

**Preventing & Addressing Sexual Abuse in Tribal Detention Facilities: The Impact of the Prison Rape Elimination Act (PREA)**  
**Notification of Curriculum Utilization**  
**December 2013**

The enclosed *Preventing & Addressing Sexual Abuse in Tribal Detention Facilities: The Impact of the Prison Rape Elimination Act (PREA)* curriculum was developed by the American Probation and Parole Association (APPA) 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 PREA standards served as the basis for the curriculum's content and development with the goal of the *Specialized Training: PREA Medical and Mental Care Standards* curriculum to satisfy specific PREA standard requirements.

It is recommended that the *Preventing & Addressing Sexual Abuse in Tribal Detention Facilities: The Impact of the Prison Rape Elimination Act (PREA)* curriculum be reviewed in its entirety before choosing which modules to use. Any alterations to the original materials must be acknowledged during their presentation or requires removal of the PRC and APPA 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: Utilization of the enclosed curriculum, either in part or whole, does not guarantee that an auditor will find a facility "meets standard". Rather, an auditor will take into consideration the curriculum used as part of their overall determination of compliance.*



***PREVENTING & ADDRESSING SEXUAL ABUSE  
IN TRIBAL DETENTION FACILITIES:***

**The IMPACT OF THE  
PRISON RAPE ELIMINATION ACT (PREA)**

**Facilitator Manual**

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## INSTRUCTORS' GUIDE - GENERAL INFORMATION

### CONDUCTING THIS TRAINING...

#### **Using the Materials**

This curriculum is provided for the use of instructors to train line employees in jails. The materials give background information and resources and additional information for both the instructor and the participants. Instructors are encouraged to carefully review the materials.

#### **Interactive Materials and The Adult Learning Technique**

Adults learn by doing and discussing. Lecturing by an instructor without sufficient time for discussion and interaction among the participants will only create boredom and barriers to learning. Certainly there is plenty of information that must be delivered to the participants concerning this topic, but adults do not learn much when someone stands in front of a classroom and just lectures.

This curriculum is highly interactive, and is intended to create a large degree of verbal discussion around all aspects of this topic. The dialogue about sexual abuse and harassment is the KEY for participants to understand the material, and the impact of these issues on their careers, their lives, and their daily activity.

Instructors are strongly advised to use all of the interactive exercises included in the Class Activity Guide. Instructors are encouraged to use other interactive class exercises with which they have success and experience, and tailor them to this particular program. However, it is NOT advised to reduce the amount of class interaction.

#### **Learning techniques for training in tribal jurisdictions**

Native American culture has some specific characteristics that instructors will find useful when training in tribal jurisdictions. The use of storytelling is part of Native heritage, and will be effective in the classroom as well. Use real stories of real events, and encourage participants to share their stories as well. Art, creative methods and visual imagery can help participants learn the material where appropriate. Talking circles and teaching in circles will all create an atmosphere of sharing and connection that can be very important for Native cultures. Instructors who are not Native American should remember that training sessions should always begin with a Native American invocation, presented by a respected member of the local tribe where possible.

#### **Sensitivity of the subject matter**

This topic is extremely sensitive in nature. Throughout the training, there is discussion about victims of abuse and how they respond to these issues. Be sure that the host

agency is aware of this.

Instructors are responsible for creating a safe and comfortable environment for participants in the classroom. Consider that there may be participants who have also been victims of sexual or physical abuse in their past. Be prepared for handling any problems that may arise during the discussion of sexual abuse, sexual victimization and assaults. It would not be unusual for those with a history of victimization to have a negative or emotional reaction during the training. Make sure that the host agency is advised and prepared to handle this. There should, at least, be a means to refer a participant for employee assistance with mental health professionals if the need arises.

The instructor must be constantly aware of this sensitive nature of some of these discussions, and be prepared to respond to the needs of the participants. Do not ignore the unusual discomfort or reactions of a participant. Ensure that other participants do not respond inappropriately or with criticism or sarcasm. Keep things completely professional, safe and comfortable.

### **Not the ONLY way**

While this training curriculum has been tested and extensively researched, it is certainly not intended to answer all questions, solve all problems, or dictate the only way for an agency and its employees to do business. The authors of this curriculum have had many years and experience in this topic and training, but do not consider this to be static or absolute.

### **Using the Modules**

There are five (5) different modules that comprise this entire training curriculum. Each module contains objectives, and provides enough information for instructors to successfully deliver the materials.

Most of the modules are designed so that they could be used independently of each other, in the event that instructors wish to break up the training times, or only cover certain aspects. However, it is strongly recommended that the instructor be completely familiar with ALL of the material in ALL modules. Instructors are most effective when they have a complete and full understanding of all materials and nuances of the topic as a whole.

Considerable resource material, articles, and a bibliography are provided in the Resource Section. Instructors are strongly advised to familiarize themselves with the resources – not just the list of available resources, but also knowledge of the content. Nearly all resources are available on-line.

### **Using the Participant Manual**

A Participant Handbook is provided and should be distributed to each participant for use during the training. The curriculum is designed to follow this particular order in the

Handbook, and the Handbook is intended to be used by participants for note-taking. Instructors should explain this to participants prior to beginning the training.

**Preparations in the days BEFORE training**

There is perhaps nothing more important and critical for instructors than to spend time in preparation. Great instructor skills are important, but only as effective as preparation. Carefully review the following list of steps to help with preparing for the training.

**Know the materials;  
know the agency;  
know the training  
facility.**

1. Do your own research on the topic – not only by familiarizing yourself with the resources provided, but also by doing a little online research for fresh information about real events and new materials. Also, be familiar with the agency where you will be doing the training.
2. Speak with the host agency's contact person about logistics (i.e., food or information about nearby restaurants for lunches, breaks, special needs, parking, printing of materials, name tents, or name tags).
3. Review the laws that apply to the agency where you are training. This will most likely include both the tribal laws and federal or state laws that may apply to sexual abuse in custodial settings.
4. Confirm the layout of the training room with the host agency's contact person. The room can be configured to the specifications of the training team. In most cases, training is more effective if participants are able to face each other in a "u" shape configuration. However, in some cases this is not possible.
5. Arrange for locations for participants to do their group break-out work. Depending on the size of the main classroom, they could potentially just use separated areas there. Ideally, they should be able to use other areas, such as break rooms, coffee rooms, lunch rooms, even outdoor space weather permitting.
6. Communicate with the host agency contact person concerning your equipment needs. You will need an LCD projector, a screen, and the associated electrical connections and cords. If you cannot provide the LCD projector, then be sure the host agency will have one for you. Always be prepared with your own laptop unless you are certain that the host agency will have that for you in the set-up. Confirm with the host agency's contact person the availability of audiovisual and other training aids (flip charts, easels, overhead screens, markers, tape, etc.)

7. The lead instructor should talk with the agency's contact person about specific learning needs, recent events, and other issues that might emerge during the training.
8. Review the curriculum and Power Point (as many times as necessary to be familiar enough with the materials to be flexible and not lose your place). Revise it as necessary to match your instructional style.
9. Strategize with your co-trainer about management of the program and group activities.
10. Arrange to have the participant materials copied and available at the training site. This includes the pre and post tests and evaluations. Have some extra copies available, or know where to copy a few extra on the day of training, if needed.

### **Audiovisual Equipment and Know-How**

A LCD projector is needed for the Power Point program. Most agencies have this equipment. If you have not worked with computer-generated software such as Corel Presentation or Power Point and a LCD projector, it is recommended that you familiarize yourself with these resources prior to your first training program. Be prepared for the event that you have NO equipment! It will be scary, but be prepared for it. It is advisable to have a back-up plan (maybe even 2 back-up plans!), in the event that equipment fails, or for some reason is not available as planned.

### **Conducting the Class Exercises and Activities**

Directions for conducting the class exercises and activities are contained in the Activity Guide, with a couple of exceptions. Those not contained in the Activity Guide, are part of the Participant and Instructor Guide, with their own set of instructions.

Class activities and interaction is essential to this training. Throughout the program, there are interactive exercises at least every hour. The use of other interactive techniques and exercises is encouraged.

Before the activity begins, inform the class as follows:

- ✓ Clearly explain the activity, what participants are expected to do, etc.;
- ✓ Explain what participants are expected to provide at the end of the group work – e.g. oral report, flip chart, etc.;
- ✓ Identify who is assigned to each group;
- ✓ Establish the time limitations;
- ✓ Allow sufficient time to prepare, report out, and process;
- ✓ Have instructors available to answer questions as the groups begin work;

- ✓ Have instructors listen-in from time to time to be sure all groups are on track;
- ✓ Provide the supplies needed – markers, paper, etc.; and
- ✓ Use time keeping techniques, if necessary, during the report-back, so that each group has equal time.

### **Dividing the class into groups:**

For many of the interactive exercises, the participants will be divided into groups. There are a number of different ways to do this. For this particular training program, it is highly recommended that the composition of the groups be changed for each group exercise if possible. (There are other types of training programs which require that groups stay together throughout the entire program).

*Here are some suggestions for breaking the class into groups:*

1. Simply divide the groups by 'counting off'. If you are going to have 5 groups, go around the room and have participants count off by numbers 1 through 5. All of the ones form a group, all of the twos form a group, and so on. If you are changing the group composition for other exercises, however, this method will only work once.
2. If the participants are from a number of different tribes, it is recommended that there be a mix of participants from each tribe in each group, if possible.
3. Divide the groups by having participants count off by numbers 1 through 5. The first set of 1 through 5 is one group, the next set of 1 through 5 is another, etc.
4. Make it creative, by using 5 different colors of 3 x 5 cards, or 5 different colors of M & M candies, or 5 different types of individually wrapped hard candies, etc. Have the participants draw from a box or other container. All of one color is one group, another color is another group, etc.

Always be aware of the group composition no matter which method you use. Make sure that the groups are balanced by gender, ethnicity, agency, or other factor. In other words, it is recommended that the groups are unbalanced with all males in one group, all females in another, etc. You may have to make some adjustments after using one of the methods above.

Be sure that all members of the group are participating. Look for those who have left the room. Invite their return. Change group membership for different activities.

After each group finishes their report-back, allow the rest of the class to make constructive comments or suggestions, and to ask questions. When the class completes their feedback (and only then – don't keep interrupting if it is not necessary), instructors should add their final comments to conclude the wrap-up.



**Recommended Reading:**

It is strongly recommended that Instructors for this training program read two particular items BEFORE conducting the training.

1. The Prison Rape Elimination Act – the law itself. This is provided as an appendix to the Instructors' Guide.
2. The U.S. Department of Justice final rule for "National Standards to Prevent, Detect, and Respond to Prison Rape" for prisons and jails. This resource includes a preamble that provides explanatory information about the standards from the Department of Justice. This can also be viewed in PDF online at [http://www.ojp.usdoj.gov/programts/pdfs/prea\\_final\\_rule.pdf](http://www.ojp.usdoj.gov/programts/pdfs/prea_final_rule.pdf).
3. The National Prison Rape Elimination Commission Report. This is a rather lengthy report, but it contains valuable and critical information that give a thorough background and understanding of not only the issue of sexual abuse in prisons and jails, but also the general intent to prevent and appropriately address incidents of such nature. The Report can be viewed in PDF.. The Report also contains all of the standards as an appendix.

**Optimal Number of Training Participants**

The optimal number of participants for these programs is around 25 - 30. Groups that are too large present a challenge to the trainer and can inhibit participation from the group.

**Optimal Number of Instructors**

It is recommended that this program be team taught, with at least two qualified and knowledgeable trainers. Instructors for this topic should be respected, and highly regarded, and should be able to cover this sensitive material in a way that is effective.

## **ON THE DAY OF TRAINING...**

- ✓ Arrive at LEAST one-hour before the program is to begin to set-up and arrange the furniture, and assure that the equipment is working and ready. If it is possible, prepare the training site the day before. This will also provide sufficient time to address any problems in time.
- ✓ Double-check the participant manuals, name tents, flip charts, etc. Be sure that each participant has an unobstructed view of the front of the room, the instructors, easels and pads, audio-visual screen, and other training aids.
- ✓ Locate the rest rooms, break rooms, coffee locations, and learn about arrangement for smokers.
- ✓ Check the ventilation. Know how to adjust the heating or cooling.
- ✓ Learn to adjust the lighting in the room.
- ✓ Be sure all participants can hear you. Listen for outside noise disruptions and make arrangements to try to overcome them.

### **Supplies**

For this training, you will need the following supplies:

- LCD projector and screen;
- Flip chart paper and easels, at least two;
- Markers;
- Masking or Painter's Tape for posting papers on the walls;
- 3 x 5 cards – about two packs of 100;
- Some wrapped candy or mints to keep on the tables (optional, but a nice touch); and
- A supply of pens for participants.

### **Starting the Program/Introductions**

Instructors should use their experience and discretion when introducing the program, themselves, and having the participants introduce one another. Instructors should be prepared to use an 'ice-breaker', some method to have everyone briefly introduce themselves to the group. Be creative about this – set the tone of openness and acceptance, and get the class to be comfortable.

Here are some steps to get started:

- ✓ Be sure the class is familiar with logistics – where the bathrooms are located, any parking concerns, how to get coffee or water, etc.
- ✓ Be sure participants have signed-in;
- ✓ Delineate the training objectives, and talk briefly about how long the training will last;
- ✓ Let the class know that there will be frequent breaks and plenty of interaction. Make sure they know that they can ask questions at any time;
- ✓ Let the class know that they will be given sufficient time for a lunch break, if the training is the full 8-hour program. Instructors should set the lunch break time based on the proximity of lunch spots;
- ✓ Advise the class that they will be asked to evaluate the program at the conclusion. However, it is advised that instructor's pass out 3 x 5 cards to all participants in the event that they have a question or comment DURING the training that they prefer not to make known to the class. Ask them to note their questions or comments on the cards, and pass them to you at any time.

### **“Parking Lot” Issues**

You may wish to create a flip chart page labeled “parking lot” for use during the training. Use this to list participants’ concerns that arise during training, but that cannot be immediately addressed. Be sure to address these by the end of the training. Instructors may need to speak to the agency host contact about some of these issues to get answers.

### **Training Evaluation**

If the host agency has a formal evaluation form, use that form. If no form exists, you may develop whatever form you need to get feedback on the impact of the program, training techniques, the skill and knowledge of the instructors, and suggestions for improving the program. Leave plenty of time at the end of the training for participants to fill out the evaluations completely. Don’t rush them.

### **Overcoming Challenging Participants and Situations**

The issue of staff sexual abuse and harassment can be controversial and emotional for some participants. Trainers need to be sensitive to this fact and keep a careful eye on the participants, anticipating any issues and addressing concerns as quickly as possible.

Often a participant will ask if there is a policy or procedure already existing that they can use as a model. While you are encouraged to share materials, participants need to be reminded that policy development must be agency-specific, recognizing agency culture and special issues. You should reinforce that there are many effective ways to solve issues.

Be mindful of chain-of-command and how this will impact participation and interaction. Create a safe environment with “amnesty” to assure the comments and points of view of those with different ranks to have the same value.

**Some refresher tips to help insure effective training:**

- Don't let one or two people dominate. It is important that different viewpoints are expressed. Possible responses to difficult, controlling or domineering people include the following, which can give control back to the instructor:
  - » *“May we put that on the back burner for the moment and return to it later?”*
  - » *“If it is all right, I would like to ask if we can discuss that on the break. There's another important point we still need to discuss and we are running a little short of time.”*
  - » *“That's a good point, let's hear from some of the others,” or redirect the conversation.*
  - » *“We have had several comments in support of this idea, are there different viewpoints in the room?”*
- Understand the question before jumping to the answer. A good technique is to rephrase the question back to the participant before answering.
- After you answer a question from a participant, ask them, *“Does that answer your question?” “Do you agree?” or “Has that been your experience as well?”*
- Keep everyone engaged in training. Look around the room. Ask people if they agree or don't agree with you. Wait for a response. If you don't have the attention of a participant, or group of participants, work to get it. Is it time for a break? Is it too hot or too cold? Are they bored? Do you need to move to a group activity?
- Questions from participants are a good indication of the level of their engagement. Questions have value in helping you to clarify, modify or fortify points or to test an idea for its potential. Ask questions of participants if you need to get them engaged.

- If a participant is belligerent or rude, walk closer to the person, even stand next to them.
- If a discussion escalates, divert the conversation away from those particular participants. *"Well, I guess we know how Sue and John feel about this! How does everyone else feel?"* or validate their feelings or emotional reactions by saying something such as, *"clearly this is a very emotional and difficult issue with differing viewpoints."* Intense emotions can also be a good indicator of major issues in the agency. You may want to give extra time for discussion to achieve some clarity or understanding of a particular topic.
- If you need to manage the person who "knows it all" acknowledge the person's contribution and then ask others in the group for their opinions.
- Keep the group focused. When a discussion gets off track, say: *"Your point is an interesting one, but it is a little different from the main issues here, perhaps we can address your issues during the break or after the session,"* or, *"We will be talking about that later in Module X. Your points are very interesting, could you hold those thoughts until we get to that module?"* Use the "parking lot" for these issues.
- Be respectful and listen. Be open yet firm and manage the discussion keeping in mind what is best for the whole group.
- Be mindful of your language. Use gender-neutral language. Avoid comments such as "you guys" or other such phrases. Be aware of the diversity of training participants, including disabilities and sexual orientation.
- Don't give legal advice.
- If you don't know the answer to a question, just say so. Tell the participant that you will make a note and let them know how best to get an answer
- Avoid one-on-one conversations and arguments with a participant.

## CONCLUDING THE TRAINING...

- Allow plenty of time for participants to complete the evaluations. If they are rushed, they will simply not do it.
- Be sure to review the "parking lot" issues. If you have been unable to get answers, direct the participants to the appropriate source to get the answer.

- If you volunteer to provide participants with copies of materials or additional information, KEEP YOUR PROMISE. Be sure to get their contact information so you can follow-up.
- If the host agency has prepared certificates for participants, allow sufficient time for distribution.
- Participants may feel overwhelmed by all of the new information and discussion. Be sure to end on a positive note. Acknowledge that there has been a lot covered during the training, and encourage them to sit down with their participant guide soon after the training to review what they learned. One effective way to assure that participants go away with a sense that they have learned something, and that this will have a positive impact on their day-to-day responsibility, is to go around the room and ask each participant to voice one 'thing' that they will do or change when they go back to work.
- Check with the host agency contact about securing the equipment and training room when you leave.
- Be sure the host agency contact knows how to get in touch with you for any questions.

## SOME FINAL DO'S AND DON'T'S FOR INSTRUCTORS

**DON'T read** directly from your Power Points or guidebook. Boring!

**DO maintain eye contact** with participants. Look around the room. Don't focus your gaze on one participant for too long unless you are speaking directly to them. If a participant asks a question, look at that person at the beginning of your answer, then look around the room so that participants feel as if you are giving information to all of them.

**DON'T make things up.** If you do not know something, don't 'wing it'. Be sure that the information you give to the participants is correct, true, and valid.

**DO vary your voice in tone.** Monotonous voices are the first thing that will put a class to sleep. Be sure you are talking loudly enough to be heard by all participants. If you need a microphone, get one!

**DO use all of your space.** Move around the room, and avoid standing in one place for any length of time. Vary your movements. But **DON'T** move around like you are pacing the floor. Remote controls for power-point presentations make it easy for you to be at any point in the room and still change slides. **USE ONE.**

**DON'T get into arguments** with participants. Use the tips given in this guide to help you manage problem persons in the class.

**DO be observant.** Are participants nodding off? Take a break. Get them moving by doing a class activity. Ask questions and work to get responses. If you are discussing a sensitive topic, be observant if someone seems to have a problem - take a break and quietly and privately talk to the person to see if there is something you can do to help.

**DO keep your promises.** If you promise to send someone something after the class, **DON'T** forget.

**INSTRUCTORS' GUIDE –  
COMPANION TO THE PARTICIPANT GUIDE**

**MODULE ONE  
DEFINING THE ISSUE  
&  
UNDERSTANDING  
THE PRISON RAPE ELIMINATION ACT (PREA)**

**LEARNING OBJECTIVES:** *After completing this module, participants will:*

- Understand The Prison Rape Elimination Act (PREA) – content and purpose of the law;
- Define prohibited behaviors - for employees, inmates, and others;
- Understand the benefits of PREA - to the agency, employees, and public safety;
- Discuss the myths and realities of the issue.



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CONTENT AS IT APPEARS IN THE  
PARTICIPANT GUIDE/HANDOUT

**Class Exercise: What Do You Know? QUIZ**



INSTRUCTORS' NOTES AND  
ADDITIONAL INFORMATION

Introductions

- APPA & Partners
- FACILITATORS
- PARTICIPANTS
- LOGISTICS
  - » Materials
  - » Agenda
  - » Ground Rules
  - » Training Expectations

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Welcome participants and provide an overview of the training program, introduce facilitators and allow participants to introduce themselves. Provide brief information about the training materials, the training agenda, ground rules for the training, and ask participants to identify their expectations for the training program.

Class EXERCISE:

WHAT DO  
YOU KNOW?



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Refer participants to the quiz in the Handout. The answers and some discussion points are in

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	<p>the Activity Guide.</p> <p>This quiz may be used as the pre-test/post-test, in which case you will not be having a discussion with the class immediately after the quiz. If you have a discussion after the quiz, avoid going into too much detail on items that will be discussed later. It will get a little disjointed. Respond to the question, but ask permission to put it in the “parking lot” until the issue comes up at a later time in the training.</p> <p>If you discuss this quiz at this point, be aware of where the class is on this issue...it will help you focus on areas that need the most attention later on.</p>
<p><b><i>What is PREA?</i></b></p> <p>The Prison Rape Elimination Act (PREA) was passed by Congress and signed into law by President George W. Bush in 2003.</p>	<div data-bbox="1121 889 1505 1179"><p>Module One</p><p>Defining the Issue and Understanding the Prison Rape Elimination Act</p><p><small>NATIONAL PREA RESOURCE CENTER</small></p></div>

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**Module One Objectives**

- Review update on PREA
- Learn definitions
- Understand benefits of compliance
- Discuss Myths & Realities

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It is highly recommended that you read the actual law itself before delivering this training. You will only be discussing the basics of the law with the participants. However, it is important for the instructor to have a working knowledge of the law itself in case of questions.

***What is the purpose and intent of PREA?***

The main purposes of PREA are to:

- Establish zero tolerance for sexual assault, rape, and sexual harassment in correctional systems, including jails, prisons, juvenile facilities, community confinement, and lock-ups.
- Develop national standards of accountability and compliance
- Collect data on the incidence of inmate-on-inmate sexual violence, and staff-on-inmate sexual misconduct.
- Increase accountability for officials who fail to detect, prevent, reduce and punish prison

**Purposes of PREA**

- Zero tolerance
- National standards
- Collect data
- Accountability

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The law does not carry any criminal penalties except for a potential loss of a portion of future federal grants. The loss of 5% of future federal grant funding applies onto to states and those facilities directly under the purview of the state. However, tribal law that covers sexual abuse

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rape.	and harassment of inmates does apply. PREA does create a greater potential for liability. Most important, however, the law is intended to provide a national strategy and level of consistent attention and response to this issue. It increases accountability and expectations for those who operate custodial facilities.
<p><b><i>To whom does the law apply?</i></b></p> <p>In the law, the term “prison” applies to all federal, state, local and private prisons, jails, police lock-ups, temporary holding cells, juvenile detention facilities, and community confinement facilities such as half-way houses and residential facilities.</p>	<div data-bbox="1123 542 1509 833"><p>Who is covered by PREA?</p><p>Federal, State, Private and Local</p><ul style="list-style-type: none"><li>• Jails</li><li>• Prisons</li><li>• Lock-ups</li><li>• Juvenile facilities</li><li>• Community confinement facilities</li></ul><p><small>NATIONAL PREA RESOURCE CENTER</small></p></div> <p>FYI – PREA defines “lockups” as any temporary holding facility, including arrestees under transport, in court-holding areas, in booking areas, or awaiting bail; and juveniles being held awaiting parents or shelter placement. The standards also define “community confinement facility” as a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential re-entry centers), other than a juvenile facility, in which individuals reside as part of a term of imprisonment or as a condition of pretrial release or post-release supervision,</p>

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	while participating in gainful employment, employment search efforts, community service, vocational training, treatment, education programs, or similar facility-approved programs during nonresidential hours.														
<b><i>Why is there a new law now?</i></b>															
<p>As far back as 1980, with the passage of the Civil Rights Act of Institutionalized Persons, abusive conditions of confinement have become a major issue. National attention was raised even higher by a number of key court cases that brought to light the widespread abuse of prisoners, mainly women, in our prisons and jails. Professional corrections associations passed resolutions that expressed zero tolerance for sexual abuse of prisoners, while advocacy and independent research groups began to collect and publish statistics and details of the scope of this issue. In July 2002, Congress began holding hearings concerning an effort to reduce prisoner rape, and by September 4, 2003, Congress unanimously passed The Prison Rape Elimination Act.</p> <p>Keep in mind that we have ALWAYS had the moral and ethical responsibility to protect those in our care, custody and control. This includes the protection against sexual abuse and harassment. PREA further emphasizes our responsibilities in this area.</p>	<div><p>Why now?</p><p>Events over the past 30 years</p><ul style="list-style-type: none"><li>• Civil rights acts</li><li>• National attention</li><li>• Key court cases</li><li>• Significant reports</li></ul><p>NATIONAL PREA RESOURCE CENTER</p></div> <div><p>History of PREA and Development of the Standards</p><table><tbody><tr><td>2003:</td><td>PRBA legislation passes</td></tr><tr><td>2004:</td><td>First meeting of the National Prison Rape Elimination Commission (NPREC)</td></tr><tr><td>June 2009:</td><td>Report and draft standards published by NPREC</td></tr><tr><td>2009-2012:</td><td>Establishment and Convening of DOJ PRBA Working Group</td></tr><tr><td>Feb. 3, 2011:</td><td>Draft DOJ standards released</td></tr><tr><td>May 17, 2012:</td><td>Final DOJ standards released</td></tr><tr><td>June 30, 2012:</td><td>Final standards published in the Federal Register</td></tr></tbody></table><p>NATIONAL PREA RESOURCE CENTER</p></div>	2003:	PRBA legislation passes	2004:	First meeting of the National Prison Rape Elimination Commission (NPREC)	June 2009:	Report and draft standards published by NPREC	2009-2012:	Establishment and Convening of DOJ PRBA Working Group	Feb. 3, 2011:	Draft DOJ standards released	May 17, 2012:	Final DOJ standards released	June 30, 2012:	Final standards published in the Federal Register
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**PREA Compliance Timeline**

August 30, 2013:	Standards applicable to state and local facilities
May 1, 2013:	Target date for DOJ to fully implement auditor certification process (estimated)
August 20, 2013:	Three-year audit cycle begins
September 30, 2013:	DOJ publishes a list of noncompliant grant recipients
October 1, 2013:	First date on which federal grant funds may be impacted (FY 2014)
August 19, 2014:	One-third of facilities must be audited
August 19, 2016:	First three-year audit cycle complete

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There have been a number of significant events over the past 30 years that led Congress to compose and pass PREA. The final report of the National Prison Rape Elimination Commission – formed by the law to gather information and develop a set of National Standards – provides an excellent overview of the chronology of these events. Briefly, they include:

*1980 – The passage of the Civil Rights on Institutionalized Persons Act.*

*1984 – Cason v. Seckinger: one of the first major court cases addressing widespread abuse of women prisoners by staff.*

*1985 – the founding of Stop Prisoner Rape (currently named Just Detention International) the first non-profit organization in the US dedicated exclusively to sexual violence in prisons and jails.*

*1994 – Farmer v. Brennan: U.S. Supreme Court ruling that corrections officials have a duty to protect prisoners from sexual abuse.*

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*1994 – Women Prisoners of the District of Columbia Dept. of Corrections v. District of Columbia: courts find that widespread pattern of abuse of women inmates violate 8<sup>th</sup> Amendment.*

*1996 - National Institute of Corrections begins work with corrections to reduce staff sexual misconduct.*

*1996 - Human Rights Watch publishes All Too Familiar: Sexual Abuse of Women in U.S. State Prisons.*

*1997 - U.S. Dept. of Justice sues state of Arizona and intervenes in Michigan for sexual abuses of prisoners during cross-gender pat-downs. Consent judgments create moratorium on cross-gender pat downs of women.*

*1999 - Lucas v. White - \$500,000 in damages to 3 female Federal inmates who were 'sold' as slaves by male staff.*

*2001 – Human Rights Watch publishes No Escape: Male Rape in U.S. Prisons.*

*2002 – Congress begins holding hearings concerning a law to reduce prison rape.*

*2003 – The Prison Rape Elimination Act passed by Congress unanimously, and signed by President Bush.*

*2012- Final Rule and PREA Standards published in Federal Register. Standards effective August 20, 2012.*

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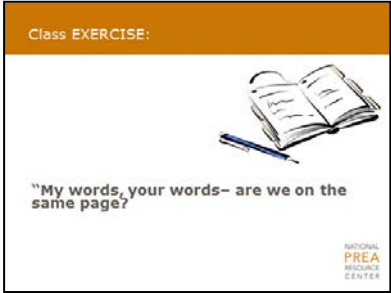
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<p><b><i>National Standards – why do we need them?</i></b></p> <p>As Congress reviewed more than 20 years of reports, court cases, and available information they discovered:</p> <ol style="list-style-type: none"><li>1. inconsistencies in how agencies responded to allegations</li><li>2. lack of preventive measures</li><li>3. the need for strong policies, procedures and practices.</li></ol> <p>This led to a mandate in PREA to develop a set of national standards that would support the elimination, detection and prevention of these acts in all custodial facilities across the United States.</p>	<p>The final version of the PREA standards were published in the Federal Register on June 20, 2012, and became effective on August 20, 2012. The process of developing the standards began with the National Prison Rape Elimination Commission which conducted a multitude of hearings across the country, taking testimony from corrections, jails and law enforcement professionals, other subject matter experts, victims, and victim advocacy groups. The responsibility for the revision and release of the standards then passed to the Office of U.S. Attorney General. After intensive review by a PREA workgroup under the purview of the Office of the Attorney General, which included two public comment periods, the standards are now effective.</p>
<p><b><i>How do the standards impact Tribal Detention Facilities?</i></b></p> <p>There are legal and jurisdictional questions that are still being considered by the U.S. Attorney General. However, the Indian Civil Rights Act does have an impact on the general application of rights for someone in custody in Tribal Detention. These include the right to be free from cruel and unusual punishment, which applies to the right to be free from unwanted sexual abuse and violence, even while in custody.</p> <p>Tribal detention facilities will decide about the implementation of PREA standards.</p>	<p>Tribal detention is not specifically mentioned in PREA. The U.S. Dept. of Justice has instituted a special office to coordinate with tribal nations, and provide additional legal information. The ICRA, as noted to the left, does apply the 8<sup>th</sup> amendment of the U.S. Constitution to tribal nations.</p> <p>Even if tribal facilities are not specifically mentioned in the law itself, the intent and purpose of PREA – to prevent and address sexual abuse – is already our moral and ethical</p>



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	responsibility. PREA provides an excellent guideline for how to best achieve this.
<p><b><i>How do they impact my job?</i></b></p> <p>Agencies that work toward compliance with National Standards will most likely review and revise existing policies, practices and procedures, which could result in changes that impact daily operations.</p> <p>Implementing PREA does not mean that we have to reinvent the wheel! By following good correctional practices, we have already been doing much of what is outlined in the PREA standards.</p> <p>Tribal Detention facilities may decide to report data annually as prescribed in the PREA standards.</p>	<p>As noted to the left, perhaps the biggest impact on agencies will be to review and revise their existing policies and procedures – AND every day practices - to align with the intention of the PREA standards. Due to certain obstacles, such as facility age and design, budget issues, and staffing, certain standards will present more of a challenge than others.</p> <p>A more detailed discussion of the actual standards takes place in a later module in this training program. To keep this module flowing and to avoid spending too much time on actual standards, keep this discussion general. You may mention that there will be a further discussion of the actual standards later in the training.</p>
<p><b><i>Definitions of behaviors</i></b></p>  <p><b>Class Exercise: “My Words, Your Words” – are we on the same page?</b></p> <p>Since data reporting is required for compliance with PREA, it is important that agencies are prepared. That means that we need to use the same definitions of</p>	<p>See the Activity Guide for detailed description of how to conduct this class exercise.</p> 

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prohibited and reportable behaviors. PREA contains clear definitions of prohibited behaviors. Each agency will decide for itself what definitions to use. There may be other considerations, such as:

- Tribal Law
- State Law

We have included the PREA definitions in an appendix.



