

**Report to the Congress of the United States
on the Activities of the Department of Justice
in Relation to the
Prison Rape Elimination Act
(Public Law 108-79)**

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Introduction

This is the fifth annual report to Congress mandated by the Prison Rape Elimination Act of 2003 (P.L. 108-79). This report fulfills Section 5(b) of the Prison Rape Elimination Act, which requires the National Institute of Corrections to submit an annual report to Congress and to the Secretary of Health and Human Services summarizing the activities of the Department of Justice regarding prison rape abatement for the preceding calendar year. This report is also being provided to the Director of the Bureau of Justice Statistics as required by the Act.

The first report to Congress summarized the activities of the Department of Justice for fiscal year 2004 (October 2003 – September 2004). This was done because the law was new and it was important to report on the many significant accomplishments of the Department in the months after the Act became law. The second report covered the months of October – December 2004 in order to get annual reports on a cycle that matches the statutory mandate of reporting information by calendar year. This report covers calendar year 2007.

Background

On September 4, 2003, the Prison Rape Elimination Act of 2003 (PREA) was signed into law. The Prison Rape Elimination Act is legislation that establishes a standard of zero tolerance for rape and sexual assault in any prison, jail, police lockup, or juvenile facility. The law gives several components within the Department of Justice (DOJ) specific tasks:

- **Bureau of Justice Statistics** – The PREA requires the Bureau of Justice Statistics (BJS) to collect, review, and analyze the incidence and effects of prison rape. The analysis will include “the common characteristics of both victims and perpetrators, and prisons and prison systems with high incidence rates.”
- **Review Panel** – The PREA mandates that the Department of Justice create a Review Panel to conduct hearings on prison rape. The Review Panel will have subpoena power to call officials who run the three facilities with the highest incidence of prison rape and the two facilities with the lowest incidence of prison rape in each category of facilities (prisons, jails, and community corrections).
- **National Institute of Corrections** – The PREA mandates that the National Institute of Corrections (NIC) offer training and technical assistance and provide a national clearinghouse for information. NIC is also required to produce an annual report to Congress.
- **Attorney General’s Office** – The Attorney General is authorized to award grants to States to assist with the implementation of PREA requirements. The Bureau of Justice Assistance (BJA) and the National Institute of Justice (NIJ) are responsible for the development and administration of these grant programs.

In addition, the Attorney General will publish national standards for the detection, prevention, reduction, and punishment of prison rape. These standards will be developed and recommended by the National Prison Rape Elimination Commission established under Section 7 of the PREA.

Note: Because the National Prison Rape Elimination Commission is not part of the Department of Justice, the activities of that Commission are not included in this report.

Activities and Accomplishments

This report describes the activities and accomplishments of the Office of Justice Programs, the National Institute of Justice, the Bureau of Justice Statistics, the Review Panel on Prison Rape, the Bureau of Justice Assistance, and the National Institute of Corrections with regard to the requirements of PREA for calendar year 2007.

Office of Justice Programs (OJP)

The Department of Justice's Office of Justice Programs (OJP) was created to provide leadership in developing a national capacity to prevent and control crime, administer justice, and provide assistance to victims of crime. OJP and its various components accomplish this through partnerships with other Federal agencies and with State and local agencies, as well as through partnerships with national and community-based organizations.

Congress included funds for PREA in the FY 2007 OJP appropriation. OJP allocated funds for the tasks required under PREA in the budgets of the appropriate OJP components. OJP also made funding available to NIC for PREA activities through an Interagency Agreement between the two agencies.

The PREA activities of the following components of OJP are described in this report:

- National Institute of Justice
- Bureau of Justice Statistics
- Review Panel on Prison Rape
- Bureau of Justice Assistance

National Institute of Justice (NIJ)

Legislative Mandate

Even though prison rape was an area of significant study prior to PREA, Congress noted in its findings that "insufficient research" has been conducted and "insufficient data reported." One of the purposes for passing the PREA was to "increase the available data and information on the

incidence of prison rape, consequently improving the management and administration of correctional facilities.”

Section 4 of the PREA mandates the development and implementation of a major research effort. While a significant portion of the work is to be carried out by the Bureau of Justice Statistics, the Attorney General is also authorized to provide grants to carry out research. NIJ was tasked to process and award these research grants. The following is a description of NIJ activities in accordance with this mandate during calendar year 2007.

Research Awards and Activities

New Awards and Activities

NIJ made one research grant in 2007. The award was under a solicitation that focused on evaluating programs and technologies designed to prevent sexual violence in correctional facilities. The grant was made to the Urban Institute for a research project that involved an evaluation of a radio frequency identification (RFID) program in an Ohio women’s correctional facility. The study involves the collection of data on inmate infractions and incidents of sexual or physical violence prior to and following the implementation of the RFID program. Another women’s facility that does not employ the RFID technology is being used as a comparison site to determine if the use of RFID reduces infractions and incidents of sexual and physical violence.

NIJ continues to work in partnership with the Bureau of Justice Statistics and the Centers for Disease Control on a passive medical surveillance project that is designed to detect sexual violence reported to prison and jail medical personnel. The data collection instrument was developed and finalized in 2007. Implementation of the instrument is expected to begin in early 2008.

Bureau of Justice Statistics (BJS)

Legislative Mandate

In keeping with the Congressional finding of “insufficient research” and “insufficient data reported,” Section 4 of the PREA tasks BJS with conducting a “comprehensive statistical review and analysis of the incidence and effects of prison rape.” BJS is charged with several complex tasks, including to:

- ▶ Solicit views from correctional and juvenile authorities, former inmates, victim advocates, researchers, and other experts;
- ▶ “Carry out, for each calendar year, a comprehensive statistical report and analysis of the incidence and effects of prison rape;”
- ▶ Sample “not less than 10 percent of all Federal, State, and county prisons, and a representative sample of municipal prisons;”
- ▶ “Use surveys and other statistical studies of current and former inmates;” and

- ▶ “Not later than June 30 of each year...submit a report...with respect to prison rape, for the preceding calendar year.”

The following is a description of BJS activities for calendar year 2007 in accordance with this mandate.

Expert Panel Meetings

On behalf of BJS, the Justice Research Statistics Association (JRSA) organized a national workshop in Washington, DC, in August 2007 for the rollout of the juvenile facility portion of the PREA data collection efforts. The commissioner of each State’s juvenile corrections system and other practitioners, researchers, and stakeholders in the juvenile corrections arena were invited to attend. Participants at the workshop were briefed on the results from the pretest from the juvenile facility survey and plans for implementation of the National Survey of Youth in Custody.

Also in August 2007, JRSA organized a meeting at the Office of Justice Programs to discuss the strategy for ranking prison facilities using data collected from the National Inmate Survey. The meeting consisted primarily of correctional administrators and researchers.

Administrative Survey Collections

Data from the third round of the Survey of Sexual Violence were published in August 2007. The report, titled *Sexual Violence Reported by Correctional Authorities, 2006*, details allegations and investigations of sexual violence and the outcomes of investigations for State prison systems, the Federal Bureau of Prisons, and a national sample of private prisons, local jails, and juvenile facilities. BJS also collected aggregated counts of sexual violence and case-specific information on each substantiated incident of sexual violence.

Victim Self-Report Survey Collections

BJS has cooperative agreements with three entities to develop, test, and implement the audio computer-assisted self interview methodology for prison and jail inmates, youthful offenders in residential placement, and former inmates on parole supervision.

- ▶ Research Triangle International (Raleigh, NC) completed the first year of the National Inmate Survey in December 2007. As a result, BJS published prevalence rates for sexual assaults in State and Federal prisons that month. It is anticipated that the data regarding sexual assaults in jails will be delivered to BJS in the beginning of March 2008 and that a report on the prevalence of sexual assaults in jails will soon follow.
- ▶ Westat, Inc. (Rockville, MD) and BJS presented the results of the pretest of the National Survey of Youth in Custody to a meeting of correctional practitioners and stakeholders in Washington, DC, in August 2007. BJS has submitted the survey instrument OMB for approval.

- ▶ National Opinion Research Center (Chicago, IL) and BJS received approval from the Office of Management and Budget for the implementation of the Former Prisoner Survey in December 2007. National implementation will begin in January 2008.

Coordination Efforts

BJS met periodically with the following Federal partners throughout 2007 to discuss PREA implementation issues:

- ▶ National Institute of Justice
- ▶ National Institute of Corrections
- ▶ Bureau of Justice Assistance
- ▶ Office of Juvenile Justice and Delinquency Prevention
- ▶ Office of Civil Rights
- ▶ National Prison Rape Elimination Commission

BJS personnel made presentations about the implementation of PREA at the following professional conferences during 2007:

- ▶ American Correctional Association
- ▶ Association of State Correctional Administrators
- ▶ American Jail Association
- ▶ Council of Juvenile Correctional Administrators
- ▶ American Probation and Parole Association
- ▶ Justice Research and Statistics Association

PREA-Related Publications

Sexual Violence Reported by Correctional Authorities, 2004 (July 2005)

<http://www.ojp.usdoj.gov/bjs/abstract/svrca04.htm>

Sexual Violence Reported by Correctional Authorities, 2005 (July 2006)

<http://www.ojp.usdoj.gov/bjs/pub/pdf/svrca05.pdf>

Sexual Violence Reported by Correctional Authorities, 2006 (August 2007)

<http://www.ojp.usdoj.gov/bjs/pub/pdf/svrca06.pdf>

Sexual Victimization in State and Federal Prisons Reported by Inmates, 2007 (December 2007)

<http://www.ojp.usdoj.gov/bjs/pub/pdf/svsfpri07.pdf>

Review Panel on Prison Rape

Legislative Mandate

The PREA mandates that the Bureau of Justice Statistics collect, review, and analyze data about the incidence and effects of prison rape; identify common characteristics of victims, perpetrators, prisons, and prison systems; and rank the institutions surveyed according to the incidence of prison rape in each. To assist the Bureau with these tasks, the Act established a Review Panel on Prison Rape. The Panel consists of three members appointed by the Attorney General and is

assisted through consultation with the Secretary of Health and Human Services. The Panel is required to hold public hearings each year concerning the operation of the three prisons with the highest incidence and the two prisons with the lowest incidence of prison rape.

