

The Impact of the Prison Rape Elimination Act (PREA) on Lock-Ups and Short Term Holding Facilities

Information and Assistance for Law Enforcement and Chiefs of Police

- **PREA is applicable to lock-ups and short-term holding facilities operated by law enforcement agencies, regardless if arrestees stay an hour, or three days.**
- **If your agency is responsible for operating short-term arrestee holding facilities– “lock-ups” – then you need to be up-to-date about the Prison Rape Elimination Act (PREA) and what it means to your agency.**

The U. S Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (BJA) provides information, training and technical assistance to organizations responsible for operating short-term holding

WHAT IS PREA?

The Prison Rape Elimination Act (PREA) was passed unanimously by Congress, and signed by the President in 2003. PREA:

- Addresses the detection, elimination and prevention of sexual assault and rape in correctional systems, including lock-ups operated by law enforcement;
- Funds the development of national standards of compliance and accountability;
- Directs collection and dissemination of information on the incidence of arrestee-on-arrestee sexual violence as well as staff sexual misconduct with arrestees; and
- Awards grants and technical assistance to help agencies implement the Act.

For purposes of PREA, the term “prison” applies to all federal, state, and local prisons, jails, **police lock-ups, temporary holding cells**, private facilities, and community settings such as residential facilities. The term “inmate” applies to any person held in a custodial setting for any length of time by any of the facility types mentioned above.

HOW DOES PREA IMPACT YOU?

PREA addresses the safety of arrestees while in the custody of your agency - from sexual assault, sexual harassment, “consensual sex” with employees, and arrestee-arrestee sexual assault.

PREA also directs agencies to maintain data regarding arrestee-arrestee sexual assaults, nonconsensual sexual acts, and staff sexual misconduct.

FAQsⁱ

1. **Can the agency be sued for not complying with PREA?**

No. PREA does not create any right to sue. However, you are already required by federal and state law to operate within Constitutional requirements and assure the safety of those in your custody. All states have laws prohibiting sexual misconduct. More importantly, there is an ethical responsibility to protect the safety of staff and those in one's custody. Failure to protect can result in civil liability for the organization, supervisors and staff, both personally and professionally.

2. What are the consequences for not complying with PREA?

If your agency fails to comply with the standards when they are disseminated, you will face a 5% reduction of federal funding for each year you fail to meet the standards. Failure to comply with the standards could also be evidence in a civil trial that you are not meeting the standard of care necessary to ensure arrestee/detainee safety.

3. What if we only operate a small lock-up, or have only a small number of holding cells?

PREA is applicable to the smallest, one-room lock-up, as well as lock-ups that hold hundreds of detainees each day.

4. We have no reports of staff sexual misconduct or arrestee-arrestee sexual assault. Why should we be concerned about PREA?

No facility, whether large or small, is immune to staff sexual misconduct and arrestee sexual assault. Some agencies may find that they don't receive reports about incidents, which is generally the result of a lack of training, a strong "code of silence," or unclear or compromised reporting mechanisms for employees and arrestees. Agencies that have no reports of such incidents should examine their reporting procedures to insure that administrators are receiving allegations and investigating them appropriately.

5. What about arrestees who either manipulate the system using PREA or make false allegations against employees?

Often, administrators or employees are understandably concerned that addressing PREA-related issues in policy and procedure, and educating arrestees of their right to be safe while in custody, may result in false accusations or reports of misconduct. Experience has shown that there may be an initial spike in reporting, or reports that "test" the system. However, this usually stops when both employees and arrestees realize that there will be thorough and timely investigations—of all arrestees—and consequences for those who make false reports.

PREA DEFINITIONS

The following are the behaviors PREA addresses:

Nonconsensual sexual acts

- Contact of any person without his or her consent, or of a person who is unable to consent or refuse; and
- Contact between the penis and the vagina or the penis and the anus including penetration, however slight; or
- Contact between the mouth and the penis, vagina, or anus; or

- Penetration of the anal or genital opening of another person by a hand, finger, or other object.

Abusive sexual contacts

- Contact of any person without his or her consent, or of a person who is unable to consent or refuse; and
- Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.
- Excluding incidents in which the intent of the sexual contact is to harm or debilitate rather than sexually exploit.

Staff sexual misconduct

- Any behavior or act of a sexual nature directed toward an inmate by an
 - Employee, volunteer, official visitor, or agency representative. Romantic relationships between staff and inmates are included. Consensual or nonconsensual sexual acts include:
 - Intentional touching of the genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, arouse, or gratify sexual desire; or
 - Completed, attempted, threatened, or requested sexual acts; or
 - Occurrences of indecent exposure, invasion of privacy, or staff voyeurism for sexual gratification.

