

PREA Report

Delaware Department of Correction

2013



This report provides an overview of the Prison Rape Elimination Act (PREA). Statistical data on sexual abuse committed within the Department's eleven prisons and jails is also included. These statistics were submitted by the Department to the U.S. Department of Justice for calendar year 2013.

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PREA Begins

The Prison Rape Elimination Act (PREA) was a federal rule passed in 2003, with the purpose to study, analyze and eventually eliminate the incidence of rape in federal, state, and local correctional institutions in the United States.

From the PREA Resource Center website:

“The act also created the National Prison Rape Elimination Commission and charged it with developing draft standards for the elimination of prison rape. Those standards were published in June 2009, and were turned over to the Department of Justice for review and passage as a final rule. That final rule became effective August 20, 2012.

In 2010, the Bureau of Justice Assistance funded the National PREA Resource Center to continue to provide federally funded training and technical assistance to states and localities, as well as to serve as a single-stop resource for leading research and tools for all those in the field working to come into compliance with the federal standards.

The National Council on Crime and Delinquency (NCCD) was awarded a cooperative agreement with the Bureau of Justice Assistance (BJA) to implement the National PREA Resource Center (PRC). The PRC’s aim is to provide assistance to those responsible for state and local adult prisons and jails, juvenile facilities, community corrections, lockups, tribal organizations, and inmates and their families in their efforts to eliminate sexual abuse in confinement.

The PRC serves as a central repository for the best research in the field on trends, prevention, and response strategies, and best practices in corrections. Technical assistance and resources are available through the PRC’s coordinated efforts with its federal partners, and the PRC will take the lead in helping the corrections field to implement the Department of Justice’s national PREA standards.

The PRC is a cooperative effort with a broad coalition of organizations with expertise and resources in the fields of corrections, law enforcement, victims' services, and sexual abuse prevention and response. You can find a full list of collaborating organizations here.” (From: <http://www.prearesourcecenter.org/about> .)

Final Standards Adopted

A set of national Standards was researched, adopted and published in the Federal Register on June 20, 2012, and may be viewed at: <http://www.gpo.gov/fdsys/pkg/FR-2012-06-20/pdf/2012-12427.pdf> .

The PREA Standards can be grouped into 10 categories:

“1. Prevention Planning

The prevention planning standards cover a variety of topics designed to aid in the prevention of sexual abuse in confinement. These topics include zero tolerance, the

PREA coordinator, contracting with other entities for confinement, supervision and monitoring, juveniles and youthful inmates or detainees, limits to cross-gender viewing and searches, inmates, detainees, and residents with disabilities or who are limited English proficient, hiring and promotion decisions, and upgrades to facilities and technologies.

2. Responsive Planning

The responsive planning standards require agencies to take steps to ensure that all incidents of sexual abuse are investigated and that victims of sexual abuse have access to forensic medical exams and rape crisis advocates. Agencies that are unable to provide access to rape crisis advocates must document their efforts to secure advocacy services and provide access instead to either a qualified staff member from a community-based organization or a qualified agency staff member.

3. Training and Education

These standards set out the requirements for training and educating employees, volunteers, contractors, inmates, residents, detainees, staff who investigate sexual abuse, and medical and mental health staff. The resources below offer information and curricula for training the different audiences. See below for links to the standards and helpful resources.

4. Screening for Risk of Sexual Victimization and Abusiveness

The standards require inmates, detainees, and residents to be screened for risk of being sexually abused or sexually abusive; that screening information must be used to inform housing, bed, work, education, and program assignments for inmates and residents. The goal is to keep those individuals at high risk of victimization away from those at high risk of committing abuse. However, facilities may not simply place victims in segregated housing against their will unless a determination has been made that no alternative means of separation is available, and even then only under specified conditions and with periodic reassessment. Standard 115.43/115.342 requires agencies to document instances when a decision is made to place someone in segregated housing

5. Reporting

The standards require agencies to provide at least two internal reporting avenues and at least one way to report abuse to a public or private entity or office that is not part of the agency in order to allow inmates, detainees, and residents to remain anonymous upon request. An agency must also provide a way for third parties to report such abuse on behalf of an inmate, detainee, or resident. In addition, agencies are required to provide inmates and residents with access to outside victim advocates for emotional support services related to sexual abuse by giving them contact information for local, state, or national victim advocacy or rape crisis organizations and by enabling reasonable communication between inmates/residents and these organizations, with as much confidentiality as possible.