Information Gathering

The Review Panel was able to identify the three prisons with the highest incidence of prison rape and the two prisons with the lowest incidence rates based on the data that the Bureau of Justice Statistics continued to collect throughout 2007.

Although the Review Panel did not hold hearings during 2007, the Panel did submit a report to Congress that highlighted selected portions of the BJS report titled *Sexual Victimization in State and Federal Prisons Reported by Inmates, 2007*. The Review Panel's report described how the Panel used the BJS findings to identify the prisons that would be examined during hearings to be held in 2008 (see *Report To The United States Congress: Activities of the Review Panel on Prison Rape in Calendar Year 2007*).

Bureau of Justice Assistance (BJA)

Legislative Mandate

A major reason for the enactment of PREA was to provide a means to overcome (1) the harmful effects on the victims of prison rape, (2) the disruption to institution operations, and (3) the demands placed on the communities to which these victims return. To help ensure that budgetary constraints and reduced spending on corrections at the State and local government levels do not compromise efforts to "protect inmates and safeguard communities," Section 6 of the PREA authorizes the Attorney General to award grants to the States, the District of Columbia, and all United States territories and possessions for personnel, training, technical assistance, data collection, and equipment.

The PREA specified that applicants meet three requirements: (1) grant awards are to be made for a period of not more than 2 years; (2) awards must include a 50-percent match by the applicant; and (3) awards must not exceed \$1,000,000. The PREA stipulated that the application is to include: (1) a certification that the State has adopted or, depending on the date of the application, will consider adopting all national prison rape standards promulgated under the Act; and (2) a description of the preventive, prosecutorial, or administrative activities to be undertaken using the grant funds. In addition, the PREA prescribed requirements for reports at the end of the grant period.

The Bureau of Justice Assistance (BJA) provides a range of services to the criminal justice field with the goal of making communities safer. These services include training, technical assistance, information, and funding to State and local justice programs. Given the task of administering the PREA grants, the BJA designed the Protecting Inmates and Safeguarding Communities Discretionary Grant Program. BJA requested proposals and awarded grants in FY

2004 and FY 2006. With subsequent appropriations, BJA has engaged in other projects to assist corrections systems address the issue of prison rape.

The following is a description of BJA activities in accordance with the Bureau's legislative mandate during calendar year 2007.

Grant Accomplishments

Following is a review of the accomplishments of the correctional agencies that received PREA grants under the BJA program.

Arkansas

The Arkansas Department of Corrections identified and assembled a team of investigators who attended advanced training in sex crime investigation and who will specialize in inmate sexual assault investigations. In addition, the Department's internal affairs unit has implemented a PREA procedural checklist and protocol to be used when an inmate sexual assault is reported.

California

The California Department of Corrections purchased and installed video surveillance equipment at the three institutions. The Department is collecting data through the use of this equipment and will analyze and compare this data with information collected from other facilities to determine the effectiveness of cameras to deter, prevent, and prosecute sexual assault.

Delaware

The Delaware Department of Corrections held a stakeholder retreat to develop a State-wide PREA policy.

Florida

Facilities Services Staff in the Florida Department of Corrections completed a site visit to Brevard Correctional Institution and met with the prison's architects. The Facility Services Staff ordered the retrofitting of several cells, and a "PREA Unit" was established at the institution. The PREA Unit was supported by additional positions and equipment.

Idaho

Staff from the Idaho Department of Corrections received training on the evidence collection process used in the local hospital, the role of the victim/witness coordinator, and barriers to prosecution from a sexual assault nurse examiner, a community victim/witness coordinator, and a local prosecutor. In addition the Department's PREA Coordinator conducted informational meetings with the Department's Program and Education Division regarding assessment training for clinicians, probation officers, and parole officers.

Indiana

The Indiana Department of Corrections completed a number of activities, including: (1) identifying juveniles and adults who are vulnerable to victimization or who may be sexual predators; (2) developing and implementing an inmate sexual violence survey; (3) developing an assessment tool to determine an institution's sexual climate; (4) monitoring 100 sexual offenders in 3 counties using a global positioning system; (5) purchasing and installing surveillance equipment in two facilities; (6) conducting a PREA Summit, which included community partners, facility personnel, and inmates; and (7) conducting a session of sexual assault training for Department staff.

Kansas

The Kansas Department of Corrections purchased and installed surveillance cameras at two facilities, hired a sexual abuse consultant, and initiated a review of their sexual assault policies. In addition, a number of specifically identified staff received training in case management and release planning.

Kentucky

The Kentucky Department of Corrections used grant funds to support various training events, including a train-the-trainer session during a conference for jail practitioners. The Department's PREA Project Director and a representative from the jail inspection unit presented PREA training throughout the State.

Maryland

The Maryland Department of Public Safety and Correctional Services purchased and installed surveillance cameras at two facilities.

Minnesota

The Minnesota Department of Corrections purchased cameras and installed them in institution day-rooms, bathrooms, classrooms, recreation areas, laundry rooms, work sites, and other areas where inmates may be vulnerable to assault and where constant and direct observation is not feasible. The Department has ordered a video management software platform, servers, and storage units to record and archive the video. In addition, the Department developed a 7-hour train-the-trainer module and a 4-hour sexual assault investigation training module and delivered these modules to 38 corrections professionals.

Missouri

The Missouri Department of Corrections used funds to purchase and install camera equipment to survey and to work to prevent sexual assault in locations where such assaults are likely to occur.

Montana

The Montana Department of Corrections developed a PREA compliance monitoring tool that is being used as a part of Department's operational audits. In addition, the Department conducted two PREA training-for-trainers events that were attended by 36 participants.

Nebraska

The Nebraska Department of Corrections conducted a 5-day training program titled "Assessment and Management of Psychopathy in Correctional Settings." The training was held at the University of Nebraska-Lincoln and included a session on sexual abuse of inmates.

New Hampshire

The New Hampshire Department of Corrections reviewed and revised its policy and procedures regarding inmate-on-inmate, staff-on-inmate, and inmate-on staff sexual assault. In addition, the Training Director and the Research and Development Unit Manager attended a training-the-trainers meeting, developed a PREA curriculum, and integrated the curriculum into training at the Department's Corrections Academy.

North Carolina

The North Carolina Department of Corrections provided agency-wide training for staff, correctional agents, volunteers, and other individuals who come in contact with or provide services to the offender population. Thirty-two staff were trained as instructors, 248 staff were trained to specialize in PREA investigations, and 200 staff were trained as PREA support personnel (responsible for linking inmate victims to victim services). A total of 20,753 Department staff have been trained to date.

Ohio

The Ohio Department of Youth Services is conducting the following activities: (1) drafting a systemic model of treating juvenile sex offenders in conjunction with the guidance of the Center for Sex Offender Management and an Interagency Ohio Advisory Board; (2) developing and pilot testing a Community Education Curriculum that will promote a comprehensive approach to the effective management of juvenile sex offenders within the community; (3) developing a system map to document the decision points in the juvenile justice process, the decision makers at each of those points, and the flow of offenders through the process; and (4) completing a Population Profile and Resource Survey to identify and describe the services and resources available to support juvenile sex offenders.

Oregon

A number of Oregon Department of Corrections staff attended several training events to gain a better understanding of the problem of sexual violence in prison. Approximately 90 staff,

comprising the Department's Sexual Assault Response Teams, attended an NIC-sponsored workshop for first responders. The Department also completed its PREA database and implemented an inmate training program at its women's prison. By the end of 2007, approximately 400 inmates had completed the training.

Pennsylvania

The Pennsylvania Department of Corrections completed the final testing and implementation of enhancements to the Department's PREA database. These enhancements ensure that reports of sexual activity are recorded and addressed.

South Dakota

The South Dakota Department of Corrections completed a facility assessment to determine the need for surveillance equipment. In addition, new staff completed PREA training through the Department's Pre-Service and In-Service Training Programs, and the Department held a multi-agency training conference.

Tennessee

The Tennessee Department of Corrections held a State-wide PREA conference in July 2007. The State's 13 institution-based PREA coordinators, the State PREA Coordinator, the Director of Mental Health Services, and other key staff discussed the Prison Rape Elimination Act, the Department's efforts to address sexual violence in the State's prison system, the reporting of incidents and allegations of sexual violence, and the State's PREA grant funds.

Texas

The Texas Department of Criminal Justice's Sexual Assault Nurse Examiner conducted in-service training on sexual assault forensic medical examinations for 176 health care providers at 20 facilities and provided a training session titled "Conducting a Forensic Collection Kit" for 106 participants at 5 Regional Safe Prisons Program Training sessions and 53 Regional Offender Victim Representative Training sessions.

Wisconsin

The Wisconsin Department of Corrections hired a full-time PREA Director in March 2007. The new Director conducted training for personnel at a number of County Sheriff's Offices. The Department also created and distributed 1,000 PREA posters to all State prisons and developed and distributed copies of a brochure that communicates the Department's zero-tolerance policy.

Wyoming

The Wyoming Department of Corrections developed a variety of training materials including PREA slide presentations, handouts, brochures, resource binders, and evaluation materials.

Training was provided for custody and non-custody staff at the State's four institutions and to staff in the Central Office. The PREA Coordinator worked closely with the Chief of Operations to draft a policy that addresses sexual misconduct against inmates. The policy covers training, incident reporting, investigation of incidents, agency reporting requirements, and confidentiality.

