

The Prison Rape Elimination Act of 2003

PREA STATEWIDE PROBATION AND PAROLE DIRECTION

February 1, 2007

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PREA Statewide Probation and Parole Direction

February 1, 2007

BACKGROUND

At the May, 2006, meeting of the Executives of Statewide Probation and Parole Network, the participants unanimously requested that the National Institute of Corrections (NIC) support the convening of a work group of six directors to draft model “policy, direction and supporting tools” for use by statewide probation and parole agencies in understanding the implications of the Prison Rape Elimination Act of 2003 (PREA) for community corrections and how to implement the PREA requirements in an appropriate and effective manner.

This paper is the initial product of the work group and summarizes its deliberations and findings. The group met twice in the period between Network meetings, on August 10 and 11, in Charlotte, NC, and on September 15, in Washington, D.C. Members of the group included state directors of probation and parole: Jacqueline Kotkin, VT; David Guntharp, AK; Jeffrey Renzi, RI; Genie Powers, LA; and Robert Guy, NC. For purposes of considering the implications for other state-level community corrections functions, NIC expanded the group to include Kathleen Graves, Kansas Director of Community Corrections; Robert Maccarone, Director of the New York State Department of Probation and Community Alternatives; and Justin Jones, former network member and now Director of the Oklahoma Department of Corrections.

PRISON RAPE ELIMINATION ACT: APPLICATION TO COMMUNITY CORRECTIONS

PREAMBLE

WHY DOES COMMUNITY CORRECTIONS CARE ABOUT PREA?

The Prison Rape Elimination Act (PREA) directly affects community corrections agencies, namely probation and parole authorities. Similar to federal, state and local prisons and jails, many community corrections agencies provide direct custodial care to juvenile and/or adult offenders through the use of detention, lock-ups, shelters, and community residential facilities. Consequently, they are responsible for the safety and well-being of individuals committed to their care and custody and directly subject to the provisions of PREA. Of course, probation and parole authorities supervise the majority of offenders in the community. However, most probationers and parolees are detained or incarcerated either immediately following their arrest, as part of a split sentence imposed by the court or as a result of having violated the terms and conditions of their community supervision sentence. Indeed, a majority of offenders sentenced to community supervision spend some period of time detained or incarcerated.

Congressional hearings have determined that victims of prison rape suffer severe physical and psychological effects that hinder their ability to integrate into the community and maintain stable employment upon their release from prison. They are thus more likely to become homeless and/or require government assistance. To the extent that offenders are treated humanely while they are detained or incarcerated, we can expect they will integrate more successfully into the community. The field now understands that the process of offender re-integration starts with the intake process at a prison or jail facility; and those entrusted with providing inmate security and programming have a profound impact on re-entry and community safety.

Probation and parole authorities, and to a much larger extent, jail and prison administrators, are governed primarily by state laws that protect individuals in their care from sexual assault. This includes various state laws that require probation and parole authorities, as mandated reporters, to report child abuse and neglect. Federal law also protects individuals from prison rape or sexual assault. In Farmer v. Brennan, 511 U.S. 825 (1994), the Supreme Court held that deliberate indifference to the substantial risk of sexual assault violates prisoners' rights under the Cruel and Unusual Punishments Clause of the Eighth Amendment and that further, the Due Process Clause of the Fourteenth Amendment extends its application to states.

PREA, when fully implemented, will set new national standards for the detection, prevention, reduction and punishment of prison rape. In PREA, prison has been broadly interpreted to include prisons, jails, lock-ups, detention and placement facilities, shelters and community residences for juvenile and adult offenders. The term "inmate" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program. "Rape" is defined as the sexual assault or sexual fondling of the individual through force or where the victim is incapable of giving consent because of his or her youth, temporary or permanent mental/physical incapacity or confinement. Prison rape endangers public safety by making brutalized inmates more likely to commit crimes when they are released. In addition we know that HIV and AIDS are major public health problems within America's correctional facilities. Infection rates for other sexually transmitted diseases, tuberculosis, and hepatitis B and C are also far greater for prisoners than for the American population as a whole. Prison rape undermines the public health by contributing to the spread of these diseases; its prevention enhances the public health of our communities.

