

The Role of Victim Advocates in the PREA Audit

Prisons and jails are closed off, secretive institutions. For many years, it was near impossible to get a glimpse inside detention facilities — including at their efforts to address sexual abuse. JDI and other prisoners' rights groups fought for stronger oversight, recognizing that sexual violence thrives in facilities that are allowed to operate in the dark.

In 2012, JDI made a breakthrough with the release of the Prison Rape Elimination Act (PREA) standards.¹ These binding rules require facilities to take commonsense steps to keep the people in their custody safe. The standards also mandate that facilities undergo audits every three years by an independent monitor² — a crucial win for openness and accountability.

Victim advocates have an important role to play in the PREA audits. Thanks to the standards, rape crisis counselors and other victim advocates are providing services to more and more sexual abuse survivors in detention — whether in person or via telephone and correspondence. Victim advocates often develop close relationships with both corrections officials and incarcerated survivors. They have a unique

perspective on safety within facilities; accordingly, auditors are required to contact advocates about their work behind bars.

An Overview of the PREA Audits

A PREA audit is an independent safety assessment of a detention facility's policies around sexual abuse prevention and response. The audit process is intended to be exhaustive, and achieving compliance should not be easy. There are hundreds of provisions in the standards; to pass an audit, a facility must show that it has adopted all of them, fully and meaningfully.

Auditors are expected to review materials remotely and to spend time on site at the facility, interviewing a range of inmates and staff about policies and practices. Following the site visits, auditors must write a report on their findings.

If an auditor finds that a facility has fallen short on any of the standards' provisions, it triggers a corrective action period: a six-month window during which time a facility must fix its flaws. The final audit report, including any corrective action that was taken, must be made publicly available.

Done properly, PREA audits can expose dangerous practices in facilities and compel corrections officials to make necessary improvements. However, the overwhelming number of audits conducted have so far been subpar. Scores of unsafe prisons, jails, and juvenile detention facilities have been found to be fully compliant with the PREA standards. In one notorious case, a federal prison received a glowing audit despite being mired in a highly publicized staff sexual abuse scandal.³ In addition, many auditors have given passing marks to facilities that were not working with outside victim advocates, which is a cornerstone of the PREA standards. Instead of reaching out directly to advocates, most auditors simply took officials at their word that inmates were getting services from qualified sexual abuse counselors.

JDI pressed the government to take action to fix the glaring problems with the PREA audits. In 2018, Congress responded by passing a law that requires auditors to adhere to strict guidelines on how to carry out assessments.⁴ The guidelines clarify that local advocates have information on sexual abuse at a facility that “may not otherwise become apparent to an auditor during the course of the audit.”⁵

Sharing Information with Auditors

As part of the assessment of a detention facility’s compliance with the PREA standards, auditors are required to be available to receive information from facility staff, inmates, and community partners. They must provide their contact information to corrections officials, who in turn are required

to post the information inside the detention facility so that inmates — and others — can reach out directly to the auditor. According to the guidelines, auditors should contact victim advocacy organizations prior to their visit to a detention facility; however, some do not do so until they are on site.

Advocacy organizations do not have to wait to hear from an auditor. On the contrary, JDI encourages advocates to reach out to auditors with information about their local facility, including whether incarcerated survivors are able to get services. Advocates can ask facility staff if they have an upcoming audit scheduled and, if so, how to contact the auditor. In addition to communicating with auditors themselves, advocates can share auditors’ contact information with any survivors they are working with inside the facility who may wish to be in touch with the auditor directly, either through written correspondence or in person when the auditor visits the facility.

If an advocate has concerns about an auditor, they should contact the National PREA Resource Center (PRC). PRC is responsible for training and certifying PREA auditors, and works closely with the Department of Justice to monitor and evaluate audit reports. Advocates can report any problems with audits, or concerns about unethical or unprofessional auditor conduct, through the PRC’s Auditor Feedback Form, available on its website, here: www.prearesourcecenter.org/audit/auditor-feedback-form.

Advocates can also use the feedback form to report an auditor who fails to contact

them during the audit to inquire about any services they may be providing for incarcerated survivors.

In addition, victim advocates can share any other relevant information they have about sexual abuse prevention and response at the facility. For example, advocates may be aware that a facility has a significant problem with staff sexual misconduct, whether or not incarcerated survivors have made formal reports. Sharing such information with auditors, without compromising survivors' confidentiality, can help auditors be on alert throughout their assessment, and make meaningful recommendations for increasing safety as part of their corrective action plan.

JDI, in cooperation with PRC, developed a supplementary questionnaire to guide auditors' interviews with victim advocates, which can be found here: www.justdetention.org/wp-content/uploads/2018/01/Supplementary-Questionnaire-on-Community-Advocate-Engagement.pdf. The questionnaire, which is reviewed during auditors' certification training, may be useful for victim advocates to review as they prepare to speak with an auditor.

