



Staff Sexual Abuse in Confinement Settings

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CHAPTER 28

CHAPTER OBJECTIVES

- Understand the historical context of addressing sexual abuse in confinement settings.
- Understand the definitions related to sexual abuse in confinement settings.
- Understand the evolution of data collection efforts in determining the prevalence of sexual abuse in confinement settings.
- Explore the importance of culture and leadership in creating safe environments.
- Understand the role of the National Standards to Prevent, Detect and Respond to Prison Rape in addressing sexual abuse in confinement settings.
- Identify emerging issues and implications for further research.

Addressing sensitive issues in any profession can test the foundations of trust among members of the community, the corporate understanding of the “good” and the “bad” of its members, and the degree to which external opinions are received as credible. This is particularly true when competing perceptions of the identified problem vary widely among professionals, advocates, researchers, and legislative bodies, among others. Addressing staff sexual abuse in correctional settings, the subject of this chapter, is a sensitive issue with a fascinating journey of professional discourse, input from the advocacy community, and a broad range of influencing factors ultimately resulting in extensive changes in policy and practice now driven by national standards for the prevention, detection, and response to sexual abuse in confinement.

Since the first edition, the body of knowledge in this area has grown considerably as the issues of sexual abuse in confinement continue to be understood and addressed by all levels of leadership within the corrections profession. Not only have corrections professionals gained greater understanding through increasing strategies to eliminate sexual abuse in confinement but survivors, advocacy groups, researchers, and legislators also have contributed to the development of strategies both internal to corrections and within the larger community to better define staff sexual abuse within the context of an imbalance of power. In August 2012, after several periods of public comment on draft standards, the Department of Justice promulgated national standards designed to assist the field in addressing this issue. In the future, correctional textbooks may identify the Prison Rape Elimination Act (PREA) of 2003 and the resulting national standards as the “game changer” in addressing sexual abuse in confinement settings.

■ Historical Context and the Evolution of National Standards

On September 4, 2003, President George W. Bush signed the PREA into law. Now over a decade since enactment, much of the intent of the Act is embodied in the promulgation of the National Standards to Prevent, Detect, and Respond to Prison Rape issued from the Honorable Eric Holder, 82nd Attorney General of the United States.

The PREA legislation addresses the rights and responsibilities of inmates in custodial confinement settings in the criminal justice system, including federal, state, and local prisons, jails, police lockups, juvenile justice facilities, private facilities, and community residential settings. The law speaks to the sexual abuse of inmates/youth by staff and additionally includes a major focus on sexual abuse occurring between inmates/youth. Although this chapter focuses primarily on the dynamics between staff and inmates resulting in staff sexual abuse—often referred to as staff sexual misconduct—the promulgation of the PREA standards clearly defines a larger discussion and requirement to address all sexual abuse in confinement settings. This chapter also limits the discussion to adult and prison settings with the full awareness that all settings under the law need careful study.

With the enactment of the law in 2003, federal resources were dedicated to engage the field in further research, technical assistance, information dissemination, and development of strategies in addressing sexual abuse. Many of these initiatives informed the development of the final standards.

Although PREA is considered by some to be one of the most significant reform initiatives in recent correctional history, the topic of sexual abuse in the profession was not new in 2003. In fact, prisoner sexual violence was documented in the United States as early as 1826, and research on the issue was published in the 1920s.¹ In the 1970s, there were credible reports of sexual abuse by staff against juveniles (see Larry Cole, 1972 and Kenneth Wooden, 1976), female offenders (see Gene Kessanbaum, 1972), and male inmates (see Lee Bowker, 1980 and 1982, and Dumond, 1992), yet no substantive action taken to address these violations was adopted by the profession at large. Very little traction was developed to spur action in the field beyond individual system responses to local incidents until highly visible litigation in women’s prisons “named” or

acknowledged staff sexual abuse as an issue demanding a more in-depth discussion regarding correctional practice and response to survivors of abuse in confinement.

Influencing Factors 1990–2005

A number of factors contributed to an increased emphasis in the field of corrections on this important subject. By recognizing some of these key factors, students, practitioners, and policymakers can learn the ways in which the public, nongovernmental organizations, legislators, the faith community, litigators, and correctional leadership can become powerfully interrelated players in the development of public policy.

EARLY LAWSUITS IN WOMEN'S PRISONS. Just as cases in the media-highlighted domestic violence, which raised the issue to the national attention by the public and policy makers, highly visible cases in women's prisons raised awareness of the issue of staff sexual abuse in correctional settings. In 1992, allegations of widespread sexual abuse of women emerged from the Georgia Women's Institution in Milledgeville, Georgia. Corrections staff were found to have engaged in sexual assault, inappropriate viewing, and verbal degradation of female prisoners in their custody.² That same year, the Michigan Woman's Commission identified the problem of staff sexual abuse in Michigan's prisons, which led to a U.S. Department of Justice investigation 2 years later in 1994. In 1994, a class-action suit, *Women Prisoners v. District of Columbia Department of Corrections* [Women Prisoners I, 877 F.Supp. 634(D.D.C. 1994)], was brought in the U.S. District Court. The suit alleged discrimination and widespread abuse against female prisoners at three Washington, D.C. facilities (Washington, D.C. Jail, the Correctional Treatment Facility, and the Lorton Minimum Security Annex). The District Court in this case found that widespread abuses against women prisoners were occurring on a regular basis, including lack of privacy, vulgar sexual remarks, inappropriate touching, sex exchanged for food and goods, and sexual assault by correctional staff and male inmates. The Court further argued that this created a "sexualized environment" where the boundaries of expectations of behavior were not clear, and which were in violation of the 8th Amendment's protection against cruel and unusual punishment.³ Similarly, other state systems and the U.S. Federal Bureau of Prisons faced litigation that was documented in the 1996 Human Rights Watch publication "All Too Familiar: Sexual Abuse of Women in U.S. State Prisons." The court orders and remedies in these cases provided models for policy and practice that served as the foundation of a correctional management framework for responding to an issue that affects all institutions. The monetary awards resulting from individual inmate cases also increased the concern of the public as well as correctional professionals, legislators, and advocates.

GROWTH OF CORRECTIONS. The prison population in this country grew from 1,078,542 in 1995 to over 1,446,269 in 2005.⁴ To the correctional practitioner, the reality of building new facilities, hiring large numbers of staff, and managing prisons during such extreme periods of growth had a tremendous impact on day-to-day institutional operations. With the growth of the offender population and prisons, more supervisors were needed to operate all aspects of prison and jail facilities. Promotions often occurred without personnel having the experience expected in earlier decades, and supervisors were often individuals who had worked as peers with the people they eventually supervised. This likely contributed to an environment in which many supervisors felt uncomfortable confronting sensitive issues at a time when correctional investigative practice did not include training on investigating allegations of sexual abuse in correctional settings.

