



## The Prison Rape Elimination Act of 2003:

# The Impact of National PREA Standards on Community Corrections

Jaime M. Yarussi and Brenda V. Smith

The Project on Addressing Prison Rape  
*in collaboration with*  
The National Institute of Corrections

SEPTEMBER 2013



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The Prison Rape Elimination Act of 2003: The Impact of National PREA Standards on Community Corrections is the end product of work by many organizations and individuals concerned about preventing and addressing staff sexual misconduct with offenders. We thank the many contributors and reviewers who have given insightful and honest commentary about the situations that community correctional professionals face and how the National PREA Standards impacts their work .

The Prison Rape Elimination Act of 2003: The Impact of National PREA Standards on Community Corrections addresses rapidly developing areas of law and practice in the United States. The information in this publication is current as of August 2013. Both law and policies rapidly change. We will remain abreast of those changes and encourage you to contact us with new information as it becomes available.



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## Foreword

From 1999 to 2012, The American University Washington College of Law had a cooperative agreement with the National Institute of Corrections to provide training to high-level correctional decision makers on key issues in addressing and investigating staff sexual misconduct. With the enactment of the Prison Rape Elimination Act in 2003 (PREA), the project's focus shifted to addressing prison rape—both staff sexual misconduct with offenders and offender on offender sexual violence and abuse.

Since the passage of PREA in 2003, there has been increased national and international attention to the issue of sexual abuse of individuals under community supervision. In response, States have strengthened criminal laws prohibiting the sexual abuse of individuals in custody, including those under supervision in the community.



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# Foreword

While some community correctional systems, the federal government and state and local agencies have made progress in addressing staff sexual misconduct and offender on offender sexual abuse, much work remains. A climate may still exist where sexual abuse of individuals under supervision in the community is permitted. Moreover, prosecutions and convictions for this abuse are rare, and sanctions for guilty correctional professionals and offenders who sexually abuse other offenders are weak. Addressing sexual abuse of those under community supervision is critical to ensuring the safety and security of correctional agencies, staff who work in these agencies, facilities across the country and people under supervision. Key intentions are: (1) Law and policy development and change; (2) consistent enforcement, prosecution and punishment of wrongdoers; (3) training of staff and offenders.

This publication is an important step in reaching out to administrators and staff in community supervision settings in order to sexual abuse of offenders. We hope that it will deepen the dialogue between line staff, administrators, community leaders, and criminal justice advocates about strategies to eliminate sexual abuse of individuals under custodial supervision.



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This publication provides guidance for departments and agencies supervising adults on community supervision. Because the National PREA Standards cover juvenile community corrections under the juvenile standards, this publication will focus on adults. However, there are resources developed addressing juveniles under community supervision.

For more information and guidance on juveniles under community supervision please see the following resources:

*Addressing Sexual Violence Against Youth in Custody: A Handbook for Youth Workers on How to Identify and Address Sexual Abuse in Juvenile Settings*

By: Brenda V. Smith and Jaime M. Yarussi (May 2012)

<http://www.wcl.american.edu/endsilence/documents/YouthWorkersHandbook-FINALinprintNIC.pdf>

*Training: Responding to Sexual Abuse of Youth in Custody: Responding to the Needs of Boys, Girls and Gender Non-Conforming Youth*

[http://www.wcl.american.edu/endsilence/juvenile\\_training.cfm](http://www.wcl.american.edu/endsilence/juvenile_training.cfm)

For other juvenile publications: [http://www.wcl.american.edu/endsilence/juvenile\\_resources.cfm](http://www.wcl.american.edu/endsilence/juvenile_resources.cfm)

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# Introduction

Sexual abuse of offenders compromises safety of staff, the facility or agency and offenders. While agencies or individuals may never encounter this unprofessional behavior (which is illegal in most states)—they should be aware of how staff sexual misconduct and offender on offender sexual abuse affects agency operations, offenders, and individual staff.

Preventing sexual abuse of offenders should be an ongoing discussion involving partners from all correctional sectors, facilities, offenders, administration and staff, law enforcement, legislatures, advocacy organizations, and the community. Sexual victimization of persons in custody has legal and non-legal consequences as well as long-lasting emotional, economic, and mental and physical health effects for staff, offenders, agencies and the community.



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## **This publication aims to educate community correctional staff on:**

- Why community correctional staff and administrators need to be concerned about sexual abuse of offenders.
- Identifying inappropriate relationships with and between offenders.
- The impact of the National PREA Standards on agency policies, practices and special concerns community correctional staff have in addressing PREA.



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**This publication aims to educate  
community correctional staff on:**

- Where reports of sexual abuse may come from and the duties of first responders.
- The consequences are for sexual abuse of offenders.
- How community correctional staff members can prevent sexual abuse of offenders.



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## Specific Objectives

- Define community corrections
- Provide overview of the Prison Rape Elimination Act
- Discuss the importance of issues of:
  - Prevalence of sexual victimization of individuals under custodial authority overall
  - Promulgation of the National PREA Standards
  - Legal Liability
- Define tools for identifying inappropriate relationships with and between offenders



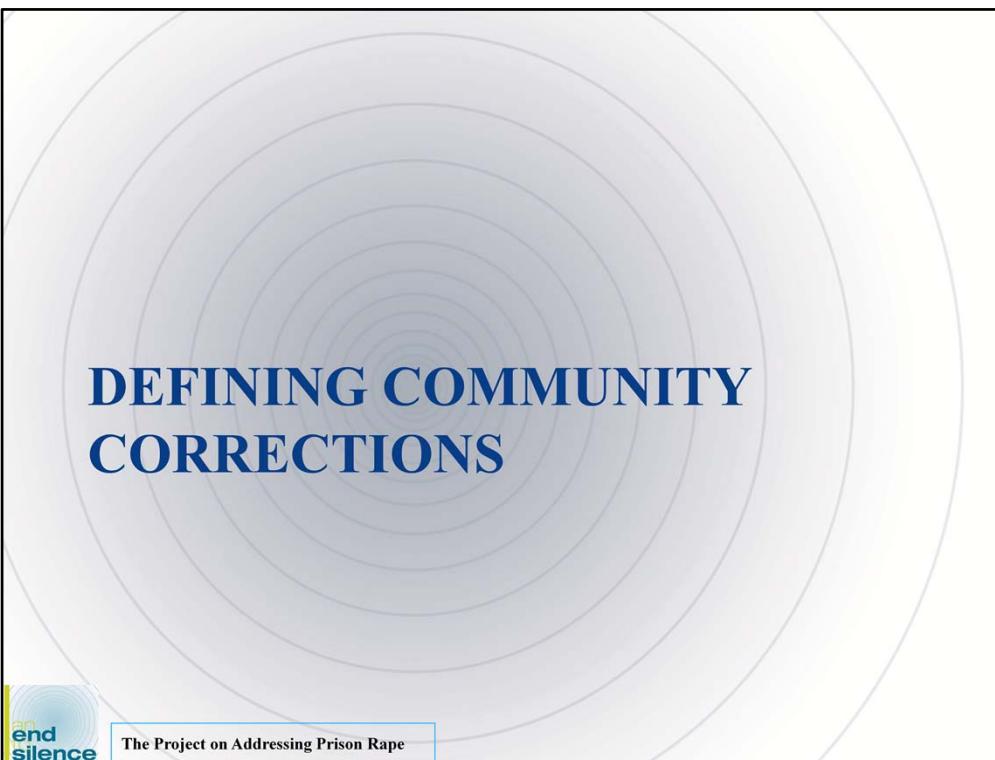
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## Specific Objectives

- Discuss special concerns for community corrections and define particular roles and responsibilities of community corrections
- Discuss prevention strategies for community correctional staff and agencies
- Make recommendations
- Provide resources



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# **DEFINING COMMUNITY CORRECTIONS**



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## Consider Jurisdictional Control

- Residential
- Non-residential
- Public
- Private/ Contracts
- Federal
- State
- Local



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Community correctional agencies can be under a number of jurisdictional controls. Some agencies operate under the umbrella of the state departments of corrections, while others can be stand alone agencies or operate under the control of a local county.

This makes it difficult to determine who is responsible, if anyone, for certifying compliance of the PREA Standards [Subpart F—State Compliance  
§ 115.501 State determination and certification of full compliance]

## Breadth of Community Corrections Arrangements

- Hardship release
- Work camps
- Community work centers
- Bail agents
- Pre-trial
- Probation
- Parole
- Court mandated substance abuse treatment
- Half-way houses



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A large number of people under custodial supervision are under community supervision.

## Facility and Types of Community Corrections

- Work release
- Court diversionary programs
- Day reporting centers
- Home detention
- Electronic monitoring
- Community service programs
- Deferred prosecution
- Treatment facilities
- Furloughs
- Pre-release centers



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The National Prison Rape Elimination Commission drafted standards in 2009 that included non-residential community correctional settings. For departments looking to implement PREA related policies and procedures, those drafted standards are a resource on what and how to incorporate PREA into their agency. Those drafted standards online at:

[http://www.wcl.american.edu/endsilence/documents/NPREC\\_CommunityCorrectionStandards.pdf](http://www.wcl.american.edu/endsilence/documents/NPREC_CommunityCorrectionStandards.pdf)

## Challenges Specific to Community Corrections

- Diversity of types of community corrections and jurisdictional control
- Not all policies/ procedures can work for all types of community corrections
- Staff work outside of the “normal” office parameters and away from supervisors and peers
- Lack of PREA Standards for non-residential community supervision settings



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While the DOJ PREA Standards cover residential settings, there are not standards for non-residential settings. Consequently, some agencies apply PREA Standards to residential settings (such as halfway houses or community work centers) but not to probation or parole offices and staff in them.

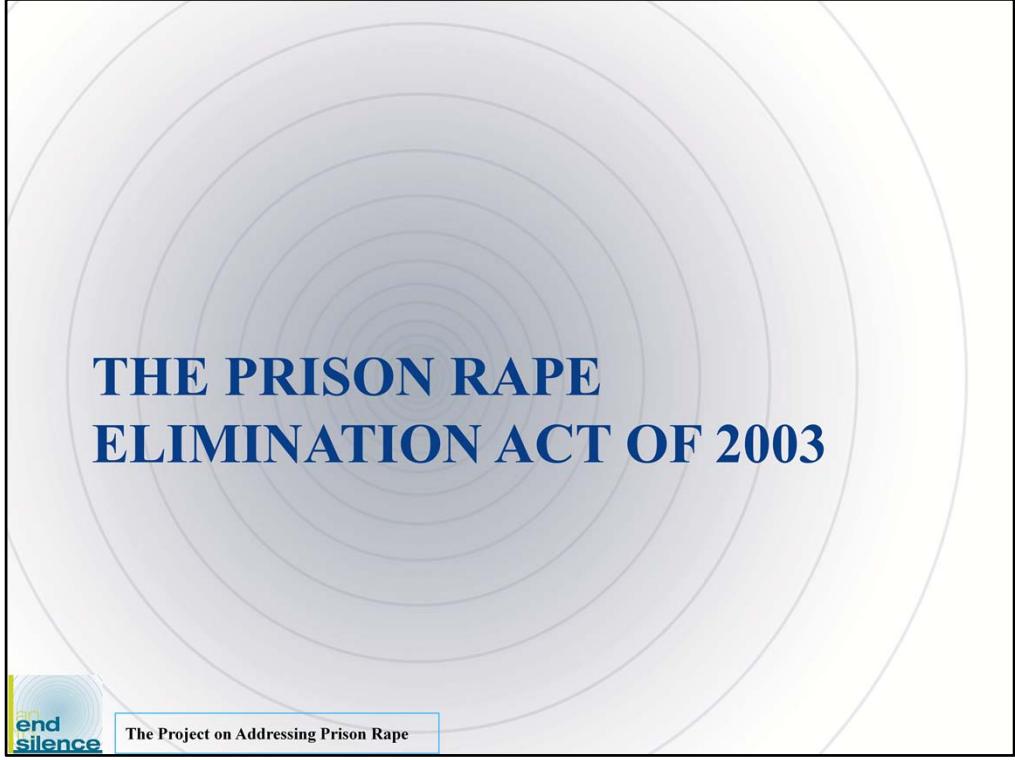
Nonetheless, it is essential staff and offenders under non-residential supervision have information regarding both the standards and state laws regarding sexual abuse.

Staff in non-residential community settings must know their reporting obligations under PREA, structure and mandatory reporting laws for their jurisdiction. Offenders in the community, if sexually assaulted while incarcerated—either by another inmate or staff person, may report once they are on community supervision. As such, all community corrections staff should be aware of their reporting responsibilities and requirements.

State laws are important as well because most states have criminal laws prohibiting sexual contact between community corrections staff and offenders. We will discuss this at great length.

Based on its authority under PREA, the National Prison Rape Elimination Commission drafted standards in 2009 that included non-residential community correctional settings. They did so because of their view that correctional systems are porous and the failure to cover non-residential settings left individuals at risk in the community and weakened prevention and protection for those in residential settings. For departments looking to implement PREA related policies and procedures covering non-residential settings, those drafted standards are online at:

[http://www.wcl.american.edu/endsilence/documents/NPREC\\_CommunityCorrectionStandards.pdf](http://www.wcl.american.edu/endsilence/documents/NPREC_CommunityCorrectionStandards.pdf)



# **THE PRISON RAPE ELIMINATION ACT OF 2003**



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## What is PREA?

- **Prison Rape Elimination Act (PREA).**
- Initial version focused on male prison rape
- Second version **included staff sexual misconduct**, but **continued to focus heavily on male-on-male rape.**
- PREA passed **unanimously** in both houses of Congress in **2003**.



