



## **Classification and Sexual Safety Workshop**

**Washington, DC**

**July 26 – 27, 2010**

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The Bureau of Justice Assistance (BJA) funded a meeting that brought together content experts to discuss the issue of classification, particularly as it relates to the PREA draft standards. The workshop provided a valuable opportunity to assemble a small group of researchers and practitioners to identify the state of current research and practice, to discuss the challenges in the field, and to make recommendations to BJA and the U.S. Attorney General regarding strategies for improving classification as a means to contribute to sexual safety in jails and prisons.

The formal purpose of the meeting was:

- To explore, with a small group of content experts, the current state of practice regarding classification of offenders for sexual safety in adult corrections, particularly as it relates to the PREA draft standards. Discussions included both the effectiveness of current tools and processes and the major challenges and problems with their use; to identify and assess the connection between research and practice in order to best support information flow to the field; and to develop recommendations for short and long term strategies to improve classification as a means of increasing sexual safety in adult corrections.

Specific objectives included:

- Identifying critical classification issues as they apply to adult corrections in prison, jail and community settings.
- Identifying the current state of practice regarding classification for sexual safety.
- Outlining the major challenges and problems related to the implementation of improved classification tools and processes for sexual safety.
- Examining the current PREA standards that apply to classification for clarity, appropriateness, and feasibility of implementation.
- Developing recommendations for strategies to improve the effectiveness of classification tools and processes for all adult corrections' settings related to sexual safety.

The meeting focused specifically on prison and jail settings.

## PREA Status Report

Gary Dennis, the Senior Policy Advisor for Corrections (BJA), provided an update on the status of the PREA standards. Since the inception of PREA legislation five years ago, all PREA funds have flowed through BJA, with funding allocated to the National Institute of Corrections (NIC) for training and technical assistance. BJA worked with the Center for Innovative Public Policies (CIPP) and Florida Atlantic University (FAU) to review PREA implementation efforts and outcomes in all fifty states. As part of this project, BJA asked CIPP and The Moss Group (TMG) to conduct critical issue meetings related to PREA, focusing on juvenile justice, classification, and special populations, and to develop two toolkits – one to assist juvenile justice practitioners and one to assist jail practitioners.

Updates specific to the PREA standards and their implementation are provided below:

### ▪ **PREA Standards Update**

- The PREA draft standards are currently being reviewed by the U.S. Attorney General, Eric Holder.
  - The draft standards will be published again in January 2011 for another comment period. Previous comments can be reviewed at [www.regulations.gov](http://www.regulations.gov) (*type in Prison Rape Elimination Act, then click on the 'submissions' reference*).
  - The final standards will be released in mid-late 2011 after the comments are reviewed and any final changes made.
- The financial auditing and review firm - Booze, Allen, and Hamilton - recently completed a study of the cost implications of the standards.

### ▪ **Implementation of the Standards**

- BJA will soon announce an award for a National Prison Rape Elimination Resource Center, which will offer technical assistance and support to agencies in implementing the standards.
- Penalty for non-compliance: states may lose five percent of their federal funding if they do not comply with the standards.
  - In addition, should an incident of sexual assault occur in a facility that demonstrably has not complied with the standards, that jurisdiction risks increased legal action.
- Compliance timeline:
  - Upon signature by the Attorney General, the standards are immediately applicable to the Federal Bureau of Prisons.
  - There is a one-year period for state and local jurisdictions to become compliant.

## Issue Spotting

*Participants identified the critical issues that must be addressed in order to improve the potential effectiveness of classification for sexual safety. The issues are grouped below:*

### **Current Research on the Effectiveness of Classification Tools and Processes:**

- There is a serious lack of research to guide agencies in developing reliable and valid instruments. In particular, there is very little research on jails.
- The available research does not support all the 'risk factors' for predation and vulnerability currently identified in the PREA draft standards.
- Of central concern is the feasibility of developing accurate classification tools given the low base rates of outcome that the tools must predict.
- The field needs both individual / offender level and environmental / facility level data and measures of risk factors / outcomes in order to improve classification for sexual safety.
- The research must be translated in ways that are useful to practitioners and user-friendly (clear, relevant, and understandable).
- The research will need to determine what is consensual and what is coerced sexual behavior.
- There are significant gender differences in risk factors and the prevalence / nature of sexual assault.
- We need to make sure that lesbian, gay, bi-sexual, and transgender offenders are being assessed appropriately.
- The term "risk assessment" sounds static, but, in fact, it must be dynamic. Assessments need regular review.

### **Design and Use of Tools:**

- It might be possible to predict sexual aggression (sexually threatening actions) more readily than sexual assault alone. The variation in outcome measures would be better. The critical question is whether sexual aggression is really a subset of aggressive behavior. Can instruments do double duty; i.e., predict patterns of sexual aggression as well as sexual assault? Would such an approach meet PREA requirements?
- Combining the screening for sexual safety issues with concerns for violent or aggressive behavior would streamline the work of classification staff.
- We need a tool that works in the context of different facility environments.
- In reality, we are talking about the design of multiple tools that predict different outcomes – predation, vulnerability and possibly sexual aggression.
- The field needs to come to terms with the "simple versus valid" issue: the problem of designing an effective screen or tool for unsophisticated corrections systems.
- Can generalized instruments be developed for use in multiple agencies? Must tools be agency specific in order to be valid?

- There is a distinction between classification instruments and screening / classification processes. Many agencies may not need a new and separate statistical instrument; they might modify a current instrument to include questions that address PREA concerns.