**Class Discussion: How do YOU define sexual abuse, sexual harassment and sexual misconduct?**

What is sexual abuse? Be specific.

Define sexual harassment. Be specific.

Define staff sexual misconduct. Be specific.

Can you give examples of each?

The intent of the exercise is to make the point that what one person thinks a word means, is NOT necessarily what another person thinks it means. This demonstrates that definitions are very important for everyone if we are all to be on the same page.

For example, many of our policies and procedures talk only about “over-familiarity with inmates” or “conduct unbecoming”, or “inappropriate relationships.” This has been one of the main issues that led to the understanding by Congress that there needs to be a standard and clear definition of what behavior is not acceptable.

After this exercise, lead a discussion with the participants about how THEY define ‘sexual abuse’. Use the questions in the left column to guide the discussion. The intent of this exercise is for the participants to get comfortable with using the actual words of sexual abuse. Until we can talk about it, we will continue to experience obstacles in addressing the problem.

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**Class Discussion**

*In your own words, define:*

- Sexual Abuse
- Sexual Harassment
- Staff Sexual Misconduct

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It would be helpful here to actually refer the participants to these definitions now. Have them see how specific, how clear, and how detailed these definitions are. While the language may be embarrassing, it certainly leaves few questions about what is prohibited. Using clear definitions is important for staff in that they actually know exactly what is not acceptable. Employees WANT clear guidance and clear policies. It helps them do their job better and with more confidence.

**Definitions**

*Important to define prohibited behaviors*

- Be specific
- Everyone understands
- Data collection purposes

*See Appendix for examples of what is being used now*

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In addition, when the annual data reporting begins, which is required under PREA, agencies

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	<p>will report using specific definitions of the alleged behavior to assure accurate and meaningful statistics.</p>
<p><b>How does compliance benefit me, my agency and the public?</b></p> <div data-bbox="247 475 625 673"> </div> <p><b>Class Exercise: Why do I care about this issue? What are the benefits?</b></p> <p>In summary, the benefits of creating a custodial environment free from sexual abuse, sexual harassment and sexual misconduct, include at least the following:</p> <ul style="list-style-type: none"> <li>✓ Creates a <u>safer environment</u> for employees and inmates;</li> <li>✓ Creates a <u>high level of professionalism</u> among employees;</li> <li>✓ Protects the <u>safety and security of the facility</u>;</li> <li>✓ Preserves <u>integrity and respect</u> of corrections professionals;</li> <li>✓ Reduces <u>embarrassment</u> for families and friends;</li> <li>✓ Reduces <u>liability</u> exposure to lawsuits;</li> <li>✓ Preserves <u>public safety</u> (reducing the number of inmates who have been sexually abused reduces the incidence of PTSD and potential violence)</li> </ul>	<div data-bbox="1060 391 1438 678"> <p>Class EXERCISE:</p> <p>Why do I care? What are the benefits?</p> <p style="text-align: right;">NATIONAL PREA RESOURCE CENTER</p> </div> <div data-bbox="1060 716 1438 1003"> <p>Benefits of PREA</p> <ul style="list-style-type: none"> <li>• Safer work environment</li> <li>• High level of professionalism</li> <li>• Safety and security in facility</li> <li>• Integrity and respect</li> <li>• Reduces embarrassment</li> <li>• Reduces liability</li> <li>• Public safety</li> <li>• Public health</li> </ul> <p style="text-align: right;">NATIONAL PREA RESOURCE CENTER</p> </div> <p>It would be simple as an instructor to just stand in front of the class and start listing the benefits of complying with the intent of the PREA standards.</p> <p>But, it will have greater impact if the class participants have to think about this and come up with their own ideas about how it will benefit them.</p>

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- ✓ Preserves public health (reduces incidence of sexually transmitted diseases)

Refer to the Activity Guide for detailed directions about conducting this group exercise.

The list to the left is just a summary of the general benefits. Hopefully, with your guidance, the class will come up with more specific and more personal benefits. For example, one of the benefits would be for an employee to feel that their job is viewed as a more professional occupation, with a degree of integrity, which will improve morale. During the report-back, be sure to get the class to discuss their list of benefits in those kinds of specific and personal terms.

### ***Myths and realities***

There are many assumptions about sexual abuse and sexual harassment in prisons and jails. These inaccurate assumptions undermine an agency's ability to protect inmates in their custody, to provide a safe and professional work environment for staff, and therefore increase their liability.

#### **Benefits of PREA**

- Safer work environment
- High level of professionalism
- Safety and security in facility
- Integrity and respect
- Reduces embarrassment
- Reduces liability
- Public safety
- Public health

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**NOTES TO INSTRUCTOR:** These myths and realities are intended to open up discussion in the class. The power-point presentation will display only the myth. As each “myth” appears on the screen, ask the class to explain why this is a myth. If they have touched on each point of the “reality”, then move on to the next when you are sure that they understand *why* it's a myth.

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<b>Myth # 1</b>	<b>We have no reports of this kind of activity in our facility, so we don't have this problem.</b>
Reality:	Virtually no public or private institution has escaped this problem – churches, schools, the military, Congress, even our families. If an agency has no reports of these types of allegations, it means one thing – that there are no reports. It does NOT mean that this behavior is not taking place. It only means that there are significant barriers for both employees and inmates when it comes to reporting.
<b>Myth # 2</b>	<b>It is not as much of a problem when inmates consent to these relationships with staff.</b>
Reality:	The courts have made it clear – there is no such thing as “consensual sex” with staff in a custodial environment. All 50 states have laws making staff sexual misconduct with inmates a felony punishable by prison terms. No state has allowed consent as a defense to these acts with staff. The basic principles of the imbalance of power place the responsibility for refraining from this behavior squarely on the shoulders of those who have authority over the custody of inmates.
<b>Myth # 3</b>	<b>Employees are very clear about their professional boundaries.</b>
Reality:	Research has shown that one person's definition of professional boundaries can be completely different than another's. There is a clear gap between what employees understand about their professional boundaries, and what management expects. Many employees are unclear about the proper way to respond to situations involving inmates, even when it comes to simple every day conversations. It is imperative that training cover this area on an ongoing basis, so that employees develop the interpersonal skills necessary to handle the challenging inmate population.
<b>Myth # 4</b>	<b>It is the rookie employee who is most likely to get involved with misconduct.</b>
Reality:	Statistics have shown that is the experienced employee, who has many years on the job, who is most likely to be involved in misconduct. These employees have a false sense of confidence about handling situations with inmates, and have become comfortable in their jobs. The conduct is often unchallenged by peers and supervisors.

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<b>Myth # 5</b>	<b>The real victims of incidents of staff sexual abuse are the employees who are manipulated by the inmates.</b>
Reality:	Inmate manipulation is a reality. In most cases, finding ways to manipulate their situation has become a routine for inmates. The fact is, it not the action of the inmate that carries consequences – it the response by the employee that determines whether the manipulation is successful or not. It is our professional responsibility to respond in such a way that we do not succumb to attempts at manipulation. If we follow policy and procedure, if we know the rules, if we understand and maintain our professional boundaries, we cannot be manipulated.

<b>Myth # 6</b>	<b>Activities between inmates, including some unwanted sexual behavior, are part of what happens normally in confinement. Inmates should expect this to happen.</b>
Reality:	Being victims of abuse and unwanted sexual behavior is NOT part of the sentence of an inmate. It is unfortunate that this behavior does occur, but it is not ethically or morally right. Inmates have a right to expect to be free from abuse and to be housed in a safe and secure environment while in our custody. We have that moral and ethical responsibility to not only protect inmates in our custody, but to also inform them of their right to be free from abuse.

**SUMMARY of MODULE ONE**

- The Prison Rape Elimination Act (PREA) was passed by Congress and signed by the President in 2003.
- The law, which does not carry a criminal penalty, but may have an impact on Federal grant funding and civil liability, is intended to address the problem of sexual abuse in prisons, jails, and all other custodial facilities.
- PREA also created a set of national standards for prevention, detection and response that are meant to guide all those covered by the law as they work to eliminate sexual abuse in their facilities.
- PREA also has created a mechanism that requires annual reporting to the U.S. Department of Justice of details on all allegations of sexual abuse that occur.
- PREA benefits everyone – employees have a safer workplace; the agency enhances their professional reputation; the inmates are less hostile due to a safer environment; there is better mental health stability when victimization is not part of the environment; the spread of sexually transmitted diseases is reduced; the

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community bears less expense for medical and mental health interventions for victims, and inmates have fewer sexually transmitted diseases when released.

- PREA provides an excellent guideline for agencies to achieve the goal of reduced sexual abuse and violence in facilities, and strengthens the mission to provide a safe and secure environment for employees and inmates.



## APPENDIX A

### HOW SEXUAL ABUSE IS DEFINED

The definition of “rape” under the Prison Rape Elimination Act of 2003 was composed by disaggregating sexual violence into two categories:

Sexual abuse of an inmate by another inmate.

Sexual abuse of an inmate by staff, contractor or volunteer.

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### ***The following definitions are contained in the Definitions of the Prison Rape Elimination Act National Standards (115.6).***

#### ***Sexual abuse includes:***

- (1) Sexual abuse by another inmate, detainee, or resident, by another inmate, detainee, or resident; and
- (2) Sexual abuse of an inmate, detainee, or resident by a staff member, contractor or volunteer.

***Sexual abuse of an inmate, detainee or resident by another inmate, detainee or resident includes*** any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument; and
- (4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contacts incidental to a physical altercation.

***Sexual abuse of an inmate, detainee or resident by a staff member, contractor or volunteer includes any of the following acts, with or without the consent of the inmate, detainee, or resident:***

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;

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- (3) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (4) Penetration of the anal or genital opening, however slight, by a hand, finger, object or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (5) Any other intentional touching, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire.
- (6) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1) – (5) of this section;
- (7) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident;
- (8) Voyeurism by a staff member, contractor or volunteer.

***Voyeurism by a staff member, contractor, or volunteer*** means an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions, and distributing or publishing them.

***Sexual harassment includes***

- (1) 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; and
- (2) 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.

**INSTRUCTORS' GUIDE –**  
**COMPANION TO THE PARTICIPANT GUIDE**

**MODULE TWO**  
**DYNAMICS OF SEXUAL ABUSE AND HARASSMENT IN CUSTODIAL FACILITIES**

**LEARNING OBJECTIVES:** *After completing this module, participants will:*

- Understand why people get involved;
- Identify the risk factors for being a victim and/or a predator;
- Identify the impact of victimization on inmates and staff;
- Learn to identify red flags that indicate there might be a problem;
- Learn to protect themselves from being manipulated;
- Understand the impact of agency culture on behavior;
- Understand how ethics and professional boundaries protect staff.

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CONTENT AS IT APPEARS IN PARTICIPANT GUIDE/HANDOUT	INSTRUCTORS' NOTES AND ADDITIONAL INFORMATION	
<p><b><i>What do we know about inmates that helps explain the tendency to this behavior?</i></b></p> <p>In reality, most staff and inmates will never become involved in sexual abuse or harassment. However, there is a certain faction of those you work with and those in custody who will. So what is the difference between those who will and those who will not get involved? Certain characteristics tend to indicate risk factors for both predatory behavior and being a victim.</p> <p>What does a victim look like? They look just like everyone else. But there are certain factors that create a higher risk for victimization. The major factors include:</p> <p><b><u>Mental Health Issues:</u></b></p> <ul style="list-style-type: none"><li>• More than half of all inmates in prisons and jails have a mental health problem (64% for jails).<sup>1</sup></li><li>• There are more mentally ill persons in prisons and jails than in hospitals.<sup>2</sup></li></ul> <p><b><u>History of Victimization Prior to Incarceration:</u></b><sup>3</sup></p> <ul style="list-style-type: none"><li>• Inmates who reported prior sexual victimization</li></ul>	<p>Class Discussion</p> <p>What Does a Victim Look Like?</p> <p>NATIONAL PREA RESOURCE CENTER</p>	<p>Inmate Characteristics</p> <p>What makes inmates more vulnerable to sexual abuse?</p> <p>NATIONAL PREA RESOURCE CENTER</p>

The information presented to the participants has been gathered from a number of sources, including research done by the U.S. Department of Justice, Bureau of Justice Statistics, academic research, and others. But most importantly, it is intended to help identify those who are most at risk for becoming either victims or predators, or both. Interestingly, some of the very same risk factors apply to both.

<sup>1</sup> U. S. Department of Justice, Bureau of Justice Statistics, "Mental Health Problems of Prison and Jail Inmates". Doris James. September 2006. NCJ 213600

<sup>2</sup> Torrey, E. Fuller M.D. et al, "More Mentally Ill Persons in Jails and Prisons Than Hospitals: A Survey of States", National Sheriff's Association and the Treatment Advocacy Center. May 2010

<sup>3</sup> U.S. Department of Justice, Bureau of Justice Statistics, "Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09", by Allen J. Beck, PhD and Paige M. Harrison. August 2010, NCJ 231169

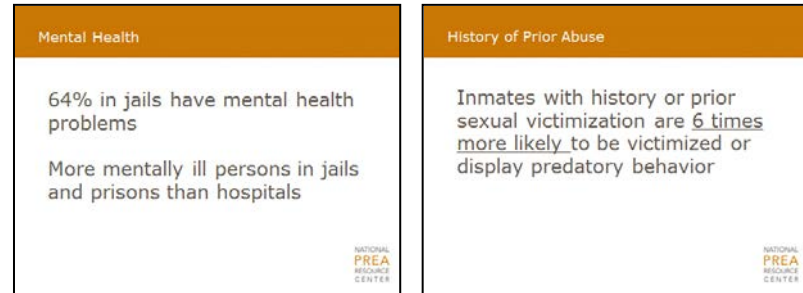
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were nearly 6 times more likely to be victimized or display predatory behavior while in custody.

**Tribal Detention and Related Statistics:**

- While American Indians and Alaska Natives accounted for 1% of the total population of the United States, they account for 1.2% of the incarcerated population.<sup>4</sup>
- About 40% of inmates confined in Tribal Jails are incarcerated for violent offenses.<sup>5</sup>
- The chance of being a victim of violent crime in Indian Country is more than double the national average.<sup>6</sup>
- More than 1 in 3 American Indian and Alaska Native women will be raped during their lifetime.<sup>7</sup>



Some very new research has emerged which places a great significance on the issue of mental health issues. Those with mental health problems seem to have the greatest risk of both victimization and predatory behavior.

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<sup>4</sup> U.S. Department of Justice, Bureau of Justice Statistics Bulletin. "Jails in Indian Country 2008". By Todd D. Minton. December 2009, NCJ 228271.

<sup>5</sup> Ibid.

<sup>6</sup> U.S. Department of Justice, Bureau of Justice Statistics. "American Indians and Crime" by Lawrence Greenfield. February 1999. NCJ 173386.

<sup>7</sup> Ibid.

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**Tribal Statistics**

- 1.2% of those incarcerated in state and federal facilities are American Indian (but only 1% of total USA population)
- 40% in tribal jails are violent offenders
- Victimization rate in Indian country **DOUBLE** that of non-Indian citizens
- 1 in 3 women will be raped

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Risk factors are important in that they can help us classify inmates to provide them with a safer housing location. In fact, one of the PREA standards addresses this specifically, and will require agencies to screen for these risk factors and use this information to assign inmates to housing and programs.

**Caution!!:** Agencies need to assure that this information is used ONLY to classify for housing and programs. It should NOT be used to set custody level. Instructors need to be aware of this if the class discussion touches on classification issues. More details about this particular topic with relation to the standards can be found in standards 115.41, 115.42, and 115.43.

PREA standards require classification procedures that identify these risk factors for victimization

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	and predatory behavior.
<b><i>The Cycle of Violence – Victims and Abusers.</i></b>	
<p>Inmates in custody come with a list of emotional and mental health issues that make some <u>significantly more vulnerable</u> to being victims of sexual abuse and violence, and it makes some more likely to <u>display predatory behavior</u> while in custody. By understanding the characteristics of those in custody, you have knowledge that will help you know how to manage and deal with them. You can better protect them and yourself from inappropriate, harmful and dangerous activity.</p> <p><b>Those with a history of mental illness or traumatic events such as abuse:<sup>8</sup></b></p> <ul style="list-style-type: none"><li>• Are typically less equipped to handle stressful situations;</li><li>• Have a pessimistic and hopeless view of the world;</li><li>• Are more at risk for further victimization;</li><li>• Are less able to distinguish between healthy relationships and exploitation;</li></ul>	<p>This discussion is intended to increase awareness of the fact that victims have a much more complicated response to continued victimization. We sometimes expect victims to act in the same manner than others, but in fact, they will have a different response than we might anticipate.</p> <p>Skilled and trained sexual assault investigators in law enforcement are well aware of these facts. For this reason, the training for investigators of sex crimes includes many components that are unique to these types of investigations. While certain certain investigative techniques are relative to all types of criminal acts, sex crimes involve very unique and special techniques.</p> <p>This is why it is important for corrections professionals to understand how the cycle of violence has a significant impact on how victims perceive their situations, how they respond to being questioned, and how they react when they are further victimized.</p>

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<sup>8</sup> Dutton, D., and S.L. Painter, 1981. Traumatic Bonding: The development of emotional attachments in battered women and other relationships of intermittent abuse. *Victimology* 6:139-55.

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<ul style="list-style-type: none"><li>• Suffer from Post-Traumatic Stress Disorder (PTSD) which can create a false sense of reality and time;</li><li>• Tend to believe that being a victim is their 'lot' in life;</li><li>• Lie about their abusers to protect them;<sup>9</sup></li><li>• Use the unhealthy methods they have learned to try to manage their situation – such as manipulating those around them, and using sexual favors, as a way to get what they want.</li></ul> <p>The psychological effects of violence can be demonstrated in ways that we may see as manipulation or hostility, depression and submission. It is critical for corrections staff to understand how these effects appear in the corrections setting.</p>	<div><p>"A very strong bond is created between victim and victimizer – so strong that....abused children and wives have lied about their injuries to protect their abusers." <i>Dutton. D., and S.L.Painter. 1981. (see footnote)</i></p></div>	<div><div>History of Trauma</div><div><ul style="list-style-type: none"><li>• Less equipped to handle stress</li><li>• Pessimistic view of world</li><li>• More at risk for further victimization</li><li>• Less able to distinguish unhealthy and exploitative relationships</li><li>• Post-Traumatic Stress Disorder (PTSD)</li><li>• Lie to protect their abusers</li><li>• More manipulative</li></ul></div><div><div>NATIONAL PREA RESOURCE CENTER</div></div></div>
<div>Red Flags – Identifying Potential Problems</div> <p>So what do you do with all of this information about inmates, victims and predators? You observe and act. It is critical to become aware of what is going on around</p>		

<sup>9</sup> Ibid.



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you.

Have you heard about someone who got in trouble for something at work, and said to yourself, “I knew something was going on”, or “I had a feeling something wasn’t right”?

At work, there may be a tendency to not trust your instincts. There are a lot of reasons for this: perhaps you don’t want to get someone in trouble if you aren’t certain about what you saw; perhaps you don’t want to make waves; or perhaps you simply don’t recognize the meaning of small observations.

Your ‘sixth sense’ about things is often valid. This exercise is intended to help you be comfortable with observing what is going on around you, and recognizing when there might be a potential problem.

**SEE THE ACTIVITY GUIDE FOR DIRECTIONS ON CONDUCTING EXERCISE** **Class Exercise: Red**



Class EXERCISE:



**SEE THE ACTIVITY GUIDE FOR MORE DIRECTIONS ON CONDUCTING THIS EXERCISE.**

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***What do I do when I see or suspect inappropriate behaviors?***

You may not want to be considered a tattletale, and certainly do not want to accuse someone of something that may not be true. But, by responding appropriately to things you observe, you could actually be saving the career and reputation of a co-worker, or saving someone from serious physical harm. If you allow the small infractions or suspicions to go unnoticed and unattended to, then you share the responsibility when things escalate to a dangerous and unsafe place.

The ultimate goal is to maintain a professional, secure workplace, where staff and inmates are safe from harm. To achieve this goal, you must be willing to act professionally. This means that you expect the same level of professional behavior and respect from others that you expect from yourself.

There are many reasons that staff and inmates do not report their suspicions and allegations. Let's examine some of these reasons.



**Class Exercise: Code of Silence –Why Inmates and Staff Don't Report**

This class exercise is perhaps one of the most effective and important exercises of the training, combined with the follow-up exercise.

It helps participants open-up about things they may have observed, or things they might observe, and connect these observations to potential inappropriate activity. We have all observed certain things that make us say to ourselves "something doesn't seem right", but we tend not to do anything about it.

We are fearful of accusing somebody of something that isn't true. We are fearful of retaliation for reporting. We don't want to rock the boat. We don't want to create an enemy of a co-worker, or even a specific inmate.

But, our blind eye only perpetuates the inappropriate behavior. By failing to respond, we allow situation to grow into something much more dangerous and sinister.

This exercise will start the dialogue about the small observations of what may at first seem insignificant, but which could be just the tip of something dangerous.

**SEE ACTIVITY GUIDE FOR DIRECTIONS ON CONDUCTING THESE EXERCISES.**

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So, now that you understand what you observe, now that you are aware of what to look for, what do you do about these 'red flags'? How would you respond? Do you know who to go to, who to talk to about this?



**Class Exercise: Now what do I do with this information?**

***I know what I'm looking at now, so how do I protect myself from manipulative inmates?***

Manipulative inmates are a fact of life in our workplaces. There are stories about inmates who have successfully manipulated someone into doing something for them. With time on their hands, inmates can become keenly observant of staff and other inmates. Since they cannot control their situation as they would when they are not incarcerated, they can become very creative and determined to find a way to get something they want. Unfortunately, this is a relatively normal response to incarceration. It is part of the "fight or flight" response that is present in all of us. Since they cannot extricate themselves from the situation, they may choose to fight in the form of non-physical actions – or, manipulation.

**Class EXERCISE:**

**CODE OF SILENCE –  
WHY INMATES AND STAFF DON'T REPORT**



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**Class EXERCISE:**

**NOW WHAT DO I DO  
WITH THIS INFORMATION?**



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**Manipulative Inmates**

- Fact of life
- Inmates find ways to gain control
- Fight or flight – a natural response to a stressful environment
- A way to get something they want

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**Protecting Ourselves**

***Best Defense.....***

- Know the rules & follow them
- Recognize manipulative attempts
- Understand why inmates attempt to manipulate
- Maintain clear professional boundaries

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This discussion about manipulative inmates will probably be very important to the participants.

We all know that inmates will try to manipulate us, but do we all know how to respond so that we can't be manipulated?

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Your best defense?

- Know the rules and follow them;
- Recognize attempts at manipulation;
- Understand why inmates attempt to manipulate; and
- Maintain a high level of professionalism and clear boundaries at all times.



**Class Exercise: Protecting myself. How does my response control the outcome?**

The exercise that follows this discussion will help the participants practice how to respond to inmates.

As one prison warden said, “You can NOT be manipulated by an inmate.....unless you LET them manipulate you.” Our RESPONSE determines whether we can be manipulated. The more consistent and professional we are, the more inmates will recognize this.

Class EXERCISE:



Protecting Myself.  
How does my Response  
Control the Outcome?

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**SEE ACTIVITY GUIDE FOR DIRECTIONS ON CONDUCTING THIS EXERCISE**

**Agency Culture – how we do business and how it affects behaviors.**

What is agency culture? It is how agencies do business. It is the total of the attitudes, behaviors, beliefs, traditions and practices of present and past employees. It includes the ethics and professionalism of staff and leadership, both past and present. Agency culture determines what is acceptable and

Agency Culture

The total of the attitudes, behaviors, beliefs, traditions and practices of present and past employees.

Determines what is acceptable and unacceptable behavior in the workplace.

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unacceptable in the workplace, regardless of what the written policies and procedures say.

For example:

- ✓ If there is mutual respect between line employees and administration, employees feel appreciated and heard and will be more inclined to follow the rules and treat each other and inmates with respect.
- ✓ If leadership walks the walk, not just talks the talk, employees will be more committed to the mission of the agency.
- ✓ If employees are permitted to talk disrespectfully to each other with no consequences, then inmates will observe this and be disrespectful to staff and other inmates.
  
- ✓ If leadership does not expect employees to behave with dignity and integrity while off-duty, then behavior at work will also lack dignity and integrity.

Agency culture has a major impact on sexual abuse and harassment in the workplace.

- ✓ Where respect is lacking in how to talk to each other and treat other, inappropriate behavior becomes an acceptable aspect of everyday life;
- ✓ Where investigations into allegations of abuse are incompetent, then the lack of trust in the process creates a barrier to reporting;
- ✓ Where inmates are considered to be unworthy of human rights and protections, abuse will occur;
- ✓ Where there is a lack of training and dialogue about the issue of abuse, abuse will occur without

The discussion of agency culture may seem a bit foreign to most line staff. But, this issue is so MUCH about agency culture, that the discussion and understanding of it is critical.

Most line staff will feel powerless to change the agency culture, which is heavily determined by leadership. However, it is possible for line staff to change the culture within their own small circle of co-workers. Agency culture starts with someone setting a standard and example, and even line staff can do that. It starts with self-respect, then respect of others – both co-workers and inmates.



Have the class talk about how they might show respect to their co-workers – through the language they use, the attitude they portray, and their actions. Have the class talk about the same thing with their interaction with inmates.

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consequences.

While changing the culture of an agency is a long and tough process, it can be achieved with proper leadership and employee expectations. Your handouts contain a checklist and scorecard to assess the culture in your own agency.

Almost always, people understand the concept of 'giving respect to others fosters getting respect from others'. At the very least, this is how line staff can impact the culture among their co-workers and their interaction with inmates.