Other Assistance Activities

BJA also worked with the National Institute of Corrections and other partners to develop guidance for criminal justice professionals charged with addressing prison sexual assault.

Aid to Judges and Prosecutors

An award was made to the National Center for the Prosecution of Violence Against Women within the National District Attorneys Association (NDAA) to work in collaboration with the National Judicial College (NJC) on the creation of resource materials for prosecutors. The effort produces two resources: (1) "The Prosecution of Prison Rape and the Prison Rape Elimination Act: A Model Curriculum for Prosecutors," which contains videos, an electronic slide show, and an instructor's manual to facilitate training on the prosecution of prison rape; and (2) "The Prosecution of Prison Rape: The Prison Rape Elimination Act," which is a CD designed to teach prosecutors how to prepare and prosecute prison rape cases. The NDAA has disseminated more than 3,000 of these CDs and has provided training to State and local prosecutors.

NJC has published two new resources that provide judges with an overview of the Prison Rape Elimination Act: (1) a CD titled "What Judges Need to Know About Prison Rape: The Prison Rape Elimination Act" and (2) "The Prison Rape Elimination Act of 2003: Curriculum for Judges." NJC has disseminated more than 1,200 of the CDs and has provided in-person training to State court judges.

Further information can be found at:

www.ndaa.org/apri/programs/vawa/eradicate_prison_rape.html and
www.judges.org/news/news121907.html

Aid to Local Law Enforcement

An award was made to the Center for Innovative Public Policies (CIPP) to provide support to State and regional law enforcement officials, individual sheriffs and sheriffs associations, and chiefs of police in the form of PREA presentations, on-site technical assistance, and a policy development guide to assist these officials and agencies as they update and revise policies and procedures to address sexual assault in jails. CIPP also offers a sexual assault prevention and intervention curriculum focused on training law enforcement agents during roll calls, educating agency leadership and policymakers, and equipping employees and supervisors involved in day-to-day jail operations. To date, nearly 450 law enforcement personnel have received such training.

National Institute of Corrections (NIC)

Legislative Mandate

The PREA gives NIC three primary tasks:

- **Training and Education** - NIC will provide periodic training and education programs for Federal, State, and local authorities responsible for the prevention, investigation, and punishment of prison rape.
- **National Clearinghouse** - NIC will provide information and assistance to Federal, State, and local authorities responsible for the prevention, investigation, and punishment of instances of prison rape.
- **Reports** - By the end of September of each year, NIC will submit a report to Congress and the Director of Health and Human Services summarizing the activities of the Department of Justice regarding prison rape abatement. This report shall be available to the Director of the Bureau of Justice Statistics.

The following is a description of NIC activities in accordance with this mandate during 2007.

Classroom Training

During 2007, NIC provided training on staff sexual misconduct and offender-on-offender abuse under a cooperative agreement award with American University's Washington College of Law in Washington, DC.

Responding to Inmate-on-Inmate Sexual Violence

A session titled "Responding to Inmate-on-Inmate Sexual Violence" was conducted from March 11-16, 2007. Participants were provided updated information on the activities being conducted under the Prison Rape Elimination Act, and the session included modules focused on inmate-on-inmate sexual misconduct and abuse. Twenty-four participants from prisons in the States of Massachusetts, Oklahoma, South Dakota, Wisconsin, Wyoming, and from jails in Barnstable County, Massachusetts, and St. Louis County, Missouri, attended the training.

Experts representing the areas of human sexuality, victim services, classification systems, and sexual assault prevention observed, taught, critiqued, and otherwise contributed to the program. The training session included the following modules: An Overview and Update of the Prison Rape Elimination Act, Sexual Behavior in Institutional Settings, Institutional Culture, Systemic Approach, State Laws and Their Impact on Inmate-on-Inmate Sexual Violence, Impact of Past Victimization on Men and Women, Special Concerns of Sexual Minorities, Medical and Mental Health, Preventing Inmate-on-Inmate Sexual Violence, Staff and Agency Response to Inmate Sexual Violence, Investigating Inmate Sexual Violence, Administrative Sanctions, Prosecuting

Inmate-on-Inmate Sexual Violence, Legal Liability for Prison Sexual Violence - Staff and Inmates, and Tools for an Effective Response to Inmate-on-Inmate Sexual Violence. The program included discussions on policy development and action planning.

Addressing Staff Sexual Misconduct with Youth in Custody

A training session titled “Addressing Staff Sexual Misconduct with Youth in Custody” was conducted from July 9-13, 2007. Eight three-person teams from the Mobile County Juvenile Court (AL), the Alaska Division of Juvenile Justice, the Gila River Indian Community (AZ), the Yavapai County Juvenile Detention (AZ), the Idaho Department of Juvenile Justice, the Portage-Geauga County Juvenile Detention Center (OH), the South Carolina Department of Juvenile Justice, and the Texas Juvenile Probation Commission attended the training.

The curriculum evolved from a program provided to personnel from the Kentucky Department of Juvenile Justice in November 2005. The program was updated with the latest PREA-related information and with modules on adolescent sexuality, human development, and providing victim services to youth in custody. The training session also included the following modules: An Overview and Update of the Prison Rape Elimination Act, Adolescent Development, Sexuality, Culture - Agency and Youth, A Comprehensive Model for Addressing Sexual Abuse of Youth in Custody, Laws and Their Impact on Addressing Sexual Abuse of Youth, Prevention and Operational Practices, Victimization Histories of Youth and Vulnerable Victims, Medical and Mental Health Care, Investigating Sexual Abuse of Youth in Custody, Prosecuting Sexual Abuse of Youth in Custody, Human Resources and Administrative Sanctions, and Legal Considerations. The training included discussions on policy development, training, and action planning.

Investigating Allegations of Staff Sexual Misconduct with Offenders

From July 15-20, 2007, NIC provided training on investigating allegations of staff sexual misconduct to 20 participants (grouped in four-person teams) from Barnstable County, Massachusetts; King County, Washington; the Miami-Dade Department of Corrections and Rehabilitation; the Texas Juvenile Probation Commission; and the Wisconsin Department of Corrections. The session included the following modules: An Overview and Update of the Prison Rape Elimination Act, State Laws and Investigations, Agency Culture, Training for Investigators in a Correctional Setting, Investigative Policy, Operational Practices, Investigative Techniques, Medical and Mental Health Care, Gender and Victimization, the Role of Prosecutors in Cases of Staff Sexual Misconduct, Media, Human Resource Issues in Investigations of Staff Sexual Misconduct, Legal Liability, and Investigations. The training also included discussions on policy development, training, and preparation of action plans.

Feedback received from previous training programs indicated the need to involve prosecutors in training regarding investigations of sexual assault. In 2006, NIC added a requirement that each participating agency add a prosecutor to its applicant team. As part of the training, three special sessions were held for the prosecutors. During these sessions, participants discussed critical issues for prosecutors, the role of investigators, barriers to successful prosecutions, tools for

prosecutors, what prosecutors need from corrections, overcoming barriers using other legal tools, and recommendations for future training.

Structure of NIC Training

NIC's PREA training programs are designed for teams of individuals who have the authority to implement any needed changes upon return to their agencies. As of December 2007, every State prison system has participated in training on addressing one or more elements of sexual misconduct or sexual abuse in a correctional setting. Administrations have changed, and with turnover among the senior staff at correctional agencies, some States have requested and have been allowed to send additional staff to these programs. Sheriffs and jail administrators continue to be interested in and are selected to attend these programs. Because juvenile agencies are included within the scope and mandate of PREA, teams of juvenile practitioners are being accepted into the programs and, as noted above, were provided a training program in 2007 that was tailored specifically for juvenile practitioners.

These three programs were evaluated under a separate cooperative agreement. Overall, the participant response was very positive. Eighty-five percent of the trainees believed the scope of the program was appropriate, 95 percent believed the material was appropriate for the audience, and 93 per cent indicated they would recommend the program to others.

Web Chats

In an effort to reach a broad audience, NIC incorporated several web chats into the cooperative agreements with American University's Washington College of Law (AU/WCL). The web chats were the result of a recommendation made from a retrospective evaluation of the AU/WCL project.

Participants of previous training sessions suggested the need for contact with project staff on a regular basis for assistance on a variety of issues. Through its list-serve, the AU/WCL project staff polled former program participants regarding potential topics. Participants expressed the need for information on cross-gender supervision, PREA implications for juvenile justice agencies, and the PREA standards under development by the Prison Rape Elimination Commission.

Using the web chat structure, an event is announced, applications are submitted, and participants are selected. In preparation for the event, participants are instructed to view a 1-hour video that is posted 48 hours prior to the event and is accessible only to the participants. Previewing the video allows participants to consider the content, discuss the issue with others in their agencies, and develop questions. The 1-hour web chat is conducted online in real time with a subject matter expert.

Cross Gender Supervision: Legal Liability for Correctional Agencies and Administrators

The first and only web chat in 2007 was held on November 8. It addressed legal liability for correctional systems and administrators that use cross-gender supervision in their agencies. While Title VII of the Civil Rights Act of 1964 requires equal job opportunities for both men and women, the courts have acknowledged that in some instances gender can be a bona fide occupational qualification (BFOQ) in certain positions in correctional facilities. This web chat explored the justification and use of BFOQ positions, policy decisions, relevant case law, and other challenges in implementing cross-gender and same-gender supervision practices. The event was offered to PREA coordinators, human resource managers, operations managers, legal counsel, personnel involved in legal training, wardens, jail administrators, and department directors. Forty-three individuals participated in the web chat.

Ninety-two percent of the participants perceived their participation in the web chat to be positive and believed the information to be relevant to their work. Eighty-five percent believed the web chat format to be a useful tool. A number of participants provided recommendations to improve the process.