### **Implications of Risk Designations--the Problem of Labeling:**

- We need to deal with the implications of the classification designation or label throughout the system. Facilities will not simply make a classification decision to label a person as at risk of becoming a predator or victim; they also must define the meaning of the label in each setting – housing, recreation, dining, movement, et cetera.
- Once assessments are made and inmates are assigned to a housing unit, staff need to monitor and follow-through. Staff supervision is critical because instruments still cannot predict for all possible situations and settings. This requires staff training.
- How does corrections deal with the information discovered during an investigation? Should inmate records be “tagged” to signify that a person is sexually aggressive or manipulative? What are the implications when the same person has two different tags: one for aggression and one for vulnerability?
- There is a real problem of overcorrection with risk labels. This is an issue of false positives (a risk label that is not warranted by subsequent behavior in the institution). So, we must ask: can the label change? How does one manage the review of risk designations? Note: participants agreed that some of the sexual aggression problems disappear with improvements in organizational culture. Therefore, would the prevalence of sexual assault / aggression be better addressed at the facility level as a matter of institutional culture?
- Systems need a structured review of designations after the initial screening. What should be done about false positives and false negatives? There needs to be a process for reviewing designations after the initial screening.

### **Jail Conditions and Questions**

- Jails (and some prison systems) do not have sophisticated classification systems and processes. Thus, a PREA classification tool for jails should be made up of nothing more than a few meaningful questions, otherwise the PREA screening process itself risks overwhelming the jail operations.
- There is huge variation among jails; some jails do not even know what classification is.
- The jail intake process is totally different from prisons. The term “intake” needs a specific definition for the jail environment. For instance, does it make sense to require jails to assess vulnerability when they are admitting a person who is intoxicated and therefore not in a condition to answer those kind of questions?
- Jails do not have the baseline training and information sharing concepts in place that would support the introduction of a PREA tool.
- Jails still have issues with the medical and mental health portions of screening; this basic screening practice is not available in some jails.

## Costs

- There is a severe lack of resources in corrections agencies with which to develop and test screening and assessment instruments. Instrument development would be a significant cost for agencies at a time when agencies are in budget crises and experiencing repeated budget cuts.
- The time required for developing and testing classification instruments should be considered in the implementation timetable for the standards.

## Research Presentations

### James Austin (JFA Institute): Presentation

Dr. James Austin presented the sexual predation and vulnerability screening instruments developed for the Louisiana Department of Public Safety & Corrections (LA DPS&C), explained the process for the design and testing of the LA DPS&C instruments, and provided the results from the pilot test of the LA DPS&C instruments. The PREA screening instrument developed by the LA DOC includes the following factors:

<b>Vulnerability:</b>	<b>Predation:</b>
1. Former victim of prison rape or sexual assault w/in 10 years	1. History of institutional predatory sexual behavior w/in 10 years
2. Youthful (under 25 years)	2. Current or prior conviction/charge for rape, child abuse or neglect w/in 10 years
3. Elderly (65 years or older)	3. Sexual abuse or sexual assault toward others within 10 years
4. Small physical stature (Male: 5'6" and/or less than 140 lbs)	4. Any history of physical abuse toward others w/in 10 years
5. Developmental disability/mental health	5. Any history of domestic violence toward others w/in 10 years
6. First incarceration (Juvenile, Parish, or State) of 30+ Days	6. Current gang affiliation
7. Homosexual, bi-sexual, overtly effeminate	7. Under age 30
8. History of sexual abuse w/in 10 years	8. Institutional disciplinary reports/investigation for strong arming or assaults within 10 years
9. History of correctional consensual sex within 10 years	9. Overtly masculine (females only)
10. Protective custody placement within 10 years	

The LA DPS&C PREA process requires each inmate to be screened upon intake and thereafter as a part of his/her regular annual review or upon special referral by the classification or mental health staff. The pilot test identified 7 percent of the inmates housed in a DPS&C facility as a potential predator or victim. Among the male inmates, 3% were identified as potential predators and 3% were identified as potential victims. In contrast, among the female inmates, none were identified as potential predators and 1% were identified as potential victims. LA DPS&C findings

from investigations of PREA-related incidents during 2008 were also presented, and indicated that only 15 of 224 (6.7%) incidents reported were substantiated. Dr. Austin pointed out that this rate was similar to that observed as part of his work with the Texas Department of Criminal Justice (5 to 10% of reported incidents were substantiated).

Dr. Austin illustrated the difficulties posed by the draft PREA standards for jails with the presentation of comments from a jail administrator stating that the draft PREA standards are counter to the FCAC and ACA standards of non-discrimination based on sexual orientation, and that the PREA requirement to interview ALL inmates about sexual victimization upon screening, classification, and reclassification would require doubling the number of jail classification and mental health staff. The administrator's comments continued with the question of whether those who drafted the standards are aware of the differences between jails and prisons or if they were just not concerned that the standards put jails in an impossible position by "lumping them" with prisons.

Dr. Austin indicated that his research included only state inmates, but the factors were applicable to county and parish inmates as well. With regard to reliance on inmate self-reported data/interviews, he noted that some of factors are institution-based while others rely only on inmate self-report. The pilot test suggested that the instrument had validity and would not lead to an inundation of the system with "high risk" inmates, as only seven percent (7%) of the cases were identified as potential predators / victims.