6. Official Response Following an Inmate/Detainee/Resident Report

The standards governing an agency's official response cover staff and agency reporting duties, the agency's duty to protect someone at imminent risk of sexual abuse, the agency's responsibility to report allegations of incidents occurring at another facility to that facility, staff first responder duties, coordinated response, prohibition on agreements that would limit the agency's ability to separate alleged staff abusers from inmates/detainees/residents, and protection for staff and inmates/detainees/residents against retaliation for reporting sexual abuse or harassment.

7. Investigations

Agencies that conduct their own investigations into sexual abuse or harassment must do so promptly, thoroughly, and objectively. The standards require investigations whenever such allegations are made, including third-party and anonymous reports, and prohibit the termination of an investigation on the grounds that the alleged abuser or victim is no longer employed or housed by the facility or agency. In addition, agencies must use investigators who have received special training in conducting sexual abuse investigations.

The standards set forth requirements for gathering and preserving evidence, conducting compelled interviews, determining witness credibility, conducting administrative and criminal investigations, making referrals for criminal prosecution, and retaining records. The standards also provide for situations in which outside investigators perform investigations.

8. Discipline

The standards require that staff be subject to discipline for violating agency policies regarding sexual abuse, with termination the presumptive discipline for staff engagement in sexual abuse. For violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse), the standards call for sanctions to be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories. Terminations or resignations linked to committing acts of sexual abuse or violating such policies are to be reported to law enforcement (unless the conduct was clearly not criminal) and relevant licensing bodies.

9. Medical and Mental Care

The standards require that all facilities provide timely, unimpeded access to emergency medical treatment and crisis intervention services, whose nature and scope are determined by practitioners according to their professional judgment. Inmate and resident victims of sexual abuse while incarcerated must be offered timely information about, and timely access to, emergency contraception and sexually transmitted

infections prophylaxis, where medically appropriate.⁵ Where relevant, inmate and resident victims must also receive comprehensive information about, and timely access to, all lawful pregnancy-related medical services.⁶

10. Data Collection and Review

Agencies are required to collect and aggregate data regarding incidents of sexual abuse in order to detect possible patterns and to help prevent future incidents. This includes data from private facilities with which agencies contract for confinement. At a minimum, this data must include information sufficient to answer fully all questions in the most recent revision of the Survey of Sexual Violence (SSV) conducted by DOJ.

The standards require agencies to use the data to identify problem areas and take ongoing corrective action. They also require preparation of a publicly available, annual report for each facility and for the agency as a whole, comparing the current year's data with data from prior years and providing an assessment of the agency's progress in addressing sexual abuse. In addition, the standards govern the retention and publication of the underlying data on which the reports are based.

11. Audits and State Compliance

The Audit Instrument for Adult Prisons and Jails was released on May 3, 2013. The instrument includes the following documents:

- Process Map
- Checklist of Documentation
- Pre-Audit Questionnaire
- Auditor Compliance Tool
- Instructions for PREA Audit Tour
- Interview Protocols
- Auditor Report
- Handbook of PREA Prisons & Jails Standards Compliance Measures

Additional information about the audit process will continue to be posted on the PRC website as it is made available from DOJ.” (From the PRC:

<http://www.prearesourcecenter.org/training-technical-assistance/prea-essentials.>)

The Delaware Department of Corrections PREA statistics (included in the the Survey of Sexual Victimization, or SSV-2) for calendar year2013 appear below.

