


The Prison Rape Elimination Act of 2003

**Sexual Abuse in Correctional Settings:
What Rape Crisis Counselors Need to
Know**

**National Sexual Assault Conference
Many Voices One Movement
Pittsburgh, PA
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Objectives


- ❖ Discuss the Prison Rape Elimination Act of 2003
- ❖ Discuss what we currently know about sexual abuse in custodial settings
- ❖ Identify vulnerable persons most likely to face victimization in custodial settings
- ❖ Describe how sexual abuse in custody manifests itself
- ❖ Discuss the impact of and being a survivor in a custodial setting
- ❖ Identify ethical dilemmas counselors can face
- ❖ Discuss tips and tools for counseling victims and survivors abused in custodial settings

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**The Prison Rape
Elimination Act of 2003**

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What is PREA?

- ❖ **Prison Rape Elimination Act (PREA).**
- ❖ The aim of the Act is to create “**zero tolerance**” for prison rape by using a variety of tools
- ❖ The initial version of PREA only sought to address **male rape**. In the initial congressional hearing, most of the survivors were male. Initial legislation **failed to include sexual violence against women**, which was more likely to be staff initiated.
- ❖ In its second iteration, **PREA included staff sexual misconduct**, but **continued to focus heavily on male-on-male rape**.
- ❖ PREA passed **unanimously** in both houses of Congress in **2003**.

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PREA Purposes

- ❖ Increase **accountability** of prison officials who fail to detect, prevent, reduce and punish prison rape
- ❖ **Protect 8th** amendment rights of federal, state and local prisoners
- ❖ Establish **grant** programs
- ❖ **Reduce costs** of prison rape on interstate commerce

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PREA Purposes

- ❖ Establish **zero tolerance**
- ❖ Make **prevention** a top priority
- ❖ Develop **national standards** for detection, prevention, reduction and punishment
- ❖ **Increase available data and information on incidence** in order to improve management and administration
- ❖ **Standardize definitions** used for collecting data on the incidence of rape in custody

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Major Sections

- ❖ Section 4: **Collection** of prison rape statistics, data and research (BJS)
- ❖ Section 5: Prison Rape **Prevention and Prosecution** (NIC)
- ❖ Section 6: **Grants to Protect Inmates and Safeguard Communities** (BJA)
- ❖ Section 7: National Prison Rape Elimination **Commission**
- ❖ Section 8: Adoption and Effect of **National Standards**
- ❖ Section 9: **Accreditation** organizations must adopt standards or lose federal funds

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Key Milestones

- ❖ **2003:** PREA legislation passes
- ❖ **2004:** First meeting of the National Prison Rape Elimination Commission (NPREC)
- ❖ **2004-2009:** Information gathering and hearings held by the NPREC
- ❖ **June 2009:** Report and draft standards published by NPREC
- ❖ **2009-2012** Establishment and Convening of PREA Work Group

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Key Milestones

- ❖ **2010:** DOJ opens public comment period for NPREC standards
- ❖ **Feb. 2011:** Draft DOJ standards released
- ❖ **Feb-April 2011:** Public comment period for DOJ standards
- ❖ **May 17, 2012:** Final DOJ standards released
- ❖ **June 20, 2012** Final standards published in the Federal Register
- ❖ **August 20, 2012:** Standards applicable to BOP
- ❖ **2013-2014:** First audit cycle

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Key Principles

- ❖ PREA encompasses **any** federal confinement facility whether run by the government or a private organization on behalf of the government
- ❖ These standards are the floor - they are minimum standards
- ❖ States **can and are encouraged to** do more particularly if your state has set higher requirements
 - ❖ Some states already have stronger state laws than the protections the current standards provide
- ❖ Must protect the constitutional rights of those in custody

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WHAT WE KNOW:

BJS Data and Findings from the National Prison Rape Elimination Commission (NPREC)

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BJS Data: Adults

- ❖ Administrative survey collections
 - ❖ 2007-8
<http://www.wcl.american.edu/endsilence/documents/SexualAbuseReportedByCorrectionalAuth2007-8.pdf>
 - ❖ 2006
http://www.wcl.american.edu/endsilence/adult_resources.cfm
 - ❖ 2005
http://www.wcl.american.edu/endsilence/adult_resources.cfm
 - ❖ 2004
http://www.wcl.american.edu/endsilence/documents/BeckandHughes_BJSReport2004.pdf?rd=1
- ❖ Self-Reports
 - ❖ 2011-2012
<http://www.wcl.american.edu/endsilence/documents/BJSReport-PrisonandJailInmates2011-12.pdf>
 - ❖ 2008 (Former Prisoners)
<http://www.wcl.american.edu/endsilence/documents/BJSReportFormerPrisoners2008May2012.pdf>
 - ❖ 2007
 - ❖ Jail Inmates
<http://www.wcl.american.edu/endsilence/documents/SeaxVictimizationInLocalJails2007.pdf>
 - ❖ State and Federal Inmates
<http://www.wcl.american.edu/endsilence/documents/seaxvictimizationofstateandfederalprisoners2007.pdf>

