



NATIONAL ASSOCIATION OF
PREA COORDINATORS
Prevent • Detect • Respond

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Question: I am a reporter with National Public Radio. I am working on a story about the new memo sent out by DOJ regarding changes to the PREA standards for auditors. This includes no longer using PREA standards that consider LGBTQ identity to make a compliance determination. As the organization representing PREA coordinators, I am hoping to speak to someone with the organization about the impact of these changes to both the work PREA coordinators do and also the impact to inmates as well. I'm working on a tight deadline, so would love to speak to someone either tonight or early tomorrow. I will also take a statement over email or text if that is easier.

Response: On January 20th, President Trump signed an Executive Order that states, in part, “[i]t is the policy of the United States to recognize two sexes, male and female. These sexes are not changeable and are grounded in fundamental and incontrovertible reality. Under my direction, the Executive Branch will enforce all sexprotective laws to promote this reality...” In an apparent recognition that an Executive Order has limited legal effect and cannot override Federal Regulations that apply to agencies of other governmental entities, such as the PREA Standards, the Executive Order directs that “[t]he Attorney General and Secretary of Homeland Security shall ensure that males are not detained in women’s prisons or housed in women’s detention centers, including through amendment, as necessary, of Part 115.41 of title 28, Code of Federal Regulations...”

The Department of Justice has not yet issued proposed regulations to change Title 28 Part 115 of the Code of Federal Regulations. Thus, the PREA Standards remain unchanged.

Today’s action by the Department of Justice directly impacts only the auditing of the listed subsections of the Standards. In essence, unless a State or Local Law is also applicable, the DOJ action on auditing allows each agency or facility, as specified in the applicable standard, to continue following the regulation or, if they choose, to ignore it.

In many ways, this action is measured in that it allows the U.S. Department of Justice to implement the President’s policy while allowing state and local governments to determine how to best meet the needs of incarcerated people who are transgender and gender diverse.

Fundamentally, the NPCA is steadfast in our belief that through the PREA Standards and a culture that will not tolerate any form of sexual victimization in our confinement facilities, it is imperative that we continue to protect those in confinement who are most vulnerable. Whether a system adopts a binary sex approach or one that recognizes a spectrum of gender, we cannot forsake our primary responsibility to keep the most vulnerable individuals in our care safe from those who present a threat of sexual abuse or sexual harassment.