### **SUMMARY of MODULE TWO**

- There are certain characteristics of inmates that make them more vulnerable to victimization, such as mental health issues, a history of prior abuse, alcohol and drug abuse.
- Corrections professionals have the ethical and moral responsibility to protect those in their custody, care and control, from being sexually abuse and harassed.
- There are a variety of reasons that inmates and staff do not report allegations, such as fear of retaliation, breaking the code of silence, and distrust of the investigative process.
- Red flags – things we observe – may indicate that there is some sort of inappropriate relationship or activity occurring. It is our responsibility to be aware of these and respond accordingly.
- Inmates will try to manipulate those around them. Corrections professionals cannot prevent inmates from trying, but the response to these attempts determines whether inmates are successful or not.
- Agency culture impacts the frequency and likelihood that sexual abuse – between inmates and between staff and inmates – occurs in our facilities.

## INSTRUCTORS' GUIDE – COMPANION TO THE PARTICIPANT GUIDE

### MODULE THREE INVESTIGATIONS AND LEGAL CONCERNS

**LEARNING OBJECTIVES:** *After completing this module, participants will:*

- Understand the unique nature of investigations into sexual abuse and harassment;
- Learn the responsibilities of being a first responder to these situations;
- Understand the rights and responsibilities of those under investigation;
- Learn about the legal concerns and consequences of involvement in prohibited behaviors.



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CONTENT AS IT APPEARS IN THE PARTICIPANT GUIDE/HANDOUT	INSTRUCTORS' NOTES AND ADDITIONAL INFORMATION
<p><b><i>Investigations are critical to prevention.</i></b></p> <p>Investigating allegations of all types of sexual abuse in prisons and jails is one of the most critical aspects of effectively addressing these incidents. Without competent, fair, timely, and consistent investigations by specially trained investigators, incidents of this nature will continue unchecked. Finding the truth to these allegations, with fair and consistent sanctions, has a major impact on the prevention of sexual abuse.</p>	<div><div><p>Unique Nature of Sexual Abuse Investigations</p><ul style="list-style-type: none"><li>• Victims, perpetrators &amp; witnesses in close proximity</li><li>• Mental and physical state of victim</li><li>• Sensitive and personal issue</li><li>• Safety for victims at risk</li><li>• Victims responds differently</li><li>• Embarrassment</li><li>• Complicated physical evidence</li><li>• Special training needed</li><li>• Medical &amp; mental health needs</li></ul><p>NATIONAL PREA RESOURCE CENTER</p></div><div><p>Investigations - Critical to Prevention</p><p>Competent investigations</p><ul style="list-style-type: none"><li>• build trust in the process</li><li>• find the truth</li><li>• build professionalism</li><li>• deter sexual abuse</li></ul><p>NATIONAL PREA RESOURCE CENTER</p></div></div> <p>The 3 most critical factors for preventing and responding effectively to incidents of sexual abuse and harassment in corrections are:</p> <ul style="list-style-type: none"><li>• Training</li><li>• Investigations</li><li>• Policies and Procedures</li></ul> <p>This module talks about investigations and legal issues to help participants understand how they impact sexual abuse in their facilities.</p> <p>Specially trained sexual assault investigators in law enforcement agencies can attest to the unique nature of these investigations.</p> <p>There are certain aspects of dealing with</p>
<p><b><i>The unique nature of investigations into allegations of sexual abuse, violence &amp; misconduct.</i></b></p> <p>There is a big difference among the different types of investigations that may occur in a correctional setting. Dealing with a victim who has just been sexually abused is not the same as finding out who brought drugs into the facility.</p> <p>Some of the biggest differences in investigating allegations of a sexually abusive nature include:</p> <ul style="list-style-type: none"><li>• Dealing with a sensitive and personal issue;</li><li>• The issues of safety for victims and suspects;</li></ul>	

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- Psychological influences on victims responses;
- Embarrassment of those involved;
- The danger and threat of retaliation to those who report allegations;
- The seriousness of charges against employees who are accused;
- The complicated process of collecting physical evidence;
- The amount of special training needed to conduct interviews and collect evidence;
- The mental and physical state of the victim; and
- The need for medical and mental health intervention

**The same level of competence, special skills, training, and thoroughness of investigations into incidents of sexual abuse that we expect when our next door neighbor, or family member are victims in the free world, should be applied to those victimized while incarcerated.**

**Specialized Training for investigators:**

The issues mentioned above, which are just a short list of unique concerns about these investigations, require specific skills and competency from those conducting them. Assigning an employee without this special training to these types of investigations is unfair to that employee, to the person accused, to the victim, and the entire agency. Unless these investigations are completed in a competent manner by those who are trained to handle them, the only

victims of sexual abuse and sexual harassment that need to be handled differently than, say, investigations into theft. Interview techniques are different.

Interviewing witnesses is different. The types and quality of evidence is different.

For purposes of this class, participants should be able to understand how may victims act and respond when they have been involved in sexual abuse and sexual harassment. Most of the participants will never have the occasion to investigate these allegations, but they will be first responders, and they will be observers of behavior.

While this issue of specially trained investigators is very important to the effective handling of sexually based investigations, many agencies, particularly in Indian country, some agencies may not have the ability to use special investigators. Don't spend too much time on this particular aspect, since it is leadership who has the responsibility to assure investigators are properly trained. If this is a 'hot' issue in the class, suggest that they ask to speak to someone in management about it.

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thing we will accomplish is to further any distrust of the process, and assure that these behaviors will continue unchecked.

PREA Standards (115.34) require that investigators of sexual abuse in confinement have specialized training in the following areas:

- Conducting sexual abuse investigations in confinement settings;
- Techniques for interviewing sexual abuse victims;
- Proper use of Miranda and Garrity warnings;
- Collection of evidence;
- Criteria and evidence required to substantiate a case for criminal prosecution and/or administrative action.

***First Responders – What We Need to Do***

Those working in a corrections setting will be the first responder to situations of this nature. So what should First Responders do?

**1. Render Aid.** First and foremost always is to render aid to the victim. Physical injuries after a sexual abuse may not always be as evident as other kinds of assaults. It is critical that victims are provided with the best available medical and mental health intervention as soon as possible. Victims may be in a state of shock or trauma. Remember that this could affect the way they answer questions, the type of information they give, and the way they respond to additional abuse.

**First Responders**

What we need to do...

1. Render aid
2. Separate victim and abuser
3. Preserve evidence
4. Make notification
5. Document actions
6. Be observant – even later

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Review each of these items with the class, and allow them to discuss them and ask questions. They are self-explanatory. Ask if they have some kind of first-responder training. If not, there are a number of online sources for some basic training in being a first responder. Refer

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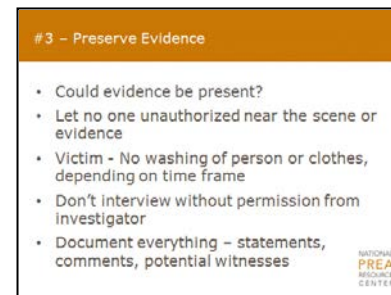
**2. Separate the alleged victim and abuser.** If inmates or staff need to be moved to preserve the safety and security of staff, inmates and the facility, do so immediately.

**3. Preserve Evidence.** If there is any possibility that physical evidence might be present, either on the person of the victim or in the area of the crime, make sure that no one touches anything; that no one has access to the area unless it's an investigator or someone who SHOULD be there. The victim should be requested to not wash, brush their teeth, eat, drink, smoke, use the toilet or change clothes if the abuse occurred within 120 hours, and ensure that the alleged perpetrator is not able to take actions that would destroy physical evidence. Policies and protocols on the timeframe for collecting and preserving evidence may vary according to jurisdiction, so it is important to be aware of the appropriate standard in your own jurisdiction.

First responders should only ask the questions necessary to render aid, preserve physical evidence, and assure the immediate safety of the victim, staff and facility. Only the person assigned to the investigation should be questioning victims and witnesses in detail. The investigation can be compromised if interviews and evidence collection are not conducted properly.

them to websites in their resource guide and to Standard 115.64 Staff First Responder Duties.

However, this basic list should help guide them if they are in a position of being a first responder, and provide a sufficient explanation of their responsibility.



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**4. Make Appropriate Notifications.** Immediately notify a supervisor or the person designated by policy of what has occurred. Be sure that an investigator will be notified.

**5. Assist investigators and supervisors.** When supervisors and investigators arrive, be sure to pass along any kind of information that you have. Even things that might not seem significant at the time could turn out to be crucial. Try not to interfere or interrupt, but be sure it is known that you are there to help if needed.

**6. Document everything you have heard and seen.** No one can remember every single detail of an event. It is important to take notes and document everything you observed, heard or did as the first responder.

**7. Be observant.** Keep a watchful eye over everyone and everything immediately following an incident. You might observe something significant that could assist with the investigation; even if it is hours or days later.

**8. Be prepared.** Know policy and procedure. Stay informed about what is going on around you at all times. Do your own reading and research into what it means to be a first responder.

The Class Exercise that follows provides a few real situations. Participants can work in groups or as a class to list the steps they would take as first responders.

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**Class Exercise:  
What Do I Do Now? Real Events for First  
Responders**

**Class EXERCISE:**

What do I do now?  
Real events for First Responders



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**SEE ACTIVITY GUIDE FOR DIRECTIONS IN  
CONDUCTING THIS EXERCISE**

***PREA Standards related to investigations.***

There are 7 PREA standards that relate directly to investigations of sexual abuse in confinement. These are:

115.21 – Evidence protocol and forensic medical exams.

- This standard states that forensic medical examinations must be conducted by Sexual Assault Nurse Examiners (SANEs), Sexual Assault Forensic Examiners (SAFEs) or other qualified medical practitioners.
- Forensic medical examinations must be offered to all victims of sexual abuse without cost to the victim.
- The agency shall attempt to make available to the victim a victim advocate from a rape crisis center, or if not available, a qualified staff member.

This guide contains the general content of the standards listed, but does not include every detail from the standard. As with any discussion of standards during this course, participants should read the standards for complete information.<sup>0</sup>

**PREA Standards Related to Investigations**

115.21 – *Evidence protocol and forensic medical examinations.*

- SANEs, SAFEs or other qualified
- Offered without cost
- Victim advocate

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**PREA Standards Related to Investigations**

115.22 – *Policies to ensure referrals of allegations for investigation.*

- Must complete administrative and/or criminal on ALL
- Refer if criminal

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For the instructor, the following contains some additional information concerning some of the standards listed here.

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- If requested by the victim, the advocate shall accompany the victim to the forensic medical examination process and investigatory interviews.

115.22 – Policies to ensure referrals of allegations for investigations.

Agencies must complete administrative and/or criminal investigations for ALL allegations of sexual abuse and sexual harassment. Allegations that involve potential criminal acts must be referred to the authority that conducts criminal investigations for the agency.

115.34 – Specialized training: Investigations.

In addition to all of the training required for employees (see standard 115.31), if the agency conducts its own sexual abuse investigations, investigators must receive additional specialized training to include:

- Conducting investigations in confinement settings;
- Techniques for interviewing victims;
- Proper use of Garrity and Miranda warnings;
- Evidence collection techniques; and
- Evidence required to sustain a case for

115.21 – This standard is also prescriptive concerning evidence protocol and names the precise published protocol.<sup>10</sup> Examinations should be conducted by Sexual Assault Nurse Examiners or Sexual Assault Forensic Examiners. If not available, then by a qualified medical practitioners. The victim advocate mentioned in the standard should be from a rape crisis center. However, if one is not available, a qualified staff person can be used. The staff person MUST have received the specialized training to be a victim advocate; training is available from rape crisis centers. A listing of tribal sexual assault/domestic violence coalitions is available on the Office on Violence Against Women (OVW) website at <http://www.ovw.usdoj.gov/statedomestic.htm>. Also, the Office for Victims of Crime (OVC) has a searchable directory of victim services, including rape crisis centers that provide services on tribal lands. To access and search this directory for services in your area, please visit: <http://ovc.ncjrs.gov/findvictimservices/>. If there are no such services available in your

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<sup>10</sup> The Office of Violence Against Women has published a second edition of the *National Protocol for Sexual Assault Medical Forensic Examinations* which provides detailed guidelines for criminal justice and health care practitioners in responding to the immediate needs of sexual assault victims. This report may be downloaded from <https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf>. Another resource is the *Recommendations for Administrators of Prisons, Jails and community Confinement Facilities for Adapting the U.S. Department of Justice's A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents*. This guide accompanies the aforementioned resource and can be downloaded from <http://www.ovw.usdoj.gov/docs/confinement-safe-protocol.pdf>.



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administrative action or prosecution.

**115.54 – Third-party reporting.**

In addition to the reporting methods for staff and inmates, agencies must provide a method for third-parties to report sexual abuse and sexual harassment of inmates, and assure that the public is aware of how to report.

**115.71 – Criminal and administrative agency investigations.**

This standard provides more detailed guidelines for conducting both criminal and administrative investigations. It covers certain responsibilities for investigators concerning investigative protocols (evidence collection and interviews); assessing credibility of victims, suspects and witnesses; contents and use of reports; and records retention.

**115.72 – Evidentiary standard for administrative investigations.**

The standard of evidence required to sustain an administrative allegation is to be no higher than “a preponderance of the evidence”, which is a lesser standard than “beyond a reasonable doubt” required for a finding of criminal guilt.

**115.73 – Reporting to inmates.**

Following an investigation, an inmate victim should be notified of the outcome of the investigation (substantiated, unsubstantiated, or unfounded).

area, it is recommended that the agency contact Just Detention International, which is a partner with the National PREA Resource Center.

**PREA Standards Related to Investigations**

*115.34–Special Training - Investigations.*

- If agency conducts
- Investigations in confinement settings
- Interviewing Victims
- Garrity & Miranda
- Evidence Collection
- Evidence to Sustain



**PREA Standards Related to Investigations**

*115.54 – Third-party reporting.*

- Must have method to report
- Public must be aware



**PREA Standards Related to Investigations**

*115.71 – Criminal & Administrative Investigations.*

- Investigative Protocols
- Assessing Credibility
- Use of Reports
- Records Retention



**PREA Standards Related to Investigations**

*115.72 – Evidentiary Standard for Administrative Investigation.*

Preponderance of Evidence



115.71 – This standard is very detailed and lengthy, and participants should be informed that a careful reading of the standard is required to know all of the content. This course provides only a summary of key points of this standard. It is particularly important for agency leadership and investigators to know and understand this standard in its entirety.



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<p>Unless the investigation was unfounded, the inmate should be notified when the accused staff member is transferred, no longer employed at the facility, indicted or convicted. In cases in which the alleged abuser is an inmate at the facility, the inmate victim should be notified when the alleged inmate has been indicted and/or convicted on a charge related to sexual abuse in the facility. All notifications should be documented. An agency's obligation under this standard is terminated upon the release of the inmate from the agency's custody</p>	<p>115.72 – If the participants seem to want more information and these differing standards of evidence, the instructor may decide to briefly touch on this topic in more detail. See the appendix for an additional discussion of this topic.</p> <div data-bbox="1150 544 1535 833"><p>PREA Standards Related to Investigations</p><p>115.73 – <i>Reporting to Inmates.</i></p><ul style="list-style-type: none"><li>• Notified of outcome</li><li>• When/if accused staff is transferred, no longer employed, indicted or convicted.</li><li>• When/if accused inmate is indicted and/or convicted.</li></ul><p style="text-align: right;"><small>NATIONAL PREA RESOURCE CENTER</small></p></div>
<p><b><i>Uh-oh – I'm under investigation!</i></b></p> <p>If you are in this profession long enough, there will only be two categories of employees: those who have been the subject of an internal investigation, and those who eventually WILL be the subject of an internal investigation. It is just the nature of this job that somewhere along the line, someone will file a complaint against us. However, statistics show that 90% of all allegations are found to be untrue.</p>	<p>This Module is intended to walk participants through the process of an administrative (internal) investigation, and get them to talk about their concerns and fears.</p> <p>Corrections agencies across the country have a variety of practices concerning who completes their investigations.</p> <p>However, there are some general methods that apply almost universally. If there is a criminal act committed by one inmate against another, or by an employee against an inmate, it will generally be investigated by a law</p>

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So why is it that being the subject of an investigation is the most stressful and terrifying thing that will probably happen in our jobs?

***Because most employees have no idea what the investigation entails!***

Being under investigation is like entering a world of the unknown. You may not know what to do, what your rights are, how long the investigation will take, what happens to you during the investigation, who has access to information, and so on. It is all a big mystery. But it should NOT be a mystery. Leadership has a responsibility to make sure that employees are informed about the investigative process. This does not mean sharing confidential information about specific investigations. It means simply knowing what the steps are in the process of an investigation, what your rights and protections are, what the agency expectations are, and what will happen at the end of the investigation.

“The number one reason that people are disciplined if they are subject of an internal investigation is **NOT because they are guilty of the allegation**. It’s because they **LIED to investigators**. And generally, they lie because they have no idea how the investigative process works. Basically, they are just terrified of the unknown”


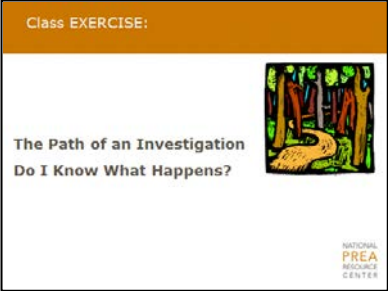
*Lt. Jim Layman, Broward Sheriff’s Office, Internal Affairs Investigator*

enforcement agency, which will then file the charges with the appropriate prosecuting jurisdiction. Corrections agencies will most likely have a standard agreement about who will investigate criminal charges. There is not much controversy about this, and most employees understand how a criminal investigation and prosecution work.

What employees generally do not understand is how an administrative investigation works. Administrative investigations are done internally, and only address the violations of agency policy. There are a number of reasons that cause employees to be distrustful of administrative investigations. These include:

- Inconsistencies in the process;
- An appearance of favoritism or special treatment;
- The tendency by management to assign untrained or inappropriate persons as investigators;
- The secrecy that surrounds the process itself;
- The lack of support from management during an investigation;
- The lack of attention from management to the rumor mill during the investigation;
- The lack of knowledge about employees’

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	<p>rights and responsibilities during investigations;</p> <p>If management does not pay attention to these details, there is no way to overcome distrust of the investigative process, which then leads to a code of silence, lack of cooperation, hesitancy to report allegations, etc.</p> <p>Certainly confidentiality is critical. Specifics about real investigations are not to be shared with those who are not intended to have the information. But the basic process of how an investigation occurs is certainly something that all employees should know.</p>
 <p><b>Class Exercise: The Path of an Investigation – Do I Know What Happens?</b></p>	<p>Class EXERCISE:</p>  <p>This activity will help participants begin to understand why they are so fearful of investigations – it is fear of the unknown. While line employees are not policy-makers, it is hoped that after this exercise, they will communicate their lack of knowledge and understanding to management.</p>

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***What are my rights and protections if I am under investigation?***

**Administrative investigations:**

**Notification:** At a certain point, you must be notified that you are the subject of an investigation. There may be a period of time where allegations are ‘checked-out’ on a preliminary level to determine if there is enough to open an investigation. But once an investigation is formally opened, subjects have a right to know. Best practice is to notify subjects in writing.

**Questioning by investigators:** During questioning by investigators, you have certain rights guaranteed under the Indian Civil Rights Act. These include the right to due process of law, and the right to be free from making incriminating statements that can be used to convict you in a court of law.

Two significant U.S. Supreme Court Decisions interpreted the U.S. Constitution Bill of Rights, Fifth Amendment. The Indian Civil Rights Act extended the same protection to Native Americans.

***Miranda v. Arizona, 384 U.S. 436(1966).*** This case guarantees the right to counsel, and the right to NOT make incriminating statements without

**SEE ACTIVITY GUIDE FOR DIRECTIONS  
ON CONDUCTING THIS EXERCISE.**

**My Rights and Protections**

- To be notified
- During questioning
  - » Miranda – right against self-incrimination (criminal invest.)
  - » Garrity – compelled statements (administrative invest.)
- Time frames
- Due process – right to hearing
- Outcome – notification & appeal rights

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Now that the participants have had some time to think about the investigative process, it is important that they understand some basic components of an administrative investigation.

Each agency will have some variations to certain components, such as the time-frame for notifying someone that they are under investigation. But each of these components is part of all administrative investigations.

Depending on agency policy and law, some subjects under investigation have certain rights to have a union representative present, or an attorney.

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legal representation. Miranda applies when an investigation involves allegations that can lead to criminal prosecution.

***Garrity v. New Jersey, 385 U.S. 493(1967).*** This case established that an employee cannot be compelled to make an incriminating statement or action that will be used in a criminal prosecution. Employers are permitted to compel an employee to make a statement, and that the statement be truthful, during administrative investigations. If an employee knowingly lies or refuses to make a statement in this situation, employers have the right to immediately fire the employee.

However, if you make a compelled statement during an administrative investigation, nothing you say can be used during a criminal prosecution or investigation.

PREA Standards (115.71 Criminal and Administrative Agency Investigations) require that when an agency conducts an investigation that may support a criminal prosecution, compelled statements should only be conducted after consulting with the prosecutor.

**Time Frames:** Most agencies include time frames for completing internal investigations. If your agency has such a time frame, you have the right to know what that frame is, and request information about what occurs if that time frame

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<p>passes without the investigation being complete. There are circumstances which give an agency the right to extend the time frames for completing investigations, and you have a right to know what those circumstances may be.</p> <p><b><u>Due Process:</u></b> You have the right to be heard in your own defense if you are subject of an investigation. Agencies will differ on the issue of whether you can have legal representation during administrative hearings. If employees are under a collective bargaining agreement, this will also specify rights during investigations and administrative proceedings.</p> <p><b><u>Outcome:</u></b> You have the right to be notified in writing of the findings of the completed investigation. The right to appeal an outcome will vary depending on the agency.</p> <p><b><u>Criminal Investigations:</u></b></p> <p>Criminal investigations involving allegations against employees in the workplace follow the same criminal procedure and administrative rules that apply for all criminal cases in the specific jurisdiction.</p>	
<p><b><i>What are my responsibilities during investigations?</i></b></p> <p><b><u>Maintain Confidentiality.</u></b> At all times and for all employees and inmates, confidentiality is a top</p>	<p>Confidentiality is critical to investigations. Rumors and leaks can seriously compromise the integrity of an investigation.</p>

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priority. This means that no one should be discussing the allegation under any circumstance, EXCEPT if and when being questioned by investigators. Most agencies have policy that requires employees to refrain from this kind of discussion.

**Stop Talking About It!** Yes, it is tempting to talk about what is going on. But it can be very detrimental to the morale of the agency, and damaging to the person(s) under investigation. If YOU were under investigation, would YOU want everybody talking about it?

**Cooperate.** We also have a responsibility to cooperate with investigators if we are questioned during the investigation. The ultimate goal is to get to the truth, and exonerate those who are not guilty. Cooperation is key to achieving this goal.

However, it is certainly not necessary, or even recommended, that management keep completely silent about an investigation if there are rumors flying everywhere. At the very least, it is helpful if management can make an official statement to the appropriate people, such as,

"There are a lot of rumors about a current investigation in this agency. Please understand that it is against agency policy to discuss this investigation, even casually, and important to protect the integrity of the investigation. If you were the person under investigation, you would expect others to respect your privacy, and to understand that discussing it is hurtful and embarrassing. This agency is committed to getting to the truth of the situation, and hopefully that means the exoneration of our employee. Please respect the persons involved, and please do not discuss this further. We will advise you of the outcome of the investigation when appropriate."

Experienced managers have been amazed at how a statement like this can help quell the rumors as much as possible.

Instructors might want to read that statement

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	<p>to the class and get their reaction. How would they feel about this kind of statement from management? Would it help them refrain from discussing it further? What if they were the accused in this investigation? Is this something they would want management to do?</p>
<b><i>Inmate Rights and Protections</i></b>	
<p>The U.S. Constitution provides certain protections for inmates in the Bill of Rights. These include:</p> <ul style="list-style-type: none"><li>• 8<sup>th</sup> Amendment against cruel and unusual punishment</li><li>• 4<sup>th</sup> Amendment guarantees certain privacy rights, although different in a custodial setting</li><li>• 14<sup>th</sup> Amendment provides a right to due process of law – meaning that action against a person cannot legally take place without a proper hearing</li></ul> <p>These do not apply to Indians in Indian country, but the Indian Civil Rights Act of 1968 did create certain protections similar to the U.S. Constitution.</p> <p><b><i>Indian Civil Rights Act (ICRA) - Limitations</i></b></p> <p>The ICRA of 1968 prohibits Indian tribal governments from enacting or enforcing laws that violate certain individual rights. While it is similar to the U.S. Constitution Bill of Rights, there are some limitations to the ICRA. In the case of an</p>	



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<p>inmate being sexually abused or harassed while in custody, there can be no monetary damages against the tribal government. Tribal courts may choose a defense of sovereign immunity which prevents a government from being sued without its consent. However, it is possible to name a specific tribal official as a defendant, in which case sovereign immunity would not apply.</p>	
<p><b><i>Legal Concerns and Consequences</i></b></p> <p><b><i>PREA sets a national standard for how to do business.</i></b></p> <p>Non-compliance with PREA standards carries more than just a potential financial penalty for some agencies. No agency wants to be a defendant in a civil lawsuit, especially one involving sexual abuse or harassment. Perhaps the most significant consequence for failing to comply with standards, or at least working to comply with standards, is increased civil liability. National PREA standards set the bar for how an agency can best prevent and respond to sexual abuse in correctional facilities. Undoubtedly, the courts will use the standards to consider if best practices have been followed when deciding on culpability and liability. . The existence of National PREA standards may influence the standard that <u>courts will apply in civil, legal and constitutional claims</u></p> <p><b><i>Criminal Prosecution for Employees and Inmates</i></b></p>	

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For Employees: All 50 states and the District of Columbia have laws that make it criminal for corrections, law enforcement, and many other type of employees to have a sexual relationship with inmates. For Inmates: Laws that apply to sexual assault and sexual abuse in the free world, also apply to inmates.



**Class Discussion: Real Cases, Real People!**

Class Discussion:

CLASS DISCUSSION:  
Real Cases, Real People



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For this exercise, The Activity Guide contains a number of brief summaries about real cases of sexual abuse in jails and prisons, and the outcomes.

Each instructor should conduct their own research into current cases to keep this information updated.

The point of this exercise is simply to let participants know that this DOES happen, and to demonstrate certain aspects – such as it is not always the rookie who gets involved, etc.

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**SEE ACTIVITY GUIDE FOR ADDITIONAL  
DIRECTIONS ON THIS EXERCISE.**

**LESSONS LEARNED**

**What lessons can we learn from real cases?**

There are three major areas where agencies fail in their response to sexual abuse:

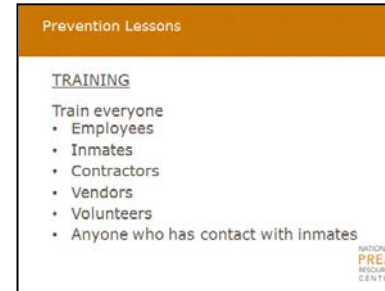
**TRAINING** - Poor or insufficient training for everyone – staff, inmates, volunteers, contractors, etc.

**INVESTIGATIONS** - Incompetent, incomplete, or unfair investigations

**POLICY & PROCEDURE** - Lack of specific and effective policy and procedures

This is intended to be a summary of all the lessons we have learned through experience – through court cases, internal investigations, work with agencies across the country, and from our professional brothers and sisters in the criminal justice field.

You might want to remind the class that we talked in detail about investigations earlier in this section.



***How can we use these lessons to prevent sexual abuse in our facilities?***

**TRAINING:**

***WHO should be trained? Everyone!***

Staff, contractors, volunteers and inmates!

The next module covers in detail the issue of inmate orientation and education as defined by PREA standards. Training and education is a critical component of the standards and is covered by standards 115.31 – 115.35.

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**INVESTIGATIONS:**

***WHAT are the keys to competent investigations?***

- Specially trained investigators
- Diligent supervision of investigations
- Consistent and fair sanctions
- Confidentiality
- Knowledge of the special nature of sexual investigations – they are very different from other investigations

**POLICY AND PROCEDURE:**

***What makes policy and procedure effective?***

- Being specific to the issue
- Defining prohibited behavior
- Created with intent to protect and guide
- Providing training on policy and procedure
- Clear expectations
- Clear disciplinary process
- Updated regularly

Prevention Lessons

INVESTIGATIONS

- Special training for investigators
- Consistent, fair
- Confidential
- Timely
- Remember – this is a different type of investigation

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Prevention Lessons

POLICY & PROCEDURE

- Specific to the issue
- Define prohibited behaviors
- Train all on P&P
- Clear expectations
- Clear disciplinary process
- Update regularly

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In the final part of this training program, we will give participants an opportunity to work in groups to design an inmate orientation program, and to actually develop a policy related to PREA.

## APPENDIX B

### EVIDENTIARY STANDARDS FOR ADMINISTRATIVE AND CRIMINAL INVESTIGATIONS

You need to know that there is a different standard to substantiate an administrative allegation compared to a criminal allegation. For a finding of guilt in a criminal case, the standard is “beyond a reasonable doubt.” The PREA standard for administrative allegations (115.72) is “a preponderance of the evidence.”