Community corrections professionals understand that the experience of offenders while incarcerated has a direct affect on their subsequent behavior in the community. Increasingly, emphasis is placed on utilizing this time to assess risk and need, identify criminogenic factors and implement effective programming that will better prepare offenders for successful re-entry and result in safer communities.

WHAT IS PREA AND WHAT DOES IT REQUIRE?

The Prison Rape Elimination Act (PREA) of 2003 is a federal law established to address the elimination and prevention of sexual assault and rape in correctional systems. PREA applies to all federal, state and local prisons, jails, police lock-ups, private facilities and community settings such as residential facilities. PREA, when fully implemented, will:

- ❖ Establish standards for the detection, reduction, prevention, and punishment of prison rape
- ❖ Provide for the collection and dissemination of information on the incidence of prison rape
- ❖ Award grants and provide technical assistance to help state governments implement the Act and make their facilities and communities safer

Data Collection and Information: PREA provides that an Annual Comprehensive Statistical Review be undertaken by the U.S. Department of Justice's Bureau of Justice Statistics (BJS) to develop a comprehensive statistical review and analysis of the incidence and effects of prison rape. Further, PREA directs BJS to solicit views from representatives of state departments of correction, county and municipal jails, juvenile correctional facilities, former inmates, victim advocates, researchers and other experts in the area of sexual assault. PREA directs the Department of Justice to establish a Review Panel on Prison Rape to conduct public hearings, solicit testimony at hearings, subpoena the attendance of witnesses and the production of written or other matter and produce an annual report to the Attorney General for submission to Congress.

Grants and Technical Assistance: PREA authorizes the Attorney General to provide grants through the Bureau of Justice Assistance (BJA) to state and local governments to ensure that as a result of budget reductions, efforts to protect inmates (particularly from prison rape) and to safeguard communities to which inmates return are not compromised. The law charges the National Institute of Corrections (NIC) to establish a national clearinghouse for the provision of information and assistance to federal, state and local authorities responsible for the prevention, investigation and punishment of instances of prison rape. It further

requires NIC to prepare an annual report for submission to Congress describing such efforts.

The Federal Commission and Standards: PREA establishes a National Prison Rape Elimination Commission comprised of nine members appointed by the President, House of Representatives and the Senate, whose primary mission it is to carry out a comprehensive legal and factual study of the penal, physical, mental, medical, social, and economic impacts of prison rape in the United States. In doing so, the Commission must provide an assessment of the impacts of prison rape on individuals, families, social institutions and the economy generally, including an assessment of the extent to which the incidence of prison rape contributes to recidivism and to increased incidence of sexual assault. Three years from the date of its first meeting, the Commission is required by statute to submit a report to the President, the Congress, the Attorney General, the Secretary of Health and Human Services, the Director of Federal Bureau of Prisons and the Chief Executive of each State that shall include *national standards* for reducing prison rape. These national standards will address a comprehensive list of priorities including, but not limited to the classification and assignment of prisoners, using proven instruments and protocols in a manner that limits the occurrence of prison rape, its investigation, the preservation of physical and testimonial evidence, the acute-term trauma care for rape victims, the training of corrections staff and the creation of a system for reporting incidents of prison rape that will ensure the confidentiality of prison rape complaints, protect inmates who make prison rape complaints from retaliation, and ensure the impartial resolution of rape complaints.

The Prison Rape Elimination Commission shall consult with accreditation organizations, conduct hearings, contract with researchers through the National Institute of Justice (NIJ) to assist it in carrying out its duties, issue subpoenas to compel the attendance of witnesses and production of materials in producing the national standards for reducing prison rape.

Adoption of Standards: PREA charges the Attorney General, not later than one year after receiving the proposed standards, to publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison rape. The national standards shall apply to the Federal Bureau of Prisons immediately upon adoption of the final rule. The national standards shall be

transmitted to the Chief Executive Officer of each state for adoption and shall require each state's certification of compliance or it will be subject to the loss of 5 percent of federal funds it would have received for prison purposes.

