

Department of Justice National Standards To Prevent, Detect, and Respond to Prison Rape IMPLICATIONS FOR COMMUNITY SEXUAL ASSAULT RESPONSE TEAMS

"Rape and sexual abuse are reprehensible, destructive, and illegal in any setting. Such acts are particularly damaging in the correctional environment, where the power dynamic is heavily skewed against victims and recourse is often limited. Until recently, however, this has been widely viewed as an inevitable aspect of imprisonment within the United States. This view is not only incorrect but incompatible with American values."

-From DOJ PREA NPRM, "Overview of PREA National Standards"

In 2003, Congress unanimously passed the Prison Rape Elimination Act (PREA). PREA created the bipartisan National Prison Rape Elimination Commission, which spent years studying the problem before delivering its recommendations to Attorney General Eric Holder for ratification. The U.S. Department of Justice (DOJ) created a PREA working group to review those recommendations, a process which was supposed to take one year. On January 24th, 2011, AG Holder and the DOJ released their version of the standards. While this more recent set of standards dramatically waters down the recommendations made by the commission, they will still provide some protections for survivors and prevention tools.

In its Notice of Proposed Rulemaking, the DOJ states that *at least* 216,600 inmates were sexually abused in 2008 alone. This figure counts the number of people abused in adult prisons and jails and juvenile detention facilities, not the number of incidents. Data from the DOJ's Bureau of Justice Statistics (BJS) show that, on average, sexually abused inmates are victimized three to five times each over the course of a year. In a majority of cases, the perpetrators are not other inmates, but corrections staff. Critically, the DOJ acknowledges that sexual abuse in detention is preventable. Ending it is a matter of adopting common-sense policies and practices, as the standards are supposed to require.

The standards, both the NRPEC and DOJ versions, acknowledge the critical role community service providers play in ending and responding to sexual violence.

The foundation of the all the standards is that corrections departments must 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. (§ 115.11 Zero tolerance of sexual abuse and sexual harassment; Prison Rape Elimination Act (PREA) coordinator).

Response Planning:

- To the extent an agency* is responsible for investigation: it shall adopt a protocol to maximize usable evidence, the protocol shall be based on the U.S. DOJ, Office of Violence Against Women's National Protocol for Sexual Assault Forensic Exams, Adult/Adolescent; residents will be offered forensic exams by qualified practitioners whether onsite or off, without cost; and it shall make available a qualified victim advocate who may accompany the victim during the exam and investigatory process to provide information, support, crisis intervention, and referrals. If the agency is not responsible for investigating, it shall inform the investigating agency of the requirements.

*"Agency" refers to a department of corrections; "facility" refers to an institution.

- The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates with confidential emotional support.
- The agency shall have a policy ensuring all allegations are investigated by an entity with criminal authority; the agency shall have a policy governing the conduct of investigations.

Reporting:

- Access to outside support services: in addition to onsite mental health services, the facility shall provide access to outside victim advocates for emotional support services related to sexual abuse by providing, posting, or otherwise making accessible addresses and telephone numbers, including toll-free hotlines; the facility will enable communication between residents and advocacy/rape crisis organizations, and allow the communication to be as confidential as possible. All residents shall be informed of the extent to which communications will be monitored.
- Coordinated response: The facility shall coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

Investigations:

- When the agency conducts its own investigations, they shall be prompt, thorough, objective, and completed by investigators who have received special training.
- All allegations (include 3rd party and anonymous) will be investigated.
- Investigators: gather and preserve direct and circumstantial evidence (including DNA, physical, and electronic monitoring); interview alleged victims, perpetrators, and witnesses; and review prior complaints and reports of sexual abuse involving the suspect.
- The agency shall not end an investigation solely because the source of the allegation recants; when evidence supports prosecution, the agency shall conduct compelled interviews only after consultation with prosecutors; the credibility of victim, suspect, or witness shall be assessed not purely on the basis of being a resident/inmate or staff.

Medical and Mental Health Care

- Victims shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, at no cost regardless of if the victim names the abuser(s).
- If no qualified medical or mental health practitioners are on duty, first responders shall take preliminary steps and notify medical and mental health as soon as possible.
- People who are sexually abused while incarcerated shall be offered information about and access to pregnancy services and STD prophylaxis. Resident victims of sexually assaultive vaginal penetration shall be offered pregnancy tests; if pregnancy results, such victims shall receive timely information about and access to all needed services that are lawful in the community.
- The facility shall offer ongoing medical and mental health evaluation and treatment to all inmates/residents who have been abused during their current term. Evaluation and treatment of sexual abuse shall include follow up services, treatment plans, and referrals.
- The facility shall provide inmates/residents who have been abused with mental and mental health services consistent with the community level of care.