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BJS Data: Juveniles

- ❖ Administrative survey collections
 - ❖ 2005-6
 - <http://www.wcl.american.edu/endsilence/documents/sexviolencejuvenilecorrath2005-6.pdf?rd=1>
 - ❖ 2004 (reported with adult numbers)
 - http://www.wcl.american.edu/endsilence/documents/BeckandHughes_BJSReport2004.pdf?rd=1
- ❖ Victim self reports
 - ❖ 2012
 - <http://www.wcl.american.edu/endsilence/documents/2012YouthBJSReport.pdf>
 - ❖ 2007-8
 - <http://www.wcl.american.edu/endsilence/documents/SexualVictimizationinYouthFacilitiesReportedbyYouth2008-9.pdf?rd=1>

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Special Report

Sexual Victimization Reported by Adult Correctional Authorities, 2007-2008

**BJS FINDINGS:
Adults**

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BJS FINDINGS: Sexual Victimization Reported by Adult Correctional Authorities, 2007-8

Gender	Inmate on Inmate Abuse		Staff on Inmate Abuse	
	Non-Consensual Sexual Conduct	Abusive Sexual Contacts	Staff Sexual Misconduct	Staff Sexual Harassment
Victims				
Male	92%	62%	65%	50%
Female	8%	38%	35%	50%
Perpetrators				
Male	93%	70%	39%	79%
Female	7%	30%	61%	21%

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BJS FINDINGS:
**Sexual Victimization in Prisons and Jails
Reported by Inmates, 2008-9**

- ❖ An estimated 4.4% of prison inmates and 3.1% of jail inmates reported experiencing one or more incidents of sexual victimization by another inmate or facility staff
- ❖ Sexual activity with facility staff was reported by 2.9% of male prisoners and 2.1% of male jail inmates, compared to 2.1% of female prisoners and 1.5% of female jail inmates.
- ❖ 13% of male prison inmates and 19% of male jail inmates said they were victimized within the first 24 hours after admission

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BJS FINDINGS:
**Sexual Victimization in Prisons and Jails
Reported by Inmates, 2008-9**

Gender	Prison		Jail	
	Male Victims	Female Victims	Male Victims	Female Victims
Male Perpetrator	14.9%	71.8%	18.2%	62.6%
Female Perpetrator	68.8%	9.3%	64.3%	27.7%
Both Male and Female Perpetrators	16.3%	18.9%	17.5%	9.8%

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BJS FINDINGS:
**Sexual Victimization Reported by Former State
Prisoners, 2008**

- ❖ 9.6% of former state prisoners reported one or more incidents of sexual victimization during the most recent period of incarceration in jail, prison, or a post-release community-treatment facility
- ❖ 3.7% reported incidents with another inmate
- ❖ 4.7% of reported incidents involved a facility staff member

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U.S. Department of Justice
Bureau of the Census
Bureau of Juvenile Statistics

Sexual Victimization in Juvenile
Facilities Reported by Youth,
2012
National Survey of Youth in Custody, 2012

Blair J. Beck, Ph.D.
BJS Statistics

David Curtis, Ph.D., John Harpe, and Tom Smith
BJS

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BJS FINDINGS:
**Sexual Victimization Reported by Juvenile Correctional
Authorities, 2005-6**

- ❖ More than 2,000 allegations of sexual violence reported each year in juvenile facilities
 - ❖ The estimated total number of allegations for the nation was
 - ❖ 2,047 in 2005 (16.7%)
 - ❖ 2,025 in 2006 (16.8%)
- ❖ About 1 in 5 allegations of sexual violence were substantiated

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BJS Findings:
Sexual Victimization Reported by Youth, 2012

- ❖ An estimated 9.5% of adjudicated youth in state juvenile facilities and state contract facilities reported experiencing one or more incidents of sexual victimization by another youth or staff in the past 12 months or since admission, if less than 12 months.
 - ❖ About 2.5% of youth reported an incident involving another youth
 - ❖ About 7.7% reported an incident involving facility staff
- ❖ Youth who identified their sexual orientation as gay, lesbian, bisexual, or other reported a substantially higher rate of youth-on-youth victimization (10.3%) than heterosexual youth (1.5%).
- ❖ Among youth who reported victimization by staff:
 - ❖ 89.1% were males reporting sexual activity with female staff
 - ❖ 3.0% were males reporting sexual activity with both male and female staff.