Lastly, PREA requires, effective 90 days after September 2, 2003, that organizations responsible for the accreditation of federal, state, local or private prisons, jails or other penal facilities, to have in effect for each facility that it is responsible for accrediting, standards for the detection, prevention, reduction, and punishment of prison rape or thereby become ineligible to receive federal funding.

WHAT DOES PREA REQUIRE OF COMMUNITY CORRECTIONS AGENCIES AND WHEN?

To the extent that community corrections agencies, namely probation and parole authorities, currently provide direct care and custody services to offenders detained or incarcerated in detention, lock-ups, shelters, placement or community residential facilities; they, like federal and state prison authorities and local jail administrators, are subject to the provisions of PREA and to the national standards that will be promulgated as a result of the findings of National Prison Rape Elimination Commission. Some provisions of PREA became effective with the passage of the new law in 2003 and others—the national standards—are expected to take effect in 2007.

While PREA requires BJS to annually collect information on the incidence and prevalence of sexual violence within correctional facilities, *there are no current BJS requirements for probation and parole agencies to collect and report information on sexual assault occurring within community corrections facilities.* For more information on reporting requirements, please see the final section of this paper. One PREA reporting provision does require that in carrying out the review and analysis of prison rape, BJS use surveys of current and former inmates from a sample of federal state, county and municipal prison. Presumably, one of the more efficient means of contacting former inmates will be through probation and parole authorities. Thus, community corrections agencies can expect to be involved in helping identify and provide access to parolees and previously incarcerated inmates under their supervision.

Similarly, Probation and Parole authorities may be called upon by the National Commission to testify and provide information about prison rape. They may be asked by one or more researchers contracted by the National Commission through NIJ, to provide information and testimony to assist in the development of the national standards. Moreover, community corrections agencies, like federal, state and local prison and jail authorities, may be eligible to receive grant and technical assistance through the NIC to develop comprehensive policies to detect, prevent, reduce and punish prison rape.

Many community corrections agencies, like other custodial providers, have in place comprehensive policies guarding against offender and staff sexual assault. They do so as a function of state law, sound professional practice, agency accreditation and protection from municipal liability.

In 2007, the national standards will challenge federal, state and local authorities to address a far more comprehensive set of policies affecting the detection, reduction, prevention and punishment of prisoner rape. They include:

- the classification and assignment of prisoners, using proven standardized instruments and protocols in a manner that limits the occurrence of prison rape;
- the investigation and resolution of rape complaints by responsible authorities;
- the preservation of physical and testimonial evidence;
- acute-term trauma care for rape victims;
- referrals for long-term continuity of care for rape victims;
- educational and medical testing measures for reducing the incidence of transmission of HIV due to prison rape;
- post-rape prophylactic medical measures for reducing the incidence of transmission of sexual diseases;
- the training of correctional staff;
- the timely and comprehensive investigation of staff sexual misconduct involving rape or other sexual assault on inmates;
- the confidentiality of prison rape complaints and protecting inmates who make complaints;
- the creation of a system for reporting incidents of prison rape;
- data collection and reporting on prison rape; and
- all other matters as may reasonably be related to the detection, prevention, reduction and punishment of prison rape.

To the extent corrections and community corrections agencies have developed comprehensive policies to protect from prison rape, they will be better served in ensuring the security of their facilities, the safety of their communities and the potential loss of federal funding.

SUGGESTED PRACTICES IN COMMUNITY CORRECTIONS: KEY POINTS OF DISCUSSION

SYSTEMIC APPROACH

For more than a decade, NIC has employed and refined a *systemic approach* to addressing staff sexual misconduct. This framework continues to be useful as NIC expands its work to address the additional requirements of PREA regarding offender-on-offender sexual abuse. Simply stated, the framework assumes implementation of multiple strategies including:

- ✓ Knowledge of state and federal law;
- ✓ Leadership direction emphasizing zero-tolerance;
- ✓ Written policy, to include medical and mental health protocols;
- ✓ A review of management and operational practices that create vulnerability for increased incidents;
- ✓ Training of staff, volunteers, contractors and offenders;
- ✓ Ensuring an objective investigative process;
- ✓ Preparing media responses; and
- ✓ Evidence-based programming that assists offenders in addressing prior victimization.

