

Responding to Sexual Abuse of Inmates in Custody: Addressing the Needs of Men, Women, and Gender Nonconforming Populations
Notification of Curriculum Use
April 2014

The enclosed Responding to Sexual Abuse of Inmates in Custody: Addressing the Needs of Men, Women, and Gender Nonconforming Populations curriculum was developed by the Project on Addressing Prison Rape at American University, Washington College of Law as part of contract deliverables for the National PREA Resource Center (PRC), a cooperative agreement between the National Council on Crime and Delinquency (NCCD) and the Bureau of Justice Assistance (BJA). The Prison Rape Elimination Act (PREA) standards served as the basis for the curriculum's content and development with the goal of the Responding to Sexual Abuse of Inmates in Custody: Addressing the Needs of Men, Women, and Gender Nonconforming Populations curriculum being to satisfy specific PREA standards requirements.

It is recommended that the Responding to Sexual Abuse of Inmates in Custody: Addressing the Needs of Men, Women, and Gender Nonconforming Populations curriculum be reviewed in its entirety before choosing which modules to use. Any alterations to the original materials require either acknowledgement during their presentation or removal of the PRC and Project on Addressing Prison Rape logos.

BJA is currently undergoing a comprehensive review of the enclosed curriculum for official approval, at which point the BJA logo may be added.

Note: Use of the enclosed curriculum, either in part or whole, does not guarantee that an auditor will find that a facility "meets standards." Rather, an auditor will take into consideration the curriculum used as part of their overall determination of compliance.

Notice of Federal Funding and Federal Disclaimer – This project was supported by Grant No. 2010-RP-BX-K001 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice nor those of the National Council on Crime and Delinquency (NCCD), which administers the National PREA Resource Center through a cooperative agreement with the Bureau of Justice Assistance.





**Training Curriculum:
Responding to Sexual Abuse of Inmates in Custody:
Addressing the Needs of Men, Women and Gender Non-Conforming
Populations**

**Module 2:
The Prison Rape Elimination Act**

**The Project on Addressing Prison Rape
February 2014**

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What is PREA?

Prison Rape Elimination Act (PREA).

Initial version focused on male prison rape

Second iteration **included staff sexual misconduct**, but **continued to focus heavily on male-on-male** rape

PREA passed **unanimously** in both houses of Congress in **2003**.

PREA Purposes

Increase **accountability** of prison officials who fail to detect, prevent, reduce and punish prison rape

Protect 8th amendment rights of federal, state and local prisoners

Establish **grant** programs

Reduce costs of prison rape on interstate commerce

PREA Purposes

Establish **zero tolerance**

Make **prevention** a top priority

Develop **national standards** for detection, prevention, reduction and punishment

Increase available **data** and **information** on **incidence** in order to improve management and administration

Standardize definitions used for collecting data on the incidence of rape in custody

Major Sections

Section 4: **Collection** of prison rape statistics, data and research (BJS)

Section 5: Prison Rape **Prevention and Prosecution** (NIC)

Section 6: **Grants to Protect Inmates and Safeguard Communities** (BJA)

Section 7: National Prison Rape Elimination **Commission**

Section 8: Adoption and Effect of **National Standards**

Section 9: **Accreditation** organizations must adopt standards or lose federal funds

Key Milestones

- 2003:** PREA legislation passes
- 2004:** First meeting of the National Prison Rape Elimination Commission (NPREC)
- 2004-2009:** Information gathering and hearings held by the NPREC
- June 2009:** Report and draft standards published by NPREC
- 2009-2012** Establishment and Convening of PREA Work Group

Key Milestones

2010:	DOJ opens public comment period for NPREC standards
Feb. 2011:	Draft DOJ standards released
Feb-April 2011:	Public comment period for DOJ standards
May 17, 2012:	Final DOJ standards released
June 20, 2012	Final standards published in the Federal Register
August 20, 2012:	Standards applicable to BOP
2013-2014:	First audit cycle

Key Principles

PREA encompasses **any** federal confinement facility whether run by the government or a private organization on behalf of the government

These standards are the floor - they are minimum standards

States **can and are encouraged to** do more particularly if your state has set higher requirements

