that exists between staff and residents.
Glossary: Video monitoring system (p. 14)	The juvenile standard should be made similar to the adult standard which is more protective.	<u>Replace</u> with the adult standard definition which is: An integrated security system that augments and/or enhances the ability of staff to provide the minimal sight and sound security necessary to prevent, detect, contain, and respond to incidents of sexual abuse. The video monitoring system should have the capabilities to enable adequately trained staff to (1) visually observe resident activities in order to detect indicators of sexually abusive behavior and actual incidents of sexual abuse; (2) activate an immediate response to detected abuse that will abate and/or contain the behavior; and (3) record and retain footage and/or audio recordings of activities for evidentiary purposes, training and policy revisions, staff redeployment decisions, and/or for identifying and designing solutions to structural or physical plant issues.
Glossary: Visitor (p. 14)	The definition for visitor listed within the glossary differs from what is commonly thought of when using the term. It also differs from how the term is used within the standards and checklists which appear to use the common definition of visitor.	Remove “for an official purpose” and “Excludes family members, friends, and attorneys who enter an agency to visit a resident” from the definition so that it reads: An individual who enters an agency for an official purpose who does not serve as a <u>staff member</u> or volunteer in the agency. Excludes family members, friends, and attorneys who enter an agency to visit a resident.
Glossary: Visual body cavity search (p. 14)	The definition for Visual body cavity search that is used for the adult standards is more protective than the definition used for the juvenile standards.	<u>Replace</u> with the Adult definition which is: A visual inspection of a body cavity, defined as stomach, rectal cavity, vagina, mouth, nose, or ears, for the purpose of discovering any drugs, weapons, or other dangerous contraband concealed in the body cavity. Visual body cavity searches of residents may be conducted on reasonable suspicion that the resident is secreting drugs or weapons or if his or her appearance and conduct suggests a likelihood of having engaged in prohibited behavior. Visual body cavity searches must be conducted in private settings by staff of the same gender as the resident being searched and should only be conducted when necessary to protect the overriding security needs of the facility. Staff conducting visual body cavity searches is not allowed to touch the breasts, buttocks, or genitalia of the person being searched.

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SA-2: Annual audit and certification Standard (p. 15)	The standard and the corresponding checklist do not match. The compliance checklist calls for the chief executive to publish audit materials and audit results but the standard does not include that.	<p><u>Amend</u> the first sentence to read: The chief executive in each jurisdiction must certify <u>and publish</u> the agency’s compliance with these standards based on results from annual audits of the standards conducted by independent auditors who have no previous or current affiliation with the agency.</p> <p><u>Amend</u> the last sentence of the statement to read: The chief executive must certify annually that the agency or body operating under the legal authority of the state is either in full compliance with or has established an action plan to enable full compliance with this body of standards pursuant to PREA <u>and must publish the audit material and audit results.</u></p>
SA-3: Internal assessment and planning for achieving compliance with PREA standards Standard & Discussion (p. 16)	The publication requirement in the last sentence of the Statement allows a broad publication exemption to protect the “safety and security of the facility.”	<ul style="list-style-type: none"> • End the Statement with this <u>shortened</u> final sentence: “The agency head must approve internal assessments and action plans, submit them to the legislature, and publish them, provided they do not contain information that, if made public, would jeopardize the safety and security of the facility. <p>In the Discussion, <u>add</u> the portion removed from the Statement and <u>clarify</u> it to read: “The agency head must submit to the legislature and publish the internal assessments and action plans. In instances where those documents contain information that, if made public, would jeopardize the safety and security of the facility or individuals at the facility, those portions (and only those portions) of the documents that put the facility or individuals in jeopardy may be redacted. However, in no case may this provision entirely excuse the agency head from responsibility for submission and publication of the documents, including those that may be partially redacted.”</p>
PP-1 P: Resident safety Discussion (p. 17)	<p>The use of technology should be adapted to work with the design of the facility, but not be a substitute for supervision by staff.</p> <p>It is important that the standard emphasize that isolation should be avoided if possible and only used as a last resort.</p>	<p><u>Amend</u> the sentence in the middle of the discussion to read: “Achieving full sight and sound supervision of residents requires proper deployment and supervision of staff, and may require other creative adaptations to facility design and/or use of technology.”</p> <p><u>Amend</u> the third to last sentence in the discussion to read: Special supervision policies must be developed for residents who are isolated from the general population and, therefore, may be more vulnerable to abuse by staff: <u>though isolation should be avoided whenever possible.</u></p>

