

**Memorandum of Understanding
Between
HAWAII DEPARTMENT OF PUBLIC SAFETY
And
MONTANA DEPARTMENT OF CORRECTIONS**

This Agreement ("Agreement") is between the Hawaii Department of Public Safety ("PSD") 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 at least once."

2. PURPOSE

The purpose of this Agreement is to outline the responsibilities of PSD 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. CONSORTIUM BASED CIRCULAR AUDITING

Each Party agrees to participate in circular auditing with the Western ASCA Consortium ("Consortium") as consideration for the audit it receives from one or more other Consortium members. States participating in the Consortium are: California, Hawaii, Montana, Nevada, New Mexico, Oregon, and Washington. No Consortium member may audit and be audited by the same other Consortium member within any twelve month period.

a. Immunity

Neither Party waives sovereign or governmental immunity by entering into this MOU. The Parties retain all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

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 Administrators may be contacted at:

a. PSD

Shelley Nobriga, PREA Coordinator 919
Ala Moana Blvd. #116
Phone: 808-587-1260
FAX: 808-587-2568
Email: shelley.d.nobriga@hawaii.gov

b. MDOC

Michele Morgenroth, PREA Coordinator
5 South Last Chance Gulch
Helena, MT 59601
Phone: 406-444-6583
FAX: 406-444-4920
Email: mmorgenroth@mt.gov

5. RESPONSIBILITIES OF PARTIES

A Party may request the other Party to appoint and send a PREA Auditor and associated support staff to the requesting Party's nominated facility or program to conduct an audit of the requesting Party's compliance with the PREA Standards. The requesting Party shall include a proposed Statement of Work, outlining the scope of the audit and terms of reimbursement. Within fourteen (14) days, the responding Party shall make a determination whether to respond to the request, and shall advise the requesting Party of its determination. No Party is obligated to audit any other Party's facility or program. If the responding Party agrees to engage in a PREA compliance audit, the Parties shall negotiate the terms of the Statement of Work, and execute the Statement of Work. The agreed Statement of Work may be executed in counterparts and delivered by electronic means.

6. STATEMENT OF WORK

The Statement of Work shall contain the following details:

- Reference to this Agreement.
- 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 who shall support the PREA Auditor ("Support Staff").
- Terms of reimbursement for the responding Party's expenses, including timeliness.
- Require that the Agency/Facility authorizes the DOJ PREA Auditor to have continuing access to all documentation and things reviewed on site for a period of fifteen (15) months from the date of the final facility audit report.

7. PREA AUDITOR STANDARDS

a. Auditor Qualifications

Each Party shall assure that the PREA Auditor it sends to audit another Party's facility or program is a Certified BJA/DOJ PREA Auditor. The PREA Auditor must have attended PREA auditor training, recertification training, and must be certified by BJA/DOJ via the PREA Resource Center.

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.

The PREA Auditor should be to be a non-exempt employee so that over-time will not be incurred during the audit process. Any overtime is the responsibility of the sending agency.

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 Administrator 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).

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, 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 PSD 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.

8. PUBLIC STATEMENTS

Except as required or authorized by the PREA auditing standards; federal, Hawaii laws, 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 PSD’s compliance or noncompliance with the PREA Standards, or any act or omission of PSD or its agents, representatives or employees.

9. 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.

10. 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.

11. COMPENSATION

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.

Effective, the second cycle of audit the allowable travel expenses are defined as:

- Round-trip coach airfare and associated baggage fees to the requesting Party's facility or program to be audited.
- Economy or compact size rental car depending on the amount of support staff, unless the requesting Party provides a vehicle for use by the PREA Auditor (including Support Staff).
- Hotel room for the duration of the audits, single occupancy.
- Parking and Mileage expense.

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.

Travel expenses shall be reimbursed only in accordance with rates approved by the requesting Party's financial or controller authority and in effect at the time the expense was incurred, however all lodging shall be based on the Federal Per Diem rates. The requesting Party shall identify these terms in the Statement of Work, to be agreed by the Parties.

Receipts are required for airfare, baggage fees, rental car, parking, mileage, and lodging. Effective the second year of the second cycle of audits (August 20, 2017) each State shall be responsible for their staff's cost for meals and incidentals as this will no longer be a reimbursed expense.

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

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.

12. DURATION OF AGREEMENT

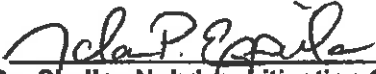

This agreement shall take effect upon execution by both Parties to this Agreement, and remain in effect for two (2) years, or upon the conclusion of any engaged PREA audit and resulting corrective action period (180 days), whichever is later.

13. 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.

14. SIGNATURES:

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

<p>STATE OF HAWAII David Y. Ige, Governor Department of Corrections Nolan P. Espinda, Director</p> <p> By: Shelley Nobriga, Litigation Coordinator/PREA Coordinator</p> <p>Date: <u>10/4/17</u></p>	<p>STATE OF MONTANA Steve Bullock, Governor Montana Department of Corrections Reginald D. Michael, Director</p> <p> By: Reginald D. Michael, Director</p> <p>Date: <u>10/12/17</u></p>
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