- Some states already have stronger state laws than the protections the current standards provide
- Florida and South Carolina: staff in adult custodial settings are mandatory reporters by law

Must protect the constitutional rights of those in custody

What We Know: BJS Data

Adult administrative survey collections:

- 2007-8
 - <http://www.wcl.american.edu/endsilence/documents/SexualAbuseReportedbyCorrectionalAuth2007-8.pdf>
- 2006
 - http://www.wcl.american.edu/endsilence/adult_resources.cfm
- 2005
 - http://www.wcl.american.edu/endsilence/adult_resources.cfm
- 2004
 - http://www.wcl.american.edu/endsilence/documents/BeckandHughes_BJSReport2004.pdf?rd=1

What We Know: BJS Data

Victim self-reports: Adult Offenders

- 2007 Jail Inmates
 - <http://www.wcl.american.edu/endsilence/documents/SexVictimizationinLocalJails2007.pdf>
- 2007 State and Federal Prisoners
 - <http://www.wcl.american.edu/endsilence/documents/sexualvictimizationstateandfedprisons2007.pdf>
- 2008-9 Prison and Jail Inmates
 - <http://www.wcl.american.edu/endsilence/documents/SexualVictimizationinPrisonsandJailsReportedbyInmates2008-9.pdf>
- 2008 Former Prisoners
 - <http://www.wcl.american.edu/endsilence/documents/BJSReportFormerPrisoners2008May2012.pdf>

FINDINGS:

Sexual Victimization Reported by Adult Correctional Authorities, 2007-8

Correctional administrators reported 7,444 allegations of sexual victimization in 2008 and 7,374 allegations in 2007.

- Total allegations of sexual victimization increased significantly between 2005 (6,241 incidents) and 2008 (7,444).

The increase in total allegations of sexual victimization between 2005 and 2008 was largely due to prisons, where allegations increased 21%, from 4,791 incidents to 5,796.

FINDINGS:

Sexual Victimization Reported by Former State Prisoners, 2008

9.6% of former state prisoners reported one or more incidents of sexual victimization during the most recent period of incarceration in jail, prison, or a post-release community-treatment facility

FINDINGS:

Sexual Victimization Reported by Former State Prisoners, 2008

Former prisoners reported a wide variety of other sexual experiences with staff that were inappropriate

- An estimated 8.9% reported that staff had hassled or harassed them in a sexual way.
- 27.9% said that staff had stared or watched them at inappropriate times (e.g., while the inmate was dressing or taking a shower).
- 13.5% said that staff had forced them to undress in their presence or had brushed against their private parts when “they did not think it was an accident or it was not required by their job.”
- 32.4% of all former inmates reported one or more of these types of experiences.

While inappropriate, these lesser forms of staff sexual misconduct were not included in the analysis unless combined with reports of “willingly” or unwillingly having sex or sexual contact with staff.

FINDINGS:

Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-9

An estimated 4.4% of prison inmates and 3.1% of jail inmates reported experiencing one or more incidents of sexual victimization by another inmate or facility staff

Sexual activity with facility staff was reported by 2.9% of male prisoners and 2.1% of male jail inmates, compared to 2.1% of female prisoners and 1.5% of female jail inmates.

13% of male prison inmates and 19% of male jail inmates said they were victimized within the first 24 hours after admission

The National Prison Rape Elimination Commission

9 members authorized (8 served)

Charge

- Conduct legal and factual study of the effects of prison rape in the US
- Recommend national standards
 - Consultation with accreditation organizations
 - Can't impose something that would mandate substantial increased costs to agency
 - Hold hearings
- Issue report w/in 2 years of initial meeting

FINDINGS: NPREC

Protecting inmates from sexual abuse remains a challenge correctional facilities across the country.

Sexual abuse is not an inevitable feature of incarceration -- leadership matters.

Certain individuals are more at risk of sexual abuse than others.

FINDINGS: NPREC

Few correctional facilities are subject to the kind of rigorous internal monitoring and external oversight that would reveal why abuse occurs and how to prevent it.

Many victims cannot safely and easily report sexual abuse, and those who speak out often do so to no avail.