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PP-2: Heightened protection for vulnerable residents Discussion (p. 18)	The standard states that vulnerable residents are to be provided with heightened sight and sound supervision but the discussion uses the word “may”, suggesting that vulnerable residents may not need protection. The wording of the discussion should be changed in order to reflect the standard.	<u>Amend</u> the third sentence in the first paragraph of the discussion to read: “This practice contributes to reluctance on the part of residents to admit that they may will require protection.”
PP-3: Restrictions on cross-gender supervision Discussion (p. 19)	The standard as described in the discussion is not as protective as the due process standard for the adult facilities.	<u>Amend</u> the third to last sentence in the first paragraph to read: These prohibitions do not apply to responses <u>the extent necessary to respond</u> to emergencies.
PP-3: Restrictions on cross-gender supervision Discussion (p. 19)	The discussion is not clear on what legitimate security purposes would be for conducting strip searches and visual body cavity searches. Also, the discussion should include the language located in the standards for the adult facilities.	<u>Amend</u> the second sentence in the last paragraph of the discussion to read: In addition to being conducted by persons of the same gender as the resident, strip searches and visual body cavity searches should be conducted only where there is a legitimate security purpose such as when a staff member suspects that a <u>articulable, reasonable suspicion that the</u> resident is concealing contraband or weapons on his or her body in a manner that cannot be detected by a pat-down search alone. <u>Amend</u> the fourth sentence in the last paragraph of the discussion to read: Routine strip, visual body cavity, and physical body cavity searches of residents for less than a reasonable security purpose <u>an articulable, reasonable suspicion</u> should not be permitted.
PP-5: Staff qualifications Standard (p.20)	The standard should be made to conform to the checklist which calls for re-screenings as a part of performance reviews.	<u>Add</u> to the end of the standard statement: After hiring staff the agency should continue perform periodic re-screening of staff members’ criminal history.

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PP-7: Use of appropriate monitoring technology Discussion (p. 21)	Since there may be competing privacy interests that come into play for when youth are in the showers and restrooms the standard should state that the technology should not be used to inappropriately invade a resident’s privacy. There will be instances in which the use of the monitoring technology is not appropriate and therefore it should be stated that it should not be an agency standard to always use this technology.	<u>Add</u> a sentence to the end of the first paragraph of the discussion stating: Additionally, video and other enhanced monitoring technologies are not to be used inappropriately in circumstances in which youth would reasonably expect a degree if bodily privacy. <u>Add</u> a sentence to the end of the discussion stating: Since there will be occasions in which the use of video and other enhanced monitoring will not be appropriate, the agency shall not make it standard that the technology be used in all situations.
RP-1: Coordinated response team Standard (p. 22)	The standard should explicitly reference that mental health services are to be provided to victims.	Amend standard to read: The agency uses a coordinated, multidisciplinary team to respond to incidents of sexual abuse to ensure that victims receive the medical, <u>mental health</u> and support services they need and that investigators are able to obtain usable evidence to substantiate allegations and ensure appropriate response to perpetrators.
RP-2: Evidence protocol Standard (p. 22)	The standard should be softened in order for the protocol for investigations to also protect the dignity of the victims.	Amend standard to read: The agency head is responsible for ensuring that investigators of sexual abuse in facilities under his or her control follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions <u>while protecting the dignity and responsiveness to the needs of victims.</u>
RP-3: Evidence protocol Standard (p. 22)	In the discussion for RP-3 it mentions that residents that commit suicide may do so because they are being sexually abused. Since suicides may not always take place immediately after the sexual abuse the facility head should look towards findings regarding whether the deceased engaged in sexual activity in a more expansive timeframe than only immediately prior to death.	Amend first sentence of the standard to read: Following any forensic autopsy performed on a resident who died of known or suspected unnatural causes while in custody, the facility head must obtain the medical examiner’s finding regarding whether there was any evidence that the deceased engaged in sexual activity, other than self-stimulated activity, <u>recently or immediately</u> prior to death

