

U. S. Department of Justice  
Office of Justice Programs  
Bureau of Justice Assistance

**The Prison Rape Elimination  
Act of 2003 and  
Law Enforcement Agencies:**

**What Every Law Enforcement  
Manager and Supervisor Needs to Know  
[draft]**

**Course Manual and  
Note-Taking Guide**

**August 2007**

The Center for Innovative Public Policies, Inc.

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# Forward

The Prison Rape Elimination Act of 2003 was passed unanimously by Congress, and signed by the President in 2003. PREA:

- Addresses the detection, elimination and prevention of sexual assault and rape in correctional systems, including lock-ups operated by law enforcement;
- Funds the development of national standards of compliance and accountability;
- Directs collection and dissemination of information on the incidence of arrestee-on-arrestee sexual violence as well as staff sexual misconduct with arrestees; and
- Awards grants and technical assistance to help agencies implement the Act.

For purposes of PREA, the term “prison” applies to all federal, state, and local prisons, jails, **police lock-ups, temporary holding cells**, private facilities, and community settings such as residential facilities. The term “inmate” applies to any person held in a custodial setting for any length of time by any of the facility types mentioned above.

## **HOW DOES PREA APPLY TO LAW ENFORCEMENT?**

PREA addresses the safety of arrestees while in the custody of the agency - including arresting agencies - from sexual assault, sexual harassment, “consensual sex” with employees, and arrestee-arrestee sexual assault.

**For the purposes of this training the term “prison” applies to all federal, state, and local prisons, jails, police lock-ups, temporary holding cells, private facilities, and community settings such as residential facilities. The term “inmate” applies to any person held in a custodial setting for any length of time by any of the facility types mentioned above.**

PREA also directs agencies to maintain data regarding arrestee-arrestee sexual assaults, nonconsensual sexual acts, and staff sexual misconduct.

## **TRAINING PROGRAM OBJECTIVES**

This introduction program for law enforcement executives is designed to achieve the following objectives:

1. To educate law enforcement executives about PREA and its relevance to law enforcement agencies who manage short term prisoner holding facilities and court holding.
2. Overview legal issues
3. Provide recommendations to both:
  - a. assure arrestee and detainee safety from sexual violence and
  - b. prevent and address staff sexual misconduct with arrestees and detainees
4. Highlight prevention activities

## 5. Identify resources

### **COURSE MANUAL AND NOTE TAKING GUIDE**

This Course Manual and Note Taking Guide is provided to encourage participants to record information and actions as the program unfolds. Many of the Power Point Presentations used in the program are included in this Guide. All Power Points are available electronically by asking the facilitator.

### **WHAT OTHER ASSISTANCE AND SERVICES ARE OFFERED BY BJA?**

BJA will provide no-cost assistance to state and regional law enforcement and sheriffs' associations, as well as individual sheriffs and chiefs of police, including:

1. Presentations/training to state or regional law enforcement or sheriffs' associations including an overview of PREA with specific policy and operational recommendations, as well as a review of legal issues for policy-makers.
2. On-site technical assistance to agencies and organizations that request more in-depth help to develop policies, procedures regarding PREA.
3. A Policy Development Guide to assist agencies as they update and revise their policies and procedures to effectively and efficiently address PREA-related initiatives (available in 2007).
4. Training curriculum that may be used by law enforcement agencies. Curriculum includes a two hour module to educate agency leadership and policy-makers about their role in assuring compliance with PREA; and a four hour module for employees and supervisors involved in day-to-day operations

To schedule a training program, at no cost to your organization, please contact CIPP by e-mail [cippinc@aol.com](mailto:cippinc@aol.com), or telephone (239) 597-5906.

To request technical assistance, please contact:

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# Training Agenda

(Four Hours)

Introduction/Logistics/Introductions

Module One – PREA Overview and Legal Issues

Module Two – Assuring Arrestee and Detainee Safety: An Overview of Sexual Violence Dynamics

Module Three – What’s Next? Assuring Arrestee and Detainee Safety

Module Four – Prevention Strategies

Close-Out

Resources

About the Authors

## Test Your Knowledge

An understanding of the issue of arrestee/arrestee sexual violence and staff sexual misconduct with arrestees involves all aspects of operations. Consider the following statements and assess whether you think they are “true” or “false”?



- \_\_\_\_\_ 1. The Prison Rape Elimination Act of 2003 is applicable only to prisons, jails, and arrestee holding facilities that keep detainees for more than 24 hours.
- \_\_\_\_\_ 2. Staff sexual misconduct with arrestees is an issue only affecting women arrestees.
- \_\_\_\_\_ 3. Sexual violence can be prevented by keeping arrestees in single cells.
- \_\_\_\_\_ 4. A male officer who fails to announce his presence when he enters an area when female arrestees are held to perform a security check is guilty of sexual misconduct.
- \_\_\_\_\_ 5. Consent is a valid defense to claims of sexual misconduct.
- \_\_\_\_\_ 6. An agency may impose standards on its staff that are higher than those contained in the state=s criminal statutes.
- \_\_\_\_\_ 7. Sexual violence and sexual misconduct are criminal, not civil, issues.
- \_\_\_\_\_ 8. Good policies that address sexual violence ensure no incidents in your organization.
- \_\_\_\_\_ 9. PREA addresses staff sexual *harassment* of arrestees.

\_\_\_\_\_ 10. Data collected by the Bureau of Justice Statistics found that in 66% of staff incidents, correctional authorities determined that staff had a romantic relationship with the offender.

\_\_\_\_\_ 11. In local jails, the Bureau of Justice Statistics found that most victims of sexual misconduct are female and most perpetrators male.

\_\_\_\_\_ 12. A survey done for the National Prison Rape Elimination Commission found that more than 60% of law enforcement agencies knew about PREA.

\_\_\_\_\_ 13. It is sufficient to conduct an administrative investigation only into allegations of staff sexual misconduct with arrestees.

\_\_\_\_\_ 14. PREA provides that if organizations fail to comply with published standards, federal funding can be reduced 5% each year.