In the community corrections arena, the systemic approach is the framework for NIC's curriculum, "Addressing Staff Sexual Misconduct in Community Corrections."

The PREA Work Group of the Executives of Statewide Probation & Parole Network did not begin its analysis of the implications of PREA with this framework in mind. Rather, it began with the list of critical issues and concerns that emerged from the May, 2006, session in Charlotte, NC. The Group conducted

a thorough review of the explicit and implicit requirements of PREA for community corrections, and then crafted the present guidance as a consensus position. This guidance is articulated in the “Preamble,” and combines the requirements of the law and its implications for community corrections with legal, policy and operational considerations, existing state laws, and the values the Group holds as professionals in the community corrections field. The group felt that the work emerged naturally as a multi- strategy approach to the issues raised by the PREA, in fact, a systemic approach.

The following critical strategies or practices are the building blocks of a systemic approach for community corrections. When combined with a strong, zero tolerance message from agency leadership, they will guide us toward proactively meeting our obligations to address sexual abuse and violence within community corrections. These suggested practices should guide practice within those community corrections custody settings specifically identified by PREA and enhance practice for all of community corrections.

LAW

During the decade of the nineties state laws prohibiting staff sexual misconduct with inmates were enacted; as of 2005 all 50 states have laws that criminalize staff sexual misconduct. To varying degrees these laws address community corrections. For the last decade NIC has partnered with the American University, Washington College of Law, to review each state’s current laws prohibiting staff sexual abuse with individuals in custody, and looked at several categories when analyzing the laws. This is a good tool to use for comparison of the different states’ laws. The survey is routinely updated by the American University, Washington College of Law.

Suggested Guidance

Community Corrections leaders should review their state laws that prohibit sexual abuse of individuals under community corrections supervision. How the law is structured can help or hinder prosecution. There is not one perfect law; those noted below have good elements in them, particularly concerning their applicability to community corrections.

Issues to consider when reviewing the law:

1. Who does the law cover?

Generally, stronger laws are more detailed and include definitions covering a wider spectrum of employees, facilities, and sexual activity. This wide spectrum includes both paid and unpaid staff.

Examples:

- *Kansas*
 - While Kansas law covers Parole Officers, it also defines a non-prison/prison sanction which basically covers all types of community corrections;
- *Oregon*
 - Oregon's definition of which employees are covered is very detailed;
- *Georgia*
 - Georgia's law covers punishment for both probation & parole officers even if they do not supervise the offenders;
- *Wisconsin*
 - Wisconsin's law includes influencing another probation or parole officer (you don't directly have to supervise the probationer or parolee)
- *Illinois*
 - Illinois gives a broad definition of facilities and custody
- *California*
 - California law defines a wide range of activity

2. Does the law punish the activity because of the parties involved; i.e., correctional employee and offender, and not just criminalize the conduct because of where it occurred?

3. What does the law cover explicitly and implicitly?

"Explicitly" means a position is specifically addressed in the law; i.e., the definition of employee specifically lists a contractor in a position of authority over the victim.

“Implicitly” uses general language like “any actor,” which would imply that it covers contractors.

POLICY

The foundation for a response to the Prison Rape Elimination Act and sexual abuse in corrections rests on good policy. One of the first decisions necessary for policy makers to consider is whether one policy or several are needed.

The PREA law includes both staff sexual misconduct as well as offender-on-offender misconduct. PREA is the federal law that impacts your policy but other state laws should be included as references to any policy on these issues. So consider whether you are really developing “PREA Policy,” or a policy to address staff sexual misconduct and offender-on-offender sexual abuse.

The work group explored the importance of having strong written policy that includes a number of critical points. Realizing that some state laws are very limited in scope, the group recognized that correctional policy can be used to fill the gaps that may be problematic in current state law.