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In September 2003, the United States Congress unanimously passed the Prison Rape Elimination Act (PREA). The Act was the culmination of a collaborative effort between human rights, faith-based, and prison rape advocacy. The aim of the Act is to create “zero tolerance” for prison rape by using a variety of tools or mechanisms including data collection; grants to the states; technical assistance to the states to improve their practices; research; the development of national standards; and the diminution of federal criminal justice assistance to states who fail to comply with the standards.

While prison rape has been an abiding feature of U.S. prisons almost since their inception, the event that contributed most to the passage of the Prison Rape Elimination Act was the 2001 publication of “No Escape: Male Prisoner Rape by Human Rights Watch (HRW).” HRW had published several reports on sexual violence in U.S. prisons dating back to its initial report in 1995 on the rape of female prisoners, titled All Too Familiar: Sexual Abuse of Women in U.S. State Prisons.

PREA passed unanimously in both houses of Congress and signaled an important shift toward more humane treatment of persons in custody.

## PREA PURPOSES

- Increase **accountability** of prison officials who fail to detect, prevent, reduce and punish prison rape
- **Protect** 8<sup>th</sup> amendment rights of federal, state and local prisoners
- Establish **grant** programs
- **Reduce costs** of prison rape on interstate commerce



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# PREA PURPOSES

- Establish **zero tolerance**
- 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 in custody



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# 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



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# Key Milestones

- **2003:** PREA legislation passes
- **2004:** First meeting of the National Prison Rape Elimination Commission (NPREC)
- **2004-2009:** Information gathering and hearings held by the NPREC
- **June 2009:** Report and draft standards published by NPREC
- **2009-2012** Establishment and Convening of PREA Work Group



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## Key Milestones

- **May 17, 2012:** Final DOJ standards released
- **June 20, 2012** Final standards published in the Federal Register
- **August 20, 2012:** Standards applicable to BOP
- **August 20, 2013:** First audit cycle begins



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# Key Principles

- PREA encompasses any federal confinement facility whether run by the government or a private organization on behalf of the government
- The standards are the floor - they are minimum standards
- States can and are encouraged to do more
- Agencies must protect the constitutional rights of those in custody



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Some states already have stronger state laws than the protections the current standards provide.

In West Virginia, inmates do not need to exhaust administrative remedies to file suit in court on a claim of sexual abuse in custodial settings.

In Florida, Missouri and South Carolina, staff must report sexual abuse in custody.

# **WHY ARE WE TALKING ABOUT THIS NOW?**



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Responses to sexual abuse of offenders under custodial supervision have largely failed to reach individuals under correctional supervision in the community. Yet offenders under community supervision are also at risk of sexual abuse. Abuse, even in the community has serious physical, emotional,, and rehabilitative consequences.

## In The News.....

### N.H. settles prison guard lawsuits for \$1.85 million

WCAX News 3

By Associated Press

March 28, 2008

New Hampshire has agreed to pay \$1.85 million to 30 female inmates and a state Department of Corrections employee who accused former Concord halfway house officer Douglas Tower of sexually assaulting or harassing them.

### Ex-parole officer sentenced to 5 years

The Times-Picayune

By Benjamin Alexander-Bloch

August 5, 2008

Former Louisiana Department of Public Safety and Corrections probation and parole officer Shannon Stewart has pled guilty to four counts of malfeasance in office for sexually abusing three women who were under his supervision.



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One of the most identifiable examples of sexual abuse in a community setting involves the Shea Farm Halfway House in Concord, New Hampshire. Douglas Tower, an officer with a record of sexual harassment on the job was transferred from another correctional facility to become the night supervisor at Shea Farm. In this position, he had a significant amount of power over the approximately 45 women living there. He was able to lower their security classification, approve or deny overnight leave requests and/or visits with family members, punish women for disciplinary infractions, and revoke their placement in Shea Farm. In total, Tower was found guilty of assaulting 13 women while assigned to the Shea Farm halfway house between Jan. 1, 2004, and Jan. 30, 2005. During part of that time, prison officials named Tower community corrections officer of the year.

## In The News.....

### **Probation officer says she had sex with teen**

*The Eagle*  
By Holly Huffman  
October 2, 2007

A Brazos County juvenile probation officer was charged Monday with sexual assault after she admitted to having a sexual relationship with a 16-year-old boy who was on probation, police said.

### **Ex-corrections employee cited for sex abuse of parolee**

*Lincoln Star Journal*  
Jonathan Edwards  
April 30, 2012

A former prison guard at the Lancaster County jail is accused of having sex with a parolee. Anoroy Yosef Loyuk, who worked at the Community Corrections Center in Lincoln, NE, was booked on suspicion of first-degree sexual abuse of an inmate. State law forbids corrections employees from having sex with inmates or parolees.



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**U.S. DOJ News:**  
**Former U.S. Probation Officer Pleads Guilty to Civil Rights  
and Sex Abuse Charges (4/28/11)**

- Mark John Walker, 52, pleaded guilty to charges related to his engaging in sexual contact or aggravated sexual abuse with female offenders who were under his direct supervision as a federal probation officer from 2006 to 2009.
- While exercising his authority as a probation officer, Walker willfully violated the victims' civil rights by kissing them, touching their breasts, buttocks and inner thighs, and forcing one victim to have sexual intercourse with him when he visited her home as part of his official duties. At the time, he was wearing his badge and carrying his government-issued firearm, and the victim was not able to escape.  
**The victims feared reporting the violations to authorities because they were afraid that no one would believe them and that Walker, as their probation officer, had the power to have them incarcerated or otherwise punished.**
- Sentenced to 10 years in prison, followed by five years of supervised release and registration as a sex offender

<http://www.justice.gov/opa/pr/2011/April/11-crt-542.html>



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Staff supervising offenders in the community in non-residential settings have the same, if not more power over people under their supervision. In the account above, “The victims feared reporting the violations to authorities because they were afraid that no one would believe them and that Walker, as their probation officer, had the power to have them incarcerated or otherwise punished.”

The example above is important because it details behavior which occurred during home visits by a probation officer. Although the PREA Standards do not cover non-residential settings like this one, agencies should train and have policies that prohibit sex with offenders under supervision.

## **Fifth man accuses Josephine County of turning blind eye to sexual abuse by probation officer (May 1, 2013)**



A fifth man is accusing Josephine County juvenile Justice Department of allowing Raymond X. Luckey and other probation officers to regulate their own behavior with children in their custody and “looking the other way when allegations of sexual abuse of minors under Luckey’s supervision or control were made known.”

[http://www.oregonlive.com/pacific-northwest-news/index.ssf?/2013/05/fifth\\_man\\_accuses\\_josephine\\_co.html](http://www.oregonlive.com/pacific-northwest-news/index.ssf?/2013/05/fifth_man_accuses_josephine_co.html)



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## What We Know: BJS Data

- **Adult administrative survey collections:**

- 2007-8

<http://www.wcl.american.edu/endsilence/documents/SexualAbuseReportedbyCorrectionalAuth2007-8.pdf>

- 2006

[http://www.wcl.american.edu/endsilence/adult\\_resources.cfm](http://www.wcl.american.edu/endsilence/adult_resources.cfm)

- 2005

[http://www.wcl.american.edu/endsilence/adult\\_resources.cfm](http://www.wcl.american.edu/endsilence/adult_resources.cfm)

- 2004

<http://www.wcl.american.edu/endsilence/documents/BeckandHughesBJSReport2004.pdf?rd=1>



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Despite increasing numbers of offenders on community supervision, there continues to be a lack of research on issues ranging from the prevalence of sexual abuse in community corrections and risk factors specific to these settings, to the impact of sexual victimization on rehabilitation and reentry. Although the Bureau of Justice Statistics conducts comprehensive national surveys of people confined in prisons, jails, and juvenile facilities to reveal rates of sexual abuse, no similar survey of people under supervision in the community has been conducted.

Although there have been two surveys of former prisoners; one in 2008 and another in 2013, BJS asked mainly about their experiences while incarcerated and did not collect data on community corrections specifically—either residential or non-residential. This leaves a serious gap in knowledge about the prevalence of sexual abuse.

To truly understand the prevalence of sexual abuse in custody, all community correctional agencies should collect data for every reported incident of sexual abuse – whether the incident occurred while under the supervision of community corrections or while incarcerated in a prison or jail but reported after release. Collecting data on abuse occurring in confinement settings but reported later will help correctional facilities maintain more accurate records of reported incidents of sexual abuse, as well as provide insight on reasons people chose not to report abuse until they were released. With this information, correctional facilities can begin to address gaps in reporting structures, investigations, data collection, and safety – an issue which victims repeatedly give as a major reason they do not report.

Collecting data on sexual abuse that occurs in community correctional residential facilities and under non-residential supervision will allow community correctional agencies to have a more complete understanding of the risks for sexual abuse while in these settings and how to mitigate these risks. Community correctional agencies may be able to determine in which situations sexual abuse is more

likely to occur, patterns for likely perpetrators and victims, and how sexual abuse may be related to community reintegration, recidivism risk, and future incidents risk for victimization. Based on this information, agencies can enact informed policies and procedures to address and prevent incidents of sexual abuse.

# What We Know: BJS Data

- **Victim self-reports**

- 2007  
Jail Inmates  
<http://www.wcl.american.edu/endsilence/documents/SexVictimizationLocalJails2007.pdf>  
State and Federal Prisoners  
<http://www.wcl.american.edu/endsilence/documents/sexualvictimizationstateandfedprisons2007.pdf>
- 2008-9  
Prison and Jail Inmates  
<http://www.wcl.american.edu/endsilence/documents/SexualVictimizationinPrisonsandJailsReportedbyInmates2008-9.pdf>  
Former Prisoners  
<http://www.wcl.american.edu/endsilence/documents/BJSReportFormerPrisoners2008May2012.pdf>
- 2011-12 Prison and Jail Inmates  
<http://www.wcl.american.edu/endsilence/documents/BJSReport-PrisonandJailInmates2011-12.pdf>



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Again, the majority of what we know thanks to data collection, are about people incarcerated in prisons, jails and juvenile facilities. However, this information will be helpful to community corrections because it will allow agencies to tailor reentry needs and reintegration efforts for victims and perpetrators of sexual abuse while in custody.

## **FINDINGS:**

### **Sexual Victimization Reported by Adult Correctional Authorities, 2007-8**

- Correctional administrators reported 7,444 allegations of sexual victimization in 2008 and 7,374 allegations in 2007.
  - Total allegations of sexual victimization increased significantly between 2005 (6,241 incidents) and 2008 (7,444).
- The increase in total allegations of sexual victimization between 2005 and 2008 was largely due to prisons, where allegations increased 21%, from 4,791 incidents to 5,796.



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About 61% of incidents of staff sexual misconduct and 21% of incidents of staff sexual harassment were perpetrated by female staff in 2007-8 according to correctional authorities. A greater percentage of allegations of abusive sexual contacts and incidents of staff sexual misconduct were substantiated in local jails than in prisons.

## FINDINGS: Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12

- An estimated 4.0% of state and federal prison inmates and 3.2% of jail inmates reported experiencing one or more incidents of sexual victimization by another inmate or facility staff in the past 12 months or since admission to the facility, if less than 12 months.
- Among state and federal prison inmates, 2.0% reported an incident involving another inmate, 2.4% reported an incident involving facility staff, and 0.4% reported both an incident by another inmate and staff.
- About 1.6% of jail inmates reported an incident with another inmate, 1.8% reported an incident with staff, and 0.2% reported both an incident by another inmate and staff.



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## FINDINGS: Sexual Victimization Reported by Former State Prisoners, 2008

- 9.6% of former state prisoners reported one or more incidents of sexual victimization during the most recent period of incarceration in jail, prison, or a post-release community-treatment facility
- Among all former state prisoners, 1.8% reported experiencing one or more incidents while in a local jail, 7.5% while in a state prison, and 0.1% while in a post-release community-treatment facility.



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According to the BJS report above, former prisoners reported a wide variety of other sexual experiences with staff that were inappropriate including:

- 8.9% reported that staff had hassled or harassed them in a sexual way
- 27.9% said that staff had stared or watched them at inappropriate times (e.g., while the inmate was dressing or taking a shower)
- 13.5% said that staff had forced them to undress in their presence or had brushed against their private parts when “they did not think it was an accident or it was not required by their job.”
- 32.4% of all former inmates reported one or more of these types of experiences. While inappropriate, these lesser forms of staff sexual misconduct were not included in the analysis unless combined with reports of “willingly” or unwillingly having sex or sexual contact with staff.

Additionally, half of victims of staff sexual misconduct said they had been offered favors or special privileges; a third had been persuaded or talked into it; a quarter had been bribed or blackmailed

Other Important Findings:

- Most victims (86%) of staff sexual misconduct reported more than one incident  
The rate of inmate-on-inmate sexual victimization among former state prisoners was 3 times higher among females (13.7%) than males (4.2%)
- The rate of “willing” sexual activity with staff was higher among males (4.8%) than females (2.6%)
- 39% of male inmates who were homosexual or gay indicated they had been victimized by another inmate and 12% by staff.

- Lesbian and bisexual female former inmates had rates of staff sexual misconduct that were at least double the rate among heterosexual female former inmates.

We know that once people are released into the community, they are more likely to report sexual abuse while incarcerated— either by other inmates or staff, because they feel a level of safety they do not feel while in prison and/or jail. This will impact all community correctional agencies because they may receive the bulk of those reports.

Based on this data collection, former inmates are reporting sexual abuse while incarcerated at much higher rate than correctional authorities. This would support the notion that overall victims of sexual abuse in custody are not reporting due to fear of retaliation, mistrust of the system/ investigations etc.

**FINDINGS:**  
**The National Prison Rape Elimination  
Commission**

- 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.



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After holding hearings from 2005-2007, the National Prison Rape Elimination Commission (NPREC) published a report, including findings from those hearings and additional working groups and a set of standards for each type of confinement setting— prisons and jails (including immigration detention), lock-ups, community corrections and juvenile agencies.