Professional Conferences

NIC presented a number of workshops at meetings and conferences sponsored by a variety of national professional correctional organizations. These workshops provide an opportunity to disseminate information about PREA and its requirements, as well as to gain input from the field. During calendar year 2007, NIC provided training and information at the following events:

American Jail Association - 23rd Annual Training Conference and Jail Expo 2007
Nashville, TN
May 20, 2007

National Sheriffs' Association Conference
Salt Lake City, UT
June 2007

International Association of Correctional Training Personnel
Charleston, WV
October 17, 2007

International Community Corrections Association
San Diego, CA
October 28, 2007

Informational Videos

Informational Video Distribution

The production and distribution of video materials has been a key strategy of the NIC PREA Initiative. *Facing Prison Rape* (a 23-minute introduction to PREA), *How the Prison Rape Elimination Act Affects You* (a 3-hour video conference), *Responding to Prisoner Rape* (a 26-minute exploration of initial strategies), *Assessing Your Agency's Response to Prison Sexual Assault* (a 6-hour video training session), and *Speaking-Up* (a brief video orientation for inmates) are video productions available to correctional and criminal justice officials. Many of these productions are accompanied by training materials and facilitator's guides to make up a "tool kit" designed to help agencies address the issue of sexual abuse and sexual violence in correctional settings. *Speaking-Up* is available in both English and Spanish, and separate versions are available for both male and female inmates. A correctional agency's use of these video productions depends on the audience and its level of PREA knowledge and experience. Distribution of these videos continued throughout 2007. Distribution of a sixth product titled *Keeping Our Kids Safe* began in 2007.

These materials are produced in CD, DVD, and VHS tape format. During this reporting period, 2,330 of these video productions were shipped to correctional agencies, given to class or workshop participants, or distributed at professional conferences.

Interactive Video/E-Learning: First Responders

Because the response of correctional staff, contractors, and volunteers to a report of sexual abuse or sexual assault is critical to the investigation of the incident, NIC developed a training program specifically for first responders to these incidents. It is important that anyone who witnesses an event; receives a report from an inmate, friend, or family member; or observes behaviors that he or she suspects as sexual misconduct or abuse understand how to treat the situation and take appropriate action steps. Because there are so many potential first responders, NIC decided to develop an interactive, e-learning package that could be offered through the Institute's e-learning center. NIC began planning for this resource in March 2007 and anticipates that the course, *Sexual Offenses in Correctional Facilities: A First Responder's Role*, will be available in April 2008.

Technical Assistance

NIC has provided technical assistance to correctional agencies for over 30 years. Technical assistance includes informational presentations, written materials, training events (ranging from 4-hour workshops to multi-phased programs presented over several weeks), and targeted assistance tailored to a requester's specific needs. For technical assistance regarding PREA, NIC has assembled a cadre of individuals with expertise in all areas that the law addresses, including: investigation of sexual assaults, male inmate violence, medical and mental health care, legal issues, institution operations, community corrections, faith-based programs and resources, staff

sexual misconduct, and research and evaluation design. NIC adds expertise to this cadre as required to meet specific technical assistance needs.

Requests for technical assistance with regard to PREA have increased steadily since the law was enacted. These requests fall into four broad categories: (1) informational assistance, (2) training, (3) systemic planning, and (4) assessment and intervention. NIC provided 56 technical assistance events during 2007. Most of the requests were for information and training.

The informational assistance events included presentations at professional conferences and meetings designed to provide a general overview of the PREA, noting that the law addresses both staff sexual misconduct and inmate-on-inmate sexual assault, describing its potential impact on the correctional agency, and reporting on the roles of the various Federal agencies tasked with its successful implementation. Following are lists and descriptions of the informational assistance and training provided by NIC.

Agencies Receiving Informational Assistance

- ▶ American Correctional Association
- ▶ American Correctional Association Juvenile Forum
- ▶ American Probation and Parole Association
- ▶ Association of Correctional Health Service Administrators
- ▶ Association of State Correctional Administrators
- ▶ Construction and Maintenance Institute for Criminal Justice Agencies
- ▶ Federal Probation and Parole Officers Association
- ▶ International Community Corrections Association
- ▶ Iowa Department of Corrections
- ▶ Michigan Sheriffs' Association
- ▶ Montana Correctional Association
- ▶ National Sheriffs' Association
- ▶ New Mexico Children, Youth, and Families Department
- ▶ Ohio Department of Corrections and Rehabilitation
- ▶ South Carolina Department of Juvenile Justice

Training Assistance

- ▶ American Jail Association: A 1-day conference event was provided and addressed appropriate first responder actions and prosecutions.
- ▶ Alabama Department of Corrections: Training was conducted on investigations and first responder issues.
- ▶ Alabama Department of Youth Services: A 2-day basic PREA session was held for administrative and line staff.
- ▶ Colorado Division of Youth Corrections: A 1-day basic PREA session was held for executive staff, managers, training personnel, and clinical directors.
- ▶ Dallas County, Texas: North Texas juvenile justice professionals received basic PREA training hosted by the Dallas County Juvenile Department.

- ▶ Georgia Department of Corrections: Training was conducted on investigations and first responder issues.
- ▶ Georgia Department of Juvenile Justice: A training-for-trainers program was conducted for agency staff and staff trainers.
- ▶ Hawaii Department of Public Safety: An overview of PREA was presented for wardens and key stakeholders.
- ▶ Hawaii Office of Youth Services: A 1-day event was held for facility administrators and staff training personnel.
- ▶ International Association of Correctional Training Personnel: The content and use of the NIC e-learning course for first responders was introduced to correctional training directors and staff trainers.
- ▶ Iowa Department of Corrections: Training was conducted addressing the impact of past childhood trauma and sexual assault on inmates.
- ▶ Iowa Department of Human Services: An executive briefing was held for the agency head and staff training was provided at the male and female juvenile facilities.
- ▶ Kentucky Department of Juvenile Justice: A 2-day training session on PREA was conducted for child care providers under contract with the Department.
- ▶ Louisiana Department of Public Safety: Training was conducted on investigations and first responder issues.
- ▶ Management and Training Corporation: Wardens and corporate executives were provided training on the investigative process.
- ▶ Maine Jail Association: Two 1-day basic PREA training sessions were held for jail administrators.
- ▶ Maricopa County Adult Probation: Information and training was provided to assist with the development of a curriculum package.
- ▶ Massachusetts Department of Corrections: Training was conducted at the women's prison in Framingham.
- ▶ Massachusetts Department of Corrections: A 2-day session was provided to instruct Department staff on the role of first responders.
- ▶ Massachusetts Department of Youth Services: Four days of PREA training were provided for department staff, child care providers, and other key stakeholders.
- ▶ Michigan Bureau of Juvenile Justice: PREA training was provided at a conference sponsored by the Bureau and attended by stakeholders from across the State.
- ▶ New Jersey Department of Corrections: A 1-day session was conducted to provide an overview of PREA and training on victimization in a correctional setting and the development of policies.
- ▶ North Carolina Department of Corrections: Department trainers received the basic training-for-trainers program.
- ▶ Office of Juvenile Justice and Delinquency Prevention (OJJDP): An overview of PREA and a discussion of the impact of the law on juvenile facility operations was provided to OJJDP compliance staff.
- ▶ Pennsylvania Department of Corrections: Department staff and representatives from selected Pennsylvania county prisons participated in a meeting to plan a training event for jail administrators.

- ▶ Pennsylvania Department of Corrections: A 1-day training session was held for Pennsylvania county prison wardens.
- ▶ Riverside Regional Jail (VA): Training on preventing staff sexual misconduct was conducted for jails administrators.
- ▶ South Carolina Criminal Justice Conference: A 1-day session was held on the origin of PREA, the purposes and requirements of the law, and general strategies for its implementation.
- ▶ South Carolina Department of Juvenile Justice: A briefing was held for the agency's executive-level administrators and managers.
- ▶ South Dakota Department of Corrections: A 2-day training conference was held for prison, jail, and community corrections officials from across the State.
- ▶ Texas Juvenile Probation Commission: Two separate briefing and training sessions were held for the Commission's executive staff and the Texas Juvenile Probation Chiefs addressing the requirements of PREA and various policy issues.
- ▶ Virginia Association of Regional Jails: A workshop was held for jail administrators and staff provided an introduction to the PREA and related legal issues.
- ▶ Wisconsin Department of Corrections: The Department hosted a 1-day briefing for sheriffs and jail administrators.
- ▶ Wisconsin Department of Corrections: The Department provided two training sessions for the agency's trainers, investigators, and victim service coordinators.

Systemic Planning Assistance

NIC's systemic planning assistance events were more complex and often required multiple site visits. These events were designed to assist agencies in the development of action plans, administrative structures, and policy and procedures to clarify and guide their efforts to implement the requirements of the PREA. Following are descriptions of these events:

- ▶ *Delaware Department of Corrections*: Training and assistance was provided at a 1-½ day executive staff meeting to develop PREA policies.
- ▶ *Iowa Department of Corrections*: Assistance was provided at a meeting of the executive staff to review the Department's PREA policies and explore its responses to incidents of staff sexual misconduct.
- ▶ *Iowa Department of Human Services*: An assessment of the State's two juvenile facilities was conducted to provide agency executive staff and facility managers a thorough overview of PREA and its implications, assistance in planning for implementation of PREA requirements, and general feedback regarding agency operations.
- ▶ *Massachusetts Department of Corrections*: In conjunction with training held at the women's prison, a meeting of executive staff was held to discuss the development of strategies to manage female inmates and reduce staff sexual misconduct.

