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The Prison Rape Elimination Act (PREA): What it Means for Your Advocacy Work

This technical assistance publication was developed by MCADSV staff.

For more information, contact MCADSV.

This document is not intended to cover the entirety of PREA, an expansive law. This document intends to prepare advocates for the implementation of PREA at detention centers in Missouri.



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The Prison Rape Elimination Act (PREA): What it Means for Your Advocacy Work

The provisions of the 2003 federal Prison Rape Elimination Act (PREA) are in the final months of policy change implementation in Missouri's prisons and detention facilities. PREA is a federal law that requires detention facilities to have a plan for the prevention, detection, response and monitoring of sexual abuse and sexual harassment. Detention facilities are facilities that confine inmates, detainees or residents—including prisons, jails and juvenile detention centers. President Barack Obama issued a memorandum stating that PREA also includes immigration detainees (The White House, 2012). As a result, your local county jail and/or juvenile justice office, as well as Missouri Department of Corrections (DOC) institutions in your service area, might contact you to develop an advocacy partnership in order to put PREA's protections in practice. You also might be contacted by other community confinement facilities including community release centers and community supervision centers. There is a spectrum of types of confinement facilities that fall under PREA. This document will focus on how advocates can support survivors in DOC detention centers and local jails who are detainees or inmates at those facilities.

This document is **not** intended to cover the entirety of PREA, an expansive law. This document intends to prepare advocates for the implementation of PREA at detention centers in Missouri. Please seek additional resources to understand the full impact of PREA in your community—see page 6 for a list of a few resources.

PREA requires that the prevention and end of sexual assault and rape in prisons and other detention facilities become a priority for corrections officials. Advocates have long known that sexual assaults, including those in correctional institutions, exist and are underreported. PREA requires corrections officials to move forward in their own work to end this violence. Simultaneously, as the systems that detain prisoners change their everyday practices, a great deal of responsibility also will fall to local community-based nonprofit organizations for advocacy services for incarcerated victims of sexual assault.

For many MCADSV member agencies, working within a correction system is new territory. The rules and regulations being created by DOC to comply with PREA are new. The implementation of PREA in Missouri is new. The ability of inmates at detention facilities to report sexual assaults—and be afforded increased protections—is new. In short, this is a new process for everyone.

MCADSV continues to meet with all state agencies involved in PREA implementation. MCADSV will keep its members informed of updates, tools and training opportunities as they are created.

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HOW PREA AFFECTS YOUR ORGANIZATION

The U.S. Department of Justice's (DOJ) PREA national standards require federal and state detention centers to inform victims of their rights under PREA. These rights include access to a community-based advocate. The law recommends that detention facilities "attempt to make available to the victim a victim advocate from a rape crisis center [...] or qualified community-based organization staff member to accompany and support them through the forensic exam" (National Standards to Prevent, Detect, and Respond to Prison Rape, 2012). PREA does apply to local county and city holding facilities, though it seems there are less leveraging options should local governments choose not to comply.

Section 115.12 of the standards "requires agencies to enter into new contracts (or renewals) only with facilities that are compliant with the standards... [Detention facilities] that are not compliant with PREA may face loss of their contracts with the state or other PREA-compliant agencies... [It also means that] private litigants may cite noncompliance as evidence that the facility is constitutionally deficient" (The Moss Group, 2011).

Tips for individual advocacy with sexual assault survivors in detention centers

1. **Be aware of limits in your funding.** As of January 2013, the only funding that supports this type of advocacy is through the Missouri Department of Public Safety (DPS). The DPS funding that allows this advocacy is the Sexual Assault Services and Prevention (SASP) grant. In January 2013 DOJ, through the Office on Violence Against Women, released information clarifying that STOP funds can be used to work with offenders regarding domestic and sexual violence. The work must focus on those two areas and not on general offender rehabilitation efforts. State grant administrators are scheduled for training in February 2013 to learn more about actual implementation of this newly released information. Until then, unrestricted dollars in your organization's budget will be important to support PREA-related staff efforts. Additional information will be passed along to MCADSV members as it is made available.

There is ongoing discussion within the federal government to change Victims of Crime Act funding regulations (VOCA) to also include PREA work done by advocates.

2. **Work with your local detention facility.** Ask its staff what they need from your agency and advocates to run background checks in order to authorize clearance for access to an inmate-victim. Finding out requirements for background checks and having a pre-approved list of advocates will be helpful when your agency is called upon to respond a survivor's needs. As a Missouri advocate described one program's experience in creating relationships with corrections officials,

"In the beginning, the officials treated us horribly. They were short with us, mean, and very intimidating, almost like they were testing

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—National Standards to Prevent, Detect, and Respond to Prison Rape, 28 C.F.R. § 115 (2012).

us. However, being tenacious like we are because we are advocates, we would just smile at them and treat them very kindly. Eventually they really liked us and would smile at us and be very helpful and even talk and joke around with us. And between sessions they would actually say they missed us! We started to really enjoy the time we had to communicate with staff” (Anonymous advocate, personal communication, November 7, 2012).

