

The Prison Rape Elimination Act: What Police Chiefs Need to Know

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Jennifer, a young mother, was arrested on a shoplifting charge. After she was brought to the police station and placed in a secure interview room, the arresting officer told her that if she performed oral sex on him, he would have the charges dismissed. She complied, and a week later the prosecutor dismissed the charges. With a vulnerable subject as a victim and no surveillance by cameras or co-workers as witnesses, the officer's actions went undetected.

Jason was arrested for drunk and disorderly conduct and placed in the police department's drunk tank overnight. The next morning he claimed another arrestee repeatedly sodomized him. The personnel who supervise the drunk tank refused to listen to his complaints or provide medical treatment.

These two scenarios can happen in any police department. Luckily, most police chiefs have taken steps to ensure that they never do. In both cases, several state and local laws were probably broken. Now, there is federal legislation designed to put a stop to sexual acts in police lock-up and custody situations and provide guidance on steps to take to prevent and respond to these situations.

What Is PREA?

The Prison Rape Elimination Act (PREA) was signed into law (P.L. 108-79) by President Bush on September 4, 2003. The goal of PREA is to eradicate sexual assaults in all "correctional" facilities in the United States. That includes police lock-ups and holding facilities. Although no one knows the extent of sexual assaults in prisons, jails, immigration facilities, tribal jails, juvenile detention, police holding cells, and other institutions in the United States, experts have conservatively estimated that nearly 200,000 inmates now incarcerated have been or will be victims of prison rape. The total number of inmates in the United States who have been sexually assaulted over the past 20 years could exceed 1 million. A recent survey conducted as a result of this law estimated 8,210 allegations of sexual violence in institutions, with 42 percent of the allegations involving staff sexual misconduct. This survey did not collect information from police lockups and holding facilities.

Definition of Terms

The title, Prison Rape Elimination Act, is somewhat misleading. Prison rape is broadly defined in this act to include the rape of an inmate in the actual or constructive control of prison officials. Rape means (a) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person, forcibly or against that person's will; (b) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person not forcibly or against the person's will, where the victim is incapable of giving consent because of his or her youth or his or her temporary or permanent mental or physical incapacity; or (c) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person achieved through the exploitation of the fear or threat of physical violence or bodily injury.

The law includes sexual acts between a man and another man, a woman and another woman, a man and a woman, a staff member and a detainee, or a detainee and another detainee. Staff includes all police personnel (sworn and nonsworn), volunteers, clergy, correctional staff, and contracted staff, such as nurses, doctors, food service personnel, and mental health staff.

It is important for police chiefs to note that, under PREA, prison is "any confinement facility of a federal, state, or local government, whether administered by such government or by a private organization on behalf of such government, and includes any local jail or police lockup and any juvenile facility used for the custody or care of juvenile inmates." Police lockup is further defined as "a temporary holding facility of a federal, state, or local law enforcement agency to hold

- inmates pending bail or transport to jail,
- inebriates until ready for release, or
- juveniles pending parental custody or shelter placement."

Thus, police chiefs need to be aware that the law applies to their agencies if they operate lockups or holding facilities for adult or juvenile arrestees.

Key Components of PREA

Some of the key components of PREA are as follows:

- Establishes a zero-tolerance standard for incidence of rape in correctional settings in the United States
- Makes prevention of prison rape a top priority in each correctional system
- Develops and implements national standards for the detection, prevention, reduction, and punishment of rape in correctional settings (including police lock-up)
- Increases available data and information on the incidence of prison rape, consequently improving the management and administration of correctional facilities
- Increases the accountability of officials who fail to detect, prevent, reduce, and punish prison rape
- Protects the Eighth Amendment rights of federal, state, and local prisoners

PREA lists a number of activities to be conducted by the U.S. Department of Justice (DOJ). The activities include the following:

- Conduct a statistical review and analysis of the incidence and aftermath of prison rape
- Establish a DOJ review panel, a national clearinghouse, and a national commission
- Publish national standards for enhancing the detection, prevention, reduction, and punishment of prison rape
- Authorize grants to protect inmates and safeguard communities

To meet some of these requirements under PREA, bureaus within DOJ are conducting the following activities:

- The Bureau of Justice Statistics (BJS) is developing new national data collection methods on the incidence of sexual violence within correctional facilities.
- The Bureau of Justice Assistance (BJA) is awarding grant funds to state governments for addressing inmate sexual assault.
- The National Institute of Justice (NIJ) is funding research into the impact of sexual victimization and investigation and prosecution of sexual violence in corrections.
- The National Institute of Corrections (NIC) is providing training and education to help agencies reduce inmate sexual assault and coercion. NIC also provides clearinghouse services on PREA issues.

