

Other PREA Resources:

- National Prison Rape Elimination Commission (www.nprec.us)
- Bureau of Justice Statistics Report on Sexual Violence (www.ojp.usdoj.gov/bjs/abstract/svrca04.htm)
- Bureau of Justice Assistance (www.ojp.usdoj.gov/BJA)
- Stop Prisoner Rape (www.spr.org)
- National Institute of Justice (www.ojp.usdoj.gov/nij/)
- Center for Innovative Public Policies (Susan McCampbell, cippinc@aol.com)
- American Probation and Parole Association (www.appa-net.org)
- International Community Corrections Association (www.icca.org)
- National District Attorneys Association (www.ndaa.org)
- National Judicial College (www.judges.org)
- The Moss Group, Inc. (www.mossgroup.us)

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PREA

PRISON RAPE ELIMINATION ACT

NIC / The Moss Group, Inc. Cooperative Agreement #05S18GJ10



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Prison Rape Elimination Act: Implications for Residential Community Corrections and Probation/Parole

The Facts



What is PREA?

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 all correctional systems. Sexual assault includes offender-on-offender (probationer/parolee) assault, as well as staff sexual misconduct with inmates, detainees, and offenders confined or living in community-based residential settings. The major provisions of PREA seek to:

- Develop standards for detection, elimination, and prevention of sexual assault and rape in correctional facilities.
- Collect and disseminate information on the incidence of sexual assault and rape in correctional facilities, whether it is inmate-inmate sexual assault or staff sexual misconduct with inmates.
- Award grants and technical assistance to help implement the Act.



To read the PREA law, go to www.nicic.org/Library/018994.

Does PREA apply to Residential Community Corrections and Probation and Parole Settings?

Yes, in several ways. PREA explicitly covers adult and juvenile offenders in community-based residential programs, including those administered by state, county, municipal authorities, or contracted providers. It also has implications for individuals on probation, parole, or other community legal statuses that have previously been in jail, prison, or community corrections residential placement. Both community corrections residential and probation and parole authorities have a responsibility to respond to all allegations of sexual assault, report, and assist in the investigation of such allegations and identify strategies for prevention of future abuse of a sexual nature.

Resources

- NIC Web site - www.nicic.org
- For information regarding the NIC PREA services and activities, contact:
Dee Halley, NIC Program Manager
1-800-995-6423, ext. 40374
dhalley@bop.gov
- Technical Assistance and training is offered under NIC cooperative agreement with The Moss Group, Inc., a criminal justice consulting firm that uses experienced practitioners to assist the field. For more information, contact:
Dr. Gary L. Dennis, The Moss Group, Inc.
1-877-546-1444, gdennis@mossgroup.us
- American University, Washington College of Law offers training under an NIC cooperative agreement on prison rape. For more information, contact:
Professor Brenda V. Smith, NIC/WCL Project on Addressing Prison Rape
1-202-274-4385
nic@wcl.american.edu or nicresearch@wcl.american.edu
- "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, contact Dr. Gary Dennis at The Moss Group, Inc., or Dee Halley at NIC (contact information listed above).
- The following PREA training videos are available through the NIC Information Center. Call 1-800-877-1461 to order copies:
 - *Facing Prison Rape, Part 1*
 - *Responding to Prison Rape, Part 2*
 - *Speaking Up: Discussing Prison Sexual Assault (inmate orientation video; available in male and female versions)*
 - *Keeping Our Kids Safe: The Prison Rape Elimination Act and Juvenile Justice*
- "Staff Sexual Misconduct with Inmates: A Policy Development Guide for Sheriffs and Jail Administrators" (www.nicic.org/pubs/2002/017925.pdf)
- Susan McCampbell, "The Gender-Responsive Strategies Project: Jail Applications," April 2006. (<http://www.nicic.org/Library/020417>)

More FAQs

6. What about offenders who either manipulate the system using PREA or make false allegations?

Administrators and employees are understandably concerned. Addressing PREA-related issues in policy and procedure, and educating offenders of their right to be safe, may initially result in offenders wrongly accusing employees or inmates of misconduct. Staff and offender orientation may result in an initial spike in reporting, or reports that “test” the system.



When both employees and offenders learn that there will be thorough, fair, and timely investigations – of all offenders – and consistent consequences for offenders who make intentionally false reports, experience has shown that the incidents of false allegations subside.

7. What if the prosecutor isn't interested in pursuing cases alleging staff sexual misconduct or offender-offender sexual assault?

As community corrections practitioners working in partnership with other branches of the criminal justice system, you are in a unique position to educate local prosecutors about the security and community health and safety implications of sexual misconduct and offender-offender sexual assault. Even if your prosecutor ultimately decides not to pursue a report, he or she may be helpful in providing advice on how to proceed with your own internal investigation.