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**BJS Findings:
Sexual Victimization Reported by Youth,
2012**

Sex of Youth Housed	Abuse reported by both staff and other youth (%)	Abuse reported by another youth (%)	Abuse Reported by Staff (%)
Males Only	9.7	2.0	8.2
Females Only	6.7	5.7	2.2
Both	9.4	3.7	7.2

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**BJS Findings:
Sexual Victimization Reported by Youth,
2012**

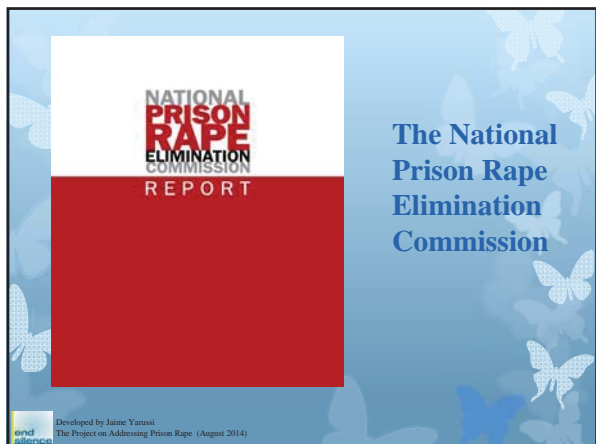
Gender of Victim	Abuse reported by both staff and other youth (%)	Abuse reported by another youth (%)	Abuse Reported by Staff (%)
Male	9.7	2.2	8.2
Females	6.9	5.4	2.8

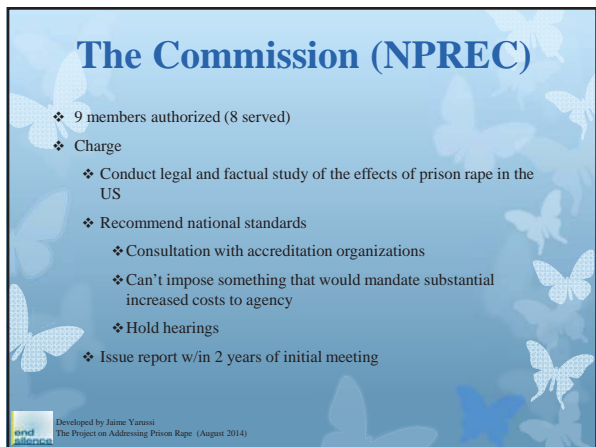
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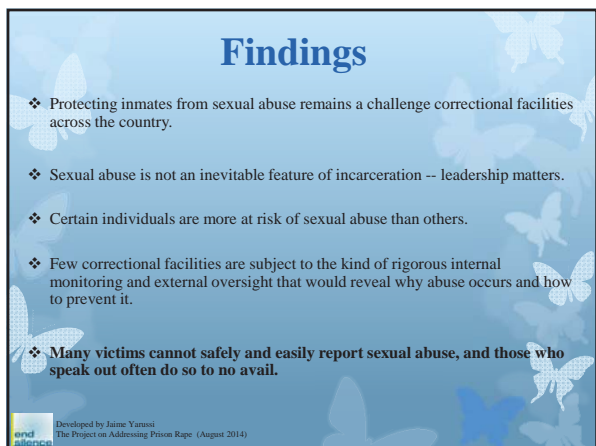
**Prevalence and RIA Findings:
Final PREA Standards (p 10-11)**

- ❖ In 2008, more than 209,400 persons were victims in prison, jails and juvenile facilities
- ❖ At least 78,500 prison and jail inmates and 4,300 youth in juvenile facilities were victims of the most serious forms of sexual abuse

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Findings

- ❖ **Victims are unlikely to receive the treatment and support known to minimize the trauma of abuse.**
- ❖ Juveniles in confinement are much more likely than incarcerated adults to be sexually abused, and they are particularly at risk when confined with adults.
- ❖ Individuals under correctional supervision in the community are at risk for sexual abuse.
- ❖ A large and growing number of detained immigrants are in danger of sexual abuse.

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Where We Are Now?

The National PREA Standards

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Standards on Prevention Planning

Adult 115.11-115.18/ Juvenile 115.311-115.318

- ❖ Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.
- ❖ Contracting with other entities for the confinement of inmates/ residents.
- ❖ Supervision and monitoring.
- ❖ Limits to cross-gender viewing and searches.
- ❖ Inmates/ residents with disabilities and who are limited English proficient.
- ❖ Hiring and promotion decisions.
- ❖ Upgrades to facilities and technologies.

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Standards on Responsive Planning
Adult 115.21-115.22/ Juvenile 115.321-115.322

- ❖ Evidence protocol and forensic medical examinations.
- ❖ Policies to ensure referrals of allegations for investigations.

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Responsive Planning Standards
Evidence protocol and forensic medical examinations

(a) To the extent the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.

(b) The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011.

