

PREA

Fact Bulletin

Sexual Harassment



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**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 the National PREA Resource Center (PRC). 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.

SEXUAL HARASSMENT OF INMATES¹

1. What is sexual harassment?

The definition of sexual harassment, as provided in PREA standard §115.6 applies to all four sets of standards (adult jails and prisons, juvenile facilities, community confinement, and lockups), and addresses sexual harassment of inmates by (1) other inmates, and (2) staff, contractors and volunteers. It is important that staff, inmates and those in facilities that have contact with inmates know this definition, know their responsibilities to report knowledge and suspicion of sexual harassment, and know the agency policy of zero tolerance. Staff, inmates, contractors and volunteers all need to receive training concerning agency policy and response concerning sexual harassment.²

It is important to note the differences between the PREA definitions of sexual harassment when committed by another inmate as compared to sexual harassment committed by staff, contractors or volunteers. Due to the imbalance of power of those in authority over inmates, inappropriate behavior includes a broader range of actions.

What are the elements of sexual harassment of an inmate by another inmate?

*Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature **by one inmate, detainee, or resident directed toward another.***

What are the elements of sexual harassment of an inmate by staff, a contractor or volunteer?

*Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident **by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.***³

¹ The term "inmate" for the purposes of this publication applies to all persons in custody, including adults, juveniles, residents, detainees and arrestees.

² Please see the PREA training standards §115.31/.131/.231/.331); §115.32/.132/.232/.332; and §115.33/.233..333.

³ Emphasis added.

2. Why is sexual harassment an important issue?

Sexual harassment is neither sexual abuse nor a criminal act. Sexual harassment impacts the overall well-being and safety of those in the agency's facilities. Sexual harassment can be an indicator of an inappropriate and unhealthy culture, and can be a red flag indicating a deeper issue which may involve sexually abusive behavior. While PREA does not address incidents of sexual harassment whereby staff members are the victims, an environment where staff is allowed to behave inappropriately in their exchanges with each other, is not only witnessed by inmates, but also sends the message to inmates that such behavior is acceptable. An environment that permits sexual harassment (of both staff and inmates) is one that also permits sexual abuse, compromises security, and creates an unhealthy and emotional environment where fights, retaliation, and other similar behaviors are frequent.

3. Assessing your agency/facility concerning sexual harassment

Sexual harassment is addressed in a number of PREA standards. In order to be fully compliant with PREA, it is necessary to address each subsection in the standards. The checklist below is intended to be a quick guide to compliance with the PREA standards concerning sexual harassment of inmates. Please read the entire standard for more information including the actual language of the standard and the most complete description of the standard itself.

Note: the number reference to the standard is from the standards for adult prisons and jails. The corresponding reference numbers to the standards for Lockups, Community Confinement, and Juvenile Facilities are shown in parentheses.

STANDARD	AGENCY/FACILITY ASSESSMENT	YES	NO
§115.11 (.111/.211/.311)	Does my agency have a written policy of zero tolerance for sexual abuse and sexual harassment of inmates?		
	Does the policy outline the agency's approach to preventing, detecting and responding to sexual abuse and sexual harassment?		
§115.16 (.116/.216/.316)	Does the agency accommodate inmates with disabilities and special needs so that they benefit from the agency's efforts concerning sexual abuse and sexual harassment?		
§115.17 (3)(b) (.117/.217/.317)	Does the agency consider incidents of sexual harassment in determining hiring and promotional decisions?		
§115.22 (.122/.222/.322)	Does the agency assure that all allegations of sexual abuse and sexual harassment are investigated?		
§115.31 (.131/.231/.331)	Does the training for employees of the agency include the following topics:		
	(1) zero-tolerance policy;		
	(2) how to fill their responsibilities for the prevention, detection and response to sexual abuse and sexual harassment;		
	(3) inmates right to be free from sexual abuse and sexual harassment;		
	(4) inmates right to be free from retaliation for reporting;		
	(5) dynamics of sexual abuse and sexual harassment in confinement settings;		
	(6) common reactions of victims of sexual abuse and sexual harassment?		
	Is this training documented?		
§115.32 (.132/.232/.332)	Does the agency train volunteers and contractors about the agency policy about sexual abuse and sexual harassment of inmates?		
	Is this training documented?		