**FINDINGS:**  
**The National Prison Rape Elimination  
Commission**

- 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.



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## FINDINGS: The National Prison Rape Elimination Commission

- 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.



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The National Prison Rape Elimination Commission (NPREC) found that offenders under community supervision were at risk for sexual abuse by staff and other offenders and needed a series of standards to protect them.

The Department of Justice declined to adopt a set of standards for non-residential community corrections—including pretrial release, probation, parole, or post-release supervision, determining that non-residential settings “exceeded the scope of PREA’s definitions of jail and prison, which include only ‘confinement facilit[ies].’”

Both the American Probation and Parole Association and the International Community Corrections Association, as well as a number of advocacy groups and certain former members of the NPREC, and two trade organizations, the American Probation and Parole Association and the International Community Corrections Association criticized this position stating that, “parole and probation officers play a significant role in the lives of their charges, and that such power includes the potential for abuse.”

Non-residential community settings that are implementing PREA should review the NPREC community corrections standards elements for implementation and compliance indicators for meeting the spirit of PREA.

[http://www.wcl.american.edu/endsilence/documents/NPREC\\_CommunityCorrectionStandards.pdf](http://www.wcl.american.edu/endsilence/documents/NPREC_CommunityCorrectionStandards.pdf)

## **FINDINGS: Prevalence and RIA National PREA Standards (p 10-11)**

- In 2008, more than 209,400 persons were victims in prison, jails and juvenile facilities
- At least 78,500 prison and jail inmates and 4,300 youth in juvenile facilities were victims of the most serious forms of sexual abuse



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On May 17, 2012, The US Department of Justice published the Regulatory Impact Assessment defining the anticipated costs of full nationwide compliance with the final PREA Standards, as well as the benefits of reducing the prevalence of prison rape as required by Executive Orders 13563 and 12866. These findings are important because the RIA assesses, and monetizes to the extent feasible, the benefits of combating rape and sexual abuse in America's prisons, jails, lockups, community confinement facilities (CCFs), and juvenile facilities, and the costs of full nationwide compliance with the Attorney General's national standards under the Prison Rape Elimination Act (PREA). These are findings from the Department of Justice regarding prevalence of sexual abuse as defined by the RIA report and work done regarding the cost of the standards. This is a much higher number than BJS reported in the same year.

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

# THE NATIONAL PREA STANDARDS

**28 CFR Part 115: National Standards to Prevent, Detect, and Respond to Prison Rape  
Subpart C—Standards for Community Confinement Facilities**

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



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## Adoption and Effect of National Standards

- One year after National Prison Rape Elimination Commission issues report-- AG publishes 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



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The work of the National Prison Rape Elimination Commission (NPREC) work included hearings and standards.

Transcripts from these hearings and a full copy of the report can be found at:  
<http://www.wcl.american.edu/endsilence/nprecommission.cfm>

# The National PREA Standards

## Subpart C

### Standards for Community Confinement Facilities

#### Prevention Planning

- Zero tolerance of sexual abuse and sexual harassment; PREA coordinator. [115.211]
- Contracting with other entities for the confinement of residents. [115.212]
- Supervision and monitoring. [115.213]
- Limits to cross-gender viewing and searches. [115.215]
- Residents with disabilities and residents who are limited English proficient. [115.216]
- Hiring and promotion decisions. [115.217]
- Upgrades to facilities and technologies. [115.218]



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#### SAMPLE STANDARDS:

##### § 115.211 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.

- (a) An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct.
- (b) An agency shall employ or designate an upper-level, agency-wide PREA coordinator, with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its community confinement facilities.

##### § 115.213 Supervision and monitoring.

- (a) For each facility, the agency shall develop and document a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect residents against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, agencies shall take into consideration:

- (1) The physical layout of each facility;
- (2) The composition of the resident population;
- (3) The prevalence of substantiated and unsubstantiated incidents of sexual abuse;

and

- (4) Any other relevant factors.

- (b) In circumstances where the staffing plan is not complied with, the facility shall document and justify all deviations from the plan.

- (c) Whenever necessary, but no less frequently than once each year, the facility shall assess, determine, and document whether adjustments are needed to:

- (1) The staffing plan established pursuant to paragraph (a) of this section;

- (2) Prevailing staffing patterns;
- (3) The facility's deployment of video monitoring systems and other monitoring technologies; and
- (4) The resources the facility has available to commit to ensure adequate staffing levels.

**§ 115.217 Hiring and promotion decisions.**

- (a) The agency shall not hire or promote anyone who may have contact with residents, and shall not enlist the services of any contractor who may have contact with residents, who—
  - (1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. § 1997);
  - (2) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or
  - (3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.
- (b) The agency shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with residents.
- (c) Before hiring new employees who may have contact with residents, the agency shall:
  - (1) Perform a criminal background records check; and
  - (2) Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.
- (d) The agency shall also perform a criminal background records check before enlisting the services of any contractor who may have contact with residents.
- (e) The agency shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with residents or have in place a system for otherwise capturing such information for current employees.
- (f) The agency shall also ask all applicants and employees who may have contact with residents directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.
- (g) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.
- (h) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

# The National PREA Standards

## Subpart C

## Standards for Community Confinement Facilities

### **Responsive Planning**

- Evidence protocol and forensic medical examinations. [115.221]
- Policies to ensure referrals of allegations for investigations. [115.222]

### **Training and Education**

- Employee training. [115.231]
- Volunteer and contractor training. [115.232]
- Resident education. [115.233]
- Specialized training: Investigations. [115.234]
- Specialized training: Medical and mental health care. [115.235]



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### **SAMPLE STANDARDS:**

#### **§ 115.222 Policies to ensure referrals of allegations for investigations.**

- (a) The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.
- (b) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The agency shall publish such policy on its website or, if it does not have one, make the policy available through other means. The agency shall document all such referrals.
- (c) If a separate entity is responsible for conducting criminal investigations, such publication shall describe the responsibilities of both the agency and the investigating entity.
- (d) Any State entity responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in community confinement facilities shall have in place a policy governing the conduct of such investigations.
- (e) Any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in community confinement facilities shall have in place a policy governing the conduct of such investigations.

#### **§ 115.231 Employee training.**

- (a) The agency shall train all employees who may have contact with residents on:
  - (1) Its zero-tolerance policy for sexual abuse and sexual harassment;
  - (2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
  - (3) Residents' right to be free from sexual abuse and sexual harassment;

- (4) The right of residents and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
- (5) The dynamics of sexual abuse and sexual harassment in confinement;
  - (6) The common reactions of sexual abuse and sexual harassment victims;
  - (7) How to detect and respond to signs of threatened and actual sexual abuse;
  - (8) How to avoid inappropriate relationships with residents;
  - (9) How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming residents; and
- (10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.
- (b) Such training shall be tailored to the gender of the residents at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male residents to a facility that houses only female residents, or vice versa.
- (c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide each employee with refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures. In years in which an employee does not receive refresher training, the agency shall provide refresher information on current sexual abuse and sexual harassment policies.
- (d) The agency shall document, through employee signature or electronic verification, that employees understand the training they have received.

**§ 115.233 Resident education.**

- (a) During the intake process, residents shall receive information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment, how to report incidents or suspicions of sexual abuse or sexual harassment, their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.
- (b) The agency shall provide refresher information whenever a resident is transferred to a different facility.
- (c) The agency shall provide resident education in formats accessible to all residents, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled as well as residents who have limited reading skills.
- (d) The agency shall maintain documentation of resident participation in these education sessions.
- (e) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to residents through posters, resident handbooks, or other written formats.

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**Screening for Risk of Sexual Victimization and Abusiveness**

- Screening for risk of victimization and abusiveness. [115.241]
- Use of screening information. [115.242]

**Reporting**

- Resident reporting. [115.251]
- Exhaustion of administrative remedies. [115.252]
- Resident access to outside confidential support services. [115.253]
- Third-party reporting. [115.254]



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**SAMPLE STANDARDS:**

**§ 115.242 Use of screening information.**

- (a) The agency shall use information from the risk screening required by § 115.241 to inform housing, bed, work, education, and program assignments with the goal of keeping separate those residents at high risk of being sexually victimized from those at high risk of being sexually abusive.
- (b) The agency shall make individualized determinations about how to ensure the safety of each resident.
- (c) In deciding whether to assign a transgender or intersex resident to a facility for male or female residents, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the resident's health and safety, and whether the placement would present management or security problems.
- (d) A transgender or intersex resident's own views with respect to his or her own safety shall be given serious consideration.
- (e) Transgender and intersex residents shall be given the opportunity to shower separately from other residents.
- (f) The agency shall not place lesbian, gay, bisexual, transgender, or intersex residents in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such residents.

**§ 115.251 Resident reporting.**

- (a) The agency shall provide multiple internal ways for residents to privately report sexual abuse and sexual harassment, retaliation by other residents or staff for reporting sexual

abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

- (b) The agency shall also inform residents of at least one way to report abuse or harassment to a public or private entity or office that is not part of the agency and that is able to receive and immediately forward resident reports of sexual abuse and sexual harassment to agency officials, allowing the resident to remain anonymous upon request.
- (c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.
- (d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of residents.

§ 115.254 Third-party reporting.

The agency shall establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of a resident.

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**Official Response Following a Resident Report**

- Staff and agency reporting duties. [115.261]
- Agency protection duties. [115.262]
- Reporting to other confinement facilities. [115.263]
- Staff first responder duties. [115.264]
- Coordinated response. [115.265]
- Preservation of ability to protect residents from contact with abusers. [115.266]
- Agency protection against retaliation. [115.267]



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**SAMPLE STANDARDS:**

**§ 115.263 Reporting to other confinement facilities.**

- (a) Upon receiving an allegation that a resident was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred.  
(b) Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.  
(c) The agency shall document that it has provided such notification.  
(d) The facility head or agency office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.

**§ 115.264 Staff first responder duties.**

- (a) Upon learning of an allegation that a resident was sexually abused, the first security staff member to respond to the report shall be required to:
- (1) Separate the alleged victim and abuser;
  - (2) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;
  - (3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and
  - (4) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes,

urinating, defecating, smoking, drinking, or eating.

(b) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence and then notify security staff.

**§ 115.267 Agency protection against retaliation.**

(a) The agency shall establish a policy to protect all residents and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other residents or staff and shall designate which staff members or departments are charged with monitoring retaliation.

(b) The agency shall employ multiple protection measures, such as housing changes or transfers for resident victims or abusers, removal of alleged staff or resident abusers from contact with victims, and emotional support services for residents or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

(c) For at least 90 days following a report of sexual abuse, the agency shall monitor the conduct and treatment of residents or staff who reported the sexual abuse and of residents who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by residents or staff, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any resident disciplinary reports, housing, or program changes, or negative performance reviews or reassessments of staff. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

(d) In the case of residents, such monitoring shall also include periodic status checks.

(e) If any other individual who cooperates with an investigation expresses a fear of retaliation, the agency shall take appropriate measures to protect that individual against retaliation.

(f) An agency's obligation to monitor shall terminate if the agency determines that the allegation is unfounded.

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**Investigations**

- Criminal and administrative agency investigations. [115.271]
- Evidentiary standard for administrative investigations. [115.272]
- Reporting to residents. [115.273]

**Discipline**

- Disciplinary sanctions for staff. [115.276]
- Corrective action for contractors and volunteers. [115.277]
- Disciplinary sanctions for residents. [115.278]



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**SAMPLE STANDARDS:**

**§ 115.271 Criminal and administrative agency investigations.**

- (a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.
- (b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to § 115.234.
- (c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.
- (d) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.
- (e) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as resident or staff. No agency shall require a resident who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.
- (f) Administrative investigations:
- (1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and
  - (2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.

- (g) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.
- (h) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.
- (i) The agency shall retain all written reports referenced in paragraphs (f) and (g) of this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.
- (j) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.
- (k) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.
- (l) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

**§ 115.278 Disciplinary sanctions for residents.**

- (a) Residents shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the resident engaged in resident-on-resident sexual abuse or following a criminal finding of guilt for resident-on-resident sexual abuse.
- (b) Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the resident's disciplinary history, and the sanctions imposed for comparable offenses by other residents with similar histories.
- (c) The disciplinary process shall consider whether a resident's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.
- (d) If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to require the offending resident to participate in such interventions as a condition of access to programming or other benefits.
- (e) The agency may discipline a resident for sexual contact with staff only upon a finding that the staff member did not consent to such contact.
- (f) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.
- (g) An agency may, in its discretion, prohibit all sexual activity between residents and may discipline residents for such activity. An agency may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

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**Subpart C**  
**Standards for Community Confinement Facilities**

**Medical and Mental Care**

- Access to emergency medical and mental health services. [115.282]
- Ongoing medical and mental health care for sexual abuse victims and abusers. [115.283]

**Data Collection and Review**

- Sexual abuse incident reviews. [115.286]
- Data collection. [115.287]
- Data review for corrective action. [115.288]
- Data storage, publication, and destruction. [115.289]

**Audits**

- Audits of standards. [115.293] pursuant to §§ 115.401-405.



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**SAMPLE STANDARDS:**

**§ 115.282 Access to emergency medical and mental health services.**

- (a) Resident victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.
- (b) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim pursuant to § 115.262 and shall immediately notify the appropriate medical and mental health practitioners.
- (c) Resident victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.
- (d) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

**§ 115.286 Sexual abuse incident reviews.**

- (a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.
- (b) Such review shall ordinarily occur within 30 days of the conclusion of the investigation.
- (c) The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.
- (d) The review team shall:
  - (1) Consider whether the allegation or investigation indicates a need to change

policy or practice to better prevent, detect, or respond to sexual abuse;

(2) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;

(3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;

(4) Assess the adequacy of staffing levels in that area during different shifts;

(5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and

(6) Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1)-(d)(5) of this section, and any recommendations for improvement, and submit such report to the facility head and PREA compliance manager.

