

Overview of the 2003 Prison Rape Elimination Act (PREA) - What it Means for the Michigan Department of Corrections (MDOC)

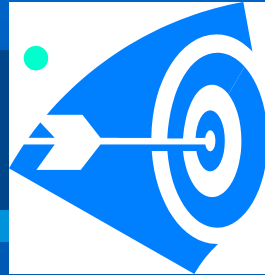


This summary presentation is compiled from information obtained through the July 21, 2004 NIC satellite broadcast, "How the Prison Rape Elimination Act (PREA) Affects You", and other resource materials.

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Let's Be Clear ...

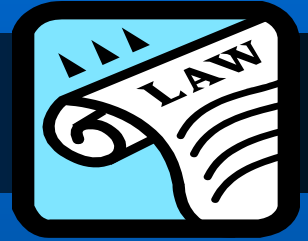


- Even though the words ‘prison’, ‘prisoner’, ‘inmate’ and ‘offender’ are referenced repeatedly in the law, PREA applies to ALL individuals under the supervision of the MDOC.
- PREA mandates apply to all MDOC prisons, camps, SAI, community residential centers, TRV centers, half-way houses, and contractual residential placements.
- PREA also addresses staff sexual misconduct by all staff, including: transportation, parole, and probation officers.

Prison Rape Elimination Act (PREA) of 2003



- **Provides for the analysis of the incidence and effects of prisoner sexual abuse (rape).**
 - **Prisoner-on-Prisoner Sexual Assault & Victimization**
 - **Staff-on-Prisoner Sexual Misconduct & Sexual Harassment**
- **Applies nationally to:**
 - **All Federal, State, and Local Institutions**
 - **Prisons, Jails, and Community Corrections**
 - **Public and Private**
 - **Juvenile and Adult**
 - **Male and Female**



- **Makes available: information, resources, recommendations, and funding to protect individuals from prison rape.**
- **Passed with unanimous approval by the US Congress (House & Senate).**
- **Signed by President George W. Bush on September 4, 2003, and became Public Law No: 108-79.**

Development of the Law



- **Survivors began to talk of their ordeal, and its impact on their lives and families.**
- **Civil rights groups and the religious community stepped in to document it and give it a moral dimension.**
- **Supported by a broad coalition: philosophically, racially, religiously, and politically, and with strong public support.**
- **No crime warrants a punishment of prison rape!**

Why The Upsurge in Interest?

- Initially recognized in female institutions as a ‘women’s’ issue, it’s now recognized as a ‘prison’ - indeed, a ‘Department’ - issue.
- Increased awareness of balance of power within all care and custodial facilities, including Corrections.
- Public wants accountability – not only monetarily, but in our behavior (exploitation is **NOT** OK).
- Drastic increase in numbers of those incarcerated means, we’re all more likely to know someone who could be a potential victim.

- **Re-Entry movement has highlighted that what happens inside prisons is a continuation on into our community.**
- **Corrections agencies are expected and obligated to run safe, secure and orderly facilities - worthy of the public trust.**
- **PREA acknowledges reality:**
 - **Prisoner sexual abuse is a security issue, and runs counter to this mission.**

A Matter of National Priority...



- ...Given the scope of the problem and its impact on victims, institutions, and society.
- Of the nearly 2 million incarcerated persons today, it is estimated that 1 in 10 (or 200,000) are victims of prison rape.
- Youth in adult prisons are 5 x's more likely than adults to be raped.
- Victims are usually first time, non-violent prisoners.

Seven Purposes of the Law:



1. A 'Zero Tolerance' mandate.
2. Making prevention a top priority in each system.
3. Developing and implementing national standards (detection, prevention, reduction and punishment).



4. Increasing the available data and information on the incidence of prisoner sexual abuse.

5. Standardizing definitions of ‘Prisoner Sexual Abuse’ are needed for collecting data. What constitutes:

- ‘Non-Consensual Sexual Acts’?
- ‘Abusive Sexual Contacts’?
- ‘Staff Sexual Misconduct’?
- ‘Staff Sexual Harassment’?



6. Increasing accountability of corrections officials.
7. Protecting 8th Amendment rights of prisoners to be free from cruel and unusual punishment.