The Presidential Commission

One of the major components of PREA is the formation of the National Prison Rape Elimination Commission (NPREC). The commission, which has subpoena powers, is presently conducting a comprehensive study of prison rape in the United States. As part of that study, the NPREC is reviewing federal, state, and local government policies and practices related to prevention, detection, and punishment of prison rape. Two of the major issues the NPREC is addressing are (1) the relationship between prison rape and prison conditions, and (2) the existing monitoring, regulatory, and enforcement practices that are intended to address this relationship. Areas that the commission is studying that may have an impact on police agency budgets, staffing, or other resources are (1) the feasibility and cost of conducting surveillance, undercover activities, or both, to reduce the incidence of prison rape; (2) the safety and security of facilities and standards for police agencies lockup cells and holding facilities; (3) the relationship between prison rape and the levels of training, the supervision, and the discipline of staff; and (4) federal and state systems for reporting the incidence of prison rape.

The NPREC is currently holding hearings around the country and will be recommending national standards to enhance detection, pre-

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vention, reduction, and punishment of inmate to inmate and staff to inmate assault. As part of its duties, the commission is required to consider any standards that have already been developed or are being developed to address the issue of institutional rape. It is reasonable to assume that this consideration will include law enforcement accreditation agencies at the state and national level.

Concerns of Police Chiefs

Many police chiefs are surprised to learn that the Prison Rape Elimination Act applies to them. Understandably, many questions have emerged from chiefs around the country as they determine how best to incorporate the elements of PREA.

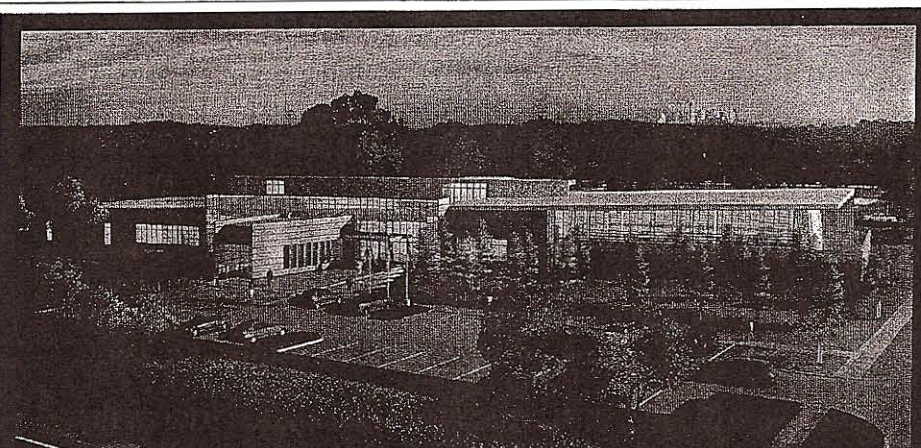
Attitudes and Barriers

Some police departments have discovered that there are attitudes held by some police and colleagues that pose a barrier to making departmental changes consistent with PREA. The following are a few of those attitudes:

- "This isn't a problem here." Perhaps an incident has not been reported or

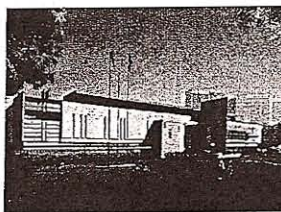
officers feel they are too busy going from call to call to even have the time to engage in this kind of behavior. It is important not to make troops think they are no longer trusted when talking about needing new policies and procedures. Most officers are good and that needs to be kept in the forefront. Offering educational literature or training is a proactive step to reduce the probability of a problem and helps a department be prepared with appropriate responses.

- "Don't educate suspects." There is always a fear that criminals who are given education about their rights will make false accusations against the police. Every report is taken seriously, but charging someone with making a false report will also be done if necessary.
- "I have no sympathy for the bad guys." If a detainee gets assaulted, they are often not viewed as real victims. Some officers feel that these victims deserve it or may have brought it on themselves. Some predatory officers who have been

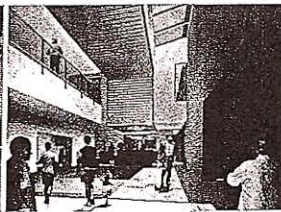


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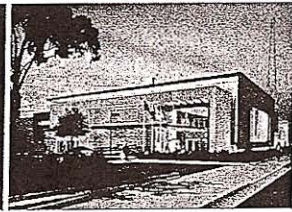
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convicted of sexually assaulting an arrestee have selected their victims carefully so that no one will believe the victim. For instance, a case in Oregon involving two police officers with multiple victims, most of whom were known prostitutes, went undetected for some time.