(c) The agency shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiary or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs.

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Responsive Planning Standards
Evidence protocol and forensic medical examinations

(d) The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.

(e) As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.

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Responsive Planning Standards
Evidence protocol and forensic medical examinations

(f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (e) of this section.

(g) The requirements of paragraphs (a) through (f) of this section shall also apply to:

- (1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in prisons or jails; and
- (2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in prisons or jails.

(h) For the purposes of this section, a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.

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Standards on Training and Education
Adult 115.31-115.35/ Juvenile 115.331-115.335

- ❖ Employee training.
- ❖ Volunteer and contractor training.
- ❖ Inmate/ Resident education.
- ❖ Specialized training: Investigations.
- ❖ Specialized training: Medical and mental health care.

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Training and Education Standards
Specialized training: Medical and mental health care.

(a) The agency shall ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in:

- (1) How to detect and assess signs of sexual abuse and sexual harassment;
- (2) How to preserve physical evidence of sexual abuse;
- (3) How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and
- (4) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

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Training and Education Standards
Specialized training: Medical and mental health care.

(b) If medical staff employed by the agency conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations.

(c) The agency shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere.

(d) Medical and mental health care practitioners shall also receive the training mandated for employees under § 115.31 or for contractors and volunteers under § 115.32, depending upon the practitioner's status at the agency.

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Standards on Screening for Risk of Sexual Victimization and Abusiveness
Adult 115.41-115.43/ Juvenile 115.341-115.342

- ❖ Screening for risk of victimization and abusiveness
- ❖ Use of screening information
- ❖ Protective custody

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Standards on Reporting
Adult 115.51-115.54/ Juvenile 115.351-115.354

- ❖ Inmate/ resident reporting.
- ❖ Exhaustion of administrative remedies.
- ❖ Inmate/ resident access to outside support services and legal representation.
- ❖ Third-party reporting.

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Reporting Standards
Access to outside confidential support services.

(a) The facility shall provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies. The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible.

(b) The facility shall inform inmates, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

(c) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse. The agency shall maintain copies of agreements or documentation showing attempts to enter into such agreements.

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Standards on Official Response
Adult 115.61-115.68/ Juvenile 115.361-115.368

- ❖ Staff and agency reporting duties.
- ❖ Agency protection duties.
- ❖ Reporting to other confinement facilities.
- ❖ Staff first responder duties.
- ❖ Coordinated response.
- ❖ Preservation of ability to protect inmates/ residents from contact with abusers.
- ❖ Agency protection against retaliation.
- ❖ Post-allegation protective custody.

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Official Response Standard
Coordinated Response

The facility shall develop a written institutional plan to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

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Standards on Investigations
Adult 115.71-115.73/ Juvenile 115.371-115.373

- ❖ Criminal and administrative agency investigations.
- ❖ Evidentiary standard for administrative investigations.
- ❖ Reporting to inmates/ residents.

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Standards on Discipline
Adult 115.76-115.78/ Juvenile 115.376-115.378

- ❖ Disciplinary sanctions for staff.
- ❖ Corrective action for contractors and volunteers.
- ❖ Interventions and disciplinary sanctions for inmates/ residents.

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Standards on Medical and Mental Health Care
Adult 115.81-115.83/ Juvenile 115.381-115.383

- ❖ Medical and mental health screenings; history of sexual abuse.
- ❖ Access to emergency medical and mental health services.
- ❖ Ongoing medical and mental health care for sexual abuse victims and abusers.

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Medical and Mental Health Care Standards: Access to Emergency Medical and Mental Health Services

(a) Resident victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.

(b) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, staff first responders shall take preliminary steps to protect the victim pursuant to § 115.362 and shall immediately notify the appropriate medical and mental health practitioners.

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Medical and Mental Health Care Standards: Access to Emergency Medical and Mental Health Services

(c) Resident victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.

(d) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

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Medical and Mental Health Care Standards: Ongoing medical and mental health care for sexual abuse victims and abusers.

(a) The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.

(b) The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.

(c) The facility shall provide such victims with medical and mental health services consistent with the community level of care.

(d) Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.

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**Medical and Mental Health Care Standards:
Ongoing medical and mental health care for
sexual abuse victims and abusers.**

(e) If pregnancy results from the conduct described in paragraph (d) of this section, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.

(f) Inmate victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.

(g) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

(h) All prisons shall attempt to conduct a mental health evaluation of all known inmate-on-inmate abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

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**Standards on Data Collection and Review
Adult 115.86-115.89/ Juvenile 115.386-115.389**

- ❖ Sexual abuse incident reviews.
- ❖ Data collection.
- ❖ Data review for corrective action.
- ❖ Data storage, publication, and destruction.

