

# **POWER HOUR**

**Chat with a PREA Expert**  
**November 14, 2024**

**115.78**

**Disciplinary Sanctions for  
Inmates**

**IMPACT/JUSTICE**

NATIONAL  
**PREA**  
RESOURCE  
CENTER



# Phebia Moreland

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NATIONAL  
**PREA**  
RESOURCE  
CENTER

# Mission

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The mission of the PRC is to assist adult prisons and jails, juvenile facilities, lockups, community confinement, and tribal facilities in their efforts to eliminate sexual abuse by increasing their capacity for prevention, detection, monitoring, responses to incidents, and services to victims and their families.

The PRC is funded by the Bureau of Justice Assistance.

# Logistics

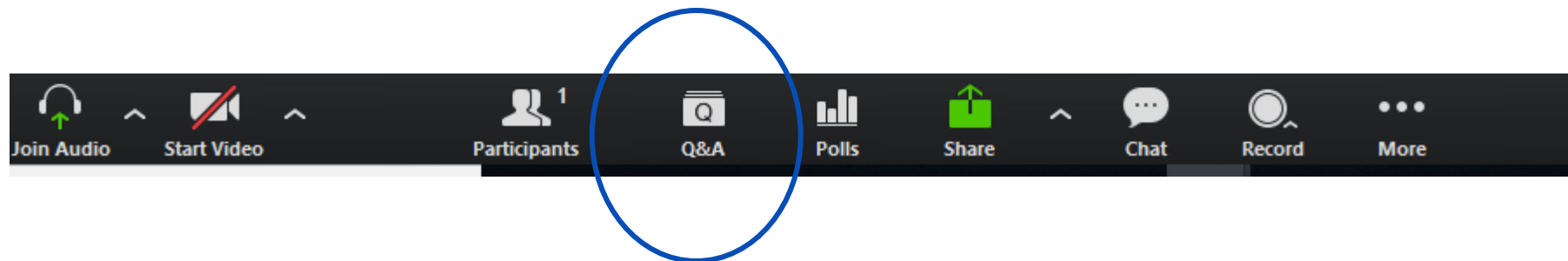
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# Logistics

## Submitting Questions

- To submit a question during the webinar, use the **Q&A feature** on your webinar toolbar, as seen below.
- Presenters will address the questions at the end of the presentation.





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# Speakers



## Talia Huff

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## Daniel Bean

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Certified PREA Auditor  
[Adult]

# Agenda

1. Standard overview.
2. Discuss implementation expectations.
3. Challenges implementing this Standard.
4. Promising practices.
5. Auditing considerations.
6. Variations for other facility types.
7. Questions.





# PREA Standard 115.78 (178/278/378)

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## Purpose of the Standard

- To ensure that individuals in confinement are held accountable for sexual abuse.
- Appropriate and measured sanctions commensurate with comparable offenses by confined persons with similar histories.
- Ensure the disciplinary process considers factors such as mental capacity, intent, and what resources or supports can be offered to the inmate abuser to support rehabilitation.

## Standard Requirements

- a) **Formal disciplinary process** following a finding that an incarcerated person has engaged in sexual abuse.
- b) Sanctions shall be commensurate with the **nature and circumstances of the abuse committed**, the **inmate's disciplinary history**, and **sanctions imposed for comparable offenses** by others with similar histories.





## Standard Requirements (cont.)

- c) The process shall consider whether **mental disabilities or mental illness** contributed to the abuser's behavior when determining what type of sanction, if any, should be imposed.
- d) If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall **consider whether to require the abuser to participate** in such interventions as a condition of access to programming or other benefits.



## Standard Requirements (cont.)

- e) A confined person may be disciplined for sexual contact with staff **only upon a finding that the staff member did not consent to such contact.**
- f) A report of sexual abuse made in **good faith** based upon a reasonable belief that the alleged conduct occurred **shall not constitute false reporting or bad faith**, even if an investigation does not establish evidence sufficient to substantiate the allegation.