Assessment/Intervention

- ▶ *Michigan Department of Corrections:* An assistance team assessed the problem of sexual misconduct at the women's prison and provided recommendations for improvement. As a result of this assessment, NIC is developing a general curriculum to address sexual misconduct at facilities for female inmates.
- ▶ *Monroe County (Pennsylvania):* Several investigations and prosecutions of facility staff led to a request by the County Commissioners for assistance in addressing inappropriate staff relationships with inmates. The consultant team provided an assessment of the agency's operations and suggested several intervention strategies. These strategies addressed leadership, communications, operational practices, investigations, staff training, policy development, and institutional culture.
- ▶ *King County (Washington) Department of Adult and Juvenile Detention:* A team of consultants reviewed the operations, programs, and services at the County's juvenile detention facility. The recommendations for improvement in the team's report focused on organizational structure, leadership, integration of operations and programs, offender management, and training.

PREA Law and Policy Committee

A Law and Policy Committee was established to assist State and local correctional agencies in addressing sexual abuse and sexual assaults and in the development or modification of PREA-related policies. The Committee developed a policy guide titled *Prison Rape Elimination Act: Considerations for Policy Review* to aid in this work. The guide addresses issues such as policy development, PREA definitions, a zero-tolerance standard, the duty to report, prevention strategies, and conducting investigations.

An agency that contacts NIC for assistance in developing policies to implement the requirements of PREA is provided a copy of the guide and is directed to use the guide to assess the adequacy of their policy and to make any revisions they believe are needed. In follow-up to use of the guide, agencies are encouraged to apply for technical assistance in the form of a policy review. If technical assistance is approved, copies of the policy are circulated to the Members of the Committee for review. Through the use of e-mail and conference calls, the Members coordinate their review of the policy and develop recommendations. The Committee's assessment and recommendations are incorporated into a report that is forwarded to the requesting agency.

In 2007, policy reviews were completed for the following agencies:

- ▶ Alabama Department of Youth Services
- ▶ Corrections Corporation of America
- ▶ Management and Training Corporation
- ▶ South Carolina Department of Corrections
- ▶ West Virginia Division of Juvenile Services

Other Assistance Activities

The bulk of NIC's assistance to the field takes the form of traditional training and assistance tailored to meet specific agency needs. The scope of PREA and the importance of eliminating sexual abuse and sexual assault in prisons and detention facilities expanded these traditional strategies.

State Legislation: A National Perspective

Only a handful of States had statutes that prohibit sexual interaction specifically between correctional staff and offenders when NIC began its work to address staff sexual misconduct. Over the past several years, all the remaining States have drafted and passed legislation addressing staff sexual misconduct. While the Institute cannot claim sole responsibility, the increased awareness generated by the NIC's training and assistance efforts have contributed to the enactment of such laws. NIC training teams have provided information to criminal justice system officials, community leaders, and legislators and have given briefings, testified before law makers and, in some cases, helped to draft legislation. These laws have helped the States make significant progress in addressing the issue of staff sexual misconduct and enforcing their zero-tolerance policies.

However, the laws differ from State to State, especially regarding definitions of sexual misconduct, the penalties, and classes of correctional staff covered by the statute. Some laws cover only sworn officers, while others include all correctional workers employed by the agency. Some laws address only misconduct in correctional institutions while others extend coverage to community corrections staff. Some of these State's statutes are felonies, while others lead only to a misdemeanor conviction. Finally, many of these laws require that those convicted under the statute register as sex offenders.

Over the past few decades, correctional agencies have strengthened their policies and improved their investigative protocols and techniques to address staff sexual misconduct. The issue, however, has not been a focus for State attorneys general and local prosecutors. NIC continues to receive inquiries about the meaning and implementation of PREA in relation to a State's statutory prohibition on staff sexual misconduct.

In response, NIC has provided assistance in a number of ways, primarily through the legal issues modules contained in the various training programs described above. NIC also provided assistance through the web chats, publications, and by responding to e-mail inquiries. Some examples of NIC assistance in this area are described below:

A Memorandum on Anti-fraternization

NIC prepared a memorandum based on anti-fraternization policies and relevant case law to provide guidance on anti-fraternization in response to a request for assistance with the development of a policy on staff relationships with inmates and ex-inmates. The memorandum was posted on the NIC web site and continues to assist practitioners in the development of

policies to address staff sexual misconduct. In 2007, the memorandum was revised and published as “Anti-fraternization Policies in Community Corrections: A Tool to Address Staff Sexual Misconduct in Community Corrections Agencies.”

E-Mail Responses to Agency Questions

Iowa Department of Corrections
Guidance on Penalties for False Reports of Prison Rape by Inmates
March 2007

Arizona Department of Corrections
Guidance on the Arizona State Law Prohibiting the Sexual Abuse of Persons in Custody
March 2007

The Moss Group
PREA: Applicability to Private Correctional Facilities
March 2007

The Fifty-State Survey

For several years, NIC has maintained and updated a *Fifty-State Survey of Criminal Laws Prohibiting the Sexual Abuse of Individuals in Custody*. The document has been expanded to include surveys of:

- ▶ Sexual assault laws.
- ▶ Statutory rape laws.
- ▶ Mandatory reporting laws.
- ▶ Vulnerable victim statutes.
- ▶ Sex offender registration laws.

This resource is updated through periodic reviews and as new State laws are enacted. A full update was completed in 2007.

National Institute of Corrections/Washington College of Law Newsletter

One of the recommendations from the November 2006 project evaluation conducted by the National Institute of Corrections/Washington College of Law (NIC/WCL) Project on Addressing Prison Rape was to provide past participants with more opportunities for contact with Project staff. It was determined that past participants could benefit from updates about services, products, and information relevant to PREA and about addressing sexual misconduct and sexual abuse in correctional settings. Project staff decided to provide a bi-monthly newsletter that would contain updates on activities being undertaken by the Project, relevant cases, publications, and upcoming events. Two publications of the newsletter titled “An End to Silence” were published in 2007. A copy of the October/November 2007 edition is included as Attachment A.

Legal Tool Kit

As noted under the subsection titled State Legislation: A National Perspective, every State has passed legislation criminalizing staff sexual misconduct. These laws provide a valuable tool to help corrections officials address abusive sexual contacts between staff and offenders. However, the PREA was enacted to address the problem of offender-on-offender sexual abuse and sexual violence as well. Liability for such offenses between offenders lies in a State's criminal rape statutes and several other areas of law.

In response, a legal "tool kit" to help corrections officials, legal counsels, and prosecutors navigate through the various gaps and weaknesses in State staff sexual misconduct law and other laws addressing sexual abuse and sexual assault is being developed. The tool kit is designed to assist officials in the use of laws that explicitly prohibit sexual abuse of those in custody and other broader laws that can help in prosecuting prison rape cases and deterring these behaviors. The tool kit focuses on a systematic approach to prosecuting cases of sexual assault. The tool kit will analyze, discuss, and contrast the approaches that States have taken and will highlight particularly innovative approaches. The document was in the final stage of editing in late 2007, and NIC anticipates releasing the product in the late spring or early summer of 2008.

NIC/WCL Project on Addressing Prison Rape Website

The NIC/WCL Project on Addressing Prison Rape updated its website, *An End to the Silence*, (<http://www.wcl.american.edu/nic>) throughout 2007. The website contains sections on the PREA, Legal Responses to Prison Rape, Working with Youth in Custody, Training, Policies and Procedures, and Resources, as well as sections providing information to correctional employees and to offenders. Site visitors can view and download training materials, and a myriad of documents about prison rape and related issues. The improvements have made the site easier to use and include the addition of resources and links to other useful websites.

PREA Information and Training Aids

The following four information and training aids were prepared during 2007 and are available through the NIC and NIC/WCL websites. In addition, these materials are provided or made available at training programs, conference workshops, meetings, and technical assistance events.

Breaking the Code of Silence: Correction Officers' Handbook on Identifying and Addressing Sexual Misconduct (May 2007). This handbook is based on staff sexual misconduct training conducted over the past decade and the experience and knowledge gained since the passage of PREA. It is designed for line correctional staff and addresses the code of silence that surrounds the issue of staff sexual misconduct with offenders. It includes discussions of the nature of sexual misconduct, consequences, culture, victimization, gender, abuse histories, the investigative process, staff rights and protections, and prevention.

Staff Perspectives - Investigating Sexual Assaults in Correctional Facilities (June 2007). This bulletin was developed using data collected from corrections practitioners about the PREA and

sexual assault in prisons and jails. It contains staff perspectives in the following areas: barriers to identifying and investigating sexual assault, the complexities of investigating sexual assaults in correctional settings, the elements of effective investigations, recommendations for improving responses to sexual assault, inmate-related issues in investigating sexual violence, determining the nature of the sexual act, characteristics of specific inmate groups, lack of cooperation, difficulties in obtaining evidence, the inmates lack of confidence in the process, fears about retaliation, false allegations, differences in working with male and female inmates, staff barriers to the investigation, ineffective investigations, confidentiality issues, the need for education and training, collaboration, investigative protocols, investigating staff sexual misconduct, leadership, and victim services.

Staff Perspectives - Sexual Violence in Women's Prisons & Jails: Results from Focus Group Interviews (June 2007). This bulletin was developed using data collected from corrections practitioners about the PREA and sexual assault in prisons and jails. It contains staff perspectives in the following areas: knowledge about sexual assault, inmate reporting of sexual violence, the role of prior violence and institutional behavior, characteristics of vulnerable and predatory female inmates, staff sexual misconduct, consequences, knowledge of policy, safety, inmate-initiated misconduct, risk factors for staff sexual misconduct, reporting staff sexual misconduct, false accusations, procedures for responding to sexual assault, staff training, and recommendations for preventing sexual assault.

Anti-fraternization Policies in Community Corrections: A Tool to Address Staff Sexual Misconduct in Community Corrections Agencies. See the subsection titled "A Memorandum on Anti-fraternization" for a review of this publication.

