



## Regulation Review

# Regulation Review: Locking Up State Budgets

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Today, the Department of Justice (DOJ) [published](#) the final version of its “National Standards to Prevent, Detect, and Respond to Prison Rape.” The pre-publication [version](#) is 268 pages long and estimates nearly \$7 billion in lifetime costs for state governments. The rule implements provisions of the Prison Rape Elimination Act (PREA).

Claiming to be “the first-ever federal effort to set standards” on the issue, DOJ seeks to regulate the enforcement procedures of the following facilities: prisons, jails, lockups, and community confinement and juvenile facilities. DOJ will audit facilities every three years, and non-compliant states could lose up to five percent of federal prison funding.

## Breakdown

### Proposed Rule:

- Costs: **\$4.2 billion**
- Paperwork Burden: **148,455 hours**

### Final Rule:

- Costs: **\$6.9 billion**
- Paperwork Burden: **148,455 hours**

**Net Change:** \$2.7 billion in greater costs; no change in paperwork burden

## Analysis

Despite an admirable goal, this “landmark rule” imposes a costly, complicated regulatory framework on states currently battling recurring budget deficits, offers little assurance of success, and fails to explain this new burden to the states as required by the Unfunded Mandate Reform Act.

The administration prescribes 43 different action items to combat prison abuse. Such tasks range from “Hiring and Promotion Decisions,” to the specific parameters of a “Sexual Abuse Incident Review.” Under this new rule, federal requirements include minimum staffing levels for juvenile facilities, no time limit for “when an inmate may submit a grievance regarding [sexual abuse],” and “methods to ensure effective communication with inmates who are deaf or hard of hearing.” It requires that inmates be screened “for risk of being sexually abused or sexually abusive,” and that post incident reviews “consider whether the incident was motivated” by hate.

The administration cannot quantify how this regulation will reduce abuse. It merely establishes a series of “best practices” and amorphous requirements on states and local governments. There are no metrics for success. The DOJ itself admitted, “a requirement for specific outcome measures would be impractical to implement.”

Not only is success questionable at best, the DOJ’s own estimates illustrate the fiscal effects of such a heavy-handed approach. The Department predicts that average total costs for each year will equal nearly \$470 million. Many of the annual estimates are slightly below that figure. However, DOJ estimated roughly \$745 million in costs for the remaining months in 2012. This \$300 million spike, compared to other years, demonstrates the steep learning curve for state correctional facilities.

DOJ also chose to ignore concerns about unfunded state costs. The Unfunded Mandates Reform Act (UMRA) requires federal agencies to explain the burden their rules impose on state and local governments. Currently, any rule imposing more than \$162 million in annualized inter-governmental costs triggers UMRA’s threshold.

Even though this regulation would cost state and local facilities approximately \$467 million per year, DOJ “concludes that the requirements of the UMRA do not apply to the PREA standards.” Why’s that?

The administration’s ability to skirt UMRA stems from one of the many loopholes in the Act. UMRA exempts regulations that enforce their dictates by leveraging “a condition of Federal assistance,” as this rule does. Although there is no statutory mandate compelling states to

comply, non-compliance means a five percent reduction in federal prison funding. Perhaps the most well-known example of this is the national drinking age law, which withholds highway funding from non-compliant states.

Many states have already made substantial cuts to their correctional budgets. Yet, ignoring this regulation simply isn't an option for states. This rule is undoubtedly an unfunded mandate - an expensive one that offers few assurances of success.