

INTERGOVERNMENTAL AGREEMENT #5303
Between
OREGON DEPARTMENT OF CORRECTIONS
and
MONTANA DEPARTMENT OF CORRECTIONS

This Intergovernmental Agreement (“Agreement”) #5303 is between the Oregon Department of Corrections (“ODOC”) and the Montana Department of Corrections (“MDOC”). Individually, they are referred to as a “Party;” together, they are referred to as “Parties.”

1. BACKGROUND

The Prison Rape Elimination Act (“PREA”), 42 U.S.C. 15601 et seq., and federal PREA Standards located at 28 CFR §115 (“PREA Standards”), require the Parties to comply with standards for preventing sexual abuse in correctional institutions and program services. The national PREA Standards became effective August 20, 2012. Standard 115.401(a) states “During the three year period starting on August 20, 2013, and during each three-year period thereafter, the agency shall ensure that each facility operated by the agency, or by a private organization on behalf of the agency, is audited once.”

2. PURPOSE

The purpose of this Agreement is to outline the responsibilities of ODOC and MDOC in respect to PREA auditing of their respective institutions and programs. Both Parties agree to circular auditing requirements as outlined by the Federal Department of Justice, Bureau of Justice Assistance (BJA) and agree to perform PREA audits at the least cost possible to both Parties.

3. SOVEREIGN STATUS.

a. Immunity

Neither Party waives sovereign or governmental immunity by entering into this IGA. Each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this IGA.

b. Insurance

Each Party agrees that it will perform requested services pursuant to this Agreement as an independent contractor. Nothing in this agreement constitutes an obligation by one Party to insure or employ an employee of the other Party. Each Party agrees that its employees will be insured under the employee’s employer-sponsored insurance coverages, including healthcare, worker’s compensation and unemployment. Each Party waives any right or claim of subrogation against the other Party.

4. AUTHORIZED REPRESENTATIVES

The Parties designate their PREA Administrators as their authorized representative for administration of this Agreement. The PREA Administrator may be contacted at:

a. **ODOC**
Ericka Sage
PREA Coordinator
Oregon Department of Corrections
2575 Center St.
Salem, Oregon 97301
Phone: 503-947-9950
Ericka.R.Sage@doc.state.or.us

b. **MDOC**
Andrew Jess
PREA Coordinator
Montana Department of Corrections
5 South Last Chance Gulch
Helena, Montana 59602
Phone: 406-444-6583
ajess@mt.gov

5. STATEMENT OF WORK

The Statement of Work (Exhibit B) contains the following details:

- The dates and times of each facility or program to be audited.
- The names of the responding Party's staff member who shall serve as auditor ("PREA Auditor").
- Other responding Party staff that shall support the PREA Auditor ("Support Staff").
- Terms of reimbursement for the responding Party's expenses, including timeliness.

6. PREA AUDITOR STANDARDS

a. Auditor Qualifications

Each Party shall assure the PREA Auditor it sends to audit another Party's facility or program is a certified BJA PREA auditor. The PREA Auditor must have attended PREA auditor training and must be certified by BJA.

A PREA Auditor cannot receive or have received financial compensation from the requesting Party, except for travel costs to perform an audit, for three years prior to the PREA audit, and for three years subsequent, with the exception of subsequent PREA audits.

b. Conflict of Interest

The PREA Auditor shall not accept employment or provide consulting services that would present a conflict of interest with his or her responsibilities under this Agreement, with the PREA auditing standards, or with auditor ethical guidance provided by the PREA Resource Center or the federal Department of Justice.

c. Auditor Duties

The PREA auditor may bring other staff to provide assistance; including conducting interviews, but the PREA Auditor is ultimately responsible for the final audit and work product generated in furtherance of the audit.

Each PREA Auditor, and all Support Staff, shall maintain confidentiality in regard to the audit.

The PREA Auditor is required to be present for, and supervise the entirety of the onsite portion of the audit.

The PREA Auditor shall sign and certify both the interim and final audit reports, and deliver it to the requesting Party's PREA Coordinator in hard copy, with an electronic copy in "PDF" format.