The statistic that only 5 to 10% of reported incidents are substantiated raised a larger question for participants: "What do you do with manipulative inmates or sociopaths?" Writing up inmates for lying to staff risks accusations that the agency is retaliating for reporting. However, these statistics indicate that the issue of false allegations is potentially extremely relevant. While false allegations within a prison setting might suggest other institutional cultural issues, in a jail, the higher turnover implies otherwise. Inmates may make false allegations with the expectation that the judge will order him released so as to protect him. Dr. Austin reported that LA DPS&C has trained six staff in the use of a polygraph machine to determine the validity of an accusation; this process allows false accusations to be written up as false claims.

### **Patricia Hardyman (Criminal Justice Institute): Presentation**

Dr. Patricia Hardyman discussed her research for the Nebraska Department of Corrections Services (NE DCS) to design and validate instruments to identify the inmates' potential for institutional violence (including sexual assault) and victimization. The NE DCS process includes gender-specific screening instruments for the initial intake process that rely on inmate self-report, staff observations, and institutional data. These assessments guide the housing and management of the inmate at the intake facility. The objective, scored vulnerability and aggression instruments are completed as part of the classification process; they guide inmate management throughout the inmate's incarceration.

The research and validation process revealed clear differences in the predation and vulnerability indicators appropriate for men and women. The research also found that the factors predictive of violent behaviors were also predictive of sexual misconduct, suggesting that sexual violence was a subset, or one of several types, of institutional violence. Of note was the finding that several of the frequently cited predation and vulnerability indicators were not statistically correlated to victimization or predation. The non-significant victimization factors included: small physical stature; intellectually challenged; first incarceration, history of sexual victimization, and

expressions for concern for institutional victimization. Non-significant predation factors included: history of incarceration and history of sex-related crimes. In addition, the methodology illustrated the need for different design and validation methodologies for male and female inmates.

<b>Nebraska DCS Sexual Violence and Vulnerability Factors</b>	
<b>Male Aggression</b>	<b>Male Vulnerability</b>
1. Number of Crime Victims with Force during the Current Crime(s)	1. Protective Custody Placements – Last 10 years
2. Who is the Victim of the Current Crime?	2. Current/Prior History of Sex-related Crimes – Last 10 years
3. Number of Predatory Misconduct Reports – Guilty – Last 10 years	3. Number of Child Victims – Current Offense
4. Number of Sex-Related Misconduct Reports – Guilty – Last 2 years	4. Age At First Conviction for a Sex-Related Offense
5. Number of Non-sex related Class II Infractions – Guilty – Last year	5. Gender of Sex Victims – Current Offense
6. Number of Non-Predatory Class I Infractions – Guilty – Last 2 years	6. Current Age
7. Placement in Segregation or Intensive Management – Last 10 years	
8. Current/Prior Conviction for Violent or Gun-Related Crime – Last 10 years	
9. Current Age	
10. Security Threat Group Participation	
<b>Female Aggression</b>	<b>Female Vulnerability</b>
1. Number of Crime Victims with Force during the Current Crime(s)	1. Protective Custody Placements – Last 10 years
2. Who is the Victim of the Current Crime?	2. Who is the Victim of the Current Crime?
3. Number of Predatory Misconduct Reports – Guilty – Last 10 years	3. Current Age
4. Number of Sex-Related Misconduct Reports – Guilty – Last 2 years	4. Marital Status
5. Number of Non-sex-related Class 1 & 2 Infractions – Guilty – Last year	5. Education Level – Grade Completed
6. Placement in Segregation or Intensive Management – Last 10 years	6. Number of Convictions in Last 10 Years
7. Current/Prior Conviction for Violent or Gun-Related Crime – Last 10 years	7. Victimized During Prior Incarcerations
8. Number of Prior Convictions in Last 10 Years	8. Number of Class 1 & 2 Infractions – Guilty – Last year

### **Pat VanVoorhis (University of Cincinnati, UC): Presentation**

Dr. Pat VanVoorhis presented findings from her work to develop gender-specific risk assessments among female inmates, parolees, and probationers. The gender-responsive risk factors identified include: family conflict, mental health history, anger, relationship dysfunction, child abuse, and symptoms of depression and psychosis. Dr. VanVoorhis emphasized that the low base rates make it extremely difficult to predict non-consensual sexual acts. She observed that, while a meta-analysis across all of the studies indicates rates as high as 5% for women and 2% for men, these are not sufficient numbers for multi-variant analyses. The base rates increase when you look at any type of sexual contact, i.e., 5 and 21% for women and 3 and 22% for men. However, these numbers are too low to be useful in creating an instrument.

When looking at gender responsive factors, Dr. VanVoorhis found that being abused as a child, a history of mental illness, and depression/psychosis, as well as others, contributed to predatory behaviors. Studies that focused on the issues of female offenders, rather than their criminal histories, indicated that these issues are highly relevant to their behaviors. However, the setting – community versus prison – impacts the significance of various factors. Self-efficacy, for example, was a predictive factor for community-based behavior, while cognitive thinking and social skills (ability to get along with others) were predictive of women's institutional behavior. In contrast to male offenders, criminal associates were not a major factor for women's behavior. Dr. VanVoorhis also emphasized the important role of institutional culture in inmate behavior.

