

PREA

Fact Bulletin

Cross-Gender Viewing of Inmates



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CENTER

**The National Prison Rape Elimination Act was passed unanimously by Congress and signed into law by President George W. Bush in September 2003, to prevent, detect and respond to sexual abuse of inmates in confinement facilities. The National PREA standards to prevent, detect and respond to sexual abuse became effective August 20, 2012.*

The PREA Fact Bulletin series is an American Jail Association project funded by a Bureau of Justice Assistance grant. Each Bulletin covers a specific topic relative to meeting PREA compliance. The intent of the Bulletins is to be a quick and general guide, and not an all inclusive and comprehensive coverage of the topic. The topics for the Bulletins were selected based on input from the field about the issues that present unique challenges for jails as they work toward PREA compliance, and to clarify issues that present the most questions. More information on these topics can be obtained by using the resources noted at the end of each bulletin.

CROSS-GENDER VIEWING OF INMATES

1. What do the PREA standards say about cross-gender viewing?

§115.15 (d) the facility shall implement policies and procedures that enable inmates to shower, perform bodily functions and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit.

The intent of PREA Standard §115.15 is to protect inmates' reasonable expectation of privacy while showering, during toilet activity, and changing clothes. PREA Standard §115.15(d) prohibits the monitoring of cameras by staff and nonmedical persons where the camera will reveal the breasts, buttocks or genitalia of inmates of the same gender as the person viewing the camera.

It is acknowledged that there is a diminished expectation of privacy in confinement settings. Viewing of inmates in a certain state of undress except for routine cell checks, bodily searches, and exigent circumstances where security is at imminent risk are prohibited. Safety and security are paramount, but where these are not an immediate issue, a prohibition on cross-gender viewing of inmates as described in the standard is sound correctional practice.

Cameras can enhance facility and staff security by being an important tool for safety, investigations, and to monitor staff performance. While cameras enhance the ability of staff, cameras cannot be used to replace staff supervision.

Cameras are generally not positioned so that single cells can be fully observed. If this is the case, it is reasonable to assume that inmates will change clothes or use a toilet within their individual cell. Except in exigent circumstances, cameras positioned on cells should only be viewed by staff or non-medical personnel of the same gender as the inmate. The exception to this is in close observation cells which are discussed later in this bulletin.

The following are just a few of the ways that facilities are working to meet Standard §115.15 where the physical design of the facility does not already provide a method to prevent cross-gender viewing of inmates' buttocks, breasts and genitalia except where permitted by medical staff or in exigent circumstances:

- 'Privacy masks' on the camera, such as those that would create a digital dark spot or fuzzy area to prevent observation
- Privacy shower curtains that obscure shoulder to leg
- Semi-transparent shower curtains that allow staff to determine dangerous activity or multi-person occupancy without violating privacy
- Shower doors that obscure from shoulder to leg
- Bathroom doors or partial walls that allow the view of feet and head

2. What about camera viewing in open dormitories?

The Frequently Asked Questions (FAQ) section on the PREA Resource Center website <http://www.prearesourcecenter.org/faq> contains the answers to many questions about the interpretation and implementation of the standards. Here is what the FAQ states concerning open dormitory camera viewing of inmates by opposite gender staff:

“Practically, most cameras in correctional facilities are focused on common areas, including dayrooms, hallways, recreation areas, etc. In dormitory units, cameras may be in the common area that includes inmate beds. Cameras are rarely located within shower or toilet areas. It is acknowledged that there is a diminished expectation of privacy in the open area of a dormitory setting or other common areas of correctional facilities. In addition, most facilities have rules prohibiting inmates from disrobing or being unclothed in common areas. If this is the case and these rules are enforced, cameras focused on common areas, including dormitory sleeping units, may be monitored by either gender.”

To access the full FAQ visit: <http://www.prearesourcecenter.org/node/3315>

3. What about close observation cells?

The PREA standards do not specifically restrict cross-gender viewing (exposed buttocks, breasts or genitalia, such as while showering, changing clothes or using the toilet) in close observation cells, although same gender viewing is always preferable. The official U.S. Department of Justice guidance concerning this is as follows:

“How do the requirements of standard 115.15(d) apply to inmates who have been placed on suicide watch? Is there a distinction between suicide watches being conducted via video and those under in-person observation?”

The definition of “suicide watch” varies across corrections agencies. Suicide watch generally refers to placing an actively suicidal inmate on a heightened level of monitoring due to high risk of imminent suicidal action.