§115.33 (.233/.333)	Do inmates receive training related to sexual abuse and sexual harassment, their right to be free from sexual abuse and sexual harassment and retaliation, and how to report sexual abuse and sexual harassment?		
	Is this training documented?		
§115.35 (.235/.335)	Does the agency train medical and mental health staff: (1) how to detect and assess signs of sexual abuse and sexual harassment; (2) how to respond to victims of sexual abuse and sexual harassment; (3) how to report allegations or suspicions of sexual abuse and sexual harassment of inmates?		
	Is this training documented?		
§115.51 (.151/.251/.351)	Does the agency provide multiple internal methods for inmates to report sexual abuse and sexual harassment?		
	Is there at least one way for inmates to report sexual abuse sexual harassment to an entity external to the agency?		
	Does staff accept all reports of sexual harassment, including verbal reports, and put them in writing?		
	Is there one way for staff to privately report sexual abuse and sexual harassment of inmates?		
§115.54 (.154/.254/.354)	Is there a method to receive reports from third-parties, and is the information about how to report distributed to the public?		
§115.61 (.161/.261/.361)	Is staff required to report all knowledge or suspicion of sexual abuse and sexual harassment that occurs in a facility (even if not the current facility)?		
	Are all reports or allegations of sexual abuse and sexual harassment referred to the designated investigator or investigative entity?		
§115.67 (.167/.267/.367)	Does the agency have a policy to prevent, detect and respond to retaliation for reporting?		
	Does this policy include a detailed plan for monitoring those who report sexual abuse or sexual harassment to assure there is no retaliation?		
§115.71 (.171/.271/.371)	Does the agency assure that investigations are completed promptly, thoroughly and objectively?		
	Have agency investigators received the required specialized training defined in 115.34?		
	Does the agency comply with the additional requirements in this complete standard?		
§115.72 (.172/.272/.372)	Does the agency require no more than a <i>preponderance</i> of the evidence to sustain an administrative investigation?		
§115.76 (.176/.276/.376)	Is staff subject to disciplinary sanctions up to and including termination for sexual abuse and sexual harassment?		
	Are disciplinary sanctions for violations of agency policy concerning sexual harassment commensurate with the nature of the acts, staff member's disciplinary history, and sanctions imposed for other comparable staff offenses?		
§115.77 (.177/.277/.377)	Does the agency take appropriate remedial measures and consider whether to prohibit further contact with inmates for contractors and volunteers who violate agency policy on sexual abuse and sexual harassment of inmates?		

4. COMMON QUESTIONS ABOUT SEXUAL HARASSMENT AND PREA

We are required to collect data on sexual abuse incidents. What about data collection for incidents of sexual harassment of inmates?

The PREA standards concerning data collection do not include incidents of sexual harassment. While sound correctional practice would be to retain all information concerning incidents of sexual

harassment for other purposes, it is not necessary to collect sexual harassment data with the sexual abuse data for the purposes of the PREA standards.⁴

What sanctions are required by the PREA standards for sexual harassment committed by inmates?

The standards require disciplinary action against staff who commit sexual harassment of inmates, but not for inmates who commit sexual harassment.⁵ Agencies and facilities, however, may and should discipline inmates according to agency policy, rules, and statutes and laws that may apply.

Are we required to refer inmate victims of sexual harassment to mental health?

No. The standards concerning medical and mental health responses to sexual abuse do not include a response to incidents of sexual harassment.⁶ As mentioned in the introduction to this Fact Bulletin, incidents of sexual harassment can be an indicator of other issues, including sexual abuse. All incidents and allegations of sexual abuse and sexual harassment should be addressed and investigated fully.

5. 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

⁴ See §115.87/.187/.287/.387

⁵ See §115.76/.176/.276/.376

⁶ See §115.82(a)/.182(a)/.282(a)/.382(a); and §115.83/.283/.383