The failure of the PREA standards to acknowledge the critical differences in the prison and jail cultures, classification processes, and operations was discussed. In many jails, for example, there is only one housing unit for the women offenders and there is not sufficient mental health staff to conduct the screening/interviews required for these instruments. While the need for an implementation guide to aid with the interpretation of the Standards has been well documented, even with an implementation guide, greater options are necessary to account for the substantial variations among jails, large and small. This is particularly true for small jails of less than 100 beds. Dr. Austin observed that the PREA standards do not just require a screening process; a protocol for housing and managing the potential predator and victims must be implemented. Even though the majority of jail populations are released within 48 hours, they still need to be appropriately housed. A full custody assessment is only completed if the inmate will be held for more than a few days. There is a need for a simple, straightforward screen – very easy to apply and objective (two to three minute thought process). The nexus of the problem is that, while most people understand the importance of these screenings, the question of what to require of the prison warden or jail administrator remains. What information is useful? Dr. Austin summed up the discussion, concluding that, *"You cannot predict rape. There are some variables associated with such an act, but it is not predictable in the true sense of the word."*

### **Allen Beck (Senior Statistical Advisor, Bureau of Justice Statistics, BJS): Data Update**

Allen Beck provided an update on BJS' current data collections, as well as outcomes of the data analysis with indicators of predatory sexual violence. Future data collection efforts were also discussed.

#### **Update on Current Data Collections:**

- A compendium report was released on August 23, 2010, including data from ICE, the military, and jails.

- The report fulfills the obligation to rank the facilities.
- Report included a substantial amount of work around risk and victimization.
- Report introduced some multivariate models to assess the contribution of risk factors in predicting outcomes.
- Those models were applied to the high ranking facilities to determine how much is related to the risk factors and what is still unexplained (and beyond the control of the facilities or staff).
- BJS is currently working on data regarding:
  - Staff sexual misconduct and inmate-on-inmate misconduct, as well as on cross gender supervision;
  - Annual survey of violence (administrative data review) to examine allegations and substantiated incidents;
  - Two-year aggregate of survey for adults; and
  - Two-year aggregate data piece on juveniles later in 2011.
- Also conducting surveys of youth in custody, which requires additional measures including:
  - Oversampling in adult facilities that house youth under the age of 18 to compensate for the low number of minors available to be sampled;
  - Some design work done to overcome the consent / in loco parentis issues; and
  - Oversampling done so as to maximize number of youth interviewed.
- For the national inmate survey, BJS has added in a component to screen for serious mental illness.
  - As BJS is required to estimate the prevalence of serious mental illness in all correctional settings to Congress, they are using the PREA work as a platform for meeting that congressional requirement.
- Partnering with the National Institute of Justice (NIJ) and the Center for Disease Control (CDC), BJS is involved with a PREA - medical indicators project. It includes:
  - Developing a passive surveillance system to track cases that are consistent with sexual violence using data gathered by facility medical staff.
  - CDC will track the data, which has been approved by Institutional Review Board's and is in compliance with the Health Information Privacy Protection Act (HIPPA) restrictions.
  - The project has been in the field since June 2010 (project is 12 months in duration).
  - As the subject sample size is small (e.g., those inmates who exhibit anal/rectal/vaginal tearing), the data sets from this study will be small.
  - Evidence suggests that there are too few incidents (and even fewer that result in injury) for this research to bring us substantially greater understanding.

### **Expectations for Future Studies:**

- BJS will follow the above with a two year aggregate data piece on juveniles later in 2011.

- BJS is obligated to do data collection for the next year, and is currently planning work around the surveys of youth in custody.
  - Challenges of past report: false positives (as expected with youth)
    - BJS threw out some interviews based on the lack of credibility of the responses due to the extreme responses, but still had some very high rates.
  - Expectations for next data collection/report:
    - Use additional measures and flags to sort out the false positives to give the numbers even greater credibility.
    - Ensure that investigators who investigate the abuse and neglect of children have experience interviewing and working with youth.
    - This second level of analysis of youth in custody will help to identify individual and facility risk covariates in predicting risk.
    - BJS anticipates that it will be published in the beginning of next year.
  - Design:
    - With the data collected, BJS anticipates providing state level estimates (instead of just facility estimates). State level estimates will enable BJS to include small facilities, but you these facilities will not be included in facility rankings because the small size of the facilities would reveal too much and risk violating confidentiality.
    - BJS will also include private facilities in the data collection.

### **Data Analysis:**

- **Predicting Factors**

The ability to predict expected levels of victimization at different facilities based on individual characteristics has improved; BJS is now trying to calculate the impact of the environmental characteristics of the facilities on the figures. Factors include:

- Age (Lacking Data)
  - The evidence that supports this factor is from a study in four sites in 1984.
  - There is a correlate with age and violence, but it is more connected with offenders aging out of violence.
  - When we look at the juvenile data (older boys) are getting involved with staff. When it comes to youth-on-youth, there is not much of a difference.
- Slight Build (Lacking Data)
  - Data does not reveal any substantive risk factors related to physical stature.
- First Incarceration:
  - Data suggests that those who have been in facilities longer and have more convictions have a higher likelihood of becoming victimizers.

- Race
  - In juveniles, youth-on-youth had a higher percentage of Caucasian victims, and African American male juveniles were involved in higher rates of staff sexual misconduct.
- History of Past Sexual Abuse
  - Prior experiences of sexual abuse are a good predictor of future risk of abuse.
- Gender
  - The juvenile work indicates that girls are more involved in the touching/grabbing/groping incidents, and boys are more involved in staff sexual misconduct.
- Sexual Preference
  - Sexual preference has a big impact, though self-identified LGBTQ are a small subsection of the population.

