

American University Washington College of Law

Digital Commons @ American University Washington College of Law

Presentations

Public Discourse

2006

Prison Rape Elimination Act: Implications for Sheriffs: The Facts

Brenda V. Smith

American University Washington College of Law, bvsmith@wcl.american.edu

Susan McCampbell

Pam Cole

Margo Frasier

Follow this and additional works at: https://digitalcommons.wcl.american.edu/pub_disc_presentations



Part of the [Administrative Law Commons](#), [Criminal Procedure Commons](#), and the [Law Enforcement and Corrections Commons](#)

Recommended Citation

Smith, Brenda V.; McCampbell, Susan; Cole, Pam; and Frasier, Margo, "Prison Rape Elimination Act: Implications for Sheriffs: The Facts" (2006). *Presentations*. 569.

https://digitalcommons.wcl.american.edu/pub_disc_presentations/569

This Presentation is brought to you for free and open access by the Public Discourse at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Presentations by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

Resources Continued:

- “Staff Sexual Misconduct with Inmates: A Policy Development Guide for Sheriffs and Jail Administrators” (www.nicic.org/pubs/2002/017925.pdf)
- Susan McCampbell, “The Gender-Responsive Strategies Project: Jail Applications,” April 2006. (<http://www.nicic.org/Library/020417>)

Other PREA Resources:

- National Prison Rape Elimination Commission (www.nprec.us)
- Bureau of Justice Statistics Report on Sexual Violence (www.ojp.usdoj.gov/bjs/abstract/svrca04.htm)
- Bureau of Justice Assistance (www.ojp.usdoj.gov/BJA)
- ACA’s “Performance-Based Standards for Adult Local Detention Facilities” (www.aca.org)
- Stop Prisoner Rape (www.spr.org)
- National Institute of Justice (www.ojp.usdoj.gov/nij/)
- Center for Innovative Public Policies (Susan McCampbell, cippinc@aol.com)

Acknowledgements: The invaluable contributions of The Moss Group, Inc. consultant team including Susan McCampbell, Pam Cole, Brenda Smith, and Margo Frasier in the development of this pamphlet are greatly acknowledged.

PREA

PRISON RAPE ELIMINATION ACT

NIC / The Moss Group, Inc. Cooperative Agreement #05S18GJI0



U.S. Department of Justice
National Institute of Corrections
Director: Morris L. Thigpen
Deputy Director: Thomas Beauclair
Jails Division Chief: Virginia Hutchinson
Project Manager: Dee Halley

Prison Rape Elimination Act: Implications for Sheriffs

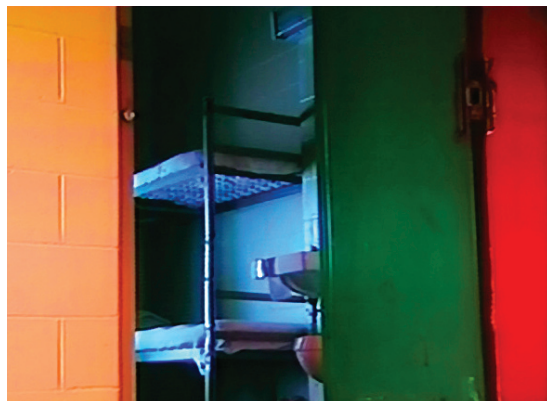
The Facts



What is PREA?

The Prison Rape Elimination Act (PREA) of 2003 is a federal law established to address the elimination and prevention of sexual assault and rape in correctional systems. Sexual assault includes staff sexual misconduct with detainees, arrestees, and/or inmates. The major provisions of PREA seek to:

- Develop standards for detection, elimination, and prevention of sexual assault and rape in correctional facilities.
- Collect and disseminate information on the incidence of sexual assault and rape in correctional facilities whether it is inmate-inmate sexual assault or staff sexual misconduct with inmates.
- Award grants and technical assistance to help implement the Act.



To read the PREA law, go to www.nicic.org/Library/018994, or request a copy from Dee Halley, National Institute of Correction (NIC) Program Manager at (800) 995-6423, ext. 40374.

Does PREA apply to jails?

Yes. PREA applies to all local confinement facilities including jails, lock-ups, work camps, restitution centers, temporary holding cells, and other similar facilities in addition to applying to federal and state facilities. It does not matter whether the facility is operated by a Sheriff's Office, or a county or city corrections department — PREA applies.

Does PREA apply to law enforcement?