DEFINITIONS

The survey of sexual violence (SSV-2) utilizes the definition of “sexual abuse” as provided by 28 C.F.R. §115.6 in the *National Standards to Prevent, Detect, and Respond to Prison Rape* (under the Prison Rape Elimination Act of 2003). For purposes of SSV, sexual abuse is disaggregated into three categories of inmate-on-inmate sexual victimization. These categories are:

§ 115.6 Definitions related to sexual abuse.

For purposes of this part, the term—Sexual abuse includes—

Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident; and

Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer. Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- Contact between the mouth and the penis, vulva, or anus;
- Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

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:

- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- Contact between the mouth and the penis, vulva, or anus;
- 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;
- 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;
- 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;
- 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;
- 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
- 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.

Sexual harassment includes—

- 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
- 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.

**Information Supplied to the U.S. Department of Justice via the
SURVEY OF SEXUAL VICTIMIZATION (SSV-2), for 2013**

What inmates and incidents are included in this data collection?

Inmates under the Delaware Department of Correction custody between January 1, 2013, and December 31, 2013.

SECTION I – INMATE–ON–INMATE SEXUAL VICTIMIZATION

1. Between January 1, 2013, and December 31, 2013, how many allegations of inmate-on-inmate

Non-Consensual Sexual Acts were reported?

Number reported 27

If an allegation involved multiple victimizations, it was counted only once per SSV-2 directions.

Allegations that were reported as consensual are excluded per SSV-2 directions.

2. Of the allegations reported in Item 1, how many were —

a. Substantiated 0

The event was investigated and determined to have occurred, based on a preponderance of the evidence (28 C.F.R. §115.72).

b. Unsubstantiated 9

The investigation concluded that evidence was insufficient to determine whether or not the event occurred.

c. Unfounded 18

The investigation determined that the event did NOT occur.

d. Investigation ongoing 0

Evidence is still being gathered, processed or evaluated, and a final determination has not yet been made.

e. TOTAL (Sum of Items 2a through 2d) 27

3. Between January 1, 2013, and December 31, 2013, how many allegations of inmate-on-inmate

Abusive Sexual Contact were reported?

Number reported 29

If an allegation involved multiple victimizations, it was counted only once per SSV-2 directions.

Allegations that were reported as consensual are excluded per SSV-2 directions.

4. Of the allegations reported in Item 3, how many were —

- a. **Substantiated** 3
- b. **Unsubstantiated** 4
- c. **Unfounded** 22
- d. **Investigation ongoing** 0
- e. **TOTAL** (Sum of Items 4a through 4d) 29

**For the 2013 statistical report, Inmate-On-Inmate Sexual Harassment was investigated and reported within the data for Inmate-On-Inmate Sexual Abuse.*

SECTION II – STAFF-ON-INMATE SEXUAL ABUSE

5. Between January 1, 2013, and December 31, 2013, how many allegations of Staff Sexual Misconduct were reported?

Number reported 8
If an allegation involved multiple victimizations, count only once.

6. Of the allegations reported in Item 5, how many were —

- a. **Substantiated** 3
- b. **Unsubstantiated** 0
- c. **Unfounded** 5
- d. **Investigation ongoing** 0
- e. **TOTAL** (Sum of Items 6a through 6d) 8

7. Between January 1, 2013, and December 31, 2013, how many allegations of Staff Sexual Harassment were reported?

Number reported 10
If an allegation involved multiple victims or staff, count only once.

8. Of the allegations reported in Item 7, how many were —

- a. Substantiated 0
- b. Unsubstantiated 4
- c. Unfounded 6
- d. Investigation ongoing 0
- e. TOTAL (Sum of Items 8a through 8d) 10

SECTION III – TOTAL SUBSTANTIATED INCIDENTS OF SEXUAL VICTIMIZATION

9. What is the total number of substantiated incidents reported in Items 2a, 4a, 6a, and 8a?

Total substantiated incidents 6