## **Data Collection**

- Interview questions:
  - Q: In the analysis of jail inmates, was there analysis of the time period in which the incidents occurred?
    - A: Yes. BJS asked when the incident happened after the incarceration. Specific questions are not asked to avoid re-traumatizing the victim; BJS asks participants about events occurring during the course of their incarceration. We are working on the former prisoner survey (18,000 former state inmates under active supervision questioned on the totality of their experience in the criminal justice system). We have tried to place the incidents in a timeline, but it is difficult to separate them into discrete events.
  - Q: Is BJS satisfied with the Audio-CASI (Computer-Assisted Self-Interview)?
    - A: BJS believes it is the best system to address the issues. While there will always be concerns about the veracity of the report - whether false positives or false negatives - A-CASI is designed to overcome the discomfort of the human element of the interview. It is beneficial in that it a) provides a very disciplined application of the survey (unlike paper where an inmate may skip around and not answer all questions) b) avoids conditioned answers as there is no knowledge of what is coming next (application affect that would be experienced in a paper application) and c) because it is a self-administered survey, it cannot be as long as a personal interview (30 minutes).
  - Q: Has BJS compared Audio-CASI and traditional self-report (paper/ pencil)?
    - There has been some serious work comparing the two, but not by BJS. The development of Audio-CASI has evolved, and BJS is the largest user.
  - Q: What percent of incidents were actually brought to the attention of the facility staff?
    - A: About 1/4 to 1/3 of the incidents. It is a prevalence rate of reporting; if you were victimized 10 times, the survey asks if any of them were reported.

- Q: Allegations by state and the national self-reporting survey are available; are state self-reporting data available?
  - BJS does not collect state self-reporting data. The survey of sexual violence gives allegations, and BJS collects summary totals for the state. (Note: There are four kinds of allegations an inmate can make against staff: unwilling activity that either a) excluded touching or b) involved touching only, and willing activity that either a) excluded touching or b) involved touching only.)
  - From this, BJS investigates the percentage that is substantiated. (Note: *substantiated*: there is evidence that verifies that the alleged incident occurred, *unsubstantiated*: there is no evidence presented that verifies that the alleged incident occurred, *unfounded*: officials determined that the alleged incident did not occur.)
  - Audio-CASI: BJS receives allegations through self-reports, but has no ability to compare the substantiated with the substantiated. Advantage: BJS can collect data on unreported abuse.
  - Administrative records nationwide:
    - 12-18% of the allegations that are reported through self-report are substantiated through investigation and administrative record review.
    - 24,000 allegations, 2,200 substantiated – 11:1 ratio.
- Q: Is there research on substantiated incidents versus unsubstantiated versus unfounded?
  - BJS only collects data on the outcomes of incidents that prove to be substantiated (18-20%).

## Jail & Prison Concerns: Small Group Work, Report Out

### **1. What are the Assumptions and Realities of Predicting Sexual Violence in Correctional Facilities?**

#### **❖ General Realities of Predicting Sexual Violence in Correctional Facilities:**

- Prediction of Sexual Assault:
  - Rape within a correctional facility cannot be accurately predicted due to the low base rate and under-reporting;
  - Prediction is limited to sexual misconduct (assaults + threats + inappropriate touching, et cetera); and
  - Outcome indicators for statistical analyses must include self-reported data in addition to disciplinary and incident data.

- Sexual misconduct within a correctional setting is multi-dimensional; rates are a function of staff behavior, agency culture, and architecture as well as inmate behaviors.
- Official misconduct data have a large measure of underreporting.
- Screening tools and processes must:
  - Be gender specific; and
  - Provide for reclassification.

❖ **Specific Realities of Screening for Sexual Violence and Vulnerability in Jails:**

- The high volume of jail admissions per year -- 12 million jail admissions versus 700,000 prison admissions per year -- creates specific barriers to screening within a jail setting.
- One-third of the 12 million jail admissions per year are done within 48 - 72 hours, high turnover rates limit staff ability to screen all admissions.
- There are substantial variations in the physical structure and design of jails that limit accommodations for privacy, interviewing, and separations in the jails' booking, housing, and programming areas.
- There are significant human and fiscal resource limitations to implementing PREA requirements, particularly for small facilities with less than 100 beds.
- Intake screening and classification occur 24/7 by non-degreed or less experienced professionals.
- Jail classification systems vary significantly with respect to consistency and sophistication.
- Self-reporting is considered accurate and acceptable for many jail classification systems.
- Initial jail intake assesses various conditions (medical, mental health, sexual history, et cetera) for individuals who are reluctant to provide information and/or are under the influence of alcohol and/or other drugs.

**2. Evidence-Based: What Do We Know about Sexual Violence in Jails and Prisons?**

❖ **Predicting Sexual Violence / Vulnerability in Correctional Facilities:**

- Development of valid, reliable tools for identifying inmates at risk for sexual predation or victimization:
  - Only one fully validated system for assessing sexual violence / vulnerability potential has been developed for a state system (Nebraska).
  - A variety of screening tools (specific items and processes based on reviews of the literature) have been developed and are being used by state correctional systems to address the PREA requirements. However, these have NOT been validated.
  - Screening tools have been validated for use within a jail setting.
  - Some systems cover PREA requirements through clinical/mental health screening.

