

# “WHAT TO DO” ABOUT



**With the April 2012 release of the Prison Rape Elimination Act (PREA) standards and a one-year period to move into substantial compliance with them, jail professionals are working diligently to incorporate PREA principles into their facilities' operations.**

For some agencies, this is relatively new territory. Officials may not have been aware of PREA or there may have been hesitancy or resistance regarding compliance. However, all jail professionals agree that people held in custody should be safe from sexual coercion and harassment. A well-run jail minimizes the possibility of such incidents.

The standards are intended to provide guidance to correctional agencies for managing facilities that are free from sexual coercion and harassment. In their sheer number and breadth, the standards may be daunting. Agencies will need to reallocate some resources to implement them appropriately.

Yet agencies can make significant progress simply and inexpensively in their approaches to:

- Creating culture change.
- Following high-quality professional practice.
- Establishing a coordinated agency approach.
- Preventing incidents and coercion.
- Responding to alleged incidents.

# PREA

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The approaches described in this article were shared at recent Large Jail Network (LJN) programs sponsored by the National Institute of Corrections (NIC). NIC brings together administrators of large jails—those with more than 1,000 beds—to discuss experiences and strategies for handling the challenges of jail management. Although participants are from larger agencies, their ideas can be used or adapted by smaller jails.

LJN has been discussing PREA policy issues and its possible statutory requirements since the law was passed in 1996. Participants have contributed individual and collective input toward shaping national PREA policy; they also have shared what is improving the culture and climate in their facilities in regard to inmate safety and freedom from harassment and coercion.

This article distills some of the nuggets from LJN meetings that could be useful for other agencies to make jails safer and improve the culture surrounding inmate sexual assault and coercion—in jails and beyond.

## Creating Culture Change

One of the challenges of PREA is the need to combat our society's belief that jails are, as the norm, unsafe places where any inmate is

a potential victim of sexual assault. The facts that inmate-on-inmate assaults have occurred and that some staff members have engaged in unlawful conduct with inmates substantiate rather than disprove this perception.

Jail professionals not only need to change the reality of this risk, but also address this perception. First, jails should work where the agency's leadership has the most influence: the jail's management, line staff, and inmates. The message also has to reach inmates' families, the law enforcement community, prosecutors, the broader justice system, service providers in the community, and communities as a whole.

Cultural change often meets resistance at first, but wins in the end. It requires a change of perspective to realize that society can choose to stop tolerating certain problems as "the norm." Parallels can be drawn with the issues confronted by Mothers Against Drunk Driving and the evolution of the justice system's response to domestic violence. In the same way jails responded to the emergence of HIV by implementing universal precautions, they can find ways to prevent sexual abuse. If people think sexual assault is common in jails, or that it does not matter, or that detainees deserve any abuse they get, it is time for them to wake up.

Inmate attitudes also are influenced by the larger culture. At least one jail administrator has commented that it is more difficult to educate inmates than it is to train staff on PREA issues. The message to inmates must be clear:

- Sexual coercion is not acceptable in this jail, and it will not be tolerated.
- Here is what this jail is doing to promote inmate safety and prevent sexual abuse.
- These are the steps we will implement if you report an incident of sexual abuse.

## Focusing on Staff: What To Do

- Educate new hires on the realities of the jail environment and inmate safety.
- Emphasize the message to new supervisors and rising managers: "If you want to advance to the lieutenant level and beyond, you need to take this issue seriously."
- Emphasize to line staff, "It's up to you as a professional to help us achieve this [zero tolerance] goal" by reporting incidents or concerns.
- Define and enforce behavioral standards for staff and inmates with zero tolerance of not only sexual assault and coercion, but also sexual harassment, including suggestive remarks and overt masturbation by inmates. Statutes can be modified to make masturbatory behavior a registered sex offense rather than merely a rule infraction. The deterrent effect supports agency efforts to avoid a hostile work environment.

- Cover the zero-tolerance standard at roll call and other training for officers. Take advantage of available distance learning and video-based training.
- Provide training (such as NIC's online course on PREA) to all workers who have contact with inmates, such as chaplains, vendor staff, and religious or program volunteers.
- Document all PREA training in staff records.
- Reinforce the message through posters and brochures for deputies.
- Be watchful for individual staff who need more guidance and follow-through, up to and including reassignment. Some male staff have been identified as having difficulty working with female inmates, which may manifest as anger or difficulty communicating. All inmates should be treated with respect.
- Create peer-review teams of officers and inmates to raise specific concerns and identify solutions.

