

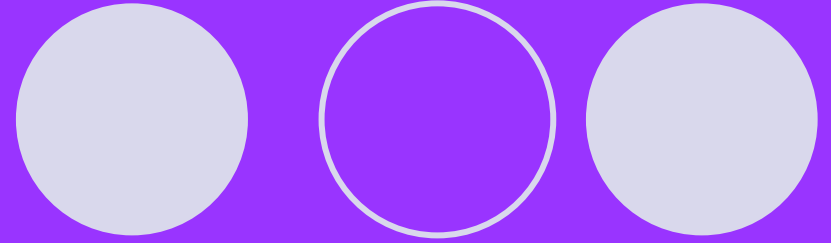
National Institute of
Corrections/ Washington
College of Law

Elements of Good State Laws

July 11-16, 2004

Enacting a Law

- Context
- Climate
- Proponent





Important Policy Decisions

- What conduct does the law cover?
- Which staff does the law target?
- Will you penalize inmates?
- What agencies are covered by the law?
- What are the penalties?
- Will you make this a strict liability offense?
- Is this a separate statute

What conduct does the law cover?

- Sexual assault
- Sexual contact
- Failure to report

Which staff does the law target?

- Correctional staff
 - Security
 - Pre-Trial
 - Probation
 - Parole
 - Work release
 - Other partners who supervise offenders
- Other corrections employees – doctor, counselor, chaplain, teachers, nurses
- Contract employees
- Volunteers

Will you penalize the conduct of offenders?

- Message sent to offenders
- Message sent to staff
- Impact on reporting by offenders
- Impact on reporting by staff

What agencies are covered?

- Prisons
- Jails
- Pre-Trial Services
- Probation
- Parole
- Police
- Community correctional facilities
- Juvenile detention facilities
- Juvenile group homes



What are the penalties?

- Felony
- Misdemeanor
- Graduated sanctions depending on the severity of the offense and other factors
- Fines
- Sex offender registry
- Loss of licensing as peace officer or social worker



Where will you place the statute?

- Vulnerable adult statute
- State's general rape statute
- Separate statute



Is this a strict liability offense?

- Consent
- Marriage
- Ignorance of status

The Prison Rape Elimination Act of 2003

Public Law 108-79

- Makes important findings about the impact of prison rape on inmates, the economy and state and federal governments

PREA Purposes



- Establish zero tolerance for the conduct
- Make prevention a top priority
- Develop national standards for detection, prevention, reduction and punishment
- Increase available data and information on incidence in order to improve management and administration
- Standardize definitions used for collecting data on the incidence of rape
- Increase accountability of prison officials who fail to detect, prevent, reduce and punish prison rape
- Protect 8th amendment rights of federal, state and local prisoners
- Establish grant programs
- Reduce costs of prison rape on interstate commerce

Major Provisions

- Section 4: Collection of prison rape statistics, data and research (BJS)(\$15MM for FY 2004-2010)
 - Surveys
 - Including prisons, jails, community corrections, boot camps, road camps, forestry programs, farms, youthful offender facilities, hospitals, drug treatment programs
 - Federal, state and local officials are required to participate
 - Review panel on prison rape with subpoena power
 - Public hearings for 3 highest incidence systems and 2 lowest
 - Report each year on 6/30

PREA Major Provisions



- Section 5: Prison Rape Prevention and Prosecution (NIC) (\$5MM for FY 2004-2010)
 - Information and Assistance through National Clearinghouse
 - Training and Education
 - Report due on 9/30 annually

PREA Major Provisions

- Section 6: Grants to Protect Inmates and Safeguard Communities (DOJ) (\$40MM)
 - Protection of the community
 - \$ to address overcrowding
 - Risk assessment tools
 - Mapping of concentration of inmates in communities
 - Policy and program development
 - Collaboration between corrections and community on reentry
 - Protection of Inmates
 - Investigations
 - Prosecution
 - Prevention

PREA Major Provisions

- Section 7: National Prison Rape Reduction Commission (with subpoena authority)
 - 9 members
 - Conduct legal and factual study of the effects of prison rape in the US
 - Report in 2 years of initial meeting
 - Recommended national standards
 - Consultation with accreditation organizations
 - Can't impose something that would mandate substantial increased costs to agency
 - Hold hearings

PREA Major Provisions



- Section 8: Adoption and Effect of National Standards
 - A year after National Prison Rape Reduction Commission issues report, AG publishes a final rule with standards
 - 90 days after transmission to state departments of correction
 - FBOP is immediately covered
 - Possible reduction of 5% each year for failure to meet the standard
 - Annual report on non-compliance

PREA Major Provision



- Section 9: Accreditation Organizations must adopt standards or lose federal funds
- Section 10: Definitions
 - Covers jails, police lockups, prisons
 - Covers both adult and juvenile facilities, government and private
 - Prison rape includes rape of inmate in actual or constructive custody



What does this mean?

- Increased scrutiny at state, federal and local level on staff sexual misconduct
- Broadened concern about inmate on inmate misconduct
- Data is your friend
- Get ahead of the curve
- You must take this seriously – it is not a backburner issue

Things to Remember

- ✓ You cannot control what passes in the legislature, only respond
- ✓ Absence of law doesn't mean that states don't or can't address the issue
- ✓ Enactment of law does not guarantee enforcement
- ✓ Do what you can do

Things to remember

- These cases are a subset of sexual assault cases in general – underreported and underprosecuted
- Visible aggressive prosecutions are important – public education, prevention, sanctioning
- Relationship is everything – prosecutor, hospital, police, victim assistance