If the PREA Auditor finds areas of non-compliance with any PREA Standard, the PREA Auditor will work with the requesting Party through the 180 day resolution period after the audit results are filed.

d. Auditor Independence

Neither the requesting Party, nor any employee or agent of the requesting Party, shall have any supervisory authority over the PREA Auditor's activities, reports, findings, or recommendations.

e. Health Insurance Portability and Accountability Act of 1996 ("HIPAA")

Federal law governing the privacy of certain health information allows medical providers with lawful custody of an offender to provide any information necessary for (among other things) "[t]he health and safety of such individual or other inmates" or "[t]he administration and maintenance of the safety, security, and good order of the correctional institution." 45 CFR §§164.512(d), 164.512(k)(5)(i). Accordingly, the Auditor shall observe the confidentiality protections for HIPAA information obtained and disclosed during the Audit, in conformity with HIPAA and 45 CFR §§164.512(d), 164.512(k)(5)(i). The Auditor shall also observe the confidentiality provisions for inmate written accounts in conformity with ORS 179.495 to 508.

f. Confidentiality

Each Facility PREA Audit will involve reviewing investigative reports, offender files, and other documents that will contain information on victims of sexual assault, sexual abuse, and sexual harassment. The material collected and distributed to audit team members is intended only for use in conducting the PREA Audit.

The content of the file maintained on an offender is confidential. Each Party shall hold information or documents identifying victims of sexual assault or sexual abuse confidential and only provide such information or documentation as needed to comply with auditing requirements. All documents and information contained within and obtained during the auditing process are confidential and shall not be released unless compelled by a court or as required by the Oregon Public Records Law (ORS 192.410 to 192.505) or the applicable portions of Montana Public Records Law (2-6-10 MCA), and shall not be accessible to any offender. Audit team members will keep all Audit materials confidential, in a secure location, and will destroy the materials after the time required by the Department of Justice for audit records. No Audit staff shall disclose any information from an offender's file, including but not limited to medical, mental health, or substance abuse treatment information, to any third party or the subject offender, except where permitted or required by law, this Agreement, or where such disclosure is expressly approved by MDOC in writing.

Each PREA Auditor, and each Support Staff supporting the PREA Auditor, shall execute and deliver to the requesting Party a Non-Disclosure Agreement prior to commencing work on the Audit, substantially in the form as attached hereto as Exhibit A.

7. PUBLIC STATEMENTS

Except as required or authorized by the PREA auditing standards; federal, Montana, Oregon, or local law, judicial order, any Statement of Work; or as permitted by the requesting Party in writing, the PREA Auditor shall not make any oral or written public statements, including, but not limited to, statements to the press, conference presentations, lectures, or articles, with regard to: the status of MDOC's or ODOC's compliance or noncompliance with the PREA Standards, or any act or omission of MDOC or ODOC or their agents, representatives or employees.

8. TESTIMONY

Except as required or authorized by the terms of any Statement of Work, or by written permission of the requesting Party, the PREA Auditor shall not testify in any litigation or proceeding with regard to the status of the requesting Party's compliance or noncompliance with the PREA Standards; or any act or omission of the requesting Party or its agents, representatives or employees, unless otherwise lawfully compelled to do so. If the PREA Auditor is lawfully compelled to provide such information, the PREA Auditor shall promptly notify the requesting Party.

9. TERMINATION OF THE PREA AUDITOR OR SUPPORTING STAFF MEMBER

The PREA Auditor, and any Support Staff supporting the PREA Auditor during the audit, may be terminated if the requesting Party and the federal Department of Justice agree and upon good cause shown. Good cause shall include, among other things, any violation of the PREA Standards; or federal, state, or local law, which reasonably calls into question the person's fitness to continue serving in the role.

10. COMPENSATION

a. Travel Expenses

No compensation shall be paid to or received by either Party for the PREA auditing services performed under this Agreement, with the exception of allowable travel expenses.