Actively suicidal inmates should be subject to constant observation. Some agencies also consider suicide watch to include situations where constant monitoring may not be clinically indicated. For example, inmates may require frequent, periodic, and unpredictable observations not to exceed 5 or 15 minute intervals. While suicide watch

should be conducted under the direction of a mental health staff member, suicide precautions are often initiated by correctional staff before a mental health evaluation can occur. Continual observation is essential to ensure inmate safety before a mental health professional can assess the situation.

Regardless of the definition of suicide watch, the PREA standards do not prohibit cross gender staff from being assigned to conduct a suicide watch. The relevant portion of standard 115.15(d) states, "The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks."

Therefore, a cross gender staff can be assigned to suicide watch, including constant observation, so long as the facility has procedures in place that enable an inmate on suicide watch to avoid exposing himself or herself to nonmedical cross gender staff. This may be accomplished by substituting same gender correctional staff or medical staff to observe the periods of time when an inmate is showering, performing bodily functions, or changing clothes. It may also be accomplished by providing a shower with a partial curtain, other privacy shields, or, if the suicide watch is being conducted via live video monitoring, by digitally obscuring an appropriate portion of the cell. Any privacy accommodations must be implemented in a way that does not pose a safety risk for the individual on suicide watch. The privacy standards apply whether the viewing occurs in a cell or elsewhere.

The exceptions for cross gender viewing under exigent circumstances or, for inmates who are not on constant observation, when incidental to routine cell checks apply to suicide watch as well. Because safety is paramount when conducting a suicide watch, if an immediate safety concern or inmate conduct makes it impractical to provide same gender coverage during a period in which the inmate is undressed, such isolated instances of cross gender viewing do not constitute a violation of the standards. Any such incidents should be rare and must be documented."

<http://www.prearesourcecenter.org/node/3833>

4. What is a 'routine cell check'?

A routine cell check is a standard operational practice carried out by agency policy. In certain circumstances, it is understood that opposite-gender staff may observe an inmate in their cell using a toilet or changing clothes while making a routine cell check. See Section One of this bulletin for recommendations for how to prevent cross-gender viewing not incidental to routine cell checks. For more information, please see: <http://www.prearesourcecenter.org/node/3315>

5. Please explain the requirement for staff of the opposite gender to announce themselves when entering a housing unit.

The PREA standards for adult prisons, jails and juvenile facilities with discreet housing units¹ require that staff of the gender opposite from the inmates/residents in the housing unit announce their presence. The intention is to put inmates on notice when opposite-gender staff may be viewing them so that they can cover their breasts, buttocks and genitalia. Such announcement is required only when an opposite-gender staff enters a housing unit where there is not already another opposite-gender staff present. A single announcement at the beginning of a shift is sufficient only if there is no change in the gender of the staff in the housing unit. Compliance with Standard §115.15(d) is further explained in the FAQ section of the PREA Resource Center website:

When the status quo of the gender-supervision on a housing unit changes from exclusively same gender, to mixed- or cross-gender supervision, the opposite-gender staff is required to verbally announce their arrival on the unit. The announcement is required for both custody and non-custody staff, and may include, for example, a clinician or case worker who spends time on the unit, or senior staff making supervisory rounds

Please see the following FAQ for the complete response and recommendations for making this announcement: <http://www.prearesourcecenter.org/node/3262>

There is no precise verbal language required for the cross-gender announcement; only that the announcement should put inmates or residents on sufficient notice that an opposite-gender staff member is entering the housing unit. Hence, such language as “man on the unit” or “Officer Smith on the unit” may both meet this requirement.

Consistent with Standard 115.16 and 115.316, the agency shall take appropriate steps to ensure that inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency’s efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Accordingly, additional systems may be needed to supplement the verbal cross-gender announcement to ensure accessibility for inmates with disabilities, such as those who are deaf or hard of hearing and/or those with Limited English Proficient.

Will a buzzer or a light suffice for meeting this standard?

A distinct buzzer, bell, or other noisemaking device may be substituted for a verbal announcement, so long as:

- (1) the buzzer emits a distinctive sound that is noticeably different from other common noisemakers;
- (2) inmates are adequately educated on the meaning of the buzzer sound and understand its purpose; and
- (3) the buzzer is not also used for other events at the facility. If used, such buzzers should be used in the identical manner that verbal announcements as required by the above guidance (e.g., when opposite gender staff enter a housing unit).