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**Standards on Audit and Compliance
115.401-115.501**

- ❖ Frequency and scope of audits.
- ❖ Auditor qualifications.
- ❖ Audit contents and findings.
- ❖ Audit corrective action plan.
- ❖ Audit appeals.
- ❖ State determination and certification of full compliance.

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Victims in Custodial Settings

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Victims Can Be.....

- ❖ Small in stature
- ❖ Young
- ❖ Inexperienced in custodial settings and the 'code'
- ❖ Have a history of abuse
- ❖ Racial and ethnic minorities within the facility
- ❖ Stigmatized by their status as previous victims
- ❖ Feminine in appearance

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Especially Vulnerable Victims

- ❖ Children (especially those housed with adults)
- ❖ Developmentally Disabled
- ❖ Mentally ill
- ❖ Hearing Impaired
- ❖ Limited Language Ability
- ❖ Sexual Minorities (LGBTI)
- ❖ Substance Abusers
- ❖ Sex offenders/ incarcerated for abuse of children

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Predators Can Be.....

- ❖ Have been incarcerated for longer period of time/ familiar with the criminal justice system
- ❖ Have street history of violence
- ❖ Generally incarcerated or detained for a violent offense
- ❖ Physically aggressive, manipulative
- ❖ Masculine in appearance
- ❖ Protected by physical strength, reputation as dangerous
- ❖ Adept at extorting and exploiting victims
- ❖ Members of a gang

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How Sexual Abuse in Custody Manifests Itself

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Rape Trauma Syndrome in Correctional Settings

- ❖ Repeated sexual assault situations
- ❖ No control over environment
- ❖ Continuous contact with abuser
- ❖ Triggers may cause anger or violent reactions
 - ❖ Often this labels victims as trouble-makers

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**Impact of Victimization in the Correctional Setting:
Male Victims**

- ❖ Connection between sexual/ physical victimization and aggressive and self-destructive behavior
- ❖ Report past abuse associated with violent crime
- ❖ Defend against feelings associated with victimization (shame, stigma)
- ❖ May question sexual identity and preference

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**Impact of Victimization in the Correctional Setting:
Male Victims**

- ❖ Feel the best defense is a good offense
- ❖ May imitate their aggressors
- ❖ Acutely aware of the prison code and their ranking

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**Impact of Victimization in the Correctional Setting:
Female Victims**

- ❖ At risk for unhealthy relationships with authority figures, based on perceptions of their power to harm
- ❖ Difficulty adjusting to coercive, restrictive environments
- ❖ Lack of right to privacy, cell searches, bodily searches may replicate past abuse
- ❖ Concern with how reporting may interrupt relationships

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**Impact of Victimization in the Correctional Setting:
Female Victims**

- ❖ Vulnerable to abusive authority figures
- ❖ Faced with sexual assault situations:
 - ❖ May not understand it is possible to refuse
 - ❖ May lack perception of a “right” to refuse
 - ❖ May believe it’s always dangerous to refuse

Developed by Jaime Yarossi
The Project on Addressing Prison Rape (August 2014)

**The Impact of Being
a Survivor in Custody**

- ❖ More likely to experience physical trauma
- ❖ Systemic infliction of psychological trauma
- ❖ Heightened feelings of lack of safety
- ❖ Retaliation and/or retribution
- ❖ Complete lack of autonomy
- ❖ General distrust
 - ❖ staff, reporting structure, investigation, prosecution

Developed by Jaime Yarossi
The Project on Addressing Prison Rape (August 2014)

**The Impact of Being
a Survivor in Custody**

- ❖ Feelings of disorientation and anxiousness may make people unable to follow rules
- ❖ Sharing or talking about feelings may be a safety risk
- ❖ Isolation may be a relief but it could also cause further trauma
- ❖ Increased anger may cause acting out
- ❖ Complex nature of “consent” can lead to self-blame
- ❖ Multiple traumas exacerbate symptoms

Developed by Jaime Yarossi
The Project on Addressing Prison Rape (August 2014)

So What? If nothing else.....

- ❖ Almost everyone who is currently in custody will live in the community again in the future– adults and juveniles
- ❖ Sex abuse in custody is a public health issue and has been linked to increased HIV/AIDS numbers in both those who are formerly incarcerated and in African American women in their 20s and 30s (according to the CDC)
- ❖ We currently do not know the long term psychological effects of sexual abuse in custody on mental health and stability of victims once released.

Developed by Jaime Yarossi
The Project on Addressing Prison Rape (August 2014)

Rape Crisis Counseling

Developed by Jaime Yarossi
The Project on Addressing Prison Rape (August 2014)

**Ethics:
Counseling Survivors in Custody**

- ❖ Consider the following:
 - ❖ Confidentiality
 - ❖ Reporting
 - ❖ Dual Services
 - ❖ Patient Centered Care
 - ❖ Criminal Justice Intervention
 - ❖ Security and Safety

Developed by Jaime Yarossi
The Project on Addressing Prison Rape (August 2014)

FAQ

QUESTION: The PREA standards require agencies to permit inmates, detainees, and juveniles to report in as confidential a manner as possible. What does as confidential as possible mean?