ADVOCACY GROUPS AND GOVERNMENT ACCOUNTING OFFICE REPORT. The role that advocacy groups played during this period was significant to the passing of the PREA and offers a student of social change a unique look into the impact that stakeholders external to the corrections field can have on policy and practice. During this period, several key human rights and advocacy groups documented the problem of sexual abuse both

in male and female facilities and called for reform of these and all systems. Human Rights Watch (1996), Amnesty International (1999, 2000, 2001; Widney-Brown, 1998), and the United Nations High Commissioner (Coomaraswamy, 1999) noted serious concerns about female inmates’ safety in America’s correctional institutions. Similarly, the Government Accounting Office (1999) through a mandate from the U.S. Congress conducted their own study in a review of the same states addressed in the earlier report by the Human Rights Watch. Although some of these reports were highly criticized by corrections officials, they served to further elevate the urgency of the national dialogue.

In addition to advocates for women in prison, advocates concerned with sexual abuse occurring in male facilities had long been championed primarily by survivors of custodial sexual abuse in male facilities and by a handful of researchers concerned with raising the visibility of such abuse. The nonprofit Stop Prisoner Rape founded by male survivors was established in 1980 and renamed Just Detention International on September 4, 2008. Human Rights Watch also published a report in 2001 entitled “No Escape: Male Rape in U.S. Prisons”, drawing further attention to the issue of prison rape in male facilities.

EVOLUTION OF STATE LAWS. The litigation that emerged from women’s facilities in the 1990s identified the lack of state laws prohibiting staff sexual abuse. Further study by the National Institute of Corrections (NIC) and the National Women’s Law Center indicated that even where laws existed, staff were often not aware of them or trained on the substance of the law. In the decade of the 90s, there were less than 10 state laws prohibiting staff sexual misconduct. Today every state has such a law, and the increase in state laws occurred as a result of several influencing factors. The NIC through federally funded training programs provided guidance in the development of state laws. In 2002 American University, Washington College of Law began hosting these training events for correctional administrators, emphasizing the importance of state laws and the key components of good law in this area. Technical assistance was also made available through NIC to support efforts in the field and the advocacy community, notably Amnesty International continued to focus on the importance of this legislative effort.

- Sexual misconduct defined as a misdemeanor.
- Sexual misconduct defined as a felony.
- Sexual misconduct defined as either a felony or misdemeanor depending on the nature and severity of the assault.
- No statute specifically criminalizing sexual misconduct.

FIGURE 28-1 Key

Finally, as the issue of sexual safety in all confinement settings continued to emerge, there was recognition, particularly in the juvenile area, of the importance of additional laws addressing custodial staff sexual misconduct and related state laws. See **Figures 28-1, 28-2, and 28-3** to see the evolution of state laws from 1990 through 2010.

EARLY WORK: THE NATIONAL INSTITUTE OF CORRECTIONS. Motivated to serve the corrections field through their mission of technical assistance to the profession, the NIC under the U.S. Department of Justice was a pioneer in developing a national

strategy to address staff sexual abuse. Learning from the lawsuits in women’s facilities in the early 90s, NIC developed a systemic model that provided the correctional field with an approach focused on effective correctional management practice, rather than an ad hoc response to a given crisis. It is not unusual for leaders in any field to be disappointed in colleagues abusing their power in a sexualized relationship, referring to the expression that all organizations have “a few bad apples.” Although there may be some truth to this expression, the assumption behind it is that the management structure or leadership has little responsibility; these unfortunate issues just happen with those “few bad apples.” NIC was willing to support a different direction in addressing sexual abuse in corrections that assumed instead that although the majority of correctional staff conduct themselves professionally, there still is good reason to frame sexual abuse in corrections as a management issue worthy of a comprehensive management approach to prevention and response. Nearly two decades later, to the credit of the leadership at NIC, thousands of correctional staff had been trained in a systemic model to address sexual abuse in corrections. Their work continues as they partner with other federal

initiatives to broadly implement PREA. See **Figure 28-4** for a visual representation of the initial systemic model. The model continued to evolve over the years and ultimately provided a strong foundation for the implementation of PREA for those states and jurisdictions who received early NIC assistance.

PASSAGE OF PREA. By the mid- and late 1990s, a diverse coalition of supporters addressing custodial sexual abuse began to form from advocacy groups such as Human Rights Watch, Stop Prisoner Rape (now known as Just Detention International), faith-based groups, and conservative and liberal policymakers, thereby elevating the discussion and demanding change. This ground swell of advocacy created a perfect storm of interest within Congress. Correctional leadership was able to advocate for a technical assistance approach to the implementation of the law through testimony before the passage of the legislation, ensuring federal funds to support the field through grants and other forms of assistance.

The result was the passage of The PREA of 2003 [Public Law 108-79] in September 2003. The Act demanded a “zero tolerance” standard, focused on prevention as a top priority, and established a number of important priorities for correctional agencies nationwide. Most importantly, Public Law 108-79 assembled the resources of a host of federal agencies to study, address, and respond to this problem. The name of the law over the next few years would create a good deal of discussion since the term “prison” doesn’t represent the full spectrum of facilities covered under the law. The final standards clarify the scope of coverage.

