

The Moss Group, Inc.

Questions Posed by the U.S. Department of Justice in the PREA Notice of Proposed Rule Making

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This document, prepared by The Moss Group, Inc., contains the questions posed in the PREA Notice of Proposed Rule Making released by the U.S. Department of Justice (Department) as well as the topic the question pertains to. The page number next to the question indicates where the question can be found in the PREA Notice of Proposed Rule Making released by the Department on January 24, 2011.

Question 1 (p.11)—Definitions

The Department solicits comments regarding the application of this definition to those States that operate “unified systems”—i.e., States with direct authority over all adult correctional facilities, as opposed to the more common practice of jails being operated by counties, cities, or other municipalities. States that operate unified systems may be less likely to adhere to the traditional distinctions between prisons and jails, and may operate facilities that are essentially a mixture of the two. Do the respective definitions of jail and prison, and the manner in which the terms are used in the proposed standards, adequately cover facilities in States with unified systems? If not, how should the definitions or standards be modified?

Question 2 (p. 15)—PREA Coordinator

Should the Department modify the full-time coordinator requirement to allow additional flexibility, such as by requiring only that PREA be the coordinator’s primary responsibility, or by allowing the coordinator also to work on other related issues, such as inmate safety more generally?

Question 3 (p. 16)—Monitoring of contracted entities

Should the final rule provide greater guidance as to how agencies should conduct such monitoring? If so, what guidance should be provided?

Question 4 (p. 20)—Staffing Levels

Should the standard require that facilities actually provide a certain level of staffing, whether determined qualitatively, such as by reference to “adequacy,” or quantitatively, by setting forth more concrete requirements? If so, how?

Question 5 (p. 20)—Staffing Levels

If a level such as “adequacy” were mandated, how would compliance be measured?

Question 6 (p. 20)—Staffing Levels

Various States have regulations that require correctional agencies to set or abide by minimum staffing requirements. To what extent, if any, should the standard take into account such State regulations?

Question 7 (p. 20)—Staffing Levels

Some States mandate specific staff-to-resident ratios for certain types of juvenile facilities. Should the standard mandate specific ratios for juvenile facilities?

Question 8 (p. 20)—Staffing Levels

If a level of staffing were mandated, should the standard allow agencies a longer time frame, such as a specified number of years, in order to reach that level? If so, what time frame would be appropriate?

Question 9 (p. 20)—Staffing Levels

Should the standard require the establishment of priority posts, and if so, how should such a requirement be structured and assessed?

Question 10 (p. 20)—Staffing Levels

To what extent can staffing deficiencies be addressed by redistributing existing staff assignments? Should the standard include additional language to encourage such redistribution?

Question 11 (p. 21)—Staffing Levels

If the Department does not mandate the provision of a certain level of staffing, are there other ways to supplement or replace the Department’s proposed standard in order to foster appropriate staffing?

Question 12 (p. 21)—Use of Technology

Should the Department mandate the use of technology to supplement sexual abuse prevention, detection, and response efforts?

Question 13 (p. 21)—Use of Technology

Should the Department craft the standard so that compliance is measured by ensuring that the facility has developed a plan for securing technology as funds become available?

Question 14 (p. 21)—Staffing/Use of Technology

Are there other ways not mentioned above in which the Department can improve the proposed standard?

Question 15 (p. 21)—Mandated Supervisory Rounds

Should this standard mandate a minimum frequency for the conduct of such rounds, and if so, what should it be?

Question 16 (p. 24)—Cross-gender Searches

Should the final rule contain any additional measures regarding oversight and supervision to ensure that pat-down searches, whether cross-gender or same-gender, are conducted professionally?

Question 17 (p. 27)—Accommodating Residents with Special Needs

Should the final rule include a requirement that inmates with disabilities and LEP inmates be able to communicate with staff throughout the entire investigation and response process? If such a requirement is included, how should agencies ensure communication throughout the process?

Question 18 (p. 30)—Evidence Protocol and Forensic Medical Exams

Do the standards adequately provide support for victims of sexual abuse in lockups upon transfer to other facilities, and if not, how should the standards be modified?

Question 19 (p. 31)—Agreements with Outside Public Entities and Community Service Providers

Should this standard expressly mandate that agencies attempt to enter into memoranda of understanding that provide specific assistance for LEP inmates?

Question 20 (p. 33)—Employee Training

Should the Department further specify training requirements for lockups and if so, how? Would lockups be able to implement such training in a cost-effective manner via in-person training, videos, or web-based seminars?

Question 21 (p. 36)—Inmate Screening

Recognizing that lockup detention is usually measured in hours, and that lockups often have limited placement options, should the final rule mandate rudimentary screening requirements for lockups, and if so, in what form?

Question 22 (p. 36)—Inmate Screening

Should the final rule provide greater guidance regarding the required scope of the intake screening, and if so, how?

Question 23 (p. 41)—Reporting

Should the final rule mandate that agencies provide inmates with the option of making a similarly restricted report to an outside public entity? To what extent, if any, would such an option conflict with applicable State or local law?