The work group outlined these areas for inclusion in policy:

- ✓ A zero-tolerance statement;
- ✓ Offender rights: the right to be safe from sexual abuse;
- ✓ Role of leadership;
- ✓ The need for clear, specific definitions;
- ✓ The coverage related to your state’s responsibilities to PREA and state law;
- ✓ The coverage of individuals to include paid/non-paid employees, contractors and volunteers;
- ✓ Reporting requirements:
 - To BJS if meets criteria,
 - To Community Corrections/Department for investigation,
 - Outline of responsibilities for first responders – those staff, contractors, volunteers who are advised by a client of sexual abuse by staff or offender/ inmate;
- ✓ Duty to report;

- ✓ Investigative protocol;
- ✓ Referral sources and protocol;
- ✓ Training requirements for staff/offenders/volunteers and contractors;
- ✓ Clear understanding of confidentiality; and
- ✓ Protocol for media response.

In the group's discussion many issues emerged that impact policy. Some of the more involved discussions included:

- Fraternalization and freedom of association;
- Professional boundaries;
- Gender issues;
- Code of Conduct and Ethics;
- Communication required regarding:
 - Revocation and the need to communicate with receiving facility to make aware of allegation/investigation/finding,
 - Communication to Community Corrections to ensure awareness of former inmates who were sexually abused by staff where offender is released to community supervision. What is supervision protocol for these offenders?
- The importance of becoming familiar with BJS work and requirements and ensuring that your agency is capturing the allegations for all applicable stakeholders in community corrections; and
- Importance of collecting information on allegations for agency management even if not required by PREA.

Suggested Guidance

The group recommends strong written policies to address PREA.

A number of states are working on PREA policies. The questions and components of policy outlined by the group give guidance to a list of critical issues to consider. In your materials you have an example of a policy from Rhode Island Adult Community Corrections. Further guidance is available through The Moss Group, Inc. / NIC publication, *Prison Rape Elimination Act: Considerations for Policy Review*. This guide is particularly applicable to residential settings but many of the questions are transferable to any setting.

Every state should review all Memoranda of Understanding (MOU), contracts, or similar documents and include applicability of PREA to the contractor, volunteer, etc, reporting requirements when staff sexual abuse is alleged, liability issues and make sure all relevant issues are addressed in the MOU.

TRAINING

Training of staff, volunteers, contractors and offenders is an important building block of an effective response to PREA. Through training, agency values and expectations are conveyed thus impacting the culture. The opportunity to assist training participants in developing skill based techniques in working with the offender population is also critical in addressing the important issues outlined in PREA.

Suggested Guidance

- Agencies should create training for staff, volunteers, contractors and community stakeholders working with the offender population.
- Training should include:
 - The PREA Law and applicable state laws;
 - Agency's responsibilities under PREA;
 - Agency policy;
 - First Responder responsibilities;
 - Reporting requirements of all stakeholders;
 - Examples of "red flags" that indicate a possible incident of staff sexual misconduct or offender-on-offender abuse;
 - Discussion of the investigative process to "demystify" the process (this helps address concern of false allegations);
 - Review of medical and mental health role;
 - Skills training on addressing dynamics of offenders and staff; and offender-on-offender relationships;
 - Training on victimology;
 - Identification of issues particular to special or minority populations; and
 - Training on special populations.

- Community Corrections agencies should take a leadership role in providing training for stakeholders to ensure consistency among community partners and as a way of building a strong process for appropriate referral.

OPERATIONAL CONSIDERATIONS

A good bit of the group's discussion centered on the management and operational implications of PREA for the community corrections field. The first step was to come to some consensus about what is explicitly covered under the law and what is implicitly covered. These distinctions are articulated in the first section of this paper. In summary explicit coverage includes:

- Those individuals who are in 24/7 facilities under community supervision, including private contractors; and
- Parolees and probationers who have been in jail and /or prison.

Once the "universe" was better defined the group began discussing all the operational considerations. Attached to this report you will find a chart that was developed as an overview of the discussion. Operational issues were broken into four categories:

1. Preventing
2. Reporting
3. Responding
4. Investigating

The operational chart is a visual that reflects our discussions.