\_\_\_\_\_ 15. Courts have limited the ability of agencies to restrict off-duty relationships with individuals with criminal histories, and/or those on probation and parole.

#### Highlights of PREA

- Supports the elimination, reduction and prevention of sexual assault within the corrections system
- Mandates several national data collection activities
- Provides funding for program development and additional research
- Creates a national commission to develop standards and accountability measures

#### NOTES:

#### The Law

- Public Law 108–79 signed by President Bush on September 4, 2003
- Applies to all federal and state prisons, jails, police lock-ups, private facilities and community correctional settings such as residential facilities (includes adult and juvenile agencies)
- “Safe communities” has implications for probation, parole and other types of non-residential supervision

- Authorization is \$60 million annually. Appropriations for 2004 at \$40 million – no guarantee that funding will continue at full level (2004 through 2010)
- BJS to collect prison rape statistics
- NIJ to provide grants for research
- NIC to offer training, technical assistance, and clearinghouse functions
- AG's Office authorized to provide grants to corrections to prevent, investigate, and punish (BJA); and create review panel
- National Prison Rape Elimination Commission appointed
- The PREA law describes a variety of research findings and data, such as:
  - In 1999, there were over 10,000,000 admissions to and discharges from prisons and jails in US
  - Estimates of sexual assault rates and total number of assaulted inmates vary widely
- Discusses the impact of rape and prison sexual assault on:
  - Public safety
  - Public health
  - Institutional violence

### Purposes

1. Establish a zero-tolerance standard for the incidence of rape in correctional facilities in the United States.
2. Make the prevention a top priority in each correctional system.
3. Develop and implement national standards for the *detection, prevention, reduction, and punishment* of rape in correctional facilities.
4. Increase available data and information on the incidence of rape facilities.
5. Standardize the definitions used for collecting data on the incidence Increase the accountability of prison officials who fail act to *detect, prevent, reduce, and punish* arrestee sexual assault
6. Protect the Eighth Amendment rights of federal, state, and local prisoners.
7. Increase the efficiency and effectiveness of federal expenditures *through grant programs* such as health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison

- construction, maintenance, and operation; race relations; poverty; unemployment; and homelessness.
8. Reduce the costs imposed on interstate

### Grants – Available through state DOC

#### National Prison Rape Elimination Commission (NPREC)

[www.nprec.us](http://www.nprec.us)

- Nine-member commission appointed by the President and Congress
- After two years, Commission reports to AG:
  - Findings and conclusions
  - Recommendations for national standards to reduce prison rape
- Consult with accrediting organizations in developing its recommendations.
- Conduct public hearings whenever deemed necessary or appropriate.
- Collect any information from federal or state agencies deemed necessary to carry out duties.
- One year after receiving the Commission report, the Attorney General shall publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison rape.

#### What Does the Law Say About the Costs if We Don't Implement PREA?

- Higher levels of violence in facilities
- Health care expenditures, inside and outside of corrections systems
- Reduces the effectiveness of disease prevention programs by increasing the spread of HIV, AIDS, tuberculosis, hepatitis B and C, and other diseases
- Increases mental health care expenditures, inside and outside of corrections systems
- Increases the rate of post-traumatic stress disorder, depression, suicide, and exacerbates existing mental illnesses among current and former inmates/arrestees
- Liability – lawsuits from arrestees who have been sexually assaulted
- Public relations risk – bad press creates ill will in the community and the organization
- Risks of recidivism, civil strife, and violent crime by arrestees/inmates who have been victimized

## What Does the Law Say about the Benefits of Implementing PREA?

- Reduced liability exposure to litigation
- Reduced costs in administration, medical, and mental health
- Safer environment for arrestees and staff
- Protects *public health* from sexually transmitted diseases arrestees may contract
- Protects *public safety* by releasing arrestees into the community who have not been sexually assaulted

## Nonconsensual sexual acts

- Contact of any person without his or her consent, or of a person who is unable to consent or refuse; and
- Contact between the penis and the vagina or the penis and the anus including penetration, however slight; or
- Contact between the mouth and the penis, vagina, or anus; or
- Penetration of the anal or genital opening of another person by a hand, finger, or other object.

## Abusive sexual contacts

- Contact of any person without his or her consent, or of a person who is unable to consent or refuse; and
- Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.
- Excluding incidents in which the intent of the sexual contact is to harm or debilitate rather than sexually exploit.

## Staff sexual misconduct

- Any behavior or act of a sexual nature directed toward an arrestee/detainee by an employee, volunteer, official visitor, or agency representative. Romantic relationships between staff and arrestees/detainees are included.
- Consensual or nonconsensual sexual acts include:
  - Intentional touching of the genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, arouse, or gratify sexual desire; or
  - Completed, attempted, threatened, or requested sexual acts; or

- Occurrences of indecent exposure, invasion of privacy, or staff voyeurism for sexual gratification.

#### Staff sexual harassment

- Repeated verbal statements or comments of a sexual nature to an inmate by an employee, volunteer, official visitor, or agency representative, including:
  - Demeaning references to gender or derogatory comments about body or clothing; or
  - Profane or obscene language or gestures.

#### Standards Development

#### BJS Administrative Record Reviews

#### Why Now for Law Enforcement?

### **Burning Issues**

#### **Legal Issues**

##### **The Issue of Consent?**

What about the issue of “consent”? Can arrestees “consent” to have sexual contact with an arresting officer, booking officer or lock-up personnel?

What is the agency’s explicit policy on the matter? Do employees’ need direction?