## Standard Requirements (cont.)

- g) An agency may, in its discretion, **prohibit all sexual activity between confined persons** and **may discipline** for such activity. An agency **may not**, however, deem such activity to constitute sexual abuse if it is not coerced.

# Implementation

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# What Is Meant by “Finding?”



- A "**finding**" that a confined person engaged in sexual abuse of another confined person can be:
  - An **administrative finding** that is substantiated.
  - A **criminal finding** that the person was found guilty through criminal court proceedings.
    - A confined person found guilty of sexual abuse by a criminal court should be subject to disciplinary sanctions in addition to any criminal penalty that may be imposed.

► **FAQ: January 20, 2023, on the PRC website.**

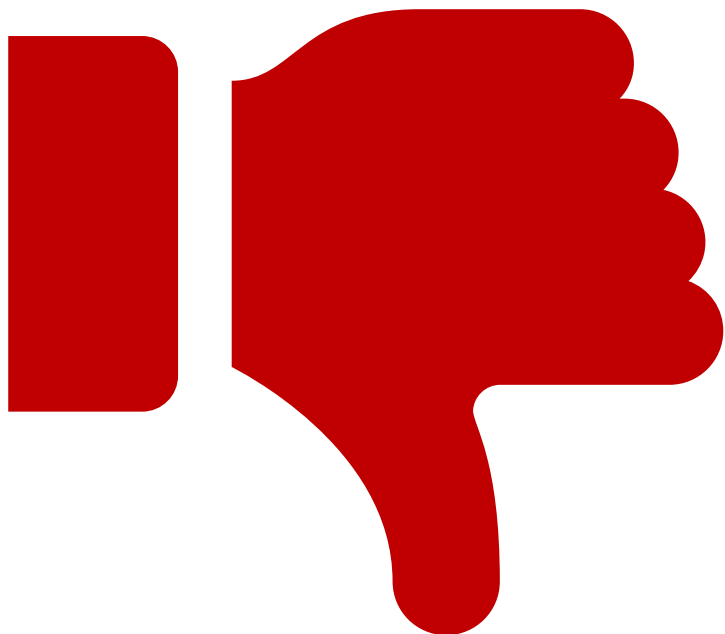
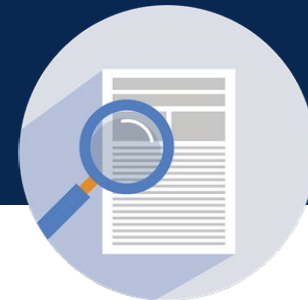


# Good Faith Allegations

- **Good faith allegations** are those based on a reasonable belief by the reporting person that the conduct occurred.
- An allegation may be in good faith even if it is not substantiated by an administrative or criminal investigation.



# Bad Faith Allegations



- **Bad faith allegations** are those where the reporting person knew it to be false and intended to accomplish something malicious.
- This determination **must be based on an administrative or criminal investigation.**
- Evidence must demonstrate a lack of any relevant mitigating circumstances related to the conduct.

# Bad Faith Allegations and Discipline



Agencies have the discretion to discipline confined people who attempt to circumvent agency rules by making “bad faith” allegations.

## Unsubstantiated

Insufficient evidence to find that a person acted in bad faith, and **discipline is not permitted under this Standard.**

## Unfounded

The agency must determine whether the report was made in bad faith **or had mitigating circumstances** in order to determine whether discipline is appropriate.

# Bad Faith vs. Mitigating Circumstances



## Unfounded with bad faith:

The allegation is unfounded based on a thorough, timely, objective investigation, and there is credible and specific evidence proving the allegation was made with malicious intent.

Disciplinary sanctions may be appropriate in this situation, at the facility's discretion.

# Bad Faith vs. Mitigating Circumstances (cont.)



## Unfounded with mitigating circumstances:

Evidence shows mitigating circumstances surrounding the reporting of the allegation, which may indicate it was **not** made with malicious intent.