Suggested Guidance

Use the attached chart to guide your agency discussions on critical operational issues. These important day-to-day operations are also reflected in the policy discussion above. As we all learn more about the prevalence of staff sexual abuse and offender-on-offender sexual abuse we also continue to learn more about how and where it happens; what are some preventative measures; and how do we respond. These questions are at the core of how we effectively address the work.

INVESTIGATIONS

A sound and comprehensive investigatory process is pivotal to any organization's effective response to PREA. In order to ensure staff cooperation with investigations and appropriate reporting of suspected incidents, staff must believe the investigative process is fair and impartial. This can be accomplished by training staff about the investigative process long before they are actually the subject of an investigation or required to participate in an investigation. Investigatory staff must also be trained to handle the specialized situations they will encounter with offenders who are the victims of either inmate sexual assault or staff sexual misconduct, particularly in situations where the event may have occurred while still incarcerated.

Suggested Guidance

- Develop training for staff to orient them to the investigative process;
- Formalize a protocol to train investigatory staff regarding investigations of staff sexual misconduct and inmate on inmate sexual assault;
- Ensure policy includes a requirement of mandatory reporting of all suspected incidents of staff sexual misconduct and/or inmate on inmate sexual assault and that this requirement is well understood by staff;
- Develop memorandum of understanding with appropriate rape crisis centers, hospitals, counselors, etc. who can help with the investigatory process. In addition, include medical and mental health departmental staff in the investigatory process;
- Ensure the timeliness of investigations and appropriate communication of results;
- Discussion with prosecutorial entities regarding the collection of essential information in the investigative process to ensure effective prosecution.

CULTURE

The group acknowledges that sexual abuse and violence in correctional settings must be understood in the context of an agency's culture addressing more than just the "sex".

In 24/7 facilities that explicitly fall under the PREA, the behavior, attitudes and practices that combine to create a culture for a facility send crucial signals to both the staff and offender population. Offenders and staff generally mirror the cultural norms.

Some highlights of the importance of culture are:

- A leader who allows a sexualized environment among staff sends a message of tolerance for inappropriate behavior in the work environment. Conversely a leader sending a zero tolerance message for staff—staff harassment will have credibility when setting a zero tolerance policy for staff—offender misconduct and offender-on-offender sexual abuse.
- An understanding of the impact of staff becoming involved with offenders includes an acknowledgement of the “imbalance of power” between community corrections staff and those they supervise.
- If a culture of an organization demonstrates a closed system unlikely to “name” sensitive issues or hold staff accountable for minor inappropriate behavior then that same culture is likely to have a strong code of silence within the office or facility.

The importance of understanding the relationship of culture and sexual abuse and violence is emerging as the PREA Commission and others explore the dynamics of sexual abuse in all correctional settings.

Suggested Guidance

Consider ways in which your agency practice sends a message to staff, offenders and the community about addressing sexual abuse and assault in your setting.

- Is leadership saying there is a zero-tolerance policy, either verbally or in writing?
- Is there a reluctance to address sexual harassment?
- Are professional boundaries among staff and offenders appropriate?
- Are professional boundaries among staff members appropriate?
- Do you clearly create accessible ways for reporting of incidents?
- What are the ways you know your organization is exhibiting a healthy culture?

In addressing operational issues, training, and policy find out how your staff is responding to the discussions – this will be a quick check on the cultural health of the organization.

TOOLS

The group discussed briefly some of the needed tools to assist community corrections in several areas:

- Development of a brochure:
 - Many brochures have been developed in adult corrections to be used primarily with the inmate population in orientation,
 - More recently a brochure for Jail Administrators explaining PREA and answering frequently asked questions was developed by NIC/The Moss Group Cooperative Agreement,
 - Rhode Island Department of Corrections/Community Corrections Division has developed a brochure in English and Spanish for the offender population,
 - A correctional staff handbook is under development with the NIC/Washington College of Law Project,
 - Examples of these products will be on the resource table at the Nov. 1 meeting.
- Possible development of a training video specific to community corrections;
- Development of posters to display emphasizing zero tolerance and methods of reporting abuses; and
- Additional training materials specific to community corrections.