Allowable travel expenses are defined as:

- The lesser of either:
 - Round-trip coach airfare and associated baggage fees to the requesting Party's facility or program to be audited; or
 - If the responding Party drives a responding Party vehicle, at prevailing rates for mileage (see below).
 - Parking fees
- Economy or compact size rental car
- Parking fees.
- Meals.
- Hotel room for the duration of the audits, single occupancy and allowable incidental costs.

All travel shall be conducted in the most efficient and cost-effective manner resulting in the best value to the requesting Party. The travel must comply with all the requirements set forth in this section and in the Statement of Work, and must be for official state business only. Personal expenses shall not be authorized at any time.

b. Prevailing Rates

Travel expenses, including mileage, shall be reimbursed only in accordance with federal per-diem rates and policies in effect and approved by the requesting Party's financial or controller authority at the time the expense was incurred. The requesting Party shall identify these terms in the Statement of Work, to be agreed by the Parties.

c. Documentation

Receipts are required for airfare, baggage fees, rental car, parking, and lodging. Receipts are not required for meals; however the amount being reimbursed is limited to rates and terms specified in the Statement of Work.

Miscellaneous expenses relating to travel may be authorized if agreed in writing prior to incurring any expense for which reimbursement will be sought.

d. Prohibition on Additional Compensation

Neither the PREA Auditor nor the Support Staff shall accept any additional compensation for the conduct of the audit not set forth in this Agreement.

11. DURATION OF AGREEMENT

This agreement shall take effect upon execution by both Parties to this Agreement, and remain in effect for five (5) years, or upon the conclusion of any engaged PREA audit and resulting corrective action period (180 days), whichever is later.

12. TERMINATION OF AGREEMENT

Either Party may terminate this Agreement upon written notice to the other Party's Authorized Representative. Termination shall become effective thirty (30) days following receipt of said notice by the Authorized Representative, or upon the conclusion of any engaged PREA audit and resulting corrective action period (180 days), whichever is later.

13. LIABILITY

Each Party shall be liable for its own acts and omissions, and the acts and omissions of its employees, agents and officers, and nothing herein shall impute or transfer liability from one Party to the other.

Neither party waives any right or defense to indemnification that may exist in law or equity.

The Parties are associated with each other only for the purposes and to the extent set forth in this Agreement, and in respect to performance of services pursuant to this Agreement, each Party is and shall be a public agency separate and distinct from the other Party and, subject only to the terms of this Agreement, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one Party whatsoever with respect to the indebtedness, liabilities, and obligations of the other Party.

Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be

through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.

Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by either Party shall not operate as a waiver by such Party of any of its rights or remedies as to any other breach.

14. SIGNATURES:

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

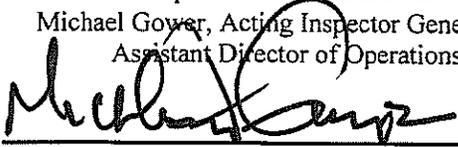
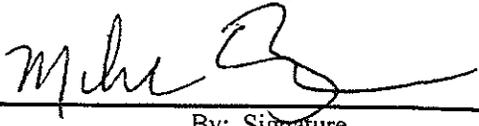
<p>STATE OF OREGON Kate Brown, Governor Department of Corrections Michael Goyer, Acting Inspector General and Assistant Director of Operations</p> <p> _____ Signature</p> <p>Date: <u>2/19/2016</u></p>	<p>STATE OF MONTANA Steve Bullock, Governor Department of Corrections Mike Batista, Director</p> <p> _____ By: Signature</p> <p>Date: <u>2/17/16</u></p>
---	--

EXHIBIT A – NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement (“Agreement”) is made and entered into by and between the State of Montana, Department of Corrections, hereafter referred to as “Disclosing Party,” and the state of Oregon, Department of Corrections, an employee of the state of Oregon, hereafter referred to as “Recipient;” individually referred to as a “Party,” and collectively, as “Parties.”