(e) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.

#### § 115.288 Data review for corrective action.

(a) The agency shall review data collected and aggregated pursuant to § 115.287 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including:

(1) Identifying problem areas;

(2) Taking corrective action on an ongoing basis; and

(3) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.

(b) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.

(c) The agency's report shall be approved by the agency head and made readily available to the public through its website or, if it does not have one, through other means.

(d) The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.

#### § 115.401 Frequency and scope of audits.

(a) During the three-year period starting on August 20, 2013 and during each three-year period thereafter, the agency shall ensure that each facility operated by the agency, or by a private organization on behalf of the agency, is audited at least once.

(b) During each one-year period starting on August 20, 2013 the agency shall ensure that at least one-third of each facility type operated by the agency, or by a private organization on behalf of the agency, is audited.

(c) The Department of Justice may send a recommendation to an agency for an expedited audit if the Department has reason to believe that a particular facility may be experiencing problems relating to sexual abuse. The recommendation may also include referrals to resources that may assist the agency with PREA-related issues.

(d) The Department of Justice shall develop and issue an audit instrument that will provide guidance on the conduct of and contents of the audit.

(e) The agency shall bear the burden of demonstrating compliance with the standards.

(f) The auditor shall review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility type.

- (g) The audits shall review, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period.
- (h) The auditor shall have access to, and shall observe, all areas of the audited facilities.
- (i) The auditor shall be permitted to request and receive copies of any relevant documents (including electronically stored information).
- (j) The auditor shall retain and preserve all documentation (including, e.g., video tapes and interview notes) relied upon in making audit determinations. Such documentation shall be provided to the Department of Justice upon request.
- (k) The auditor shall interview a representative sample of inmates, residents, and detainees, and of staff, supervisors, and administrators.
- (l) The auditor shall review a sampling of any available videotapes and other electronically available data (e.g., Watchtour) that may be relevant to the provisions being audited.
- (m) The auditor shall be permitted to conduct private interviews with inmates, residents, and detainees.
- (n) Inmates, residents, and detainees shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel.
- (o) Auditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.

## SCOPE: Provisions Specific to Community Corrections

- Standards only apply to “community confinement facilities,” defined as:
  - A community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential re-entry centers) in which offenders or defendants reside as part of a term of imprisonment or as a condition of pre-trial release or post-release supervision, while participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during nonresidential hours.

- (28 CFR Part 115 §115.5)



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### Scope of Standards: Pretrial Release, Probation, Parole, and Related Programs

In the proposed rule, the Department declined to adopt the NPREC’s recommendation that the Department adopt a set of standards for community corrections, which the NPREC had recommended defining as follows: “Supervision of individuals, whether adults or juveniles, in a community setting as a condition of incarceration, pretrial release, probation, parole, or post-release supervision. These settings would include day and evening reporting centers.” The Department determined that to the extent this definition included supervision of individuals in a non-residential setting, it exceeded the scope of PREA’s definitions of jail and prison, which include only “confinement facilit[ies].” 42 U.S.C. 15609(3), (7). Accordingly, the proposed rule did not reference community corrections, but instead proposed adopting a set of standards for “community confinement facilities,” defined as a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential re-entry centers) in which offenders or defendants reside as part of a term of imprisonment or as a condition of pre-trial release or post-release supervision, while participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during nonresidential hours.

Several commenters criticized the proposed rule for excluding individuals who are not incarcerated but are subject to pretrial release, probation, parole, or post-release supervision. These commenters included advocacy groups, certain former members of the NPREC, and two trade organizations, the American Probation and Parole Association and the International Community Corrections Association. Commenters observed that parole and probation officers play a significant role in the lives of their charges, and that such power includes the potential for abuse. Some suggested that the Department should adopt all of the NPREC’s recommendations with regard to pretrial release,

probation, parole, or post-release supervision, while others proposed including only certain training requirements related to handling disclosures of sexual abuse and avoiding inappropriate relationships with probationers and parolees.

The final rule does not include these suggested changes and instead retains the definition quoted above. The Department recognizes, of course, that staff involved in pretrial release, probation, parole, or post-release supervision exert great authority. The same is true, however, of numerous other government officials, including police officers who operate in the community, law enforcement investigators, and certain categories of civil caseworkers. While any abuse by law enforcement officials or other government agents is reprehensible, PREA appropriately addresses the unique vulnerability of incarcerated persons, who literally cannot escape their abusers and who lack the ability to access community resources available to most victims of sexual abuse.

One commenter observed that PREA defines “prison rape” as including “the rape of an inmate in the actual or constructive control of prison officials,” 42 U.S.C. 15609(8), and suggested that a probationer or parolee should be considered to be under the constructive control of correctional officials. This suggestion, however, neglects the statute’s definition of “inmate” as “any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.” 42 U.S.C. 15609(2). An inmate by definition is “incarcerated or detained in [a] facility”; the inclusion of inmates who are “under the constructive control of correctional officials” presumably refers to inmates who are temporarily supervised by others, such as inmates on work details. Furthermore, the reference to parole, probation, and related programs in the definition of “inmate” indicates that only a person who “violate[s] . . . the terms and conditions” of such a program, rather than any person who is subject to such terms and conditions, qualifies as an inmate. Indeed, with the exception of an unrelated grant program to safeguard communities, the statute makes no other reference to parole, probation, pretrial release, or diversionary programs.

The same commenter noted that PREA instructed the NPREC to recommend to the Attorney General national standards on, in addition to specifically enumerated topics, “such other matters as may reasonably be related to the detection, prevention, reduction, and punishment of prison rape.” 42 U.S.C. 15606(e)(2)(M). The Department agrees with the commenter that this language, by extension, provides the Attorney General with a broad scope of authority to combat sexual abuse in confinement facilities. However, this language does not necessitate the adoption of standards to govern probation, parole, pretrial release, or diversionary programs. To be sure, former inmates may report to a parole officer sexual abuse that occurred while they were in a confinement facility. However, former inmates—unlike current inmates—generally possess ample ability to report abuse through the same channels as any other person living in the community.

Still, the Department encourages probation and parole departments to take active steps to ensure that any information they learn about sexual abuse in confinement facilities is transmitted to law enforcement authorities or correctional agencies, as appropriate. The Department recommends that such departments train their officers as needed to facilitate proper investigation of allegations.

Finally, one commenter suggested that probation departments should be included because some probation departments operate residential facilities, including juvenile detention facilities. No change is warranted, because the proposed rule already included any agency that operates residential facilities. For example, to the extent that a probation department operates a juvenile detention facility, it is

covered by the Standards for Juvenile Facilities, § 115.311 et seq.

CITATION: Department of Justice 28 C.F.R § 115. (2012) at 164 at 15-17

## But.....

- Sexual abuse of offenders on probation and parole happens
  - Covered in the news and in civil litigation
- State criminal laws and constitutional protections existing prior to the passage of PREA **still** apply in probation and parole settings
  - Staff should be aware of what elements of PREA and the national standards apply to them, their job and policies and practices within the agency
- Inmates released into community supervision– including probation and/or parole– often report sexual abuse that occurred in prisons or jails
  - Staff in probation and parole departments need to be knowledgeable about the impact of the standards on their jobs.



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You can view a side by side comparison of the NPREC and final promulgated standards at:  
[http://www.wcl.american.edu/endsilence/documents/PREAStandardsComparisonChart\\_CommunityCorrectionsMay2012.pdf](http://www.wcl.american.edu/endsilence/documents/PREAStandardsComparisonChart_CommunityCorrectionsMay2012.pdf)

## **Recommendations for Non-residential Settings**

- Have a zero tolerance policy for sexual abuse of offenders
- Make hiring and promotion decisions based on the prescribed PREA standards
- Provide PREA training for all staff, volunteers, contractors and offenders
- Investigate all allegations of sexual abuse and harassment
- Help offenders find medical and mental health care in the community as needed



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Zero tolerance policy 115.211

Hiring and promotion decisions 115.217

Training 115.223-115.233

Investigations 115.221-115.222 and 115.271-115.273

Medical and mental health care 115.253 and 115.282-115.283

## **Recommendations for Non-residential Settings**

- Have reporting policies that allow for multiple reporting points both inside and outside of the agency
- Have a policy outlining reporting duties if an offender reports they were sexually abused in a facility
- Provide consistent discipline for staff who engage in sexual abuse of offenders
- Collect and analyze data and make changes to policies and procedures accordingly



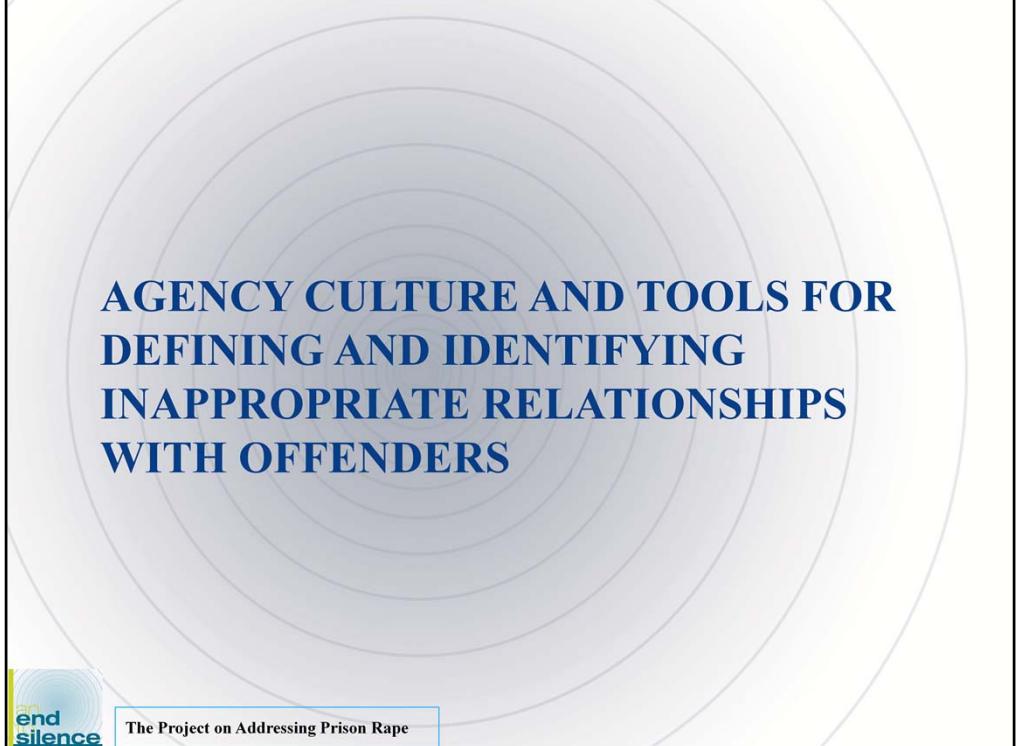
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Reporting policies 115.254, 115.261, 115.263, 115.273

First responder duties 115.264

Discipline 115.276-115.277

Data collection and review 115.286-115.289



## **AGENCY CULTURE AND TOOLS FOR DEFINING AND IDENTIFYING INAPPROPRIATE RELATIONSHIPS WITH OFFENDERS**



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Agency culture the sum of an organization's attitudes, values, norms, beliefs, prejudices, history, personalities and ethics of staff — both past and present. It is the organization's character and the way it does business. In an unhealthy organization, inappropriate relationships between staff and offenders, including sexual misconduct, may be both ignored or accepted and thus reinforced as part of the culture of an agency. Changing the way an agency manages inappropriate relationships between staff and offenders can mean changing the culture of that agency.

# Agency Culture

There are often two types of culture:

- Ideal: values held in principle, such as an organization's mission statement, policies and procedures, formal incentives and sanctions.
- Real: way the agency actually works, the hidden, informal chain of command, how things get done and who has the power and leadership.



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## Agency Culture

Influences on the culture of an agency include:

- history and critical events that happen within an agency and how they are interpreted
- hiring process
- promotional process
- disciplinary process
- role played by middle management



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## Agency Culture

- physical environment
- behavior of management with staff
- tone and style of leadership
- interactions and dynamics between staff and with offenders
- interactions and dynamics between offenders
- political support or lack thereof



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# The Culture of Community Corrections

- Principles
  - Do no harm
  - Off duty conduct
  - Managing the aftermath of incarceration
  - Function of community corrections



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Staff can be vulnerable because of role ambiguity. Roles that community correctional staff often fill include:

Monitor  
Intervention  
Control  
Treatment  
Supervision  
Reintegration

Because they function in a number of ways, as discussed earlier, more training on boundaries may be appropriate in community settings.

## The Impact of Culture: Code of Silence

What is the “Code of Silence”?

- A code of silence is when a person opts to withhold what is believed to be vital or important information voluntarily or involuntarily.
- A shroud of secrecy, agreement to keep quiet.
- The code of silence is usually either kept because of threat of force, or danger to oneself, or being branded as a traitor or an outcast within the unit or organization



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**Baron v. Hickey, 242 F. Supp. 2d. 66 (D. Mass. 2003)**

The Facts:

Baron, a corrections officer in Suffolk County House of Correction, witnessed a supervisor playing cards with inmates, a violation of facility policy

Baron filed a report, and the supervisor was suspended

Baron claimed that he was ostracized and harassed

Defaming posters claiming Baron watched child pornography; threatening phone calls; smeared feces on his car; slashed tires.