Disciplinary sanctions are not permitted in these situations with mitigating circumstances.

Additional mental health consultations or services and/or safety measures should be assessed.

# Scenario

A confined person makes an allegation of sexual abuse against another confined person in their housing unit. As part of the facility's response, the alleged victim is taken to the medical unit.

Once in the medical unit, the alleged victim states the abuse never occurred, and they made the allegation because they feared for their own safety after other people on the unit learned they had a conviction for sexual abuse of a child.

The alleged victim states twice they had previously asked to move to a different housing unit and were told to speak with a supervisor. The alleged victim states they tried to speak with the supervisor, who told them they were too busy to talk.

# Audience Participation

1. **Chat:** What information may a facility want before it is determined whether disciplinary actions are appropriate?
2. **Chat:** Are there mitigating factors to consider?
3. **Chat:** Was this allegation made in bad faith?

# Challenges

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## Training is Critical! Disciplinary and Investigative Staff Must Understand and Apply:

Unfounded allegations versus those made in bad faith.

Bad faith allegations versus unfounded allegations with mitigating circumstances.

Reporting in good faith never results in punishment.

Manipulation via bad faith allegations.

# Challenges (cont.)



## Quality of Investigations

- Correctly applying “unfounded” dispositions.
- Specialized training for investigators.
- Thoroughness of the investigation.
- Credibility of alleged victims/suspects/witnesses must be assessed on an individual basis and not based on the person’s status as staff or confined person.

# Challenges (cont.)



## Force or Coercion

- Sexual activity between confined people without force or coercion **≠** sexual abuse.
- No discipline for confined people who engage in sexual activity with staff, unless the staff person did not consent.
  - The imbalance of power between staff and confined people creates an inherently coercive situation.

# Promising Practices

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# Promising Practices



## Considering Mental Disabilities or Illness

Include:

- Behavioral health providers.
- Disability support organizations.
- Staff responsible for compliance with the Americans with Disabilities Act (ADA).

# Promising Practices (cont.)



## Considering Mental Disabilities or Illness (cont.)

- Possible effects of solitary confinement, lack of exercise, or lack of sunlight on certain mental health conditions.
- How a confined person with a disability would be able to access treatment.
- Whether factors in the facility contributed to the incident, and what could be altered to avoid similar situations in the future.

**➔ Question for participants!**

# Promising Practices (cont.)

## Minor Rules Violations Example

MINOR	1h, 2b, 13a, 20	<ul style="list-style-type: none"> <li>• 1 – 10 hours of facility service</li> <li>• 1 – 5 days, PRIDE privilege(s) and all activities</li> <li>• 1 – 3 days, Suspension/Reassignment from assigned job</li> <li>• 1 – 5 days, early to bed / bed area (7:00 PM)</li> <li>• 1 – 5 days, loss of evening activity</li> <li>• 1 – 5 days of assigned seating</li> <li>• Victim Apology Letter</li> <li>• Letter of explanation (parent/guardian, Judge, Release Authority, Other)</li> <li>• Clinical Sanction/Behavioral Contract Recommended</li> </ul>
	14, 21, 22, 23, 24, 26, 28, 37, 38, 39, 40b, 47, 48, 50, 51, 52, 55	<ul style="list-style-type: none"> <li>• 1 –5 hours of facility service</li> <li>• 1 – 3 days PRIDE privilege(s) and all activities</li> <li>• 1 – 3 days early to bed / bed area (7:00 PM)</li> <li>• 1 – 2 days, loss of evening activity</li> <li>• 1 -2 days of assigned seating</li> <li>• Victim Apology Letter</li> <li>• Letter of explanation (parent/guardian, Judge, Release Authority, Other)</li> <li>• Clinical Sanction/Behavioral Contract Recommended</li> </ul>

