



PRISON RAPE ELIMINATION ACT

Prison Rape Elimination Act (PREA) Considerations for Policy Review


National Institute of Corrections
NIC/Moss Group Cooperative Agreement #05S18GJ10

This policy review guide was developed by The Moss Group, Inc. under cooperative agreement with the National Institute of Corrections, U.S. Department of Justice.

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Purpose

As part of its mission to assist state and local correctional organizations in implementing the requirements of the Prison Rape Elimination Act (PREA), The Moss Group, Inc., under a cooperative agreement with the National Institute of Corrections (NIC) is offering to help jurisdictions by reviewing policies developed to respond to the intent of PREA. We invite you to send a technical assistance request to Dee Halley, Program Manager at the National Institute of Corrections, dhalley@bop.gov, or 1-800-995-6423, to initiate the process. The Moss Group, Inc. will use a team of consultants with expertise in the sexual misconduct/assault policy development to provide written feedback on submitted policies.

This **Policy Review Guide** is designed to help you create the initial draft your policies. Before submitting your policies to the National Institute of Correction for review, we ask that you go through this guide as a planning tool.

NOTE: The questions in this document are meant to provide guidance on the need for answers somewhere in departmental policy or operating procedures. When answering the question you should be able to indicate in the answer where the policy or procedural language is located.

Questions to Consider

Policy Organization

PREA covers issues related to offender-on-offender sexual assault as well as issues related to staff sexual misconduct. Your agency needs to determine how to organize its response to PREA in policy by answering these questions:

Question:	Answer (Explain why or why not):
Would one policy covering PREA in general provide a more direct source of information? OR	
Should you have separate policies for staff sexual misconduct issues and offender-on-offender assault?	

Definitions

Question:	Answer (Explain why or why not):
Are the definitions in your policy consistent with those used by the Bureau of Justice Statistics in collecting information on incidents of staff sexual misconduct and offender-on-offender sexual assault?	
Does your policy reflect definitions of criminal acts related to staff sexual misconduct or assault in state law?	
Does your policy include prohibitions which may go beyond those of a criminal nature in the definition of staff sexual misconduct, such as conversations or correspondence of a romantic or sexual nature?	

Question:	Answer (Explain why or why not):
<p>Does your policy carefully stipulate who may be covered by the policy? For example, does the policy define who is included when discussing “staff,” “contractors,” “volunteers,” “visitors,” etc? Are private correctional facilities operating in the state covered by the policy? Are offenders under supervision in the community covered by the policy?</p>	

Zero Tolerance

Question:	Answer (Explain why or why not):
<p>Does your policy contain a statement reflecting a zero tolerance for this type of behavior and ensuring that all allegations regardless of source will be investigated?</p>	

Staff/Offender Duty to Report

Question:	Answer (Explain why or why not):
Does your policy instruct various entities how to report incidents? (Staff, offenders, volunteers, contractors, etc.)	
Does your policy provide multiple channels for reporting incidents? For example, is there a way to report outside one's chain of command or one's facility?	
Does your policy provide a way to make reports anonymously?	
Does your policy provide a central location where reports can be documented from any sources?	
Does your policy reflect that staff has a duty to report?	
Does your policy contain sanctions for failing to comply with this duty?	
If state law addresses a duty to report, is that referenced in the policy?	
Does your policy address a medical or mental health staff's duty to report when they may consider conversations confidential in nature? Is the policy consistent with state laws governing patient-provider relationships?	

Question:	Answer (Explain why or why not):
Is there a fair and effective grievance policy in place for offenders that can be used to address staff sexual misconduct or offender on offender sexual assault?	

Prevention

Question:	Answer (Explain why or why not):
Does your policy require orientation and training of staff and offenders about the requirements of statutory law and policy? Is refresher training provided on a periodic basis?	
Does your policy require orientation and training of volunteers and contractors about the requirements of statutory law and policy? Is this training provided on a periodic basis?	
Does your staff Code of Conduct/Ethics provide consistent guidance on prohibited type of conduct and reporting requirements?	
Is your offender classification system designed to minimize risk of offender sexual assault?	
Does the facility provide adequate numbers of protective custody or single cell bed space to protect offenders reporting sexual abuse?	
Is your procedure for considering offender cell change requests designed to promote housing changes which would help prevent or stop offender sexual assaults?	

Question:	Answer (Explain why or why not):
Do your institutions have in place security policies and protocols that support the prevention and detection of sexual abuse? If so, identify them (i.e. cameras, recorders, authorization for issuance of keys, sign-in requirements, etc.)	
Are employees aware in policy that they may be subject to search of their person, car, computer email, etc. (the answer may depend on laws and collective bargaining agreements in each jurisdiction)?	
Is there language in policy prohibiting retaliation for the filing of a complaint?	
How does the classification process consider offenders who are known perpetrators or who are particularly vulnerable to victimization?	