Beyond a reasonable doubt – There is evidence that, in the mind of a reasonable person, there is reasonable doubt that the person is guilty. There can be some doubt, but not enough that a reasonable person would doubt the guilt of the accused.

A preponderance of the evidence – The evidence makes it more likely than not that the allegation is true. Some use the standard of “more than 50%” likely. This does not mean 50% of the evidence. For example, one witness may be so credible, that even five other witnesses to the contrary are not as believable.

### **SUMMARY of MODULE THREE**

- Competent, fair, timely and consistent investigations are critical to prevent and effectively respond to allegations of sexual abuse.
- Investigations into these types of allegations are unique – they require specially trained investigators, and special attention.
- First responders to these incidents have an extremely important role in effectively addressing sexual abuse.
- First responders need to know their duties and responsibilities.
- Most employees have no idea how investigations are completed, and thus distrust the process.
- Employees should know their rights and responsibilities if they are subject to investigation.
- The Indian Civil Rights Act provides certain protections for employees who are subject to investigation.
- Garrity ensures that employees compelled to make a statement to investigators at the risk of being fired, will not have their statements used against them in criminal proceedings.
- Miranda protects employees from making incriminating statements in criminal investigations without proper representation.
- PREA increases the level of civil liability for those who fail to protect those in custody from sexual abuse.
- We have learned some lessons over the years in dealing with this issue. The “Big Three” areas where agencies fail in meeting the goal to prevent and respond appropriately to sexual abuse are: insufficient training; incompetent investigations; and lack of effective policy and procedure.

## INSTRUCTORS' GUIDE – COMPANION TO THE PARTICIPANT GUIDE


### MODULE FOUR REVIEW OF PREA STANDARDS

**LEARNING OBJECTIVES:** *After completing this module, participants will:*

- Be familiar with the PREA standards;
- Understand how the standards might affect current policies and procedures; and
- Be prepared for national data collection.

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<b>CONTENT AS IT APPEARS IN THE PARTICIPANT GUIDE/HANDOUT</b>	<b>INSTRUCTORS' NOTES AND ADDITIONAL INFORMATION</b>
<p data-bbox="247 380 1045 448"><b><i>What are the National Standards developed under The Prison Rape Elimination Act?</i></b></p> <p data-bbox="302 493 1045 597">There are 44 PREA standards, plus 2 standards that contain definitions, which became effective August 20, 2012.</p> <p data-bbox="302 643 1052 1071">These standards are intended to provide all agencies that hold persons in custody with a set of guidelines and best practices in their effort to eliminate and address sexual abuse and harassment, both between inmate-on-inmate, and staff-on-inmate. There is nothing new about our responsibility to protect those in our care, custody and control. We have always had this moral and ethical obligation. The standards are merely intended to help agencies across the country achieve a consistent level of competency and professionalism in dealing with this issue.</p>	<div data-bbox="1146 375 1530 662"><p data-bbox="1167 386 1352 402">What are the Standards?</p><p data-bbox="1167 444 1440 461">46 STANDARDS intended to:</p><ul data-bbox="1167 493 1499 591" style="list-style-type: none"><li>• Provide guidelines</li><li>• Demonstrate best practices</li><li>• Achieve consistent level of competency and professionalism</li></ul></div> <p data-bbox="1146 704 1892 1084">The PREA standards, themselves, do not apply to tribal detention facilities. However, in releasing the final PREA Standards, the U.S. Department of Justice called for other departments that operate detention facilities, including the U.S. Department of Interior, Bureau of Indian Affairs, to develop standards (which the PREA standards can serve as a starting point) to prevent and address sexual abuse in confinement.</p>
<p data-bbox="247 1127 802 1159"><b><i>How were the standards developed?</i></b></p> <p data-bbox="302 1205 1031 1416">Upon passage, the PREA Act established the National Prison Rape Elimination Commission (NPREC), comprising members appointed by Congress and the President. The NPREC was charged with undertaking a comprehensive study of prison rape and its impacts on government</p>	



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<p>institutions as well as on communities and social institutions. The NPREC was also tasked with the development of recommended national standards to enhance the detection, prevention, reduction, and punishment of prison rape. As part of this effort, the NPREC conducted a series of hearings conducted throughout the country, with testimony provided from corrections, jails and law enforcement, tribal jurisdictions, professional organizations researchers, subject matter experts, all levels of staff, victims, and victim advocates.</p> <p>At the conclusion of the wealth of testimony and information gathered, the NPREC developed a set of draft standards, which were reviewed and revised by the Office of the U.S. Attorney General as required by PREA.</p>	
<p><b><i>How will these standards affect our current policies and procedures?</i></b></p>	
<p>Each agency can compare these standards to their current policies and procedures. If current policies and procedures address the issues specified in the standards, then the agency is in compliance. While <u>this is NOT reinventing the wheel</u>, there may need to be some tweaking of current policies and procedures. These standards are intended to assist agencies to achieve the goal of doing their best to address sexual abuse and harassment.</p>	<p>The National PREA Resource Center website contains a "PREA Toolkit for Jails". This toolkit walks an agency through a step by step process of assessing and revising policies and procedures. Additionally, the National Institute of Corrections developed an e-toolkit that automates the toolkit for Jails and self-generates the action plan that is included. It can be accessed at: <a href="http://nicic.gov/Library/026880">http://nicic.gov/Library/026880</a>.</p>

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***What data collection will take place as a result of PREA standards?***

PREA also includes the collection of data on incidents of sexual abuse and sexual harassment in covered agencies. Congress recognized the lack of any standardized data on these incidents. As part of the PREA standards, the U.S. Department of Justice, will collect and maintain data from all covered agencies concerning allegations of this nature. Similar to the Uniform Crime Reporting to the FBI from law enforcement agencies, data reporting for PREA will help create a national database concerning these particular types of incidents.

**PREA Data Collection**

- Annually to DOJ
- Information on all reported incidents
- Based on definitions of behaviors
- Creates national data base

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Whether the standards are actually applies to tribal detention, it is fully anticipated that tribal facilities will be requested to provide statistical information. This will be in the form of annual reporting about all incidents of this nature that are reported.

The discussion about defining the prohibited behaviors in Module One is significant for this task, as it is critical for all reporting agencies to define behaviors in a similar manner.

***What do the standards actually say?***

There are separate standards for adult prisons and jails, police lockups, community confinement facilities and juvenile facilities. While many of the standards are the same for each of the above-named entities, each set has minor differences.

Included in your resource guide is a complete set of the full standards for adult prisons and jails. You may also download the “PREA Toolkit for Jails”, and obtain copies of all sets of standards on the PREA

This course does not cover every single standard specifically. To do so would take a full day. The only way to have a full understanding of the standards is to read them. Many questions that are asked about the standards could be answered if the requester read the standards. The instructor is encouraged to be prepared for this class by reading the standards and the preamble to the standards that provides significant information about interpreting them standards.

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Resource Center website at  
[www.prearesourcecenter.org](http://www.prearesourcecenter.org).

A general word about the standards from the U.S. Department of Justice *Statement by Marlene Beckman, J.D., Office of the Assistant Attorney General, Office of Justice Programs, U.S. Department of Justice, at the state PREA Coordinators' conference on June 6, 2012*):

*The standards are about good correctional practice, and are based on research and input from practitioners and subject matter experts. The standards purposely indicate “what” you should do, and not necessarily “how” you should do it. The reason is that all agencies and all facilities are different and have unique challenges. This is clear from the hundreds of comments received from the field. The “how” must be determined by each individual agency and facility. What works for one will not necessarily work exactly the same for another. For this reason, it is critical that agencies follow a process for policy review and development, and for implementation of practices to comply with standards. It is critical that you document your process, so that you can explain how you reached your decisions about what works for YOUR agency and/or facility.*

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The Prison Rape Elimination Act (PREA) Standards are divided into the following categories.

- *Prevention Planning (8 standards)*
- *Responsive Planning (2 standards)*
- *Training and Education (5 standards)*
- *Screening for Risk of Sexual Victimization and Abusiveness (3 standards)*
- *Reporting (4 standards)*
- *Official Response Following an Inmate Report (8 standards)*
- *Discipline (3 standards)*
- *Medical and Mental Care (3 standards)*
- *Data Collection and Review (4 standards)*
- *Audits (1 standard)*
- *Auditing and Corrective Action (5 standards)*
- *State Compliance (1 standard)*

Following this list of categories, you will find a discussion on a few of the standards that would be interest to participants.

**SELECTED STANDARDS PRESENTED FOR CLASS DISCUSSION:**

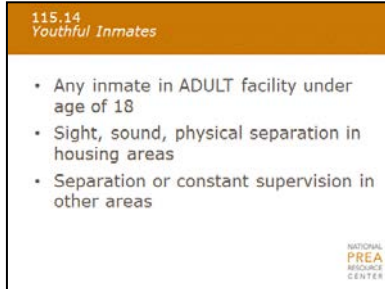
**TO INSTRUCTOR: BELOW YOU WILL FIND A FEW OF THE STANDARDS WITH THE EXACT WORDING OF THE STANDARD AND THE ASSESSMENT CHECKLIST. AS TIME AND INTEREST PERMITS, COVER AS MANY OF THESE AS APPROPRIATE. THE STANDARD SHOULD APPEAR ON THE POWERPOINT SLIDE. REVIEW EACH STANDARD AND GIVE PARTICIPANTS TIME TO COMMENT OR ASK QUESTIONS. DO NOT ANSWER QUESTIONS IF YOU DO NOT KNOW THE ANSWER! HOWEVER, A FULL READING OF THE STANDARDS AND THE PREAMBLE THAT ACCOMPANY THE STANDARDS WILL IN MOST CASES, PROVIDE THE ANSWER. QUESTIONS THAT YOU CANNOT ANSWER SHOULD BE REFERRED TO THE NATIONAL PREA RESOURCE CENTER THROUGH THEIR WEBSITE.**

**Prevention Planning:**

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### **115.14 – Youthful Inmates**



(a) A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters.

(b) In areas outside of housing units, agencies shall either:

- (1) maintain sight and sound separation between youthful inmates and adult inmates, or
- (2) provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact.

*Discussion: For this standard, a youthful inmate is defined as any person under the age of 18 who is under adult court supervision and incarcerated in an adult prison or jail. While some jurisdictions and courts have certain titles or classifications of “Youthful Offenders” or “Juveniles”, this standard applies to anyone under the age of 18 who is incarcerated in an adult prison or jail, regardless of a court distinction. There are no exceptions to this standard. It is recommended that you read the definitions contained in PREA regarding youthful inmates, youthful detainees, and juveniles.*

(c) Agencies shall make best efforts to avoid placing youthful inmates in isolation to comply with this provision. Absent exigent circumstances, agencies shall not deny youthful inmates daily large-muscle exercise and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible.

*Discussion: Unless you have NO alternative, you should not use isolation to comply with this standard.*

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*Youthful inmates should not be denied legally required education. This means that your facility must make whatever accommodation necessary to meet this standard, unless you can demonstrate that you have made every effort to do so but still cannot comply with this section of the standard. Additionally, it is critical that you document any decision and why it was made, particularly if isolation is use.*

***This standard generally creates a lot of discussion among corrections employees.***

### **115.15 Limits to cross-gender viewing and searches**

**115.15**  
Cross-gender viewing and searches

*Except in exigent circumstances*

- No cross-gender strip, body cavity searches except by medical
- No cross-gender pat down of females
- Document all cross-gender searches

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**115.15**  
Cross-gender viewing and searches

- Inmates shower, perform bodily functions, change clothes, without non-medical staff of opposite gender viewing breasts, buttocks or genitalia
- Exception – during routine cell checks

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RESOURCE  
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(a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches except 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.

*Discussion: The extended date for compliance is intended to give agencies time to adjust hiring and post assignment processes to allow for staffing changes that include female staff to be on duty to meet this standard.*

(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.

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(d) The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in the case of emergency, by accident, 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.

*Discussion: Make note that if such viewing is incidental to routine cell checks, it is understood that such viewing may occur. For example, if a female corrections officer is the only person assigned to a male pod/unit/dorm/area, it is likely that she will view a male inmate as described at some point. As long as the facility has no alternative, then this is routine.*

(e) The facility shall not search or physically examine a transgender or intersex inmate to determine 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.

*Discussion: It is not acceptable to search or physically examine a transgender or intersex inmate just to determine whether they have certain genitalia.*

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

### **115.31 – Employee Training**

#### **115.31 Employee Training**

##### **Zero Tolerance**

- Policy and Procedure
- Fulfill Responsibilities
- Inmates Rights to be free from abuse, retaliation
- Dynamics of sexual abuse
- Reactions of victims
- Detect and Respond to signs
- Avoid inappropriate relationships
- Communicate effectively
- Mandatory reporting

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**PREVENTING AND ADDRESSING SEXUAL ABUSE IN TRIBAL DETENTION FACILITIES:  
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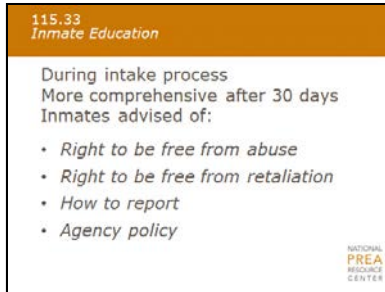
- (a) The agency shall train all employees who may have contact with inmates on:
- (1) Its zero-tolerance policy for sexual abuse and sexual harassment;
  - (2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies 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.
- (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.

*Discussion: This standard is self-explanatory. Agencies should visit the National PREA Resource Center website as there are many resources available for agencies to develop the training that will cover these topics.*



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### 115.33 - Inmate education



(a) During the intake process, inmates shall receive information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.

(b) Within 30 days of intake the agency shall provide comprehensive education to inmates either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.

(c) Current inmates who have not received such education shall be educated within one year of the effective date of the PREA standards, and shall receive education upon transfer to a different facility to the extent that the policies and procedures of the new facility differ from those of the previous facility.

(d) The agency shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled as well as to inmates who have limited reading skills.

(e) The agency shall maintain documentation of inmate participation in these education sessions.

(f) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats.

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### **115.41 Screening for risk of victimization and abusiveness**

**115.41**  
*Screening Inmates for Risk*

- Inmates screened at intake (within 72 hrs) to determine risk
- Reassess if transferred
- Screened for risk factors listed
- Agency uses standard forms
- Reassess within 30 days
- No discipline for refusal to answer



(a) All inmates shall be screened 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.

(d) The intake screening shall consider, at a minimum, the following criteria to screen to assess the 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 been previously 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 perceived to be gay, lesbian, bisexual, transgender, or intersex or gender nonconforming;
- (8) Whether the inmates has previously experienced sexual victimization;

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- (9) The inmate's own perception of vulnerability; and
  - (10) Whether the inmate is detained solely for civil immigration purposes.
- (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 (d)(1), (d)(7), (d)(8), or (d)(9) of this section.
- (g) 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**

115.42  
Use of Screening Information

- Only to inform housing, bed, work, education & program assignments
- Goal – to keep vulnerable separate from predatory
- Individual determinations
- Transgender and intersex reassessed twice per year

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- (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.

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(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.

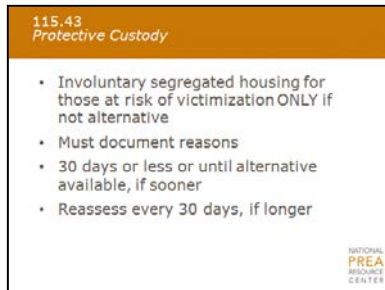
(d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.

(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.

### **115.43 Protective Custody**



(a) Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an

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assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers. If a facility cannot conduct such an assessment immediately, the facility may hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment.

(b) Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document:

- (1) The opportunities that have been limited;
- (2) The duration of the limitation; and
- (3) The reasons for such limitations.

(c) The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.

(d) If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, the facility shall clearly document:

- (1) The basis for the facility's concern for the inmate's safety; and
- (2) The reason why no alternative means of separation can be arranged.

(e) Every 30 days, the facility shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population.

#### **115.51 Inmate Reporting**

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**115.51**  
**Inmate Reporting**

- Multiple reporting paths
- Ability to report to outside entity
- ALL reports accepted – anonymous, third party, etc.
- Reports immediately put in writing by staff

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(a) The agency shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

(b) The agency shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request. Inmates detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.

(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.

(d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of inmates.

*Discussion: Inmates must have multiple internal and private ways to report sexual abuse and sexual harassment, retaliation for reporting, and any staff neglect or violation that may have contributed to such incidents.*

In addition, the agency must provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is external to the agency. This source must be able to receive and immediately forward reported abuse to agency officials. Inmates must be able to remain anonymous if requested.

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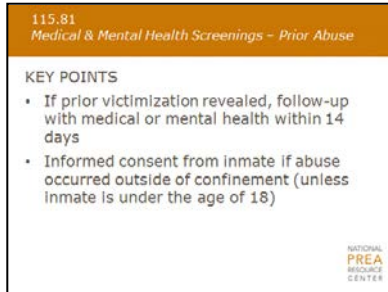
Staff who receive reports verbally, must put them in writing. Staff must accept all reports, whether are in writing, verbal, from a third-party or reported anonymously.

Staff must have a method to report abuse of inmates privately.

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**115.81 – Medical and mental health screenings; history of prior 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.
- (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.



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*Discussion:*

*If during screening, it is determined that a jail inmate has a history of prior sexual victimization, whether in a facility or not, the inmate shall be offered a meeting with a medical or mental health practitioner within 14 days of the screening.*

*Medical and mental health practitioners must obtain informed consent from inmates before reporting prior sexual abuse that did not occur in confinement (unless inmate is under 18).*

## INSTRUCTORS' GUIDE – COMPANION TO THE PARTICIPANT GUIDE

### MODULE FIVE

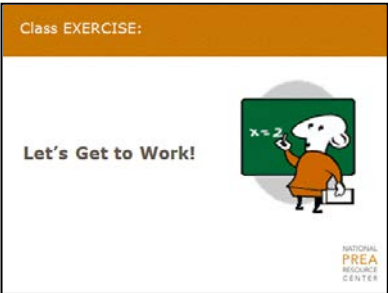
#### PUTTING INTO PRACTICE WHAT WE KNOW

**LEARNING OBJECTIVES:** *After completing this module, participants will:*

- Demonstrate their understanding of the information presented during the first 4 modules;
- Complete a useful tool for actual use in their workplace;
- Gain confidence in discussing the information learned in this training program;

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<b>CONTENT AS IT APPEARS IN THE PARTICIPANT GUIDE/HANDOUT</b>	<b>INSTRUCTORS' NOTES AND ADDITIONAL INFORMATION</b>
<p>This module is all about YOU, the participants! You will all be working in groups to create usable products and tools that you can take with you back to your workplace. They can be used in training, for inmate orientation, at staff meetings and roll call.</p> <p>You will have more confidence about what you learned during this training program, and have the chance to demonstrate that.</p> <p>The instructor will provide additional guidance and helpful information when you have completed your presentations.</p> <ul style="list-style-type: none"><li>• <b>BE CREATIVE.</b></li><li>• <b>DON'T BE AFRAID TO USE APPROPRIATE STORIES AND HUMOR TO GET YOUR POINTS ACROSS TO THE REST OF THE CLASS.</b></li><li>• <b>HAVE FUN!</b></li></ul> <p>On the following pages, you will find the specific task for each group. Good luck!</p>	<p>This module is all about the work the participants do. The instructor's role in this module is twofold:</p> <ul style="list-style-type: none"><li>• First and foremost, you will observe each presentation and determine if the participants have accurate knowledge of PREA and the prevention of sexual abuse. The participants should NOT go away with incorrect information.</li><li>• Second, you will monitor the groups. Check in with each group periodically to see if they need help or guidance. Don't be afraid to help them with your suggestions. The key is that they understand the information and can demonstrate that in their presentation.</li></ul> <div data-bbox="1150 915 1535 1206"><p>Class EXERCISE:</p></div> <p>This exercise is not meant to make qualified instructors of the participants. Some will be fine in front of a classroom; others will be timid and uncomfortable. That's just fine.</p>

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**Class Exercise: Let's Practice!**

They will be working in groups of 5 or 6, depending on the size of the class. There are six group exercises. As the instructor, you may use these six, or create others that you feel are more appropriate or beneficial.

The group exercises are listed in order of priority, based on significance. Clearly group one's exercise is critical for tribal facilities.

Don't have more than 6 presentations. In fact, 5 might be better in the interest of time.

This is the final module, and the instructor needs to be a careful TIME KEEPER. Each group will only have 5 minutes to give their presentations. DO NOT LET THEM GO OVER THIS TIME. Use a piece of paper that shows when they have one minute left, and hold it up to show them.

Sit in the back of the class as they give presentations. Do not interrupt during their presentations. When the group is done, ask the class if they have any questions or comments. Let them comment first. Give your tips or suggestions after the class has given theirs.

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**Group One:**

What a lucky group, you are, group one! You have the toughest task of all - but perhaps the most important. We all know that without our leaders on board, it is very tough to make change.

You will be creating a 5 minute briefing for your tribal leadership concerning PREA and the responsibility to prevent and address sexual abuse in detention facilities. You have been asked the leadership to tell them about this issue.

So here's what you need to consider:

- **BENEFITS** – inform them how meeting the PREA standards will benefit the employees, the leaders, the community and the tribe.
- **HOW THEY CAN ACHIEVE THE GOALS:** What is the role of the leaders in this effort? What specifically can they do?
- **SUPPORTING THE EMPLOYEES:** Explain how important this is to employees, and WHY it is important.
- **WHAT CAN BE DONE NOW:** Briefly describe what actions need to be taken (such as, review of policies, training for staff, etc.)

**KEEP IN MIND WHO YOUR AUDIENCE IS – TRIBAL LEADERSHIP.** Your biggest task will be to do this in a respectful manner, to keep it brief and concise, but to clearly explain the role of leadership.

Make sure that EVERY PERSON IN YOUR GROUP participates, especially in the creative process. Your group will make the presentation to the class. Let everyone have a chance to take part in the presentation.

GOOD LUCK!

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**Group Two:**

You will be creating a poster to be displayed in the booking area for all inmates to see. This poster will contain all of the pertinent information about PREA and their right to be free from sexual abuse and harassment while in custody.

**BE CREATIVE!** Use images, color, anything that will get their attention and make the point.

Use your flip chart paper to create the poster.

Include in your poster:

- Who it is for
- Their rights
- How to report
- What to do if they are a victim

Keep in mind these concerns:

- Language and literacy difficulties
- How to get their attention
- The sensitive nature of this issue – don't be offensive or crude, but get the point across
- The inmates won't be standing there reading something that is too long or too boring

Make sure that EVERY PERSON IN YOUR GROUP participates, especially in the creative process. Your group will present your completed poster to the class, and will explain each of the aspects of the poster. Let everyone have a chance to take part in the presentation.

GOOD LUCK!

**PREVENTING AND ADDRESSING SEXUAL ABUSE IN TRIBAL DETENTION FACILITIES:  
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**Group Three:**

You have been chosen by your leadership to provide an outline of what you think should be included in a written policy that requires employees to report their observations, knowledge and concern that inappropriate behavior is happening between an employee and an inmate.

List exactly what YOU would want in that policy directive.  
BE BRIEF, but BE SPECIFIC!

Consider:

- Our discussion about everyone knowing exactly what is prohibited behavior
- Our discussion about confidentiality for reporting
- How you would want the administration to respond to the report
- Protections for those who report and for victims

Make sure that EVERY PERSON IN YOUR GROUP participates, especially in the creative process. You will be asked to present your outline of the policy to the class, and to explain your process to develop the policy. Let everyone have a chance to take part in the presentation.

GOOD LUCK!

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**Group Four:**

You will be creating a five-minute presentation that is appropriate for staff meetings and roll call. You must keep their attention during this presentation! So keep it simple, keep it concise, and include the critical things they need to know as they go about their job day-to-day. Even use humor. Be creative. Think of it this way: if you had not been in the class, what do you think you would need to know about PREA, and how to prevent and address sexual abuse in the facility.

Use your flip chart paper as the model visual aid you would use during the presentation. As with power-point presentations, this means that your visual aid will only be the highlights of each point.

Make sure that EVERY PERSON IN YOUR GROUP participates, especially in the creative process. Your group will make the presentation to the class, and will explain each of the points. Let everyone have a chance to take part in the presentation.

GOOD LUCK!



**Group Five:**

Your group will be creating a skit or role-play that will demonstrate to the class a particular 'red flag' concerning an officer's behavior. The red flag could indicate that the officer is doing favors for another inmate, and then another officer observes this and has to respond. It could be that an officer thinks that another officer might be having sex with one or more inmates. You choose the red flag and what it might indicate. You should also include a demonstration of the best way to report the red flag.

Have each person in your group take on a specific role. One person will be the inmate, one person the officer, one person a supervisor, one person another inmate, and so on. It could even involve a volunteer or a food service worker, or a health worker.

First choose the situation; then select who will play what role; and then have fun! Make sure that your skit is easy for the class to follow, and that they will get your point.

Make sure that EVERY PERSON IN YOUR GROUP participates, especially in the creative process. Your group will make the presentation to the class. Let everyone have a chance to take part in the presentation.

GOOD LUCK!

**Group Six:**

Your group will be creating a skit or role-play that will demonstrate to the class a particular 'red flag' concerning an inmate who is behaving 'badly'. They might be trying to get an officer to do something for them, or trying to get another inmate to do something for them, or actually be involved in a sexual relationship with another inmate. This will be something that is observed by officers.

Have each person in your group take on a specific role. One person will be the inmate, one person the officer, one person a supervisor, one person another inmate, and so on. It could even involve a volunteer or a food service worker, or a health worker.

First choose the situation; then select who will play what role; and then have fun! Make sure that your skit is easy for the class to follow, and that they will get your point.

Make sure that EVERY PERSON IN YOUR GROUP participates, especially in the creative process. Your group will make the presentation to the class. Let everyone have a chance to take part in the presentation.

GOOD LUCK!

## PREVENTING AND ADDRESSING SEXUAL ABUSE IN TRIBAL DETENTION FACILITIES: IMPACT OF THE PRISON RAPE ELIMINATION ACT (PREA)

### NATIONAL PREA RESOURCE CENTER:


#### Instructor:

Your slide presentation contains several slides that detail the purpose and services provided by the National PREA Resource Center. There is also a discussion about using the PREA Toolkit for Jails.



#### Mission

The mission of the PRC is to assist adult prisons and jails, juvenile facilities, lockups, community corrections and tribal facilities in their efforts to eliminate sexual abuse by increasing their capacity for prevention, detection, monitoring, responses to incidents and services to victims and their families.




#### Targeted Training & Technical Assistance -- Methods of Delivery


- ☐ Webinars
- ☐ Publications
- ☐ Regional Trainings
- ☐ FAQs
- ☐ Field-Initiated Training and Technical Assistance
- ☐ Audit toolkit/support & Auditor training



#### Field Initiated TTA




Jurisdictions can request assistance by completing web form on the PRC website ([www.preasourcecenter.org](http://www.preasourcecenter.org)) under the Training and Technical Assistance tab and clicking "Request for Assistance on the sidebar"



#### BJA PREA Jail Toolkit


##### Providing PREA Resources Online to Jail Practitioners

- BJA Funded
- Developed by The Moss Group under cooperative agreement with the Center for Innovative Public Policies, Inc.




#### The Toolkit

- Basic information about PREA and Implementation;
- Self-assessment tool for to assess priority areas of implementation and develop action plans for PREA implementation;
- Resources for further reading and/or information (e.g., national reports and articles, materials developed and used by other jails, etc);
- Training curriculum and policy guidance.