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RP-4: Reporting to other confinement facilities.	The standard is not clear about whether identifiable information about specific victims would be included. If that information would be part of an information system, the victim should first give consent.	Add a sentence to the end of the standard. <u>“Before identifiable information about a victim is shared with the facility where the alleged abuse occurred, the victim must first give informed consent.”</u>
RP-8: Agreements with forensic medical examiners Discussion (p. 26)	Although it is required that victims who request copies of their records receive them the discussion section does not state that it is required to inform victims that they are able to receive copies of their records.	Amend the last sentence of the discussion to read: Additionally, <u>victims must be informed that they may receive copies of their records free of charge;</u> if requested, independent examiners must provide copies of records to the victims.
TR-1: Staff and volunteer training Standard (p. 27)	The standard states that all staff are to be educated about sexual abuse and the agency’s sexual abuse policy but it does not require them to be educated before they come into contact with any of the residents.	Amend the statement to read: All staff members and volunteers are educated about sexual abuse and agency sexual abuse policies through training that is comprehensive, easy to understand, up-to-date, and appropriate for the agency’s population <u>prior to having contact with the residents.</u>
TR-1: Staff and volunteer training Discussion (p. 27)	The standard requires that all staff members and volunteers are to be trained but it does not have a requirement that there be a signed form of verification that training took place.	Add to the discussion section before the final sentence: Statement of policies and practices and memoranda of understanding should be acknowledgements signed by staff and volunteers regarding training.
TR-2: Visitor awareness of agency’s zero tolerance policy regarding sexual abuse (p. 27)	The standards state that only visitors on official business are required to sign an acknowledgment that they understand the agency’s zero tolerance policy. The discussion should be amended to show that the acknowledgement of the policy will only for those visiting on official business.	Amend the final sentence of the discussion to read: The policy may be posted at facility entrances, and signing the visitor’s logbook can serve as acknowledgement of the policy <u>for visitors on official business.</u>

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TR-2 Visitor awareness of agency’s zero tolerance policy regarding sexual abuse & TR-3: Resident notification of agency’s zero tolerance policy during intake Standard (p. 27)	Both of the Standard Statements for TR-2 & TR-3 focus on the notification of the existence of a zero-tolerance policy rather than a clear understanding of how to report violations of the policy. The Discussion for TR-2 states that “it is important that they <i>understand</i> ” the policy, but the Standard Statements do not reflect that. TR-2 & TR-3 also do not note the importance of language access for visitors and residents.	<u>Rephrase</u> TR-2 Statement: “Through communication that is appropriate and meaningful to the audience, all visitors on official business to a facility acquire a clear understanding of the agency’s zero-tolerance policy regarding sexual abuse and how to report violations of the policy. They are required to sign an acknowledgment that they understand... [Followed by the last sentence of the current TR-2 Statement].” <u>Rephrase</u> TR-3 Statement: “During the intake process, through communication that is appropriate and meaningful to the audience, all residents acquire a clear understanding of the agency’s zero-tolerance policy regarding sexual abuse and how to report violations of the policy.”
TR-3: Resident notification of agency’s zero tolerance policy during intake Standard (p. 27)	Although the standard does cover informing new residents of the agency’s zero tolerance policy the current standard does not cover informing residents within the facility prior to the passing of the PREA standards.	<u>Add</u> to the end of the standard: Residents already within the facility prior to the passing of these standards are to be informed of the agency’s zero tolerance policy and how to report abuse as soon as possible.
TR-3: Resident notification of agency’s zero tolerance policy during intake Discussion (p. 28)	The presentation requirements do not mention accommodations for LEP, sight-, hearing-, or speech-impaired residents.	<u>Add</u> after second sentence of second paragraph of Discussion an additional, new sentence: “Regardless of the means of presentation, it must make accommodations to meet the needs of LEP and sight- or hearing-impaired residents, and those residents with learning or developmental impairments.”
TR-4: Resident education on sexual abuse (p. 28)	The standard states that residents are supposed to be taught about sexual abuse but it does not reference teaching the residents that there is a prohibition against retaliation. The standard should specifically reference educating residents on the prohibition against retaliation. If residents know about potential disciplinary sanctions for retaliation, they may feel safe in reporting abuse.	<u>Amend</u> the first sentence in the standard to read: All residents are educated about sexual abuse <u>and the prohibition of retaliation against those who report sexual abuse</u> through education sessions that are comprehensive, easy to understand, up-to-date, and appropriate for the agency’s population. The discussion section should include language from AD-1 stating that residents should be informed that: “Retaliation can take many forms such as being placed in harsh or hostile conditions, being attacked by other residents, or suffering harassment from staff.”

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TR-5: Specialized training: classification, investigation, medical, and mental health care, and data collection Discussion (p. 29)	The discussion requires those who record and protect the data to be specially trained but those in charge of destroying the data should be specially trained on how to properly do so as well.	Amend the Data Collection section of the discussion to read: Finally, those with data collection responsibilities require special training so that they understand the importance of and will comply strictly with agency policies on recording, and protecting, <u>and destroying</u> information that is confidential by law or, if not confidential by law but left unprotected, could endanger victims, witnesses, and alleged abusers.
CL-2: Full classification assessment of resident Standard & Discussion (p. 31)	Unlike the adult standard the juvenile standard does not have a requirement for the resident's classification assessment to be updated. This requirement should be added to the standard. The requirement from the adult standard to test and validate classification instruments should be included within the discussion section.	<u>Add</u> to the end of the standard that: Every resident's classification assessment is reviewed and updated, as necessary, following significant incidents and whenever new relevant information is available. <u>Add</u> a new paragraph directly before the final paragraph in the discussion section stating: The Commission encourages agencies to test and validate for the adolescent population the reliability of classification instruments that use these measures. Agencies should review their own institutional histories for information about incidents of sexual abuse in their facilities and make that information available to researchers so that advances can be made in this field.
RE-1: Resident reporting Standard (p. 33)	In the standard the Prison Litigation Reform Act (PLRA) is referenced (PLRA states that "No action shall be brought with respect to prison conditions... by a prisoner ...until such administrative remedies as are available are exhausted") but the standard should not directly reference another piece of legislation. Also, the PLRA does not define what would be considered to be an exhaustion of administrative remedies.	Amend the second line of statement to read: Any report of sexual abuse made at any time after the abuse, which names a perpetrator and is made in writing to the agency satisfies the exhaustion requirement of the Prison Litigation Reform Act <u>shall be considered an exhaustion of administrative remedies.</u>