This Agreement supports the Memorandum of Understanding between the Disclosing Party and the State of Oregon, IGA # XXXX, and the Statement of Work supporting that Memorandum of Understanding, IGA# XXXX, pursuant to which the Recipient, shall engage in an audit of the Disclosing Party’s information for purposes of PREA compliance. To further these ends, the Disclosing Party may, from time to time, disclose certain information in oral or written form considered confidential and protected in nature to the Recipient for the purpose of evaluating the Disclosing Party’s compliance with PREA.

1. IDENTIFICATION OF CONFIDENTIAL INFORMATION.

Both Parties have full awareness of the confidential nature of victim information and protected health information, hereafter referred to as “Confidential Information.”

2. OBLIGATIONS OF THE RECIPIENT.

In addition to the duties imposed by criminal and civil statutes, the Party receiving Confidential Information shall exercise all reasonable care to preserve and protect the Confidential Information. The Recipient shall notify the Disclosing Party, in writing, immediately after the Recipient becomes aware of any unauthorized use, disclosure, or theft of the Confidential Information and shall identify the Recipient’s actions to contain and prevent further unauthorized use, disclosure, or theft of the Confidential Information.

3. GOVERNING LAW.

This Agreement shall be construed and enforced in accordance with the laws of the state of Montana.

4. SIGNATURE.

<p>RECIPIENT INSERT-Legal Name of INDIVIDUAL</p>
<p>_____ By: INSERT-Name of Authorized Individual, INSERT-Official Title of Authorized Individual</p>
<p>Date: _____</p>

EXHIBIT B - STATEMENT OF WORK

1. GENERAL DESCRIPTION:

Pursuant to the Memorandum of Understanding between the Montana Department of Corrections (“MDOC”) and the Oregon Department of Corrections (“ODOC”) effective Date (“January 20, 2016”), MDOC requests ODOC conduct a PREA compliance audit for MDOC. For purposes of this Statement of Work, MDOC is the requesting Party, and ODOC is the responding Party.

2. RESPONDING PARTY’S OBLIGATIONS:

ODOC shall use the PREA audit instrument approved by the federal Department of Justice (“DOJ”) to conduct a DOJ PREA audit of the following MDOC correctional facility):

Montana Women’s Prison

701 South 27th Street

Billings MT 59101

Phone: (406) 247-5100

Fax: (406) 247-5161

3. COMPENSATION FOR TRAVEL EXPENSES:

MDOC will reimburse ODOC for travel expenses as defined in Section 10 of the Agreement.

4. PREA Auditors and Support Staff

ODOC names the following staff members to serve as the PREA Auditor:

Name	Robert Real
Department	Oregon Department of Corrections
Address	777 Stanton Blvd.
Address	Ontario, Oregon 97914

PREA Support Staff

Plus:

Name	Jeremy Wagner
Department	Oregon Department of Corrections

Address	3405 Deer Park Dr. SE
Address	Salem, Oregon 97310

5. MDOC Responsible Administrator

MDOC's performance hereunder shall be under the direction of the PREA Coordinator identified in the Agreement.

6. MDOC Facility Contacts

Charlotte Dolezal PREA Compliance Manager
 406-247-5159
cdolezal@mt.gov

7. Dates

ODOC shall audit Montana Women's Prison March 15-17, 2016

8. PREA Auditor Responsibility and Authority.

The PREA Auditor shall have the responsibility and authority to independently observe, assess, and review, with the aid of PREA Auditor Support Staff, and to report on MDOC's implementation and compliance with the PREA Standards at each of the four facilities. In order to accurately assess compliance at each facility, the PREA Audit Team shall:

- a. conduct an on-site inspection to observe programs and activities;
- b. interview pertinent administrators, professional staff, correctional staff, and contractors;
- c. individually interview a sample of offenders; and staff from all shifts
- d. review a sampling of videotape surveillance recordings from housing units;
- e. conduct detailed reviews of offender records and other pertinent documents and reports;
- f. spend a sufficient amount of time at each facility in order to accurately assess day to day operations and conditions. The PREA Auditor shall be responsible for independently verifying representations from each facility regarding facility compliance;
- g. be permitted to initiate and receive ex parte communications with community stakeholders (e.g. victim advocate, rape crisis center, SANE program), PREA Resource Center, the Department of Justice, offenders, and other interested parties.
- h. Pass along to the MDOC compliance manager any documented reports or allegations of sexual assault, abuse, or harassment made by an offender to the PREA Auditor.