Victims are unlikely to receive the treatment and support known to minimize the trauma of abuse.

FINDINGS: NPREC

Juveniles in confinement are much more likely than incarcerated adults to be sexually abused, and they are particularly at risk when confined with adults.

Individuals under correctional supervision in the community are at risk for sexual abuse.

A large and growing number of detained immigrants are in danger of sexual abuse.

Adoption and Effect of National Standards

One year after National Prison Rape Elimination Commission issues report-- AG publishes a final rule with standards

- 90 days after publication -- transmission to state departments of correction
- FBOP is immediately covered by rule
- Possible reduction of 5% each year for failure to meet the standard
- Annual report on non-compliance

PREA Standards

Attorney General Working Group

- Composition: NIC, OJJDP, HHS, BJA, NIJ, BOP, OJP, ICE, HS, CRT, OFDT, OLP, USMS, OVW
- Tasks
 - Reviewed standards one by one
 - Commissioned a cost study (OJP)
 - Established a framework for public comments on the standards

AG's proposed final rule was released in Feb 2011

Public Comment Period was open until April 2011

Review of comments by workgroup completed by end of 2011 and standards were sent to OMB for review

Final standards released **May 17, 2012**

Differences from NPREC to the Final Standards

Coverage of immigration detention facilities

Protections for LGBTI individuals

Required staffing levels for youth in custody

Sight and sound separation for youthful inmates

Limitations on cross gender viewing and searches

Acknowledgment that non-coercive sexual contact between inmates and between youth are not necessarily sexual abuse

Applicable PREA Standards

- 115.15: Limits to cross-gender viewing and searches
- 115.21: Evidence protocol and forensic medical examinations
- 115.31: Employee training
- 115.41: Screening for risk of victimization and abusiveness
- 115.42: Use of screening information
- 115.81: Medical and Mental health screenings; history of sexual abuse
- 115.82: Access to emergency medical and mental health services
- 115.83: Ongoing medical and mental health care for sexual abuse victims and abusers

115.15: Limits to cross-gender viewing and searches

(a) The facility **shall not conduct cross-gender strip searches or cross-gender visual body cavity searches** (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.

(b) **As of August 20, 2015, or August 20, 2017 for a facility whose rated capacity does not exceed 50 inmates**, the facility shall not permit **cross-gender pat-down searches of female inmates**, absent exigent circumstances. Facilities shall not restrict female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision.

(c) The facility shall **document** all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female inmates.

115.15: Limits to cross-gender viewing and searches

(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.

(e) The facility **shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status**. If the inmate's genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

(f) The agency **shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates**, in a **professional and respectful** manner, and in the **least intrusive** manner possible, **consistent with security** needs

115.21: Evidence protocol and forensic medical examinations.

(a) To the extent the agency is responsible for investigating allegations of sexual abuse; the agency shall **follow a uniform evidence protocol** that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.

(b) The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, **shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,"** or similarly comprehensive and authoritative protocols developed after 2011.

(c) The agency shall offer all victims of sexual abuse **access to forensic medical examinations**, whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs.

115.41: Screening for Risk of Victimization and Abuse

(a) All inmates shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates.

(b) Intake screening shall ordinarily take place within 72 hours of arrival at the facility.

(c) Such assessments shall be conducted using an objective screening instrument.

115.41: Screening for Risk of Victimization and Abuse

- (d) The intake screening shall consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization:
- (1) Whether the inmate has a mental, physical, or developmental disability;
 - (2) The age of the inmate;
 - (3) The physical build of the inmate;
 - (4) Whether the inmate has previously been incarcerated;
 - (5) Whether the inmate's criminal history is exclusively nonviolent;
 - (6) Whether the inmate has prior convictions for sex offenses against an adult or child;
 - (7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
 - (8) Whether the inmate has previously experienced sexual victimization;
 - (9) The inmate's own perception of vulnerability; and
 - (10) Whether the inmate is detained solely for civil immigration purposes.

115.41: Screening for Risk of Victimization and Abuse

(e) The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency, in assessing inmates for risk of being sexually abusive.