Question 24 (p. 48)—Exhaustion of Administrative Remedies

Because the Department's proposed standard addressing administrative remedies differs significantly from the Commission's draft, the Department specifically encourages comments on all aspects of this proposed standard.

Question 25 (p. 51)—Coordinated Response

Does this standard provide sufficient guidance as to how compliance would be measured? If not, how should it be revised?

Question 26 (p. 52)—Agency Protection Against Retaliation

Should the standard be further refined to provide additional guidance regarding when continuing monitoring is warranted, or is the current language sufficient?

Question 27 (p. 60)—Ongoing Medical and Mental Health Care for Sexual Abuse Victims and Abusers

Does the standard that requires known inmate abusers to receive a mental health evaluation within 60 days of learning the abuse has occurred provide adequate guidance regarding the scope of treatment that subsequently must be offered to such abusers? If not, how should it be revised?

Question 28 (p. 65)—Audits

Should audits be conducted at set intervals, or should audits be conducted only for cause, based upon a reason to believe that a particular facility or agency is materially out of compliance with the standards? If the latter, how should such a for-cause determination be structured?

Question 29 (p. 66)—Audits

If audits are conducted for cause, what entity should be authorized to determine that there is reason to believe an audit is appropriate, and then to call for an audit to be conducted? What would be the appropriate standard to trigger such an audit requirement?

Question 30 (p. 66)—Audits

Should all facilities be audited or should random sampling be allowed for some or all categories of facilities in order to reduce burdens while ensuring that all facilities could be subject to an audit?

Question 31 (p. 66)—Audits

Is there a better approach to audits other than the approaches discussed above?

Question 32 (p. 66)—Audits

To what extent, if any, should agencies be able to combine a PREA audit with an audit performed by an accrediting body or with other types of audits?

Question 33 (p. 66)—Audits

To what extent, if any, should the wording of any of the substantive standards be revised in order to facilitate a determination of whether a jurisdiction is in compliance with that standard?

Question 34 (p. 67)—Audits

How should “full compliance” be defined in keeping with the considerations set forth in the above discussion?

Question 35 (p. 67)—Audits

To what extent, if any, should audits bear on determining whether a State is in full compliance with PREA?

Question 36 (p. 69)—Placement of Juveniles in Adult Facilities

Should the final rule include a standard that governs the placement of juveniles in adult facilities?

Question 37 (p. 70)—Placement of Juveniles in Adult Facilities

If so, what should the standard require, and how should it interact with the current JJDPa requirements and penalties mentioned above?

Questions for Public Comment on Regulatory Impact Assessment

Questions 38 (p.64)

Has the Department appropriately determined the baseline level of sexual abuse in correctional settings for purposes of assessing the benefit and cost of the proposed PREA standards?

Question 39 (p. 87)

Are there any reliable, empirical sources of data, other than the BJS studies referenced in the IRIA, that would be appropriate to use in determining the baseline level of prison sexual abuse?

If so, please cite such sources and explain whether and why they should be used to supplement or replace the BJS data.

Question 40 (p. 88)

Are there reliable methods for measuring the extent of underreporting and overreporting in connection with BJS's inmate surveys?

Question 41 (p. 88)

Are there sources of data that would allow the Department to assess the prevalence of sexual abuse in lockups and community confinement facilities? If so, please supply such data. In the absence of such data, are there available methodologies for including sexual abuse in such settings in the overall estimate of baseline prevalence?

Question 42 (p. 88)

Has the Department appropriately adjusted the conclusions of studies on the value of rape and sexual abuse generally to account for the differing circumstances posed by sexual abuse in confinement settings?

Question 43 (p. 88)

Are there any academic studies, data compilations, or established methodologies that can be used to extrapolate from mental health costs associated with sexual abuse in community settings to such costs in confinement settings? Has the Department appropriately estimated that the cost of mental health treatment associated with sexual abuse in confinement settings is twice as large as the corresponding costs in community settings?

Question 44 (p. 88)

Has the Department correctly identified the quantifiable costs of rape and sexual abuse? Are there other costs of rape and sexual abuse that are capable of quantification, but are not included in the Department's analysis?

Question 45 (p. 88)

Should the Department adjust the “willingness to pay” figures on which it relies (developed by Professor Mark Cohen for purposes of valuing the benefit to society of an avoided rape) to account for the possibility that some people may believe sexual abuse in confinement facilities is a less pressing problem than it is in society as a whole, and might therefore think that the value of avoiding such an incident in the confinement setting is less than the value of avoiding a similar incident in the non-confinement setting? Likewise, should the Department adjust these figures to take into account the fact that in the general population the vast majority of sexual abuse victims are female, whereas in the confinement setting the victims are overwhelmingly male? Are such differences even relevant for purposes of using the contingent valuation method to monetize the cost of an incident of sexual abuse? If either adjustment were appropriate, how (or on the basis of what empirical data) would the Department go about determining the amount of the adjustment?

Question 46 (p. 89)

Has the Department appropriately accounted for the increased costs to the victim and to society when the victim is a juvenile? Why or why not?