9. Scope of Audit

a. MDOC Accommodations.

- i. Audit facilities. Each Facility will provide:
 - a. A room for the PREA Audit Team to use, with access to a telephone, fax machine, computer (computer access can be provided and the PREA Audit

Team may bring in laptop computers only with prior approval of the Facility Warden), if needed.

- b. A room where offenders can talk confidentially with the PREA Audit Team but maintain Facility and PREA Audit Team safety.
- c. Rooms where staff can talk freely with the PREA Audit Team.

b. Advance Notice:

At least four (4) weeks before the audit, the Facility shall post an announcement for staff and offenders, making them aware of the dates of the audit and ways to contact the PREA Auditor. MDOC shall post and disseminate a message to offenders and staff informing them about the scheduled PREA audit and where to send letters.

c. Audit Support and Access:

The MDOC PREA coordinator shall ensure that the PREA Audit Team has access to staff members to help obtain documents, reports or lists of offenders, staff, contractors, and other stakeholders for interviews; and shall provide a tour, and a confidential room to conduct interviews. The MDOC PREA coordinator or compliance manager shall ensure the PREA Audit Team has access to the Facility, documentation (including electronically-stored information), personnel, and offenders, consistent with the auditing standards, until the issuance of the final report.

d. Maintenance of Documentation and Information:

MDOC shall maintain and secure any and all of the documentation (including electronic documentation) required by the PREA Standards. The PREA Audit Team is authorized to request, review, and retain all such documentation prior to, during, and after the on-site visit.

e. Retaliation Safeguards.

MDOC agrees that it shall not retaliate against any person because that person has provided any information or assistance to the PREA Audit Team, has filed or will file a complaint, or has participated in any other manner in the conduct of the audit. MDOC agrees that it shall timely and thoroughly investigate any allegations of retaliation in violation of the PREA Standards, the Agreement, or this Statement of Work, and take corrective action identified through such investigations.

10. Reporting of New Claims:

If an offender makes a report of sexual abuse or sexual harassment, the audit will be required to report it to appropriate facility staff as well as inform the offender at the on-set of the interview what the confidentiality limitations are. Auditors are mandatory reporters.

11. Phase I: Pre-Audit:

The PREA Auditor's pre-audit duties will include accessing and uploading documents into the pre-audit questionnaire as well as answering questions. In addition, the PREA Auditor shall engage in the following activity:

- a. Reviewing the pre-audit questionnaire.

- b. Coordinating with and interviewing the MDOC PREA coordinator and/or compliance manager.
- c. Contacting victim advocacy groups (phone numbers and contact information will be provided by MDOC).
- d. Contacting Facility affiliated hospital Sexual Assault Nurse Examiners (phone numbers and contact information will be provided by MDOC).
- e. Reviewing MDOC policies and documentation provided to determine compliance with PREA standards.
- f. Coordinating arrival, tour, schedule and interviews.

The PREA Audit Questionnaire and supporting documentation will be provided to the PREA Audit Team six weeks prior to the onsite portion of the audit.