### **Focusing on Inmates: What To Do**

- Integrate an orientation to PREA and personal safety to occur within existing timelines for inmates' initial court appearance or bond hearing.
- Use a video and/or a verbal orientation to acquaint inmates with PREA-related non-tolerance policies, rules, safety, and incident-reporting options.
- Write print materials for a fifth-grade reading level or lower.
- Feature PREA information prominently in the first few pages of the inmate handbook and other orientation material.
- Provide inmate orientation materials in multiple languages, corresponding to populations represented in the jail.
- Reinforce the PREA message via posters and brochures placed throughout the facility, including the chapel and courtroom space—not only the housing units.
- Use inmate peer groups to teach other inmates about personal safety and how the agency will respond if an incident occurs.
- Understand that jail inmates who are victimized may not report the incident because they do not want to be seen as weak or as victims.

### **Reaching Beyond the Jail: What To Do**

- Convince prosecutors and district attorneys that it is as important to prosecute inmates for sexual assault and coercion incidents as for other matters central to safety.
- Use State laws that designate sexual contact between staff and inmates as a criminal offense for leverage to ensure the prosecution of cases.

- Build relationships between larger and smaller jurisdictions so that those with fewer staff and resources have help understanding and responding to PREA standards. State and regional jail associations provide opportunities for such knowledge transfer.
- Educate local police chiefs and police departments about PREA issues. Some police chiefs may still be unaware of PREA, but as the first point of contact with suspects and detainees, local police also must understand and demonstrate appropriate conduct and practices. Contact county organizations of police chiefs to start a dialogue and share information.

### **Already-Established Practices**

Andie Moss of The Moss Group stresses that agencies can find a silver lining of improved operations when they focus on PREA. Many PREA requirements are already established in good correctional practice; now they can be relabeled with respect to sexual assault and coercion. By following these standards, agencies reduce their vulnerability to lawsuits across the full spectrum of operations.

Jails that have been through American Correctional Association or National Commission on Correctional Health Care accreditation or that meet stringent State standards will find complying with PREA less challenging. Compliance will be a matter of adding only a few new elements.

### **Preparing for Compliance: What To Do**

- Map the agency's complete processes from an inmate's accusation of staff misconduct or assault by another inmate to disposition of the alleged incident.
- Have a current and thorough process in place for inmate orientation to agency policies.
- Review PREA standards systematically against existing jail policies and procedures to document compliance status and identify gaps. Dividing and assigning sections of the standards to the executive staff and asking them to read them carefully is a good way to identify implications for the agency.
- Develop a matrix of PREA standards, relevant policies that already exist, policies that need modification, and aspects of the standards that are beyond the jail's control or that do not apply to the agency. For example, investigations may be outside the jail's or the sheriff's control.
- Estimate the likely costs of compliance by reviewing the Booz Allen Hamilton report on implementation costs.
- Consider following the educational process of The Moss Group's five-phase model. The first step is to understand what PREA is all about. Second, jails need to acknowledge the risks and dangers present in their own facilities. Third, agencies need to develop strate-

gies to address the problem through such measures as academy training, inmate orientation, and in-service training. Implementing and evaluating the strategies are the final two phases.

A. T. Wall, Director of the Rhode Island Department of Corrections, has observed that PREA creates no new grounds for suing agencies. If a case is litigated, agencies must be prepared to show that they are in compliance. This means being able to answer the basic questions, “Does your agency have a PREA policy? If so, do your people know it, do you train for it, do you audit it, are you in compliance with it, do you orient your inmates to it?”

### **Establishing the PREA Coordinator: What To Do**

Defining the role of a PREA coordinator at the agency level has been a concern. The role can be a collateral duty rather than a full-time position, but it must be clearly designated.

- Consider combining the roles of PREA coordinator and accreditation coordinator.
- Consider combining the responsibilities of CRIPA and PREA coordinators in one position, reflecting the overlap with other targets for outside review and audit. (CRIPA is an acronym for the Constitutional Rights of Incarcerated Persons Act, which gives the U.S. Department of Justice authority for jail investigations.)
- Consider creating the position of “safety coordinator” to focus on preventing both physical and emotional violence.
- In larger jail systems, consider the placement of a PREA coordinator in each facility.
- Invest the staff member responsible for implementing PREA with sufficient authority and choose someone with high integrity and credibility so the work will be respected.
- Be careful that creating a dedicated PREA position does not lead to a perception that only one person “owns” the issue. Organization-wide ownership is necessary, as when an agency seeks accreditation.
- Create workgroups in which the PREA coordinator collaborates with people from the medical staff, investigations, and training.
- Allow staff assigned to head the agency’s PREA work to interact directly with both inmates and other staff to promote a shared understanding of the agency’s zero-tolerance standard and specific policies and procedures.