Yes. It also does not matter how long a person is held in a custodial setting; for the purposes of the law, that person is an inmate under the law and PREA applies.

Your obligation to investigate allegations exists whether or not the prosecutor will pursue criminal charges.

Resources

NIC Resources:

- NIC Web site - www.nicic.org
- For information regarding the NIC PREA services and activities, contact:

Dee Halley, NIC Program Manager
1-800-995-6423, ext. 40374
dhalley@bop.gov
- Technical Assistance and training is offered under NIC cooperative agreement with The Moss Group, Inc., a criminal justice consulting firm that uses experienced practitioners to assist the field. For more information, contact:

Ania Dobrzanska, The Moss Group, Inc.
1-877-546-1444
aniad@mossgroup.us
- American University, Washington College of Law offers training under an NIC cooperative agreement on prison rape. For more information, contact:

Professor Brenda V. Smith, NIC/WCL Project on Addressing Prison Rape
1-202-274-4385
nic@wcl.american.edu or nicresearch@wcl.american.edu
- "Prison Rape Elimination Act (PREA) Considerations for Policy Review." This document is designed to help you create the initial draft of your PREA policies when requesting technical assistance from NIC. For a copy, contact Ania Dobrzanska at The Moss Group, Inc., or Dee Halley at NIC (contact information listed above).
- The following PREA training videos are available through the NIC Information Center. Call 1-800-877-1461 to order copies:

Facing Prison Rape, Part 1

Responding to Prison Rape, Part 2

Speaking Up: Discussing Prison Sexual Assault (inmate orientation video; available in male and female versions)

Keeping Our Kids Safe: The Prison Rape Elimination Act and Juvenile Justice

More FAQs

6. We have no reports of staff sexual misconduct or inmate-inmate sexual assault. Why should I be concerned about PREA?

Jails, large and small, around the country are not immune to staff sexual misconduct and inmate-inmate sexual assault. Some jails may find that they don't receive reports about incidents because of a lack of training, a strong "code of silence," or unclear or compromised reporting mechanisms for employees and inmates. Organizations that have no reports of such incidents should examine their reporting processes to insure that the jail administration is receiving allegations and investigating them appropriately. It is suggested that Sheriffs have a policy that requires them to be notified of any allegations of sexual assault or sexual misconduct.



7. What about inmates who either manipulate the system using PREA or make false allegations against employees?

Often, administrators or employees are understandably concerned that addressing PREA-related issues in policy and procedure, and educating inmates of their right to be safe while incarcerated, may result in inmates wrongly accusing employees or other inmates of misconduct. Experience has shown that there may be an initial spike in reporting, or reports that "test" the system. However, this usually stops when both employees and inmates realize that there will be thorough and timely investigations—of all offenders—and consequences for staff and inmates who make false reports.

8. What if the prosecutor isn't interested in pursuing cases alleging staff sexual misconduct or inmate-inmate sexual assaults?

As fellow elected officials, Sheriffs often find that they are in a unique position to help the prosecutor understand the security implications of sexual misconduct and inmate-inmate sexual assaults, and gain the prosecutor's support. Even if the prosecutor ultimately decides not to review or prosecute a case, he or she may be helpful in providing advice on investigating these types of cases.

What is the purpose of PREA?

PREA seeks to insure that jails and lock-ups protect inmates from all forms of sexual assault including sexual harassment with employees and inmates. These violations affect security and staff safety. They also pose long-term risks to inmates and staff inside jails, and to the public when victimized inmates are released into the community.

PREA requires jails to keep data regarding inmate-inmate sexual assaults, nonconsensual sexual acts, and staff sexual misconduct. For more information about the PREA data collection efforts, go to www.ojp.usdoj.gov/bjs/abstract/dcprea03.htm.

What should my jail be doing now?

Systemic Approach:

NIC recommends a "systemic approach" using multiple strategies to develop a response to PREA. In a systemic approach, Sheriffs should review their current policies, procedures, training, classification systems, and inmate services addressing sexual violence and abuse.

For assistance, the NIC video, *Responding to Prisoner Rape*, explains this systemic approach and is available through the NIC Information Center. (See "Resources" on p. 7 for information on how to obtain this video.)