RESOURCES

National Institute of Corrections: www.nicic.org

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The following videos are available through the NIC Information Center. Please call (800) 877-1461 to order copies:

- *Facing Prison Rape, Part 1*
- *Responding to Prisoner Rape, Part 2*
- *Speaking Up: Discussing Prison Sexual Assault* (inmate orientation video; available in both male and female version)
- *Keeping Our Kids Safe: The Prison Rape Elimination Act and Juvenile Justice*

“Prison Rape Elimination Act (PREA) Considerations for Policy Review.” This document is designed to help you create the initial draft of your PREA policies when requesting technical assistance from NIC. For a copy, please contact Dee Halley or:

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To attend NIC’s PREA training programs or request technical assistance, please contact:

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1-800-995-6423 ex. 40374

Bureau of Justice Statistics
Report on Sexual Violence: www.ojp.usdoj.gov/bjs/abstract/svrca04.htm

National Institute of Corrections/Washington College of Law Project on
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National Prison Rape Elimination Commission: www.nprec.us

Stop Prisoner Rape: www.spr.org

Bureau of Justice Assistance: www.ojp.usdoj.gov/BJA

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Bloom, B., Owen B, and S. Covington. (2003). *Gender-Responsive Startegies.
Research, Practice, and Guiding Principles for Women Offenders*. U.S. Department of
Justice. National Institute of Corrections.

Bureau of Justice Assistance: www.ojp.usdoj.gov/BJA

ACA's "Performance-Based Standards for Adult Local Detention Facilities":
www.aca.org

CURRENT BUREAU OF JUSTICE STATISTICS DATA COLLECTION AND REPORTING REQUIREMENTS

The purpose of this section is to clarify the responsibilities of state probation and parole agencies for reporting incidents of sexual violence to the Bureau of Justice Statistics, U.S. Department of Justice. Please note that this is a statement of *current* requirements. Following the development of Standards by the PREA Commission, reporting requirements may change.

BACKGROUND

The Prison Rape Elimination Act of 2003 requires the Bureau of Justice Statistics (BJS) to annually collect information on the incidence and prevalence of sexual violence within correctional facilities. Its responsibilities are in two areas: to identify the incidence and characteristics of both the victims and perpetrators of

prison rape; and to identify the prison systems with a high incidence of prison rape.

There are no current requirements for probation and parole agencies to collect and report information on sexual assault occurring within community corrections facilities. *The current reporting programs are concerned with sexual violence among incarcerated inmates only.* Further there are no plans to survey probation and parole agencies regarding substantiated or self reported incidents of sexual assault.

It is helpful to place the data collection program in perspective. BJS will employ multiple measures of sexual assault victimization because of the complexities of such sensitive data collection. Each provides insight into the circumstances, nature and prevalence of sexual violence. These measures are:

❖ ***An annual administrative records collection***

The results of the second national survey are reported in the BJS Special Report, *Sexual Violence Reported by Correctional Authorities, 2005*, July 2006.

❖ ***Self reports by inmates in adult correctional facilities***

Research Triangle Institute was awarded a 24-month cooperative agreement to design, develop and test Audio Computer Assisted Self Interviews (know as "audio-CASI") in adult correctional facilities.

❖ ***Self reports by person in juvenile facilities***

A data collection agent has been identified for an 18-month cooperative agreement to design, develop and test audio-CASI in juvenile facilities.

❖ ***Self reports by soon to be released jail inmates and former state prisoners***

BJS is working with the Demographic Surveys Division of the U.S. Census Bureau to design and test survey methods for use with inmates at time of discharge from local jails and for former State prisoners on active parole supervision.

There are two ways in which reports of sexual assault in residential community corrections settings may occur:

1. Some information on experiences of sexual assault in community corrections residential facilities will be picked up in the inmate self report study which will survey former inmates in parole offices regarding the totality of their experiences in confinement. This survey will collect information on allegations of assault while in public and private confinement facilities and during the period of post custody supervision *which may include a period of time in a residential program or setting*. This study employs a sampling of parolees only; the data provides another way of assessing the validity of other administrative records and self-report collection results.