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RE-2: Outside support services for residents Discussion (p. 34)	The standard and discussion both state that victims are to have access to medical and mental health treatment but since some residents may be fearful of naming their actual abuser the discussion should state that residents should be able to report sexual abuse without naming their abuser and still receive medical and mental health treatment.	Amend to include statement that: Residents who decide to report abuse without naming an abuser are still eligible to receive medical and mental health treatment.
RE-2: Outside support services for residents Discussion (p. 34) Continuation of RE-2: Outside support services for residents	Although the discussion does talk about residents meeting face-to-face with advocates and / or counselors, the presence of security staff, direct care staff, or administrators may have a chilling effect on sensitive conversations. Residents should be able to meet privately with advocates and counselors. The discussion should restate that residents are to have unimpeded access to their attorneys as well as other legal representation.	Amend the first line of second paragraph in the discussion section to read: The agency should consider entering into an MOU with a community agency and providing regular opportunities for residents to meet <u>privately</u> face-to-face with advocates and/or counselors. (RP-5). Add a sentence to the end of the discussion stating: The agency is to ensure that residents are allowed unimpeded access to their attorneys as well as unimpeded access to other legal representation (e.g. special ed. attorneys).
RE-3: Third party reporting Discussion (p. 35)	The various suggestions for making information on reporting available should not suggest that one strategy is enough by using the conjunction "or."	Amend the second sentence of the Discussion to read: "For example, the information could be available by phone, <u>or</u> on a website, as <u>and should be</u> part of a presentation to visitors about the agency's zero-tolerance policy. <u>Examples of methods of providing information include:</u> or <u>in</u> brochures, flyers, or <u>and</u> on posters in visiting areas."
SD-1: staff duty to report sexual abuse Standard (p. 35)	The wording of the last sentence of the standard does not conform to the style used for the rest of the standards.	Amend the last sentence of the standard to read: Staff must <u>are not to</u> reveal any information related to a sexual abuse report to anyone other than those who need to know in order to make treatment, investigation, and classification decisions.

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SD-2: Facility head duty to report sexual abuse Standard (p. 36)	The standard requires the facility head to report abuse to parents or legal guardians except in extremely limited circumstances but in some cases it may be harder for a victim to recover from sexual abuse if his or her parents are informed about the abuse without the victim's consent (e.g., a youth who identifies as gay or lesbian but has not revealed the information to their parents). In these cases allowing the youth to make decisions about when and how to disclose information is particularly important.	<u>Amend the second sentence of the standard to read:</u> "The facility head must also report the allegation to the parents or legal guardians of the victim unless the facility has official documentation showing they should not be notified, such as when parental rights have been terminated, or when notifying the parents or legal guardian would place the victim in specific identifiable <u>danger or interfere with his or her recovery.</u>
SD-3: Staff duty to protect sexual abuse victims and preserve evidence Standard (p. 36)	The steps that the staff are to take in order to protect the safety of the victim should include separating the victim from the abuser.	<u>Amend</u> the statement to read: Upon learning that a resident has been sexually abused, staff is required to take steps to protect the safety of the victim, <u>including separating victim from abuser</u> , seal and preserve any crime scene(s), and inform the victim not to take any actions that could destroy physical evidence before an investigator or other member of the coordinated response team (RP-1) arrives.
AD-1: Agency duty to protect against retaliation Discussion (p. 37) Continuation of AD-1: Agency duty to protect against retaliation	The discussion states that protection against retaliation is to begin immediately but it does not state what triggers the protection. Additionally, although the standard states that the agency is to protect all residents and staff who report sexual abuse from retaliation by other residents or staff it does not state that staff are to be informed of whistleblower protections.	<u>Amend</u> the sentence in the second paragraph of the discussion to read: Protection against retaliation must begin immediately <u>upon report of abuse</u> , and the agency must stay alert and maintain protective measures for as long as it deems necessary. <u>Insert</u> a sentence after the first sentence in the second paragraph stating: All staff should be informed of the whistleblower protections for staff and residents who report allegations of sexual abuse.
IN-1: Investigation Discussion (p. 37)	Although the discussion states that patterns of unsubstantiated allegations involving the same abusers will be investigated, the	<u>Insert</u> a sentence at the end of the second to last paragraph stating: After the investigation is complete victims are to be informed of the outcome.