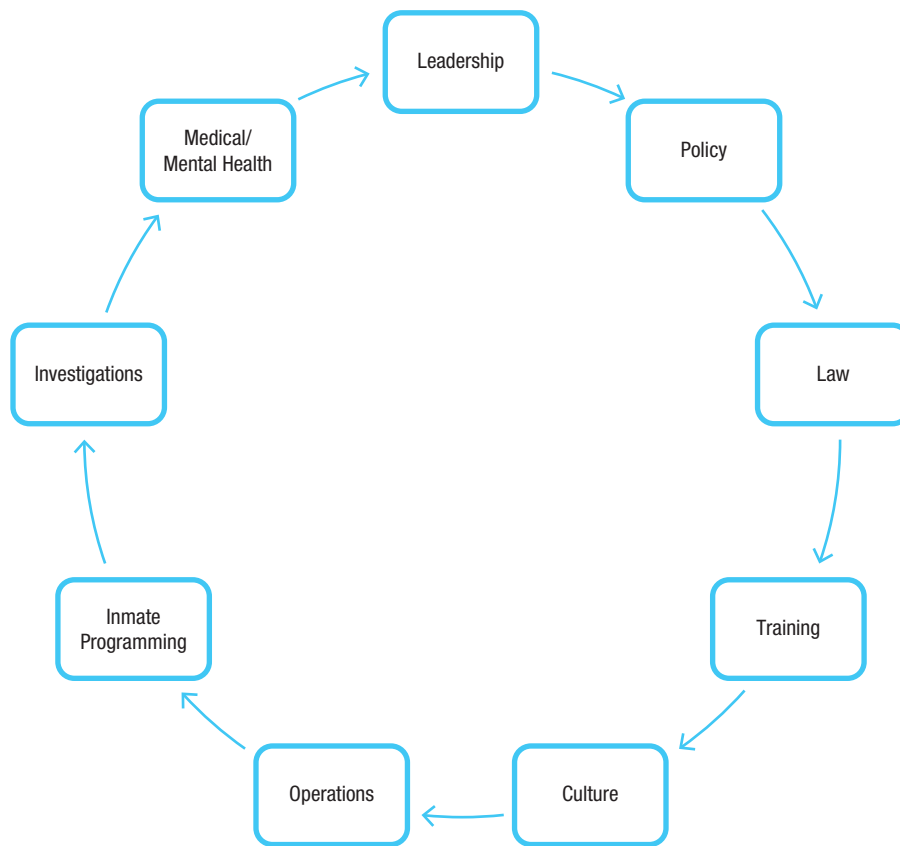


FIGURE 28-4 National Institute of Corrections early systemic model
Moss (1998)

PUBLIC INTEREST AND INCREASED AWARENESS OF ABUSE OF POWER. Costly lawsuits combined with the general public's frustration with crime contributed to an increased interest in corrections. Highly visible cases in the military, the academic community, churches, civic organizations, and the private and public sectors overall raised the awareness of abuse of power in various settings. This increase of examples in other settings in which individuals hold authority over others affirmed the importance of addressing issues of sexual violence and abuse in correctional settings. Any social or cultural change begins by naming or acknowledging that the issue exists; by 2005, the correctional field was clearly moving into a new era of policy and practice addressing staff sexual misconduct by naming the need for a systemic management response.

Influencing Factors 2005 to Present

EMPIRICAL RESEARCH. The absence of systematic empirical research was of serious concern to members of Congress during the development of the PREA legislation. The limited data demonstrating the prevalence of sexual abuse in confinement settings made addressing the issue difficult. Anecdotal evidence and a limited but concerning scope of research was used to demonstrate both extremely high and extremely low rates of sexual abuse. In the last decade, research efforts have increased and practitioners have begun to develop more confidence in approaches to prevention, detection, and response to sexual abuse in their facilities. One of the key features of the PREA was to have systematic, multimodal empirical studies conducted by the Bureau of Justice Statistics to examine the prevalence of sexual assault in America's jails, prisons, and juvenile institutions. Although the methodology is complex and challenging due to the nature of the work, the multiyear trends and rich information have notably enhanced the field's knowledge of the prevalence of sexual abuse in confinement settings and the patterns that exist therein. The National Institute of Justice, consistent with the PREA, conducted research through grant funding. This work further contributed to the body of knowledge.

ECONOMY. The final PREA standards arrived in an environment of cost containment where many states were cutting corrections budgets and reducing the inmate population. This challenging time in corrections impacted agency responses to the PREA standards due to limited staffing and monetary resources. The significant controversy around the potential costs agencies might incur if mandated to comply with the standards spurred the Department of Justice to conduct a cost analysis of each standard. The final promulgated standards were designed to reflect findings in the cost analysis and included feedback from the field to alleviate some of the concerns.

ADVOCACY AND AGENCY COLLABORATION. The increased collaboration among advocacy groups, nonprofits, and corrections officials through the implementation phase of the PREA standards represents an encouraging approach to the prevention of sexual abuse in confinement. With the involvement of community partners, there is an increased focus on policy, practice, and a strong response to victims. Examples of these collaborative efforts are found in the development of facility–community partnerships with rape crises centers and local law enforcement.

THE NATIONAL PREA STANDARDS. The National Prison Rape Elimination Commission (NPREC), a nine-person committee, was appointed by Congress and the White House⁵ and tasked with the enormous responsibility of creating standards for the field, which would then be promulgated by the U.S. Attorney General. The NPREC released the draft standards in 2009 and subsequently disbanded as described in the law.

After what became a multiyear project, including several periods during which the corrections field and the public were asked to submit comments on the draft standards, the Attorney General released the *National Standards to Prevent, Respond and Detect Prison Rape*⁶ in May 2012 and promulgated the standards in August 2012. These standards include 12 domain areas, included in [Figure 28-5](#), and include requirements for both policy and practice across key operational areas impacting inmate sexual safety.