- Sex offender risk assessments for men (e.g., static 99 and SONAR) have not been tested as tools for predicting sexual behavior in correctional facilities.<sup>1</sup>
- Screening For Risk Of Sexual Victimization And Abusiveness (SC-1):
  - SC-1 factors have not been assembled into an overall risk scale(s);
  - There is limited, mixed and conflicting evidence from quantitative research and empirical data to suggest that risk factors listed in standard SC-1 are related to sexual misconduct in a correctional facility; and
  - The absence of correlates or patterns among SC-1 factors and institutional sexual predation and victimization may be due to unreliable data, low base rates, and / or failure to control for institutional factors (culture, institution specific-factors).
- There are very few empirical or qualitative studies on women regarding sexual predation or vulnerability within a correctional setting.
- Some correlates of predation and vulnerability overlap (e.g., prior victimization and mental health).
- Data suggest that sexual aggression in correctional facilities appears to be a subset of aggressive behavior for males and females.
- BJS data demonstrate:
  - Incident rates in jails are lower than those in prisons (3.1% in jails versus 4.5% in prisons). This might be a function of length of stay. Biggest difference was staff-on-offender and gender of staff influences.
  - Higher rate of male staff on female inmate sexual assault / misconduct in jails than in prisons.
- Some evidence indicates PREA-related incidents drop with implementation of screening:
  - There is an initial spike of reporting that decreases as investigations improve, processes evolve, et cetera.
  - Because populations in jails turn over so quickly, the learning curve concerning PREA and reporting is very different than it is in prisons, and often there will be a continuation in occasional spikes in reporting.

### **3. Promising Approaches / Under Development**

#### **❖ Promising Approaches and Current Work for Jails:**

- As generic classification tools are valid for assessing institutional risk for safety and security, only a few items need to be added to the generic jail classification instruments to address PREA.
- Jail processes for forwarding and using screening data for housing and management of inmates need to be developed.

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<sup>1</sup> Static 99 and SONAR items were included in the set of risk factors tested for Nebraska Sexual Violence instrument, however the total score and/or risk levels derived from these instruments have not been tested as predictive of sexual behavior in a correctional setting.

- Various tools and instruments have been developed; the items need to be refined to identify a few key screening questions that will address the standards.
- Very little, if any, work to design and validate a generic tool for jails is currently being conducted.

❖ **Promising Approaches and Current Work for Prisons:**

- Conduct more research to validate the factors associated with sexual misconduct:
  - Build on work from Louisiana, Nebraska, Wyoming and Kansas to develop screening tools, established assessments, clinical assessments, new scales, and so forth. Testing should occur across multiple sites.
  - Pilot test any new instrument.
  - Consider institutional data (as well as self-reported information) to mitigate over-corrections or over-labeling (Louisiana).
- Be open to the possibility that organizational and facility cultural variations are so great as to overwhelm individual level (inmate level) correlates of predation or vulnerability, particularly for women. These cultural variations may be more important than the individual risk factors.
- Need guidance for correction systems regarding:
  - Establishment and maintenance of positive institutional cultures (a promising approach is institutional assessments like GIPA -- Gender Informed Practice Assessment);
  - Development of screens/tools and use of the information to generate effective programs.
- Use the screening process itself to generate important changes in housing, recreation, work assignments and climate. There are many implications for using the information from the screening tools for other institutional policies and processes.

**4. Major Needs and/or Constraints**

❖ **Major Constraints or Barriers encountered by Jails:**

- Some jails do not have objective classification systems:
  - Cannot just integrate the PREA requirements into the current process; classification systems for these jails must be developed and implemented.
  - Development and implementation of a valid and reliable classification system can take considerable time and resources to develop.
- PREA designations (potential predator or potential victim) cannot affect risk/custody classification, but would affect the housing, placement, programming, et cetera (i.e., a medium custody potential predator and medium custody potential victim should housed / programmed together). However, jail physical and programming structures are severely limited for implementing PREA requirements.
- Over-interpretation or overreaction may paralyze the system (inmates may not be incarcerated long enough for a thorough classification to be truly necessary).

Need for separate requirements for jails versus prisons due flow of inmates through these systems.

❖ **Major Constraints or Barriers encountered by Prisons:**

- Base rates of sexual predation and victimization are too low to allow for accurate prediction.
- Offenders, particularly those who have spent extended periods of time in prison, change their attitudes and behaviors regarding sexual behaviors over time. PREA processes must reflect these changes.
- Size of the facility and departments impact whether a DOC can do a prediction study (larger departments are better suited for construction validity studies).
- Official records seem less trustworthy as a measure of sexual misconduct as opposed to misconduct overall. Outcome data need to be supplemented with self-report information.
- Money – financial resources are needed to develop trustworthy tools and processes and the time it takes to get useful results and findings. (The validation process to develop and pilot test the instrument(s) may take up to two years to complete if a prospective methodology to compile and analyze data/interviews not currently available is required.)

## PREA Standards Discussion

- **APPLICABLE TO BOTH PRISONS AND JAILS**
  - Recommendation: While a standard screening tool would be desirable, none currently exists. Participants recommend that each jail and prison define and document its screening/classification questions and process/approach to achieve compliance with the standards.
  - Recommendation: All key terms in the classification standards need to be carefully defined in a glossary (e.g., initial screening, booking, intake, assessment). The definitions would make clear the differences in usage of terms in different settings. (e.g., prisons, jails, community corrections, juvenile facilities).
  
- **APPLICABLE TO JAILS**
  - Recommendation: Suggest a time frame for using an initial booking tool to limit the PREA requirements. Then develop a rationale and time frame for the use of a more substantial screening instrument. A full screen should not be required of everyone that is booked into jails unless they are booked for more than 72 hours. Such a change would acknowledge the reality of the jail environment in terms of numbers, alcohol use and the mental health condition of defendants at booking.