Hickey, another corrections officer, was the ring leader of the harassment

Called him a “rat-fink” and threw cheese at him

“low down Jewish rat bastard coward”

Baron verbally complained on 30 separate occasions and submitted 20 reports in writing

Hickey was ordered to cease harassment, but not discipline

A supervisor told Baron to “be a man”

Baron was charged, and acquitted of indecent assault and battery

Baron suspended for five days for giving food to a female inmate

He was to be suspended for 20 days for submitting an inmate communication

directly to the Boston Police rather than his supervisor, but resigned before the suspension was to take place

Legal Claims:

42 U.S.C. § 1983

First Amendment

Due Process

State law claims

Holding:

The supervisors' tolerance of harassment was a "matter of public concern," sufficient to satisfy a First Amendment claim

Jury awards Baron \$500,000 for severe harassment

Affirmed 402 F.3d 225 (1st Cir.(Mass.))

<http://law.justia.com/cases/federal/appellate-courts/F3/402/225/510084>

## Tools: Red Flags

What is a “red flag” and why is it important?

- A warning signal.
- Something that demands attention or provokes an irritated reaction.
- Red flags are actions, words, situations or settings that should warn a person that something may be wrong.



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Activity: Can you identify the red flags in this situation?

Emily, the only female intern working on unit 4, came to work early on a Friday to work on some programming she was planning. This was the fourth day that week she came in early and worked late. She had appointments with four residents set up that day for review of discipline files. Each appointment took about 15 minutes.

As usual, she kept her office door open during those appointments. The fifth resident appointment took an hour and the door was closed. This particular resident had been in her office each day this week and she was unusually attentive to him when she was out on the unit. She always asked the unit advisor about this resident and his progress, even though he was not on her case load.

When questioned about her unusual work hours and specific interest in this resident, she responded that she was fighting a lot with her husband and did not want to be home much. She said her interest in this particular resident was because they were from the same neighborhood and she knew his sister.

The resident when questioned about his relationship with Emily revealed that he knew her phone number and that she had confided in him that she was thinking of getting a divorce. The resident stated that she looked sad one day and noticed that she did not interact with any other staff because they were all men. The resident thought he could be her friend.

## **Red Flags for Identifying Staff Sexual Misconduct**

- Over-identifying with any offender or their issues (i.e., blind to offender's actions)
- Offender knows personal information about staff
- Offender has letters or photos of staff
- Staff granting special requests or showing favoritism
- Offender in unauthorized area or repeatedly out of their assigned space



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## Red Flags for Identifying Staff Sexual Misconduct

- Staff spending an unexplainable amount of time with a offender
- Staff taking offender out of cell/ housing space at unusual times
- Staff in personal crisis (divorce, ill health, bankruptcy, death in family)
- Overheard conversations between staff and offender which is sexualized in nature, or refers to the physical attributes of staff or offender



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Answers from activity (page 57)

1. Unusual amount of office visits by an offender
2. Employee is isolated from other employees
3. Employee is in personal crisis
4. Employee is consistently working overtime
5. Employee is overly concerned about a particular offender
6. Employee is discussing personal information with an offender
7. Employee is involved with an offender's family
8. Closed door

## **Red Flags for Identifying Offender on Offender Sexual Abuse**

- Refusal to shower, eat or be in certain less supervised areas
- Self abuse or suicidal behaviors
- Withdrawing or isolating themselves
- Increased medical complaints and attention seeking
- Uncharacteristic acting out in an effort to facilitate transfer



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## **Red Flags for Identifying Offender on Offender Sexual Abuse**

- Letters between offenders
- Change in hygiene habits
- Exchanging food or other goods
- Missed/ rearranged appointments
- Missing work
- Being late for appointments
- Drama or fighting
- Threats of harm



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## **Red Flags for Identifying Offender on Offender Sexual Abuse**

- Verbal harassment
- Grooming of potential victims
- Blatant sexual harassment
- Prior history of sexual abuse
- Past victimization
- Difficulty controlling anger
- Poor coping skills / strategies
- Voyeuristic / exhibitionistic behavior



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## Tool: Daily Dozen

Asking yourself questions can be a good “check and balance” to see if pressure is clouding or affecting your good judgment. The purpose of these self-check questions is to help correctional staff members identify when they might be getting close to crossing ethical and professional boundaries.



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## The Daily Dozen

1. Do you look forward to seeing a particular offender when you come to work?
2. Have you done anything with an offender that you would not want your family or your supervisor to know about?
3. Would you be reluctant to have a co-worker observe your behavior for an entire day?
4. Do you talk about your personal matters with offenders?
5. Do you believe you can ask an offender to do personal favors for you?
6. Have you ever received personal advice from an offender?
7. Have you said anything to an offender that you would not want tape recorded?
8. Do you have thoughts or fantasies of touching a particular offender? Does this extend to planning how you can be alone with that offender?
9. Do you think you have the right to touch an offender whenever and wherever you want to?
10. Do you look forward to sharing good/ bad news with a particular offender?
11. Do you think offenders are not allowed to say “no” to you, no matter what you ask?
12. Have you ever allowed an offender to talk to you about sexual experiences or sexual fantasies, or to tell sexual jokes in your presence? Have you ever shared these things with an offender?



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Developed by: Teena Farmon, a former warden and a national expert on staff sexual misconduct.

## Tool: Ethics

Ethics are the knowledge and guidelines used to make decisions based on a set of morals and values within a particular group. Correctional staff face many challenges that make day-to-day decisions difficult. Making ethical decisions are sometimes even harder.

- In order to make an ethical decision it helps to:
  - define the dilemma you are having
  - gather data and information about the dilemma
  - list the “pros and cons” if you make a decision either way
  - ask yourself if your choices would be considered legal
  - ask yourself if your choices feel consistent with your own values and moral compass
  - ask yourself if your choices are consistent with your agency’s mission
  - list the consequences for yourself, offenders, other staff, supervisors, administrators and the public



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Developed by the Center for Innovative Public Policy, Inc.

# Ethical Decisions

Some examples of ethical decisions you may need to make are:

- Is it ethical for me to have dinner with the family of an offender?
- Is it ethical to cover for a colleague who is experiencing some personal problems at home and behaving in a questionable manner?
- Is it ethical to accept a reduced price meal from a local diner because I am a correctional staff member?
- Is it ethical to overlook a close friend's violation of a petty department rule? Is it ethical to take a mental health day periodically?
- Is it ethical to have my car serviced at a garage where a former offender works?
- Is it ethical to tell a "little white lie" to protect a peer or colleague?
- Is it ethical to tell an offender s/he looks good or flirt if no one "gets hurt"?
- Is it ethical to find ways around departmental policy and procedures that get in the way of doing my job?
- Is it ethical to do favors for my supervisor?
- Is it ethical to do favors for an offender?



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## Ethical Decisions

To determine if the decision you have made is ethical, ask yourself:

- Was my decision based on anger, lust, peer pressure, or greed?
- Would I make the same decision if my family were standing beside me?
- Would I make the same decision if I were being videotaped or my supervisor was watching?
- Would my loved ones be ashamed of my decision?
- Can I look at myself in the mirror after the decision I made?



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## Tool: The Headline Test

Some people find applying the Headline Test is a good way to determine whether a decision may be ethical or not.

- Ask yourself, “what would a headline in a newspaper look like if they were covering this story?”
- If the headline looks or feels bad or is one you would be ashamed to show your friends or family, the decision or action is probably not a good one.



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Developed by The Project on Addressing Prison Rape

## Sample Headlines

Some headlines involving staff sexual misconduct with offenders have included:

- Parole officer from Eugene gets 10 years for sex abuse
- Feds bust parole officer in sex assault
- Probation Officer Accused of Using Blackmail For Sex
- MT probation officer sentenced for sexual assault of probationer
- Probation officer accused of sexual assault.



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Parole officer from Eugene gets 10 years for sex abuse.

<http://www.kval.com/news/local/125779103.html>

Feds bust parole officer in sex assault. [http://www.kasa.com/dpps/news/crime/feds-bust-parole-officer-in-sex-assault\\_5074641](http://www.kasa.com/dpps/news/crime/feds-bust-parole-officer-in-sex-assault_5074641)

Probation Officer Accused Of Using Blackmail For Sex.

[http://www.kktv.com/home/headlines/Probation\\_Officer\\_Arrested\\_For\\_Sexual\\_Assault\\_151786835.html](http://www.kktv.com/home/headlines/Probation_Officer_Arrested_For_Sexual_Assault_151786835.html)

MT probation officer sentenced for sexual assault of probationer. [http://www.ktvq.com/news/mt-probation-officer-sentenced-for-sexual-assault-of-probationer/#\\_](http://www.ktvq.com/news/mt-probation-officer-sentenced-for-sexual-assault-of-probationer/#_)

Probation officer accused of sexual assault.

[http://www.qcitymetro.com/news/articles/probation\\_officer\\_accused\\_of\\_sexual\\_assault103310815.cfm](http://www.qcitymetro.com/news/articles/probation_officer_accused_of_sexual_assault103310815.cfm)

# **POLICY CONSIDERATIONS AND OPERATIONAL PRACTICES**



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What in general makes for a good policy?

- Clear and inclusive definitions
- Clear and inclusive responsibilities for staff
- Clear and inclusive procedures
- Reporting points for others (volunteers, family members etc.)
- Clear sanctions for not following policy
- Periodic review of policies by interdisciplinary group

Policies v. directives

- Policies are rigid—departmental policies with numbers on it
- When we use the word policy it may mean a statute
- Procedures and directives are what happens—what you do

Does your facility practice differ from your policies and directives? Is there an “informal” procedure/practice at play?

## Policies Needed to Address Sexual Abuse in Community Corrections

### Policies relevant to staff

- Sexual assault and harassment (of offenders/youth and other staff)
- Ethics and Codes of Conduct
- Anti-fraternization
- Human Resources– pre and post employment
- Investigations
- Reporting

### Policies relevant to offenders

- Classification and housing (residential only)
- Medical and mental health
- Sexual behavior
- Sexual Assault Response Teams (SART)
- Investigations
- Grievance
- LGBTI



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Definitions in terms of context are important. Sometimes definitions in state statutes do not match PREA definitions. PREA Standards are the floor– state law may provide greater protection– if they do that is the framework you are working in. Preamble to the standards makes clear that PREA is not a safe harbor. States and agencies must comply with PREA, but may have other obligations that may not be covered by PREA.

# Elements of Effective PREA Policies

- Zero tolerance statement
- Definitions
- Applicability
- Data collection
- Division responsibilities
- Standard operating procedures
- Staff and offender/ youth training
- Prevention and detection efforts
- Signage, brochures, info
- Interagency cooperation
- Monitoring culture
- SART
- Safety of vulnerable populations
- Victim safety and support
- Medical and mental health
- Timelines for responses
- Investigative responsibility and procedure
- Reporting
- Training



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## Policy decisions include:

- What actions to include
- Responsibility assignments and timeframes
- Reporting structures
- Safety v. confidentiality
- Discipline
- After action report and review
- Data collection

## Challenges for community corrections in implementing PREA policies could include:

- Leadership: Role modeling behaviors and commitment
- Culture and history: unions and employee groups, external partners and external interest groups as well as past attempts to address sensitive issues
- Practices being “in synch” with policy
- How to address ongoing mental health care of offenders
- Implementing gender responsive strategies (women/ girls, men/boys and LGBTI)
- Attitudes and beliefs of staff (personal, religious, biases)
- Defining internal and external roles
- Ability to conduct thorough investigations

## Important Policies to Consider

- Anti-fraternization
- No contact policies and the role of technological advancement
  - myspace, facebook, twitter, instagram, online chats
- Reporting
- Disclosure
- Conditions of Employment



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These are other important policies that can and often do help community agencies address sexual abuse.

## Key Operational Components

- Everyone needs to be involved in this process
- Consider departmental and staff roles and responsibilities as it relates to PREA compliance
- Look at all policies and procedures that affect compliance with the standards



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PREA is a large endeavor and while it is advisable for agencies to appoint PREA coordinators and/or monitors, the implementation of PREA standards in any given agency is the responsibility of the entire agency. Involvement from the following will be imperative to full PREA Implementation:

**Internal:**

Agency leadership  
General counsel  
Policy staff  
Investigators  
Medical and mental health care representatives  
Training staff  
PREA coordinators/ monitors  
Classification staff  
Case/ social workers  
Human resources representatives  
EAP representatives  
Staff who review and monitor contracts

**External:**

Law enforcement  
Prosecutors  
Union representatives  
Community advocates

## **Operationalizing PREA for Community Corrections: Prevention**

- Prevention:
  - Implement effective policies to address PREA efforts
  - Have appropriate supervision of offenders
  - Monitor staff interactions with offenders and monitor interactions between offenders
  - Implement hiring and promotion policies and procedures that will not allow people with past abusive histories to supervise offenders



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Zero tolerance policy: 115.211

Supervision and monitoring: 115.213

Hiring and promotion: 115.217

## **Operationalizing PREA for Community Corrections: Prevention**

- Prevention
  - Train all staff, offenders and volunteers/contractors about your policy and identifying and reporting sexual abuse
  - Utilize effective screening tools for offenders to identify likely victims and aggressors
  - Have multiple mechanisms for staff, offenders and the community to report sexual abuse and publicize these mechanisms to all parties



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Training: 115.231-115.233

Screening: 115.241-115.242

Reporting: 115.251 and 115.254

## **Operationalizing PREA for Community Corrections: Prevention**

- Prevention
  - Train staff on the expectations and procedures first responders will need to follow
  - Implement reporting procedures and provide training for all staff on how to respond to offenders' allegations of sexual abuse in a previous confinement setting.
  - Implement procedures to protect staff and offenders from retaliation



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First Responders: 115.2264

Reporting allegations: 115.263

Protection from retaliation: 115.267

## **Operationalizing PREA for Community Corrections: Response**

- Responding to Sexual Abuse Incidents:
  - Refer all allegations for investigation—administrative and criminal
  - Investigate all allegations
  - Provide forensic medical examinations when appropriate



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Referral for investigation: 115.222

Investigations: 115.271

Forensic medical exams: 115.221

## **Operationalizing PREA for Community Corrections: Response**

- Responding to Sexual Abuse Incidents Continued:
  - Offer immediate and ongoing medical and mental health care meeting the community level of care, including offering access to resources in the community such as rape crisis counselors
  - Discipline staff and offenders administratively according to agency's policies and procedures and refer for criminal prosecution when appropriate



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Medical and mental health care: 115.282-115.283

Discipline: 115.276-115.278

## **Operationalizing PREA for Community Corrections: Aftermath**

- Follow-up to Sexual Abuse Incidents:
  - Collect data from all allegations of sexual abuse, both those that happen within the community setting and those reported from prisons, jails or other confinement settings
  - Review policies and procedures often to determine if they are meeting the agency's needs
  - Complete sexual abuse incident reviews in accordance with the standards to analyze how the agency responds to reports of sexual abuse



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Data collection: 115.287 and 115.289

Incident reviews: 115.286 and 115.288

# **REPORTING AND DUTIES OF FIRST RESPONDERS**



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## **Elements of effective reporting structures include:**

1. Multiple avenues for reporting— including receiving third-party reports
2. Procedure for reporting for staff and offenders/ youth
3. Methods for reporting including writing, anonymous, 800 lines, verbal report to staff, community reporting
4. Reporting requirements
5. Inclusions in report
6. Record keeping

Community corrections staff will play an integral role in reporting sexual abuse that occurs in custody. Sexual abuse that occurs in community settings. it is also important to understand and train staff for their role in reporting sexual abuse within other confinement settings. Based on findings by both the National Prison Rape Elimination Commission, anecdotal evidence and statements made by formerly incarcerated individuals, many offenders will not report sexual abuse that occurred in prison or jail until they are on community supervision. This means that community corrections staff including probation and parole officers may serve as first responders and will have to determine how, when and to whom to report abuse allegations from offenders.