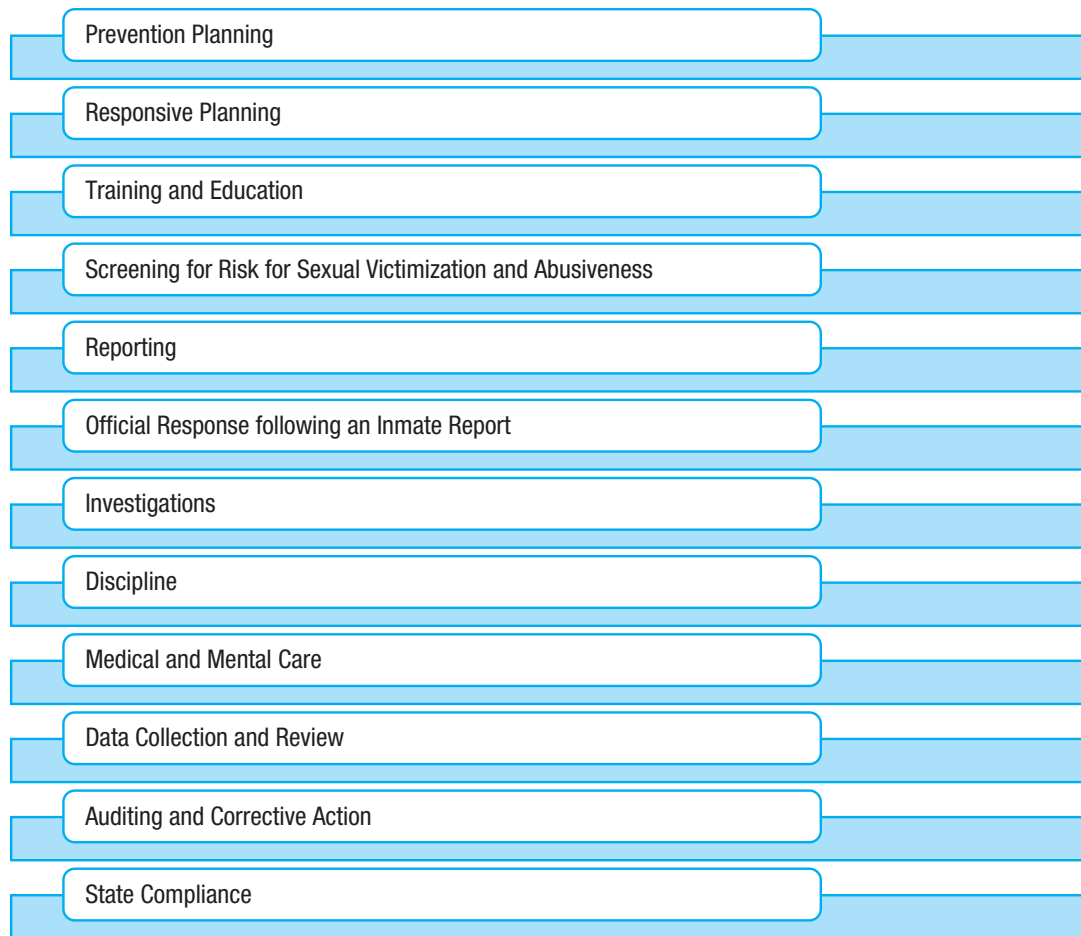


FIGURE 28-5 Domains of National Standards to Prevent, Detect and Respond to Prison Rape

■ Defining Sexual Abuse in Confinement Settings

To best guide the field and develop strategies that can be implemented with consistency and clarity, it is important to have consistent definitions. Defining behaviors or categories of behaviors that constitute the various forms of sexual abuse in confinement settings only began through the lawsuits of the 90s in women's prisons, borrowing terms from state laws, domestic violence response, and nationally recognized organizations involved in addressing sexual violence. The definitions in these lawsuits were driven by the "naming" of staff sexual misconduct rather than the current expanded understanding of the range of behaviors identified with custodial sexual abuse. Without the development of consistent terms and the subsequent training of correctional staff, recognizing and effectively preventing the subtle behaviors is difficult sometimes. Without consistent definitions, it has also been challenging to determine prevalence of sexual abuse and develop effective policy. The evolution of the PREA required a thoughtful dialogue to continue clarifying definitions with the legislation, state laws, and the Bureau of Justice Statistics (BJS) data collection efforts.

In the section "Data Collection, Reporting, and Determining the Prevalence of Sexual Abuse in Correctional Facilities," the author discusses the role of the federal data collection process through the

Bureau of Justice Statistics (under the Office of Justice Programs, U.S. Justice Department) as a component of Congress's mandates under PREA. To collect the most accurate data to determine prevalence of sexual abuse, the development of common definitions was a powerful and critical step. The definitions evolved over several years with input from experts and professional organizations around the country and have now resulted in a body of work that informs policy language and ongoing data collection efforts required by the PREA. Specifically, the BJS definitions drive data collection and serve to create uniformity for greater fidelity in understanding prevalence and characteristics of sexually abusive behavior.

The national PREA standards include definitions for the field to use when working toward compliance with the standards. In addition to the term sexual abuse, the field often uses "staff sexual misconduct," which originated from litigation of women's prisons. This chapter uses the term staff sexual abuse rather than misconduct to be consistent with the PREA definitions. The Department of Justice defined staff sexual abuse as the following in the promulgated standards:

Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the inmate, detainee, or resident:

1. *Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;*
2. *Contact between the mouth and the penis, vulva, or anus;*
3. *Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;*
4. *Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;*
5. *Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;*
6. *Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1)-(5) of this section;*
7. *Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident; and*
8. *Voyeurism by a staff member, contractor, or volunteer.*

Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

The standards also address the issue sexual harassment, and sexual harassment is defined as follows:

Sexual harassment includes—

1. *Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and*
2. *Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.*

■ Data Collection, Reporting, and Determining the Prevalence of Sexual Abuse in Correctional Facilities

Reporting and the Impact on Data Collection

Historically, the occurrence of incidents of sexual abuse in correctional settings has been difficult to determine. Early work funded by the NIC resulted in gathering staff perspectives of the barriers to reporting that complicate the task of defining prevalence. Staff reported the barriers that hinder the collection of statistics on sexual abuse that they encounter as well as the barriers that inmates encounter in.

*Staff Perspectives: Trends from Focus Group Interviews.*⁷ Some of the identified barriers include the following:

- Data on investigations have often been documented in more general categories not specific to sexual misconduct, such as assault or drug investigations.
- The degree to which sexual misconduct is reported may also parallel the historical underreporting of other forms of sexual assault in the world beyond corrections.
- Prisoners may not report sexual misconduct for fear of reprisal, fear that they will not be believed, or the relationships meet their needs in some ways.
- Sexual misconduct is difficult to investigate, and investigative techniques that corroborate or add information beyond the word of the inmate are generally necessary to substantiate a claim.
- Staff may not recognize the signs indicating a potential problem.
- A “code of silence”⁸ from either the inmate population or the staff may create a significant barrier embedded in the culture of a facility.
- Effective reporting mechanisms are not in place.
- Investigations are not perceived to be objective.

A historical perspective provides the following reasons why prevalence rates have been difficult to establish:

- *Detection.* Staff have not generally been trained in recognizing the signs that may indicate a potential problem. In addition, many staff have not been educated on the dangers of sexual abuse in confinement settings or the inevitable security risks that arise when staff are not where they are assigned or are otherwise not doing their job or following policy, which has meant that not all recognized signs of sexual abuse have been reported. Cultural “codes of silence” have also impeded reporting of detected abuse, particularly in cases of staff sexual abuse.
- *Reporting.* Of all crime categories, rape and sexual assault have traditionally been underreported due to fear, intimidation, and concern about safety (Bartol & Bartol, 2004), which is even more challenging when reported in a correctional environment (Dumond and Dumond, 2002). Prisoners may not report sexual abuse for fear of reprisal, fear that they will not be believed, or because the relationship meets their needs in some way. In addition, effective reporting mechanisms have not always been in place, which leads to inmates reporting without appropriate agency follow-up or documentation, or inmates refraining from reporting altogether. Inmates who do report may face retaliation, which may lead to noncooperation. When investigations are not perceived to be objective, this also leads to fewer reports.
- *Response.* Investigations of sexual abuse in corrections have often been categorized in more general categories, such as physical assault or drug investigations, and thus, there has not been clear data on the quantity of sexual abuse investigations. In addition, sexual abuse is difficult to investigate, and investigative techniques that corroborate or add information beyond the word of the inmate are generally necessary to substantiate a claim. Many corrections staff have not been trained in trauma-informed

interviewing techniques, which enhance cooperation from victims of sexual abuse. Agencies have often used outside investigators with limited or nonexistent correctional expertise who frequently find it difficult to substantiate a claim due to the unique challenges of a correctional setting, including difficulties in obtaining physical evidence, problems with maintaining confidentiality, and the complications inherent to navigating a facility culture.