Answer:

- ❖ PREA standards do not define what as confidential a manner as possible means, but the standards outline strategies to provide confidentiality.
- ❖ First, the facility must inform inmates if the facility plans to monitor communications (when and how) prior to giving inmates access to these services
- ❖ Also, facilities must inform inmates about state mandatory reporting laws, and when an inmate, detainee or juvenile's report of abuse will trigger a mandatory report.
- ❖ In general, juvenile and certain vulnerable persons' reports of abuse trigger mandatory reports.
- ❖ The standards do not require absolute confidentiality, recognizing that physical layout challenges, procedural requirements like the need to request a call, or facilities' automatic phone monitoring systems may limit confidentiality. Given these limitations, the standards allow the facility to determine how they will provide confidentiality. Some agencies have programmed their phones to provide confidentiality for legal calls or provided hotlines or unmonitored numbers for certain calls.

Developed by Jaime Yarossi
The Project on Addressing Prison Rape (August 2014)

FAQ

QUESTION: The PREA standards require agencies to enable reasonable communication between inmates, detainees, and juveniles and community partners. What does reasonable communication mean?

Answer:

- ❖ The PREA standards do not define reasonable communication.
- ❖ At a minimum, agencies must provide the mailing addresses and telephone numbers of local, State, or national victim advocacy or rape crisis organizations to inmates, detainees, and juveniles.
- ❖ Beyond this basic information, agencies must provide access for community partners to adequately address inmate, detainee, and juvenile needs for counseling needs and emotional support services related to sexual abuse.
- ❖ For example, to comply with this standard, facilities could permit rape crisis centers to visit with inmates, detainees, and juveniles on an as needed basis at the facility, or provide access to rape crisis counselors during hospital visits.

Developed by Jaime Yarossi
The Project on Addressing Prison Rape (August 2014)

FAQ

QUESTION: Are there any state laws that specifically provide confidentiality to rape crisis providers? If so, how do these rules apply to inmates, detainees, and juveniles?

Answer:

- ❖ Yes. Nearly every state has a law that requires confidential communications between rape crisis providers and survivors of sexual abuse.
- ❖ Each law outlines the type and degree of confidentiality that applies between a victim and rape crisis counselor; the types of employees bound by confidentiality; instances where confidentiality can be waived; and any exceptions to confidentiality.
- ❖ Confidentiality laws for rape crisis counselors and victims apply regardless of the setting e.g. prison, jail, juvenile, lock-ups or community.
- ❖ Correctional agencies should be knowledgeable of the applicable laws to understand the limitations state law places on agencies' ability to monitor inmates', detainees', and juveniles' interactions with victim advocacy organizations.
- ❖ Rape crisis counselors working with youth should inform youth of limits of their ability to keep confidential reports of abuse.

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FAQ

QUESTION: Under what circumstances are rape crisis centers required to report information about victims in custodial settings back to the facility?

Answer:

- ❖ Common scenarios where state law may require rape crisis counselors to report information to facilities include when a victim plans to commit a crime; where there is a serious risk of harm to that inmate; or when the victim is a juvenile or reveals ongoing child abuse. Be sure to read carefully as states also differ on requiring counselors to report or allowing counselors to report.
 - ❖ For example, in New York, rape crisis counselors do not have to treat communications from victims as confidential, if the victim reveals that she intends to commit a crime or harm another. N.Y. C.P.L.R. Law § 4510 (McKinney 2013). Counselors may have a duty to report to local authorities, or to agencies if they learn, during the course of treatment, that inmate plans to commit a crime.
 - ❖ In Washington, rape crisis counselors may disclose confidential communications without victims' consent, "if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person." WASH. REV. CODE § 5.60.060(7) (b). Here, the law requires the harm to be imminent. Therefore a counselor need not report harm that is serious but not imminent.
- ❖ Many states do not require a rape crisis counselor to maintain confidentiality if the victim is a child, or reveals a concern about ongoing child abuse. See, e.g., WIS. STAT. § 905.045 (2013). The agency should inform juveniles that the counselor may be bound by state law to report abuse of that juvenile to appropriate authorities.

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The Project on Addressing Prison Rape (August 2014)

FAQ

QUESTION: Who qualifies as a rape crisis counselor?

Answer:

- ❖ There is no national standard for rape crisis counselors.
- ❖ Each state has individual requirements in state law for the qualifications of rape crisis counselors.
- ❖ These requirements often include certain training, supervision, and certification by state public health authorities.
- ❖ Rape crisis counselors can be employees of agencies or volunteers.
- ❖ Confidentiality laws are usually the best resource to determine who is considered a counselor in your state.