# Mandatory Reporting

- Mandatory reporting laws require certain individuals to report cases of physical or sexual abuse committed against children and vulnerable adults.
- Two types of statutes:
  - Child abuse
  - Vulnerable persons



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## § 115.251: Resident reporting

- (a) The agency shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.
- (b) The agency shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request. Inmates detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.
- (c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.
- (d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of inmates.

## § 115.261: Staff and Agency Reporting Duties

- (a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
- (d) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

# Mandatory Reporting

- Child Abuse Reporting Statutes – Reporters
  - Seven states specifically include “corrections officials” as mandatory reporters
  - Three states explicitly identify staff of juvenile detention centers as mandatory reporters.
  - Several states include probation and parole officers within the list of those required
  - A significant number of states classify “police officers,” “peace officers,” or “law enforcement officers” as mandatory reporters.



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# Mandatory Reporting

- Vulnerable Adult Abuse Reporting Statutes – Reporters
  - 8 states exclude correctional staff from their adult mandatory reporting statutes
  - New York does not have a mandatory reporting statute for adults
  - North Dakota's statute permits, but does not require, reporting
- Florida, Missouri, and South Carolina also have specific duty to report clauses from whom under their staff sexual misconduct laws in addition to their mandatory reporting laws



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While community corrections staff may not be mandatory reporters of sexual abuse, the PREA Standards require community correctional agencies to report sexual abuse that happens in another facility.

## § 115.263 Reporting to other confinement facilities.

- (a) Upon receiving an allegation that a resident was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred.
- (b) Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.
- (c) The agency shall document that it has provided such notification.
- (d) The facility head or agency office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.

Additionally, while it is not a specific standard for probation and parole officers, it could be beneficial to community agencies to train staff on the reporting structure and timeline for sexual abuse allegations made by offenders.

# State Specific Statutes

- **Parole & Probation Officers**
  - Hawaii, Massachusetts, Missouri, Nevada, Guam, Virgin Islands
- ***“Any Person with Cause”***
  - Kentucky, Louisiana, New Mexico, Tennessee, Wyoming
- **Employees or Administrators of the State**
  - Illinois, Pennsylvania
- **Gains Information in Scope of Employment**
  - Texas



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[http://www.wcl.american.edu/endsilence/documents/FiftyStateSurveyofMandatoryReporting\\_2012U  
pdate.pdf](http://www.wcl.american.edu/endsilence/documents/FiftyStateSurveyofMandatoryReporting_2012Update.pdf)  
(Use a variety of language to cover community corrections actors duties to report.)

## State Specific Statutes

- **Criminal Justice Employees**
  - Florida, South Dakota
- **Law Enforcement Officers, Personnel, or Peace Officers**
  - Arizona, Arkansas, Colorado, Georgia, Iowa, Kansas, Michigan, Minnesota, Montana, Nebraska, New Hampshire, Ohio, Oklahoma, Virginia, Washington, West Virginia
- **Elderly, Incapacitated or Disabled Adults**
  - California, Delaware, Indiana, Maine, North Carolina, Oregon, Rhode Island, South Carolina, Utah, Puerto Rico



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## Receiving a Report: First Responders in Community Corrections

- Source of Reports:
  - Other offenders
  - Family members
  - Living unit staff
  - Probation or parole officers
  - Medical and/ or mental health staff
  - Contractors
  - Work supervisors— both off and on site
  - Volunteers
  - Religious personnel
  - Staff not supervising the offender
  - Community partners or advocacy organizations



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Applicable standards:

§ 115.251 Resident reporting.

- (a) The agency shall provide multiple internal ways for residents to privately report sexual abuse and sexual harassment, retaliation by other residents or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.
- (b) The agency shall also inform residents of at least one way to report abuse or harassment to a public or private entity or office that is not part of the agency and that is able to receive and immediately forward resident reports of sexual abuse and sexual harassment to agency officials, allowing the resident to remain anonymous upon request.
- (c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.
- (d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of residents.

§ 115.254 Third-party reporting.

The agency shall establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of a resident

## Duties of First Responders: Immediate Reports

1. Stop the abuse
2. Separate the perpetrator and victim
3. Cordon off the scene to preserve evidence to avoid compromising the investigation
4. Follow your agency policy on
  - o Reporting up the chain of command
  - o Calling in investigators
  - o Calling in medical/mental health staff
  - o Use of SART team



The Project on Addressing Prison Rape

SOURCE: Addressing Sexual Abuse in Custody (Hennepin County, MN Division of Community Services) [April 2013] by The Project on Addressing Prison Rape, Washington College of Law in collaboration with The Moss Group, Inc. and the National PREA Resource Center

## Duties of First Responders: Immediate Reports

5. Avoid asking questions that are not “need to know” for safety of the victim. Only trained investigators or SANE nurses should take statements
6. Scan the entire area to thoroughly assess the scene and note any possible secondary scene(s).
7. Be aware of any persons attempting to leave or enter the scene or any persons in the vicinity that may be related to the crime (look outs or potential suspects).
8. Remain alert and attentive. Assume the crime is ongoing until determined to be otherwise.



The Project on Addressing Prison Rape

SOURCE: Addressing Sexual Abuse in Custody (Hennepin County, MN Division of Community Services) [April 2013] by The Project on Addressing Prison Rape, Washington College of Law in collaboration with The Moss Group, Inc. and the National PREA Resource Center

## Duties of First Responders: Immediate Reports

9. Unit/area lockdown
10. Advise victim not to shower, use the bathroom, eat or drink and advise medical staff of evidence contamination precautions.
11. Remain at the scene until instructed by investigators or management.
12. Clearly document (e.g., who, what, when, where, time, date, address/location, contact info and parties involved).
13. Prepare a detailed crime scene briefing for the investigator in charge.



The Project on Addressing Prison Rape

SOURCE: Addressing Sexual Abuse in Custody (Hennepin County, MN Division of Community Services) [April 2013] by The Project on Addressing Prison Rape, Washington College of Law in collaboration with The Moss Group, Inc. and the National PREA Resource Center

## Duties of First Responders: Reports of Past Abuse

1. Listen to the resident reporting the abuse/assault in a non-judgmental manner

NOTE: Not everyone responds to a sexual assault the way you think they should— people can be irrational or calm depending on the situation and/or history of past sexual abuse.
2. Be aware of both your verbal and non-verbal response
3. Clearly document (e.g., who, what, when, where, time, date, address/location, contact information and parties involved).



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Frankly, while we would all like to get immediate reports of sexual abuse, that is just not the norm. Most reports staff receive are reports that are more than 120 hours later and more often than not may be months or years old.

SOURCE: Addressing Sexual Abuse in Custody (Hennepin County, MN Division of Community Services) [April 2013] by The Project on Addressing Prison Rape, Washington College of Law in collaboration with The Moss Group, Inc. and the National PREA Resource Center

## Duties of First Responders: Reports of Past Abuse

4. Follow your agency policy on  
Reporting up the chain of command—only tell staff who NEED  
to know  
Involvement of investigators  
Involvement of medical/ mental health staff
5. Question the resident/inmate reporting as to the specifics of the  
allegation  
Where did it happen; who was involved?
6. Do NOT conduct a full interview or interrogation; that will be  
done by the investigator.



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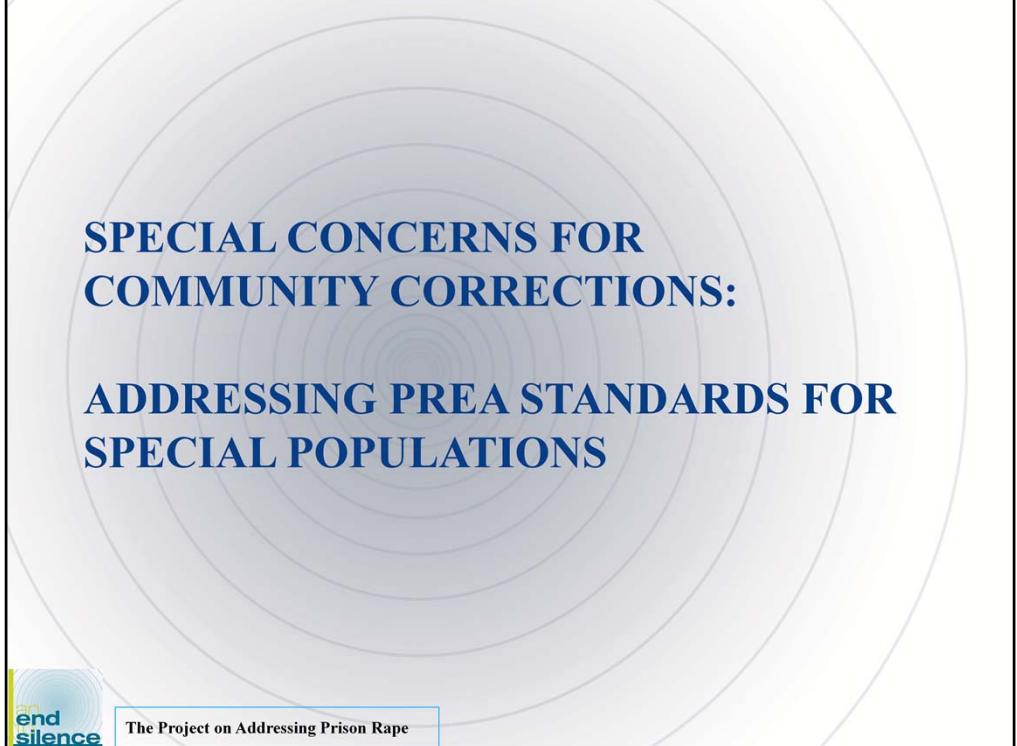
SOURCE: Addressing Sexual Abuse in Custody (Hennepin County, MN Division of Community Services) [April 2013] by The Project on Addressing Prison Rape, Washington College of Law in collaboration with The Moss Group, Inc. and the National PREA Resource Center

## First Responders Need to Know:

- Who you report to?
- What is the timeframe to report?
- Are there confidentiality requirements?
- What are staff requirements for reporting?
- Are there penalties for failure to report sexual abuse?



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# **SPECIAL CONCERNS FOR COMMUNITY CORRECTIONS: ADDRESSING PREA STANDARDS FOR SPECIAL POPULATIONS**



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## Special Concerns of Community Corrections

- Small facilities/ rural communities
  - Money for investigations and/ or services
  - Understaffing and large case loads
- Contracted functions and supervision by non-government agencies
- Pre-trial persons with greater constitutional rights



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It is important to remember, that no matter what the supervision structure is, offenders are constitutionally protected from sexual abuse. Courts have found that sexual abuse in community corrections violates the Eighth Amendment of the U.S. Constitution prohibiting cruel and unusual punishment.

See, Smith v. Cochran, 339 F.3d 1205 (10th Cir. 2003) (Male state license examiner raped female prisoner while she was out on work release. The Court found this was a violation of the Eighth Amendment)

In small agencies or agencies in rural communities, community advocates and resources may provide additional help in addressing PREA related issues.

## Special Concerns of Community Corrections

- Community supervision is a less restrictive form of supervision
  - More flexibility in personal choices by offenders
  - Client is not under direct supervision at all times
- Home visits
- Residential Programs
  - Classification systems in residential facilities
- Sexual activity between offenders



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Sexual activity between staff and offenders may be more difficult to detect in community settings because of the flexibility offenders have under some supervision structures. Additionally, probation and parole officers work uniquely personal settings, such as an offenders' home.

To address some of these issues, probation and parole agencies should refer to the assessment checklists provided by the National Prison Rape Elimination Commission in the 2009 drafted PREA Standards. You can find those at:

[http://www.wcl.american.edu/endsilence/documents/NPREC\\_CommunityCorrectionStandards.pdf](http://www.wcl.american.edu/endsilence/documents/NPREC_CommunityCorrectionStandards.pdf)

While offender on offender sexual abuse will most often happen in the context of residential community facilities, governed by the PREA Standards, probation and parole agencies may want to have policies and procedures in place regarding these relationships, even when they don't occur in residential settings.