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Continuation of suggestions for IN-1: Investigation	standard should also require that victims are informed on what happened as a result of the investigations that were performed.	
DI-1: Disciplinary sanctions for staff Standard (p. 39)	In addition to stating that “Sanctions are comparable and proportional to the type of violation committed and the staff member’s disciplinary history”, the standard should state that sanctions will be consistent with the zero tolerance policy.	<u>Amend</u> the last sentence in the standard to state: Sanctions are comparable and proportional to the type of violation committed and the staff member’s disciplinary history <u>and demonstrate consistency with the agency’s zero-tolerance stance toward the sexual abuse of people in confinement. (cf Introduction, page 5.)</u>
DI-2: Interventions for residents who engage in sexual abuse Standard (p. 39-40)	Additional information from the discussion section should be placed into the standard in order to emphasize the fact that it should be taken into consideration that sexual experimentation is a normal part of adolescent psycho-social and sexual development.	<u>Add</u> portions of the third paragraph of the discussion section into the standard: “Additionally, Appropriate interventions for residents should take into consideration the normal course of adolescent psycho-social and sexual development, which often includes periods of sexual experimentation. Residents will experience numerous physiological and emotional changes during their period of confinement, including physical maturation and development, an increase in hormone levels, and an increased desire to engage in sexual activity. Additionally, While residents may engage in masturbation or self-experimentation, and such these actions should are not to be subject to disciplinary sanctions unless they purposefully occur in front of staff, are directed toward other residents, or are otherwise disruptive in nature. Direct training on adolescent development will enable staff to understand and better differentiate normal adolescent experimental behavior from sexually aggressive and dangerous behavior.”
DC-2: Data storage, retention, protection, and destruction Standard (p. 45)	The standard should state that the tasks of storage, retention, protection, and destruction of the data should be the responsibility of specially trained staff members.	<u>Amend</u> the first sentence of the statement to read: The agency ensures that the collected sexual abuse data is properly stored, retained, protected, and destroyed <u>by specially trained staff members.</u>

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Compliance Checklist 3: Internal assessment and planning for achieving compliance with the PREA standards (SA-3) (2) Annual follow-up assessment and follow-up plan to ensure compliance with PREA standards (p. 47-48)	<ul style="list-style-type: none"> SA-3 Standard Statement (PDF p. 16) requires that agency internal assessments and action plans be submitted to the Legislature and published. Neither requirement appears in Checklist 3. 	<ul style="list-style-type: none"> <u>Add</u> to Checklist 3(1): "Have the internal assessment and action plan been published?" <u>Add</u> to Checklist 3(1): "Have the internal assessment and action plan been submitted to the Legislature?" <u>Add</u> to Checklist 3(2): "Have the follow-up assessment and follow-up action plan been published?" <u>Add</u> to Checklist 3(2): "Have the follow-up assessment and follow-up action plan been submitted to the Legislature?"
Compliance Checklist 4: Resident safety (PP-1) (p. 49)	<ul style="list-style-type: none"> Checklist 4(k) allows for the staff who supervise residents to be monitored by a supervisor "and/or" technology, although the standard PP-1 Discussion (PDF p. 17) says technology may not be a complete substitute for supervisory monitoring. PP-1 Discussion states that "facility heads/superintendents should be visible throughout the facility and make efforts to interact with residents on a regular basis" but this is not located in the checklist. Although putting the resident in isolation is a safety precaution that may need to be taken, the checklist should show that this should only be used as a measure of last resort. 	<ul style="list-style-type: none"> <u>Remove</u> "or" from the "and/or" conjunction used in Checklist 4(k) to make clear that the standard does not allow the use of technology alone to supervise staff interaction with residents. <u>Revise</u> 4(k) to read: "Are staff members who supervise residents isolated from the general population monitored by supervisors, and or <u>when available at the facility, also</u> by monitoring technology such as RFID or video security monitoring systems?" <u>Add</u> to checklist 4: Is the facility head visible throughout the facility and interacting with residents regularly? <u>Add</u> to checklist 4: Is isolation only used as a last resort?
Compliance Checklist 5: Heightened protection for vulnerable residents (PP-2) (p. 49-50)	<ul style="list-style-type: none"> Although PP-2 Discussion (PDF p. 17-18) provides that vulnerable residents housed in protective custody should have full access to mental health services" the Checklist does not. 	<ul style="list-style-type: none"> <u>Add</u> to Checklist 5 another question: "Do vulnerable residents who are housed separately from the general population have full access to mental health services?"