### Need to Know:

- PREA = no new “cause of action”
- Focuses on existing duty to protect arrestees
- Need to involve prosecutors
- Arrestees cannot consent to sex with employees
- Lock-ups have duty to protect arrestees from other arrestees

### Sources of Liability

- PREA
- Agency Policy
- State statutes prohibiting the abuse of persons in custody
- Laws enacted to Implement PREA (California)
- Other State Laws
- Constitutional Law

### Sexual Misconduct Laws

- All 50 states, the federal government and DC have laws specifically covering the sexual abuse of persons in custody
- 32 states cover law enforcement officers
- 21 states cover arrests
- 39 states cover police lockups
- 49 states cover jails

### Other State Criminal Laws

- Sexual Assault
- Statutory Rape
- Sodomy
- Sex Offender Registration
  - Juveniles
  - Adults
- Vulnerable Adult Statutes
- Licensing
- Malfeasance in Office/Official Misconduct
- Obstruction of Justice
- Making False Statements to a government official
- Mandatory Reporting
- Notification

### Civil Liability -- Constitutional Claims

- Most common legal bases for challenges
  - 42 U.S. C. 1983
  - Eighth Amendment
  - Fourth Amendment
  - Fourteenth Amendment
  - State tort claims

### 42 U.S. C. 1983

- Creates a federal cause of action for the vindication of rights found elsewhere
- Key elements
  - Deprived or a right secured by the constitution or law of U.S.
  - Deprivation by a person acting under color of state law

## Eighth Amendment

- Prohibits cruel and unusual punishment
- Legal standard is deliberate indifference
  - Established in a prison rape case Farmer v. Brennan, 511 U.S. 825 (1994)
  - Two part test
    - the injury must be objectively serious and must have caused an objectively serious injury
    - the official must have a sufficiently culpable state of mind and have acted with deliberate indifference or reckless disregard for the inmate's constitutional rights

## State Tort Law Claims

- Assault
- Battery
- Intentional infliction of emotional distress
- Negligent infliction of emotional distress
- Negligent hiring, firing, supervision, training

## Liability

- Municipal
- Official
- Individual
- Personal

## Fourteenth Amendment : Substantive Due Process

- Was the individual deprived of a life, liberty or property without due process of law?
- Lower legal standard than 8<sup>th</sup> Amendment
- Depending on situation – 14<sup>th</sup> Amendment may apply – juveniles and pre-trial detainees in particular

## What the court looks for

- Deliberate indifference to inmate vulnerability -- safety or health
  - Official knew of and disregarded an excessive risk to inmate safety or health
  - Official must be aware of facts from which an inference could be drawn that a substantial risk of harm exists and he must draw the inference

## Lessons Learned

- Examine patterns of misconduct at institution
- Same employee/officer accused many times
- Off duty conduct which reflects on work performance
- Compromised grievance procedures
- Ineffective investigative procedures
- Must lead, manage and discipline

## Conclusions:

- Law enforcement officials can be held liable in their official, individual and personal capacities for sexual violence against arrestees by either staff or other offenders
- Knowledge and involvement of prosecutor important.
- Municipalities can be held liable for sexual violence against arrestees if the violence is a result of a policy or custom of the county or if it follows official policy set by the Chief of Police/Sheriffs

- Failure to address sexual violence and misconduct has criminal, administrative and civil consequences for cities, counties, chiefs of police, sheriff, and law enforcement personnel.

**Characteristics of Arrestees:****Women Arrestees:**

- 40% of women arrestees reported they were under the influence of drugs or alcohol when crimes committed (compared to 32% for men)
- Over 50% of women in jail have drug abuse histories;
- If involved in sex work;
  - Previous victimizations (at home, in foster care, in juvenile system)
  - Use of body for gain/problem solving
- Have children (single parents)
- Have negative interactions with “authority figures”
- Have higher prevalence of mental illness including PTSD

**Male Arrestees:**

- More than half of male offenders report history of abuse by parents/guardians
- 61% of male prisoners in state have history of past abuse

**Identify other “Vulnerable Arrestees”:**

- Mentally disabled
  - Want to please
  - Relationship with authority figures
- Physically disabled
- Persons with mental illness
  - Type of illness
  - Treated/untreated
  - Dangerousness
  - Alternatives to arrest
- Those with different sexual preferences:
  - Lesbian, gay, bi-sexual
  - Transsexual, inter-sex
  - Transvestites
- Physical statures:
  - Small, vulnerable
  - Large, aggressive
  - Victim profile
  - Predator profile

### **Why do employees get involved sexually with arrestees?**

- Lack of supervision
- Culture of corruption
- No consequences for misconduct
- Opportunity
- Already know them?
- Community standards
- Lack of professional boundaries
  - Staff/staff misconduct

### **What about reports of allegations?**

**Reports from arrestees? Barriers?**

**Reports from employees? Barriers? Code of Silence**

### **Red Flags**

<b>Module Three</b>	<b>What's Next: Assuring Arrestee and Detainee Safety</b>
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### Policies and Procedures

Issue	Notes
Administrative, Management and Operations <ul style="list-style-type: none"> <li>○ Organizational Placement</li> <li>○ Chain-of-command</li> <li>○ Staffing</li> <li>○ Training</li> <li>○ Auditing</li> <li>○ Forms</li> </ul>	
Zero Tolerance <ul style="list-style-type: none"> <li>○ Definitions               <ul style="list-style-type: none"> <li>○ What are prohibited behaviors?</li> <li>○ What behaviors constitute staff misconduct and harassment?</li> </ul> </li> <li>○ What are reporting requirements for employees?</li> <li>○ What are reporting avenues for arrestees/detainees</li> <li>○ Commitment to investigate to exonerate</li> <li>○ Commitment to improve operations</li> <li>○ Fraternalization rules, reporting</li> </ul>	
Use of Force <ul style="list-style-type: none"> <li>○ Restraints</li> <li>○ Firearms</li> <li>○ Chemical spray</li> <li>○ Tasers</li> <li>○ Other non-lethal</li> </ul>	

