The Prison Rape Elimination Act: What You Need to Know

What is the Prison Rape Elimination Act?
In 2003, Congress recognized the negative impact of sexual abuse in correctional facilities in the United States and passed the Prison Rape Elimination Act (PREA) in order to address this problem. Its goal is to promote the prevention, detection and punishment of sexual harassment and assault at any prison, jail, lockup and other detention facility housing either adults or juveniles.

Why is PREA important for people living with serious mental illness?
Inmate-on-inmate sexual victimization is three to four times more likely among inmates who had previously received mental health treatment or counseling.[i] The Texas Department of Criminal Justice examined reports from 2000 to 2005 and determined that inmates classified as mentally ill were eight times more likely to be victimized.[ii]

Victims of sexual assault may experience increased anxiety, suicidal ideation and post-traumatic stress disorder. Unwanted sexual advances have also been linked to poor health outcomes and increased risk of sexually transmitted diseases such as HIV.[iii]

How does PREA further the goal of eliminating prison rape?
PREA seeks to eliminate prison rape by collecting data on sexual abuse in correctional facilities and creating national standards for the prevention, detection, and punishment of prison rape. It also encourages states to adopt the standards.[iv] Implementation of the new standards began in 2012, though some parts will be phased in over the next few years.[v]

Does PREA only apply to prisons?
No. PREA applies to all federal, state and local detention facilities. Federal detention facilities outside of the Federal Bureau of Prisons, such as those run by Immigration and Customs Enforcement (ICE), will create their own rules. PREA also covers all state and local correctional facilities, including adult prisons and jails, lock-ups, community corrections, and juvenile detention facilities. The standards are slightly different for different types of facilities. For example, the rules for adult facilities only require "adequate" staffing while juvenile facilities must maintain a certain ratio of staff to detainees.[vi]

What should I do if I or someone I know is a victim of sexual abuse in a correctional facility?
The facility should have multiple internal reporting procedures, as well as one external reporting procedure. Within the facility, a report can be made to any staff member verbally or in writing. These reports can be anonymous. Outside the facility, there should be a designated group or office that will collect reports of abuse and refer them back to the corrections agency for investigation.[vii] Unfortunately, these outside organizations may vary across a state; it is important to check with the corrections agency to find the appropriate organization.

There is no time limit on filing a report. Inmates can even report an incident of sexual assault or harassment after they have left a facility. For example, if you are transferred, a report can be made to officials at the new facility. You can also report an assault to a parole officer after leaving incarceration. In either case, the report would be sent to the facility where the incident occurred and investigated.[viii]

What help can I get if I have been assaulted while in jail or prison?
PREA requires that facilities allow inmates timely access to appropriate physical and mental health care following sexual abuse, including access to a rape crisis counselor. Phone calls with a counselor may be monitored.

What can I do if my complaint is not taken seriously?
Each state has its own grievance process to deal with inmate complaints. This is an administrative process in which an inmate files a formal complaint, known as a grievance, and then the facility responds. Under PREA, the facility has 90 days after an inmate files a grievance to investigate the allegation. Prison authorities may take up to an additional 70 days to respond should it be required. An emergency grievance may be filed stating that an inmate has a high risk of immediate sexual abuse; in that case, authorities must respond within 48 hours and issue a final decision within five calendar days.[ix] Once this process has been exhausted, you can speak to an attorney about filing a lawsuit. Be sure that you follow all the steps in your facility's grievance process.

What can I do if there's widespread abuse in a prison or jail?
The Special Litigation Section of the U.S. Department of Justice investigates allegations of widespread or systemic abuse within the criminal justice system, including sexual abuse. They do not take individual cases, and they do not prosecute federal agencies.[x] Complaints can be made by emailing special.litigation@usdoj.gov, calling (877) 218-5228 or faxing (202) 514-0212. In your report, you should include the name and location of the facility, date, whether the perpetrator was another inmate or a staff person, and as much additional detail as you are comfortable providing.

Does the federal government have the power to force state or local correctional facilities to comply with PREA?
Generally, no. However, cases brought by the U.S. Department of Justice alleging widespread or systemic abuses often lead to court decisions that force a facility to make changes.

What incentives do state and local correctional facilities have to comply with PREA?
Each governor must certify that all correctional facilities under the supervision of the state comply with PREA. Noncompliant states will lose five percent of their federal grant money for prisons unless the governor states that five percent of that year's funds will be used to bring the correctional facilities into compliance.[xi] Local facilities not under the control of the state and not contracting with either state or federal facilities will not have any direct financial penalty. States will not face a potential loss of funding until federal fiscal year 2014, which starts October 1, 2013.[xii]

Court orders can also be used to force compliance, if the facility is in violation of previous court directives or relevant laws.

How can I find out more about PREA?

- **Just Detention** has compiled a state-by-state resource guide for survivors of sexual violence, whether they are currently incarcerated or have left correctional supervision.
- The **National PREA Resource Center** serves as a clearinghouse for PREA-related information, including studies of sexual abuse in correctional facilities, links to state and federal laws, sample policies, and audit standards.
- The **Bureau of Justice Statistics** collects information regarding the prevalence of sexual abuse in correctional facilities.
- The **National Institute of Justice** is the research, development, and evaluation arm of the U.S. Department of Justice. Their site includes information about PREA standards, research, and links to additional information.
- The **Government Printing Office** publishes the PREA standards in the Code of Federal Regulations, in a section of the Code updated each July 1. The current year version can be accessed **here**. Go to title 28, chapter 1, Part 115.
- The **Civil Rights Division of the U.S. Department of Justice** houses the Special Litigation Section. This section investigates civil rights abuses on behalf of many justice-involved persons, including adults and juveniles confined to state and local institutions.
- Each state has a **Protection and Advocacy** (P&A) agency. These agencies are free and are in every state. They advocate on behalf of people with disabilities, including those with mental illness. In some states, the agencies are called Protection and Advocacy for Individuals with Mental Illness (PAIMI).

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[i] Beck, A., Berzofsky, M. , Caspar, R., & Krebs, C. (2013). *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12: National Inmate Survey 2011-12.* Bureau of Justice Statistics. Retrieved from http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4654

[ii] Crisanti, A. S., & Frueh, B. C. (2011). Risk of trauma exposure among persons with mental illness in jails and prisons: what do we really know? *Current Opinion in Psychiatry, 24,* 431-435. doi:10.1097/YCO.0b013e328349bbb8

[iii] Crisanti, A. S., & Frueh, B. C. (2011). Risk of trauma exposure among persons with mental illness in jails and prisons: what do we really know? *Current Opinion in Psychiatry, 24,* 431-435. doi:10.1097/YCO.0b013e328349bbb8

[iv] 42 U.S.C. § 15602 (2011).

[v] National Standards to Prevent, Detect, and Respond to Prison Rape. 77 Fed. Reg. 37107 (Jun. 20, 2012) (to be codified at 28 C.F.R. § 115).

[vi] 28 C.F.R. § 115.13 (2012), 28 C.F.R. § 115.313 (c) (2012).

[vii] 28 C.F.R. § 115.51 (2012).

[viii] 28 C.F.R. § 115.263 (a) (2012).

[ix] 28 C.F.R. § 115.52 (2012).

[x] 42 U.S.C. § 1997(a) (2011).

[xi] 42 U.S.C. § 15607(c) (2011).

[xii] National PREA Resource Center. (2013) *Frequently Asked Questions*. Retrieved from http://www.prearesourcecenter.org/faq