Data Collection Mandate from Congress

Congress tasked the Bureau of Justice Statistics with determining the actual prevalence of sexual abuse in corrections settings through a multiyear comprehensive data collection process. This task includes not only data collection concerning abuse between staff and inmates/youth but also additionally required data regarding inmate-on-inmate or youth-on-youth abuse. Since 2003, the BJS has conducted administrative records collections in adult jails, prisons, and juvenile facilities to document the formal reports submitted by inmates, prisoners, detainees, and juveniles to correctional authorities, and has collected data on victimization reported by former and current state prisoners through BJS anonymous surveys. The reports resulting from the data collection are made available to the public on BJS' website.

The data collected through this research were substantial, and although controversial in some aspects, clear patterns emerged with regards to inmate victimization and staff sexual abuse. The most recent National Inmate Survey for inmates⁹ currently in custody in prison or jail found that 88,500 adult inmates self-reported being sexually victimized in the 12 months before the survey, which was 4.4% of the inmates in prisons and 3.1% of the inmates in jails. Percentages of inmates reporting sexual victimization by staff included 2.8% in prisons and 2.0% in jails. Of that number, 1.8% in prisons and 1.1% in jails indicated that they willingly (although note that willing does not reflect consent) participated in sex or sexual contact with staff.

Rates of self-reported victimization by staff were higher among black inmates (compared to white), inmates aged 20–24 (compared to ages 25 or older), inmates with a college degree (compared to those who had not completed high school), and inmates who had experienced sexual victimization before coming to the facility (compared to those who had not). Inmates with a sexual orientation other than heterosexual self-reported victimization by staff at a rate three times higher than heterosexual inmates.

Most perpetrators of staff sexual misconduct were females; among male victims of staff sexual abuse, 69% of those in prison and 64% of those in jails reported sexual activity with female staff. Of those male inmates reporting sexual activity with facility staff, 64% reported no force or pressure. In contrast, 70% of female inmates reporting sexual activity with facility staff reported that they were pressured by the staff to engage in the activity. Among the former prisoners interviewed in 2008, half of all those who self-reported victimization by staff stated that they had been offered favors or special privileges; a third said they had been persuaded or talked into it.¹⁰

These data points provide practitioners with important information. The characteristics reported by the inmate population indicate the need to explore prevention strategies that are targeted with sensitivity to gender, race, age, sexual victimization history, sexual orientation, and education level.

Role of National Prison Rape Review Panel

The National Review Panel on Prison Rape was formed under the PREA. The panel is responsible for conducting annual hearings to identify common characteristics of victims and perpetrators of prison rape, as well as to identify prisons and prison systems with high incidence and low incidence of prison rape.¹¹ The panel has helped to clarify general assumptions about sexual abuse through the hearing process. As a result, the corrections field is moving toward a greater understanding of the occurrence of sexual violence and abuse

in our correctional systems. This increased understanding provides correctional administrators with refined and effective approaches in addressing sexual abuse.

■ The Importance of Culture and Leadership in Promoting Sexually Safe Environments

Long before the passage of PREA and the promulgation of the final standards, many correctional administrators have been developing ways to respond to this issue. What is important to note, and is acknowledged in the preamble of the National Standards, is that the PREA standards alone are not enough to ensure sexually safe environments: Culture and leadership are key components that must be incorporated into an approach towards addressing sexual abuse. The Final Standards note:

The success of the PREA standards in combating sexual abuse in confinement facilities will depend on effective agency and facility leadership, and the development of an agency culture that prioritizes efforts to combat sexual abuse. Effective leadership and culture cannot, of course, be directly mandated by rule. Yet implementation of the standards will help foster a change in culture by institutionalizing policies and practices that bring these concerns to the fore.¹²

The environment of a facility is complex because of the culture in which it exists. Although every organization has a culture founded on the attitudes, beliefs, values, norms, and prejudices of the individuals within the organization, a correctional facility culture is unique due to the purpose of the institution and the inescapable dynamics therein. The majority of the population within a correctional facility (the inmate population) is there involuntarily and depends almost entirely on the minority population (staff) to respond to their daily needs. Correctional staff spend many hours interacting with inmates, getting to know inmates through long-term supervision.

Most types of interactions that occur between individuals within a normal community also occur within corrections, but they are intensified by the correctional setting. Although a transgender individual in the community may find themselves avoiding certain areas or individuals to minimize unwanted stares and verbal or even physical harassment on the street, transgender inmates are unable to choose the individuals with whom they interact and instead must rely on correctional staff to help protect them. Although rival gangs members may only interact occasionally in the free world, they may be living on the same unit within a correctional facility. Racism, sexism, and homophobia all exist within the free world, but the impact is more clearly felt in the artificial community of a correctional facility.

Cultural Collision

In addition to the staff–inmate dynamics caused by virtue of the individuals’ positions as staff or inmates, correctional facility cultures often struggle with “cultural collisions¹³” as well. Cultural collisions can be characterized by competing priorities of various subgroups, policy directives, or leadership direction. For instance, prisons are often located in geographical locations far from an inmate’s home area, and the life experiences of staff and inmates may be vastly different. If culture is defined by the behavioral norms of staff and offenders, then the behaviors that challenge these norms result in cultural collisions.

These cultural differences embedded in the day-to-day life of a prison can create challenges (collision) of perceptions, communication styles, life experiences, and values, creating difficulty in relationships among staff and offenders, both between and within groups. An increased loyalty among subcultures within the facility, both among staff and offenders, may contribute a code of silence.

Paramilitary Structure and Impact on Culture

Staff and inmate interactions must be understood within the context of an environment that remains, in most settings, a paramilitary structure between inmates and staff. In such a culture, reporting infractions

usually requires a prescribed reporting system within a chain of command. In a small community, reporting a colleague for any infraction, sexual or otherwise, can lead to alienation and isolation. An inmate reporting a staff person or another inmate for an infraction may face similar isolation or, in extreme cases, find him or herself in physical danger.

In addition, as the cultural drivers mentioned above create divisions that become embedded in the day-to-day life of a facility, they can create a collision of perceptions, communication styles, life experiences, and values. The dynamics of a correctional facility lead to increased intergroup loyalty among subcultures within the facility, creating the potential for a code of silence.