Bureau of Justice Statistics (BJS) Mandate

- **Administrative record and report reviews will begin.**
- **Facility surveys each year, beginning in 2005.**
 - **At least 10% of all facilities nationwide (which numbers 8,700).**
 - **Randomly sampled, annually.**
 - **Required to select one prison in every state.**
- **Prisoner Surveys.**

Key Components of the PREA



- 1. Data Collection**
- 2. Review Panel**
- 3. National Institute of Corrections (NIC)**
- 4. National Prison Rape Commission**

1. Data Collection (Quantitative)

- Data is a Powerful Management Tool
 - Will identify strengths and weaknesses.
- Data Must Have Integrity – Collection will include:
 - Administrative Reports
 - Surveys
 - Interviews
 - Self-Reports

- Information collected will include:

- How many assaults occurred?
- How is 'assault' defined?
- What happens when an assault is reported?
- What was the gender & relationship (staff/prisoner) of each party?
- What were the findings and outcome?

- **Difficulties in Reporting / Recording Prisoner Sexual Abuse Data**

- Prisoner sexual abuse isn't always reported as a factor (or primary factor) in an incident.
- Often, it is only included coincidentally, as a secondary characteristic of what occurred (e.g., drugs, or a fight).
- Behavior may not be obvious as an assault, and may appear consensual.
- As a result, the abuse gets lost or hidden in the investigation's data stream.

2. Review Panel (Qualitative)

- **Three (3) members, each appointed by the US Attorney General, to assist the BJS.**
- **Conduct Public Hearings with the:**
 - 3 prisons - highest incidence of prisoner sexual abuse.
 - 2 prisons - lowest incidence of prisoner sexual abuse.
- **Hearings afford administrators an opportunity to:**
 - Explain the numbers (i.e., offer context).
 - Explain the positive steps they have taken.

- **Through these hearings, the Review Panel will attempt to:**
 - **Identify common characteristics of perpetrators and victims.**
 - **Attempt to understand why prisoner sexual abuse occurs in some settings and not others.**
 - **Identify features of systems (e.g., architecture and structure) which may affect the incidence of prisoner sexual abuse.**

- **A system reporting a high incidence of prisoner sexual abuse may reflect that prisoners are confident they will be believed, and be protected by administrators.**
- **Prisoners may be more likely to come forward, if they have confidence they will be afforded some remedy.**

3. National Institute of Corrections (NIC)

- Responsibilities:

- Clearinghouse for Information.
- Training and Education - *What's going on in other jurisdictions?*
- Technical Assistance - Short and long term technical assistance, perhaps by sending people directly to a site.
- Annual Summary Report - All activities related to the PREA.



- **Will continue a focus on dynamics of prisoner-on-prisoner sexual abuse, and ways in which it occurs in our institutions.**
- **Will offer strategies specific to populations being served (e.g., female/male institutions, prison/jail/ community corrections).**
- **Solutions don't necessarily require large amounts of \$\$.** Examples:
 - **Policy development, creation of training curricula, and tightening up of protocols.**

4. National Prison Rape Commission



- **Nine (9) members, each appointed by the President and Congress (five Republicans and four Democrats); each with some background in the issue of prison rape.**
- **Purpose - To develop national standards for the prevention, investigation, punishment, and prosecution of prisoner sexual abuse, for adoption by the states.**

- **Within Two Years of the First Commission Meeting (by July 7, 2006) - Issue a report to a wide variety of federal and state officials.**
 - Identified causes, prevention and detection of prisoner sexual abuse.
 - Recommendations for national standards.
 - Recommended protocols.
- **Within One Year Following Report - Attorney General issues final rule.**
- **Within 90 Days Following Rule – Rule distributed for review by states and accrediting organizations.**

Aspects of Male Sexual Assault

- **Generally invisible, due in part to societal definitions of masculinity and maleness, and feelings of homophobia.**
- **Gender stereotypes and systems of power serve to silence male survivors, who may fear appearing powerless, weak and unmasculine.**
- **Males who are perceived as powerless, are often the targets of sexual assault.**
- **Rape serves to reinforce the dominant status of the perpetrator, through sexual violence.**

Perpetrators of Sexual Assault

- **Statistically, perpetrators are not whom you might imagine.**
- **Research shows us that:**
 - **Perpetrators of male sexual assault are overwhelmingly men who identify as heterosexual.**
 - **Of the sexual violence committed against males and females, 96-98 % is committed by heterosexual men.**
 - **While over 80% of sexually abused boys never become adult perpetrators,**
 - **As many as 80% of perpetrators were abused as boys and young men.**

What Happens to Individuals Who Have Been Sexually Assaulted or Abused?