12. Phase II: On-Site:

During the audit, the PREA Coordinator and/or compliance manager will be available to assist and coordinate meetings, tours, and obtain additional documents. A Facility Contact can provide a list of staff, contractors, offenders, and other stakeholders, upon request. The PREA Audit Team is expected to engage in the following activities:

- a. Tour of Facility, and any re-tour, as needed
- b. Scheduled Interviews with the following people:
 - i. Superintendent
 - ii. Random staff
 - iii. Specialized staff
 - iv. Contractors
 - v. Random offenders
 - vi. Specific offenders (e.g. youthful, disabled, limited English proficient, sexual identity (e.g. transgender, inter-sex, gay, bi-sexual, etc.), offenders in segregated housing for risk of sexual victimization, offenders who reported sexual abuse or assault and offenders who disclosed sexual victimization during screening or assessment)
- c. Review investigative paperwork including but not limited to investigative reports and findings, court/prosecution documents, disciplinary actions, or administrative actions.
- d. Review MDOC records concerning the following subjects:
 - i. grievances
 - ii. Disciplinary documents
 - iii. Screening forms and counseling records and documentation
 - iv. Background, training and personnel records
 - v. Standards compliance
- e. Conduct random Interviews; interviews will be conducted in a setting where subjects may feel free to talk without being overheard by other staff or offenders.
- f. Collect Data (including from the MDOC PREA Office and Office of Planning and Analysis)
- g. Meet with the PREA Coordinator, Warden, and the compliance manger daily to give them an idea of how the audit is progressing, and to provide an opportunity to clarify issues or rectify them on the spot, whenever possible.
- h. The MDOC Responsible Administrator will assist the PREA Audit Team with coordinating interviews with specialized staff located outside the Facility. These include:

- i. Agency Head
- ii. Investigative staff
- iii. Human Resources staff
- iv. Victim advocates
- v. Random staff
- vi. Contract Administrator
- vii. Intermediate or higher level facility staff
- viii. Line staff who supervise youthful inmates
- ix. Education and program staff who work with youthful inmates
- x. Medical, Mental Health, Sex Offender program staff
- xi. Non-medical staff involved in cross-gender strip or visual searches
- xii. SANE/SAFE staff
- xiii. Volunteers and contractors who may have contact with inmates
- xiv. Staff who perform screening for risk of victimization and abusiveness
- xv. Staff who supervise inmates in segregated housing
- xvi. Incident review team
- xvii. Designated staff member charged with monitoring retaliation
- xviii. Security staff and on-security staff who have acted as first responders
- xix. Intake staff
- xx. Random inmates, youthful inmates, disabled and limited English proficient inmates, transgender, intersex inmates: gay, lesbian and bisexual inmates, inmates placed in segregated housings (for risk of sexual victimization/who allege to have suffered sexual abuse, inmates who reported sexual abuse, inmates who disclosed sexual victimization during risk screening.
- xxi. Others as deemed necessary and upon request. Due to location, some of these staff may only be available by phone. In the event of an emergency or previously scheduled time out for court or leave, their designee will be made available. Follow up with the primary staff can be scheduled for a later or earlier time.

13. Phase III: Post-Site Work:

The PREA Auditor shall finalize the audit within thirty (30) calendar days of departing the Facility. During this time, it is expected that the PREA Audit Team may engage in follow-up action, including:

- a. Reviewing documents
- b. Interviewing past or new persons to clarify issues
- c. Reviewing standards
- d. Communication: phone calls to Facility, MDOC, or outside advocates
- e. Writing the audit report
- f. Corrective Action – Work with the MDOC PREA coordinator and compliance manager for a plan on how to make corrections.

14. Corrective Action:

If the audit report indicates that corrective action is required, the PREA Auditor and MDOC shall work to promptly and jointly develop a Corrective Action Plan (CAP) toward achieving

compliance with all PREA Standards. The CAP shall contain a timeline for specific minimal remedial measures MDOC shall take to achieve compliance within a 180-day corrective action period. Pursuant to the corrective action timeline, MDOC shall deliver to the PREA Auditor, and the PREA Auditor shall review and comment upon, corrective action deliverables. Upon completion of the conclusion of the 180-day corrective action period, the PREA Auditor shall issue the final audit report.

MDOC may request the PREA Auditor, and any necessary Support Staff, return to assist with correction action. Corrective action may require additional compensation for follow up activity. This will be accomplished by a separate written and agreed upon Statement of Work pursuant to the Agreement.

15. Final Report

The PREA Auditor shall publish the final report of the audit on their website as required by the PREA Standards.