What Victim Advocates Can Expect

When auditors contact victim advocates, they should ask about specific provisions in the PREA standards related to victim services, including: written agreements between the detention facility and victim services organizations, the availability of confidential services and accompaniment to forensic exams and investigatory interviews, and

mechanisms for inmates to report sexual abuse. It is helpful for advocates to share whatever information they have about the facility's work to address sexual abuse and make sure that survivors can get help.

Memoranda of Understanding (MOU)

Under the PREA standards, detention facilities must work with community-based victim services organizations to ensure survivors who report sexual abuse can get follow-up care.⁶ Detention facilities have to make a good-faith effort to enter into written agreements, or MOUs, with advocacy organizations to provide these services. In some cases, victim services organizations may have declined to sign an agreement because corrections officials were making unreasonable demands, such as insisting that victim advocates share survivors' confidential information with prison staff. In other cases, facilities may have secured a written agreement with a victim services organization but, subsequently, may never have contacted the organization again and failed to refer any survivors for services. It is the auditor's job to evaluate these agreements and detect — and then direct the facility to address — limitations to the services provided and any barriers to service provision.

Accompaniment

In response to a report of sexual abuse, corrections agencies must make sure that inmates can speak to an advocate from a rape crisis center. The advocate's role includes accompanying the survivor through

the forensic medical exam and investigatory interviews, and providing emotional support, information, and referrals.⁷ Auditors need to verify that survivors are offered accompaniment services. They also must review how survivors are being told about the services — and how the rape crisis center is notified to provide services. It is also the auditor's job to evaluate the selection process and training for any staff person who steps in to provide services in the event that a qualified advocate cannot. The auditor should ask the advocacy organization what role, if any, they played in this training and, if applicable, the reasons a community-based advocate is not available.

Confidential Support Services

Corrections agencies must provide all inmates with confidential support services from an outside victim advocate via telephone or mail. Inmates must be able to get such help regardless of whether or not they have made a formal report of sexual abuse, and regardless of when or where the sexual abuse occurred. Auditors are encouraged to review agreements about confidential services, including what services are provided, how confidentiality is maintained, and any limits to confidentiality that have been agreed upon by the detention facility and the rape crisis center.

Inmate Reporting Mechanisms

The PREA standards require agencies to provide multiple methods for inmates to report sexual abuse and sexual harassment. Agencies must provide at least one reporting

option to an external organization that is in no way connected to the corrections agency.⁸ Sometimes, corrections agencies ask advocacy organizations to serve as the external organization that agrees to receive sexual abuse reports from incarcerated survivors. This can be a difficult role for victim services organizations to navigate, because it requires the organization to forward the survivor's report to the corrections agency to investigate. Sharing survivors' reports generally runs counter to a rape crisis center's advocacy mission and violates its obligations around client confidentiality.

Auditor should ask victim advocacy organizations whether they have elected to accept survivors' reports and, if so, how the organization does so while also providing confidential services. The auditor should also ask how a report can be made in order to check these systems at the audited facility. Furthermore, the auditor should ask for the number of reports received in the previous year to compare against the number of investigative reports provided by the corrections facility.

Support for Incarcerated Survivors During the Audit

The Department of Justice developed interview protocols to guide auditor interviews with staff and inmates. At the same time, the vast majority of auditors do not have a professional background in providing services to trauma survivors. While the auditor's questions for inmates and staff focus on the PREA standards, the interview

process can be difficult for survivors. Auditors are expected to make sure that there is someone inmates can talk with for emotional support following an interview; they are also encouraged to identify support services for staff. While facility mental health staff may be able to fulfill this role, victim advocates should also be prepared to provide emotional support services to inmates and staff who feel triggered by an interview.

Endnotes

1. National Standards To Prevent, Detect, and Respond to Prison Rape, 28 CFR 115 (Department of Justice, 2012), available at: www.federalregister.gov/a/2012-12427
2. National Standards, Auditing, (§§ 115.93, 115.193, 115.293, 115.393)
3. Lovisa Stannow, “We have standards to stop prison rape. Why were rapists allowed to enforce them?” *Washington Post*, August 9, 2017, available at: www.washingtonpost.com/news/posteverything/wp/2017/08/09/we-have-standards-to-stop-prison-rape-why-were-rapists-allowed-to-enforce-them
4. U.S. Parole Commission Extension Act of 2018, Public Law No: 115-274, available at: <https://www.congress.gov/bill/115th-congress/house-bill/6896/text>
5. Auditor Handbook, National PREA Resource Center (Bureau of Justice Assistance, 2018), available at: www.prearesourcecenter.org/sites/default/files/library/PREAAuditorHandbook-V1.0%20August%202017.pdf
6. National Standards, “Access to Outside Support Services,” (§§ 115.53, 115.253, 115.353)
7. National Standards, “Responsive Planning,” (§§ 115.21, 115.121, 115.221, 115.321)
8. National Standards, “Inmate Reporting,” (§§ 115.51, 115.151, 115.251, 115.351)

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This project is supported by a grant awarded by the Office for Victims of Crime, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed herein are those of the presenters and do not necessarily reflect the views of the Department of Justice, Office for Victims of Crime.

