

**PRISON
RAPE ELIMINATION
ACT:**

**Compliance and Management
Of the Sexually Abused Inmate**

OBJECTIVES

- 1. Define PREA
- 2. List 3 reasons for PREA
- 3. Report 3 consequences of not implementing PREA
- 4. Identify 3 signs of prisoners at risk for sexual abuse or assault
- 5. Name the biggest challenge to implementing PREA
- 6. Identify and list the responsibilities of health care workers

PREA

- The Prison Rape Elimination Act, or PREA, was signed by President Bush on September 4, 2003, to support the elimination, reduction and prevention of sexual assault within the corrections system.
- This law applies to all Federal or State prisons, jails, police lock up areas, private facilities and community correctional settings, both adult and juvenile.
- The act mandates several national data collection activities, provides funding for program development and additional research, creates a national commission to develop standards and accountability measures, and divides abuse into two categories:
 - prisoner-on-prisoner sexual abuse and victimization
 - staff on prisoner sexual misconduct and harassment.

- The standards set forth in the rule require that each facility be audited every three years to assess compliance.
- States that do not comply with the standards are subject to a reduction in funding and ineligibility for federal grants.
- PREA applies to all federal prisons, state prisons, and local facilities.
- To assist agencies in their compliance efforts, the Department of Justice has funded the National Resource Center for the Elimination of Prison Rape.
- This organization serves as a resource center for online and direct support, training, technical assistance, and research in combating sexual abuse in confinement.

- Sexual abuse is a crime.
- Congressional findings estimate that 1 in 10 US prisoners have been sexually assaulted.
- Most staff are not adequately trained or prepared to prevent, report, or treat these assaults. Prison rape often goes unreported, and inmate victims may receive inadequate treatment for both the physical and the psychological affects, if they receive any treatment at all.
- Re-integration back into society upon release is affected by the psychological damage inflicted upon victims.
- Prison rape spreads sexually transmitted diseases, which is a risk to the public health.
- Racial tension, homicide and other violent crimes, including the risk of riots, is increased.

PREA mandated the Attorney General to publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison rape. This final rule was published in 2012. This training is designed to assist the correctional health care worker with understanding PREA and the standards of the final rule.

- Prior to PREA, prisons, jails, and other correctional facilities were not required to keep track of sexual assaults separately from other types of assaults, making evidential data spotty (where it existed at all).
- Prisons and jails are reluctant to allow outsiders into their system for assessment purposes, and the topic is not a popular one for academics to study.
- Any completed studies have been on a small scale. Inmate sexual assault in prison and jail is under-reported, and possibly even more so, than in the general public.
- Barriers to reporting include the fear of retaliation, lack of confidentiality, homophobia, lack of sensitive training for staff, and the “code of silence” for both inmates and officers.
- The “code of silence” is the biggest challenge in implementing the Prison Rape Elimination Act, and is defined as the unwillingness of staff and/or inmates to talk openly about incidents which are illegal, unethical, or questionable.

- Penalties for not participating in implementing these standards include a loss of Department of Justice funds at the state level.
- The success of the PREA standards in combating sexual abuse in confinement facilities depends on effective agency and facility leadership, and the development of a culture that prioritizes efforts to combat sexual abuse.
- Effective leadership and culture change are goals which cannot be legislated, but rather need constant attention from participants at all levels within each facility.
- Knowing these standards is the first step toward these goals.
- **The standards have three main goals: to prevent, detect, and respond to sexual abuse.**

New Standards

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- **Establish a zero tolerance standard for the incidence of rape in U.S. prisons.**
 - **Designate a PREA point person** to coordinate compliance efforts. All incidents or suspected sexual abuse or assault should be reported to the PREA point person for the facility, who should have sufficient time and authority to drive compliance.
 - Adherence to the standards is measured with **audits every three years**. Audits may not be conducted by a person who reports directly to the agency's governing board. Auditors will be trained and certified by the Department.
 - **Screen inmates for risk of being sexually abused or sexually abusive**, and use that information to contribute to housing, bed, work, education and program assignments.
 - On intake, if the inmate reports a history of either sexual abuse or perpetration of a sexual abuse crime, offer a **follow up meeting with a medical or mental health practitioner within 14 days**.
 - All prisons shall attempt to **conduct a mental health evaluation of all known inmate-on-inmate abusers within 60 days** or learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.
 - Develop and document staffing plans that provide for **adequate levels of staffing** and place video monitoring where applicable.