PREA and Community Corrections

At a meeting of NIC's Executives of Statewide Probation and Parole Network in May 2006, participants unanimously requested that the Institute support the convening of a work group to draft model "policy, direction, and supporting tools" for use by probation and parole agencies to help these agencies understand the implications of the PREA for community corrections and to provide assistance in implementing the requirements of the PREA in an appropriate and effective manner. The work group consisted of state directors of probation and parole agencies from Alaska, Louisiana, North Carolina, Rhode Island, and Vermont; the Kansas Director of Community Corrections; the New York State Director of Probation and Community Alternatives; and the Oklahoma Director of Corrections.

Several meetings of the work group and conference calls lead to the development of a document titled *PREA Statewide Probation and Parole Direction* completed in February 2007. The document summarizes the groups discussions, deliberations, and findings, and is available on the NIC website. The document's Preamble is included as Attachment B.

Additional Work

Meeting of Health Care Subject Matter Experts

A 2-day meeting of individuals with expertise in correctional health care was convened in February 2007 to focus on an assessment of the implications of PREA for correctional health care. The meeting was held in Atlanta, Georgia, and consisted of 16 participants who were provided an overview of the PREA and an update on PREA-related activities being conducted by the Federal partners and various professional organizations. The participants were provided presentations regarding forensic examination of sexual assault victims, legal issues related to reporting and confidentiality, and PREA activities being carried out in the participants' respective agencies. Participants engaged in discussions to identify critical health care issues and policy questions. Attachment C contains summaries from the presentations and comments from the meeting.

Participation in Standards Development

To help support the work of the National Prison Rape Elimination Commission, the NIC PREA Program Manager served on the Commission's Classification/Technology Standards Committee, and two NIC Community Corrections Division staff members were consulted during the Commission's development of the community corrections standards.

Evaluation

Achieving the multiple goals of the Prison Rape Elimination Act involves the efforts of four Federal agencies and two special bodies established to collect information about prison rape, identify and review effective and problematic practices, and develop national standards. Numerous Federal employees and technical assistance providers have devoted a tremendous amount of time to meeting the mandates of the law, and several million dollars have been appropriated to fund this work. Determining the effectiveness of NIC's strategies in meeting its mandate is critical to ensuring corrections practitioners are receiving relevant and useful assistance.

Over the years, NIC's PREA efforts have been evaluated in a variety of ways at various levels of rigor. In 2007, NIC determined the necessity of undertaking more in-depth, integrated assessment of the Institute's PREA Initiative. To begin this effort, NIC awarded a cooperative agreement to evaluate the training and assistance provided through the NIC/WCL Project on Addressing Prison Rape.

The evaluation has three major components: (1) a retrospective assessment of the Project's training activities, (2) a prospective assessment of training activities, and (3) a study of selected products developed under the NIC/WCL Project. The retrospective component will review staff sexual misconduct training initiated in 1998 and continuing through the enactment of PREA to 2005. The evaluation will assess:

- ▶ Whether participants and technical resource providers understood the training goals and objectives of the NIC/WCL Project.
- ▶ The activities and outputs produced during the time frame being reviewed.
- ▶ The impact of the program activities and outputs on staff who participated in the Project's programs and on the employee's agencies.
- ▶ The extent to which the program has succeeded in making progress toward its stated goals and objectives.

The primary strategies to be used for the retrospective assessment will be focus groups and a web-based survey of individuals who have attend NIC staff sexual misconduct training. The focus groups had been completed and the web-based survey was initiated at the end of 2006. The Retrospective Evaluation Report was completed by the evaluation team in late 2007 and forwarded to the NIC/WCL Project staff for review.

The prospective component involves the of review current and ongoing training efforts. Instruments are being developed to assess:

- ▶ The extent to which the Project's program and services are meeting the NIC PREA Initiative's goal of addressing prison rape.
- ▶ The effectiveness of the Project's programs and activities.
- ▶ Any return on investment from the Project's programs and activities.
- ▶ Any reduction in the barriers to addressing prison rape from the Project's programs and activities.

At the close of 2007, the evaluation team had developed and pilot tested the pre-test and post-test instruments for the Project's training programs. These were used to evaluate the three classroom-based offerings. (See the section titled "Classroom Training" for a review of the evaluation results.) The evaluation team also conducted an analysis of the objectives most often identified in the action plans developed by the participants of NIC training programs. Working on policy and law issues, staff training, and training curriculum development were the top three objectives identified.

The third component of NIC's evaluation will be an assessment of the effectiveness of selected written products and the Project's web site.

National Clearinghouse

The National Institute of Corrections Information Center has served the corrections and criminal justice field for approximately 30 years. The NIC Information Center provides direct, personalized research assistance and serves as a clearinghouse for documents and videos produced by NIC. It is one of several points of contact for corrections practitioners and the public to access information regarding PREA.

To avoid duplication and make use of the field's awareness and use of the Information Center, NIC decided to co-locate the PREA national clearinghouse service with the NIC Information

Center. Throughout 2007, the Information Center used its research services, collection of documents, website, and practitioner networks to support the PREA clearinghouse function. In addition, an Information Center program specialist is assigned to receive and manage all requests related to the PREA and issues surrounding prison rape. This individual also reviews and recommends materials for distribution and identifies materials for training and presentations. Additionally, this specialist maintains a blog (weblog) that features the most current news, information, and publications related to PREA.

PREA Website (<http://www.nicic.org/PREA>)

The NIC Information Center is responsible for the management of the NIC website. Shortly after the enactment of the PREA, the Information Center developed a separate web page devoted to the law. Later, the site was expanded to incorporate a PREA news blog to facilitate the timely delivery of new information.

Posting of information on the PREA web page and blog continued in 2007. The information posted in the blog is fed into the main NIC website, the PREA homepage, and other related pages. Video conferences, technical assistance opportunities, publications, and other PREA-related events, programs, and information are delivered through the PREA blog. Blog postings are done directly by NIC staff and Information Center staff.

Approximately 34,000 visits to view or download PREA-related resources were made to the website and the blog in 2007. Practitioners, stakeholders, and other interested parties visited the PREA website over 2,800 times per month to review or obtain materials addressing PREA-related topics, such as the language of the law; the activities of the Federal agencies involved in implementation; NIC programs, services, and products; and updates regarding the National Prison Rape Elimination Commission.

A “Help Desk” provides users with options for obtaining information through links to: Ask a Colleague (access to forums and support networks), Ask Our Specialists (research assistance from Information Center staff), and Contact the National Institute of Corrections (addresses, telephone numbers, and fax numbers). The PREA page also allows users to browse the collection of documents, offers links to related topics on the NIC site, and provides contact information for the NIC PREA Program Manager.

By the end of 2007, the Information Center contained over 200 resources related to the Prison Rape Elimination Act or staff sexual misconduct. These resources are primarily operationally-oriented materials developed by correctional agencies or through NIC initiatives. The resources include NIC's training curricula and broadcasts developed to address prison rape, sample lesson plans to guide in the development of additional curricula, and procedures to assist agencies in developing PREA-related policies. The journal collection contains published articles that address PREA-related topics. Information Center staff can also access research databases, such as the Criminal Justice Periodicals Index or Ebsco's Academic Search Premier for further searching of thousands of online journals.

Direct Responses to Requests for Information

NIC changed the system for tracking and measuring information services significantly during 2007. To provide an indication of the extent of NIC's efforts in responding to requests for information, the following estimates are provided (extrapolated from the period before the change):

- 32 requests were for a copy of *Facing Prison Rape - Part 1*.
- 108 requests were for a copy of *Responding to Prison Rape - Part 2*.
- 32 requests were for a copy of *A Town Hall Meeting - Addressing the Prison Rape Elimination Act*.
- 25 requests were for information on related topics such as agency policies and procedures, incident investigation processes, and staff training.

Some requests were for multiple copies of the videos and CDs for distribution throughout correctional agencies, local jails, or community residential facilities. As a result, the Information Center has distributed approximately 135 sets of the *Facing Prison Rape* video, 164 sets of the *Responding to Prison Rape* video, and 34 copies of the *A Town Hall Meeting - Addressing the Prison Rape Elimination Act*.

PREA on the Web

During 2007, there were over 34,000 visits to the NIC website to view or download PREA-related resources. The average number of monthly visits to the most popular PREA web pages is listed below.

<i>Issue/Topic</i>	<i>Average Monthly Visits</i>
PREA Blog Articles (combined)	1,900
Prison Rape Elimination Act	868
About PREA	98

**Attachment A:
NIC/WCL Newsletter**

DIRECTOR'S CORNER:

Over the past six months, two opinions, from different parts of the country, have raised questions about the advisability of permitting male staff to supervise female inmates alone. These cases, *Heckenlaible v. Virginia Peninsula Regional Jail Authority*, 2007 WL 1732385 (E.D.Va.) and *Cash v. County of Erie*, 2007 WL 2027844 (W.D. N.Y. July 11, 2007) both involved situations where either policy or practice permitted male staff to supervise female inmates in isolated settings – medical and segregation units respectively. In each case, the court allowed the inmate to proceed with litigation against county and state officials. (For more detail on the cases, you can go to the Cases to Watch section of this newsletter)

The lessons emerging from these cases are:

- Courts take sexual abuse of women in custody seriously.
- Policies and practices that either affirmatively allow or are silent on male staff supervising female inmates – in isolated situations – can leave inmates vulnerable to sexual abuse.
- Cross gender supervision of female inmates by male staff can leave agencies vulnerable to litigation.