Issue	Notes
<p>Booking Procedures</p> <ul style="list-style-type: none"> <li>○ Searches <ul style="list-style-type: none"> <li>○ Pat, full, strip, body cavity</li> </ul> </li> <li>○ Screening/Risk Assessment</li> <li>○ Assignment in holding area</li> <li>○ Medical interventions</li> <li>○ Searches</li> <li>○ Arrestee property <ul style="list-style-type: none"> <li>○ Medications</li> </ul> </li> <li>○ Record management/confidentiality (CALEA 72.1.3)</li> </ul>	
<p>Supervision of arrestees</p> <ul style="list-style-type: none"> <li>○ Security/wellness checks, cell searches (CALEA 72.4.6)</li> <li>○ When officers can enter cells (CALEA 72.4.2)</li> <li>○ Cross-sex supervision</li> <li>○ Managing potentially vulnerable victims</li> <li>○ Managing potentially aggressive predators</li> <li>○ 24/7</li> <li>○ Visual</li> <li>○ Logs</li> <li>○ Detainee privacy</li> <li>○ Access to holding area by non-essential person (CALEA 72.1.2)</li> </ul>	
<p>Meals</p> <ul style="list-style-type: none"> <li>○ Preparation/Dated</li> <li>○ Storage</li> <li>○ Safety/Inspection</li> <li>○ Three meals a day (CALEA 72.7.1) within 24 hour period</li> </ul>	

Issue	Notes
<p>Bedding</p> <ul style="list-style-type: none"> <li>○ Laundry</li> <li>○ Sanitation</li> <li>○ Blankets</li> <li>○ If held longer than 8 hours (CALEA 7.2.1)</li> </ul>	
<p>Arrestee Hygiene</p> <ul style="list-style-type: none"> <li>○ Working toilets</li> <li>○ Working sinks</li> <li>○ Toilet paper</li> <li>○ Ability to shower</li> <li>○ Alternative clothing</li> <li>○ Feminine hygiene supplies</li> <li>○ Hygiene kits (toothpaste, soap)</li> <li>○ Access to showers</li> <li>○ Hygiene kits</li> <li>○ Clothing issue?</li> <li>○ Feminine hygiene</li> <li>○ "Suicide" gowns</li> <li>○ ADA/Accessibility</li> </ul>	
<p>Fire Safety (compliance with local codes)</p> <ul style="list-style-type: none"> <li>▪ Approved plan</li> <li>▪ Drills/documentation</li> <li>▪ Storage of combustible materials</li> <li>▪ Air pacs, extinguishes</li> <li>▪ Fire Marshall's inspection</li> </ul>	

Issue	Notes
Pharmaceutical distribution <ul style="list-style-type: none"> <li>▪ Give to arrestee upon release</li> <li>▪ Transfer with custody</li> <li>▪ Refused/forgotten prescriptions</li> <li>▪ Acquired from family</li> </ul>	
Emergency Procedures <ul style="list-style-type: none"> <li>○ Fire</li> <li>○ Suicide Attempts</li> <li>○ Medical</li> <li>○ Assaults (sexual and other)               <ul style="list-style-type: none"> <li>○ First responder</li> <li>○ Evidence collection, preservation, chain of custody</li> </ul> </li> <li>○ Disturbance</li> <li>○ Natural disaster</li> <li>○ Mass arrest</li> <li>○ Escape</li> <li>○ Staff injury/assault</li> <li>○ Emergency keys</li> <li>○ Blood borne pathogens/OSHA requirement for clean up</li> </ul>	
Maintenance/Janitorial <ul style="list-style-type: none"> <li>○ Fixing problems</li> <li>○ Sanitation/cleaning</li> <li>○ Control of cleaning chemicals</li> </ul>	
Access to counsel	

Issue	Notes
Release to investigators for interview	
Transferring information to next organization	
Meth lab decontamination <ul style="list-style-type: none"> <li>○ No clothes from lab</li> <li>○ Arrestee decontaminated before arrival</li> <li>○ No storage of arrestee property</li> </ul>	
Access to telephones	
<ul style="list-style-type: none"> <li>○ Key control (CALEA 72.4.3)</li> </ul> Transport <ul style="list-style-type: none"> <li>○ Same sex, procedures</li> </ul>	
Reporting by arrestees of misconduct/criminal activities <ul style="list-style-type: none"> <li>○ By community, family</li> <li>○ When leave custody</li> <li>○ When arrive in state custody</li> </ul>	
Court Holding <ul style="list-style-type: none"> <li>○ Separation</li> <li>○ Communication in holding areas</li> <li>○ Supervision</li> <li>○ Reporting</li> <li>○ Responding to allegations</li> </ul>	

<b>Issue</b>	<b>Notes</b>
Investigations <ul style="list-style-type: none"> <li>○ Administrative vs. Criminal investigations</li> <li>○ Garrity warnings and Miranda warnings</li> <li>○ Handling allegations</li> <li>○ Training of investigators</li> </ul>	
Memoranda of Agreement <ul style="list-style-type: none"> <li>○ Sexual Assault Treatment Center</li> <li>○ Investigating authority</li> <li>○ Mental health resources (NAMI, MHA)</li> <li>○ Hospital</li> <li>○ Prosecutors</li> </ul>	
Training of employees assigned to manage arrestees/detainees <ul style="list-style-type: none"> <li>○ Medical, mental health, risk assessment</li> <li>○ Medication management</li> <li>○ Logging/documentation</li> <li>○ Supervision</li> <li>○ Inspection</li> <li>○ Fire Safety</li> <li>○ Emergency responses               <ul style="list-style-type: none"> <li>○ Fire extinguishers</li> <li>○ Air pacs</li> </ul> </li> </ul>	

## Arrestee Risk Assessment

Issue	Notes
<p>Arresting Officer:</p> <ul style="list-style-type: none"> <li>• Did the arrestee exhibit any behaviors indicating mental health issues?</li> <li>• Did the family, or bystanders, indicate the arrestee has any mental health issues?</li> <li>• Does the arrestee appear physically injured?</li> <li>• Is the arrest sober? Alcohol or legal or illegal drugs?</li> <li>• Did the arrestee indicate any thoughts of self-harm or suicide?</li> <li>• Did arrestee come from active meth lab?               <ul style="list-style-type: none"> <li>○ Decontaminated before transport?</li> </ul> </li> </ul>	
Issue	Notes
<p>Arrestee Screening:</p> <ul style="list-style-type: none"> <li>• Mental Health:           <ul style="list-style-type: none"> <li>○ Appears anxious</li> <li>○ Hallucinating</li> <li>○ Hearing voices</li> <li>○ Unfocused</li> <li>○ Acting out               <ul style="list-style-type: none"> <li>▪ Crying</li> <li>▪ Withdrawing</li> <li>▪ Other</li> </ul> </li> <li>○ Psychiatric history               <ul style="list-style-type: none"> <li>▪ Current treatment/immediate past treatment</li> </ul> </li> <li>○ Developmentally disabled, appearance of low functioning</li> </ul> </li> </ul>	
Issue	Notes
<p>Arrestee Screening:</p> <ul style="list-style-type: none"> <li>• Suicide risk           <ul style="list-style-type: none"> <li>○ Nature of offense</li> <li>○ Shame/humiliation</li> <li>○ Sex offense involving minor</li> <li>○ Past attempts; evidence of past attempts</li> </ul> </li> </ul>	