False Allegations

Any discussion of staff–inmate dynamics and correctional culture would be incomplete without acknowledging staff concerns of false allegations from offenders. This difficult topic in correctional settings creates one of the major barriers to gaining staff confidence in addressing sexual abuse. Many staff still fear that inmates will manipulate the system through false reports. Although false allegations are a reality, if the investigative process is timely, efficient, and objective, inmates will soon learn that false allegations will not benefit them, and invisible retaliation from staff and inmates usually greets the false accuser. Both false allegations and invisible retaliation are addressed in the PREA standards with guidance to the field. If false allegations are a continuing problem in a facility, this may indicate other problems in the supervision of inmates. The concern about false allegations often seems to escalate into mythic proportions when compared to facility data. With the federal requirements for reporting all allegations, a much clearer picture of incidents of false allegations will continue to emerge. The encouraging news is that most practitioners understand that all allegations must be fully investigated whether they appear credible or not. Effective investigative practice results in staff recognizing that the investigative process serves to clear them from false allegations and protect them as well.

Reporting Culture

Although policies and the implementation of the National Standards will move the field forward through strong guidance, the desired outcome of eliminating staff sexual abuse requires a willingness to promote a reporting and responsive culture. A reporting culture is characterized by staff and offenders knowing how to report abuse, being willing to report abuse, and having confidence that a response to reporting will be handled objectively. Reporting environments are characterized by an expectation that staff members will demonstrate professionalism every day in all aspects of daily operations. Appropriate language that demonstrates respect and encourages trust; objective investigations that are effective and timely; trained staff who understand their roles and responsibilities in preventing, detecting, and responding to sexual abuse; strong operational practices that enhance safety and minimize opportunities for sexual abuse; and appropriate inmate programming that minimize inmate idleness and enhance reentry are all hallmarks of a reporting culture. These characteristics promote the culture as one that values prevention and increases physical and emotional safety as well as sexual safety.

Creating a culture that supports the reporting of sexual abuse is a dynamic process that must be valued by all levels of leadership. If the culture of the institution does not support objective reporting and response to nonsexual infractions, then the atmosphere for reporting staff sexual abuse is greatly hampered. A fear-based facility culture is one that characteristically is highly punitive and leaves little room for the consideration of complex human dynamics. Sometimes to “preserve the order,” keeping things simple seems like an efficient management style of leadership. Addressing staff sexual misconduct in a correctional setting requires much more from leadership. Effective leaders in corrections allow for hope-based environments encouraging respectful and safe avenues for reporting any abusive behavior. The opportunity to report abusive behavior, as supported by the PREA standards, requires multiple ways in which staff or inmates can report safely.

■ Examples of Current and Emerging Issues

Employee Support and Training in Professional Boundaries

People may wonder why staff do not understand the simple directive not to have sex with inmates. However, most staff do understand this directive and would never intentionally violate their professional duties. Yet, the boundaries between staff and inmates can become blurred, and not all staff sexual abuse involves overt coercion or force. Forms of staff sexual abuse range from force, coercion, and sex for favors to “willing” relationships in which the staff and inmate claim to be in love.¹⁴ In addition, there are inmates who “groom” staff to develop affection for them for the purpose of accessing privileges and contraband, and warnings of the manipulative inmate are common in correctional officer trainings.

Although it is always the responsibility of the correctional staff to maintain professional boundaries to ensure security is maintained in the facility and that all relationships are professional, staff members may feel isolated, depressed, or verbally abused themselves by peers or supervisors, which creates emotional vulnerability. Cases of staff sexual abuse have involved all levels of staff, and case examples demonstrate that even the staff members who might be thought least likely to become involved may sometimes cross the line. Staff feeling particularly stressed in their personal lives may have an increased vulnerability to “crossing the line” with inmates, especially if they have had minimum training and support in understanding the importance of professional boundaries. Research shows PTSD rates among correctional officers rivaling rates previously reported for emergency medical professionals, post-9/11 fire fighters and police officers, and wartime military personnel.¹⁵ The need to identify stress reduction strategies becomes even more apparent when we know staff carrying high stress levels are vulnerable to diminished professional judgment.

Correctional staff are in close contact with those they supervise, but very few correctional training programs address the feelings and emotional dilemmas of officers or staff members when inmates become attached to or interested in them personally, or when the reverse is true. Although early training for clinical professionals such as psychologists, social workers, and clinical chaplains includes discussions of the critical boundaries between professionals and patients, training for correctional staff traditionally has not. Such training offers more understanding of the emotional challenges of the job and goes beyond a policy statement prohibiting inappropriate behavior. One might strongly argue that correctional staff simply need more “tools” for the emotional dynamics of the job. A low-cost “tool” might be a greater awareness among supervisors of the warning signs indicating staff isolation or high levels of stress exhibited by an individual staff member.

Women in Corrections

The BJS data reported in the section “Data Collection, Reporting, and Determining the Prevalence of Sexual Abuse in Correctional Facilities” brings forward challenging data regarding violations of professional boundaries by some women staff in ways that threaten the public and the field’s positive perceptions of the productive role women play throughout all areas of the profession. More importantly, the results of some of the more egregious staff sexual misconduct violations have resulted in dangerous outcomes including loss of life during escapes that were orchestrated by female staff for their male inmate lovers. The data calls for corrections professionals, men and women, to share in a renewed awareness of the importance to develop an understanding of the environment in which they work. As discussed earlier in the chapter, staff sexual misconduct takes many forms. The data related to women in corrections indicate that 64% of inmates involved with female staff did not feel forced. This is notably different and higher from the reporting of male staff involved with female inmates. Understandably, this is a very complicated subject to address. The data do not ignore that some males do feel forced to become involved in relationships with male and female staff. Seeing women staff as perpetrators is often more difficult for the corrections community, prosecutors, and the public. Emerging work in understanding the role of gender in staff sexual abuse is important in the strengthening of prevention strategies. This work is a priority of the Bureau of Justice Assistance (BJA)-funded National PREA Resource Center.

Inmate Orientation and Education

Prisoners do not leave their emotional needs or needs for the basic comforts of life in the courtroom. Just as the inmate population is keenly aware of vulnerable staff members, staff members recognize the vulnerability of inmates. Although effective staff training is critical, more recent understandings of the dynamics of staff–inmate sexual abuse have resulted in recognition of the importance of educating the inmate population about their rights to live in a correctional environment that is sexually safe. Although inmate orientation programs that address sexual abuse in custody have been implemented in some facilities for a number of years, the PREA standards require programs provide information defining sexual abuse in custody and provide information on multiple ways to report sexual abuse in all facilities.

Understanding Pathways

The field's understanding of the dynamics of staff–inmate sexual abuse will be enhanced as we continue to learn more about the profile of prisoners in both men's and women's facilities, as well as the profiles of the staff supervising them. For instance, understanding more about the effects of childhood abuse and its impact on adult behavior patterns can be helpful in identifying ways to enhance day-to-day interactions between staff and inmates. Many inmates have histories of physical, sexual, and emotional abuse, and research shows that male and female inmates have experienced significant prior sexual victimization. Staff similarly bring the influences of their histories. The “journey” of both staff and offenders impacts the corrections “mix.”¹⁶ The BJS data recognize past histories of sexual abuse as a factor in vulnerability to custodial sexual abuse. Training programs for staff need to be trauma informed so that the operations of a facility, investigative practice, and programming and work assignments are informed by pathways of offenders, many of which involve a trauma component. Not all pathways into crime are through childhood trauma; however, inmates often come from communities of families that have been marginalized because of poverty, lack of education, unemployment, and substance abuse.