2. Departments of Corrections are required to report, in the annual administrative records collection, incidents of sexual assault among inmates under their jurisdiction that are housed in residential, pre-release or other types of community corrections facilities. Publicly operated residential programs housing only probationers will not be surveyed; and probationers and parolees in private facilities will not be picked up in any survey.

A comprehensive summary of data collection plans for PREA are provided in the BJS Status Report, Data Collections for the Prison Rape Elimination Act of 2003, June 30, 2004.

PREA OPERATIONAL CONSIDERATIONS

<p>APPLIES TO 24-HOUR PRISONS, JAILS AND RESIDENTIAL COMMUNITY CORRECTIONS SETTINGS</p>	<p>APPLIES TO PROBATION, PAROLE AND OTHER COMMUNITY STATUSES</p>	<p>APPLIES TO <u>ALL</u> CORRECTIONAL SETTINGS AND OFFENDERS</p>
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Why?		
Supports the elimination, reduction and prevention of sexual abuse within the corrections system	<p>Safer Communities</p> <ul style="list-style-type: none"> Public Health Issues – medical and mental health and transmission of STD’s Reduction of offender risk 	A systemic approach to correctional management which addresses zero tolerance of staff sexual misconduct, culture, professionalism and ethics and is supported by policy, law and training has a direct relationship to offender safety and safer communities
Prevent		
	<ul style="list-style-type: none"> Policies/training to ensure staff assess potential vulnerability and risk when returning an offender to a 24 hour correctional setting (age, gender, sexual orientation, offense, 1st offense). Policies/action steps to ensure staff reduce risk when returning offender to a 24 hour setting (recommend specific facility, housing unit, extra supervision) Policies/training re: re-entry planning to include the treatment, support and supervision needs of victims in 24 hour settings. 	<ul style="list-style-type: none"> Law: Ensure that all stakeholders know the provisions of State law criminalizing staff sexual misconduct: which offenders, staff and behaviors are covered. What are the penalties? Policy: to include employee ethic/code of conduct, volunteer responsibilities, contractor responsibilities, zero tolerance, medical and mental health protocol. Clarity in how employees, contractors, volunteers and offenders and their families are informed. Train: Ensure all staff, contractors, volunteers and stakeholders trained in PREA and Staff Sexual misconduct policies. Train staff first. Demystify process by training reporting/investigation/confidentiality process. Ensure staff have skills to work with offenders and maintain appropriate boundaries. Management and Operations: Ensure that managers review systemic and individual red flags.
Report		
	<ul style="list-style-type: none"> Development of Agency procedural guidelines to map reporting paths Assurance that allegations reported by 	<ul style="list-style-type: none"> Policy reflects employee reporting of allegations of staff sexual misconduct, and confidentiality requirements Policy reflects protections

	<p>probationers/parolees of previous facility sexual exploitation are reported internally and to appropriate law enforcement in accordance with policy and State law.</p>	<p>against retaliation and false allegations</p>
Respond		
	<ul style="list-style-type: none"> • Ensure staff trained in how to establish supportive relationships with offenders. • Ensure First Responders are trained and provide initial support • Ensure referral to treatment and other support services • Adjust supervision strategies of victim if appropriate 	<ul style="list-style-type: none"> • Systems exist which ensure that staff and offenders are referred to treatment and other support services • Systems exist to ensure differential supervision strategies of victim if appropriate. • Systems exist to manage media and staff fall- out, consistent with confidentiality requirements
Investigate		
	<ul style="list-style-type: none"> • Ensure investigations are assigned (internal/law enforcement) • Ensure investigations thorough • Ensure investigators trained • Ensure investigations swift • Manage the aftermath 	<ul style="list-style-type: none"> • Ensure reports made; investigations assigned; investigations are thorough; investigators are trained; investigative protocols are in place. • Use information to “add value” to the agency.