## Special Concerns of Community Corrections

- Hard to know who offenders are
  - Collateral contacts more likely in nature of supervision
  - Relations with persons under supervision but not on your specific case load
- Appropriate supervision strategies for victims and perpetrators
- Level of supervision issues



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One of the most effective tools that agencies have to combat the issue of collateral contacts (contacts with friends and/or family members of the offender) are anti-fraternization policy mandating reporting to agency officials when a community correctional staff has social contact with an offender in the community.

For instance, agencies could have policies regarding what a probation officer should do if someone on supervision but not their case load, attends the same church.

Courts have also found in favor of agencies looking to implement anti-fraternization policies and also found that codes of conduct prohibiting contact with offenders under supervision in the community, while seemingly harmless, can be prohibited. Some case examples include:

Asbury v. Teodosio, 412 Fed.Appx. 786 (6th Cir. 2011) (not published in the Federal Reporter)  
The court found appropriate, a ban on contact by corrections officers with juveniles after their release from a Detention facility even if that contact can be shown to be motivated by a desire to help and guide the child. A purported “good” motive in breaking such a ban would not be considered constitutionally protected speech.

Montgomery v. Stefaniak, 410 F.3d 933 (7th Cir. 2005)  
The court found the interference with the probation officer’s right to association was minimal. She was free to buy a car from any other dealership, and free to interact with the probationer in other ways. “The code of conduct at issue here is rationally related to the court’s interest in ensuring the impartiality of its probation officers.”

Akers v. McGinnis, 352 F.3d 1030, 1034 (6th Cir. 2003).

The first plaintiff, a Wayne County probation officer, was contacted by a man she had dated before she became an employee. At the time he contacted her, he was serving a life sentence without parole in a prison outside her jurisdiction. She exchanged several letters with him.

The Sixth Circuit held that the MDOC's regulation easily met the rational basis test. The court found that MDOC had a legitimate interest in preventing fraternization between its employees and offenders and their families, and that the rule was a rational means for advancing that interest.

# **CRIMINAL AND CIVIL LIABILITY**



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## Criminal Laws: Staff Sexual Misconduct

- Felony in most states
  - This is the case even if the behavior alleged is touching, hugging and suggestive comments.  
See,  
<http://www.tennessean.com/article/DA/20130809/NEWS01/308090040>
- Consent is NOT a defense
  - There is never any such thing as “consensual” sex between staff and inmates
- Victim credibility is an issue
- Code of silence and lack of corroboration are barriers to prosecution.
- Lack of physical evidence and timely reporting



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## Criminal Laws: Staff Sexual Misconduct

### Louisiana's Staff Sexual Misconduct Statute:

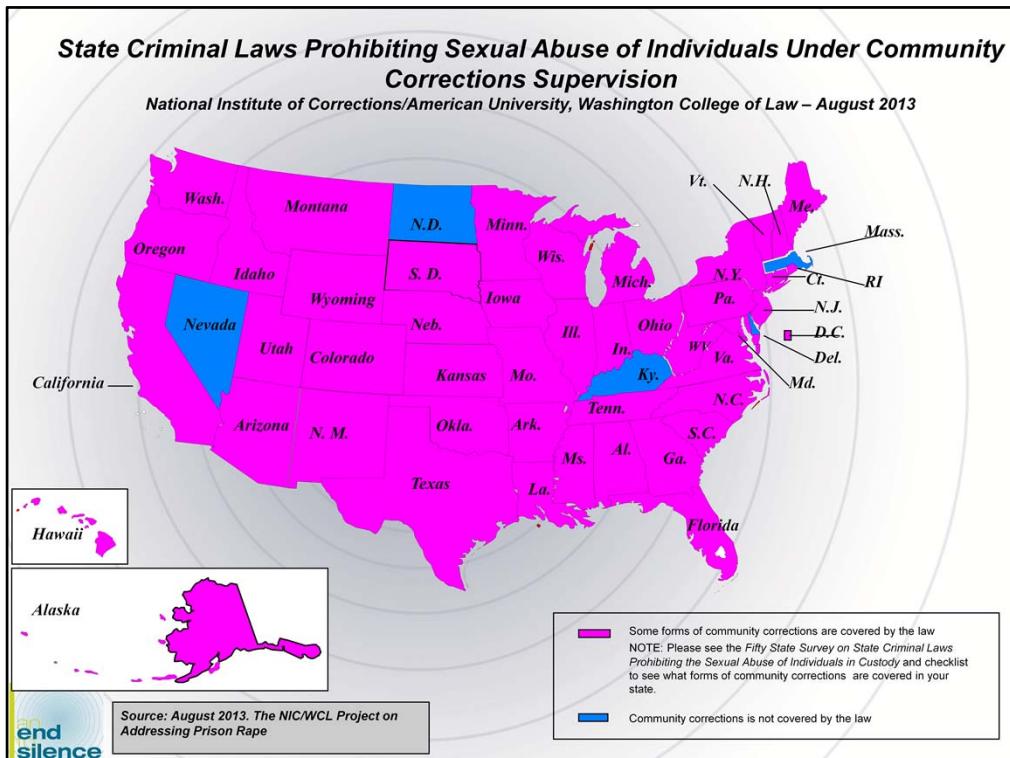
It shall be unlawful and constitute malfeasance in office for any of the following persons to engage in sexual intercourse or any other sexual conduct with a person who is under their supervision and who is confined in a prison, jail, work release facility, or correctional institution, **or who is under the supervision of the division of probation and parole.**

**Criminal Penalty:** Up to 10 years imprisonment at hard labor, up to \$10,000 finer, or both.

LA. CODE OF CRIM. LAW AND PROC. § 14:134.1 (2013).



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## Criminal Laws: Sexual Abuse

- Generally a Felony, carrying lengthy sentences.
  - One Parole Officer convicted of Sexual Abuse of multiple women under his supervision was sentenced to 10 years in prison and ordered to pay a \$25,000 fine.
  - When force is used or threatened, the sentence in federal court could be up to life imprisonment. 18 U.S.C.A. § 2241.
- Lack of consent is element of crime
- Complainant credibility is an issue
- Lack of corroboration
- Sex offender registration usually required



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Example: <http://www.kval.com/news/local/125779103.html>

## **Bonner v. Perry, 564 F.3d 424 (6th Cir. 2009)**

- A probation officer with the Kentucky Department of Corrections supervised a probationer over a period of five years.
  - For over a year, the officer forced her to engage in sexual acts with him.
  - The officer threatened her, and told her that he would revoke her probation if she did not have sex with him.
- After she reported the abuse, investigators discovered six other women who the officer had similarly abused and threatened.
- The officer admitted the abuse and pled guilty to criminal charges, and received five years in prison.



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This could have been prosecuted as sexual abuse and/or staff sexual misconduct

# Civil Liability

- Eighth Amendment Violations
  - The 8<sup>th</sup> amendment protection from cruel and unusual punishment applies when the State or Federal DOC gives its penological and supervisory authority over inmates/detainees to programs like work release centers.
- §1983 Suit
  - Plaintiff must show law was clearly established.
- Tort Liability
  - Federal Tort Claims Act: 2013 Supreme Court decision in *Millbrook*, waived sovereign immunity for federal corrections officials who commit intentional torts against inmate while acting within the scope of employment.



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In addition to criminal liability, there can be civil liability for sexual abuse of individuals under community supervision. That liability can come from the 8<sup>th</sup> Amendment or state tort law.

For more information on Millbrook see:

[http://www.prearesourcecenter.org/sites/default/files/library/millbrookdecisionsummary\\_0.pdf](http://www.prearesourcecenter.org/sites/default/files/library/millbrookdecisionsummary_0.pdf)

# Civil Liability

- State Tort Law
- Assault
- Battery
- Unintentional / Intentional Emotional Distress
- Neglect, hiring, firing or supervision



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Some Case Examples include:

California v. Bojorquez, 183 Cal. App. 4th 407 (2010).

California operates a work-release program for many inmates, allowing them to perform community service at certain facilities instead of serving time in prison. The Animal Care shelter was a popular location for women to complete their sentence. Bojorquez was employed at the shelter but not officially titled as a supervisor of the community service program nor did he have the proper certification to do so. Despite this, he was still responsible for overseeing those participating in the program and had regular daily contact with them. Six women came forward alleging Bojorquez committed various sexual offenses, most non-consensual, and had not complained earlier, fearing they would be dropped from the program and made to serve the rest of their time in custody. Bojorquez was found guilty of a multitude of charges, and appealed specifically the § 289.6 convictions claiming his position would not make the statute applicable. The court found that the shelter was a facility used for the confinement of adults within the meaning of the statute and upheld his convictions.

State v. Martin, 561 A.2d 631 (N.J. Super. Ct. App. Div. 1989)

A female probationer living in a state-run shelter as part of her probation had several incidents of sexual contact, including intercourse, with one of the detention officers. The defendant claims all the encounters were consensual. He was found not guilty of charges from incidents that occurred on days he was not working, but simply visiting the facility. The court found that he could only be held liable for incidents when he was acting as a supervisor and strongly noted that consent is not a defense in those cases. The defendant's sentence of 18 months and \$120 fine was upheld.

Com. v. Budd, 821 A.2d 629 (Pa. Super. Ct. 2003)

This suit claims that the law prohibiting sexual relations between inmates and corrections officers are vague in that it does not adequately defining the terms inmate and correctional officer. The case stems from an incident in which Budd, an off-duty correctional officer had oral sex with an inmate who was in plain clothes due to being on work release. The court held that the terms were not too broad, the statute did not prohibit innocent contact, and there were facts from which it was reasonable to conclude that Budd had knowledge the victim was an inmate. The court found that a person is an inmate even if they are on work release, and a corrections officer is still such, even off-duty. Budd was ultimately sentenced to two years probation.

## **Smith v. Cochran, 339 F.3d 1205 (10th Cir. 2003)**

- A male state license examiner sexually assaulted a female prisoner while she was out on work release.
- The Court found the examiner's conduct clearly violated the Eighth Amendment prohibition on cruel and unusual punishment.
- The court further held that the examiner was a person acting under color of state law, as "persons to whom the state delegates its penological functions, which include the custody and supervision of prisoners, can be held liable for violations of the Eighth Amendment."



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## **Washington v. City of Shreveport, 2006 WL 1778756 (W.D. La. Jun. 26, 2006)**

- A female participant in a work release program was sexually assaulted by a male supervisor over the course of four days.
- The male employee fondled her breasts, touched her inner thigh, grabbed her wrist and asked her for sex.
- The court found there was no Eighth Amendment violation, as the only physical harm she suffered was a headache, and the incidents were neither severe enough to be objectively, sufficiently serious, nor were the incidents cumulatively egregious.



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## **Boyd v. Dill, 2011 WL 1304725 (W.D. La. Apr. 1, 2011)**

- A male employee of a community corrections facility forced a male resident to have sexual intercourse with him.
- The resident was living in the facility, and working at a bakery. The employee picked the resident up to drive him to the bakery, but instead took the resident back to his house.
- Once there, the employee threatened the resident that if he did not have sex with him, he would report the resident for rule infractions.
- The court entered a default judgment and awarded the inmate \$150,000 under § 1983 and state law against the individual employee.



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## Cross Gender Supervision in the Probation and Parole Context

- Baker v. Welch, 2003 WL 22901051 (S.D.N.Y. Dec. 10, 2003)
  - A male parolee was required to urinate into a cup for a drug test while a female parole officer was present. The court dismissed the plaintiff's Fourth Amendment claim on a motion for summary judgment, finding that the officer was entitled to qualified immunity. The court found that the right to be free from cross-gender viewing was not clearly established at the time of the incident, relying on both the lack of Supreme Court precedent and the circuit split on the issue.
  - The court however, noted that parole officers are now on notice that the law is "clearly established" in forbidding "close" observation of a parolee's genitals during a urine test by a parole officer of the opposite sex.



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## Cross Gender Supervision in the Probation and Parole Context

- Sepulveda v. Ramirez, 967 F.2d 1413 (9th Cir.1992), cert. denied, 510 U.S. 931, 114 S.Ct. 342 (1993)
  - A male parole officer violated the constitutional rights of a female parolee when he observed her during a urine drug test. The officer entered the restroom while the parolee was providing the sample. The parolee asked him to leave, and the officer allegedly laughed and stated she “did not have anything he had not seen before.” The court held that the parolee’s right to bodily privacy had been clearly established and that no reasonable officer would have believed the parole officer’s conduct was reasonable.



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# Sex Offender Registration

- Sex Offender Registration
  - Probation Officer in Colorado Springs and married father of five must now register as a sex offender after having sex multiple times with a woman he was supervising. She says, “emotionally I felt like I was being raped every single time. He thought I wanted to be doing it but I didn’t.”
  - Sex Offender Registration in Colorado includes:
    - An online public registry containing your name, address and physical description
    - Registering within 5 days of your birthday every year
    - Registering within 5 days of moving
    - Registering within 5 days of beginning or changing jobs, school or volunteer work.
    - Paying \$75 for initial registration, and \$25 for every subsequent registration.



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<http://denver.cbslocal.com/2013/07/24/former-probation-officer-I-crossed-the-line-had-sex-with-client/>

In addition to criminal penalties, Community Corrections staff convicted of sexually abused individuals under their supervision may have to register as sex offenders. Depending on offense, registration can be a lifetime.

# Anti-Fraternization

- Rules and policies prohibiting romantic, intimate, and financial relationships between community corrections officers and individuals being supervised.
- Generally, breaking these rules results in automatic termination of employment.
  - In MD for example, automatic termination of employment can only be overturned with a showing that the State agency abused their discretion in a way that was so extreme and egregious that it constituted arbitrary and capricious action. (Maryland Aviation Admin v. Noland, 873 A.2d 1145 (2005))
- These rules are typically upheld by courts against First Amendment challenges.