#### Self-Assessment Example



Item	Assessment	Score	Comments
1. The facility has a written policy prohibiting sexual abuse.	<input checked="" type="checkbox"/>	100%	
2. The facility has a written policy prohibiting sexual harassment.	<input checked="" type="checkbox"/>	100%	
3. The facility has a written policy prohibiting sexual contact.	<input checked="" type="checkbox"/>	100%	
4. The facility has a written policy prohibiting sexual coercion.	<input checked="" type="checkbox"/>	100%	
5. The facility has a written policy prohibiting sexual exploitation.	<input checked="" type="checkbox"/>	100%	
6. The facility has a written policy prohibiting sexual assault.	<input checked="" type="checkbox"/>	100%	
7. The facility has a written policy prohibiting sexual abuse by staff.	<input checked="" type="checkbox"/>	100%	
8. The facility has a written policy prohibiting sexual abuse by inmates.	<input checked="" type="checkbox"/>	100%	
9. The facility has a written policy prohibiting sexual abuse by visitors.	<input checked="" type="checkbox"/>	100%	
10. The facility has a written policy prohibiting sexual abuse by contractors.	<input checked="" type="checkbox"/>	100%	

**PREVENTING AND ADDRESSING SEXUAL ABUSE IN TRIBAL DETENTION FACILITIES:  
IMPACT OF THE PRISON RAPE ELIMINATION ACT (PREA)**

CONTENT AS IT APPEARS IN THE PARTICIPANT GUIDE/HANDBOOK				INSTRUCTORS' NOTES AND ADDITIONAL INFORMATION																				
<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <b>FACILITY, WHAT DO I WANT TO DO TO IMPROVE HOW WE ADDRESS PREA AND THE PREVENTION OF SEXUAL ABUSE IN OUR FACILITY?</b> </div> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr style="background-color: #f4cccc;"> <th style="padding: 5px;">THE ACTION</th> <th style="padding: 5px;">HOW WILL I DO THIS?</th> <th style="padding: 5px;">WHEN WILL I DO THIS?</th> <th style="padding: 5px;">WHO DO I NEED TO TALK TO OR WORK WITH?</th> </tr> </thead> <tbody> <tr><td style="height: 40px;"></td><td></td><td></td><td></td></tr> <tr><td style="height: 40px;"></td><td></td><td></td><td></td></tr> <tr><td style="height: 40px;"></td><td></td><td></td><td></td></tr> <tr><td style="height: 40px;"></td><td></td><td></td><td></td></tr> </tbody> </table>				THE ACTION	HOW WILL I DO THIS?	WHEN WILL I DO THIS?	WHO DO I NEED TO TALK TO OR WORK WITH?																	<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <div style="background-color: #d95319; color: white; padding: 2px 5px; font-weight: bold;">Action Plan</div> <div style="text-align: center; padding: 10px;">  </div> <div style="text-align: right; font-size: small; margin-top: 5px;">             NATIONAL PREA RESOURCE CENTER           </div> </div> <p>This is the chance for the participants to take a moment and think about what they've learned and how they are going to put it into practice.</p> <p>When participants take this time at the end of a class, they tend to actually return to work and use what they've learned, rather than take the handout and leave it in a drawer.</p> <p>When all the presentations are done, give the class no more than TWO minutes to quickly jot down what they will do when they get back to work. In their guide, they will find the chart that is shown here to the left.</p> <p>After two minutes are up, have the class form a circle. Pass around a significant object, and as each person holds the object, have them say ONE thing that will do when they get back to the workplace, based on what they learned in this class. You do not want this to be a</p>
THE ACTION	HOW WILL I DO THIS?	WHEN WILL I DO THIS?	WHO DO I NEED TO TALK TO OR WORK WITH?																					

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discussion or a lengthy process. Just a couple of seconds per person for them to say one thing...

This benefits the entire class when they hear what others have been thinking about, what they will do, and what they find important.

Encourage the class to take their action plan out of the handout, and post it near their desk or in their workspace.

**Quick Fire**

**When I get back to my facility, one thing that I want to do or to change is \_\_\_\_\_**

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Evaluations  
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**For More Information**

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For more information about the American Probation & Parole Association, visit [www.appa-net.org](http://www.appa-net.org). Direct questions to [tmullins@csg.org](mailto:tmullins@csg.org).

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# Activity Guide

PREVENTING AND ADDRESSING SEXUAL ABUSE IN TRIBAL DETENTION FACILITIES:  
IMPACT OF THE PRISON RAPE ELIMINATION ACT (PREA)



TRAINING ON PREVENTING AND ADDRESSING SEXUAL ABUSE IN TRIBAL DETENTION FACILITIES:  
THE IMPACT OF THE PRISON RAPE ELIMINATION ACT

Pre-Test

Participant Name: \_\_\_\_\_ Email: \_\_\_\_\_

Training Location: \_\_\_\_\_ Training Date: \_\_\_\_\_

F 1. True or False?

The Prison Rape Elimination Act of 2003 is applicable only to prisons, jails, and lockups or holding facilities that keep detainees for more than 24 hours.

*It applies to all custodial entities and location, both for adults and juveniles, regardless of the amount of time someone is in custody. This would then include inmate transport, court holding areas, interview rooms, etc.*

C 2.

Which of the following is NOT a primary purpose of the Prison Rape Elimination Act?

- a. Establish Zero Tolerance for sexual abuse and staff sexual misconduct in correctional systems.
- b. Develop national standards to support the prevention, detection, and response to sexual abuse and misconduct in correctional confinement facilities.
- c. Criminalize all sexual activity between detained individuals.
- d. Collect data on the incidence of inmate-on-inmate sexual violence and staff-on-inmate sexual misconduct.

F 3. True or False?

Sexual abuse can be completely prevented by keeping inmates/detainees/residents in single cells.



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**PREVENTING AND ADDRESSING SEXUAL ABUSE IN TRIBAL DETENTION FACILITIES:  
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*While this method might prevent inmate-on-inmate sexual abuse from a housing perspective, it certainly does nothing to protect inmates from actions by staff or by other officials who have contact with them (medical, educational, etc.), or through interactions with other inmates/detainees/residents during programming, education, work, etc.*

- C   4. If an inmate consents to a sexual relationship with staff:
- (a) The employee is not guilty of a criminal act of sexual misconduct.
  - (b) The employee is guilty only of a violation of department rules.
  - (c) The employee may be guilty of both a criminal act and a violation of department rules.

*Consent is not a defense in a case where staff has a relationship with an inmate. The imbalance of power invalidates consent by an inmate. It is the responsibility of those in authority to protect those over who they have power. This includes maintaining professional boundaries and NOT getting involved in inappropriate relationships, even if the inmate consents, initiates the relationship, or seeks it out. This should be addressed in agency policy and procedure, as well as the jurisdiction's laws. All 50 states have laws that criminalize these relationships and invalidates consent as a defense. Most tribal laws also address sexual assault and sexual abuse, but few, if any, specifically mention jail officers having sex with inmates. However, the agency itself should be able to enforce the prohibition of these acts with their own policies and rules.*

- F   5. True or False?
- If our department has good policies that address sexual abuse there will be no incidents in our facilities.

*Just having policies does not mean that they are effective, enforced or followed. Good policies are a start, but agencies must educate staff about them, be sure they are effective and fair, and enforce them consistently. Agency leaders must also model the behavior and attitude that give policy and procedure the backing necessary.*

- T   6. True or false?
- PREA addresses staff sexual harassment of detainees.

- c   7. How often do serious incidents of staff sexual misconduct begin with



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simple, innocent breaches of professional boundaries, such as giving an inmate an extra serving of food, having a casual conversation with the inmate, telling a joke to an inmate, or not objecting when an inmate makes a personal comment to staff?

- (a) Very infrequently (less than 10% of the time)
- (b) Occasionally (about 25% of the time)
- (c) More than half of the time (more than 50%)

*Of all reported incidents of staff sexual misconduct, the vast majority began as simple relationships...perhaps doing a favor for the inmate or showing some sort of minor special attention. Many of these early breaches of professional boundaries are harmless and had no intent of starting a relationship. But there is a slippery slope when it comes to breaking the boundaries of professionalism. Suddenly the inmate has the upper hand because they have something to hold over staff. Or suddenly, there is an emotional attachment developing that causes staff to make bad decisions based on emotion rather than professionalism.*

- T    8. True or False?  
Failure to comply with PREA standards may result in a 5% reduction in federal funding from the U.S. Department of Justice for prison purposes.

*If the governor of a state does not certify full compliance with the standards that state may be subject to the reduction of US Department of Justice funding that is used for prison purposes by 5% for a state the is non-compliant with the standards. Governors of states that do not certify full compliance may submit an assurance that the 5% in funding would be used for the purpose of enabling the state to achieve full compliance. For local facilities or facilities not operated by the state, PREA provides no direct federal financial penalty for not complying.*

*If a local facility has a contract to hold state or federal inmates, however, it may lose that contract if it does not comply with PREA standards.*

- e    9. Sexual relationships between inmates/detainees/residents:
- (a) Can compromise facility security
  - (b) Do not compromise facility security
  - (c) Help arrestees adjust to life in custody
  - (d) Complicate an officer's job in the facility
  - (e) A and D
  - (f) B and D



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(g) A and C

*Clearly staff sexual misconduct compromises facility security, but we may think that what the inmates do among themselves does not. Inmate relationships can create situations that threaten security of other inmates, staff, and ultimately facility security. When inmates have sexual relationships, it brings along the same complications as do sexual relationships in the outside world. If an officer has to deal with these complications, it only makes the job more difficult.*

- \_\_a\_\_ 10. An employee under an internal investigation who exercises his/her rights under the Supreme Court decision Garrity v. New Jersey:
- (a) Can be fired if they refuse to give a statement to internal investigators
  - (b) Is guaranteed an attorney to be present during all questioning
  - (c) May be present during any questioning of witnesses

*Garrity is a court decision that gives an employer the authority to compel a TRUE statement from an employee who is under investigation. If the employee refuses to make a statement, or gives a false statement, then the employer had the right to immediately terminate employment. The other part of this, however, is that any statement that an employee gives under this circumstance may not be used against them in a criminal prosecution. As for b and c in this answer, they are rights guaranteed under Miranda, which applies during criminal investigations.*

- \_\_F\_\_ 11. True or False?
- Employees are always clear about professional boundaries, and know how to communicate and interact with inmates/detainees/residents.

*The fact is, most employees have very different ideas of what professional boundaries are. What one thinks, is not necessarily what someone else thinks or what is included in policy. This is why it is critical for employees to be given clear direction from management about what is appropriate and what is not appropriate. It is not enough to simply prohibit "inappropriate relationships", which is what many rules say. Training is key, and during training, employees should be encouraged to have an open discussion about this issue. Talking about it in a training setting helps clarify any questions that employees may have.*

- \_\_T\_\_ 12. True or False?



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The Indian Civil Rights Act applies to persons convicted of offenses while they are in custody.

  F   13. True or False?

Investigating sexual abuse allegations is the same as investigating any other type of offense, and therefore requires no specialized training or skill set.

*The nature of sexual abuse is very different than other types of offenses, such as introducing contraband to the facility, or theft. Perhaps the most significant reason is the complex nature of victimization. Talking to and interviewing victims of sexual abuse requires specific training for the investigator (per Standard 115.34). The psychological and emotional effects on a victim can be very complicated. In addition, the collection and preservation of evidence presents unique challenges.*

*PREA is very clear – the same professional and competent investigations completed when someone is sexually abused in the free world, should be the standard for those who are sexually abused in custody.*

  b   14. An employee who is the first responder on the scene where sexual abuse of an inmate has just taken place:

- (a) Should gather as much physical evidence as possible as quickly as possible so that it is not destroyed.
- (b) Should arrange immediate medical attention for the victim, close off the crime scene, call a supervisor, and wait for further directions.
- (c) Should immediately call the staff medical personnel who will then collect the rape kit evidence.
- (d) Should immediately begin interviewing as many witnesses or potential witnesses as possible.

*First responders have a big responsibility, since they are usually not only the first person on the scene, but usually the ONLY official on the scene at the time. Obviously, the first responder is responsible for notifying the proper officials. But the first priority is assuring the well-being of the victim. Once that has been accomplished, then the first responder should NOT conduct interviews or touch any evidence. Only trained investigators should conduct those tasks to assure the integrity of the investigation and evidence. However, the first responder should make notes as to potential witnesses or those who may have been present, make notes about what the victim or witnesses may have said to them, and be observant about the surroundings.*



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F 15. True or False?

The impacts of sexual abuse victimization in custodial settings are less severe and long-lasting than implications of sexual abuse victimization that may occur in the community.

*Victims of corrections-based sexual abuse experience many of the physical, emotional, and behavioral implications as do individuals who are sexually abused in the community, but in many cases, these impacts can actually be exacerbated when the abuse occurs within a confinement facility. Given the higher rates of sexually transmitted infections (STIs) and other communicable diseases in correctional facilities as compared with the community, there are higher chances of being infected when sexually abused in a correctional setting. The emotional stress of encountering one's abuser (whether it is another inmate/detainee/resident or correctional staff) on a daily or regular basis can also make the impacts of victimization in a confinement setting more severe for victims.*



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## **My Words, Your Words – Why definitions are important**

**Materials needed:** List of words to use as a word association-type exercise

**Purpose of activity:** This is a type of word-association intended to demonstrate why it is so important for definitions of prohibited behaviors to be clear and specific. The point is that what one person means by a certain word is not necessarily what other persons might think.

**Instructions to class:** Have everyone stand at their seats. Tell them that you are going to be going around the room at random. You will give the participant a word, and they are to respond back to you with a word that comes to their mind when they hear your word. Example: The instructor says “prison” and the participant might say “jail”. Tell the class that if a person gives you the word you want in response, they can sit down. Otherwise they have to keep standing.

**What Instructor Does:** Go around the room – randomly if you like – and give a participant a word. Ask them to give you a word in response. Don’t give them any more instructions, other than if they say the word you want, they can sit down. You want the participant to give you a word that starts with the LAST LETTER of the word you just gave them, but don’t tell them that! For example, you say “prison” the participant says “negative”. You say “inmate” the participant may say “education”. There is really no specific meaning to your word, other than to demonstrate the point that if we aren’t clear about what we want and what we mean, we are all confused.

**To the Instructor:** It is recommended that you arrange for one or two “plants” from among the participants – tell them what you are doing and make sure they give you the word you want. When they give the correct word, have them sit down, but continue on with the exercise. This makes the rest of participants wonder why someone got it right, but they didn’t. Don’t spend TOO much time on this – in fact you might need to simply cut it short after a dozen or so words. That’s enough to make the point.

**Wrap-up:** When you finish, have everyone be seated again. Explain that you wanted them to give you a word that started with the LAST LETTER of the word you gave them.

Once you give this explanation, then tell the class that this is why definitions and being specific is so important...if we don’t know what each other is talking about, we can’t achieve any kind of unity or communication. It doesn’t matter what words we use, but we have to all know what is meant by the word.

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This is a list of words you might want to use. Certainly you may use words you choose yourself, based on the audience or location. You can use a word more than once, if you like.

Prison  
Jail  
Inmate  
Assault  
Rape  
Supervisor  
Leadership  
Investigation  
Sergeant  
Team  
Training  
Report  
Key  
Trustee  
Camera  
Cell  
Transportation  
Court  
Guilty  
Innocent  
Co-worker

## Why do I care about this issue? What are the benefits?

**Materials Needed:** Flip chart paper and markers.

**Purpose of Activity:** This exercise helps participants think about why this issue is important. Rather than just a general idea that “it’s better to NOT have sexual abuse in our jail”, this directs them to think about the specific benefits to the following categories:

- to them as individuals,
- to co-workers,
- to the agency,
- to the community,
- to the inmates,
- globally – to their tribe.

**Time for Activity: Maximum total time: 15 minutes. If done in groups, the group has 5 minutes to work, and 2 minutes per group to report back.**

**What Instructor Does:** There are two options for conducting this exercise:

- (1) Divide the class into groups. You may do this in a variety of ways. You could either do a ‘count-off’, or any other efficient method. The number of groups will be determined by the total number of participants. No group should be larger than six (6) maximum. Give each group one of the categories listed. Obviously there will be more than one group focusing on a specific category.

OR

- (2) Simply have participants respond from their seats. The instructor will flip chart the responses. If the exercise is conducted in this manner, the instructor should begin asking the benefits for each category listed below, one by one.

***The instructor should keep this exercise moving. If there are a lack of responses, the instructor can fill in with suggestions of their own, or use some from the list in the Instructor/Participant Guide.***

**Instructions to Class:** Instructions to the class for each of the methods is shown below:

- (1) Before the class breaks out into groups, explain that each group will come up with as many specific benefits as they can think of for their assigned



category, in the time allowed. The group will write their responses on their flip chart paper. Each group should appoint a spokesperson who will come back to the class and present their list.

(2) The instructor will go category by category, and have the participants give their responses.

**Wrap-Up:** Each group will have 2 minutes to present their list of reasons. Give the class a brief time to comment or ask questions.

Summarize the highlights of these reasons. Return to the curriculum to review the general list.

## **RED FLAGS!**

### **KNOWING AND UNDERSTANDING WHAT WE OBSERVE**

**Materials Needed:** Give each group a sheet of flip chart paper and a marker.

**Purpose of Activity:** This is intended to help participants recognize the signs and indicators that may indicate anything from an inappropriate relationship to sexual abuse –staff with inmates, and inmates with inmates, and other non-staff persons with inmates. This is a very important class exercise, since it opens up the dialogue about the issue, and gives participants confidence in their observations. Do not skip this exercise, and do not inhibit discussion, as long as the discussion has value. Most staff do NOT talk about this stuff, and it is critical that the conversation takes place.

**Time for Activity:** 10 minutes for the group work. Two minutes per group for reporting back to the class. **Maximum total time: 25 minutes.**

**Instructions to Class:** Before the class breaks out into groups, explain that the group will come up with their top 5 signs and indicators they might observe, which would indicate the possibility that something inappropriate may be going on between staff and inmates, between inmates, or between inmates and others who have access to them (such as teachers, medical persons, mental health persons, AA leaders, contractors, food service vendors, etc.) Each group will focus on one of the three categories names above, i.e. (1) staff with inmates, (2) inmates with inmates, (3) inmates with other who have access to them (contractors or volunteers).

The group will write their top 5 reasons on their flip chart paper. Each group should appoint a spokesperson who will come back to the class and present their five reasons.

**What Instructor Does:** Divide the class into groups. You may do this in a variety of ways. You could either do a 'count-off', or any other efficient method. The number of groups will be determined by the total number of participants. No group should be larger than six (6) maximum. Give each group one of three focus categories listed above. Obviously there will be more than one group focusing on a specific category. If the participants are unable to come up with red flags, or seem to be duplicating other groups, take some examples from the list in the Resource Guide and add to their lists.

The instructor also keeps the time for this exercise. Though discussion is encouraged after each group makes it presentation, be sure to give each group an opportunity to make their own presentations.

AS THE GROUPS MAKE THEIR PRESENTATIONS, WRITE DOWN EACH OF THE RED FLAGS THEY NAME INDIVIDUALLY ON A 3 X 5 CARD. These will be used in the next exercise.

**Wrap-Up:** Each group will have 2 minutes to present their list of reasons. Give the class a brief time to comment or ask questions. Class members should have an opportunity to add some of their own ideas in each category.

Summarize the highlights of these reasons.

It might be worthwhile to take a short break at this point. When the class returns, they are going to move directly into the follow-up exercise where they will think about and discuss how they might respond to these red flags.

## **Code of Silence – Why Inmates and Staff Don't Report**

**Materials Needed:** Flip chart and marker for instructor.

**Purpose of Activity:** This is intended to help participants talk openly about what their fears and concerns are about reporting their suspicions or allegations that there is inappropriate behavior going on between staff and inmates, and between inmates.

**Time for Activity: Maximum total time: 10 minutes.**

**Instructions to Class:** The class (together) will call out their reasons for staff and inmates not reporting their suspicions or knowledge about inappropriate activity in the following three categories – (1) between inmates, (2) between staff and inmates, and (3) between inmates and others who have access to them (such as teachers, medical persons, mental health persons, AA leaders, contractors, volunteers, food service vendors, etc.)

**What Instructor Does:** Open the class discussion by asking them why they think employees do not report their suspicions or allegations about potential inappropriate behavior. Then ask the class why inmates might not want to report being victimized, or why they might not want to report their suspicions and knowledge about inappropriate behavior.

Write their responses on a flip chart, and post the list on the wall at the end of the exercise.

**Wrap-Up:** Summarize the highlights of these reasons.

## ***RED FLAGS!***

### **NOW what I do with this information?!?!**

**Materials Needed:** The instructor should have written down each of the red flags from the previous exercise on 3 x 5 cards.

**Purpose of Activity:** This exercise, a follow up to the previous “Red Flags” exercise, will help the participants take their observations one step further. Being observant and understanding what we observe is only the first step. Employees need to be comfortable with acting on their observations, and this exercise helps them think through the process of how to respond. This is a very important class exercise, since it opens up the dialogue about the issue, and gives participants confidence in their observations. Do not skip this exercise, and do not inhibit discussion, as long as the discussion has value. Most staff do NOT talk about this stuff, and it is critical that the conversation takes place.

**Time for Activity: Maximum total time: 25 minutes.**

**Instructions to Class:** The instructor will be going around the room with the handful of 3 x 5 cards that contain the red flags from the previous exercise. Each participant will take one card at random, stand up, read it out loud, and then explain exactly what their next few steps would be.

**What Instructor Does:** The instructor might need to start this exercise off by choosing a card and giving their own answer as an example to the class. The instructor should encourage participants to keep going to the next step in their response. For example, if the red flag is “an inmate doesn’t want to take off their underwear to go into the showers”, the participant might say “report this to the supervisor”. While that is fine, there are other things that the employee can do. They can be more observant about who is usually in the showers at the same time as that particular inmate, or they might even feel comfortable enough with the inmate to actually ask them if there is something they could help with. Perhaps the participant might want to ask if the inmate would like a referral to medical, thinking that the inmate might be more comfortable talking to a medical person. Try not to let the participants merely stop at “report this to a supervisor.” Another suggestion is to then ask the participant what they would do if they were the supervisor and got a report like this from a staff person.

**Wrap-Up:** When each participant has had an opportunity to respond to a red flag, be sure to open up the discussion to the class. Ask them what they learned from this exercise, or what they will do differently in the future. Summarize the highlights.

## PROTECTING MYSELF FROM MANIPULATION

**Materials Needed:** A stack of 3 x 5 cards. At least one for each member of the class.

**Purpose of Activity:** This exercise will give participants the opportunity to practice what their real life responses would be to attempts by inmates to manipulate them.

**Time for Activity: Maximum total time: 15 minutes.**

**Instructions to Class:** First, give the participants about 3 minutes to each come up with a specific situation where an inmate is trying to manipulate them into doing something. Tell the class that these can be specific, such as an inmate asking for a specific favor, or they can be more subtle, such as an inmate trying to be nice to the officer and perhaps discussing personal information. DON'T tell the participants what they will be doing with these cards until everyone has written down a scenario. It doesn't matter if more than one person ends up with a similar scenario. Encourage the participants to think about something that may have really happened to them.

Have the participants write down the scenario on the 3 x 5 card.

When all participants have done this, then have the participants all stand. One by one, participants will take their 3 x 5 card and go to another participant. The one with the card, will be the inmate, and actually act out the scenario. Explain that they should try to act exactly like the inmate would – be creative and have FUN. The other participant they have chosen will be the officer and must demonstrate how they would respond.

**What Instructor Does:** Be aware if some of the participants are having difficulty coming up with a scenario. If so, then give them some ideas yourself. It really doesn't matter who comes up with their scenario. This exercise is all about the responses.

**KEEP THIS EXERCISE MOVING QUICKLY. DON'T GIVE THE PARTICIPANTS TOO MUCH TIME TO GIVE THEIR RESPONSES. THE POINT IS TO GET PARTICIPANTS TO REACT AND RESPOND QUICKLY, JUST LIKE THEY WOULD HAVE TO IN REAL LIFE.**

Encourage fun with this exercise. Get the participants to really 'act', and be creative.

Be sure to let the two participants have the attention of the entire class during their little acting session. Then if the class wants to comment, let them do so. Don't spend too much time on any one scenario unless it has significant value to do so.

You may find that some participants do not participate. That is fine. It becomes too uncomfortable if people are forced to speak when they really don't want to. For the class just to listen to a few is still a significant benefit.

**Wrap-Up:** When everyone has had a chance to do this, open the discussion to the whole class by asking

- *“What did you find out from this exercise?”*
- *“Will you be doing anything differently in your interaction with inmates?”*
- *“Is there anything you would like to say about this topic?”*
- *“What are the keys to not allowing yourself to be manipulated?”*

## IDENTIFY MY AGENCY CULTURE

**This exercise is contained in the instructor guide, and as a separate handout for participants (not in the participant guide), but is also provided here so that it can be used independently for other training purposes.**

### **To Instructor:**

Give the participants about 5 minutes to fill out the checklist. Make sure everyone has had time to do so.


When participants are done, ask them to put their final total (the total of all sections) on a 3 x 5 card, and pass it to the instructor. Take a minute to read out the totals to the class. They know what their own totals are...and it is interesting for them to get an idea of how everybody else feels.

If the class is from mixed jurisdictions, you could use a different color card for each jurisdiction. When you read out the totals, do it in parts – read the blue first, then the pink, etc. Rather than call out which color was associated with each jurisdiction, just say, “Okay, the pinks say...and the blues say...” The participants will know which color is with their own jurisdiction, but probably not the others.

Close this discussion by encouraging them to do something when they go back to work. Ask them to look carefully at each of the items in the checklist. If there are particular weaknesses, they might consider approaching someone in management to sit down with them and review the results. In some cases, this will work out, in others it will not. But don't let the participants get discouraged about this. Tell them that if nothing else, this will help them see where the agency's shortcomings exist. Ask them to be alert for opportunities to share this with policy makers – perhaps during an evaluation or employee survey, or even in a casual conversation. The first step to changing agency culture is to recognize it, and these participants are already steps ahead of others by doing that.

### **Instructions to Class:**

The following checklists will help you evaluate your agency culture. While it is up to leadership to guide an agency through changes that will improve culture, line staff can help by being aware of the deficiencies and problem areas. Remember – by acting professionally, we can individually impact the culture around us.


Instructions: Review each of the following items on the list and give a check  if the statement is true. Count the number of checkmarks at the end of each category and enter in the area for the “Score for this block.” When you have gone through all of the blocks, enter the score in the last at the end, and total them up. Check the total rating results. *(Note: This basic evaluation was developed by The Center for Innovative Public Policies, Inc. through cooperative agreement with #01P18GIR4 from*





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*the National Institute of Corrections, U.S. Department of Justice, for use with curriculum package "Preventing and Addressing Staff Sexual Misconduct in Community Corrections: A Training Program for Agency Administrators." March 2004.)*

	<b>HIRING</b>
	There is a plan in place for hiring new staff.
	Hiring goals are reached.
	Good quality employees are being hired.
	Our hiring message is reaching our community.
	New employees represent the diversity in our community and among inmates.
	Our employees are our #1 recruiters – they bring in excellent new staff.
	Add the checkmarks for the <i>HIRING</i> block & enter total here _____

	<b>PROMOTIONS</b>
	The promotional process is objective.
	Employees know the criteria for getting promoted.
	Most employees think the promotional decisions are fair.
	The promotional process results in qualified and motivated managers.
	The promotional process is a positive incentive for employees.
	Add the checkmarks for the <i>PROMOTIONS</i> block & enter total here _____


	<b>OPERATIONS</b>
	What we do in reality, matches policy and procedure.
	Employees are generally hard-working and committed to doing the right thing.
	Employees are professional in interactions with inmates.
	Employees understand their job responsibilities.
	Supervisors are supportive of their subordinates.
	Employees feel safe on the job.
	There are few instances of sexual misconduct.
	Add the checkmarks for the <i>OPERATIONS</i> block & enter total here _____


	<b>MANAGERS</b>
	Managers are trained to do their job.
	Managers support the agency mission and its leadership.
	Managers are pro-active, and work to prevent crises.
	Managers are visible.
	Managers are generally respected by subordinates and their bosses.
	Managers are considered competent by subordinates and their bosses.
	Managers are generally approachable by their subordinates.


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	Add the checkmarks for the managers block & enter total here_____
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	<b>PROFESSIONALISM</b>
	The agency has a good reputation in the community.
	Employees are respected in the community.
	Off-duty behavior is consistent with the level of integrity and professionalism expected on-duty.
	Employees are respectful in the way they treat each other.
	Incidents of sexual joking and sexual harassment are rare.
	Employees are proud to be associated with the agency.
	Employees avoid using street slang, foul language, and derogatory remarks to both other employees and inmates.
	Other agencies visit to learn from your organization.
	The agency is considered a valued partner with other criminal justice agencies, such as police, courts, probation, etc.
	Total the Checkmarks for the PROFESSIONALISM block & enter here_____

	<b>COMMUNICATION</b>
	There is a regular employee newsletter, and employees like to read it.
	Information flows well both up and down the chain of command.
	Supervisors facilitate communication in the organization.
	Employees believe their grievances will be heard in a timely manner and settled fairly.
	Employees believe their feedback and suggestions are valued.
	Supervisors hold regularly schedule staff meetings to share information.
	Supervisors use opportunities to provide training and guidance.
	Total the Checkmarks for the COMMUNICATION block & enter here_____

	<b>LEADERSHIP</b>
	The agency mission is clear to everyone.
	The organization's values are known and embraced by employees.
	Leadership is accessible to employees.
	Leadership demonstrates professionalism.
	Leadership engages in "management by walking around" – being seen.
	Leadership values employees and it shows.
	Employees generally trust the agency leadership.
	Add the checkmarks for the LEADERSHIP block & enter here_____

	<b>QUALITY OF WORK LIFE</b>
	Employees can get time off without a lot of hassle.
	Employees don't abuse sick leave.
	Employees trust and use an Employee Assistance Program.

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	Employees are formally recognized for milestones in their careers.
	Employees are officially acknowledged for a job well done.
	Employees do not divide themselves into cliques along age, gender, or tribal lines.
	There is very little, if any, racism or sexism in the workplace.
	Employees consistently receive training to do their jobs effectively.
	<i>Add the checkmarks for the QUALITY block and enter here</i> _____

Consider the following scores for each individual block.

- 1 = We need help!  
2 = We are doing “ok”, but could use improvement.  
3 = We are doing great – no need to improve at this time.

Now put each block total in the appropriate space and add them all together.