<ul style="list-style-type: none"> <li>○ First arrest</li> <li>○ Alcohol/drug involvement</li> <li>○ Voicing self-harm</li> <li>○ No family/friends in community</li> </ul>	
<b>Issue</b>	<b>Notes</b>
<p>Arrestee Screening:</p> <ul style="list-style-type: none"> <li>● Medical Screening <ul style="list-style-type: none"> <li>○ Appearance <ul style="list-style-type: none"> <li>▪ Obvious pain/swelling</li> <li>▪ Injury (old or new)</li> <li>▪ Visible trauma, bruises, lacerations</li> <li>▪ Infection</li> <li>▪ Profuse sweating</li> <li>▪ Sutures, bandages, cast</li> <li>▪ Color</li> <li>▪ Pupils</li> <li>▪ Withdrawing from substance</li> </ul> </li> <li>○ Pregnant/recent delivery/breast feeding</li> <li>○ Allergies</li> <li>○ Asthma</li> <li>○ Diabetes</li> <li>○ Seizures</li> <li>○ Epilepsy</li> <li>○ Cardiac health issues</li> <li>○ High blood pressure</li> <li>○ Recent surgery</li> <li>○ Current drug use</li> <li>○ Past drug use</li> <li>○ Current alcohol use</li> <li>○ Past alcohol use</li> <li>○ Did arrestee come from meth lab? <ul style="list-style-type: none"> <li>▪ User?</li> <li>▪ Decontaminated?</li> </ul> </li> <li>○ Movement impaired, wheelchair, crutches <ul style="list-style-type: none"> <li>▪ ADA issues</li> </ul> </li> <li>○ Current medications <ul style="list-style-type: none"> <li>▪ With arrestee?</li> </ul> </li> </ul> </li> <li>● Risk Assessment/Sexual Violence <ul style="list-style-type: none"> <li>○ Indicates is homosexual [gay man, lesbian woman]</li> </ul> </li> </ul>	

<ul style="list-style-type: none"> <li>○ Indicates is transsexual, inter-sex</li> <li>○ Physical stature indicates potential victimization</li> <li>○ Physical stature indicates potential predator</li> <li>○ Anger</li> <li>○ Fear</li> <li>○ Criminal charge (past and present)</li> <li>○ Disabled</li> <li>○ Young</li> <li>○ Old</li> <li>○ Developmentally disabled</li> <li>○ Mental Illness</li> <li>○ Previous sexual assault victim/perpetrator</li> <li>● Name of physician</li> </ul>	
<p><b>Risk Assessment/Sexual Violence</b></p> <ul style="list-style-type: none"> <li>● Indicates is homosexual [gay man, lesbian woman]</li> <li>● Indicates is transsexual, inter-sex</li> <li>● Physical stature indicates potential victimization</li> <li>● Physical stature indicates potential predator</li> <li>● Anger</li> <li>● Fear</li> <li>● Criminal charge (past and present)</li> <li>● Disabled</li> <li>● Young</li> <li>● Old</li> <li>● Developmentally disabled</li> <li>● Mental Illness</li> <li>● Previous sexual assault victim/perpetrator</li> </ul>	
<b>Issue</b>	<b>Notes</b>
<p><b>Hospital</b></p> <ul style="list-style-type: none"> <li>○ Criteria for transport</li> <li>○ Allegations of sexual assault/misconduct</li> <li>○ Transporting criteria</li> <li>○ Supervision at the hospital; secure</li> </ul>	

<p>area</p> <ul style="list-style-type: none"> <li>○ Medical information from hospital re: arrestee Precautions</li> <li>○ Drug interactions</li> <li>○ Prescriptions, how filled</li> </ul>	
<b>Issue</b>	<b>Notes</b>
<p>Medical authority approves procedures (CALEA 72.6.1)</p>	

## Physical Plant Assessment

Issue	Notes
<p>Fire/Life Safety</p> <ul style="list-style-type: none"> <li>○ Fire extinguishers               <ul style="list-style-type: none"> <li>○ Inspected, dated</li> <li>○ Mounted</li> <li>○ Appropriate type</li> </ul> </li> <li>○ Combustible materials               <ul style="list-style-type: none"> <li>○ Removed (inside and in sally port)</li> <li>○ Stored in allowable containers</li> <li>○ No smoking</li> </ul> </li> <li>○ Fire egress               <ul style="list-style-type: none"> <li>○ Cleared exits</li> </ul> </li> <li>○ Fire exits marked, diagrams, posted, painted</li> <li>○ Fire loads               <ul style="list-style-type: none"> <li>○ Storage closets, janitor closets, telephone closets</li> <li>○ File storage</li> <li>○ Sally ports</li> </ul> </li> <li>○ Fire detection and alarm system               <ul style="list-style-type: none"> <li>○ Smoke detectors</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>○ Sanitary conditions               <ul style="list-style-type: none"> <li>○ Cleaning, janitorial</li> <li>○ Control of Cleaning chemicals</li> </ul> </li> </ul>	
<p>Safety Equipment</p> <ul style="list-style-type: none"> <li>○ Breathing apparatus (air masks)</li> <li>○ First aid kits, airways, inspected</li> <li>○ Automated External Defibrillator (AED)</li> <li>○ Personal protection equipment (PPE)               <ul style="list-style-type: none"> <li>○ Gloves</li> <li>○ Masks</li> <li>○ Eye Wash Stations</li> </ul> </li> <li>○ Working toilets (arrestee and employee)</li> <li>○ Working sinks (arrestee and employee)</li> </ul>	
<p>Emergency Response</p> <ul style="list-style-type: none"> <li>○ Cell lock release</li> <li>○ Emergency keys</li> </ul>	
<p>Inspections</p> <ul style="list-style-type: none"> <li>○ Weekly documented inspection of fire equipment; semi-annual testing of</li> </ul>	