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## Anti-Fraternization

- *Vega v. Department of Correctional Services*, 186 A.D.2d 340 (N.Y.A.D. 1992)
  - A female correctional officer was terminated, and received a notice of discipline that referenced her marriage to a former inmate.
  - The officer challenged her dismissal as arbitrary and capricious
  - The court found that the discipline was not imposed for the marriage, but for violating agency rules governing anti-fraternization.



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The disciplinary note also listed her “covert and unauthorized conduct in developing and maintaining an apparent close relationship with an inmate and parolee.”

The officer challenged her dismissal as arbitrary and capricious, and claimed the dismissal violated a state law, which prohibited employers from dismissing an employee based the employee's marital status.

The court found that she was not dismissed for her marital status, but for violating the Employees' Manual rule prohibiting employees from having a “relationship with any inmate, former inmate, [or] parolee in any manner or form which is not necessary or proper for the discharge of the employee's duties,” and requiring the employee to make a report of such behavior.

The court found that the discipline was not imposed for the marriage, but for violating agency rules governing anti-fraternization.

## Anti-Fraternization

- *Lape v. Pennsylvania*, No: 05-1094, 157 Fed. Appx. 491 (3d Cir.2005)
  - A female counselor at the Pennsylvania Department of Corrections (PA DOC) brought suit challenging her termination for marrying a former inmate.
  - The inmate was transferred then telephoned the counselor at home and sent her correspondence
  - When the inmate was paroled, the two were married.
  - The counselor added her husband to her medical coverage.
  - A year later, he was readmitted as a parole violator.



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The staff member met the offender while he was under her care.

While housed in a community corrections facility, he filed a form requesting permission to operate his wife's motor vehicle. The counselor was the wife.

## Anti-Fraternization

- *Lape v. Pennsylvania*, No: 05–1094, 157 Fed. Appx. 491 (3d Cir.2005)
  - The PA DOC terminated the counselor for violating the code of ethics
  - The female officer brought a claim alleging violations of her First Amendment right of free association.
  - The court noted that the PA DOC did not terminate the counselor for marrying a parolee, but for having authorized conduct with an inmate and parolee, and failing to disclose that conduct.



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The court granted summary judgment for the defendants, noting that “fraternization between guards and prisoners would not only increase the risk that contraband could be introduced into the facility, but would also compromise the respect and authority that must be commanded by correctional officers by giving inmates a basis to question their impartiality.

## **LESSONS LEARNED**



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Although staff sexual misconduct may be difficult to control, internal policies and training for both staff and offenders can help. The purpose of internal policies is to deter behavior that may lead to the violation of your agency's standards for conduct, and ultimately to prevent you from violating the law. Your agency has policies regarding use of force, searches and seizures, and confidentiality of records. Likewise, most facilities have internal policies prohibiting staff sexual misconduct with offenders.

## Lessons Learned

- Have a zero tolerance culture for sexual abuse
- Adhere to the PREA standards— even in non-residential settings
- Follow and review agency policies and procedures
- Train staff and offenders on prevention and reporting



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Are there other prevention strategies that you use or are aware of?

## Lessons Learned

To prevent and address sexual abuse **you** can:

- Ask your agency's policy review board to review, revise and update your written policies and procedures to include updated definitions of illegal and unethical behaviors
- Ask for training about policies and procedures as well as state laws governing sexual abuse
- Ask for training to improve your skills in offender management
- Ask for training on offender abuse histories and how it impacts them and you during their community supervision and reintegration



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## Lessons Learned

- Work to diminish the “code of silence” in your agency
- Research and learn more about the resources available to you through your employee assistance program (E.A.P.) and resources available to your agency through the National Institute of Corrections
- Report sexual misconduct in your agency
- Do not commit staff sexual misconduct



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# CONCLUSION



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## What Does this Mean?

- Increased scrutiny at state, federal and local level for community corrections facilities
- Have an understanding of what PREA does and does not do and what your obligations are
- Get guidance from other experts in your agency and the field
- Connect with prisons and jails to report incidents that come to your attention



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## What Does this Mean?

- Need for victim services
- Reentry services for victims and perpetrators and role of community corrections
- Assess agency vulnerability
- Train, Train, Train



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## Resources for Doing This Work

- American Probation and Parole Association
- National PREA Resource Center
  - <http://www.prearesourcecenter.org>
  - Training, technical assistance, regional meetings, PREA institute(s), webinars, general information, office hours
- Work of other agencies in this area
  - NIC <http://nicic.gov>
  - OJJDP <http://www.ojjdp.gov>

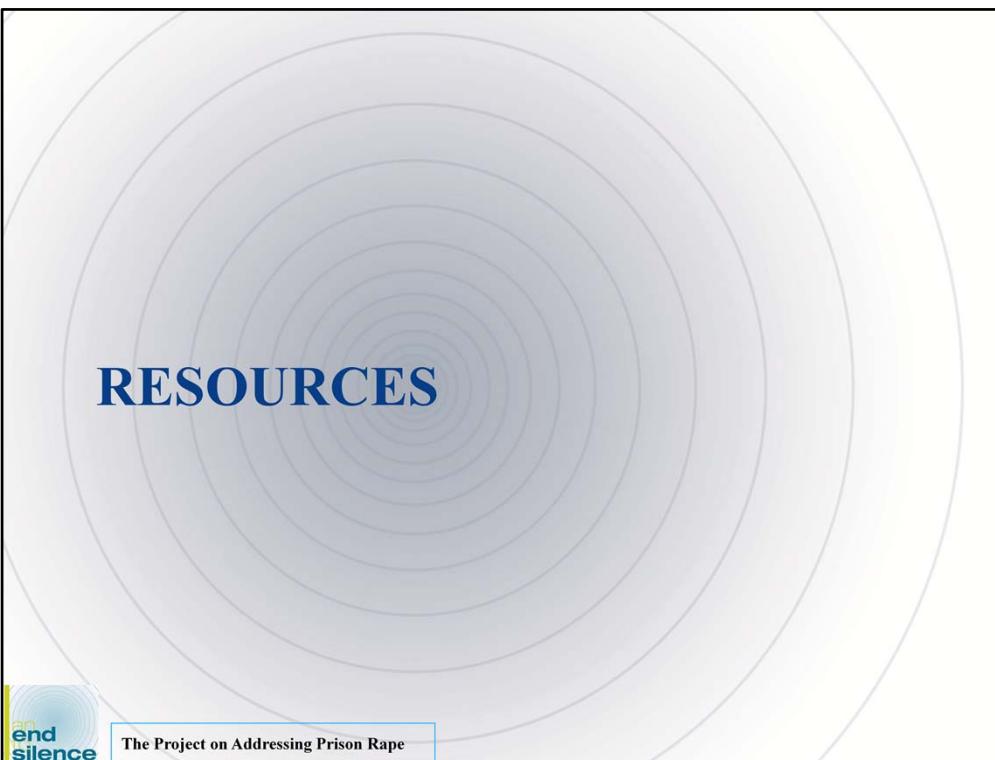


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### Other Work

Posters  
Curricula  
Pamphlets  
Handbooks

NOTE OF CAUTION: before you pay for something see what is already out there or what you can do in house



## RESOURCES



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## Resources: Government Reports

- United States. The Department of Justice/ Bureau of Justice Statistics. [Sexual Victimization Reported by Former State Prisoners, 2008](#). Comp. by Allen Beck and Candace Johnson. Washington, DC. May 2012.
- United States. The Department of Justice/ National Prison Rape Elimination Commission. [REPORT](#). Washington, DC. June 23, 2009.
- United States. The Department of Justice/ National Prison Rape Elimination Commission. [Standards for the Prevention, Detection, Response and Monitoring of Sexual Abuse in Community Corrections](#). Washington, DC. June 23, 2009.
- United States. The Department of Justice/ National Institute of Corrections. [Gender Responsive Strategies for Women Offenders: Supervision of Women Defendants and Offenders in the Community](#). Comp. by Linda Sydney. Washington, DC. October 2005.



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## Resources: For Community Corrections Staff

- American Probation and Parole Association et. al. [Corrections Based Sexual Abuse: A Guide for Community Corrections Professionals](#). Alexandria, VA. December 2009.
- Carle, Susan D., Kathy Tuznik, Aaron Brand and Brenda V. Smith. [Labor and Employment Law: Tools for Prevention, Investigation and Discipline of Staff Sexual Misconduct in Custodial Settings](#). Washington, DC. October 2009.
- Smith, Brenda V. and Jaime M. Yarussi. [Legal Responses to Sexual Violence in Custody: State Criminal Laws Prohibiting Sexual Abuse of Individuals under Custodial Supervision](#). Washington, DC. October 2009
- Simonian, Nairi M. and Brenda V. Smith. “[Anti-fraternization Policies in Community Corrections: A Tool to Address Staff Sexual Misconduct in Community Correction Agencies.](#)” *Perspectives*. Winter 2007: 43-48.
- Buell, Maureen, Elizabeth Layman, Susan McCampbell and Brenda V. Smith. “[Addressing Sexual Misconduct in Community Corrections.](#)” *Perspectives: the Journal of the American Probation and Parole Association.*, 27:2 Spring 2003.



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## **Resources: Law Reviews and Journal Articles**

- Smith, Brenda V. “[The Prison Rape Elimination Act: Implementation and Unresolved Issues](#)” [Criminal Law Brief](#) American University Washington College of Law Washington, DC; 10-18 (Spring 2008).
- Yarussi, Jaime M. “[The Violence Against Women Act: Denying Needed Resources Based on Criminal History.](#)” [Criminal Law Brief](#) of American University Washington College of Law Washington, DC; 29-36 (Spring 2008).



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## Legal Resources: State Criminal Laws

- State Criminal Laws
  - [Fifty State Surveys](#)
  - [Checklists](#)
  - [Maps](#)
- *Legal Responses to Sexual Violence in Custody: [Using Existing State Mandatory Reporting Statutes to Improve Disclosure of Sexual Violence in Correctional Settings](#)*  
By: Brenda V. Smith, Loren Ponds, and Melissa Loomis (2013)
- *Legal Responses to Sexual Violence in Custody: [Sex Offender Registration Statutes: Impact on Addressing Sexual Abuse in Custodial Settings](#)*  
By Brenda V. Smith and Mary Elizabeth Pavlik (2012)
- *Legal Responses to Sexual Violence in Custody: [State Criminal Laws Prohibiting the Sexual Abuse of Individuals under Custodial Supervision](#)*  
By: Brenda V. Smith and Jaime M. Yarussi (2009)



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## Legal Resources: Civil Litigation

- [Anti-Fraternization Polices and their Utility in Preventing Staff Sexual Abuse in Custody](#)  
By: Brenda V. Smith and Melissa C. Loomis (May 1, 2013)
- [Sexual Abuse in Custody: A Case Law Survey](#)  
By: Brenda V. Smith and Melissa C. Loomis (February 1, 2013)
- [Cross-gender Searches: A Case Law Survey](#)  
By: Brenda V. Smith and Melissa C. Loomis (February 1, 2013)



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## Helpful Websites

- American Civil Liberties Union: [www.aclu.org](http://www.aclu.org)
- American Correctional Health Services Association: [www.achsa.org](http://www.achsa.org)
- American Probation and Parole Association: [www.appa-net.org](http://www.appa-net.org)
- Amnesty International: [www.amnesty.org](http://www.amnesty.org)
- Bureau of Justice Statistics: [www.ojp.usdoj.gov/bjs](http://www.ojp.usdoj.gov/bjs)
- Center for Disease Control: [www.cdc.gov](http://www.cdc.gov)
- Center for Innovative Public Policy <http://www.cipp.org>
- Center for Mental Health Services: GAINS Center: [www.gainscenter.samhsa.gov](http://www.gainscenter.samhsa.gov)
- Human Rights Watch: [www.hrw.org](http://www.hrw.org)
- International Community Corrections Association [www.iccaweb.org](http://www.iccaweb.org)



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## Helpful Websites

- Institute for Criminal Justice Healthcare: [www.icjh.org](http://www.icjh.org)
- Just Detention International (formerly Stop Prison Rape)  
[www.justdetention.org](http://www.justdetention.org)
- Justice Policy Institute [www.justicepolicy.org](http://www.justicepolicy.org)
- Justice Research and Statistics Association: [www.jrsa.org](http://www.jrsa.org)
- National Clearinghouse for Science, Technology and Law at Stetson University: [www.ncstl.org](http://www.ncstl.org)
- National Criminal Justice Reference Service: [www.ncjrs.org](http://www.ncjrs.org)
- National Institute of Corrections: [www.nicic.gov](http://www.nicic.gov)
- National Institute of Justice: [www.ojp.usdoj.gov/nij](http://www.ojp.usdoj.gov/nij)
- National Juvenile Defender Center: [www.njdc.info](http://www.njdc.info)



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## Helpful Websites

- National PREA Resource Center [www.prearesourcecenter.org](http://www.prearesourcecenter.org)
- National Victims' Constitutional Amendment Passage: [www.nvcap.org](http://www.nvcap.org)
- National Youth Court Center: [www.youthcourt.net](http://www.youthcourt.net)
- Office of Juvenile Justice and Delinquency Prevention: [www.ojjdp.ncjrs.org](http://www.ojjdp.ncjrs.org)
- Rape Abuse and Incest National Network (RAINN): [www.rainn.org](http://www.rainn.org)
- The Sentencing Project: [www.sentencingproject.org](http://www.sentencingproject.org)
- United States Department of Health & Human Services: [www.hhs.gov](http://www.hhs.gov)
- United States Department of Justice: [www.doj.gov](http://www.doj.gov)
- Urban Institute: [www.urban.org](http://www.urban.org)
- Vera Institute of Justice: [www.vera.org](http://www.vera.org)



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For further information on anything discussed  
in this handbook or to give us your comments  
please email us at  
[endsilence@wcl.american.edu](mailto:endsilence@wcl.american.edu)

We are interested in hearing from you.



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