Staff sexual harassment

- Repeated verbal statements or comments of a sexual nature to an inmate by an employee, volunteer, official visitor, or agency representative, including:
 - Demeaning references to gender or derogatory comments about body or clothing; or
 - Profane or obscene language or gestures.

WHAT SHOULD YOU BE DOING NOW?

Here are suggestions to begin your agency's review of the impact of PREA on your operations. Further guidance is contained in the [Policy Development Guide](#) available from BJA or CIPP.

1. Policy Review – Examine existing policies which guide interactions between employees and arrestees, and between arrestees, specifically prohibiting sexual assault, abuse, and harassment.
2. Arrestee Screening – Review arrestee screening processes to insure that arrestees who are potential victims and those who are potential sexual predators are separated and monitored. The protocols for securing medical care for arrestees who allege they are victims of sexual assault while in your custody are in place.
3. Physical Plant Assessment – Triage the agency's holding facilities to insure arrestee safety while housed.

4. Employee Training – Review employee training to insure that the provisions of PREA are known and that employees are clear about their obligations to safeguard arrestees from harm.
5. Investigations and Data Collection – Assure initiation of investigations into allegations of employee/arrestee sexual misconduct and/or arrestee/arrestee sexual misconduct. Develop and maintain data bases to report to the Bureau of Justice Statistics.

WHAT ASSISTANCE AND SERVICES ARE OFFERED BY BJA?

BJA provides no-cost assistance to state and regional law enforcement and sheriffs' organizations and professional associations, including:

1. Presentations/training to state or regional law enforcement and sheriffs' associations providing an overview of PREA with specific policy and operational recommendations, as well as a review of legal issues for policy-makers.
2. On-site technical assistance to agencies and organizations who request more in-depth help to develop policies, procedures regarding PREA.
3. A Policy Development Guide to assist agencies to update and revise policies and procedures to effectively and efficiently address PREA-related initiatives.
4. Training curriculum including: a two hour module to educate agency leadership and policy-makers about their role in assuring compliance with PREA; and a four hour module for employees and supervisors involved in day-to-day operations.

ADDITIONAL RESOURCES

Here are other resources that can assist your agency in reviewing the impact of PREA on agency operations.

National Prison Rape Elimination Commission – www.nprec.us – Provides information on the Commission and its nine members, resources, status of standards under development, transcripts of the hearings conducted to date by the Commission.

National Institute of Corrections (NIC) – www.nicic.org – Provides information on the resources to address PREA.

Addressing Sexual Violence in Prisons: A National Snapshot of Approaches and Highlights of Innovative Strategies

http://www.urban.org/UploadedPDF/411367_psv_programs.pdf

Data Collections for the Prison Rape Elimination Act of 2003

<http://www.ojp.usdoj.gov/bjs/pub/pdf/dcprea03.pdf>

<http://www.ojp.usdoj.gov/bjs/pub/pdf/svrca04.pdf>

http://www.wcl.american.edu/nic/documents/BeckandHarrison_BJSReport2005_000.pdf?rd=1

PREA Statute:

http://www.wcl.american.edu/nic/Articles_Publications/Prison_Rape_Elimination_Act_of_2003.pdf?rd=1

Reports/Articles:

Jordan, Andrew, Marcia Morgan and Michael McCampbell, "The Prison Rape Elimination Act: What Police Chiefs Need to Know", *Police Chief Magazine*, International Association of Chiefs of Police, vol. 73, no. 4, April 2006,
http://policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=864&issue_id=42006

McCampbell, Michael S., "Prison Rape Elimination Act: Impact on Police Chiefs of the Prison Rape Elimination Act," *Subject to Debate*, Police Executive Research Forum, September 2005, Vol. 19, No. 9, page 5, http://www.policeforum.org/upload/V19-N09%20P%5B1%5D_715866088_12302005143917.pdf

Confronting Confinement: A Report of the Commission on Safety and Abuse in America's Prisons
<http://www.prisoncommission.org/report.asp>

End to Silence, website of the Washington College of Law, The American University
<http://www.wcl.american.edu/nic/>

Stop Prisoner Rape, Call for Change: Protecting the Rights of LGBTQ Detainees, May 2007
<http://www.champnetwork.org/media/callchange.pdf>

Stop Prisoner Rape, How Well is Your Institution Meeting the Goals of the Call for Change, May, 2007,
<http://www.spr.org/index.asp>

Training Materials:

<http://www.wcl.american.edu/nic/training.cfm>

REQUESTING ASSISTANCE

To schedule a training program, at no cost to your organization, please contact Susan McCampbell at CIPP by e-mail cippinc@aol.com, or telephone (239) 597-5906.

To request technical assistance at your agency's location, please contact:
U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 810 7th Street NW, Washington, D.C. 20531

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