Investigations – General Considerations

Question:	Answer (Explain why or why not):
Does your policy reflect the impact state statutes, administrative regulations, or collective bargaining agreements may have on the investigative process?	
Are there requirements under state statute, administrative regulations, or collective bargaining agreements about when the subject of an investigation must be notified?	
Is there a timeline to ensure investigations are conducted as promptly as possible?	
Are staff trained in the constitutional requirements associated with investigative interviews (i.e. Miranda, Garrity, Weingarten)?	

Investigations – Selection and Training of Investigators

Considerations for protocol and practice:

Question:	Answer (Explain why or why not):
What type of skills are mandatory qualifications in selecting new investigators?	
What type of training is conducted with investigators for sexual abuse investigations?	
How are investigators chosen for particular investigations?	
To whom do investigators report and how do they	

communicate these findings?	
Is the gender of the victim considered when assigning an investigator?	
When investigators are internal to the agency are they assigned to headquarters or do they work out of a facility? If they are locally based, when are non-resident investigators brought in?	
When are outside (non-agency) investigators used?	
Is there some type of memorandum of understanding or other agreement outlining outside investigator's authority, protocol, etc?	

Investigations – Protocols

Question:	Answer (Explain why or why not):
Who is given authority to initiate an investigation? Who has the authority to conduct an investigation? Who has the authority to act on the investigators' findings?	
How is information communicated with outside law enforcement?	
What is the role of outside law enforcement in the process?	
How is the status of an ongoing investigation communicated with various entities such as staff, offenders, and/or the media?	
Who authorizes the use of investigative tools – covert, warrants, phone call monitoring, DNA	

Question:	Answer (Explain why or why not):
samples, polygraph, etc?	
How are witnesses protected during the investigation?	
How are victims protected during the investigation?	
Is there a protocol for ensuring that all physical evidence is secured?	
Is there a protocol for notifying mental health staff for assistance with questioning of victims and perpetrators?	
When are outside mental health staff used in the investigative or treatment process?	
Is there a medical protocol to provide guidance to medical staff regarding the treatment of injuries, preservation of forensic evidence, testing, prevention and treatment of sexually transmitted infections such as HIV, hepatitis B, syphilis, etc?	
Is there a mental health protocol for treating victims of sexual abuse?	
When is outside medical staff used in the investigative or treatment process?	
Does the medical protocol address prevention of pregnancy ("morning after" pill) and pregnancy testing for female offenders?	
What is the process for handling the resignation of a staff member during an ongoing	

Question:	Answer (Explain why or why not):
investigation? What effect does it have on the investigation?	

Investigations – Aftermath

Question:	Answer (Explain why or why not):
Is there a process for ensuring protection of witnesses and victims once an investigation is concluded?	
Are reporting requirements under PREA followed?	
Are reporting requirements under Uniform Crime Reports followed?	
What type of information about employees is communicated to future employees as the result of a reference check or background investigation?	
Is there a process for reporting information to the appropriate licensing organizations (i.e., medical staff, attorneys, etc.)?	
Is there a protocol to ensure appropriate mental health and medical follow up?	
Is there a process to ensure appropriate referrals for prosecution?	
How are the results of completed investigations communicated with various entities such as staff, offenders and/or the media?	

Question:	Answer (Explain why or why not):
Is there a process for ensuring lessons learned from an investigation are incorporated into policy or training?	
How are false allegations by staff or offenders dealt with?	
How does the system deal with a large number of inconclusive investigations?	

First Responders

Question:	Answer (Explain why or why not):
Does your policy instruct staff who are first responders about the steps to take to secure the scene; notify superiors; separating the parties; making referrals to medical and/or mental health; notifying investigators, etc?	
Do you have a checklist that first responders can follow in fulfilling their duties?	

List of Resources for Guidance on the Prison Rape Elimination Act

1. National Institute of Corrections: www.nicic.org
2. National Institute of Corrections/Washington College of Law Project on Addressing Prison Rape:
NIC/WCL Project on Addressing Prison Rape
The Washington College of Law
4801 Massachusetts Ave NW
Washington, DC 20016
Phone: 202-274-4385
Email: nic@wcl.american.edu
nicresearch@wcl.american.edu
3. National Prison Rape Elimination Commission: www.nprec.us
4. U.S. Department of Justice, Bureau of Justice Statistics: www.ojp.usdoj.gov/bjs