- **Suicide or Attempt – Increased risk is our most serious concern.**
 - 1st or 2nd leading cause of death U.S. jails.
 - 3rd leading cause of death in U.S. prisons (following ‘illness & natural causes, excluding AIDS’).
- **Post Traumatic Stress Disorder (PTSD) or Rape Trauma Syndrome.**
- **Exacerbation of pre-existing psychiatric disorders.**
- **Development of anxiety, depression, or other psychological or psychiatric conditions.**

Safeguarding Communities

- **Upon release, victims are more likely to commit crimes, and far more likely to commit violent crimes.**
- **Leads to the transmission of infectious disease (HIV, Hepatitis):**
 - **Within the prison setting, and**
 - **Consequently, into society-at-large, as victims are released.**

It is An Employee and Employer Issue !

- **For Any Involved Staff Who Either:**
 - Participates in sexual misconduct or sexual harassment with a prisoner, or
 - Turns a blind eye towards any prisoner sexual assault or victimization (Failure to Report).
- **For the Head of Any Institution or Department:**
 - Who will be held liable - civilly, criminally, or through loss of employment.

There Is No Consent for Sexual Behavior !

- **Staff-on-Prisoner:**

- Prisoners are **never** regarded as being in a position to grant legitimate consent.

- **Prisoner-on-Prisoner:**

- Perceived consent may **not** be ‘consent’ in reality. Other prisoners may exercise an influencing degree of intimidation and control.

Legal Implications of PREA



- **Administrators have a responsibility for leadership on this issue, and to respond to allegations of prisoner sexual abuse.**
- **Deliberate Indifference - Conscious or reckless disregard of the consequences of one's acts or omissions.**
 - **To the extent you begin to look at what's going on in your system or facility, and address it...**
 - **You start to move outside the realm of 'deliberate indifference'.**



- Possible Consequences of Inaction:
 - Money judgments.
 - Outside supervision (monitoring).
 - Mandated changes in policy, practice, procedure.
 - Personal liability.

Indemnity - Reasonable Person Standard

- Indemnity - Legal exemption from liability.
- US Supreme Court - *Farmer v. Brennan*. Court looked at a two-pronged approach in determining whether or not there is an 8th Amendment violation:
 - Subjectively: Would someone else in my position, a *reasonable correctional administrator*, believe I should have done this? *Did I know, or should I have known*, there was reasonable suspicion I might be placing the person at risk of serious harm or injury?
 - Objectively: Is the injury serious enough to rise to the level of *cruel and unusual punishment*.

Impact on Community Corrections

- **Combating prisoner sexual abuse must be part of our public safety mission. Most of our prisoners will leave to go back out into the community.**
- **It is estimated that:**
 - **10% of incarcerated prisoners are victims of sexual abuse.**
 - **600,000 incarcerated prisoners are released each year.**
 - **Therefore, roughly 60,000 releasees will have experienced some sort of sexual abuse while incarcerated.**

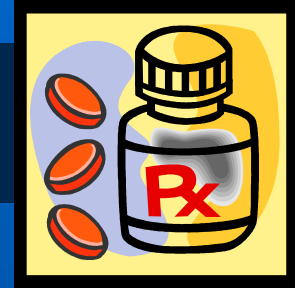
- **Issues Commonly Addressed at Re-Entry:**
 - **Poor education**
 - **Chronic unemployment**
 - **History of substance abuse**
 - **Mental health problems.**