- **Train all employees annually on their responsibilities** in preventing, recognizing and responding to sexual abuse. Training should include the **duty to report** any allegation of sexual abuse or rape, and the responsibility to inform reporting inmates of this duty.
- Perform **background checks on prospective employees** and not hire people with a history of abusing.
- **Prevent juveniles from being housed with adults or having unsupervised contact with adults.**
- **Ban cross-gender pat-down searches of female inmates and of both male and female residents in juvenile facilities.**
- **Require staff of the opposite gender to announce their presence** when entering an inmate housing unit.
- **Include vulnerabilities of gay, lesbian, bisexual, transgender, intersex and gender nonconforming inmates into training and screening protocols.**
- **Training for security staff** in conducting respectful and professional cross-gender pat-down searches and searches of transgender and intersex inmates.
- Enable inmates to shower, perform bodily functions and change clothing **without improper viewing by staff of the opposite gender.**

- **Restrict the use of solitary confinement as a means of protecting** vulnerable inmates.
- Enter into or renew **contracts only with entities who agree to comply with the standards.**
- **Make inmates aware of facility policies and how to report sexual abuse.**
- **Provide multiple channels for reporting,** including and outside entity and anonymous reporting.
- **Provide a method for staff and others to report** abuse on behalf of an inmate.
- Develop **policies to prevent retaliation** against those reporting.
- **Ensure communication methods** when inmates have disabilities or speak limited English.
- **Provide timely medical and mental health care to victims.** This care includes determining the nature and scope of emergency treatment and crisis intervention services, treatment plans, and referrals for continued care following transfer to or placement in other facilities, or release from custody.
- **Inmate victims of sexually abusive vaginal penetration while incarcerated are offered pregnancy tests, and if those tests are positive, receive information about pregnancy-related services,** including prenatal and deliver services or elective abortion services.
- **Provide access to victim advocates** from rape crisis centers for emotional support where available.

- Establish an **evidence protocol** and offer **no-cost access to forensic medical exams**.
- **Investigate allegations** of sexual abuse promptly and thoroughly and deem as substantiated when supported by a preponderance of the evidence.
- **Discipline staff and inmate assailants appropriately**, with termination as the presumptive disciplinary sanction for staff.
- **Allow inmates a full and fair opportunity to file grievances** regarding sexual abuse.
- **Maintain records of incidents of abuse and use those records for future prevention planning**.
- **Increase the efficiency and effectiveness of federal expenditures** through grant programs such as health care, mental health care, disease prevention, crime prevention, investigation and prosecution, prison construction, maintenance and operation, race relations, poverty, unemployment and homelessness.
- **Reduce the costs that prison rape imposes**.

Financial Cost

- The costs of not implementing PREA include higher levels of violence directed both at inmates and staff within facilities, an increase in medical and mental health care expenditures, both within and outside of the system, increasing the spread of diseases such as HIV, AIDs, TB and hepatitis B and C.
- Costs also include an increase in the rate of post-traumatic stress disorder, depression, suicide, and other mental illnesses.
- Increasing liability from victims, ill will in the community as a result of bad press, and an increase in the risk of recidivism, civil strife and violent crime by victims are added costs.
- Implementing PREA reduces liability from prison rape lawsuits, reduces costs for administration, medical and mental health, creates a safer environment for inmates and staff, protects the public from sexually transmitted diseases contracted in prison, and protects the public safety by releasing inmates into the community who have not been sexually assaulted in prison.

- The preventative stance also affects the security and safety of correctional facilities.
- Agencies involved in PREA implementation include National Institute of Corrections, The Bureau of Justice Statistics, the National Prison Rape Reduction Commission, and the Attorney General's Office.
- Although sexual assaults in prison and jails may be extremely violent, the most common scenario is that of "protective pairings" which result from coercion. In these pairings, the weaker inmate provides sex to another in exchange for protection.
- Consent cannot be given because there is no choice:
 - the weaker individual either agrees to the pairing or suffers brutal rapes or beatings.
- These pairings may appear to be consensual to the uninformed, but in reality can be a form of sexual slavery.

What constitutes sexual abuse?