<p>equipment; daily visual inspection of fire detention devices and alarm systems as required by local code (CALEA 72.3.1)</p> <ul style="list-style-type: none"> <li>○ Emergency evacuation plan (CALEA 72.3.2)</li> <li>○ Weekly sanitation inspection (CALEA 72.3.3)</li> <li>○ Vermin and pest control (CALEA 72.3.3)</li> </ul>	
<p><b>Lighting</b></p> <ul style="list-style-type: none"> <li>○ Lighting as required by local code</li> </ul>	
<p><b>Air Circulation</b></p> <ul style="list-style-type: none"> <li>○ Air circulation</li> </ul>	
<p><b>Crowding/Degrading Conditions/Totality of Conditions</b></p> <ul style="list-style-type: none"> <li>○ What is capacity of cellblock?</li> <li>○ What are provisions when capacity is reached?</li> <li>○ Single cells</li> </ul>	
<p><b>Suicide Hazards/Opportunities for Harm</b></p> <ul style="list-style-type: none"> <li>○ Lighting</li> <li>○ Pipes</li> <li>○ Bars</li> <li>○ Benches</li> <li>○ Clothing <ul style="list-style-type: none"> <li>○ Shoe laces</li> <li>○ Belts</li> </ul> </li> <li>○ Areas out of surveillance</li> <li>○ Covered windows (paper, blinds, etc.)</li> <li>○ Air vents</li> <li>○ Broken equipment, doors, materials, etc.</li> <li>○ Towel bars, grab bars</li> <li>○ Cot, bed frames</li> <li>○ Privacy screens as appropriate</li> <li>○ Unobservable areas/blind spots</li> </ul>	
<p><b>Meal Service</b></p> <ul style="list-style-type: none"> <li>○ Storage</li> <li>○ Thermometer, logs</li> <li>○ Control of tools and culinary</li> </ul>	

equipment (CLAEA 72.4.7)	
Maintenance <ul style="list-style-type: none"> <li>○ Inspections checklists</li> <li>○ Requests for maintenance</li> <li>○ Promptness of maintenance</li> <li>○ Closing of holding areas</li> <li>○ Tool control <ul style="list-style-type: none"> <li>○ Inventory</li> <li>○ Log</li> </ul> </li> </ul>	
ADA Accessibility <ul style="list-style-type: none"> <li>○ Plan to disabled arrestees</li> <li>○ Retrofitting ADA accessible</li> </ul>	
Secure pharmaceutical storage <ul style="list-style-type: none"> <li>○ Key control</li> <li>○ Logs</li> </ul>	
Communication ability with arrestees in the cell area <ul style="list-style-type: none"> <li>○ Panic alarms for officers</li> <li>○ Call button for arrestees</li> </ul>	

## **Training**

## **Data and Reporting**

- Nonconsensual sexual acts
- Abusive sexual contacts
- Staff sexual misconduct
- Staff sexual harassment

### Investigative Findings:

- substantiated, if they were determined to have occurred

- unsubstantiated, if the evidence was insufficient to make a final determination that they occurred
- unfounded, if they were determined not to have occurred
- investigation ongoing, if a final determination had not been made at time of data collection.

<b>Investigations</b>
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## Investigations

1. Administrative
  - a. Authority to Act:
    - i. State statutes
    - ii. Collective Bargaining Agreements
      1. What is permitted
      2. What is not permitted
    - iii. Police/Corrections' Employees Bill of Rights
    - iv. State Administrative Regulations
  - b. Communicating about allegation(s) with the organization (employees), media, offenders
    - i. What to say and who should say it about allegations
  - c. Required notifications to employees under investigation (per administrative rules and/or collective bargaining units)
    - i. Compromising investigations
  - d. Cooperation of subject, witnesses
  - e. Resignation of employees during investigations
  - f. Training of employee/volunteer/contractor, etc. training for sexual abuse investigations to include:
    - i. Role(s) in recognizing, reporting
    - ii. Cooperating during investigation
    - iii. Knowledge of offender histories (abuse, mental health)
    - iv. First responders (SART)
  - g. Personnel decisions
    - i. Who has authority to manage personnel during investigations
    - ii. Interventions (employee assistance)
    - iii. Reassignment of employees
    - iv. Actions regarding volunteers, contractors, vendors
    - v. Protecting witnesses
    - vi. Prohibition re: retaliation
  - h. Post investigation personnel actions
2. Operations
  - a. Investigative competencies
    - i. Selecting investigators
    - ii. Training investigators

- iii. Definitions/common language
- iv. Chain-of-command of organizational structure
  - 1. Who is the investigative team – criteria
  - 2. Supervisory/reporting structure – chain of command- for investigations
  - 3. Who is responsible for day-to-day management
  - 4. How often are updates provided and to whom? Written or verbal?
  - 5. Data base/tracking
  - 6. Classifying an allegation
- v. Reporting formats/forms, etc.
- vi. Who authorizes the investigation
  - 1. Time lines for notifications and assignment
  - 2. Criminal vs. administrative focus – who has the authority to direct
  - 3. Who authorizes use of investigative tools – i.e., covert, warrants, phone call monitoring, DNA, financial, etc.
  - 4. Who authorizes use of Garrity and/or Miranda?
- b. Investigative Protocols
  - i. Preliminary investigations – determine when appropriate
    - 1. Polygraph (and other instruments/tests to determine deception) for employees and/or offenders – legal in state? Consistent with police officers’ bill of rights? Collective bargaining agreements?)
  - ii. Assigning the investigation
    - 1. Gender issues
    - 2. Use of non – agency investigators
      - a. Execution of MOU to outline authority, protocols, cooperation, up-dating, etc.
  - iii. Securing physical evidence
    - 1. Examinations/photos
    - 2. Clothes, log books, tapes, inmate account, property, etc.
    - 3. Where information can be found during the investigation, i.e., log books, computer records, data entry, inmate movement logs, key logs, electronic access records, work assignment sheets or logs, medical logs, count logs, video surveillance/cameras, etc.
    - 4. Chain of evidence
  - iv. Coordination with of medical/mental health
    - 1. Preparing for questioning
    - 2. During questioning
    - 3. Communication/consultation
    - 4. Guidelines on information sharing
  - v. Closing the investigation
    - 1. PREA reporting issues
    - 2. UCR reporting issues