- **PREA challenges Community Corrections to address the impact of in-prison sexual abuse on successful re-entry.**
 - **Being a victim of sexual abuse exacerbates an already challenging set of circumstances.**
 - **Incarcerated individuals have a much higher rate of infectious STD's, which is perpetuated back into the community.**
 - **There is a significant difference in how this is handled, and victims are supported, for male survivors than for female survivors, out in the community.**

PREA Represents Good Correctional Management Practices

- **Prisoner sexual abuse impacts facility order and security, by contributing to more violence.**
- **Prisoner sexual abuse reinforces that staff is not in charge.**
- **PREA:**
 - **Forces us to break the ‘Code of Silence’ (Failure to Report).**
 - **Forces us to look at our institutional cultures and practices (e.g., prisoner movement, staffing), and examine vulnerable areas of our facility.**
 - **Offers the opportunity to develop promising practices, through multi-disciplinary approaches.**

Preventive Measures



- Effective Policy - Defines and prohibits the conduct, and staff and prisoners are aware of it.
- Credible Investigations - Regardless of where the reports come from, investigate them thoroughly.
- Protection from Retaliation - Measures are in place to protect the person (staff or prisoner) who reported the claim.
- Appropriate Sanctions - For prisoners and staff who are found guilty of prisoner sexual abuse.

DVD Presentation:

“Facing Prison Rape”

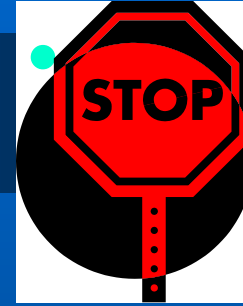


National Institute of Corrections (2004)

The PREA Initiative In the Michigan Department of Corrections



Zero Tolerance



- MDOC has a Zero-Tolerance policy for prisoner sexual abuse which includes:
 - Prisoner-on-prisoner sexual assault
 - Prisoner sexual victimization
 - Staff-on-prisoner sexual misconduct and harassment
- This zero-tolerance policy will be reinforced at all levels within the MDOC, as part of the PREA initiative.

Our Plan for Implementation

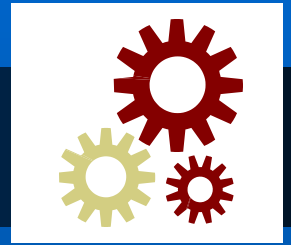


- **The PREA Initiative will be designed around a proactive approach that addresses:**
 - **Policy and procedure development and/or refinement.**
 - **Prevention measures.**
 - **Standardized reporting and trend identification.**
 - **Tracking of sexual victimization allegations.**
 - **Specialized training for staff.**



- Prisoner education and reporting.
- Investigation procedures.
- Medical response to, and treatment of, victims.
- Mental Health response to, and treatment, of victims.
- Sanctioning and prosecution of perpetrators.
- Parole Interface, through Transition Accountability Plans.

A Teamwork Approach ...



- The PREA Project Team will oversee and guide the development and refinements needed to comply with the law.
- A Pilot Project will be established in CFA Region III through grant funding received.
- Specialist Teams will be appointed. These multi-disciplinary teams will include the involvement of staff from all levels and all disciplines.

Specialist Teams



- **The Specialist Teams will be asked to focus on:**
 - **Determining whether existing policies address the elements of PREA, and other related laws.**
 - **Reviewing available data to determine the prevalence of prisoner sexual abuse, and incident final outcomes.**
 - **Examining current reporting and tracking mechanisms, and their impact on consistent data collection.**
 - **Examining currently available training for staff, and providing specialized training.**



- **Developing orientation and education programs for prisoners.**
- **Developing protocols to identify, monitor, and counsel at-risk prisoners.**
- **Evaluating current protocols which identify, monitor and counsel predatory sexual aggressors.**
- **Developing protocols to guide facility staff in addressing allegations.**



- **Addressing the impact of prisoner sexual abuse, to support successful re-entry through Transition Accountability Plans.**
- **Establishing community collaborations which will support the PREA Initiative .**

The End ...



We thank-you for your time!

- Any Questions????



Resources:

- National Institute of Corrections -
<http://www.nicic.org/>
- NIC Link to Information on PREA -
<http://www.nicic.org/prea.aspx>
- Bureau of Justice Statistics -
<http://www.ojp.usdoj.gov/bjs/>