¹ In lockups and community confinement facilities, and in juvenile facilities that do not have discrete housing units, opposite-gender staff is only required to “announce their presence when entering an area where” detainees and residents “are likely to be showering, performing bodily functions, or changing clothing.” 28 C.F.R. §§ 115.115(c), 115.215(d), and 115.315(d).

None of the following activities constitute compliance or serve as substitutions for the verbal announcement or the buzzer as described in the above paragraph. These other practices may be helpful supplements to the required verbal announcement:

- Posting a notice on the housing unit or generally instructing inmates that they may be subject to cross-gender supervision at any time.
- Making a single announcement at the beginning of each shift indicating that inmates may be subject to cross-gender supervision at any time.
- Toggling a certain color light or flickering the lights in the unit as a signal to the inmates that opposite-gender staff may be on the unit.

Please see the following FAQ for the complete response and recommendations for making this announcement: <http://www.prearesourcecenter.org/node/3262>

6. *What about privacy or cross-gender viewing considerations when viewing video during sexual abuse and sexual harassment investigations?*

It is critical that the agency/facility assure thorough and effective investigations and incident reviews involving sexual abuse and sexual harassment. Cross-gender viewing of recorded camera footage is permissible if the viewing is in conjunction with an investigation or incident review. The following is an excerpt from a broader FAQ concerning cross-gender viewing.

“..in order to maintain the ability to conduct thorough and effective investigations and incident reviews involving sexual abuse, sexual harassment, and other misconduct, appropriately trained internal and external investigators, and senior facility and agency administrators are not prohibited by this rule from viewing any cross-gender recorded camera footage in conjunction with an investigation or incident review. Other staff are not prohibited from viewing cross-gender recorded camera footage, as long as the footage does not depict inmates showering, performing bodily functions, changing clothes, or in a state of undress or partial undress.”

Please see the following FAQ for the complete answer:
<http://www.prearesourcecenter.org/node/3315>

7. *Cross Gender viewing considerations should be part of assessing, upgrading or acquiring camera systems.*

When designing or acquiring a facility or when planning any substantial expansion or modification of existing facilities, consider the effect of the design, acquisition, expansion or modification upon a building and the ability to protect inmates from sexual abuse.

When installing or updating a video monitoring system, electronic surveillance system or other monitoring technology, an agency should consider how such technology will enhance an agency’s ability to protect inmates from sexual abuse.

Assessing video monitoring technology is also important when creating the annual staffing plan as required in Standard §115.13(a). The use of video monitoring will certainly impact and relate to the placement of supervisory staff, the composition of the inmate population, how a facility addresses blind spots, and other aspects that must be considered when developing and assessing the staffing plan. Please follow the links below for the FAQs that relate to adequate

staffing. The FAQs may also be accessed by going to the PRC website, click on FAQs, and then search by standard 115.13.

- Adequate staffing defined: <http://www.prearesourcecenter.org/node/3252>
- Staff for staffing ratios: <http://www.prearesourcecenter.org/node/3253>
- Staff for juvenile staffing ratios: <http://www.prearesourcecenter.org/node/3254>

The following tips are from a cross-section of jail administrators who have worked to achieve PREA compliance. Though not required for compliance with the PREA standards these are generally considered to be sound correctional practice:

- Assess, at least annually, the feasibility of your security systems to determine if a need exists for new or additional monitoring technology and develop a plan for securing such technology.
- Determine who has the authority to copy and review video. All stored video should be considered confidential. Unauthorized staff or other unauthorized persons should not have access to view these videos.
- Video recording should be retained based on the time capabilities of the system (memory).
- No recorded video should be removed from the facility without approval from the Jail Administrator, Sheriff or Chief of Police.
- Any time a video is exported for sexual abuse incident reviews, no less than five minutes before the alleged incident and five minutes after the incident should be copied.

8. RESOURCES

To achieve compliance with PREA standards, it is extremely helpful to use all of the tools available. The checklist in this Fact Bulletin is a quick guide, but does not present the complete language of the PREA standards and does not include all of the available resources developed to assist with PREA implementation. It is recommended that agencies and facilities use the following:

Toolkit for Jails <https://s3.amazonaws.com/static.nicic.gov/Library/026880.pdf>

Audit Instrument <http://www.prearesourcecenter.org/node/1754>

Archived webinars <http://www.prearesourcecenter.org/training-and-technical-assistance/archived-webinars>

Latest interpretive guidance and information in the FAQ section of the PREA Resource Center website <http://www.prearesourcecenter.org/faq>.

For more information and assistance please visit

www.prearesourcecenter.org
www.aja.org