3. Reporting findings to appropriate organizations (e.g., POST, licensing organizations (medical, mental health, clergy, etc.))
  4. Notifications to employees, offenders of outcomes
  5. Definitions of potential findings and outcomes
- c. Corrections Operations
- i. Re-housing decisions
  - ii. Disclosure of info to complainant, victim other staff and inmates
  - iii. Notification of witnesses re confidentiality and retaliation
  - iv. Post incident follow-up/offender
    1. Medical
    2. Mental health
    3. Protection
    4. Retaliation
3. Stakeholders
- a. Coordination with prosecutor and/or local police (law enforcement)
    - i. On-going/regular communications and during an investigation
    - ii. Case preparation
    - iii. Referral process
    - iv. Prosecution decision making request and notification
    - v. Grand juries
    - vi. Arrests
    - vii. Post arrest procedures
      1. Protection of accused
    - viii. Guidelines addressing *quid pro quo* (especially for jails)
  - b. Coordination with others:
    - i. Reporting to Uniform Crime Reports/State Police
    - ii. Sexual Assault Treatment Center
    - iii. Victim advocates in the community
4. Aftermath Management
- a. Written report (distribution of report)
    - i. Substantiated, unsubstantiated, unfounded (BJS)
  - b. Public/media
  - c. Interventions (Critical incident stress de-briefing)
    - i. Employees
    - ii. Offenders
  - d. Post investigation – valued added/lessons learned – link results to hiring, training, supervision, etc.

**5 Best Prevention Strategies**

**Arrestee/Arrestee Sexual Violence**

**Staff Sexual Misconduct**

**Other Prevention Strategies**

**Extinguish Burning Issues**

## Resources

### **Addressing Sexual Violence in Prisons: A National Snapshot of Approaches and Highlights of Innovative Strategies**

[http://www.urban.org/UploadedPDF/411367\\_psv\\_programs.pdf](http://www.urban.org/UploadedPDF/411367_psv_programs.pdf)

### **Arrestee/Detainee Suicide Prevention**

“Model Suicide Prevention Programs: Part I”, *Jail Suicide/Mental Health Update*, A Joint Project of the National Center for Institutions and Alternatives and the National Institute of Corrections, U. S. Dept. of Justice, Summer 2005, Volume 14, Number 1, page 6.

<http://www.ncianet.org/suicideprevention/publications/update/summer2005update.pdf>

### **Data Collections for the Prison Rape Elimination Act of 2003**

<http://www.ojp.usdoj.gov/bjs/pub/pdf/dcprea03.pdf>

### **PREA Statute**

[http://www.wcl.american.edu/nic/Articles\\_Publications/Prison\\_Rape\\_Elimination\\_Act\\_of\\_2003.pdf?rd=1](http://www.wcl.american.edu/nic/Articles_Publications/Prison_Rape_Elimination_Act_of_2003.pdf?rd=1)

### **Reports/Articles:**

Commission on Accreditation for Law Enforcement Agencies, Inc., Standards for Law Enforcement Agencies: The Standards Manual of the Law Enforcement Agency Accreditation Program, Fourth Edition, November 2001, Fairfax, Virginia. [www.calea.org](http://www.calea.org) Chapter 71, Prisoner Transportation, Chapter 72, Holding Facility

Confronting Confinement: A Report of the Commission on Safety and Abuse in America's Prisons

<http://www.prisoncommission.org/report.asp>

End to Silence, website of the Washington College of Law, The American University

<http://www.wcl.american.edu/nic/>

Jordan, Andrew, Marcia Morgan and Michael McCampbell, “The Prison Rape Elimination Act: What Police Chiefs Need to Know”, *Police Chief Magazine*, International Association of Chiefs of Police, vol. 73, no. 4, April 2006,

[http://policechiefmagazine.org/magazine/index.cfm?fuseaction=display\\_arch&article\\_id=864&issue\\_id=42006](http://policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=864&issue_id=42006)

McCampbell, Michael S., “Prison Rape Elimination Act: Impact on Police Chiefs of the Prison Rape Elimination Act,” *Subject to Debate*, Police Executive Research Forum, September 2005, Vol. 19, No. 9, page 5, [http://www.policeforum.org/upload/V19-N09%20P%5B1%5D\\_715866088\\_12302005143917.pdf](http://www.policeforum.org/upload/V19-N09%20P%5B1%5D_715866088_12302005143917.pdf)

Susan W. McCampbell and Larry S. Fischer, Staff Sexual Misconduct with Inmates: Policy Development Guide for Sheriffs and Jail Administrators, National Institute of Corrections, August 2002.