Other Suggestions:

- Examine your state's laws on custodial sexual misconduct and sexual assault.
- Review your policies and procedures regarding staff sexual misconduct and inmate-inmate sexual assault.
- Assess training provided to employees, medical and mental health providers, volunteers, and contractors regarding your policies, procedures, and reporting requirements.
- Evaluate how offenders are oriented to the facility's rules, and how effectively and consistently the rules are enforced.
- Review services to inmates who are victims of sexual assault.
- Evaluate the effectiveness of your grievance procedures.
- Evaluate the effectiveness of your investigative process.

More Suggestions:

- Collect data consistent with the definitions from the Bureau of Justice Statistics (see “Resources”).
- Check with your state department of corrections to join their initiatives, if appropriate.
- Identify non-profit groups in your area that provide services to sexual assault victims (Rape Crisis Centers, public health departments, women’s commissions).
- After your review, consider developing a plan of action to address gaps in your current policies, procedures, operations, training, investigations, and medical and mental health services.
- Identify resources that can help make your jail operations even safer, and begin the process of implementing your plan.

Where can my agency go for help?

NIC Technical Assistance and training is available to help all jails (large and small) develop an approach to respond to PREA. The strategies outlined in this pamphlet can help all jails find low-cost, effective ways to address sexual abuse and violence.

To assist you in developing your policies, a policy development guide is available through NIC (see “Resources” on p. 7). Training is also offered at state and national conferences such as the annual meetings of state sheriffs’ associations, the National Sheriff’s Association, and the American Jail Association.

FAQs

1. Are there currently standards with which my agency must comply?

In the near future, the National Prison Rape Elimination Commission (NPREC) will publish recommendations for standards that will apply to all jails and lock-ups. These standards will be forwarded to the U.S. Attorney General (A.G.) for review and dissemination. The A.G. will allow a year for accrediting agencies to review the standards before finalizing them.

2. Can my agency or I be sued for not complying with PREA?

The Prison Rape Elimination Act does not create any new cause of legal action. However, once the national standards are promulgated by the A.G. and become an accepted best practice, the liability of Sheriff’s and Jail

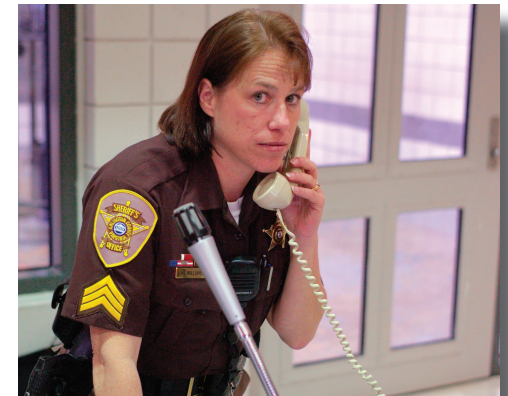
Administrators will increase significantly with regard to lawsuits under Title 42 of the U.S. Code, Section 1983 (civil rights protection), and the Eighth Amendment protection against cruel and unusual punishment based on the 1994 Supreme Court decision in *Farmer v. Brennan*.

3. What are the consequences to my agency for not complying with PREA?

If your jail does not comply with the standards when they are enacted, the county will face a 5% reduction of federal criminal justice funding for each year the jails fails to meet the standards. It could also be expected that, if you are sued, the plaintiff will argue that the failure to comply with the standards is evidence that your jail is not meeting the standard of care necessary to ensure inmates’ safety.

4. What if my jail is a small jail or is only used to house inmates for short periods of time?

PREA does not exempt small jails and it does not exempt short term facilities. However, NIC recognizes that many jails have limited resources and personnel. Small jails particularly need to identify community resources that may be helpful in developing sound practices in addressing sexual assault incidents. Educating community partners and creating investigation procedures in cooperation with local hospital and law enforcement is critical. Sheriffs are encouraged to consider the resources available through the NIC Jails Division, and the NIC Information Center for assistance with addressing sexual abuse in small jails.



5. Can my agency get funding to help implement all this?

BJA has completed two rounds of PREA grant awards to states. In some cases, the states built work with local agencies into their grant proposals. Congress did not appropriate PREA grant funds for 2007. However, for more information about future PREA grants, or other grant solicitations that might assist with PREA projects, contact: Julius Dupree, Policy Advisor, Bureau of Justice Assistance, (202) 514-1928, or julius.dupree@usdoj.gov.

While the BJA grant funds are awarded to state systems, Sheriffs should explore the availability of technical assistance from NIC to work directly with their jail on policy development and training. Technical assistance may also be available by attending training offered by your state association or the National Sheriffs’ Association.