### **Monitoring Indicators: What To Do**

Comprehensive oversight and monitoring of incident reports, as well as more subtle indicators, are important.

- Scan incident reports, investigation documents, and grievance documents for key terms and key words.

Agencies can consider purchasing software that automates this process. Specific items that are flagged can trigger an automatic e-mail to jail leadership and the PREA coordinator.

- Regard fraternization with inmates seriously; talk with your telephone vendor about running reports on inmate calls to staff members’ phone numbers.
- Do an annual internal report on PREA; this organizes the agency’s information on investigations and outcomes.

### **Preventing Incidents and Coercion: What To Do**

Jails can tie new information about inmate vulnerability to classification and operations. Intake screening is essential. Much of what happens to a detainee long before arrest, immediately before arrest, or during arrest may be relevant to victimization in jail. Keeping vulnerable inmates away from predatory inmates is the essence of the solution. Where separation options are limited, supervision and vigilance are needed. Officers need to view the possibility of abuse seriously.

- Use classification forms to ask whether a detainee has been assaulted in jail before.
- Provide meaningful supervision and oversight during an inmate’s first 24 hours in jail, when most inmate sexual assaults occur.
- Provide meaningful supervision and oversight on the swing shift, another time when incidents are more common.
- Be aware that more women than men are assaulted (as a percentage of inmates), but they are less likely to report it.
- Be aware that inmates who attended college are at higher risk than other inmates.
- Develop legally permissible ways to ask detainees about their sexual orientation, because lesbians, gay men, and transgendered inmates are more often victimized than other inmates. For example, jails might ask a question about sexual orientation, but allow detainees to opt out of answering.
- Develop legally permissible housing plans for inmates who are vulnerable to assault and coercion based on their sexual orientation. Jails need methods for protecting inmates at risk other than routinely segregating them based solely on their sexual orientation.

Law and practice on cross-gender pat searching has long involved a balance between the rights of staff to work in their chosen professional field and the rights of inmates to physical privacy. PREA requires a move away from routine cross-gender pat searches to same-sex pat searches, except in emergency situations. This requirement places a new burden on agencies.

### Maintaining a Balance: What To Do

- Continue to train new officers on conducting appropriate, professional, cross-gender pat searches.
- Review actual practices in pat searching. Supervisors should verify that staff are searching according to policy and training. If necessary, provide additional on-the-job training. If respectful conduct cannot be ensured with an individual officer, consider discipline or reassignment.
- Develop contingency plans (particularly in smaller jails without medical staff on duty 24/7) for conducting strip or body cavity searches of gay, lesbian, and transgendered/intersex detainees.

Sometimes measures that allow additional visual privacy have unintended consequences. One county installed visual barriers in the inmates' shower areas, and the jail experienced more suicide attempts there.

### Responding to an Alleged Incident: What To Do

All allegations of sexual coercion must be taken seriously.

- Add direct telephone lines in housing units to reach rape crisis centers and Internal Affairs.
- Give officers awareness and sensitivity training to create a climate in which inmates will come forward and report problems.
- Be persistent in building relationships with community resources, such as rape crisis centers that become the first point for incident reporting. Ideally, these agencies will become allies and receptive to training on jails and PREA issues.
- Ask for information on jail inmate calls to community rape crisis centers (in accordance with confidentiality requirements). One agency found that inmates were placing a number of bogus calls; calls connected with actual incidents were noticeably shorter than the others, lasting only three to four minutes.
- Remember that a low incidence of reported assaults, coercion, and harassment may be a good thing, or it might mean that the agency has a weak system for reporting or a climate that inhibits reporting.

### Preparing for an Investigation: What To Do

PREA standards call for prompt, thorough, and objective investigations that are conducted by trained investigators.