(f) Within a set time period, not to exceed 30 days from the inmate's arrival at the facility, the facility will reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.

(g) An inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness.

(h) Inmates may not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (d)(1), (d)(7), (d)(8), or (d)(9) of this section.

(i) The agency shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates.

115.42: Use of Screening Information

(a) The agency shall **use information** from the risk screening required by § 115.41 to **inform housing, bed, work, education, and program assignments** with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.

(b) The agency shall **make individualized determinations** about how to ensure the safety of each inmate.

(c) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on **a case-by-case** basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.

115.42: Use of Screening Information

(d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.

(e) A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.

(f) **Transgender and intersex inmates** shall be given the **opportunity to shower separately** from other inmates.

(g) **The agency shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status**, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates.

115.31: Employee training

- (a) The agency shall train all employees who may have contact with inmates on:
- (1) Its zero-tolerance policy for sexual abuse and sexual harassment;
 - (2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
 - (3) Inmates' right to be free from sexual abuse and sexual harassment;
 - (4) The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
 - (5) The dynamics of sexual abuse and sexual harassment in confinement;
 - (6) The common reactions of sexual abuse and sexual harassment victims;
 - (7) How to detect and respond to signs of threatened and actual sexual abuse;
 - (8) How to avoid inappropriate relationships with inmates;
 - (9) How to **communicate effectively and professionally** with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and
 - (10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

115.31: Employee training

(b) Such training shall be tailored to the gender of the inmates at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male inmates to a facility that houses only female inmates, or vice versa.

(c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide each employee with refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures. In years in which an employee does not receive refresher training, the agency shall provide refresher information on current sexual abuse and sexual harassment policies.

(d) The agency shall document, through employee signature or electronic verification, that employees understand the training they have received

115.81: Medical and mental health screenings; history of sexual abuse

(a) If the screening pursuant to § 115.41 indicates that a prison inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.

(b) If the screening pursuant to § 115.41 indicates that a prison inmate has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening.

(c) If the screening pursuant to § 115.41 indicates that a jail inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.

115.81: Medical and mental health screenings; history of sexual abuse

(d) Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law.

(e) Medical and mental health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18.

115.82: Access to emergency medical and mental health services

(a) Inmate victims of sexual abuse shall receive **timely, unimpeded access to emergency medical treatment and crisis intervention services**, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.

(b) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, **security staff first responders shall take preliminary steps to protect the victim pursuant to § 115.62** and shall immediately notify the appropriate medical and mental health practitioners.

(c) Inmate victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.

(d) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

115.83: Ongoing medical and mental health care for sexual abuse victims and abusers

(a) The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.

(b) The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.

(c) The facility shall provide such victims with medical and mental health services consistent with the community level of care.

(d) Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.

115.83: Ongoing medical and mental health care for sexual abuse victims and abusers

(e) If pregnancy results from the conduct described in paragraph (d) of this section, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.

(f) Inmate victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.

(g) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

(h) All prisons shall attempt to conduct a mental health evaluation of all known inmate-on-inmate abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

What Does this Mean?

Increased scrutiny at state, federal and local level

You must get started

Have an understanding of what PREA does and does not do and what your obligations are

Get guidance from other experts in your agency and the field

What Does this Mean?

Enhanced focus on investigations, prosecution and administrative sanctions

Services for victims

Reentry services for victims and perpetrators and role of community corrections

Set of national standards that establish minimum standards for addressing sexual violence in custody

Our Aims

Provide resources for meeting the PREA Standards in your agency

Provide a blueprint for implementing gender responsive strategies

Provide networking opportunities with other agencies involved in PREA work

Resources for Doing This Work

Grants and cooperative agreements from BJA

National PREA Resource Center

<http://www.prearesourcecenter.org>

Training, technical assistance, regional meetings, PREA institute(s), webinars, general information, office hours

Work of other agencies in this area

NIC <http://nicic.gov/>

OJJDP <http://www.ojjdp.gov/>

Summary

What are the purposes of PREA?

Who are the most vulnerable to sexual abuse in custody?

Why are we discussing gender responsive strategies?