Women Offenders

Meda Chesney-Lind suggests that there are gender differences in the dynamics that follow an abused child into adulthood, noting that girls are much more likely than boys to be victims of sexual abuse and that sexual abuse of girls often follows them into adulthood.¹⁷ This may suggest many women continue to be “frozen” in a victim role as they enter institutions. The studies report that between 40% and 88% of incarcerated women have been victims of domestic violence and sexual or physical abuse prior to incarceration.¹⁸ These experiences with intimate violence create pathways to prison in two ways: First, trauma is typically untreated and is tied to initial entry into substance abuse, the primary reason for increasing female imprisonment. Second, repeated victimization in the lives of women can lead to defensive violence and other criminal behavior.¹⁹ There is also a correlation between victimization and future offenses with the cycle of violence continuing through imprisonment and upon release. Professor Barbara Owen of Fresno State University is a national figure in the area of research on women offenders and emphasized in her testimony before the National PREA Review Panel that sexual violence should be understood in a gendered context. Dr. Barbara Owen and Dr. James Wells have developed a research-informed safety instrument funded by the National Institute of Justice (NIJ) and NIC to assist practitioners in identifying the women's perceptions of safety (including sexual safety) in women's facilities by housing unit.²⁰ The instrument's capacity to collect data on perceptions of sexual violence, among other types of violence, in women's facilities is promising and can enhance facility safety for staff and inmates.

Mentally Ill Offenders

The population of individuals with mental illness in the criminal justice system is growing, and the management of this population requires a unique skill set from officials and staff. A 2005 Bureau of Justice Statistics report stated that more than half of all prison and jail inmates had a mental health problem. More than

two-fifths of state prisoners and half of jail inmates reported symptoms that met the criteria for mania; almost one-quarter of state prisoners and one-third of jail inmates reported symptoms of major depression; and an estimated 15% of state prisoners and almost one-quarter of jail inmates met the criteria for a psychotic disorder.²¹ This large population of mentally ill offenders results in large part from the “deinstitutionalization” of persons with mental illness starting in the 1970s and has caused a crisis in corrections as staff struggle to manage complex populations with limited training, treatment, and staffing resources. Among several unique needs, this population is more likely to have experienced sexual and physical abuse prior to their incarceration,²² which may increase their vulnerability to sexual abuse while in confinement. As the field of corrections moves forward, shifts both in training and in culture will be necessary to keep this population physically and sexually safe. Providing administrators and staff with the tools to prevent, detect, and respond to sexual abuse and harassment in this unique population is a necessity in creating a culture of safety in a correctional setting.

Transgender Offenders

Transgender inmates, although a minority population, have featured in some of the most publicized lawsuits in corrections, including the 1994 Supreme Court case of *Farmer v. Brennan, Warden, et al.*, which determined that the deliberate indifference of a correctional officer to a substantial risk of serious harm to an inmate (physical, sexual, emotional) violates the cruel and unusual punishment clause of the Eighth Amendment. The population requires careful consideration as agencies attempt to determine appropriate placement, management, and treatment for their safety. Just as transgender individuals in the community face prejudice, confusion, and ignorance among their peers, transgender inmates face isolation, alienation, and, according to one research study done in California, a 59% chance of experiencing sexual assault.²³ Although more research is needed to determine the actual prevalence of sexual abuse among the transgender population in corrections, the field of corrections as a whole is working to address the needs of the population more generally and to establish best practices that will allow for the supervision of transgender inmates in a way that maintains their dignity, safety, and mental health.

Lesbian, Gay, Bisexual, Transgender, and Intersex Offenders

For many, the focus on transgender individuals in confinement is an opportunity to address the issues facing the lesbian, gay, bisexual, transgender, and intersex (LGBTI) population as a whole. BJS data demonstrate that inmates with nonheterosexual sexual orientations are up to 10 times more likely to report abuse by other inmates and 3 times more likely to report abuse by staff.²⁴ The PREA standards require correctional staff to be trained in communicating effectively and professionally with all inmates, including LGBTI or gender nonconforming individuals²⁵; and require agencies to consider any gender nonconforming appearance or manner or identification as LGBTI, and whether the inmate may therefore be vulnerable to sexual abuse, in intake screening processes and housing, bed, program, education, and work placements.²⁶ Many agencies are developing policies addressing the supervision and management of LGBTI populations in confinement that touch on all areas of operation, from professional boundaries and the role of personal values in managing and interacting with inmates to cross-gender supervision and distinguishing consensual sexual activity from sexual abuse. This is an arena where best practice is currently being developed.

Investigative Training

The skills needed to investigate sexual abuse in correctional settings were not well identified in the period prior to the evolution of state laws prohibiting staff sexual misconduct. The general thinking among many investigative units was that a good investigation is simply a good investigation. Just as the world outside of corrections has learned that investigations of crimes of a sexual nature are a specialized area of professional expertise, NIC identified the need for specialized training for investigators conducting sexual abuse

investigations within a correctional environment and developed a national initiative to offer investigative training to correctional administrators through technical assistance and training.

The potential contamination of evidence through multiple interviews in a setting that is filled with institutional rumors and invisible retaliation; the high incidence of sexual abuse in the histories of the inmate population, particularly women; and the code of silence within a closed facility culture all impacted a new paradigm for understanding investigating sexual abuse in confinement. Correctional Investigative Training is being conducted in many locations now and is often funded by the U.S. Department of Justice, BJA National PREA Resource Center as the PREA standards require specialized investigative training. For many years, NIC-funded programs through training at the American University, Washington College of Law and through technical assistance with the Center for Effective Public Policy. The evolution of this work from early lawsuits is one of the cornerstone components to how the work has advanced in addressing staff sexual abuse. Experts now believe that correctional investigative training should be trauma informed, gender informed, and conducted to teach investigative skills that include an understanding of the corrections environment.

Audits

The PREA standards require compliance documented through an audit process. Audits will assess the degree to which an individual facility is in compliance with each PREA standard and will assist in establishing best practice in the field of corrections moving forward. This is a critical time in the evolution of national best practice, and the corrections field has the opportunity to accomplish measured results of the intent of the PREA legislation. As challenging as the journey has been for the development of standards and the audit process, few professions have accomplished a national initiative with such complexity and sensitivity.