Hiring = \_\_\_\_\_  
Promotions = \_\_\_\_\_  
Operations = \_\_\_\_\_  
Managers = \_\_\_\_\_  
Professionalism = \_\_\_\_\_  
Communication = \_\_\_\_\_  
Leadership = \_\_\_\_\_  
Quality of Work Life = \_\_\_\_\_

**TOTAL** = \_\_\_\_\_

**Rating Results:** *How do you believe your workplace rates? Here is what your score may mean in terms of your agency culture.*

0 – 88 Your workplace needs improvements in just about every area of agency culture. This relates to not only how business is conducted, but also how employees are treated. Without improvement, new initiatives, particularly in sensitive areas such as staff sexual abuse and harassment, are likely to encounter resistance from employees.

89-147 Your workplace is taking some steps to address the basic needs of employees, and seeks to create a positive culture. Some improvements may still be needed in the areas you noted with the lowest scores. Because of this more positive culture within the agency, new initiatives will work better and be more accepted.

148+ Congratulations. You are working in an environment that has a positive culture and is open to new initiatives to maintaining a healthy workplace.

## ***IS IT ETHICAL?***

### ***CASE STUDIES IN ETHICAL DECISION-MAKING***

**Materials needed:** Make sure the participants turn to the part in their note-taking (end of Module Two) guide that contain the list of situations.

**Time for Activity:** 20 Minutes Total – 5 minutes to read, 15 minutes for discussion.

**Instructions to Class:** Tell the participants to read through the situations on the list in the note-taking guide. Place an “E” in the space next to the items that you believe are ethical for criminal justice professionals. Place a “U” next to items that you believe are unethical for criminal justice professional.

#### **TO THE INSTRUCTOR:**

This exercise is intended to get participants talking about each of these situations in an open forum. Have them apply the steps to making decisions to each of these scenarios. It would be a good idea to keep the Power Point that lists these steps in view.

Give the class about 5 minutes to finish reading through the list. The most important part is the discussion about these items, so be sure to give the class enough time for that.

Start with the first situation, and ask for a volunteer to give their answer. Then ask if anyone else thought differently. Have each person explain their answer.

- 1. Define the dilemma. Don't generalize. Look at the specific situation.*
- 2. Gather information.*
- 3. List the pros and cons.*
- 4. Is it legal? Is it against policy and procedure?*
- 5. Does it align with the agency mission?*
- 6. Are you willing to accept the consequences? Have you thought about what the consequences will be?*

Clearly, there are a LOT of gray areas in many of these items. On the other hand, there are some clear right and wrong items. See the additional notes in the right hand column.

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	1. You tell a small lie to protect a co-worker.	Depends, depends, depends. Go through the steps...
	2. You tell a small lie to protect an inmate.	Unethical under any circumstance. If an inmate needs protection, telling a lie is not the way to do it.
	3. You periodically call in sick when you really aren't sick.	We probably all do this during our careers. It really does depend on a lot of things, such as how liberal is the agency in general about the use of leave. It also depends on how it affects everyone else at work. If you really aren't sick, and just want to take a day off without using vacation, but you are putting others at risk at work because of short-staffing, this is unfair and unethical.
	4. You cover for a co-worker who has to leave 15 minutes early to pick up their child from day care.	There are a lot of pros and cons for this. And a lot of other considerations. How would this impact YOU if it is found out? Are you ready to accept the consequences? How often does this happen? Do you think that if your co-worker went to a supervisor about this dilemma it would be met with flexibility and a potential solution? If you do this for this co-worker, who else will you cover for, and how often?
	5. You accept a ride from a family member of an inmate when your car is in the shop for service.	<p>This is generally unethical – for your own protection and reputation. However, there may be circumstances beyond your control. Are you stranded miles and miles from where you have to be? Is there any other way that you can catch a ride from someone else?</p> <p>If you DID accept the ride, would you then tell your supervisor about</p>

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		the situation so that you keep everything out in the open and not appear to be doing it in secrecy?
	6. You accept cookies from an inmate's mother who brings them to give to her son on visiting day.	In pretty much any circumstance this is unethical. Accepting cookies seems minor, but minor things can easily lead to bigger things. There is no acceptable reason for officers to accept food of this nature. It's not as if there are 'extenuating circumstances' surrounding a cookie. Professional boundaries need to be clear – and we need to keep to them if we are going to protect ourselves from the slippery slope of accepting favors.
	7. You tell a co-worker about an inmate's sexual history, which you knew about from being in school with the inmate a few years ago.	Unless this information is necessary to protect the inmate, then it is not to be shared. If you are telling the co-worker about this because the co-worker is getting 'involved' with the inmate and you are trying to protect the co-worker, there need to be additional actions. Even the simplest "involvement" with an inmate, no matter how innocent, can lead to that slippery slope.
	8. You keep quiet about the fact that an inmate in your jail is a close cousin.	What does agency policy say? Does it address what you have to do if a family member is in your jail?
	9. You arrive at work 10 minutes late, but nobody notices so you do nothing about it.	Does it affect the safety and security of the facility, staff or inmates? How does this reflect your general professionalism and attitude about work?
	10. You give extra food to a particular inmate at meal time because they missed the previous meal due to an outside medical appointment.	This is probably okay, IF it is not against agency policy, and if you are following agency rules. It should also be very clear to the

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		<p>inmate that you are giving them extra food because you know they missed their earlier meal. This should not be done in secrecy, and should be something that is done with professional boundaries in mind.</p>
	<p>11. You purposely circumvent a department policy because you think it is stupid and interferes with you doing your job.</p>	<p>There may very well be a policy that really is “stupid”. But that would be your opinion. You may not fully understand why the policy exists, and there may be a good reason. Your ethical responsibility would be to communicate to your supervisor your concerns about this policy and how it interferes with doing a proper job. Be prepared to discuss this professionally and without any kind of attitude or malice. Be prepared to offer a suggestion for a more effective policy. And if you don’t want to do any of that, be prepared for the consequences.</p>
	<p>12. You ask a co-worker to not tell a supervisor about something you did which was against policy, but not very serious.</p>	<p>It is unfair and unethical to drag someone else into your action. You have a responsibility to your co-workers not to place them in such a position.</p>
	<p>13. You get your car serviced by the brother of an inmate in your jail.</p>	<p>This, of course, depends. Is this the only repair garage in town? Are you taking your car there BECAUSE this is the brother on the inmate, and you are hoping for a discount? Let’s hope not.</p>
	<p>14. You bring your brother a birthday card on his birthday – while your brother is an inmate in your jail.</p>	<p>The only way for any inmate to receive any kind of correspondence is through proper channels according to agency policy. You can just as easily mail your brother a card as carry it in to the facility illegally.</p>

## ***THE REAL WORLD FOR FIRST RESPONDERS – WHAT DO I DO NOW?***

**Materials Needed:** Flip chart paper – a page for each group. Markers for each group.

**Purpose of Activity:** This exercise will give participants the opportunity to practice what they would do in their role as first responders.

**Time for Activity: Maximum total time: 25 minutes.**

**Instructions to Class:** The class will be divided into five groups. (Less if the class is very small. About 6 persons per group is fine).

Each group will be given a written situation from the instructor. (There are 5 suggestions below – but the instructor is encouraged to use other situations that will be appropriate). The group will work together to come up with the steps they would follow in each situation, and record those steps on the flip chart paper. They need to determine themselves when they think their role as a first responder is concluded. They will have 5 minutes to complete their group work.

Have them appoint a spokesperson for the group who will make the presentation to the class about what steps they have outlined. The spokesperson they choose should be someone who has NOT been a spokesperson for other group exercises that required a single person to report back.

**What Instructor Does:** Be prepared by separating each of the situations below, or the ones you have prepared on your own. Distribute the situations to the groups.

Keep the time closely for this exercise. Wander among the groups as they work to see if they need any help. It's fine to give them some guidance, but let them do most of the work themselves.

**Wrap-Up:** When everyone has had a chance to do this, open the discussion to the whole class by asking "What did you all find out from this exercise?" "Will you be doing anything differently in your interaction with inmates?" "Is there anything you would like to say about this topic?"

### **Group # 1 Situation:**

An inmate who is awaiting their court trial approaches you and tells you that they have just had a visit from their attorney. While in the interview room, the attorney told the inmate that if they didn't perform oral sex on him, the attorney would make sure that the inmate would lose the case in court. The attorney said that no one would believe the inmate if they complained about the attorney because the attorney is well known



and highly respected. The inmate tells you that he was able to save some of the semen from the attorney and that it is on the inmate's shirt sleeve. The inmate wants to file a complaint against the attorney.

**Group # 2 Situation:**

You walk past an inmate's cell and notice that the inmate is very upset – almost crying. You ask what is wrong and the inmate says that he was raped last week by another inmate who has been released. The inmate was afraid to report it while the other inmate was still in custody.

**Group # 3 Situation:**

Inmate Smith shows up for breakfast one morning with a bloody nose. You ask what happened and the inmate tells you nothing and moves on. Later that morning another inmate comes up to you and says that inmate Smith got into a fight with inmate Jones when inmate Smith tried to have sex with inmate Jones.

**Group # 4 Situation:**

Inmate Smith shows up for breakfast one morning with a bloody nose. You ask what happened and the inmate tells you nothing and moves on. Later that morning, as you are doing count, Inmate Smith says that he and inmate Jones got into a fight over their "relationship". Inmate Smith begs you not to say anything or make a report because he and inmate Jones are just fine now. Smith tells you that Jones is his only friend in the facility, and that if they are separated he will go crazy. Again he begs you not to report anything.

**Group # 5 Situation:**

Inmate Sue has been in your jail for about two weeks. As you are escorting inmate Sue one day, she tells you that the police officer who arrested her sexually abused her in his police car after the arrest.

**Group # 6 Situation:**

You are doing cell checks one night, and as pass the utility closet, you hear a commotion inside. You move on past the closet, but you are still able to see the door. Within a few minutes, the door opens and inmate Joe comes out of the closet. Just a few seconds later, you see fellow officer Mary exit the closet, buttoning up her shirt. Mary sees you, and says, "Joe is an old friend of mine and we have had sex when he was on the outside, so this is no big deal."

## ***The path of an investigation – do I know what happens?***

**Materials needed:** Have a sign prepared that says “INVESTIGATION”. You can use a simple piece of card stock – the ones used for name tents is fine.

**Purpose of Activity:** This activity is to get the class involved in a discussion about what happens during an investigation. It starts with the opening of an administrative investigation - not a criminal investigation as that is determined by the police and prosecutor. Most investigations will be administrative in nature, and this is what tends to be so much of a mystery to employees.

**Time for Activity:** 10-15 Minutes

**Instructions to Class:** Have the class all stand in a circle – either in the middle of the room if the set-up allows, or at the front of the room. You can even take this outside on a nice day, or to another room, just to give them a change of scenery. Just don't waste time on getting the class to stand in a circle.

The sign “INVESTIGATION” will be passed from participant to participant, and each time the sign is passed, the participant with the sign has to say what the next step would be. For example, the instructor will give the sign to the first participant, saying, *“An allegation of staff harassment was received. The employee is accused of having a romantic relationship with an inmate”*.

**What Instructor Does:** Once each participant explains what their step is in the process of the investigation, the instructor has the participant pass the sign to the next person. The instructor will have to prompt many of the participants to get the process going. Do not allow this to bog down – if someone needs help or is stumped, guide them along and move it to the next participant.

Here is sampling of what the path of an investigation might look like:

- Allegation received.
- Investigation initiated
- Preliminary inquiries take place, such as looking a log books, checking phone calls, etc.
- The subject employee is notified that they under investigation
- Garrity rights are given to the subject employee in writing, and they are explained.
- Investigator asks for a statement from the subject employee.
- Personnel Action: Subject employee might be suspended pending the investigation, or reassigned so that they have no further contact with subject inmate.
- Witnesses are interviewed.
- Subject inmate is interviewed.

- Follow-up interviews might be conducted.
- Report filed by investigator.
- Report is reviewed by supervisor and/or management.
- Finding is made.
- Subject employee is notified of the findings.
- Subject inmate is notified of the findings.
- Disciplinary sanctions imposed on either or both the subject employee and subject inmate.
- If outcome is unfounded, management determines if report was maliciously false.
- If maliciously false allegation was made, management determines if any action should be taken against the person filing the report.

**Some important things to know:**

- Most employees are unfamiliar with preliminary inquiries. This is done when there is no immediate possibility that evidence will be lost by taking time to do this before opening an investigation. This usually involves some initial investigation into things like logbooks, time sheets, telephone records, etc. In some instances, the preliminary investigation may show that the allegation is unfounded, even without opening a full investigation. For example, an employee is accused of taking an inmate out of his cell at midnight on a specific day. The preliminary investigation may show that the employee was not on duty on that particular day, or was not assigned to that unit.
- Care should be taken in preliminary investigations to be sure that information – such as dates and times – are certain, and that the allegation really is true except that someone just got the date or time wrong.
- Also, preliminary investigations should not become full investigations without the subject employee being notified that they are under investigation.

**Wrap-up:** When the participants have reached the end of the investigation, open the discussion for questions or comments. Ask the participants if this helped them understand how an investigation flows? Does this help them feel more comfortable with the investigative process? What are some of the continuing concerns about investigations?

## ***Real Cases, Real People***

**Materials needed:** Newspaper articles or other official documentation of real cases. These should describe the behavior, the subjects involved (inmate, employees, volunteers, etc.), and the outcome of the cases (arrests, prosecutions, civil action, firing, etc.)

As the instructor, you should take time to do some research on current cases. The internet is probably the best place to start looking for newspaper articles and accounts of actual situations.

It is a good idea to research current information, and in particular, cases that are of interest to your participant audience. For example, cases involved state prisons will not be as relevant to jails.

**Purpose of Activity:** This activity is to get the class involved in a discussion about real situations. Real situations have a greater impact than hypothetical situations.

**Time for Activity:** 10 Minutes

**What Instructor Does:** Give a summary of each case, and then pass a few copies of the article around the room. Generally, this works best if the instructor goes over each case consecutively, and then gives the class time to respond and discuss when the instructor is finished.

This is also a good time to ask the class if they have any examples that they have heard about themselves. By this point in the training program, participants are hopefully more comfortable discussing this topic.

## RESOURCES

### **Addressing Sexual Violence in Prisons: A National Snapshot of Approaches and Highlights of Innovative Strategies**

[http://www.urban.org/UploadedPDF/411367\\_psv\\_programs.pdf](http://www.urban.org/UploadedPDF/411367_psv_programs.pdf)

### **Data Collections for the Prison Rape Elimination Act of 2003**

<http://www.ojp.usdoj.gov/bjs/pub/pdf/dcprea03.pdf>

### **Prison Rape Elimination Act—Full Text of the Law**

<http://www.prearesourcecenter.org/sites/default/files/library/prea.pdf>

### **To order the 5-part DVD “Facing Prison Rape and Responding to Prison Rape”:**

Contact the National Institute of Corrections Information Center at [www.nicic.org](http://www.nicic.org), or by calling 1-800-877-1461

### **To download the final National PREA Standards, links to available resources including upcoming and archived webinars, regional trainings. Frequently Asked Questions, and the report of the National Prison Rape Elimination Commission:**

Go to [www.prearesourcecenter.org](http://www.prearesourcecenter.org)

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### **Reports/Articles:**

Breaking the Code of Silence, website of the Washington College of Law, The American University <http://www.wcl.american.edu/nic/> (Search using “Brenda Smith” which will provide easier access to a number of resources and publications – look for the NIC project)

Commission on Accreditation for Law Enforcement Agencies, Inc., Standards for Law Enforcement Agencies: The Standards Manual of the Law Enforcement Agency Accreditation Program, Fourth Edition, November 2001, Fairfax, Virginia.  
[www.calea.org](http://www.calea.org) Chapter 71, Prisoner Transportation, Chapter 72, Holding Facility

Confronting Confinement: A Report of the Commission on Safety and Abuse in America's Prisons <http://www.prisoncommission.org/report.asp>

Deer, Sarah and Maureen L. White Eagle. “Tribal Legal Code Resource: Sexual Assault and Stalking Laws Guide for Drafting or Revising Victim-Centered Tribal Laws Against Sexual Assault and Stalking”. Tribal Law and Policy Institute. June 2008

Jails in Indian Country, 2008.

[www.ojp.usdoj.gov/bjs](http://www.ojp.usdoj.gov/bjs). Document # NCJ 228271

Jordan, Andrew, Marcia Morgan and Michael McCampbell, "The Prison Rape Elimination Act: What Police Chiefs Need to Know", *Police Chief Magazine*, International Association of Chiefs of Police, vol. 73, no. 4, April 2006, [http://policechiefmagazine.org/magazine/index.cfm?fuseaction=display\\_arch&article\\_id=864&issue\\_id=42006](http://policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=864&issue_id=42006)

McCampbell, Michael S., "Prison Rape Elimination Act: Impact on Police Chiefs of the Prison Rape Elimination Act," *Subject to Debate*, Police Executive Research Forum, September 2005, Vol. 19, No. 9, page 5, [http://www.policeforum.org/upload/V19-N09%20P%5B1%5D\\_715866088\\_12302005143917.pdf](http://www.policeforum.org/upload/V19-N09%20P%5B1%5D_715866088_12302005143917.pdf)

Susan W. McCampbell and Larry S. Fischer, Staff Sexual Misconduct with Inmates: Policy Development Guide for Sheriffs and Jail Administrators, National Institute of Corrections, August 2002. <http://www.cipp.org/SSMPolicy/index.html>

McCampbell, Susan W. and Elizabeth P. Layman, "Investigating Allegations of Staff Sexual Misconduct with Inmates: Myths and Realities." <http://www.cipp.org/old/article2.pdf>

Sexual Violence Reported by Correctional Authorities, 2004  
<http://www.ojp.usdoj.gov/bjs/pub/pdf/svrca04.pdf>

Sexual Violence Reported by Correctional Authorities, 2005  
[http://www.wcl.american.edu/nic/documents/BeckandHarrison\\_BJSReport2005\\_000.pdf?rd=1](http://www.wcl.american.edu/nic/documents/BeckandHarrison_BJSReport2005_000.pdf?rd=1)

Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09.  
[www.ojp.usdoj.gov/bjs](http://www.ojp.usdoj.gov/bjs). Document # NCJ 231169

Simonian, Nairi M. and Brenda V. Smith. "Integrity in Jail Operations: Addressing Employee/ Offender Relationships." *American Jails*. July/August 2006: 9-19.  
[http://www.wcl.american.edu/nic/documents/AJA\\_Final.pdf?rd=1](http://www.wcl.american.edu/nic/documents/AJA_Final.pdf?rd=1)

Staff Perspectives: Sexual Violence in Adult Prisons and Jails: Trends from Focus Group Interviews  
<http://nicic.org/Downloads/PDF/Library/021619.pdf>

United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance. "Mental Health Problems of Prison and Jail Inmates" Revised December 14, 2006. NCJ 213600. <http://www.bjs.gov/content/pub/pdf/mhppji.pdf>

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**Web Sites:**

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National PREA Resource Center -- [www.prearesourcecenter.org](http://www.prearesourcecenter.org)

Tribal Law and Policy Institute – [www.tribal-institute.org](http://www.tribal-institute.org)

Tribal Law Journal – [www.tlj.unm.edu](http://www.tlj.unm.edu)

Bureau of Justice Assistance – <http://www.ojp.usdoj.gov/BJA>

Bureau of Justice Statistics -- <http://www.ojp.usdoj.gov/bjs/abstract/dcprea03.htm>

National Institute of Corrections -- [www.nicic.org](http://www.nicic.org)

Just Detention International – [www.jdi.org](http://www.jdi.org)

National Criminal Justice Resource Service – [www.ncjrs.gov](http://www.ncjrs.gov)

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**Training Materials – more available on the following websites:**

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- [www.prearesourcecenter.org](http://www.prearesourcecenter.org)
- [www.wcl.american.edu/nic/training.cfm](http://www.wcl.american.edu/nic/training.cfm)
- [www.nicic.org](http://www.nicic.org)
- [www.cipp.org](http://www.cipp.org)
- [www.tribal-institute.org](http://www.tribal-institute.org)
- [www.appa-net.org](http://www.appa-net.org)

**ABOUT THE AUTHOR OF THIS TRAINING CURRICULUM:**

**Elizabeth Layman** is President of Price Layman, Inc., a criminal justice consulting firm. Ms. Layman was a police officer/detective for 9 years in Arlington, Virginia, where she worked in the patrol division, a crime scene specialist, and as a detective in Major Crimes (robbery, burglary and sexual assault). After moving to Florida, Ms Layman spent 16 years with the Department of Corrections Probation and Parole, and the Parole Commission in the State of Florida, where she worked as an Administration Hearing Officer conducting parole eligibility hearings, revocation hearings, and evidentiary hearings in state prisons and county jails. For 9 years of those years, Ms. Layman was the Regional Director for the Florida Parole Commission, managing agency operations in the eight-county region of South Florida. Ms. Layman has also conducted clemency and death sentence investigations for the Office of the Governor of the State of Florida.

Since 1997, Ms. Layman has worked on numerous projects with the U.S. Department of Justice, National Institute of Corrections and Bureau of Justice Assistance including: providing on-site technical assistance and training to state and local corrections and law enforcement agencies throughout the country; curriculum development, including: Training for Investigators of Staff Sexual Misconduct; Managing a Multi-Generational Workforce; FutureForce:Developing a 21<sup>st</sup> Century Workforce for Community Corrections and the Prison Rape Elimination Act for Law Enforcement and Jails; co-authorship of A Resource Guide for New Wardens, , and Staff Sexual Misconduct with Offenders Policy Development Guide for Community Corrections; The Prison Rape Elimination Act of 2003: What Executives, Supervisors and Staff Need to Know; and co-authorship of publications on the issue of Staff Sexual Misconduct in various periodicals, including *American Jails*, *Perspectives*, and *Sheriff* magazines.

Ms. Layman holds a Bachelor of Science in Sociology from Virginia Tech.



## **PRISON RAPE ELIMINATION ACT – FULL TEXT OF THE LAW**

117 STAT. 972 PUBLIC LAW 108-79-  
SEPT. 4, 2003

Sept. 4, 2003 [So 1435] Prison Rape Elimination Act of 2003.

### **Public Law 108-79**

### **108th Congress An Act**

To provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION I. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.-This Act may be cited as the "Prison Rape Elimination Act of 2003".

(b) TABLE OF CONTENTS.-The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Purposes.

Sec. 4. National prison rape statistics, data, and research. Sec. 5.

Prison rape prevention and prosecution.

Sec. 6. Grants to protect inmates and safeguard communities. Sec.

7. National Prison Rape Reduction Commission.

Sec. 8. Adoption and effect of national standards.

Sec. 9. Requirement that accreditation organizations adopt accreditation standards. Sec. 10.

Definitions.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) 2,100,146 persons were incarcerated in the United States at the end of 2001: 1,324,465 in Federal and State prisons and 631,240 in county and local jails. In 1999, there were more than 10,000,000 separate admissions to and discharges from prisons and jails.

(2) Insufficient research has been conducted and insufficient data reported on the extent of prison rape. However, experts have conservatively estimated that at least 13 percent of the inmates in the United States have been sexually assaulted in prison. Many inmates have suffered repeated assaults. Under this estimate, nearly 200,000 inmates now incarcerated have been or will be the victims of prison rape. The total number of inmates who have been sexually assaulted in the past 20 years likely exceeds 1,000,000.

(3) Inmates with mental illness are at increased risk of sexual victimization. America's jails and prisons house more mentally ill individuals than all of the Nation's psychiatric hospitals combined.

As many as 16 percent of inmates in State prisons and jails, and 7 percent of Federal inmates, suffer from mental illness.

(4) Young first-time offenders are at increased risk of sexual victimization. Juveniles are 5 times more likely to be sexually

assaulted in adult rather than juvenile facilities - often within the first 48 hours of incarceration.

(5) Most prison staff are not adequately trained or prepared to prevent, report, or treat inmate sexual assaults.

(6) Prison rape often goes unreported, and inmate victims often receive inadequate treatment for the severe physical and psychological effects of sexual assault -if they receive treatment at all.

(7) HIV and AIDS are major public health problems within America's correctional facilities. In 2 000, 25,088 inmates in Federal and State prisons were

known to be infected with HIV/AIDS. In 2000, HIV/AIDS accounted for more than 6 percent of all deaths in Federal and State prisons. Infection rates for other sexually transmitted diseases, tuberculosis, and hepatitis Band 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, and often giving a potential death sentence to its victims.

(8) Prison rape endangers the public safety by making brutalized inmates more likely to commit crimes when they are released -as 600,000 inmates are each year.

(9) The frequently interracial character of prison sexual assaults significantly exacerbates interracial tensions, both within prison and, upon release of perpetrators and victims from prison, in the community at large.

(10) Prison rape increases the level of homicides and other violence against inmates and staff, and the risk of insurrections and riots.

(11) 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.

(12) Members of the public and government officials are largely unaware of the epidemic character of prison rape and the day-to-day horror experienced by victimized inmates.

(13) The high incidence of sexual assault within prisons involves actual and potential violations

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of the United States Constitution. In *Farmer v. Brennan*, 511 U.S. 825 (1994), the Supreme Court ruled that deliberate indifference to the substantial risk of sexual assault violates prisoner's rights under the Cruel and Unusual Punishments Clause of the Eighth Amendment. The Eighth Amendment rights of State and local prisoners are protected through the Due Process Clause of the Fourteenth Amendment. Pursuant to the power of Congress under Section Five of the Fourteenth Amendment, Congress may take action to enforce those rights in States where officials have demonstrated such indifference. States that do not take basic steps to abate prison rape by adopting standards that do not generate significant additional expenditures demonstrate such indifference. Therefore, such States are not entitled to the same level of Federal benefits as other States.

(14) The high incidence of prison rape undermines the effectiveness and efficiency of United States Government expenditures through grant programs such as those dealing with health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison construction, maintenance, and operation; race relations; poverty; unemployment and homelessness. The effectiveness and efficiency of these federally funded grant programs are compromised by the failure of State officials to adopt policies and procedures that reduce the incidence of prison rape in that the high incidence of prison rape: -

(A) increases the costs incurred by Federal, State, and local jurisdictions to administer their prison systems;

(B) increases the levels of violence, directed at inmates and at staff, within prisons;

(C) increases health care expenditures, both inside and outside of prison systems, and reduces the effectiveness of disease prevention programs by substantially increasing the incidence and spread of HIV, AIDS, tuberculosis, hepatitis Band C, and other diseases;

(D) increases mental health care expenditures, both inside and outside of prison systems, by substantially increasing the rate of post-traumatic stress disorder,

depression, suicide, and the exacerbation of existing mental illnesses among current and former inmates;

(E) increases the risks of recidivism, civil strife, and violent crime by individuals who have been brutalized by prison rape; and

(F) increases the level of interracial tensions and strife

within prisons and, upon release of perpetrators and victims, in the community at large.

(15) The high incidence of prison rape has a significant effect on interstate commerce because it increases substantially -

(A) the costs incurred by Federal, State, and local jurisdictions to administer their prison systems;

(B) the incidence and spread of HIV, AIDS, tuberculosis, hepatitis Band C, and other diseases, contributing to increased health and medical expenditures throughout the Nation;

(C) the rate of post-traumatic stress disorder, depression, suicide, and the exacerbation of existing mental illnesses among current and former inmates, contributing to increased health and medical expenditures throughout the Nation; and

(D) the risk of recidivism, civil strife, and violent crime by individuals who have been brutalized by prison rape.

**SEC. 3. PURPOSES.**

The purposes of this Act are to -

(1) establish a zero-tolerance standard for the incidence of prison rape in prisons in the United States;

(2) make the prevention of prison rape a top priority in each prison system;

(3) develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape;

(4) increase the available data and information on the incidence of prison rape, consequently improving the management and administration of correctional facilities;

(5) standardize the definitions used for collecting data on the incidence of prison rape;

(6) increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison rape;

(7) protect the Eighth Amendment rights of Federal, State, and local prisoners;

(8) increase the efficiency and effectiveness of Federal expenditures through grant programs such as those dealing with health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison construction, maintenance, and operation; race

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relations; poverty; unemployment; and homelessness; and .

(9) reduce the costs that prison rape imposes on interstate commerce.

SEC. 4.

**ANNUAL COMPREHENSIVE STATISTICAL REVIEW-** .

(1) **IN GENERAL.**-The Bureau of Justice Statistics of the Department of Justice (in this section referred to as the "Bureau") shall carry out, for each calendar year, a comprehensive statistical review and analysis of the incidence and effects of prison rape. The statistical review and analysis shall include, but not be limited to the identification of the common characteristics of.

(A) both victims and perpetrators of prison rape; and (B) prisons and prison systems with a high incidence of prison rape ...

(2) **CONSIDERATIONS** . . . -In carrying out paragraph (1), the Bureau shall consider -- .

(A) how rape should be defined for the purposes of the statistical review and analysis; .

(B) how the Bureau should collect information about

staff -on-inmate sexual assault; .

(C) how the Bureau should collect information beyond inmate self -reports of prison rape; .

(D) how the Bureau should adjust the data in order to

account for differences among prisons as required by subsection (c)(3);

(E) the categorization of prisons as required by sub section(c)(4); and

(F) whether a preliminary study of prison rape should be conducted to inform the methodology of the comprehensive statistical review.

