

September 27, 2013

TECHNICAL BULLETIN

To: Selected County Officials

From: SCAC Staff

Re: The Prison Rape Elimination Act Regulation

This *Technical Bulletin* outlines the Prison Rape Elimination Act Regulations (PREA) and its impact on jails and detention centers. PREA is a federal law that was passed by Congress in 2003. The law created a commission to study the issue, and then directed the Attorney General to issue national standards for the detection, prevention, reduction, and punishment of prison rape. After a decade of study, research, and public comment, the Attorney General issued the final PREA standards on June 20, 2012, which made them effective on August 20, 2012, with the audit cycle for state certification beginning on August 20, 2013. The standards apply to Federal Bureau of Prison facilities immediately upon their adoption. State compliance, by contrast, is to be enforced indirectly through a grant incentive. Namely, a state will lose five percent of federal grant money it would otherwise receive for prison purposes unless the state's governor can certify each year that the State has adopted and is in full compliance with the PREA standards, or the governor submits an assurance that such five percent will only be used for complying with the standards in the future. PREA applies to local jails and detention centers as the federal statute defines "jails" to include "any confinement facility of a Federal, State, or local law enforcement agency whose primary use is to hold persons pending adjudication of criminal charges, persons committed to confinement after adjudication of criminal charges for sentences of one year or less, or persons adjudicated guilty who are awaiting transfer to a correctional facility."

PREA requires covered agencies to adopt a written policy of zero tolerance towards all forms of sexual abuse and sexual harassment. It also requires that each facility be audited every three years, at the facility's expense, to assess compliance. One standard in particular presents issues for jails and detention centers in this state. This standard prohibits juveniles from being housed with adult inmates or having unsupervised contact with adult inmates in common spaces. The federal statute defines juvenile as any person under the age of 18. South Carolina is one of the few states that treats a 17-year old as an adult. There is no funding provided for this mandate.

Here are some other requirements of the PREA standards:

- Designate a PREA point person to coordinate compliance efforts;
- Screen inmates for risk of being sexually abused or sexually abusive, and use screening information to inform classification, work, education, and program assignments;

- Develop and document a staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring;
- Train employees on their responsibilities in preventing, recognizing and responding to sexual abuse;
- Perform background checks on prospective employees, current employees who will be supervising inmate workers, and do not hire abusers;
- Ban cross-gender pat-down searches of female inmates in prisons and jails and of both male and female residents of juvenile facilities;
- Incorporate unique vulnerabilities of lesbian, gay, bisexual, transgender, intersex, and gender nonconforming inmates into training and screening protocols;
- Enable inmates to shower, perform bodily functions, and change clothing without improper viewing by staff of the opposite gender;
- Restrict the use of solitary confinement as a means of protecting vulnerable inmates;
- Provide at least two internal reporting avenues, and at least one way to report abuse to a public or private entity that is not a part of the facility and that can allow inmates to remain anonymous upon request. Inmates must also be provided with access to outside victim advocates for emotional support services related to sexual abuse;
- Develop a written plan to coordinate actions taken among staff first responders, medical and mental health practitioners, investigators, and facility leadership in response to a sexual abuse incident. A facility must also have policies to prevent and detect retaliation against persons reporting sexual abuse or who cooperate with investigations;
- Investigations must follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative and criminal proceedings. Victims must be offered no-cost access to forensic medical examinations where evidentiarily or medically appropriate;
- Require staff to be subject to discipline for sexual abuse, presumably termination for actually engaging in sexual abuse, and reporting to law enforcement and relevant licensing bodies where appropriate;
- Provide timely, unimpeded access to emergency medical treatment and crisis intervention services;
- If a facility has a grievance process for inmates alleging sexual abuse, the facility may not impose a time limit on when an inmate may submit a grievance regarding such allegations;
- Develop methods to ensure effective communication with inmates that have intellectual, psychiatric, or speech disabilities;
- Enter into or renew contracts only with outside entities that agree to comply with the standards.

For more detailed information, you can download the “Implementing the Prison Rape Elimination Act: A Toolkit for Jails” at <http://www.prearesourcecenter.org/library/509/resources/toolkits-and-handbooks>, which provides a checklist of requirements necessary for PREA compliance.

Even if there is no direct financial penalty for a local jail that fails to comply with PREA, there is some concern that the federal standards may evolve into a standard of care in civil actions related to inmate sexual abuse.

Below are some additional websites that may be helpful:

PREA standards: <http://www.gpo.gov/fdsys/pkg/FR-2012-06-20/pdf/2012-12427.pdf>

PREA standards for the US Department of Homeland Security confinement facilities:

<http://www.dhs.gov/sites/default/files/publications/prea-nprm-final-120612.pdf>

Examples of a written PREA policy document:

<http://www.jdaihelpdesk.org/intersiteconference2013/PREA%20Policies%20and%20Procedures%20-%20Dallas%20TX.pdf>

http://www.wcl.american.edu/endsilence/documents/prea_doc_idaho.pdf

The National PREA Resource Center:

<http://www.prearesourcecenter.org/>

Please consult your county attorney if you have specific questions about the interpretation or application of these changes. The SCAC staff is also available at 1-800-922-6081 to address general questions.