- "No prosecutor is going to take a case like this." Most prosecutors will need training on PREA and their own state laws relating to in-custody sexual assaults. Including prosecutors in meetings about writing or reviewing a policy may help them understand what needs to be done. It also reaffirms that prosecutors are important partners in this effort.
- "What if it is consensual sex between the staff and detainee or detainee and detainee?" First and most importantly, there is no such thing as consensual sex between police and detainees. When there is a power differential—that is, where one person can arrest the other and control that person's freedom and future—there is never consent. And employees are not paid to have sex on the job. If two detainees are involved in sexual acts, it could be a liability for chief and the department if due diligence has not been taken to reasonably protect detainees from each other. The collusion between detainees could also pose a security risk.

Impact on the Department

Sexual incidents involving staff and detainees can have many ramifications for a police department. Coercive sexual acts in the workplace can destroy the lives of the victim and the perpetrator, break apart families and departments, and create newspaper headlines no chief wants to see.

- Internal effects on the department: split loyalties; secrecy and rumors that destroy morale
- Embarrassment for the department in the community: police managers and supervisors at risk of losing their jobs
- Financial implications: lawsuits against correctional agencies and police departments for sexual acts by their officers
- Impact on the family of the officer: emotionally devastating to the officer's family and friends
- Health implications for officers, their families, and the community: risk of acquiring HIV/AIDS, hepatitis, and sexually transmitted diseases from members of high-risk groups, such as intravenous drug users.

Action to Take Now

Because the PREA Commission's standards will not be released for another two to three years, there are several things police chiefs can

do now to be proactive. These proactive steps apply to all police departments whether they are small one-person departments or larger police agencies that have jails.

Step 1: Adopt a Zero-Tolerance Policy

- Develop specific policies and procedures for detecting, preventing, and investigating sexual assaults occurring in jurisdiction's facilities.
- Set up a policy development committee. Consider including citizens at large, attorneys, and others to get a broad perspective and thwart possible criticism if an incident happens later.
- Develop a zero-tolerance policy specifically forbidding staff sexual misconduct with arrestees and protecting arrestees from sexual acts by other arrestees in jurisdiction's facilities.
- Put the policy in writing, focusing on lock-up settings. It is unknown at this point whether the standards will cover any time a detainee is in police custody or just in lockup. Therefore, having a comprehensive zero-tolerance policy from point of arrest to lockup may be appropriate.

Step 2: Staff Education

- Develop and offer training, at briefings or in the police academy or both, that address the following issues:
 - Give an overview of the problem of police-detainee sexual behaviors including statistics, PREA law, myths, health issues, mental health, liability, and impact on the department and the family.
 - Review state laws on staff sexual conduct and sexual assault in institutions. Forty-nine states already have specific laws that address these issues and provide enhanced penalties for agency personnel who are convicted of these offenses.
 - Review the department policy with officers.
 - Describe how to recognize that a detainee has been sexually assaulted.
 - Review how to respond if a detainee has been sexually assaulted: securing the crime scene, preserving the evidence, assisting the victim with physical concerns (medical evidence rape kit, injuries), and emotional (victim assistance) procedures.
 - Teach preventive tactics such as maintaining appropriate physical and emotional boundaries.
 - Review privacy issues, visual and physical (including pat searches).
- Request technical assistance and PREA educational programs. The National Institute of Corrections has a cooperative agreement contract with the Moss Group in Washington, D.C., to provide

education and assistance to criminal justice/corrections agencies. Call toll free: 877-546-1444.

Step 3: Detainee Education

It may be too difficult to conduct detainee orientation sessions due to the short nature of their stay. But police can inform detainees about their rights and protections from sexual assault while they are held in the facility:

- Develop and display posters that can be located near cells or in places all detainees will see, such as in the Sallyport area; include victim assistance or rape crisis center phone numbers on the poster.
- Develop complaint forms that are accessible to the detainees. Be sure internal investigation procedures are in place and will take each complaint seriously.
- Develop brochures or other materials for detainees. Be sure the materials are in languages appropriate for detainee population.

Step 4: Physical Structure and Facility Design

Examine the physical structure of the building, especially in areas where detainees have access.

- Are there surveillance cameras to observe detainee and officer interactions?
- How good is the visibility into the interview and interrogation rooms, holding cells, detox rooms, and so on? Are there windows in the doors?
- Are there hidden or secluded areas (such as janitor closets) where covert sexual behavior could occur?

Step 5: PREA Research and Standards Development

- If the agency receives a questionnaire from BJS developed for PREA, the agency is required to participate in the survey and to provide access to any inmates in custody.
- If seeking accreditation or reaccreditation from the state law enforcement accreditation commission or the Commission on Accreditation for Law Enforcement Agencies, expect to see new standards addressing this issue in the near future.
- Keep track of the activities of the Prison Rape Reduction Commission and volunteer to provide testimony on behalf of police agencies that have holding facilities or lockups. Provide feedback to the commission and be sure that local and state police organizations are also monitoring their progress. ❖

For more information on PREA and the National Prison Rape Elimination Commission, see the Web site of the National Institute of Corrections at www.nicic.org, and the National Prison Rape Elimination Commission at www.nprec.us.