(3) **SOLICITATION OF VIEWS**-The Bureau of Justice Statistics shall solicit views from representatives of the following:

State departments of correction; county and municipal jails; juvenile correctional facilities; former inmates; victim advocates; researchers; and other experts in the area of sexual assault.

(4) **SAMPLING TECHNIQUES**-.The review and analysis under paragraph (1) shall be based on a random sample, or other scientifically appropriate sample, of not less than 10 percent o f all

Federal, State, and county prisons, and a representative sample of municipal prisons. The selection shall include at least one prison from each State. The selection of facilities for sampling shall be made at the latest practicable date prior to conducting the surveys and shall

not be disclosed to any facility or prison system official

prior to the time period studied in the survey. Selection of a facility for sampling during any year and shall not preclude its selection for sampling in any subsequent surveys

(5) **SURVEYS**-.In carrying out the review and analysis under paragraph (1), the Bureau shall, in addition to such other methods as the Bureau considers appropriate, use surveys and other statistical studies of current and former inmates from a sample of Federal, State, county, and municipal prisons. The Bureau shall ensure the confidentiality of each survey participant.

(6) **PARTICIPATION IN SURVEY**-.Federal, State, or local officials or facility administrators that receive a request from the Bureau under subsection (a)(4) or (5) will be required to participate in the national survey and provide access to any inmates under their legal custody.

(b) **REVIEW PANEL ON PRISON RAPE.- ESTABLISHMENT.** \_To assist the Bureau in carrying out the review and analysis under subsection (a), there is established, within the Department of Justice, the Review Panel on Prison Rape (in this section referred to as the "Panel").

(2) **MEMBERSHIP.** \_

(A) **COMPOSITION.**-The Panel shall be composed of 3

members, each of whom shall be appointed by the Attorney General, in consultation with the Secretary of Health and Human Services.

(B) **QUALIFICATIONS.**-Members of the Panel shall be

selected from among individuals with knowledge or expertise in matters to be studied by the Panel.

(3) **PUBLIC HEARINGS.**-

**IN GENERAL.**---The duty of the Panel shall be to carry out, for each calendar year, public hearings concerning the operation of the three prisons with the highest incidence of prison rape and the two prisons with the lowest incidence of prison rape in each category of facilities identified under subsection (c)(4). The Panel shall hold a separate hearing regarding the three Federal or State prisons with the highest

incidence of prison rape. The purpose of these hearings shall be to collect evidence to aid in the identification of common characteristics of both victims and perpetrators of prison rape, and the identification of common characteristics of prisons and prison systems with a high incidence of prison rape, and the identification of common characteristics of prisons and prison systems that appear to have been successful in deterring prison rape.

(B) **TESTIMONY AT HEARINGS.**-

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(i) PUBLIC OFFICIALS.-In carrying out the hearings required under subparagraph (A), the Panel shall request

the public testimony of Federal, State, and local officials (and organizations that represent such officials), including the warden or director of each prison, who bears responsibility for the prevention, detection, and punishment of prison rape at each entity, and the head of

the prison system encompassing such prison.

(ii) VICTIMS.-The Panel may request the testimony of prison rape victims, organizations representing such victims, and other appropriate individuals and organizations.

(C) SUBPOENAS.-

(i) ISSUANCE.-The Panel may issue subpoenas for the attendance of witnesses and the production of writ ten or other matter.

(ii) ENFORCEMENT.-In the case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

(c) REPORTS.-

(1) IN GENERAL.-Not later than June 30 of each year The Attorney General shall submit a report on the activities of the Bureau and the Review Panel, with respect to prison rape, for the preceding calendar year to -(A) Congress; and (B) the Secretary of Health and Human Services.

(2). CONTENTS. -The report required under paragraph (1) shall include -

(A) with respect to the effects of prison rape, statistical, sociological, and psychological data;

(B) with respect to the incidence of prison rape -

(i) statistical data aggregated at the Federal, State, prison system, and prison levels;

(ii) a listing of those institutions in the representative

sample, separated into each category identified under

subsection (c)(4) and ranked according to the incidence of prison rape in each institution; and

(iii) an identification of those institutions in the representative sample that appear to have been successful in deterring prison rape; and

(C) a listing of any prisons in the representative sample that did not cooperate with the survey conducted pursuant to section 4.

(3) DATA ADJUSTMENTS.-In preparing the information specified in paragraph (2), the Attorney General shall use established statistical methods to adjust the data as necessary to . account for differences among institutions in the representative sample, which are not related to the detection, prevention, reduction and punishment of prison rape, or which are outside the control of the

State, prison, or prison system, in order to provide an accurate comparison among prisons. Such differences may include the mission, security level, size, and jurisdiction under which the prison operates.

For each such adjustment made, the Attorney General shall identify and explain such adjustment in the report.

(4) CATEGORIZATION OF PRISONS-The report shall divide the prisons surveyed into three categories. One category shall be

composed of all Federal and State prisons. The other two categories

shall be defined by the Attorney General in order to compare similar institutions.

(d) CONTRACTS AND GRANTS.-In carrying out its duties under this section, the Attorney General may -

(1) provide grants for research through the National Institute of Justice; and

(2) contract with or provide grants to any other entity the Attorney General deems appropriate.

(e) AUTHORIZATION OF APPROPRIATIONS.-

There are authorized to be appropriated \$15,000,000 for each of fiscal years 2004 through 2010 to carry out this section.

SEC. 5. PRISON RAPE PREVENTION AND PROSECUTION. (a) INFORMATION AND ASSISTANCE.-

(1) NATIONAL CLEARINGHOUSE.-There is established within the National Institute of Corrections a national clearinghouse for the provision of information and assistance to Federal, State, and local authorities responsible for the prevention, investigation, and punishment of instances of prison rape.

(2) TRAINING AND EDUCATION.-The National Institute of Corrections shall conduct periodic training and education programs for Federal, State, and local authorities responsible for the prevention, investigation, and punishment of instances of prison rape.

(b) REPORTS.-

(1) IN GENERAL.-Not later than September 30 of each year, the National Institute of Corrections shall submit a report to Congress and the Secretary of Health and Human Services. This



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report shall be available to the Director of the Bureau of Justice Statistics.

(2) CONTENTS.-The report required under paragraph (1) shall summarize the activities of the Department of Justice regarding prison rape abatement for the preceding calendar year ..

(c) AUTHORIZATION OF APPROPRIATIONS.-

There are authorized to be appropriated \$5,000,000 for each of fiscal years 2004 through 2010 to carry out this section .

**SEC. 6. GRANTS TO PROTECT INMATES AND SAFEGUARD COMMUNITIES.**

(a) GRANTS AUTHORIZED.-From amounts made available for grants under this section, the Attorney General shall make grants to States to assist those States in ensuring that budgetary circumstances (such as reduced State and local spending on prisons) do not compromise efforts to protect inmates (particularly from prison rape) and to safeguard the communities to which inmates return. The purpose of grants under this

section shall be to provide funds for personnel, training, technical assistance, data collection, and equipment to prevent and prosecute prisoner rape.

(b) USE OF GRANT AMOUNTS.-Amounts received by a grantee under this section may be used by the grantee, directly or through subgrants, only for one or more of the following activities:

(1) PROTECTING INMATES.-Protecting inmates by-

(A) undertaking efforts to more effectively prevent prison rape;

(B) investigating incidents of prison rape; or

(C) prosecuting incidents of prison rape.

(2) SAFEGUARDING COMMUNITIES.-

Safeguarding

communities by- (A) making available, to officials of State and local governments who are considering reductions to prison budgets, training and technical assistance in successful methods for moderating the growth of prison populations without compromising public safety, including successful methods used

by other jurisdictions; (B) developing and utilizing analyses of prison populations and risk assessment instruments that will improve State and local governments understanding of risks to the community regarding release of inmates in the

prison population; (C) preparing maps demonstrating the concentration, on a community by-community basis, of inmates who have been released, to facilitate the efficient and effective -

(i) deployment of law enforcement resources (including probation and parole resources); and

(ii) delivery of services (such as job training and substance abuse treatment) to those released inmates; (D) promoting collaborative efforts, among

officials of State and local governments and leaders of appropriate communities, to understand and address the effects on a community of the

presence of a disproportionate number of released inmates in that community; or

(E) developing policies and programs that reduce spending on prisons by effectively reducing rates of parole and probation revocation without compromising public safety.

(c) GRANT REQUIREMENTS.-

(1) PERIOD.-A grant under this .section shall be made for a period of not more than 2 years.

(2) MAXIMUM. - The amount of a grant under this section may not exceed \$1,000,000.

(3) MATCHING.-The Federal share of a grant under this section may not exceed 50 percent of the total costs of the project described in the application

submitted under subsection (d) for the fiscal year for which the grant was made under this section.

(d) APPLICATIONS.-

(1) IN GENERAL.-To request a grant under this section, the chief executive of a State shall submit an application to the Attorney General at such time, in

such manner, and accompanied by such information as the Attorney General may require.

(2) CONTENTS. -Each application required by paragraph (1) shall- .

(A) include the certification of the chief executive that

the State receiving such grant - ..

(i) has adopted all national prison rape standards that, as of the date on which the application was submitted, have been promulgated under

this Act; and (j) will consider adopting all national prison rape standards that are promulgated under this Act after such date;

(B) specify with particularity the preventative, prosecutorial, or administrative activities to be undertaken by the State with the amounts received under the grant; and (C) in the case of an application for a grant for one or more activities specified in paragraph (2) of subsection (b)-

(1) review the extent of the budgetary circumstances affecting the State generally and

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describe how those circumstances relate to the State's prisons;

(ii) describe the rate of growth of the State's prison population over the preceding 10 years and explain why

the State may have difficulty sustaining that rate of growth; and

(iii) explain the extent to which officials (including law enforcement officials) of State and local governments and victims of crime will be consulted regarding decisions whether, or how, to moderate the growth of the State's prison population.

(e) **REPORTS BY GRANTEE.-**

(1) **IN GENERAL.-**The Attorney General shall require each grantee to submit, not later than 90 days after the end of the period for which the grant was made under this section, a report on the activities carried out under the grant. The report shall identify and describe those activities and shall contain an evaluation of the effect of those activities on-

(A) the number of incidents of prison rape, and the grantee's response to such incidents; and

(B) the safety of the prisons, and the safety of the communities in which released inmates are present.

(2) **DISSEMINATION.-**The Attorney General shall ensure that each report submitted under paragraph

(1) is made available under the national clearinghouse established under section 5 .

(f) **STATE DEFINED.-**In this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(g) **AUTHORIZATION OF APPROPRIATIONS.-**

(1) **IN GENERAL.-**There are authorized to be appropriated for grants under this section \$40,000,000 for each of fiscal years 2004 through 2010.

(2) **LIMITATION.-**Of amounts made available for grants under this section, not less than 50 percent shall be available only for activities specified in paragraph (1) of subsection (b).

**SEC. 7. NATIONAL PRISON RAPE REDUCTION COMMISSION.**

(a) **ESTABLISHMENT.-**There is established a commission to be known as the National Prison Rape Reduction Commission (in this section referred to as the "Commission").

(b) **MEMBERS.-**

(1) **IN GENERAL.-**The Commission shall be composed of 9 members, of whom-

(A) 3 shall be appointed by the President;

(B) 2 shall be appointed by the Speaker of the House of

Representatives, unless the Speaker is of the same party as the President, in which case 1 shall be appointed by the Speaker of the House of

Representatives and 1 shall be appointed by the minority leader of the House of Representatives; (C) 1 shall be appointed by the minority leader of the

House of Representatives (in addition to any appointment made under subparagraph (B));

(D) 2 shall be appointed by the majority leader of the

Senate, unless the majority leader is of the same party as the President, in which case 1 shall be appointed by the majority leader of the Senate and 1 shall be appointed by the minority leader of the Senate; and

(E) 1 member appointed by the minority leader of the Senate (in addition to any appointment made under subparagraph D.

(2) **PERSONS ELIGIBLE.-**Each member of the Commission shall be an individual who has knowledge or expertise in matters to be studied by the Commission.

(3) **CONSULTATION REQUIRED.-**The President, the Speaker and minority leader of the House of Representatives, and the majority leader and minority leader of the Senate shall consult with one another

prior to the appointment of the members of the Commission to achieve, to the maximum extent possible, fair and equitable representation of various points of view' with respect to the matters to be studied by the Commission.

(4) **TERM.-**Each member shall be appointed for the life of the Commission.

(5) **TIME FOR INITIAL APPOINTMENT.-**The appointment of the members shall be made not later than 60 days after the date of enactment of this Act.

(6) **VACANCIES.-**A vacancy in the Commission shall be filled in the manner in which the original appointment was made, and shall be made not later than 60 days after the date on which the vacancy occurred.

(c) **OPERATION.-**

(1) **CHAIRPERSON.-**Not later than 15 days after appointments of all the members are made, the President shall appoint a chairperson for the Commission from among its members.

(2) **MEETINGS.-**The Commission shall meet at the call of the chairperson. The initial meeting of the Commission shall take place not later than 30 days after the initial appointment of the members is completed.

(3) **QUORUM.-**A majority of the members of the Commission shall constitute a quorum to conduct business, but the Commission may establish a lesser quorum for conducting hearings scheduled by the

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Commission.

(4) **RULES.**-The Commission may establish by majority vote any other rules for the conduct of Commission business, if such rules are not inconsistent with this Act or other applicable law.

**(d) COMPREHENSIVE STUDY OF THE IMPACTS OF PRISON RAPE.-**

(1) **IN GENERAL.**-The Commission shall carry out a comprehensive legal and factual study of the penalogical, physical, mental, medical, social, and economic impacts of prison rape in the United

States on-(A) Federal, State, and local governments; and (B) communities and social institutions generally, including individuals, families, and businesses within such communities and social institutions.

(2) **MATTERS INCLUDED.**-The study under paragraph (1) shall include -

(A) a review of existing Federal, State, and local government policies and practices with respect to the prevention, detection, and punishment of prison rape;

(B) an assessment of the relationship between prison rape and prison conditions, and of existing monitoring, regulatory, and enforcement practices that are intended to address any such relationship;

(C) an assessment of pathological or social causes of prison rape;

(D) an assessment of the extent to which the incidence of prison rape contributes to the spread of sexually transmitted diseases and to the transmission of HIV;

(E) an assessment of the characteristics of inmates most likely to commit prison rape and the effectiveness of various types of treatment or programs to reduce such likelihood;

(F) an assessment of the characteristics of inmates most likely to be victims of prison rape and the effectiveness of various types of treatment or programs to reduce such likelihood;

(G) an assessment of the impacts of prison rape on individuals, families, social institutions and the economy generally, including an assessment of the extent to which the incidence of prison rape contributes to recidivism and to increased incidence of sexual assault;

(H) an examination of the feasibility and cost of conducting surveillance, undercover activities, or both, to reduce the incidence of prison rape;

(I) an assessment of the safety and security of prison facilities and the relationship of prison facility construction and design to the incidence of prison rape;

(J) an assessment of the feasibility and cost of any particular proposals for prison reform;

(K) an identification of the need for additional scientific and social science research on the prevalence of prison rape in Federal, State, and local prisons;

(L) an assessment of the general relationship between prison rape and prison violence;

(M) an assessment of the relationship between prison rape and levels of training, supervision, and discipline of prison staff; and

(N) an assessment of existing Federal and State systems

for reporting incidents of prison rape, including an assessment of whether existing systems provide an adequate assurance of confidentiality, impartiality and the absence of reprisal.

**(3) REPORT.-**

(A) **DISTRIBUTION.**-Not later than 2 years after the date of the initial meeting of the Commission, the Commission shall submit a report on the study carried out under this subsection to-

(i) the President;

(ii) the Congress;

(iii) the Attorney General;

(iv) the Secretary of Health and Human Services;

(v)

the Director of the Federal Bureau of Prisons; (vi)

the chief executive of each State; and

(vii) the head of the department of corrections of each State.

(B) **CONTENTS.**-The report under subparagraph (A)

shall include- (i) the findings and conclusions of the Commission; (ii) recommended national standards for reducing prison rape; (iii) recommended protocols for preserving evidence and treating victims of prison rape; and (iv) a summary of the materials relied on by the Commission in the preparation of the report.

**(e) RECOMMENDATIONS.-**

(1) **IN GENERAL.**-In conjunction with the report submitted under subsection (d)(3), the Commission shall provide the Attorney General and the Secretary of Health and Human Services with recommended national standards for enhancing the detection, prevention, reduction, and punishment of prison rape.

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(2) MATTERS INCLUDED.-The information provided under paragraph (1) shall include recommended national standards relating to --

(A) the classification and assignment of prisoners, using proven standardized instruments and protocols, in a manner that limits the occurrence of prison rape;

(B) the investigation and resolution of rape complaints by responsible prison authorities, local and State police, and Federal and State prosecution authorities;

(C) the preservation of physical and testimonial evidence for use in an investigation of the circumstances relating to the rape;

(D) acute -term trauma care for rape victims, including standards relating to --

(i) the manner and extent of physical examination

and treatment to be provided to any rape victim; and

(ii) the manner. and extent. of any psychological examination, psychiatric care, medication, and mental health counseling to be provided to any rape victim;

(E) referrals for long-term continuity of care for rape victims;

(F) educational and medical testing measures for

reducing the incidence of HIV transmission due to prison rape;

(G) post-rape prophylactic medical measures for reducing the incidence of transmission of sexual diseases;

(H) the training of correctional staff sufficient to ensure that they understand and appreciate the significance of prison rape and the necessity of its eradication;

(1) the timely and comprehensive investigation of staff sexual misconduct involving rape or other sexual assault on inmates;

(J) ensuring the confidentiality of prison rape complaints and protecting inmates who make complaints of prison rape;

(K) creating a system for reporting incidents of prison rape that will ensure the confidentiality of prison rape complaints, protect inmates who make prison rape complaints from retaliation, and assure the impartial resolution of prison rape complaints;

(L) data collection and reporting of.

(i) prison rape;

(ii) prison staff sexual misconduct; and

(iii) the resolution of prison rape complaints by

prison officials and Federal, State, and local investigation and prosecution authorities; and

(M) such other matters as may reasonably be related to the detection, prevention, reduction, and punishment of prison rape.

(3) LIMITATION. -The Commission shall not propose a recommended standard that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities.

(D CONSULTATION WITH ACCREDITATION ORGANIZATIONS.-In developing recommended national standards for enhancing the detection, prevention, reduction, and punishment of prison rape, the Commission shall consider any standards that have already been developed, or are being developed simultaneously to the deliberations of the Commission. The Commission shall consult with accreditation organizations responsible for the accreditation of Federal, State, local or private prisons, that have developed or are currently developing standards related to prison rape. The Commission will also consult with national associations representing the corrections profession that have developed or are currently developing standards related to prison rape.

(g) HEARINGS.-

(1) IN GENERAL. -The Commission shall hold public hearings. The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out its duties under this section.

(2) WITNESS EXPENSE-Witnesses requested to appear before the Commission shall be paid the same fees as are paid to witnesses under section 1821 of title 28, United States Code. The per diem and mileage allowances for witnesses shall be paid from funds appropriated to the Commission.

(h) INFORMATION FROM FEDERAL OR STATE AGENCIES.-The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out its duties under this section. The Commission may request the head of any State or local department or agency to furnish such information to the Commission.

(i) PERSONNEL MATTERS.-

(1) TRAVEL EXPENSE-The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the



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performance of service for the Commission.

(2) **DETAIL OF FEDERAL EMPLOYEES** With the affirmative vote of  $\frac{2}{3}$  of the Commission, any Federal Government employee, with the approval of the head of the appropriate Federal agency, may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status, benefits, or privileges.

(3) **PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICE.**-

Upon the request of the Commission, the Attorney General shall provide reasonable and appropriate office space, supplies, and administrative assistance.

(j) **CONTRACTS FOR RESEARCH.** -

(1) **NATIONAL INSTITUTE OF JUSTICE** With a affirmative vote, the Commission may select nongovernmental researchers and experts to assist the Commission in carrying out its duties under this Act. The National Institute of Justice shall contract with the researchers and experts selected by the Commission to provide funding in exchange for their services.

(2) **OTHER ORGANIZATIONS.**-Nothing in this subsection shall be construed to limit the ability of the Commission to enter into contracts with other entities or organizations for research necessary to carry out the duties of the Commission under this section.

(k) **SUBPOENAS.**-

(1) **ISSUANCE.**-The Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter.

(2) **ENFORCEMENT.**-In the case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

(3) **CONFIDENTIALITY OF DOCUMENTARY EVIDENCE.**-Documents provided to the Commission pursuant to a subpoena issued under this subsection shall not be released publicly without the affirmative vote of of the Commission.

(l) **AUTHORIZATION OF APPROPRIATIONS.**- There are authorized to be appropriated such sums as may be necessary to carry out this section ..

(m) **TERMINATION.**-The Commission shall terminate on the date that is 60 days after the date on which the Commission submits the reports required by this section..

(n) **EXEMPTION.**-The Commission shall be exempt from the Federal Advisory Committee Act.

**SEC. 8. ADOPTION AND EFFECT OF NATIONAL STANDARDS.** (a) **PUBLICATION OF PROPOSED STANDARDS.**-

(1) **FINAL RULE.**-Not later than 1 year after receiving the report specified in section 7(d)(3), the Attorney General shall publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison rape.

(2) **INDEPENDENT JUDGMENT.**-The standards referred to in paragraph (1) shall be based upon the independent judgment of the Attorney General, after giving due consideration to the recommended national standards provided by the Commission under section 7(e), and being informed by such data, opinions, and proposals that the Attorney General determines to be appropriate to consider.

(3) **LIMITATION.**-The Attorney General shall not establish a national standard under this section that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities. The Attorney General may, however, provide a list of improvements for consideration by correctional facilities.

(4) **TRANSMISSION TO STATES.**-Within 90 days of publishing the final rule under paragraph (1), the Attorney General shall transmit the national standards adopted under such paragraph to the chief executive of each State, the head of the department of corrections of each State, and to the appropriate authorities in those units of local government who oversee operations in one or more prisons.

(b) **APPLICABILITY TO FEDERAL BUREAU OF PRISONS.**-

The national standards referred to in subsection (a) shall apply to the Federal Bureau of Prisons immediately upon adoption of the final rule under subsection (a)(4).

(c) **ELIGIBILITY FOR FEDERAL FUNDS.**

(1) **COVERED PROGRAMS.**-

(A) **IN GENERAL.**-For purposes of this subsection, a grant program is covered by this subsection if, and only if-

(i) the program is carried out by or under the authority of the Attorney General; and

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(ii) the program may provide amounts to States for prison purposes.

(B) LIST.-For each fiscal year, the Attorney General shall prepare a list identifying each program that meets the criteria of subparagraph (A) and provide that list to each State.

(2) ADOPTION OF NATIONAL STANDARDS.-For each fiscal year, any amount that a State would otherwise receive for prison purposes for that fiscal year under a grant program covered by this subsection shall be reduced by 5 percent, unless the chief executive of the State submits to the Attorney General-

(A) a certification that the State has adopted, and is in full compliance with, the national standards described in section 8(a); or

(B) an assurance that not less than 5 percent of such

amount shall be used only for the purpose of enabling the State to adopt, and achieve full compliance with, those national standards, so as to ensure that a certification under subparagraph (A) may be submitted in future years.

(3) REPORT ON NONCOMPLIANCE.-Not later than September 30 of each year, the Attorney General shall publish a report listing each grantee that is not in compliance with the national standards adopted pursuant to section 8(a).

(4) COOPERATION WITH SURVEY.-For each fiscal year, any amount that a State receives for that fiscal year under a grant program covered by this subsection shall not be used for prison purposes (and shall be returned to the grant program if no other authorized use is available), unless the chief executive of the State submits to the Attorney General a certification that neither the State, nor any political subdivision or unit of local government within the State, is listed in a report issued by the Attorney General pursuant to section 4(c)(2)(C).

(5) REDISTRIBUTION OF AMOUNTS.-Amounts under a grant program not granted by reason of a reduction under paragraph (2), or returned by reason of the prohibition in paragraph (4), shall be granted to one or more entities not subject to such reduction or such prohibition, subject to the other laws governing that program.

(6) IMPLEMENTATION.-The Attorney General shall establish procedures to implement this subsection, including procedures for effectively applying this subsection to discretionary grant programs.

(7) EFFECTIVE DATE.-

(A) REQUIREMENT OF ADOPTION OF STANDARDS.-The first grants to which paragraph (2) applies are grants for the second fiscal year

beginning after the date on which the national standards under section 8(a) are finalized.

(B) REQUIREMENT FOR COOPERATION.-The first grants to which paragraph (4) applies are grants for the fiscal year beginning after the date of the enactment of this Act.

SEC. 9. REQUIREMENT THAT ACCREDITATION ORGANIZATIONS ADOPT ACCREDITATION STANDARDS.

(a) ELIGIBILITY FOR FEDERAL GRANTS.-Notwithstanding any other provision of law, an organization responsible for the accreditation of Federal, State, local, or private prisons, jails, or other penal facilities may not receive any new Federal grants during any period in which such organization fails to meet any of the requirements of subsection (b).

(b) REQUIREMENTS.-To be eligible to receive Federal grant an accreditation organization referred to in subsection (a) must meet the following requirements:

(1) At all times after 90 days after the date of enactment of this Act, the organization shall have in effect, for each facility that it is responsible for accrediting, accreditation standards for the detection, prevention, reduction, and punishment of prison rape .

(2) At all times after 1 year after the date of the adoption of the final rule under section 8(a)(4), the organization shall, in addition to any other such standards that it may promulgate relevant to the detection, prevention, reduction, and punishment of prison rape, adopt accreditation standards consistent with the national standards adopted pursuant to such final rule.

SEC. 10. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) CARNAL KNOWLEDGE.-The term "carnal knowledge" means contact between the penis and the vulva or the penis and the anus, including penetration of any sort, however slight .

(2) INMATE.-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.

(3) JAIL.-The term "jail" means a confinement facility of a Federal, State, or local law enforcement agency to hold-

(A) persons pending adjudication of criminal charges;

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(B) persons committed to confinement after adjudication of criminal charges for sentences of 1 year or less.

(4) HIV.-The term "HIV" means the human immunodeficiency virus.

(5) ORAL SODOMY.-The term "oral sodomy" means contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus.

(6) POLICE LOCKUP.-The term "police lockup" means a temporary holding facility of a Federal, State, or local law enforcement agency to hold-  
(A) inmates pending bail or transport to jail;  
(B) inmates until ready for release; or  
(C) juveniles pending parental custody or shelter placement.

(7) PRISON.-The term "prison" means any confinement facility, of a Federal, State, or local government, whether administered by such government or by a private organization on behalf of such government, and includes-

(A) any local jail or police lockup; and

(B) any juvenile facility used for the custody or care of juvenile inmates.

(8) PRISON RAPE.-The term "prison rape" includes the rape of an inmate in the actual or constructive control of prison officials.

(9) RAPE.-The term "rape" means-

(A) the carnal knowledge, oral sodomy, sexual assault

with an object, or sexual fondling of a person, forcibly or against that person's will;

(B) the carnal knowledge, oral sodomy, sexual assault

with an object, or sexual fondling of a person not forcibly or against the person's will, where the victim is incapable of giving consent because of his or her youth or his or her temporary or permanent mental or physical incapacity; or

(C) the carnal knowledge, oral sodomy, sexual assault

with an object, or sexual fondling of a person achieved through the exploitation of the fear or threat of physical violence or bodily injury.

(10) SEXUAL ASSAULT WITH AN OBJECT.-The term "sexual assault with an object" means the use of any hand, finger, object, or other instrument to penetrate, however slightly, the genital or anal opening of the body of another person.

(11) SEXUAL FONDLING.-The term "sexual fondling" means the touching of the private body parts of another person (including the genitalia, anus, groin, breast, inner thigh, or buttocks) for the purpose of sexual gratification.

(12) EXCLUSIONS.-The terms and conditions described in paragraphs (9) and (10) shall not apply to-- (A) custodial or medical personnel gathering physical evidence, or engaged in other legitimate medical treatment, in the course of investigating prison rape;

(B) the use of a health care provider's hands or fingers or the use of medical devices in the course of appropriate medical treatment unrelated to prison rape; or

(C) the use of a health care provider's hands or fingers and the use of instruments to perform body cavity searches in order to maintain security and safety within the prison or detention facility, provided that the search is conducted in a manner consistent with constitutional requirements.

Approved September 4, 2003.

LEGISLATIVE HISTORY-S. 1435:

CONGRESSIONAL RECORD, Vol. 149 (2003):

July 21, considered and passed Senate. July 25, considered and passed House.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 39 (2003):

**RELEVANT STATISTICS – SEXUAL ABUSE IN JAILS AND PRISONS**

**Mental Health Issues:**

- More than half of all inmates in prisons and jails have a mental health problem (64% for jails).<sup>11</sup>
- There are more mentally ill persons in prisons and jails than in hospitals.<sup>12</sup>
- At least 16% of inmates in jails and prisons have a serious mental illness requiring medication or hospitalization.<sup>13</sup>
- Forty percent (40%) of all mentally ill persons in the United States will be in either jail or prison at some point in their lives.<sup>14</sup>

**Drug and Alcohol Addiction:**

- At least 49% of violent offenders in jails and prisons committed the offense(s) under the influence of drug and/or alcohol.<sup>15</sup>

**History of Victimization (Abuse) Prior to Incarceration:**<sup>16</sup>

- More than HALF of all female inmates in prisons and jails report a history of sexual and/or physical abuse prior to being incarcerated.
- For males, that figure exceeds 18%.
- One third (1/3) of women in state prison report being raped before their incarceration.
- On average, more than 90% of those who had been abused were abused by spouses, parents, friends, family members or guardians.
- A great percentage of those reporting prior abuse were likely to have abused drugs and alcohol compared to those not reporting prior abuse.