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(Continuation of suggestions for Compliance Checklist 5: Heightened protection for vulnerable residents)	<ul style="list-style-type: none"> The Checklist does not ask if vulnerable residents who have been housed in protective custody are subjected to a different disciplinary environment than those residents who are being isolated for disciplinary infractions. 	<ul style="list-style-type: none"> <u>Add</u> to Checklist 5 another question: “Do vulnerable residents who are housed separately from the general population live in a different environment than the one experienced by residents who are being isolated because of disciplinary infractions?”
Compliance Checklist 6: Restrictions on cross gender supervision (PP-3) (p. 50)	<ul style="list-style-type: none"> The Check list does not ask whether all strip and visual body cavity searches are performed by staff members who have been trained to do so as the PP-3 Discussion states. Although PP-3 Discussion states that when physical body cavity searches are to be performed they are to be performed by medical practitioners, the checklist does not ask if this takes place. Although the PP-3 Discussion states that staff members are not to be isolated one-on-one with residents of the opposite gender when out of camera view the checklist does not ask about this either. 	<ul style="list-style-type: none"> <u>Add</u> to checklist 6 after (b): Are all strip and visual body cavity searches performed by trained staff members and done in conformance with hygienic procedures and professional practices? <u>Add</u> to checklist 6 before (c): Are all physical body cavity searches conducted by specially trained authorized medical practitioners? <u>Add</u> to checklist 6: When one-on-one supervision is out of the camera view is supervision by a staff member of the same gender?
Compliance Checklist 7: Language access (PP-4) (p. 51)	<ul style="list-style-type: none"> The checklist deals exclusively with whether staff know how to communicate and the agency policy specifies how to communicate. It does not ask whether any needs-based communication actually occurs. 	<ul style="list-style-type: none"> <u>Add</u> a question to Checklist 7: “Are agency policies and information about how to report sexual abuse actually translated for LEP residents and otherwise provided in an accessible format to deaf, speech-, or sight-impaired residents, as well as residents with limited reading ability?”
Compliance Checklist 8: Staff qualifications (PP-5) (p. 51)	<ul style="list-style-type: none"> PP-5 Discussion (PDF p. 20) says the agency must ask job applicants to sign waivers of their legal rights to file suit because of reference checks, and if they do not, immediately disqualify them from consideration. The Checklist does not include either of these 	<ul style="list-style-type: none"> <u>Add</u> a question to Checklist 8: “To the extent permitted by state law, does the agency ask job applicants to sign waivers stating that they waive all of their legal rights to claim libel, defamation, or slander regarding the information given during reference checks.” <u>Add</u> a question to Checklist 8: “For any job applicant refusing to sign

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Compliance Checklist 8: Staff qualifications (PP-5) cont.	requirements.	a legal waiver of rights regarding information given during reference checks, has the applicant been immediately excluded from consideration, to the extent permitted by law?"
Compliance Checklist 9: Integrated information systems (PP-6) (p. 52)	<ul style="list-style-type: none"> ● PP-6 Discussion (PDF p. 21) calls for the agency's integrated data system to include medical and mental health information collected by outside practitioners, but the Checklist does not. ● PP-6 Discussion states that if the agency does not maintain an electronic database, it must at the very least maintain the same information in spreadsheet format, but the Checklist does not. ● PP-6 Discussion calls for information on every resident to be available through the agency database, but the Checklist does not address this requirement. ● Staff should know how to use the database but the checklist does not include this. 	<ul style="list-style-type: none"> ● <u>Add</u> a question to Checklist 9: "Does the agency's integrated information system include, when appropriate, information gathered by medical and mental health practitioners, including information collected by outside providers?" ● <u>Add</u> a question to Checklist 9: "If the agency lacks the resources to obtain and support an automated database system, does it, at the very least, use a spreadsheet or other similar tool to integrate the same information that would be entered into an automated system?" ● <u>Add</u> a question to Checklist 9: "Does the agency's integrated information system include data for the entire resident population?" ● <u>Add</u> to checklist 9: Does the staff know how to use the database?
Compliance Checklist 10: Use appropriate monitoring technology (PP-7) (p.52)	<ul style="list-style-type: none"> ● The Checklist does not include the cautionary statement from PP-7 that technology should not replace proper levels of staffing. ● The checklist should also address the fact that not all situations are appropriate for the use of video and enhanced monitoring technology. 	<ul style="list-style-type: none"> ● <u>Add</u> a question to Checklist 10: "Does the agency use technology only as a supplement, but not as a substitute, for actual, in-person supervision of staff and residents?" ● Add to checklist 10: Does the agency only use the video and enhanced monitoring technology for situations in which it is appropriate to use the technology?