We hope to explore this topic in greater detail on our November web-chat on cross gender supervision. In the meantime, feel free to send your questions on this topic to me at nicresearch@wcl.american.edu

PROJECT UPDATE:

The handbook for correctional officers, [Breaking the Code of Silence: Correctional Officers' Handbook on Identifying and Addressing Staff Sexual Misconduct with Offenders](#) can be found on the project website at <http://www.wcl.american.edu/nic>

Vanessa Motley is the newest member of our staff and has been hired as a Research Associate. Vanessa is a 2005 graduate of American University, Washington College of Law (WCL) and spent two years as a law clerk to the Honorable Zoe Bush, Associate Judge with the District of Columbia Superior Court. We are happy to welcome Vanessa. If you need to reach Vanessa you can email her at nicresearch@wcl.american.edu or contact her by phone at 202-274-4386.

PROJECT ALERT: You may receive a call from our evaluation team. They will be enlisting your help to assess other services you need from the project. If you have questions about this process, please email Dan Lucas at dan.lucas@imperialresolutions.com.

CASES TO WATCH:

Heckenlaible v. Virginia Peninsula Regional Jail Authority, 491 F.Supp.2d 544 (2007)

Facts: A mentally ill female pretrial detainee, filed a civil action to recover for injuries she suffered as a result of an allegedly nonconsensual sexual encounter with the former jailer that occurred in the jail medical unit. The officer passed a criminal background check and there was nothing to suggest he posed a risk. The incident occurred after the officer watched the detainee shower.

Findings: Jail Authority's motion for summary judgment granted in part and denied in part. Jail authority was not liable for negligent hiring. Jail Authority could be liable under a respondeat superior theory for the officers' actions. Plaintiff allowed to proceed against Jail Authority on the respondeat superior theory for assault and battery and intentional infliction of emotional distress claims. Plaintiff can also proceed against Jail Authority for the negligence claim. Plaintiff further allowed to proceed against Steele on negligence claim, substantive due process, assault and battery and intentional infliction of emotional distress claims.

Cash v. County of Erie, 2007 WL 2027844 (W.D.N.Y. July 11, 2007)

Facts: Vicki Cash was sexually assaulted by a correctional officer in 2002 while in segregation in an Erie County holding center. The correctional officer worked alone in the unit and there was no policy in place to prevent male deputies from walking in on female deputies unannounced.

Findings: Motion for summary judgment granted in part and denied in part. A reasonable jury could find that the county had a policy and practice that allowed male officers to have access to female inmates without the presence of female staff and other inmates; prison officials, including the sheriff had knowledge of the practice; and prison officials knew of past complaints and took no corrective action. Case allowed to proceed to trial on plaintiff against the county, the correctional officer and the sheriff.

IN THE NEWS:

Former guard charged with sex assault

Concord Monitor
By Annmarie Timmons
September 21, 2007

Former New Hampshire Department of Corrections employee Darrell Brinkley has been indicted on charges of alleged sexual assault against female inmates in a psychiatric unit.

State settles suit with inmate who alleged rape by prison staff

Times Leader
By Associated Press
September 4, 2007

The state of Pennsylvania has agreed to pay \$35,000 to settle a lawsuit filed by a female inmate who alleged that she was raped, assaulted and videotaped during a strip search by male correctional officers at the State Correctional Institution at Cambridge Springs.

OCTOBER/NOVEMBER EVENTS & PUBLICATIONS:

Events:

November 8, 2007: NIC/WCL Project will host a web-chat on Cross Gender Supervision from 1-2pm. To apply please go to: <http://www.wcl.american.edu/nic/webchats.cfm>

Publications:

Training Curriculum: Investigating Allegations of Staff Sexual Misconduct with Offenders (forthcoming, October, 2007)

Attachment B:

PREA Statewide Probation and Parole Direction

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.

Attachment C :

Summary of the Health Care Subject Matter Experts Meeting

Two presentations prompted a number of questions and provided a setting for participants to identify important issues and concerns. Several of the participant organizations reported on the status of their efforts to address the PREA, particularly in the area of medical and mental health care. Finally, participants engaged in a discussion about the use and effect of policy in preventing sexual assault and sexual abuse.

Presentation by:

Jo Sterns, Physicians Assistant

DeKalb Emergency Physicians Medical Group

Sexual Assault Medical Forensic Examination: Current Standard of Care in Communities Today
Selected Key Points

- ▶ Is it important to acknowledge the tension that exists in correctional settings between medical staff and custodial staff.
- ▶ Most States have adopted a gender-neutral standard in their definition of rape. However, Georgia law defines rape as an act that takes place between a man and a woman. Sometimes the nonjudgmental treatment of rape victims is difficult to obtain.
- ▶ The examining doctor is not responsible for making a judgement as to whether a rape has occurred.
- ▶ The examination has two points of focus: medical and criminal justice. As a part of the medical exam, the practitioner evaluates and treats injuries and provides support and counseling. The criminal justice focus requires the documentation of findings.
- ▶ Even as experts, witnesses are never asked if the victim was raped. It is up to the court and the jury to determine whether or not the person was raped.
- ▶ We want to deliver victim-centered care, provide a safe environment, and acknowledge safety concerns.
- ▶ It is important to accommodate a patient's request that a partner be there with them and respect requests for responders of a specific gender.
- ▶ The examiner must distinguish a patient's DNA from that of the perpetrator.
- ▶ The collection of evidence is guided by forensic history, the physical exam, and evidence collection kit instructions.
- ▶ The preservation of evidence involves looking at secure storage sites, transfer from the site of the examination to the crime lab, and the chain of custody.
- ▶ Agencies need clear management and follow-up plans.

Participant Questions

Q. Do you do anything different for males?

A. No. We respect their privacy in the same way we do for females and offer the same STD treatment.

Q. Do you have an opinion with regard to ensuring the “treater” is the same gender as the patient?

A. There are a lot of requests from younger women wanting female providers. We do ask the male patients and try to make same-gender providers available. I think some males are more comfortable with women as treatment providers.

Q. What problems do you see in other parts of the State where the provision of health care is not as state of the art as in DeKalb County?

A. There is decreased reporting in many other areas, because the exams are more traditional pelvic exams. As a teacher, I only have a 20-minute segment to provide this information to college students.

Q. To what extent do these procedures differ for juveniles?

A. We treat adolescents as well as children. We try to transfer young children to children’s hospitals. We are trying to look at all the Metro Atlanta hospitals to try to identify the community standard here.

Q. Can you name the stigma reference working sexual assault cases?

A. We have a lot of new practitioners who do not want to do these exams. They may be required to defend their work and feel they have not been adequately trained. Pediatrics is probably the only area where practitioners can receive special instruction. The best thing that ever happened was the creation of the SANE (Sexual Assault Nurse Examiner) program. If we are having this much of a problem in the free world community, how much more difficult is it going to be in a prison setting?

Presentation by:

Brenda Smith, Professor and National Prison Rape Elimination Commissioner
NIC Project Director, American University, Washington College of Law

Briefing on Legal Research on Reporting and Confidentiality

Selected Key Points

- ▶ Agencies need PREA policies regarding medical and mental health care.
- ▶ This can be a confusing area of the law. Much work will be needed to advise people regarding their obligations.
- ▶ Agencies should be looking at a variety of laws including those governing licensing institutions, vulnerable adults, reporting, and confidentiality. They should also check the ethics standards from various health organizations.

- ▶ Guidance on reporting obligations can come from the Health Insurance Portability and Accountability Act (HIPAA), State law, case law, professional health organizations' codes of ethics, and correctional policy and procedure. State law is really the controlling factor. HIPAA will preempt State laws unless they provide a greater degree of privacy protection.

Participant Questions

- Q. Can we expect that the standards coming from the PREA commission will provide any guidance for States as they try to identify their obligations?
- A. I do not know. There may be different standards for different areas. In the area of prosecution; there is debate about whether these offenses should be "registerable." As I indicated in my presentation, this is a very complicated issue. Officials must determine what will be appropriate for each State.
- Q. How will we reconcile the differences between State and local jurisdictions? How will ethical issues and State laws affect the provision of appropriate care and safety? It's a mess! I feel very discouraged by the information presented over the past few days. What is going to come from all of this work?
- A. This is like operating heavy machinery. I would say find someone who knows something about it. It would be helpful if each State develops and forwards their policies to the PREA Commission for review. However, the Commission is not the "boss of the States." One thing I will say is that we (the Commission) do not discuss what is acceptable or permissible sexuality in correctional settings. That would be something useful to the States. I will provide you an article that I wrote called "Rethinking Prison Sex."
- Q. Does the Commission understand the PREA law? Could they explicate it in a brochure that we could use for guidance?
- A. The Commission would be uncomfortable doing that because we do not have that power.

Selected Comments from Agency Reports

- ▶ Medical staff have been focused on PREA because the nurse often receives the first report.
- ▶ As soon as the medical staff are notified, the rape crisis center is notified and the person is transported to the hospital. There is follow-up with the jail nurse upon return to the facility. The patient is seen and counseled by mental health staff.
- ▶ It is part of the nurses responsibility to ensure that connections and referrals are made. If the person is not in custody for long, the nurse refers him or her to city clinics or private providers for testing and follow-up care.
- ▶ Many do not seek follow-up care. They may not have the financial means, may not be concerned, or simply don't want to be bothered.
- ▶ We are trying to get the different professional disciplines to work together to address these problems.

- ▶ We test the alleged assailant after obtaining consent. We tell him what is being alleged by the officer.
- ▶ Under a grant from the city, we did a study to determine if male-on-male sex was occurring in the jail. We used questionnaires. Quite a few men answered, “Yes.” It was uncovered that there may be more sexual activity than was being documented.
- ▶ The impact from an epidemiological perspective is incredible. We know that if a person is raped, the effects will be seen as long as 16 years later. Even if at only 2 percent, it is an enormous number. The potential impact on public health is huge.
- ▶ I think the title of the statute does a great disservice to the issue. Coercive sex in prison is far murkier than what you would be likely to see in a civilian setting. Oral sex, obligatory masturbation, the issue of what is consent and what is not, the economic element, and sex for protection all complicate the problem.
- ▶ In our State, there is a culture of “this is the way it is.”
- ▶ We thought we would be able to receive services from our Victims Association. We found this was not possible. Inmate victims can only receive services from our own mental health staff. Traditional victims services are “not on board” with the notion that prisoners can be victims of sexual assault and, therefore, part of their constituency.
- ▶ In our State, we brought that group into the planning process and made them a part of the solution.
- ▶ The move to do better discharge planning is a growing expectation in the criminal justice community. As justice budgets dwindle, agencies are looking to community providers to fill gaps in service.