**Tribal Detention and Related Statistics:**

- While American Indians and Alaska Natives accounted for 1% of the total population of the United States, they account for 1.2% of the incarcerated population.<sup>17</sup>
- About 40% of inmates confined in Tribal Jails are incarcerated for violent offenses.<sup>18</sup>
- The chance of being a victim of violent crime in Indian Country is more than double the national average.<sup>19</sup>

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<sup>11</sup> U. S. Department of Justice, Bureau of Justice Statistics, "Mental Health Problems of Prison and Jail Inmates". Doris James. September 2006. NCJ 213600

<sup>12</sup> Torrey, E. Fuller M.D. et al, "More Mentally Ill Persons in Jails and Prisons Than Hospitals: A Survey of States", National Sheriff's Association and the Treatment Advocacy Center. May 2010

<sup>13</sup> Ibid.

<sup>14</sup> U. S. Department of Justice, Bureau of Justice Statistics, see i above.

<sup>15</sup> Ibid.

<sup>16</sup> U.S. Department of Justice, Bureau of Justice Statistics, "Prior Abuse Reported by Inmates and Probationers". By Caroline Wolf Harlow, Ph.D., April 1999, NCJ 172879.

<sup>17</sup> U.S. Department of Justice, Bureau of Justice Statistics Bulletin. "Jails in Indian Country 2008". By Todd D. Minton. December 2009, NCJ 228271.

<sup>18</sup> Ibid.

- More than 1 in 3 American Indian and Alaska Native women will be raped during their lifetime.<sup>20</sup>

In a recent (August 2010) report by the Bureau of Justice Statistics<sup>21</sup>, data collected from more than 81,000 inmates in prisons and jails revealed a number of significantly relevant results about sexual victimization.

- 4.4% of prison inmates and 3.1% of jail inmates reported one or more incidents of sexual abuse by another inmate or facility staff in the past 12 months.
- Females in prison or jail were twice as likely as males to report experiencing inmate-on-inmate sexual abuse.
- Of those inmates reporting inmate-on-inmate sexual abuse, most incidents occurred between 6 pm and midnight (40%).

**Certain inmate characteristics increased the likelihood of sexual victimization, including:**

- Those inmates who were white or multi-racial, compared to black inmates;
- Those inmates with a college degree or higher, compared to those with high school or less;
- Those inmates who reported gender preference other than heterosexual;
- Those inmates with a history of prior sexual abuse.

**In cases of staff sexual misconduct with inmates:**

- Incidents were lower among white inmates compared to black inmates;
- Incidents were lower among inmates age 25 or older, compared to age 24 or less;
- Incidents were higher among inmates with college degrees;
- Incidents were higher among inmates with a history or prior sexual abuse;
- Most victims were male, and most perpetrators were female.

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<sup>19</sup> U.S. Department of Justice, Bureau of Justice Statistics. "American Indians and Crime" by Lawrence Greenfield. February 1999. NCJ 173386.

<sup>20</sup> Ibid.

<sup>21</sup> "Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-2009". Allen J. Beck and Paige M. Harrison, Statisticians. U.S. Department of Justice, Office of Justice Programs, Bureau of Justices Statistics. August 2010. Publication NCJ 231169.



NATIONAL  
**PREA**  
RESOURCE  
CENTER

## Frequently Asked Questions

The final Department of Justice PREA Standards became effective on August 20, 2012. The Department will have more information forthcoming about compliance and monitoring of the standards, and that information will be available on the PRC website. *Last updated February 7, 2013.*

1. [General](#)
2. [Audit and Compliance](#)
3. [Applicability of the Standards to Individual Settings](#)
4. [Screening](#)
5. [Supervision](#)
6. [Youthful Inmates](#)
7. [Cross Gender Supervision](#)

### General

#### **1. What are the PREA standards and when are they effective?**

The Prison Rape Elimination Act (PREA) was passed in 2003. The law created the National Prison Rape Elimination Commission (NPREC) and charged it with developing standards for the elimination of sexual abuse in confinement. The law required the Department of Justice (DOJ) to review the NPREC standards, make revisions as necessary, and pass the final standards into law.

The final rule was published in the [federal register](#) on June 20, 2012, and became effective on August 20, 2012. Certain standards do not go into effect until a later date. The standard that governs external audits provides that the first audit cycle begins on August 20, 2013, and, to be in compliance, that jurisdictions must have at least one third of their facilities audited within the subsequent 12-month period ending August 20, 2014. The restrictions on cross-gender pat-down searches of female inmates in prisons, jails, and community confinement facilities (115.15(b) and 115.215(b)) do not go into effect until August 20, 2015, for facilities whose rated capacity is 50 or more inmates, and August 21, 2017, for facilities whose rated capacity does not exceed 50. The standard on minimum staffing ratios in secure juvenile facilities (115.313(c)) does not go into effect until October 1, 2017, unless the facility is already obligated by law, regulation, or judicial consent decree to maintain the minimum staffing ratios set forth in that standard.

#### **2. How can the PREA Resource Center help?**

The PREA Resource Center (PRC) is designed to offer assistance to state and local agencies working to address sexual abuse in their confinement facilities, adult and juvenile. One of our primary purposes is to help with implementation of the standards, but we have a broader mission to help address the issue of prison rape by providing a forum for exchanging ideas and sharing examples of innovation and emerging best practices. This website offers a full library with research and tools to help agencies learn about the issue and to learn about strategies for preventing, detecting, and responding to sexual abuse in confinement. In addition, the library contains tools to help agencies

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develop PREA policies and implement the standards. To search the library, click [here](#). The PRC library also contains links to resources for [survivors](#).

The PRC offers training and technical assistance in a variety of forms. We host frequent webinars on topics relevant to standards implementation and addressing sexual abuse in confinement in general. You can find a listing of webinars and other upcoming and archived events [here](#). Where there is need, we sponsor trainings around the country on PREA-related topics, and the PRC responds to individual requests for technical assistance from agencies and facilities. To learn more about our training and technical assistance, click [here](#).

### Audit and Compliance

#### **1. What information is forthcoming on the audit?**

The DOJ, in collaboration with the National PREA Resource Center (PRC), has convened a PREA audit workgroup to develop the audit tool that will be used to assess compliance with the PREA standards. The audit tool, once completed, will provide guidance regarding audit methodology and, where possible, enumerate compliance measures for each standard. The expectation is that the audit tool will be beta tested in the early winter and finalized by February 2013. It will be shared publicly, with guidance on preparation for audits, once it is finalized. DOJ fully understands agencies' needs for guidance on the audit component of the final PREA standards. Consequently, DOJ is working as quickly as possible to release information on the audit—both timing and compliance measures—to the agencies and the field.

#### **2. What is the minimum period of time, prior to the start of an audit, that an agency needs to demonstrate compliance with the standards in order to achieve favorable audit findings? For example, if an agency can demonstrate it is in compliance on a specific standard for 30 days prior to the audit, but not the eight months prior to the audit, is the agency considered compliant?**

The answer to this question is dependent on the development of the audit tool and compliance measures for each standard. DOJ recognizes that audits conducted toward the beginning of the first audit cycle, which begins August 20, 2013, will take into consideration the fact that facilities will have spent a significant period of time institutionalizing the standards. By contrast, a short period of compliance during the end of the audit review period (meaning closer to August 2014 or thereafter) would not be sufficient to achieve compliance. DOJ will work with PRC to define the measures auditors will use to assess compliance during the early auditing period, and additional information will be forthcoming as we approach the initial auditing cycle. Additionally, pursuant to PREA Standard 115.404(d), facilities that auditors find not in compliance with provisions of PREA have an automatic 180-day corrective action period during which auditors will work with agencies to remedy and verify remedial action for any deficiencies. This process provides additional time for facilities to achieve compliance before the auditor issues a final audit determination.

#### **3. What are the financial consequences to a state if it is not in compliance with the standards?**

The PREA statute provides that a state whose governor does not certify full compliance with the standards is subject to the loss of five percent of any DOJ grant funds that it would otherwise receive for prison purposes, unless the governor submits an assurance that such five percent will be used only for the purpose of enabling the state to achieve and certify full compliance with the standards in future years. 42 U.S.C. 15607(c).

#### **4. Does PREA require the governor to submit a certification of compliance, and if so, when is the first certification of compliance due to the Department of Justice?**

Pursuant to the PREA statute, the governor has three options: 1) submit a certification that the state is in full compliance; 2) submit an assurance that not less than five percent of its DOJ funding for prison purposes shall be used only for the purpose of enabling the state to adopt and achieve full compliance with the PREA standards; or 3) accept a five percent reduction in such grants. The specified date for the submission of either a certification or assurance by the Governor has not yet been determined.

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**5. On what basis can the governor make a certification decision? Is it the audit finding alone, or should the governor base certification on other items? If other items are applicable for a certification, what are some examples of these items?**

Pursuant to PREA Standard 115.501(a), governors shall make their certification of compliance taking into consideration the results of the most recent agency audit results. DOJ intends audits to be a primary, but not the only, factor in determining compliance. For example, audit results for a particular period may show the selected one third of audited facilities in compliance; however, the governor may have determined that other facilities under his/her control are, in fact, not in compliance with the standards.

Neither the PREA statute nor the PREA standards restrict the sources of information governors may use in deciding whether or how to certify compliance.

**6. In which fiscal year will the five percent penalty for non-compliance begin?**

Federal fiscal years begin on October 1. The first year of the non-compliance penalty period is fiscal year 2014, which will commence on October 1, 2013, and end on September 30, 2014.

**7. Which federal grant programs will the five percent penalty for non-compliance affect?**

It is important to note that if a governor submits an assurance to DOJ that not less than five percent of the state's DOJ funding for prison purposes will be used to support implementation of the PREA standards, then no penalty will be imposed, although the state may need to reallocate some of its DOJ funding such that five percent of the total is being used to support implementation of the standards.

Under PREA, the attorney general is required to publish a list each fiscal year of those grant programs that may be at risk for failure to comply with the standards. See 42 U.S.C. § 15607(c)(1)(B). That list has not yet been finalized because the penalties will not take effect until fiscal year 2014, and it is not yet known which current grant programs will continue to be funded, and which new grant programs may be created, by that year. That said, as an example, if the list were created using the fiscal year 2012 appropriations, the list would likely include, most notably, the Edward Byrne Memorial Justice grant program, the Juvenile Justice and Delinquency Prevention Act formula grant program, and the Juvenile Accountability Block Grant program.

**8. Would a five percent reduction in federal grant funds be applied to all funds within the designated grant program or only those budgeted "for prison purposes"?**

The reduction of federal funds would apply to all DOJ funding that the state could use for prison purposes. This includes dollars that could be used for prison purposes but that the state intended to use for other purposes. See 42 U.S.C. § 15607. In any event, it is important to note that "prison" is defined broadly by the statute to cover "any confinement facility" and includes the four covered facility types included in the standards. See 42 U.S.C. § 15609(7).

**9. Does my agency have to audit exactly one third of its facilities each year? We are on an ACA audit schedule and ACA does not audit exactly one third of our agencies per year. Do we need to change the auditing schedule to comply with PREA?**

Standard 115.401 discusses the audit frequency and timeframes and specifies that the agency shall ensure that each facility operated by the agency, or by a private organization on behalf of the agency, is audited at least once during each three-year period. The standards require an audit during each one-year period of at least one third of each facility type (prison, jail, juvenile facility, overnight lockup, and community confinement facility) operated by an agency, or by a private organization on behalf of an agency. DOJ is still determining potential coordination between ACA audits and PREA audits; in the future, the PREA and ACA audits may work in tandem. However, regardless of any such coordination, agencies must audit one third of each type of facility as specified in Standard 115.401 (b), irrespective of the timing of any ACA audit schedule.



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**10. Please provide recommendations for identifying an auditor while maintaining appropriate independence from the state criminal justice department. What role, if any, should the state criminal justice department play in identifying the auditor? Will the DOJ publish a list of certified PREA auditors?**

Prospective auditors will apply to be PREA-certified auditors. Only DOJ can certify auditors. In order to be certified, auditors must 1) meet a number of qualifications; 2) submit to a criminal records background check; and 3) pass DOJ-developed auditor training. DOJ plans to hold auditor training in spring 2013 in advance of the first audit cycle, which begins August 20, 2013. A complete list of PREA-certified auditors will be maintained publicly on the DOJ and PRC websites.

DOJ has not placed restrictions on how agencies choose auditors. Each agency should develop its own process, consistent with PREA Standard 115.402, which provides that 1) the auditor cannot be part of, or under the authority of, the agency (but may be part of, or authorized by, the relevant state or local government); 2) an auditor cannot be a person who has received financial compensation from the agency being audited (except for compensation received for conducting prior PREA audits) within three years prior to the agency's retention of the auditor; and 3) the agency cannot employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent PREA audits.

Applicability of the Standards to Individual Settings

**1. What facilities are covered under PREA and the PREA standards?**

PREA directed the attorney general to promulgate standards for all confinement facilities including, but not limited to, local jails, police lockups, and juvenile facilities. See 42 U.S.C. § 15609(7). DOJ has promulgated standards for prisons and jails (28 C.F.R. §§ 115.11 – 115.93), lockups (28 C.F.R. §§ 115.111 – 115.193), residential community confinement facilities (28 C.F.R. §§ 115.211 – 115.293), and juvenile facilities (28 C.F.R. §§ 115.311 – 115.393).

Additionally, on May 17, 2012, the President directed “all agencies with federal confinement facilities that are not already subject to the Department of Justice’s final rule” to develop rules or procedures that comply with PREA.

**2. Do the standards apply to locally operated facilities?**

Yes. PREA standards apply equally to locally operated facilities, such as lockups, jails, juvenile detention centers, and locally operated residential community confinement facilities. The statute imposes certain financial consequences on states that do not comply with the standards. However, for local facilities or facilities not operated by the state, PREA provides no direct federal financial penalty for not complying.

If a local facility has a contract to hold state or federal inmates, however, it may lose that contract if it does not comply with PREA standards. If a governor should certify compliance, he/she must certify that all facilities under the state's authority, including all local facilities the state contracts with to hold inmates, are in compliance. Furthermore, states that operate unified systems must demonstrate that all state-operated facilities, including jails, comply with the PREA standards.

Finally, all agencies, state or local, have obligations under federal and state constitutions to provide safety for individuals in their custody. While PREA does not create any new cause of action, private civil litigants might assert noncompliance with PREA standards as evidence that facilities are not meeting constitutional obligations.

**3. Do the standards apply to non-confinement community correctional settings such as probation and parole?**

No, the PREA standards do not apply to non-confinement community corrections functions such as probation and parole supervision. The PREA standards do apply to residential community confinement facilities such as halfway houses operated by community corrections agencies. The PREA standards apply to confinement facilities defined in section 115.5 General Definitions as “a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential reentry centers), other than a juvenile facility, in which individuals reside as part of a term of imprisonment or as a condition of pre-trial release or post-release supervision, while participating in gainful employment, employment search

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efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during nonresidential hours.” DOJ declined to adopt recommendations to adopt a set of standards that included pre-trial release, probation, and parole.

### **4. Do community corrections standards apply to juvenile community confinement settings?**

No. Juvenile community confinement facilities are covered by the juvenile facility standards. See 28 C.F.R. § 115.5 (definition of community confinement facility). The community confinement facility standards do not apply to juvenile community confinement facilities.

### **5. Do the standards apply to facilities that hold youth in the custody of a juvenile justice agency if those youth are not the totality of the population held in that particular facility? For example, are contracted secure juvenile facilities; contracted halfway houses, group homes, and community correctional facilities; and state department of social services secure facilities that provide services to juveniles who are under juvenile court jurisdiction through a contract with the state juvenile justice agency all covered? If so, to what extent?**

The PREA standards make clear that a *juvenile facility* is one that is *primarily* used for the confinement of juveniles. If a majority of a facility’s residents are under the age of 18 (unless under adult court supervision *and* confined or detained in a prison or jail), it will fall within the scope of the juvenile facility standards, even if non-delinquent youth are part of the facility’s population. One example is a facility that houses 10 youth and only two of those youth are under the jurisdiction of juvenile justice agencies. According to the standard, because less than a majority of the youth in that facility are in the custody of the juvenile justice department, the facility does not need to comply with PREA juvenile facility standards. For example, if the facility is used to house individuals “as part of a term of imprisonment or as a condition of pre-trial release or post-release supervision...” then the community confinement standards would apply. See 28 C.F.R. § 115.5 (definition of community confinement facility).

In addition, as in all custodial settings, agencies have state and federal legal obligations to protect those in custody, irrespective of obligations under PREA.

Finally, PREA Standard 115.312 provides that “a public agency that contracts for the confinement of its residents with private agencies or other entities, including other government agencies, shall include in any new contract or contract renewal the entity’s obligation to adopt and comply with the PREA standards and any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards.”

### **6. Is PREA Standard 115.14 Youthful Inmates applicable to juvenile settings? Often juvenile settings can house youth committed to the department of juvenile justice until age 21. Do youth in juvenile custody need to be sight and sound separated if they are over 18?**

No. Individuals confined in juvenile facilities are defined as “residents” and may reside in juvenile facilities until the age allowable by state law, which in most states is 21, and in some as high as 25. The PREA standards do not provide for any sight and sound separation of residents in juvenile facilities either because of age or court of conviction. Neither the standard on youthful inmates (115.14) nor the standard for youthful detainees (115.114) is applicable in juvenile facilities. The Youthful Inmate standard requiring separation of those under age 18 from those over 18 is “setting specific,” applicable only in prisons, jails, and lockups. Even where state law provides for automatic prosecution in adult court of individuals at age 16 (e.g., NC, NY) and age 17 (e.g., GA, NH, IL, LA, MD, MA, MI, SC, TX, WI) when those persons are detained or confined in an adult prison, jail, or lockup, such individuals must be sight and sound separated from those over the age of 18.

### Screening

Screening instruments, such as risk assessments, are tools that can assist in identifying vulnerabilities for particular individuals in custody. They are not a complete answer to sexual safety. To date, no single nationally validated instrument can identify inmates who are at risk for abuse or predation. Moreover, validation of risk-screening instruments may differ jurisdiction to jurisdiction and depend on the unique characteristics of the inmate population and facility type. Agencies should use screening instruments to keep inmates safer, but they do not take the place of

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good operational practices. They should be used to complement other necessary safety precautions such as supervision and monitoring, staff training, inmate orientation, and a zero tolerance policy for sexual abuse.

### **1. Is there a validated and objective screening instrument to assess risk of sexual victimization?**

PRC has not identified a national validated PREA-specific risk assessment tool currently in operation. DOJ chose not to include a validation requirement for risk assessment tools in the final standards, recognizing that the cost of the validation process is often prohibitive for small agencies. Instead, DOJ decided that objectivity is the most important component of risk assessment tools in the final standards. Standards 115.41, 115.241, and 115.341 address the elements that must be a part of *objective* risk assessment tools. DOJ takes the position that all staff, with appropriate training, can complete the risk assessment for incoming inmates.

The National PREA Resource Center is collecting risk assessment tools from juvenile and adult agencies. The PRC will make those tools available on its website.

### **2. What are appropriate ways to use PREA screening information? Should we base housing decisions on the PREA risk screening information?**

PREA screening information should be used to inform agency or facility decisions regarding a particular inmate/resident's housing unit, security level, and programming needs and interventions. For example, if, upon intake, an inmate is a risk of committing predation, an agency would not place him/her in a two-person room with an inmate/resident who classified as at risk for victimization. Agencies should note, however, that DOJ, in its final standards, directed agencies to implement appropriate controls on the dissemination of information gathered during assessment so that the information is not used to the inmate/resident's detriment. See, for example, Standard 115.41(i).

#### Supervision

The final rule recognizes the economic implications of staffing levels. The standards require agencies with adult facilities to adopt adequate staffing plans and make best efforts to comply with them. In the case of secure juvenile facilities, the standards require particular minimum staffing ratios but allow an extended period of time to comply with the ratio requirements. DOJ recognizes that while technology and cameras, screening assessments, and policies are all effective tools to combat sexual abuse, adequate staffing and supervision are essential to provide safety from sexual abuse in custody.

### **1. What is adequate staffing?**

The PREA standards do not mandate specific minimum staffing ratios for adult and non-secure juvenile settings. Instead, the PREA rule provides guidance on how agencies can determine adequate staffing levels to protect inmates and residents from sexual abuse. For prisons, jails, and juvenile facilities, the standards require that agencies consider 1) generally accepted practices; 2) judicial findings of inadequacy; 3) findings of inadequacy from federal investigative agencies; 4) findings of inadequacy from internal or external oversight bodies; 5) all components of the facility's physical plant (including "blind spots," or areas where staff or residents may be isolated); 6) composition of the inmate/resident population; 7) number and placement of supervisory staff; 8) number and types of programs occurring on a particular shift; 9) applicable state or local laws, regulations, or standards; 10) prevalence of substantiated and unsubstantiated incidents of sexual abuse; and 11) any other relevant factors. See Standards 115.13(a) and 115.313(a). The lockup and community confinement standards provide a similar, albeit abbreviated, list of factors.

In secure juvenile facilities, DOJ defined minimum staffing ratios under PREA Standard 115.313 (c) as 1:8 during resident waking hours and 1:16 during resident sleeping hours. Agencies may depart from these minimum ratios during limited and discrete exigent circumstances, which are fully documented for audit purposes. *Id.* DOJ noted that many states and localities, as a matter of law or policy, already have minimum staffing ratios in juvenile settings; some state and local facilities exceed the minimum staffing ratios proscribed in the PREA standards and are strongly encouraged to maintain those ratios. In order to provide agencies with sufficient time to readjust staffing levels and, if necessary, request additional funding, the standard provides that any facility that is not already

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obligated by law, regulation, or judicial consent decree to maintain the required minimum staffing ratios has until October 1, 2017, to achieve compliance. *Id.*

**2. What types of staff count toward an agency's staffing ratio?**

Only *security staff* are included in the minimum staffing ratio requirement. The PREA standards define security staff as "employees primarily responsible for the supervision and control of inmates, detainees, or residents in housing units, recreational areas, dining areas, and other program areas of the facility." See 28 C.F.R. 115.5 (definitions).

Youthful Inmates

**1. Do all inmates under the age of 18, regardless of court adjudication, need to be housed and managed in an area totally separate from adult inmates while residing in an adult jail or prison?**

PREA Standard 115.14 provides that *youthful inmates*, which the standards define as "any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail," must be housed separately from adult inmates in a jail or prison, but may be managed together outside of a housing unit if supervised directly by staff. Standard 115.114 provides analogous but abbreviated standard requirements for lockups.

The standard includes three requirements. First, no youthful inmate may be placed in a housing unit where he/she will have contact with any adult inmate through use of a shared day room or other common space, shower area, or sleeping quarters. Second, outside of housing units, agencies must either maintain "sight and sound separation" between youthful inmates and adult inmates—i.e., prevent adult inmates from seeing or communicating with youth—or provide direct staff supervision when youthful inmates and adult inmates are together. Third, agencies must make their best efforts to avoid placing youthful inmates in isolation to comply with this provision. Finally, absent exigent circumstances, agencies must comply with this standard in a manner that affords youthful inmates daily large-muscle exercise and any legally required special education services, and provides access to other programs and work opportunities to the extent possible.

Persons under 18 who are charged with status offenses and/or delinquent offenses are not covered by Standard 115.14, but they are covered by the Juvenile Justice and Delinquency Prevention Act (JJDP) and regulations promulgated pursuant to the JJDP. These requirements ensure that states do not securely detain status offenders in adult facilities and severely limit the time in which accused delinquent youth may spend in adult facilities; status offending and delinquent youth must always be sight and sound separated from adult inmates in prisons, jails, and lockups. More information about JJDP requirements is available at [www.ojjdp.gov/compliance](http://www.ojjdp.gov/compliance).

In crafting this standard, DOJ was cognizant of agency concerns regarding cost, feasibility, and preservation of state law prerogatives related to youthful inmates. Accordingly, this standard affords facilities and agencies flexibility in devising an approach to separate youthful inmates. In particular, agencies can achieve compliance by 1) confining all youthful inmates to a separate housing unit; 2) transferring youthful inmates to a facility within the agency that enables them to be confined to a separate unit; 3) entering into a cooperative agreement with an outside jurisdiction to enable compliance; or 4) ceasing to confine youthful inmates in adult facilities as a matter of policy or law. Agencies may, of course, combine these approaches as they see fit.

Cross Gender Supervision

**1. Please explain the adult cross-gender viewing and searches standard.**

At its most basic, the standard has three parts. First, it prohibits all cross-gender strip and body cavity searches except in exigent circumstances and disallows the use of cross-gender pat searches for female inmates in jails, prisons, and community confinement facilities (the juvenile facility standards prohibit cross-gender pat searches of both male and female residents). Second, it provides for a "knock and announce" practice when an opposite gender staff member enters a housing unit and, more generally, provides that facilities are to 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. Third, the standard also provides protection from intrusive searches for the purpose of determining gender for transgender or intersex inmates.

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As a practical matter, many agencies already do only same-gender pat-down searches. For example, some juvenile agencies have BFOQ positions based on the privacy rights of girls, and some adult jails that house immigration detainees who are Muslim have banned female staff from searching those detainees. Other agency practices consistent with this standard include knock and announce policies, the use of privacy shields in shower and bathroom areas, and staffing patterns that ensure the availability of male and female staff to perform searches when necessary.

Furthermore, in crafting the final rule, DOJ determined that at least 27 states ban the practice, and that it is common practice in several other states for male officers to perform pat-down searches of female prisoners only under exigent circumstances. DOJ believes that adopting such a practice furthers PREA's mandate without compromising security in corrections settings, infringing impermissibly on the employment rights of officers, or adversely affecting male inmates.

In order to mitigate agency burdens for implementing the staffing changes that PREA standards may require for jails, prisons, and community confinement facilities, DOJ has provided that agencies will have additional time to come into compliance with this particular standard (August 2015, or August 2017 for facilities whose rated capacity is less than 50 inmates).

DOJ is aware that a prohibition on certain cross-gender searches and viewing will not solve the problem of sexual abuse in totality. DOJ is hopeful that adequate training of staff on conducting searches in a professional and respectful manner will decrease the likelihood of reports of sexual abuse due to an intrusive or improperly conducted search.

### **2. Can you please clarify the parameters of conducting a search of a transgender or intersex inmate/resident?**

An agency cannot search or physically examine transgender or intersex inmates/residents for the sole purpose of determining their genital status. As noted in PREA Standard 115.15, if an inmate's genital status is unknown, an agency can determine it through 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. Additionally, agencies must provide training to security staff in how to conduct cross-gender pat-down searches and searches of transgender and intersex inmates. *Id.* Security staff must conduct these searches in a professional and respectful manner; in the least intrusive manner possible, consistent with security needs; and only if a search needs to occur under exigent circumstances. *Id.*

Operationally, three options are in current practice for searches of transgender or intersex inmates/residents: 1) searches conducted only by medical staff; 2) searches conducted by female staff only, especially given there is no prohibition on the pat-searches female staff can perform (except in juvenile facilities); and 3) asking inmates/residents to identify the gender of staff with whom they would feel most comfortable conducting the search.

## The Daily Dozen<sup>22</sup>

A former warden developed a list of questions for her correctional staff to ask themselves on a daily basis. Asking yourself these questions is an excellent way to maintain awareness of professional boundaries, and to check that you are not becoming complacent about dealing with inmates. If you answer yes to any of these questions, consider how you might manage feelings and responses. If your agency has an Employee Assistance Program through which you can seek professional help, that might be one avenue to find help. If you respect and trust an experienced co-worker, if you trust your supervisor, or if you know another person in the profession who is not part of your agency, consider discussing this with them. In most instances, the dialogue about these situations is very effective in helping you handle these issues. Remember.....it is being aware of your professional boundaries and knowing how to manage the challenges at work that will help keep you safe and professional at work.

- Do you look forward to seeing a particular offender when you come to work?
- Have you done anything with an offender that you would not want your family or your supervisor to know about?
- Would you be reluctant to have a co-worker observe your behavior for an entire day?
- Do you talk about your personal matters with offenders?
- Do you believe you can ask an offender to do personal favors for you?
- Have you ever received personal advice from an offender?
- Have you said anything to an offender that you would not want tape recorded?
- Do you have thoughts or fantasies of touching a particular offender? Does this extend to planning how you can be alone with that offender?
- Do you think you have the right to touch an offender whenever and wherever you want to?

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<sup>22</sup> Teena Farmon, a former warden and a national expert on staff sexual misconduct initially developed this questionnaire for correctional staff to use as a daily self-test.