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Compliance Checklist 11: Coordinated response team (RP-1) (p. 53)	<ul style="list-style-type: none"> RP-1 Discussion states that “Agencies should also take special care to ensure that every agency member on the team has a back-up staff person who is qualified to fulfill the team member’s role when he or she is unavailable.” The checklist does not ask whether this takes place. 	<ul style="list-style-type: none"> <u>Add</u> to checklist 11: Is there a qualified back-up person for each position?
Compliance Checklist 13: Sexual abuse findings from forensic autopsies (RP-3) (p. 55)	<ul style="list-style-type: none"> In the discussion for RP-3 it mentions that residents that commit suicide may do so because they are being sexually abused. Since suicides may not always take place immediately after the sexual abuse the facility head should look towards findings regarding whether the deceased engaged in sexual activity in a more expansive timeframe than only immediately prior to death. 	<ul style="list-style-type: none"> <u>Amend</u> (a) of checklist 13 to read: “Following any forensic autopsy performed on a resident who died of known or suspected unnatural causes while in custody, does the facility head obtain the medical examiner’s finding regarding any evidence that the deceased engaged in sexual activity, other than self stimulated activity, <u>recently</u> or immediately prior to death?”
Compliance Checklist 14: Reporting to other confinement facilities (RP-4) (p. 55)	<ul style="list-style-type: none"> The Checklist requires that the facility heads know how to contact other facilities, but it does not require them to actually forward complaints received about other facilities or investigate complaints received from other facilities. 	<ul style="list-style-type: none"> <u>Add</u> a question to Checklist 14: “When the facility receives an allegation that a resident has been sexually abused while incarcerated at another facility, does the facility head notify the head of the facility where the alleged abuse occurred?” <u>Add</u> a question to Checklist 14: “When the facility head receives a report of sexual abuse occurring at his or her facility from another facility or agency, does the facility head ensure an investigation of the allegation at his or her facility?”
Compliance Checklist 15: Agreements with outside agencies (RP-5) (p. 55-56)	<ul style="list-style-type: none"> In the agreements with outside agencies the agreements should specify which agency is to report sexual abuse to the designated state or local service agency. 	<ul style="list-style-type: none"> <u>Add</u> to checklist 15: If required by law, do all agreements specify which outside agency will report the abuse to the designated state or local service agency?
Compliance Checklist 24: Specified training (TR-5) (p. 63)	<ul style="list-style-type: none"> For (c) the checklist has nothing checked. 	<ul style="list-style-type: none"> Both the long term confinement and short term detention boxes should be checked.

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Compliance Checklist 26: Full classification assessment of resident vulnerability or potential abusiveness (CL-2) (p. 67)	<ul style="list-style-type: none"> 60 days is a long amount of time to take to review the classification assessment status of residents. 	<ul style="list-style-type: none"> Reduce the time allotment from 60 days
Compliance Checklist 28: Resident reporting (RE-1) (p. 69)	<ul style="list-style-type: none"> The statement for RE-1 states that residents are able to make both written and verbal reports to agency staff as well as government officials and non affiliated agencies who have “agreed to receive and act on reports” but the checklist does not ask whether accommodations are made to ensure residents can do this. 	<ul style="list-style-type: none"> <u>Add</u> to checklist 28: Are accommodations made to ensure residents may make reports both written and verbally to internal and external channels regardless of their literacy and writing abilities?
Compliance Checklist 29: Outside support services for residents (RE-2) (p. 69-70) (Continuation of suggestions for Compliance Checklist 29: Outside support services for residents (RE-2))	<ul style="list-style-type: none"> Checklist makes provisions for confidential communications between residents and victim advocates and counselors, but no provision for communications with legal representation. The checklist does not state that residents should have unimpeded access to their attorneys or other legal representation as stated in the statement for RE-2. 	<ul style="list-style-type: none"> <u>Add</u> a question to Checklist 29: “Are residents provided unimpeded access to their attorneys or other legal representation, in settings where communications cannot be overheard?” <u>Add</u> to checklist 29: Do residents have unimpeded access to their attorneys and other legal representation?
Compliance Checklist 30: Third party reporting (RE-3) (p. 70)	<ul style="list-style-type: none"> The Checklists contains nothing about whether third party reports are investigated, although this requirement is part of the RE-3 Standard Statement (PDF p. 35) 	<ul style="list-style-type: none"> <u>Add</u> a question to Checklist 30: “Does the agency investigate all third party reports and document the course of those investigations?”