# Audit Considerations

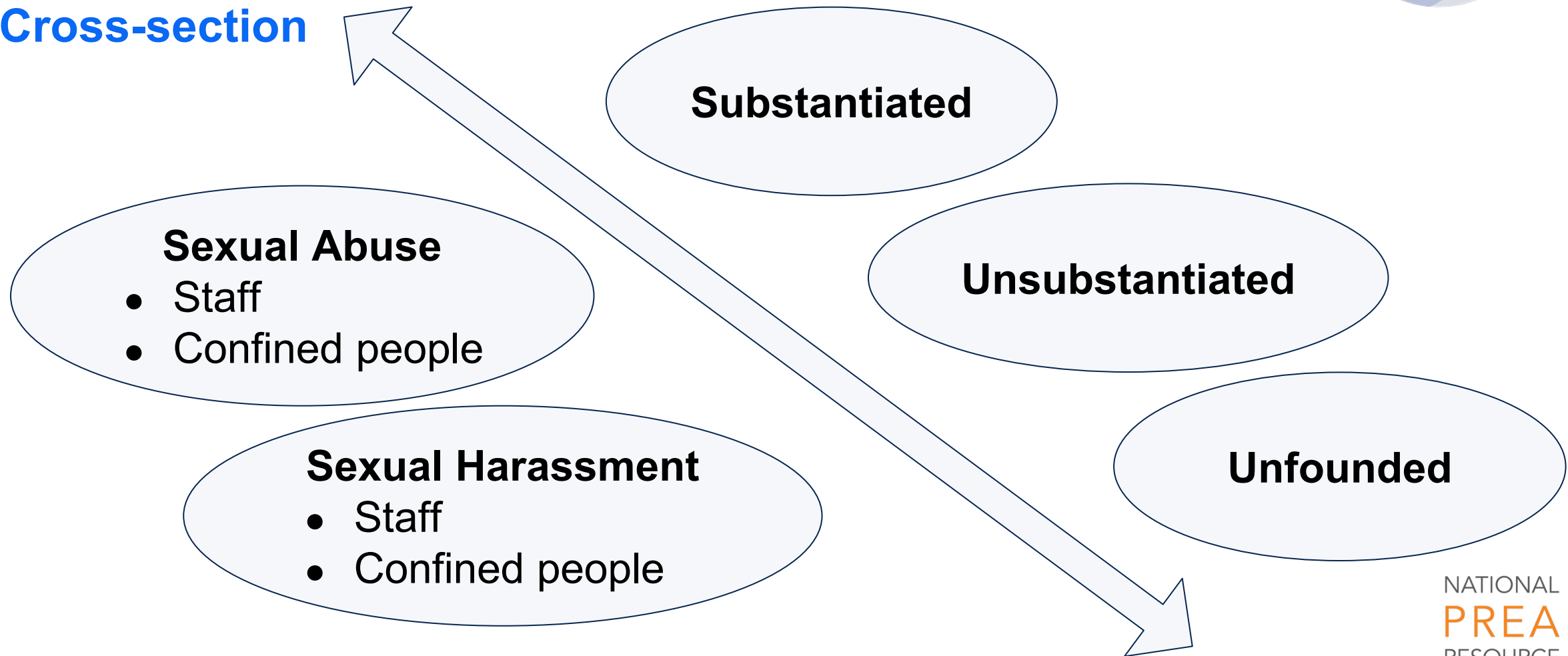
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# Audit Considerations



**Cross-section**



# Audit Considerations (cont.)



## Incident-Based Document Requests:

- Disciplinary actions of confined people for sexual activity with staff.
- *IF* a facility offers interventions, shall *consider...*
- Consideration of mental disabilities/illnesses.

# Audit Considerations (cont.)



## Formal Disciplinary Process

How is the agency issuing fair and consistent sanctions?

- Is it outlined in policy?
- Is there a manual or other written guidance for staff?
- Is there a dedicated disciplinary staff member?
- Is the process conveyed to the confined population?