- Sexual fondling: touching of the private body parts of another person for the purpose of sexual gratification.
- Sexual misconduct: the use of indecent sexual language, gestures, or sexually oriented visual surveillance for the purpose of sexual gratification.
- Sexual assault with an object: 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.
- Rape: the carnal knowledge, oral sodomy, or sexual assault with an object or sexual fondling of a person forcibly or against the person's will, where the victim is incapable of giving consent, or achieved through the exploitation of fear or threat of physical violence or bodily injury.

What constitutes sexual harassment?

- 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.
- 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.

Voyeurism

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.

Inmates in the custody of a Minnehaha County Facility shall be able 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. Prior to entering any shower or bathroom area, Officers will announce their presence if the officer is of the opposite gender from the inmates present.

Who has the potential for being assaulted?

- All prisoners have the potential to be sexually abused or assaulted, but some key identifiers exist for potential victims. These inmates may be:
- Young inmates, particularly juveniles
- First time, non-violent offenders
- Smaller, weaker or possessing “feminine traits”
- Gay or transgender
- Race (white are more likely to be assaulted by other races, but not vice versa)
- Poor or economically disadvantaged

Youthful Inmates or detainees

- Persons under the age of 18 who are under adult court supervision and incarcerated or detained are deemed “youthful inmates” or “youthful detainees.” The standards govern placement of these individuals by imposing three requirements:
 1. No inmate under the age of 18 may be placed in a housing unit where contact will occur with adult inmates in a common space, shower area, or sleeping quarters.
 2. Agencies must either maintain “sight and sound” separation (preventing adult inmates from seeing or communicating with youth) or direct staff supervision when the two are together.
 3. Agencies must make their best effort to avoid placing youth with isolation to comply with this provision.

Perpetrators

- Perpetrators are usually older and/or stronger than their victims. They may be gang members who use their gang affiliation as a coercion tool. They have usually been incarcerated long enough to know the systemic workings of the facility and the location of physically vulnerable areas. They are better connected than other inmates and have “friends” who can operate as “look outs.” Their perceived toughness and strength is well respected by other inmates.
- Systemic conditions can make sexual assault more likely. These conditions include overcrowding, misunderstanding by officers of the “protective pairing “as consensual, small numbers of staff, and indifference of staff and other inmates.

Characteristics of Perpetrators

- Older than potential victims
- Prior incarceration
- Gang affiliation
- Prior history of sexual violence
- Poor coping skills/strategies
- Difficulty controlling anger
- Exhibit voyeuristic behavior
- Control others through threats, intimidation, and fear
- Taunt new inmates
- Trap potential victims by sharing food, making loans, etc.

Sexual Abuse By Staff

- Sometimes sexual assault is at the hands of the very people employed by the facility. Sexual acts or contacts between an inmate/ offender and staff member, even when no objections are raised by either party, are always forbidden and illegal (Class 6 Felony).
- Staff sexual misconduct is defined as any behavior or act of a sexual nature by staff. These perpetrators may include correctional employees, contractors, food service workers, maintenance workers, volunteers, medical or mental health staff, clergy, vendors, or teachers.
- The new standards subject staff to discipline for violating agency policies regarding sexual abuse with termination for engaging in sexual abuse.

Avoiding Inappropriate Relationships With Inmates

- Professional boundaries mark the line between the power of Staff, Contractors and Volunteers and the Inmate's vulnerability.
- Violations result when needs of worker/volunteer vs. inmate are confused, and the line is crossed.
- While boundary crossings may be inadvertent, repeated crossings must be avoided. Times of vulnerability for Staff/Contractors/Volunteers are times of vulnerability for the integrity of their boundaries. Examples are working when in distress (family member ill, etc.), during the holidays, or during times of low morale in the workplace (e.g., during layoffs).
- Professional sexual misconduct is an extreme form of boundary violation, and is a breach of trust. Such misconduct includes behavior that is seductive, sexually demanding, harassing or reasonably interpreted as sexual by the inmate.

RED FLAGS

- 1. Excessive self-disclosure with the client. The worker tells the client about his/her home life and family.
- 2. Secretive behavior with client and subsequent defensiveness with others about actions. The worker sides with the client against other members of the team.
- 3. Singled-out inmate attention to the worker: inappropriate amounts of time spent, or the inmate paying special attention (gift giving).
- 4. Selective communication: Inmate asks for a particular worker because the others are “too busy.”
- 5. Flirtations: implied sexual innuendo, off-color jokes, and /or offensive language.
- 6. “You and me against the world”: the worker protects the inmate, and sides with the inmate regardless of the situation.