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Compliance Checklist 33: Staff duty to protect sexual abuse victims and preserve evidence (SD-3) (p. 72)	<ul style="list-style-type: none"> The reference made under (a) of this checklist does not provide the full and accurate reference. 	<ul style="list-style-type: none"> <u>Amend</u> citation in (a) to read: (RP-2, Compliance Checklist 12 <u>(1)</u> (c))
Compliance Checklist 34: Agency duty to protect against retaliation (AD-1) (p. 73)	<ul style="list-style-type: none"> In the discussion for AD-1 it is stated that “agencies should try to secure collective bargaining agreements that do not limit their ability to protect residents or other staff from retaliation” but checklist does not ask whether the agency attempted to do this. Although the checklist does include a list of measures for protecting residents it does not have a clause about when the protections should start. 	<ul style="list-style-type: none"> <u>Add</u> to checklist 34: Has the agency attempted to secure collective bargaining agreements that do not limit the ability to separate staff or residents to protect them from retaliation? Add to checklist 34: Does the agency begin to implement measures of protection immediately upon receiving report of abuse?
Compliance Checklist 36: Level of proof required to substantiate sexual abuse allegations for disciplinary action (IN-2) (p. 75)	<ul style="list-style-type: none"> Question (b) on checklist 36 should include a reference to IN-1 which states that sexual abuse is less likely to leave physical evidence and discusses protocol for making credible assessments. 	<ul style="list-style-type: none"> <u>Add</u> citation for (b) referencing (IN-1)
Compliance Checklist 42: Medical and mental health care for sexual abuse victims (MM-4) (p. 78-79)	<ul style="list-style-type: none"> The MM-4 Discussion states that refusals for care must be “signed by the victim and documented in the resident’s medical file” but the checklist does not include this. 	<ul style="list-style-type: none"> <u>Add</u> to checklist 42: Are refusals for care consistent with applicable state law, signed by the victim and documented in residents’ medical files?
Compliance Checklist 43: Incident-based data collection for every reported incident of sexual abuse (regardless of investigative outcome) (DC-1) (p. 81-82)	<ul style="list-style-type: none"> The documentation requirements of Checklist 43(e) do not include reported threats to the victim of the incident from other residents – only threats from the perpetrator of the particular incident and threats or rewards from staff. 	<ul style="list-style-type: none"> <u>Add</u> one more <i>bullet</i> under Checklist 43(e): Threats to the victim from other residents, regardless of whether they were involved during the incident, to discourage a report or retaliate because of a report of the incident.

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Compliance Checklist 43: Incident-based data collection for every reported incident of sexual abuse (regardless of investigative outcome) (DC-1) cont.	<ul style="list-style-type: none"> • The documentation under Checklist 43(L) & (m) include changes [after abuse] to classification, custody, and housing, but not services and education. • There should be a requirement to document the provision of pregnancy testing listed under 43(g). 	<ul style="list-style-type: none"> • <u>Add</u> one more <i>bullet</i> under both Checklist 43(L) & 43(m): • Any changes to his/her programs, education, or services provided • <u>Add</u> one more <i>bullet</i> under both Checklist 43(g) for Pregnancy testing
Compliance Checklist 44: Aggregate data (DC-1) (p. 82)	<ul style="list-style-type: none"> • (d) and (e) of checklist 44 should be made to correlate better to Compliance Checklist 3(2)(r) which asks for a comparison of the current year data to that of previous years in order to find a trend. 	<ul style="list-style-type: none"> • <u>Amend</u> citation in (d) to read: SA-3, Compliance Checklist 3(2)(q) <u>and 3(2)(r)</u> • <u>Add</u> citation in (e): (SA-3, Compliance Checklist 3(2)(r))
Compliance Checklist 45: Data storage, retention, protection, and destruction (DC-2) (p. 83)	<ul style="list-style-type: none"> • DC-2 Discussion (PDF p. 45) requires aggregate data to be posted & accessible online, unique identifiers to be removed from all data provided, and the agency's operating presumption to be that information should be provided when requested by the public. None of these provisions appear in Checklist 45. 	<ul style="list-style-type: none"> • <u>Add</u> a follow-up question below Checklist 45(c), which requires publishing, to require online access to info: "Is the published aggregate data available online and updated online at least annually?" • <u>Add</u> a question to Checklist 45: "In accordance with applicable law, are unique identifiers removed when data are provided?" • <u>Add</u> a question to Checklist 45: "Does the agency's record of dispositions for public information requests demonstrate that the agency's operating presumption is to grant requests for information, unless there is a significant countervailing interest that cannot be overcome?" [This question employs the language of DC-2 Discussion (PDF p. 45)]