

Investigating Allegations of Staff Sexual Misconduct with Offenders

Module 2: The Prison Rape Elimination Act- Overview and Update

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PREA Purposes

- 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



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



PREA: Major Sections

- Section 4: Collection of prison rape statistics, data and research (BJS)
- Section 5: Prison Rape Prevention and Prosecution (NIC)
- Section 6: Grants to Protect Inmates and Safeguard Communities (BJA)
- Section 7: National Prison Rape Elimination Commission
- Section 8: Adoption and Effect of National Standards
- Section 9: Accreditation organizations must adopt standards or lose federal funds

What We Know about Prevalence

- Administrative survey collections -- 2004, 2005 and 2006 data
- Inmate Victim self reports – 2007
- Juvenile victim self reports- 2010

Sexual Violence in Correctional Settings as Reported by Authorities

- 2006 BJS Report

- Since the Prison Rape Elimination Act was passed in 2003, the estimated number of allegations nationwide rose by 21%
- 6,528 allegations included:
 - 36% staff sexual misconduct
 - 34%, inmate-on-inmate nonconsensual sexual acts
 - 17%, staff sexual harassment
 - 13%, inmate-on-inmate abusive sexual contacts

Sexual Violence in Correctional Settings as Reported by Authorities

- Consistencies in Findings from 2004-2006

- Staff Sexual Misconduct

	<u>2006</u>	<u>2005</u>	<u>2004</u>
● Substantiated	25%	15%	30%
● Unsubstantiated	47%	66%	55%
● Unfounded	28%	19%	15%

Sexual Violence in Correctional Settings as Reported by Inmates

- 2007 BJS Report- State and Federal Inmates
 - The estimated number of State and Federal inmates experiencing sexual violence totaled 60,500 (or 4.5% of the Nation's prisoners).
 - Findings and Rankings:
 - Among the 10 facilities with the highest overall prevalence rates, 3 had prevalence rates of staff sexual misconduct that exceeded 10%
 - 14 facilities had nonconsensual sex rates of 300 or more incidents per 1,000 inmates

Sexual Violence in Correctional Settings as Reported by Inmates

- 2008 BJS Report- Jail Inmates
 - The estimated number of Jail inmates experiencing sexual violence totaled 24,700 (or 3.2% of all jail inmates).
 - Findings and Rankings:
 - 18 jails had prevalence rates of at least twice the national average
 - Nearly 1/3 of all facilities had rates of “zero”

National Prison Rape Elimination Commission

- Charge

- Conduct legal and factual study of the effects of prison rape in the US
- Recommend national standards
 - Consultation with accreditation organizations
 - Can't impose something that would mandate substantial increased costs to agency
 - Hold hearings
- Issue report w/in 2 years of initial meeting [June 23, 2009]



Commission Findings

- Protecting inmates from sexual abuse remains a challenge correctional facilities across the country.
- Sexual abuse is not an inevitable feature of incarceration -- leadership matters.
- Certain individuals are more at risk of sexual abuse than others.



Findings: NPREC

- Few correctional facilities are subject to the kind of rigorous internal monitoring and external oversight that would reveal why abuse occurs and how to prevent it.
- Many victims cannot safely and easily report sexual abuse, and those who speak out often do so to no avail.
- Victims are unlikely to receive the treatment and support known to minimize the trauma of abuse.



Findings: NPREC

- Juveniles in confinement are much more likely than incarcerated adults to be sexually abused, and they are particularly at risk when confined with adults.
- Individuals under correctional supervision in the community are at risk for sexual abuse.
- A large and growing number of detained immigrants are in danger of sexual abuse.



Structure of Standards

- Table of Contents
- Preface
- Compliance guide
- Glossary
- Standards
 - Standard
 - Discussion
 - Checklist



Standards Include

- Leadership and Accountability
- Prevention
- Detection and Response
- Monitoring



Standards Example

- IN-1 Duty to Investigate

- Summary: The facility investigates all allegations of sexual abuse, including third-party and anonymous reports, and notifies victims and/or other complainants in writing of investigation outcomes and any disciplinary or criminal sanctions, regardless of the source of the allegation. All investigations are carried through to completion, regardless of whether the alleged abuser or victim remains at the facility.

Compliance Checklist

IN-1 Duty to Investigate

Assessment Checklist	YES	NO
(a) Does the facility investigate all allegations of sexual abuse from all sources, including third-party and anonymous reports?		
(b) Does the facility notify victims and other complainants in writing of investigation outcomes and any disciplinary or criminal sanctions?		
(c) Are all investigations carried through to completion, regardless of whether the alleged abuser or victim remains at the facility?		

Discussion

One of the challenges agencies face when investigating allegations of sexual abuse is inmate and staff reluctance to report the abuse, whether as victims or as witnesses. This reluctance to report leads to delayed reporting, changed stories, noncooperation, and difficulties obtaining physical evidence. By investigating all allegations of sexual abuse and carrying those investigations through to completion, agencies send a strong message that sexual abuse is taken seriously and will not be tolerated, thereby encouraging all inmates to report.



Standards Example

- DC-2 Data Collection

- Summary: The agency collects accurate, uniform data for every reported incident of sexual abuse using a standardized instrument and set of definitions. Data is aggregated annually and includes data necessary to satisfy annual BJS Surveys. Data is obtained from multiple sources, including contracted facilities.

Compliance Checklist

● DC-2 Data Collection

Assessment Checklist	YES	NO
(a) Does the agency collect uniform data for every reported incident of sexual abuse using a standardized instrument and set of definitions?		
(b) Does the agency aggregate the incident-based sexual abuse data at least annually?		
(c) Does the agency collect the incident-based data necessary to answer all questions from the most recent version of the BJS Survey on Sexual Violence?		
(d) Does the agency obtain data from multiple sources, including reports, investigation files, and sexual abuse incident reviews?		
(e) Does the agency also obtain incident-based and aggregated data from every facility with which it contracts for the confinement of its residents?		

Adoption and Effect of National Standards

- A year after National Prison Rape Elimination Commission issues report, AG is to publish a final rule with standards
 - 90 days after publication -- transmission to state departments of correction
 - FBOP is immediately covered by rule
 - Possible reduction of 5% each year for failure to meet the standard
 - Annual report on non-compliance



Likely Reality

- PREA Working Group
 - NIC, OJP, OJJDP, NIJ, BJA
- Listening Sessions
 - Jan- Feb 2010
- Comment Period
 - May 2010
- Cost Study Completed
 - April 2010
- Propose Rule
 - Fall/ Winter 2010
- Final Rule
 - 2011



What does this mean?

- There will be a rule
- Increased scrutiny at state, federal and local level on custodial sexual abuse
- Enhanced focus on investigations, prosecution and administrative sanctions
- Services for victims



What does this mean?

- Reentry services for victims and perpetrators and role of community corrections
- Set of national standards that establish minimum standards for addressing sexual violence in custody



Unresolved Issues

- Who defines compliance?
- Who monitors compliance?
- The existence of a body to continue to refine the standards
- The availability of funding to assist in implementing the standards and developing best practices