# Standard Variations

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**Community confinement facilities § 115.278:** No differences.

**Lockups:** Standard 115.178 is considerably shorter and reads as follows:

**§ 115.178 Referrals for prosecution for detainee-on-detainee sexual abuse**

(a) When there is probable cause to believe that a detainee sexually abused another detainee **in a lockup**, the agency shall refer the matter to the appropriate prosecuting authority.

## **§115.178 Referrals for prosecution for detainee-on-detainee sexual abuse**

(b) To the extent that the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall inform the investigating entity of this policy.

(c) Any state entity or Department of Justice component that is responsible for investigating allegations of sexual abuse in lockups shall be subject to this requirement.

**Juvenile Facilities:****§ 115.378 Interventions and disciplinary sanctions for residents.**

(b) Any disciplinary sanctions shall be commensurate with the nature and circumstances of the abuse committed, the resident's disciplinary history, and the sanctions imposed for comparable offenses by other residents with similar histories.

▶ **Final Rule!**

**Juvenile Facilities (cont.):****§ 115.378 Interventions and disciplinary sanctions for residents.**

In the event that a disciplinary sanction results in the isolation of a resident, agencies shall not deny the resident daily large-muscle exercise or access to any legally required educational programming or special education services.

Residents in isolation shall receive daily visits from a medical or mental health care clinician. Residents shall also have access to other programs and work opportunities to the extent possible.



# Questions?



# PRC Library

**Filter** [Reset All](#)

**Facility**

- Community Confinement
- Juvenile Facility
- Lockup Facility
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423 results Sort by Date ▼

**TOOL: AUDIT**

**Documentation Requirements - Juvenile PREA Standards**

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**TERMS:** Audit  
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**TOOL: AUDIT**