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FAQ

QUESTION: Could rape crisis center employees face criminal penalties for revealing clients' confidential information?

Answer:

- ❖ Yes. Disclosing information about sexual abuse victims is a crime in some states.
 - ❖ In Illinois, it is a Class C misdemeanor for rape crisis counselors to disclose any confidential communications. 735 ILL. COMP. STAT. 5/8-802.1.
 - ❖ In Texas, it is a Class C misdemeanor to intentionally or knowingly disclose information "made in the course of providing sexual assault advocacy service." TEX. GOV'T CODE § 420.075.
- ❖ Those providing support services to inmate victims of sexual abuse should check their state laws to determine the scope of their liability for disclosing information learned in the course of counseling inmates.
- ❖ The penalties for these misdemeanors could involve include fines and jail time.

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FAQ

QUESTION: Do the PREA Standards give correctional facilities the authority to listen in on counseling sessions between rape crisis counselors and inmate clients?

Answer:

- ❖ Not generally. The PREA standards require (1) the facility to provide inmates with access to outside victim advocates for emotional support services related to sexual abuse; (2) the facility to enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible; and (3) the facility to inform inmates, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.
- ❖ While the PREA standards do not require absolute confidentiality, state laws regarding confidentiality and privilege for conversations between counselors and clients may, and often do, provide additional protections for inmates' confidentiality in this situation.
- ❖ If states' laws governing confidentiality and client privilege require complete confidentiality then agencies and rape crisis providers must follow those laws. The parties should be aware of these obligations before entering into an MOU to provide services.

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FAQ

QUESTION: If an inmate calls a rape crisis "hotline" to report sexual abuse from a detention facility and wishes to have everything kept confidential, does VAWA prohibit reporting to the detention facility?

Answer:

- ❖ No. The Violence Against Women Act (VAWA) did not create any new confidentiality protections.
- ❖ VAWA acknowledges that confidentiality is important in providing services.
- ❖ Hotline operators should be aware of state laws or ethical duties that conflict with reporting the call and discuss with the inmate or resident the benefits and risks of reporting.
- ❖ If the hotline is supported by or receives VAWA funds, However, it is the position of the Office of Violence Against Women, that all reports are confidential and the hotline cannot report any incident to facilities.

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The Project on Addressing Prison Rape (August 2014)

FAQ

QUESTION: Are rape crisis centers or community advocacy organizations required to notify a correctional agency when they receive a report of sexual abuse if they serve as agencies' external reporting mechanism?

Answer:

- ❖ Yes. PREA standards require correctional agencies to provide at least one way for inmates to report abuse or harassment to a public or private entity that is able to receive and immediately forward inmate reports to agency officials. The standards also require that inmates be allowed to remain anonymous upon request
- ❖ Crisis providers and/or advocacy organizations should be particularly careful about entering into relationships to be external reporting agencies if they are concerned about maintaining confidentiality.
- ❖ Additionally, PREA Standard, §115.53 requires agencies to provide inmates access to outside emotional support services such as rape crisis counselors. These communications are confidential to varying degrees in all states. That means that the rape crisis counselor may not, with exceptions for certain mandatory reporting laws, reveal their communications with inmate and resident victims.

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FAQ

QUESTION: If rape crisis counselors decide that they must report an incident of sexual abuse – either because of state law or with the inmate or resident victim’s approval, to whom should they report?

Answer:

- ❖ If the incident involves a counselor’s mandatory reporting requirement, state laws will indicate where and how counselors make reports. Typically, counselors and others make reports to Child Protective Services or Developmental Disabilities agencies. Counselors could report inmates to local police departments or through the third party reporting mechanism in inmates’ or residents’ facilities.

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**What You Need to Know:
Hospital Advocates**

- ❖ The victim could be a male
- ❖ The victim may be in handcuffs and/or shackles
- ❖ A correctional officer or staff person from the correctional facility may push to be in the room during the exam
- ❖ You may not be able to touch the person
- ❖ You may need to leave your personal items outside of the room
- ❖ You may not be able to offer food or drink to the victim after the exam

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**What You Need to Know:
Hospital Advocates**

- ❖ You may need to vouch for the person’s whereabouts (if in a community setting) or be asked to call the facility to report where the person is located
- ❖ Medical after care and resources offered to the victim will have to be different
- ❖ Victims may not have phone access to use the hotline
- ❖ You may be dealing with local law enforcement as well as internal investigators from the correctional facility who may or may not understand the victim centered care model
- ❖ Call your back up or other rape crisis center staff if you are uncomfortable or do not feel safe during the visit and check-in with your supervisor once the call is completed

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What You Need to Know: Hospital Advocates

- ❖ Consider how you are dressed
- ❖ You will not be able to offer to call anyone for the victim to let them know how or where they are
- ❖ For juvenile victims the facility or agency where they are being housed may have the right to consent to the exam
- ❖ For adult victims the facility or agency may have SANE exams as part of any procedure where a sexual assault is reported, however, the victim may not want the exam.
- ❖ Victims may not be cognitively able to understand the process of the exam and Counselors will have to determine a person's comfort level with the process of the exam and explain it thoroughly to the victim in a developmentally appropriate way.