Question 47 (p. 89)

Are there available methodologies, or available data from which a methodology can be developed, to assess the unit value of avoiding a nonconsensual sexual act involving pressure or coercion? If so, please supply them. Is the Department’s estimate of this unit value (i.e., 20% of the value of a forcible rape) appropriately conservative?

Question 48 (p. 89)

Are there available methodologies, or available data from which a methodology can be developed, to assess the unit value of avoiding an “abusive sexual contact between inmates,” as defined in the IRIA? If so, please supply them. Is the Department’s estimate of this unit value (i.e., \$375 for adult inmates and \$500 for juveniles) appropriately conservative? Would a higher figure be more appropriate? Why or why not?

Question 49 (p. 90)

Are there any additional nonmonetary benefits of implementing the PREA standards not mentioned in the IRIA?

Question 50 (p. 90)

Are any of the nonmonetary benefits set forth in the IRIA actually capable of quantification? If so, are there available methodologies for quantifying such benefits or sources of data from which such quantification can be drawn?

Question 51 (p. 90)

Are there available sources of data relating to the compliance costs associated with the proposed standards, other than the sources cited and relied upon in the IRIA? If so, please provide them.

Question 52 (p. 90)

Are there available data as to the number of lockups that will be affected by the proposed standards, the number of individuals who are detained in lockups on an annual basis, and/or the anticipated compliance costs for lockups? If so, please provide them.

Question 53 (p. 90)

Are there available data as to the number of community confinement facilities that will be affected by the proposed standards, the number of individuals who reside or are detained in such facilities on an annual basis, or the anticipated compliance costs for community confinement facilities? If so, please provide them.

Question 54 (p. 90)

Has the Department appropriately differentiated the estimated compliance costs with regard to the different types of confinement facilities (prisons, jails, juvenile facilities, community

confinement facilities, and lockups)? If not, why and to what extent should compliance costs be expected to be higher or lower for one type or another?

Question 55 (p. 90)

Are there additional methodologies for conducting an assessment of the costs of compliance with the proposed standards? If so, please propose them.

Question 56 (p. 91)

With respect to §§ 115.12, 115.112, 115.212, and 115.312, are there other methods of estimating the extent to which contract renewals and renegotiations over the 15-year period will lead to costs for agencies that adopt the proposed standards?

Question 57 (p. 91)

Do agencies expect to incur costs associated with proposed §§ 115.13, 115.113, 115.213, and 115.313, notwithstanding the fact that it does not mandate any particular level of staffing or the use of video monitoring? Why or why not? If so, what are the potential cost implications of this standard under various alternative scenarios concerning staffing mandates or video monitoring mandates? What decisions do agencies anticipate making in light of the assessments called for by this standard, and what will it cost to implement those decisions?

Question 58 (p. 91)

With respect to §§ 115.14, 115.114, 115.214, and 115.314, will the limitations on cross-gender viewing (and any associated retrofitting and construction of privacy panels) impose any costs on agencies? If so, please provide any data from which a cost estimate can be developed for such measures.

Question 59 (p. 91)

Will the requirement in §§ 115.31, 115.231, and 115.331 that agencies train staff on how to communicate effectively and professionally with lesbian, gay, bisexual, transgender, or intersex residents lead to additional costs for correctional facilities, over and above the costs of other training requirements in the standards? If so, please provide any data from which a cost estimate can be developed for such training.

Question 60 (p. 91)

Has the Department accounted for all of the costs associated with §§ 115.52, 115.252, and 115.352, dealing with exhaustion of administrative remedies? If not, what additional costs might be incurred, and what data exist from which an estimate of those costs can be developed?

Question 61 (p. 92)

Is there any basis at this juncture to estimate the compliance costs associated with §§ 115.93, 115.193, 115.293, and 115.393, pertaining to audits? How much do agencies anticipate compliance with this standard is likely to cost on a per-facility basis, under various assumptions as to the type and frequency or breadth of audits?

Question 62 (p. 92)

Has the Department used the correct assumptions (in particular the assumption of constant cost) in projecting ongoing costs in the out years? Should it adjust its projections for the possibility that the cost of compliance may decrease over time as correctional agencies adopt new innovations that will make their compliance more efficient? If such an adjustment is appropriate, please propose a methodology for doing so and a source of data from which valid predictions as to “learning” can be derived.

Question 63 (p. 92)

Are there any data showing how the marginal cost of rape reduction is likely to change once various benchmarks of reduction have been achieved? If not, is it appropriate for the Department to assume, for purposes of its breakeven analysis, that the costs and benefits of reducing prison rape are linear, at least within the range relevant to the analysis? Why or why not?

Question 64 (p. 92)

Are the expectations as to the effectiveness of the proposed standards that are subsumed within the breakeven analysis (e.g., 0.7%-1.7% reduction in baseline prevalence needed to justify startup costs and 2.06%-3.13% reduction required for ongoing costs) reasonable? Why or why not? Are there available data from which reasonable predictions can be made as to the extent to which these proposed standards will be effective in reducing the prevalence of rape and sexual abuse in prisons? If so, please supply them.