- Be prepared to take an alleged victim to a rape crisis center outside the jail or to a location with trained sexual assault examination nursing care. Treat the incident as a criminal event and preserve all evidence.
- Have a specialized sex crimes investigator on call, if one is available in your area, to speed the investigation process.
- Use a specialized sex crimes investigator to provide staff training on crime scene evidence collection and

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## More PREA “What To Do”

### Beyond the Myths: The Jail in Your Community

<http://nicic.gov/library/018696>

### Implementing the Prison Rape Elimination Act: A Toolkit for Jails

[prearesourcecenter.org/sites/default/files/library/preatoolkitforjails.pdf](http://prearesourcecenter.org/sites/default/files/library/preatoolkitforjails.pdf)

### Just Detention International

[justdetention.org](http://justdetention.org)

### The Moss Group, Inc.

[mossgroup.us](http://mossgroup.us)

### National Institute of Corrections, PREA/Offender Sexual Abuse

<http://nicic.gov/PREA>

### National Institute of Corrections-Sponsored Technical Assistance

Dee Halley, NIC’s PREA Coordinator at [dhalley@bop.gov](mailto:dhalley@bop.gov) or 800-995-6423, ext. 40374.

### National Standards To Prevent, Detect, and Respond to Prison Rape, Department of Justice. Final Rule

[www.ojp.usdoj.gov/programs/pdfs/prea\\_final\\_rule.pdf](http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf)

### PREA Resource Center

[www.prearesourcecenter.org](http://www.prearesourcecenter.org)

### Prison and Jails PREA Standards Documentation Requirements, The Moss Group

[prearesourcecenter.org/sites/default/files/library/preaprisonandjailsstandardsdocumentationrequirements.pdf](http://prearesourcecenter.org/sites/default/files/library/preaprisonandjailsstandardsdocumentationrequirements.pdf)

[prearesourcecenter.org/library/search?keys=documentation&cat=6](http://prearesourcecenter.org/library/search?keys=documentation&cat=6)

### Prison Rape Elimination Act (PREA) Resources

<http://nicic.gov/Library/024657>

### “Prison Rape Elimination Act: PREA Cost Impact Analysis, Final Report, June 18, 2010.” Booz Allen Hamilton

[www.ojp.usdoj.gov/programs/pdfs/preacostimpactanalysis.pdf](http://www.ojp.usdoj.gov/programs/pdfs/preacostimpactanalysis.pdf)

preservation. Standardized processes put everyone on the same page and improve evidence preservation for all types of incidents.

- Provide training to medical personnel on gathering forensic evidence for investigations. Grant funding may be available for training sexual assault response teams.
- Extend investigations training to any local agencies (such as police departments and prosecution) that could have a role in responding to allegations. The jail can gain new insights from training with them and also draw attention to the importance of the issue.
- Ensure that investigative training covers the different ways men and women who have experienced trauma will present. NIC has training resources that address this topic.
- Immediately turn over alleged incidents to police or other investigators to avoid any perception of a cover-up. Referring an allegation for criminal action is a separate response from an administrative investigation. Criminal investigations and internal investigations may be launched simultaneously, or the criminal investigation may be launched first.

### Collaborating with Attorneys: What To Do

Alleged incidents for which there is sufficient evidence must be prosecuted to demonstrate that inmate safety is considered no less seriously than the safety of other community members. Lack of prosecution furthers the impression that inmate safety is unimportant, and it undermines the jail’s ability to make perpetrators accountable.

- Establish a relationship with the district attorney and learn what evidence the agency needs to move ahead with a PREA-related prosecution. Investigations and

documentation must meet the prosecutor’s criteria.

- If cases still are not prosecuted, ask why. Prosecutors may have limited budgets and, for that reason, place a lower priority on inmate sexual victimization than other crimes. Keep this point open for discussion and possible change.

### Conclusion

Over the past few years, PREA often has been negative for jails. In some cases, jail leaders have found it difficult to respond to media coverage that put their facilities in a bad light. According to Andie Moss, one of the challenges in the national policy process on PREA has been that the advocacy community was very effective in getting heard, and their voices needed to be balanced with input from jail and corrections practitioners. Jail leaders rose to that challenge. The resulting PREA requirements may not satisfy all parties, but each side made meaningful concessions.

Today, jail leaders have the opportunity to explain their stance on the issue, to describe what their agencies have been doing or will do to run a safe jail and accommodate PREA requirements, to share positive data on inmate safety, to clearly voice the agency’s commitment to preventing sexual abuse and prosecuting perpetrators, and to garner broad support to ensure that cases are prosecuted. ■

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