Selected Comments: Critical Medical Issues Faced in Implementing PREA

Group One: Overall we don’t think we are all on the same page in understanding the magnitude of sexual assault in prison settings.

- ▶ We need a study looking at physical assault in the prison setting, with an emphasis on sexual assault.
- ▶ Staff need to improve their skill at taking “histories.” This is not something you can just learn in a day or two.
- ▶ We need to design a questionnaire for overall assault.
- ▶ Who does the forensic exam? Do we/should we outsource these exams? Not everyone knows how to do a sexual assault examination.
- ▶ We need video training to demonstrate how the provider interacts with the patient. You need to see the actual physical examination being performed.
- ▶ There are safety issues. When an assault happens, do we move the perpetrator, the victim, or both? Do we put them right back into the same physical situation?
- ▶ Follow-up training is needed.
- ▶ Everyone needs to know the signs and symptoms of a potentially explosive situation. Do the officers know how to identify signs of post traumatic stress disorder? Housing and overcrowding are important. We would like better facility design. Single cells would be optimal.

- ▶ Adequate staffing levels are of concern, as well as education for inmates and staff.
- ▶ We need clear and concise directions on reporting, including what is expected by the government. What is their definition of confidentiality and how does it relate to an inmate?
- ▶ How should we treat an inmate who has been in prison for a long time and comes to medical staff with a sexually transmitted disease (STD)? What are the confidentiality requirements in light of the fact that any sex in prison is illegal?
- ▶ What, if anything, is the impact of conjugal visits? Condom distribution?
- ▶ We need to reconsider creative sexual expression. This includes friends, masturbation, conjugal visits, and/or allowing sex in the prison.
- ▶ Some sexual assaults never get reported. Those assaults should be evaluated separately to determine which are sexual. There may be more than we think.
- ▶ The law should be clarified. If you have sex in the prison, is that rape? Sex is impermissible, not illegal.
- ▶ PREA does not cover every incidence of sex. Where are the boundaries for reporting?
- ▶ We need more clarity about our obligations.
- ▶ Does PREA apply to consensual sex? (Response from Professor Smith: I do not think that is clear. When you talk about consensual sex, if you have a policy within your facility that says no sex is permissible, then PREA would cover that. It is certainly something you would need to report.)
- ▶ This creates conflict with confidentiality issues (e.g., reporting STD's or HIV). Having to report consensual sexual activity puts health care professionals in an untenable situation. Clinicians simply will not report. This creates an unhealthy situation in the prison.
- ▶ There is no corollary to this in the community.
- ▶ In Texas, we have run into the problem that if an inmate knows that he is going to get into trouble for sexual activity, he claims he has been coerced. If we set up the healthcare staff as the reporters, we are creating a situation where we will get false reports and therefore bad data.
- ▶ Institutions have a right to create their rules. It is having medical staff being informers that is a problem for us.
- ▶ There is a phenomenon called "rape trauma syndrome." This is another problem that health care professionals need to be aware of. Questions should be included that rule this in or out.
- ▶ Comment from Director Wall: This conversation makes it clear to me how important it is that the Commission hear from health care professionals. We who run prisons and jails understand how important it is to have health care providers who have standards from their profession. If we put health care professionals where they cannot practice according to the code of ethics, then the people who are willing to come in will be creatures of the place, who are indeed willing to ignore those ethics and standards. How do we create a place where we can have the rules of order while also respecting your ethical codes?

Group Two: It took us some time to get to the medical situation specifically because we were so caught up in all of the issues involved in reporting generally.

- ▶ There really is no confidential reporting. Who will keep your confidence? That report goes up the chain of command.
- ▶ The victim is often treated the same as the assailant; both are put into some kind of segregation which is perceived as punitive. If asked to be released from that custody, they are known as a victim throughout the facility and may become known as a target or as a reporter.
- ▶ If a victim is being moved to a prison far from home in order to be protected, the victim may rather take his chances rather than be far from family.
- ▶ Where should the forensic exam be performed? There is better objectivity and maintenance of the examination's integrity and potential access to specialized services off site. But public safety concerns and scarce transportation resources may deter this. There may also be issues of continuity of care. Also, outside providers may or may not have a bias about caring for inmates. Of course, this may nor may not be true. If done on site, the continuity of care is good, but you may have a clinician who does not perform the examination correctly. Health care personnel on site are in a health provider capacity. If that health care professional has to collect evidence that will be used in a court of law, it could create confusion around their role. That health care professional is also going to be providing health care to the assailant. (Response from Professor Smith: There may also be an issue of admissibility of the evidence collected if the examination is not done correctly. The health care professional may also be in a position where the facility itself has a stake in the outcome. It would be good if an outsider could come in and do those investigations, to get the health care professional out of that bind. This would allow the people on site to continue to have a therapeutic relationship with both the perpetrator and the assailant.)
- ▶ There is a sensitivity to bringing in an outside health care provider. You may be opening the institution up to safety issues. Those health care folks from outside need to be willing to undergo searches. The distinction is between confidentiality and privacy. If patients are taken out for an examination, a security officer may be present and hear the exchange. This may also be true inside a facility. Some facilities do not allow the exam to take place without the officer being present in the room. Continuity of care has many dimensions.
- ▶ Staff need training on the law and on policies, sensitization to people who may be being sexually abused, and how to ask the questions in ways that they can then delve further into what exactly happened.
- ▶ One of the main things in a sexual assault exam is maintaining that chain of custody for the evidence. Every time you move the inmate, you are jeopardizing that chain.
- ▶ There is a resource load that comes with PREA compliance. If you are going to have your own staff do the examination, you are going to pay for that staff time. If we are going to increase the reporting, the workload of staff who are involved with these issues will increase. This will require more money whether the work is done in-house or through an outside contract.
- ▶ Need to acknowledge the potential for secondary trauma of providers, including security staff. One article looked at sick leave of social workers who dealt with these cases. What happens when all of your staff are taking sick leave because they do not have a healthy outlet

for processing that secondary trauma?

- ▶ Most of what we talked about today is about what happens after the rape occurs. We may want to put some more money into prevention.
- ▶ What about the health care professional's role in prevention? Maybe we can include PREA training when we complete the medical orientation?
- ▶ Inmates need more information about the PREA at orientation. Let them know that they have access to medical staff if required.
- ▶ We have not talked about health care staff sexual misconduct. It is a big issue for us when we learn about a professional colleague getting involved with inmates.
- ▶ We need more discussion and training regarding professional boundary issues.
- ▶ For those hiring medical staff, do you run background checks and exclude anyone with a sexual assault history? (Unknown Respondent: There is no profile that you can use that tags those people accurately. We cannot place our faith in screening tools.)

Selected Comments: PREA and Policy Issues

- ▶ We are living in environments that, by their nature, are not therapeutic. Health care providers who are concerned and care about the victim, and trying to be victim centered, are feeling challenged.
- ▶ How can we be victim centered?
- ▶ In certain situations there may be a need for limited disclosure.
- ▶ Where things are not clearly defined, we fall back on community standards. We do not know what those community standards are, so we need to find out. Where state law does not clearly address disclosure, you will be held to a community standard.
- ▶ There is a presumption that you maintain confidentiality unless there is a countervailing issue. Are we talking about imminent risk? When we talk about security, are we just talking about good order?
- ▶ The truth is that we need to know what is going on around sexual behavior because when the relationship breaks up, we may have another kind of security risk.
- ▶ A good recommendation for the Prison Rape Commission would be to suggest they provide guidance to agencies regarding parties within the State that need to be involved in the policy development discussion.
- ▶ There may be a precedent in pandemic planning where sister agencies come together to identify the potential areas of conflict.
- ▶ A critical issue concerns an inmate disclosing that he has been assaulted. Temporally, it would be difficult to warn them about informed consent when that warning really comes after the fact of disclosure. The same situation occurs when you get a letter from an inmate disclosing an assault. In a clear case of assault, our response of making a report is fine. However consensual sex is more problematic, particularly given that when an inmate says that he has been assaulted, he may lose control over his housing assignment and many other things that are important to him.
- ▶ We must be mindful of the fact that many correctional policies are silent about the responsibility of health care staff to report. Under these circumstances, you must look at the State law. If the interest has not been articulated, then you keep that information

confidential.

- ▶ It seems like all of this is in response to the PREA. But these issues really predated the PREA. Many of these things are just good correctional practice that needed to be discussed and settled at the agency level.
- ▶ We have to be clear with inmates that if they reveal certain things to staff, there may be consequences.
- ▶ We need to work with the offender around the options that they have for reporting. Spend more time with them until they are comfortable reporting.
- ▶ We have a concern about under-reporting. There is a perception that it is not safe to report. We can develop policies, but unless we can change the overall culture in criminal justice, they will make little difference. The inmate will simply not report. The victim's perception of safety is critical.
- ▶ One effect of PREA has been to bring the conversation concerning issues of reporting, privacy, and confidentiality to a higher level.
- ▶ We are sexual beings. Not being allowed to express our sexuality can lead to other kinds of perversion. How can science weigh in on this question? We must somehow engage not only the prison setting but the larger community. If we do not allow people to express their sexuality, what happens? Some places do have a structured way for people to express their sexuality. In those places we frequently see a lower rate of violence.