7. Failure to protect inmate: worker fails to recognize boundary crossings, fails to consult with supervisor, and fails to transfer care of inmate to another worker when needed.

What should the worker do when becoming aware of potential boundary violations?

- First, make inmate safety a priority. If action needs are imperative, do not waste time. Inmate safety must be the first line of action.
- Don't be afraid to call attention to a situation that seems wrong or unsafe.
- Consult with your supervisor if you doubt your interpretation of events.
- Be familiar with reporting requirements and document incidents in a timely manner.

Inmate Education

- The standards address inmate education about sexual abuse/ harassment while incarcerated with the following mandates:
- During intake, inmates shall receive information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions. Facilities are responsible to conduct a screening assessment for risk of either sexual abuse or being sexually abusive within 72 hours of arrival at a facility. Within 30 days of intake, the facility shall reassess the inmate's risk and provide comprehensive education whether in person or through video about their rights to be free from sexual abuse and sexual harassment, and from retaliation for reporting incidents or suspicions.
- Current inmates who have not been educated shall be educated by the facility within one year of the effective date of the PREA standards and upon transfer to another facility where the policies and procedures are different.
- The education provided to inmates about these topics will be in formats accessible to all inmates including limited English proficient, deaf, visually impaired, with limited reading skills, or otherwise disabled. The facility shall maintain documentation of inmate participation in these education sessions, but may not use the information to discipline inmates or youth.

Minnehaha County Jail Policy

- The Minnehaha County Jail has established a PREA policy in accordance with the new PREA standards. This policy (PREA) is located on Policytech. It is designed to ensure prompt and appropriate intervention in the event of sexual abuse or assault. All Jail staff are required to review and acknowledge the policy.
- The policy includes:
 - The Minnehaha County Jail maintains a zero tolerance policy for any type of sexual misconduct or activity between inmates housed in the Minnehaha County Jail and between inmates and all staff, volunteers, contractors, professional visitors, and any other person having contact with inmates housed in the Jail.
 - SDCL 22-22-7.6 specifies that sexual acts between any person employed at a jail and any inmate is a class 6 felony.
 - Any allegation of sexual misconduct, abuse, or assault between inmates will be immediately and thoroughly investigated.
 - Criminal action will be initiated if warranted.
 - Consent of the inmate is not a defense.

- It is mandatory that any prohibited acts in the PREA policy be immediately reported by inmates, staff, volunteers, contractors, or visitors.
- Reporting: Verbal, Inmate Grievance, Letter
- Intervention: notify a Supervisor, separation of inmate from abuser, obtaining medical care for the victim, completing necessary reports
- Training/orientation: prevention, detection, response and investigation, being alert to potential situations, staying alert, recognizing the signs of sexual victimization, and the consequences of inappropriate relationships with inmates, including sexual misconduct.

Observable Signs of Sexual Assault

- An offender who has difficulty, or pain while walking or sitting
- An offender who has unusual bruises or marks that may indicate assault
- Bloody clothing, especially in the seat of the pants or underwear
- Bloody linen
- Frequent requests by the offender to see health care staff
- Frequent requests for laundry exchange

Environmental Signs of Sexual Assault

- Offender group approaching single offender
- Rumors
- Unaffiliated offenders with organized offenders
- Single offenders who defy the norm “snitching”
- A decrease in interest in normal activities
- Withdrawal from social activities
- Attitude change by an offender
- Offenders who loiter or congregate in blind spots (areas not readily observable by staff)

Reporting Inappropriate Sexual Conduct

- If signs are observed a report shall be made
- An incident report shall be made
- Offenders shall be encouraged to report
- Offenders shall be made aware of how to report
- Offenders shall be able to report to any staff member

Reporting Inappropriate Sexual Behavior

- Any staff person, volunteer, or contractor has a duty to report
- Staff shall ensure that both their Facility Head and Internal Affairs are notified
- Facility Head will submit a Report of Critical Incident
- If a juvenile is involved, a report shall be made to Child Protective Services