What is the purpose of PREA?

PREA seeks to insure that residential correctional facilities protect offenders from all forms of sexual assault. Such violations affect security and staff safety, and result in harm to offenders, which can contribute to difficulties in re-entry from prison to the community and heighten the risk of continued criminal behavior. There are implications for probation and parole agencies, as well. Your role is to respond, report, and assure proper investigation of reported assault — and develop strategies designed to prevent future occurrences.

What should my agency be doing now?

Systemic Approach:

NIC recommends a “systemic approach,” using multiple strategies to develop a response to PREA. Probation and parole and community corrections residential facility authorities should review current policies, procedures, training, supervision strategies, and offender services that address sexual violence and abuse.

Other Suggestions:

- Examine your state's laws on staff sexual misconduct and sexual assault. Establish zero tolerance for this behavior.
- Review your policies and procedures regarding staff sexual misconduct.
- Evaluate the effectiveness of your grievance procedures.
- Evaluate the effectiveness of your investigative process.
- Assess training provided to employees, medical and mental health providers, volunteers, and contractors regarding your policies, procedures, and reporting requirements.
- Develop an action plan to address gaps in your current policies, procedures, operations, training, investigations, and medical and mental health services.
- Assure that individuals in residential programs or supervised on probation and parole are aware of your policies.
- Establish standards for the detection, reduction, prevention, and reporting of sexual assault.
- Review and help develop services to offenders who are victims of sexual assault. Identify non-profit groups in your area that provide services to victims of sexual assault.
- Check with state or county corrections agency to join their initiatives, if appropriate.
- Identify resources that can help you make your operations even safer and implement your plan.

Where can my agency go for help?

NIC Technical Assistance and training is available to help all community corrections agencies develop an approach to respond to PREA. The strategies outlined in this pamphlet can assist in finding low-cost, effective ways to address sexual abuse and violence. In addition, members of the Statewide Probation and Parole Executives have developed a policy statement, which provides guidance and is available through NIC.

To assist you in developing your policies, a *Policy Development Guide* is available through NIC (see Resources on p. 7). Training is also offered at state and national conferences such as the annual conferences of the American Probation and Parole Association (APPA) and the International Community Corrections Association (ICCA).

FAQs

1. Are there currently standards with which my agency must comply?

In Spring of 2008, the National Prison Rape Elimination Commission (NPREC) will publish draft standards that will apply to components of the corrections system, including community corrections. After a period of public comment, these standards will be forwarded to the U.S. Attorney General (A.G.) for review and dissemination. The A.G. will allow a year for accrediting agencies to review the standards before finalizing them.

2. Can my agency or I be sued for not complying with PREA?

The Prison Rape Elimination Act does not create any new cause of legal action. However, once the national standards are promulgated by the A.G. and become an accepted best practice, the potential liability of community corrections agencies will increase significantly, with regard to lawsuits under Title 42 of the U.S. Code, Section 1983 (civil rights protection), and the Eighth Amendment protection against cruel and unusual punishment based on the 1994 Supreme Court decision in *Farmer v. Brennan*, which created a deliberate indifference standard.

3. What are the consequences to my agency or facility for not complying with PREA?

It can be expected that, if you are sued, the plaintiff may argue that your agency has failed to comply with the standards of practice originating from the PREA to ensure offender safety. Agencies found to be non-compliant with the standards may face a 5% reduction in federal funding for each year they are out of compliance.

4. Can I get funding to help implement all this?

The Bureau of Justice Assistance (BJA) has completed two rounds of funding to state departments of corrections. Many of these states have indicated that they would like to collaborate with community corrections and probation and parole agencies. For more information, contact:

Julius Dupree, Policy Advisor, Bureau of Justice Assistance.
202-514-1928, Julius.Dupree@usdoj.gov

In addition, you may be eligible for technical assistance from NIC to work directly with your agency.



5. We have no reports of staff sexual misconduct, or reports of present or previous offender-offender sexual assault. Why should I be concerned about PREA?

Community Corrections agencies are not immune to staff sexual misconduct and offender-offender sexual assault. In addition, they may fail to receive reports of abuse, because of a lack of staff training, a strong “code of silence,” or unclear or compromised reporting mechanisms for employees and offenders.

All organizations should examine their reporting processes to insure that administrators who receive reports, investigate them. Even if there are no allegations about occurrences, remember that offenders under your care or supervision may have been victimized during a prior incarceration or residential placement. The systemic approach helps provide an environment in which offenders may report previous victimization. Your role will then be to **respond**, **report**, and assure proper **investigation**.