- Jails should measure and screen for immediate threats or needs. Jails have expectations placed upon them when an inmate is suicidal, and there could be similar expectations for sexual assault. However, these factors or triggers are not well understood. A limited set of trigger questions should be incorporated into standard booking proceedings in order to make the process feasible.
- In jails, intake is one process and initial classification is another. They are separate processes for a reason and this should be understood and acknowledged in the standards in terms of compliance requirements.
- Medical and mental health screens are supposed to be done by medical/mental health professionals (MM-1), but a lot of jurisdictions do not have such personnel on staff or even on-call to a sufficient degree to be considered in compliance. Recommendations: the MM-1 standard would apply only when the inmate is referred for more thorough medical/mental health review (7 – 14 days after intake).
  - Regarding Standard MM-I: Has there been any discussion about informed consent regarding youth who are certified as adults, if they are under the age of 18?
- APPLICABLE TO PRISONS
  - Recommendation: The Standards should clarify the reasons for the differences between identified risk factors for males and females. *Participants assumed the reason is that there are more data available on risk factors for male inmates because the population is much larger, however the field would like to understand the basis for the PREA Commission's findings.*

### **Specific Recommendations on the PREA Draft Standards:**

#### **SC-1: Screening for risk of victimization and abusiveness.**

General wording:

- Add a fifth bullet that states: “These factors may be modified to respond to emerging research, especially the emergence of validated PREA assessments of risk of victimization and risk of predation.” Or “the emergence of empirical research related to PREA topics.”
- Add a footnote to the standard specifying that the list of factors is predicated on the research available at the time. As new research emerges, the list of factors may be changed or augmented.
- Amend the third sentence of the standard to read: “Corrections officials are encouraged to consider the following factors ...” rather than “...screening instruments must contain the criteria described below.”
- Add this statement: “Inmates with multiple risk factors should be considered to be of higher risk than those with single risk factors.”

- Add: “A form must be created that includes the specific items described in SC-1; however the “written screening instrument” requirement must explicitly state that “written” includes electronic and computerized forms.
- Add an assurance that re-classification is explicitly required by the standard.
- Add clarifying language to the effect that the PREA classification tool does not have to be a separate form from other classification instruments, but rather that the PREA classification response must demonstrate that there is a means of collecting information and making decisions on each of the required PREA risk factors.

Participants emphasized their appreciation for the hard work that went into drafting the standards and were reluctant to suggest wide reaching changes. Nonetheless, participants were concerned about the general paucity of research to support the risk factors identified in SC-1 and the apparent broad assumption of the Standards’ drafters that risk instruments are widely used in correctional facilities, when, in fact, many facilities, particularly jails, do not currently use a validated risk assessment tool or process.

Most participants felt strongly that the PREA classification tool should be integrated with existing classification instruments where they exist, and that a separate tool should not be required.

There was general agreement that the same risk factors or criteria should not be applied to women and men, because the existing evidence suggests that there are significant gender differences in the prevalence and nature of sexual assault and misconduct.

## **Strategies to Improve Classification for Sexual Safety**

### **Short Term Strategies:**

- If an agency employs an objective risk classification system, the PREA screen should build upon that foundation.
- Provide technical assistance to jurisdictions regarding acceptable provisional screening procedures and criteria. There could be one statewide meeting per state to offer approaches to meeting the PREA requirement with simple screening tools and processes. Jails and prisons require separate technical assistance events.
- Develop a simple literature review (in layman’s terms) of the risk factors. Suggest multiple indicators / checklists.
- Expand the PREA Standards’ glossary of terms to include terms such as jail booking, intake, initial screening, risk assessment, gender responsive, and so forth.
- Develop a model memorandum of understanding that defines the relationships and responsibilities between the custodial agency (jail, prison, community residential facility) and the housing agency (mental health hospitals, forensic centers, private facilities).

- The PREA Resource Center should have a call center / clearinghouse for quick questions from the field.
- Develop a primer on how to conduct a study of the validity of a current instrument – a ‘how to’ guide on how to sample the inmate population and determine if your measurements are accurate and valid. This should be done in very straightforward and simple terms.

### **Long Term Strategies:**

- Develop and validate trigger questions for PREA screening at jail booking.
- Support construction validation research of PREA risk assessment tools for jails and prisons using large systems so the sample sizes are large enough for the analysis of the multiple factors that need to be explored. Re-validation of these instruments may involve smaller systems. Study sites must include both jails and prisons.
- Support construction and validation of an instrument for assessing institutional environment, climate, and culture.
- Create generic, public domain PREA assessment tools for both jails and prisons (two for jails – male / female; and two for prisons – male / female) that address both predation and vulnerability.
- If there is a model checklist for evaluation of compliance, develop a training module for trainers so they are applying the checklist consistently.
- Develop first responders training for PREA and general training to help staff respond to red flags that they observe while supervising inmates. Recommend that everyone review the National Institute of Corrections (NIC) training [Your Role: Responding to Sexual Abuse, <http://nicic.gov/Training/PREA>].

## **Appendix 1: Classification-Related National Draft Standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse in Adult Prisons and Jails**

### MM-1: Medical and mental health screenings—history of sexual abuse

Qualified medical or mental health practitioners ask inmates about prior sexual victimization and abusiveness during medical and mental health reception and intake screenings. If an inmate discloses prior sexual victimization or abusiveness, whether it occurred in an institutional setting or in the community, during a medical or mental health reception or intake screening, the practitioner provides the appropriate referral for treatment, based on his or her professional judgment. Any information related to sexual victimization or abusiveness that occurred in an institutional setting must be strictly limited to medical and mental health practitioners and other staff, as required by agency policy and Federal, State, or local law, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments. Medical and mental health practitioners must 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.