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What You Need to Know: Hotline Counselors

- ❖ The caller may be a friend or family member calling to get information for a family member—be prepared to offer helpful resources for both the victim who is in custody as well as the family/ friend calling. These family and friends often feel helpless to assist and generally are because of the status of the victim.
- ❖ The caller may be a man/ boy
- ❖ You will need to give people informed consent upfront as soon as they reveal they are in a custodial setting unless there is a rape crisis center MOU in place with the custodial facility
- ❖ People in custodial settings may meet the standards for mandatory reporting and/or protection of vulnerable persons. Be aware of your state laws on both of these issues and allow that to govern your responses

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What You Need to Know: Hotline Counselors

- ❖ Confidentiality may be different for these callers, if you have a caller identifying themselves as being in a correctional facility make sure to call your back-up and/or rape crisis center staff immediately following your call to check in with them about your requirements.
- ❖ General tools regarding self-care and calming techniques will not work because there is no freedom in these settings.
- ❖ If you do not feel comfortable counseling victims who are incarcerated or juveniles in detention, work to end the call as soon as possible letting them know that you are unprepared to assist them but that there are other Counselors who are better suited to help. Remind them that you are glad they called and ask them if there is a call back number or if they would call the office or hotline at another time. Contact your backup or rape crisis center staff immediately to let them know about the call and ask for advice if you need it.

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Tips and Tools for Hospital Advocates

- ❖ Ask as few questions as possible about the person's status as an offender
- ❖ Follow the lead of the SANE
- ❖ Go with your instincts- advocate for your victim as you would anyone in the community. Community level of care is the aim of this process.
- ❖ Do not reveal any information about yourself
- ❖ Try to stay on a first name basis
- ❖ Answer questions to the best of your ability- it's okay to say you do not know something
- ❖ Do not make ANY promises
- ❖ Acknowledge that although you understand the victim's choices are limited because of their status, by reporting the abuse they made powerful choice

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Tips and Tools for Hospital Advocates

- ❖ Acknowledge that you understand by reporting the abuse they were taking a risk and that you are happy they are there.
- ❖ When talking about safety planning understand that safety may not ever be achieved in a correctional setting
- ❖ Be comfortable discussing the stigma associated with sexual abuse especially for men/boys
- ❖ Let them know you understand that while the resources while they are in custody are limited there are resources in the community for them once they are released.
- ❖ Give them the hotline number for the rape crisis center as well as the address— writing may be the only way they can communicate with Counselors
- ❖ Ask if they want the rape crisis center to follow up on their well being

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Tips and Tools for Hotline Counselors

- ❖ Don't immediately assume it is a crank call
- ❖ If you generally recommend people go for a run or take a calming bath or listen to music etc. you may instead suggest writing feelings in a letter, reading a book or working on art projects. These will be more practical in places where movements, especially at night, are highly restricted.
- ❖ Do not allow victims in custody to be graphic; use the same expectations as you would with folks calling from the community. Let the caller know that that language is unacceptable on the hotline or that they do not need to be graphic about the assault, that you do not need that level of detail to help them. Give one or two warnings depending on your comfort level and then do not be afraid to tell the caller you are terminating the call and they should feel free to call back when they can more appropriately express themselves.

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Tips and Tools for Hotline Counselors

- ❖ Avoid saying "I understand... a lot of people who have been abused feel..." Being sexually abused in a custodial setting is unique in that often it is at the hands of a staff that has complete control over your every movement or freedom within the facility (outside recreation time, visitations, medical care etc.). If sexual abuse is at the hands of another inmate, juvenile or resident, a complex alignment of consent and abuse may be present and causing confusion for the victim (protective pairing, sex for trade, sex for protection etc.)
- ❖ Be aware that because of the complex nature of consent in custodial settings, feelings of hopelessness, depression and often suicide are very strong and being able to accurately assess those things will be critical in the resources you can provide to the caller.

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Summary

- ❖ Most people who are in custody have prior victimization histories which puts them at an increased risk for abuse while in custody
- ❖ Know yourself and your values– do what you can
- ❖ Be aware of policies and procedures that the rape crisis center may have governing this population
- ❖ These cases will not make up a large part of what you do but they will be very important

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Questions? Need to Debrief?

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