■ Conclusion

Sexual abuse among staff and inmates is an issue that has come to the forefront in contemporary corrections due to factors inside and outside the correctional environment. Professional relationships between corrections personnel on the frontlines and inmates often create challenges for staff and offenders alike. An understanding of the importance of professional boundaries and the role of correctional staff in an often emotional environment requires an understanding of inmate dynamics as well. An institutional culture is created and sustained through the example of leaders throughout the institution and the behaviors and values exhibited by all staff in adhering to policies and practices daily.

Meeting standards is not a new challenge for the correction's field; however, the PREA standards will only meet their intent by the day-to-day commitment of professionals to sexual safety. There are many examples of the seriousness with which correctional administrators, community partners, and stakeholders have taken their responsibilities to create a strong response to staff sexual abuse. Countless individuals have provided leadership in changing state laws, developing policy, conducting training, improving investigative practice, developing inmate orientation, and expanding reporting mechanisms. It is essential to the mission of corrections that the issue of staff sexual abuse is discussed openly with staff and inmates to promote understanding and support of the efforts to end staff sexual abuse.

Although the PREA law will likely define policy and practice for years to come, creating a sustainable culture of safety will always require diligence from correctional administrators, stakeholders, and the population we serve.

Chapter Resources

DISCUSSION QUESTIONS

1. Why is it important to consistently define sexual abuse for confinement settings?
2. How might facility-community partnerships assist the corrections facilities in assimilating PREA into their operations more effectively?
3. How has the passage of the Prison Rape Elimination Act and the development of the PREA standards impacted corrections standards, and how will affect future correctional practices?
4. What is necessary to integrate the mission of PREA into standard operations in corrections facilities, as budgets and experience decrease?
5. Taking into account work load, experience, and culture; is it possible for corrections leaders and correctional officers to become proactive rather than reactive in prevention of sexual abuse in the confinement setting?

ADDITIONAL RESOURCES

BJS, PREA Data Collection Activities, 2012 <http://bjs.gov/index.cfm?ty=pbdetail&iid=4373>

M.S. Fleisher and J.L.Krienert, *The Myth of Prison Rape. Sexual Culture in American Prisons.* (Lanham, MD : Rowman and Littlefield, 2009)

The Moss Group, Inc. www.mossgroup.us

The National PREA Resource Center, www.prearesourcecenter.org

American University, Washington College of Law an End to Silence
<http://www.wcl.american.edu/endsilence/>

National Standards to Prevent, Detect and Respond to Prison Rape,
[http://www.ojp.usdoj.gov/programs/pdfs/prea final rule.pdf](http://www.ojp.usdoj.gov/programs/pdfs/prea%20final%20rule.pdf)

Implementing the Prison Rape Elimination Act: Toolkit for Jails, <http://nicic.gov/Library/026880>

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Implementing the Prison Rape Elimination Act: Toolkit for Jails, <http://nicic.gov/Library/026880>

NOTES

1. Fleisher, M. S., & Krienert, J. L. (2006). *The culture of prison sexual violence*. U.S. Department of Justice, National Institute of Justice.
2. *Cason v. Seckinger*, No. 99-11125. 11th Cir. (2000, October 24). *Women Prisoners of the District of Columbia Dep't of Corr. v. District of Columbia*, No. 93-2052 (JLG). United States Court of Appeals for the District of Columbia Circuit. December 13, 1994.
3. *Daskalea v. DC*, No. 98-7207. (2000, August 8). United States Court of Appeals for the District of Columbia Circuit. (award of \$350,000 for inmate forced to participate in cellblock striptease).
4. Beck, A. J., & Hughes, T. A. (2005, July). *Sexual Violence Reported by Correctional Authorities, 2004*. Bulletin. U.S. Department of Justice: Bureau of Justice Statistics.
5. Public Law 108-79 – September 4, 2003 Section 7 a and b.
6. U.S. Department of Justice, 28 CFR Part 115, Docket No. OAG-131; AG Order No. RIN 1104-AB34, 2012.
7. U.S. Department of Justice. (2012, August). *National standards to prevent, detect, and respond to prison rape*. Washington, DC.: U.S. Department of Justice.
8. Code of silence refers to an unwritten code among groups that reporting infractions, abuse, or misconduct is not acceptable within the group. Breaking the code may have serious consequences for the member stepping out of line.
9. Beck, A. J., Harrison, P. M., Berzokfsky, M., Caspar, R., & Krebs, C. (2010, August). *Sexual victimization in prisons and jails reported by inmates, 2008-09*. NCJ 231169. Washington, DC: United States Department of Justice, Office of Justice Program.
10. Beck, A. J., & Johnson, C. (2012, May). BJS Special Report: Prison Rape Elimination Act of 2003. *Sexual victimization reported by former state prisoners, 2008*. NCJ 237363. Washington, DC: United States Department of Justice, Office of Justice Program.
11. The official Review Panel website is <http://www.ojp.usdoj.gov/reviewpanel/reviewpanel.htm>.
12. U.S. DOJ, 28 CFR Part 115, Page 3.
13. The term cultural collision used in this context was coined by Andie Moss and used in the earlier edition of this chapter. Cultural collisions within facilities often impact sexual safety as subgroups compete to achieve opposing goals.
14. Smith, B. V. (2006). Rethinking prison sex: Self expression and Safety. *Columbia Journal of Gender and Law*, 15, 185. American University, WCL Research Paper No. 2008-31.
15. PTSD in US Correctional Professionals: Prevalence and Impact on Health and Functioning. Published by Desert Waters Correctional Outreach, 2012.
16. This language is pulled from Barbara Owen's work on the pathways of women offenders, mentioned later in this chapter. Though the theory is an application to understand primarily women offenders, this author believes that the research of correctional staff pathways could also be relevant.
17. Mauer, M., & Chesney-Lind, M. (2002). *Invisible punishment: The collateral consequences of mass imprisonment*. New York: NY, The New Press.
18. Owen, B., & Covington, S. (2003). *Gender-responsive strategies: Research, practice, and guiding principles for women offenders*. Washington DC: National Institute of Corrections.
19. Moss, A. (2007). PREA and implications for women and girls. *Corrections Today*, 44-47, Washington, DC: National Institute of Corrections.
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21. James, D., & Glaze, L. (2006, September). *Bureau of Justice Statistics Special Report: Mental health problems of prison and jail inmates*. NCJ213600. Washington, DC: United States Department of Justice, Office of Justice Program.
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25. U.S. Department of Justice. National Standards to Prevent, Detect, and Respond to Prison Rape Washington, DC: August 2012, standard 115.33.
26. U.S. Department of Justice. National Standards to Prevent, Detect, and Respond to Prison Rape Washington, DC: August 2012, standards 115.41 and 115.42.