<http://www.cipp.org/SSMPolicy/index.html>

McC Campbell, Susan W. and Elizabeth P. Layman, "Investigating Allegations of Staff Sexual Misconduct with Inmates: Myths and Realities."  
[http://www.wcl.american.edu/nic/Articles\\_Publications/Investigating\\_Allegation\\_of\\_taff\\_Sexual\\_Misconduct.pdf?rd=1](http://www.wcl.american.edu/nic/Articles_Publications/Investigating_Allegation_of_taff_Sexual_Misconduct.pdf?rd=1)

Sexual Violence Reported by Correctional Authorities, 2004  
<http://www.ojp.usdoj.gov/bjs/pub/pdf/svrca04.pdf>

Sexual Violence Reported by Correctional Authorities, 2005  
[http://www.wcl.american.edu/nic/documents/BeckandHarrison\\_BJSReport2005\\_000.pdf?rd=1](http://www.wcl.american.edu/nic/documents/BeckandHarrison_BJSReport2005_000.pdf?rd=1)

Simonian, Nairi M. and Brenda V. Smith. "Integrity in Jail Operations: Addressing Employee/Offender Relationships." American Jails. July/August 2006: 9-19.  
[http://www.wcl.american.edu/nic/documents/AJA\\_Final.pdf?rd=1](http://www.wcl.american.edu/nic/documents/AJA_Final.pdf?rd=1)

Simonian, Nairi M. and Brenda V. Smith. "Policy on Worker Relations Helps Ensure Office Integrity." Sheriff May-June 2006: 27-28.  
[http://www.wcl.american.edu/nic/documents/5.SheriffMagazine\\_WorkerRelationsPolicies.pdf?rd=1](http://www.wcl.american.edu/nic/documents/5.SheriffMagazine_WorkerRelationsPolicies.pdf?rd=1)

Staff Perspectives: Sexual Violence in Adult Prisons and Jails: Trends from Focus Group Interviews  
<http://nicic.org/Downloads/PDF/Library/021619.pdf>

Stop Prisoner Rape, Call for Change: Protecting the Rights of LGBTQ Detainees, May 2007  
<http://www.champnetwork.org/media/callchange.pdf>

Stop Prisoner Rape, How Well is Your Institution Meeting the Goals of the Call for Change, May, 2007, <http://www.spr.org/index.asp>

#### **Web Sites:**

American with Disability Act - <http://www.usdoj.gov/crt/drs/drshome.htm>

Bureau of Justice Assistance – <http://www.ojp.usdoj.gov/BJA>

Bureau of Justice Statistics - <http://www.ojp.usdoj.gov/bjs/abstract/dcprea03.htm>

National Institute of Corrections [www.nicic.org](http://www.nicic.org)

Prison Rape Elimination Commission [www.nprec.us](http://www.nprec.us)

Stop Prisoner Rape – [www.spr.org](http://www.spr.org)

#### **Training Materials:**

- <http://www.wcl.american.edu/nic/training.cfm>

## About the Authors

### Susan W. McCampbell

Ms. McCampbell is President of the Center for Innovative Public Policies, Inc., (CIPP) a not-for-profit company specializing in public policy consulting, established in 1999. Ms. McCampbell also currently serves as the Special Master in the matter of the United States of America v. the Territory of the Virgin Islands, et. al., appointed by the Federal Court in April 2006. Ms. McCampbell serves as an expert witness in corrections and law enforcement litigation.

CIPP has worked on a number of projects with the U. S. Department of Justice's National Institute of Corrections (NIC): develop strategies for community corrections to address recruitment, retention and preparation of first line supervisors and other workforce issues; to provide technical assistance to state and local correctional agencies regarding the issues associated with staff sexual misconduct and PREA; and to revise the curriculum for the National Sheriffs' Institute. Since 1999, CIPP has provided training and technical assistance to over 75 entities on the topic of staff sexual misconduct with offenders, and has developed numerous publications, guides, and curriculum on this topic. CIPP will be working with the Bureau of Justice Assistance to help educate and prepare agencies having the responsibility for arrestee lock-ups about the impact of PREA.

CIPP also performed work for the Henry J. Kaiser Family Foundation, The Collins Center for Public Policy, the School Board of Broward County, Florida, Women in Distress of Broward County, Inc., and the Broward County, Florida, Sheriff's Office.

Prior to founding CIPP in 1999, Ms. McCampbell was the Director of the Department of Corrections, Broward County, Florida, Sheriff's Office for four (4) years. During this time, Ms. McCampbell oversaw the daily operations of a jail system with 4,200 inmates, three facilities, and a staff of 1,600. During her tenure, the agency received their initial accreditation from the Commission on Accreditation for Corrections, and re-accreditation, the largest agency of its kind to receive simultaneous accreditation for all facilities. Other highlights of her term as Director include implementation of an objective inmate classification system, dramatic improvements in the management and treatment of inmates with a diagnosis of mental illness in the jail system, the planning for a new 1,000 bed men's direct supervision facility, and a 1,000 bed women's jail. While with the Broward Sheriff's Office, Ms. McCampbell served as Chief Deputy/Acting Sheriff for six (6) months following the death of the Sheriff.

Prior to coming to Broward County, Ms. McCampbell was Assistant Sheriff for the City of Alexandria, Virginia, Sheriff's Office for eleven (11) years, a Program Director for Police Executive Research Forum in Washington, D. C., and a regional criminal justice planner in Northern Virginia.

Ms. McCampbell holds a BA in Political Science from the School of Government and Public Administration, The American University, Washington, D. C., and a Master's Degree in City and Regional Planning from the School of Architecture and Engineering of The Catholic University of America, Washington, D. C.

**Elizabeth Layman** is President of Price Layman, Inc., a criminal justice consulting firm. After graduating from Virginia Tech, Ms. Layman was a police officer/detective for 9 years in Arlington, Virginia, and subsequently spent 16 years with the Department of Corrections Probation and Parole, and the Parole Commission in the State of Florida. For 9 years of those years, Ms. Layman was the Regional Director for the Florida Parole Commission, managing agency operations in the eight-county region of South Florida.

Since 1997, Ms. Layman has worked with NIC on numerous cooperative agreements including technical assistance and training, and curriculum development, including: Training for Investigators of Staff Sexual Misconduct; Managing a Multi-Generational Workforce; FutureForce:Developing a 21<sup>st</sup> Century Workforce for Community Corrections; co-authorship of A Resource Guide for New Wardens, and Staff Sexual Misconduct with Offenders Policy Development Guide for Community Corrections; and co-authorship of publications on the issue of Staff Sexual Misconduct in various periodicals, including *American Jails*, *Perspectives*, and *Sheriff* magazines.