**Documentation Requirements - Prisons and Jail PREA Standards**

**STANDARDS:** All

**FACILITY:** Prisons and jails

**TERMS:** Compliance  
Audit (+1)

**FEATURED RESOURCE**

**WEBINAR**

**Power Hour: Chat with a PREA Expert on Standard 115.32**

**STANDARDS:** 115.32

**FACILITY:** Community Confinement  
Juvenile Facility (+2)

**TERMS:** Volunteers  
Contractors (+2)

**WEBINAR**

**PRC Website Revision: Overview and Q&A**

**STANDARDS:** None

**FEATURED RESOURCE**

**WEBINAR**

**Developing a PREA-Compliant Language Access Plan for Incarcerated...**

**STANDARDS:** 115.16, 115.21, 115.51, 115.53

**FACILITY:** Community Confinement  
Juvenile Facility

**TERMS:** Accessibility  
Limited English proficient

**TOOL: AUDIT**

**Audit Report Template - Juvenile Facilities**

**STANDARDS:** 115.401

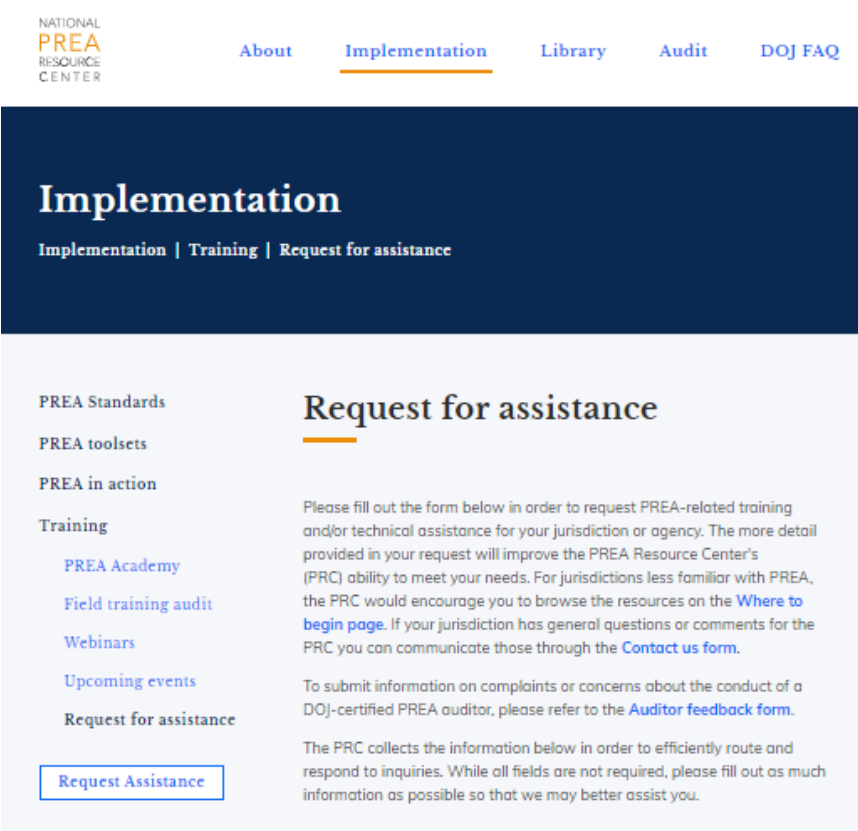
**FACILITY:** Juvenile Facility

**TERMS:** Audit  
Audit Instrument (+2)

# Request Assistance

## PRC Website

Jurisdictions can request assistance by completing a web form on the PRC website under the **“Implementation”** tab and clicking **“Request for assistance”** under **“Training.”**



The screenshot shows the National PREA Resource Center website. The navigation menu includes 'About', 'Implementation' (which is underlined), 'Library', 'Audit', and 'DOJ FAQ'. The main content area is titled 'Implementation' and includes a sub-menu with 'Implementation', 'Training', and 'Request for assistance'. The 'Request for assistance' section is highlighted with a blue underline. Below the title, there is a paragraph explaining the purpose of the form: 'Please fill out the form below in order to request PREA-related training and/or technical assistance for your jurisdiction or agency. The more detail provided in your request will improve the PREA Resource Center's (PRC) ability to meet your needs. For jurisdictions less familiar with PREA, the PRC would encourage you to browse the resources on the [Where to begin page](#). If your jurisdiction has general questions or comments for the PRC you can communicate those through the [Contact us form](#).' Below this paragraph, there is a sub-section for 'Request for assistance' with a 'Request Assistance' button. The text below the button states: 'To submit information on complaints or concerns about the conduct of a DOJ-certified PREA auditor, please refer to the [Auditor feedback form](#). The PRC collects the information below in order to efficiently route and respond to inquiries. While all fields are not required, please fill out as much information as possible so that we may better assist you.'

## Mailing List Signup

First name \*

Last name \*

Phone

Email \*

Confirm email \*

Do you wish to name your employer? \*

Submit

## Sign Up for Our PRC Newsletter

Jurisdictions can sign up for the PRC newsletter by completing a web form on the PRC website under the “How to use this site” tab and going to “Frequently asked questions” and clicking “Subscribe to our newsletter.”

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# Dana Shoenberg

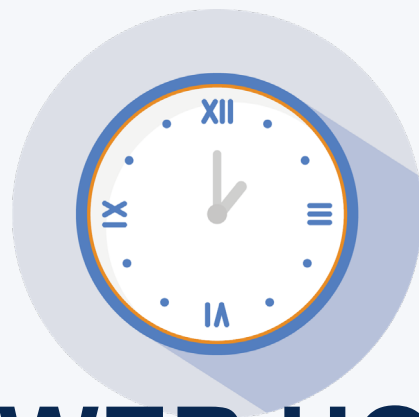
**PRC Director**

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For more information about the National PREA Resource Center, visit [www.prearesourcecenter.org](http://www.prearesourcecenter.org).

To ask a question, please visit our [Contact Us](#) page.



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# **Thank You!**

## Notice of Federal Funding and Federal Disclaimer

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