### Screening for Risk of Sexual Victimization and Abusiveness (SC)

#### SC-1: Screening for risk of victimization and abusiveness

All inmates are screened during intake, during the initial classification process, and at all subsequent classification reviews to assess their risk of being sexually abused by other inmates or sexually abusive toward other inmates. Employees must conduct this screening using a written screening instrument tailored to the gender of the population being screened. Although additional factors may be considered, particularly to account for emerging research and the agency's own data analysis, screening instruments must contain the criteria described below. All screening instruments must be made available to the public upon request.

- At a minimum, employees use the following criteria to screen male inmates for risk of victimization: mental or physical disability, young age, slight build, first incarceration in prison or jail, nonviolent history, prior convictions for sex offenses against an adult or child, sexual orientation of gay or bisexual, gender nonconformance (e.g., transgender or intersex identity), prior sexual victimization, and the inmate's own perception of vulnerability.
- At a minimum, employees use the following criteria to screen male inmates for risk of being sexually abusive: prior acts of sexual abuse and prior convictions for violent offenses.
- At a minimum, employees use the following criteria to screen female inmates for risk of sexual victimization: prior sexual victimization and the inmate's own perception of vulnerability.
- At a minimum, employees use the following criteria to screen female inmates for risk of being sexually abusive: prior acts of sexual abuse.

## SC-2: Use of screening information

Employees use information from the risk screening (SC-1) 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. The facility makes individualized determinations about how to ensure the safety of each inmate. Lesbian, gay, bisexual, transgender, or other gender-nonconforming inmates are not placed in particular facilities, units, or wings solely on the basis of their sexual orientation, genital status, or gender identity. Inmates at high risk for sexual victimization may be placed in segregated housing only as a last resort and then only until an alternative means of separation from likely abusers can be arranged. To the extent possible, risk of sexual victimization should not limit access to programs, education, and work opportunities.

## Supplemental Standards for Facilities with Immigration Detainees

ID-5: Supplement to SC-1: Screening for risk of victimization and abusiveness. The facility makes every reasonable effort to obtain institutional and criminal records of immigration detainees in its custody prior to screening for risk of victimization and abusiveness. Screening of immigration detainees is conducted by employees who are culturally competent.

ID-6: Supplement to SC-2: Use of screening information Any facility that houses both inmates and immigration detainees houses all immigration detainees separately from other inmates in the facility and provides heightened protection for immigration detainees who are identified as particularly vulnerable to sexual abuse by other detainees through the screening process (SC-1). To the extent possible, immigration detainees have full access to programs, education, and work opportunities.

## Supplemental Standards for Family Facilities

The following standards must be followed in ICE family facilities.

IDFF-1: Screening of immigration detainees in family facilities (This standard replaces rather than supplements SC-1 and SC-2)

Family facilities develop screening criteria to identify those families and family members who may be at risk of being sexually victimized that will not lead to the separation of families. Housing, program, educational, and work assignments are made in a manner that protects families and in all cases prioritizes keeping families together.

## National Standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse in Lockups

PP-4: Heightened protection for vulnerable detainees: Any intake screening or assessment includes consideration of a detainee's potential vulnerability to sexual abuse. When vulnerabilities are identified, law enforcement staff provides heightened protection to vulnerable detainees, which may require continuous direct sight and sound supervision or single-cell housing. Absent intake screenings or assessments, any time a law enforcement staff member observes any physical or behavioral characteristics of a detainee that suggest he or she may be

vulnerable to sexual abuse, the staff member provides sufficient protection to that detainee to prevent sexual abuse.

## National Standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse in Juvenile Facilities

### AP-1: Obtaining information about residents

During intake and periodically throughout a resident's confinement, employees obtain and use information about each resident's personal history and behavior to keep all residents safe and free from sexual abuse. At a minimum, employees attempt to ascertain information about prior sexual victimization or abusiveness; sexual orientation and gender identity; current charges and offense history; age; level of emotional and cognitive development; physical size/stature; mental illness or mental disabilities; intellectual/developmental disabilities; physical disabilities; and any other specific information about individual residents that may indicate heightened needs for supervision, additional safety precautions, or separation from certain other residents. This information may be ascertained through conversations with residents at intake and medical and mental health screenings; during classification assessments; and by reviewing court records, case files, facility behavioral records, and other relevant documentation from the residents' files. Medical and mental health practitioners are the only staff permitted to talk with residents to gather information about their sexual orientation or gender identity, prior sexual victimization, history of engaging in sexual abuse, mental health status, and mental or physical disabilities. If the facility does not have medical or mental health practitioners available, residents are given an opportunity to discuss any safety concerns or sensitive issues privately with another employee.

### AP-2: Placement of residents in housing, bed, program, education, and work assignments

Employees use all information obtained about the resident at intake and subsequently to make placement decisions for each resident on an individual basis with the goal of keeping all residents safe and free from sexual abuse. When determining housing, bed, program, education and work assignments for residents, employees must take into account a resident's age; the nature of his or her offense; any mental or physical disability or mental illness; any history of sexual victimization or engaging in sexual abuse; his or her level of emotional and cognitive development; his or her identification as lesbian, gay, bisexual, or transgender; and any other information obtained about the resident (AP-1). Residents may be isolated from others only as a last resort when less restrictive measures are inadequate to keep them and other residents safe, and then only until an alternative means of keeping all residents safe can be arranged.

## **APPENDIX I: PARTICIPANT LIST**



## Classification and Sexual Safety Workshop

July 26 – 27, 2010

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