3. **Ask your local detention facility about its investigative and detention process.** The balance of personal safety for the advocate and the integrity of security of the facility will be taken very seriously by detention center staff.
 - a. Who conducts the investigation about the sexual assault?
 - b. Who pursues prosecution of offenders? For inmate-on-inmate violence? For corrections-staff-on-inmate violence?
 - c. When and how would advocates be provided access to victims?
 - d. What kind of security is there for advocates who go to the facility to meet with the victim in person? Will there be a glass that separates the two? Will the inmate be shackled? Is the meeting room observed? Is there private space to meet?
 - e. Is there space to offer a support group? How do the above questions relate to working with survivors in a group setting?
4. **Prepare staff and volunteers to accept calls from prisoners.** Many programs have a process for accepting calls from survivors. Calls from inmates can be so infrequent that newer staff/volunteers may not be aware of the organization’s practice. As a Missouri advocate who established in-person support groups explained, working with prisoners is worth the effort:

“Even though there were several not-so-positive things ... the work is very much worth it ... you really feel like you are changing lives. Many of [the survivors] were murderers due to domestic violence situations or were in for drug issues also due to domestic violence situations—and they needed someone to teach them about domestic violence and also to be compassionate about their stories. They needed to know they weren’t crazy and when you came in and told them things they thought only they went through, it opened up a whole new realm” (Anonymous advocate, personal communication, November 7, 2012).

Make sure that taking calls from incarcerated survivors is included in the agency’s standard operating procedures and in the hotline training.
5. **Discuss with staff their feelings about working with prisoners who are victims.** For some advocates this could be a population they are concerned about or will find difficult to work with because of their own backgrounds and histories. Discuss how this work fits in your agency’s mission. Have a plan for how this work will be discussed when talking with your community.
6. **Discuss personal safety considerations with advocates.** Providing advocacy to victimized offenders when working within the confines of a detention facility and its rules, compared to working with a non-offending victim, doesn’t always mesh neatly. The situation is not ideal. When communicating in writing with an inmate, consider the following guidelines from DOC’s

Discuss how this work fits in your agency’s mission. Have a plan for how this work will be discussed when talking with your community.

“Many of them thanked us very sincerely because we took the time to know them, the time to hear them, and the time to help them because they didn’t feel like they were worth it anymore.”

—Anonymous advocate, personal communication, November 7, 2012.

PREA coordinator, presented at *Here We Stand*, MCADSV’s 2012 Annual Conference:

- Focus on the victimization, not the crime that brought the person into prison or jail.
- Clarify your role and purpose from the beginning of your interactions.
- Don’t use your full name.
- Don’t sign your correspondence with your legal signature.
- Don’t become overly personal with the inmate.
- Don’t do favors for the inmate.
- Don’t give an inmate money.

As a Missouri advocate who worked with inmates in group settings explained,

“You have to maintain very professional relationships. Not that you don’t already do that with your normal client base, but in prison there is no touching, no hugging, no closeness that you would normally get with clients that you have worked with over a period of time. You were also discouraged in sharing anything from your personal life because of the possibility that they might take advantage of it, i.e., use it against you or blackmail you.”

The advocate concluded that to ensure safety, “you really needed to make sure you showed the utmost respect for [the survivor]” (Anonymous advocate, personal communication, November 7, 2012).

7. **Establish what you really need to know about the person to whom you are providing advocacy service.** Discuss with staff that curiosity regarding an inmate’s conviction and reason for detention is natural. However, would they consider making background inquiries and checks in Missouri CASE.net (Missouri Court’s Automated Case Management System) on other survivors? Assuming the detention facility and your agency have worked out the details of security in advance, how much information do you need really to be an advocate for a prisoner who reports being sexually assaulted? Advocates can be reassured that they already know how to work with victims of trauma and the multiple issues they may have. This population will not be very different in that regard.
8. **Understand that not all survivors will report a recent sexual assault.** A requirement of PREA is that anyone incarcerated and disclosing sexual abuse, whether the assault took place while in detention or not, is entitled to community-based advocacy services. Therefore, adult survivors of child sexual assault could seek services from you or your colleagues.

An advocate described some of the healing that would occur during support groups,

“The guilt [that often comes with surviving sexual assault] in some cases started falling away and for those that were getting ready to leave, [participants] were already thinking about how to not put themselves back into situations that might land them back in prison. Many of them thanked us very sincerely because we took the time to know them, the

time to hear them, and the time to help them because they didn't feel like they were worth it anymore.

“At the end of the classes we tried to come up with at least three things about each offender that we really thought was great or that we really admired them for. You would never believe their reactions. Some were in tears because they were so touched. They really need someone to care and someone to believe in them and we were able to provide just a little portion of that for them. It is very much worth the effort [to support incarcerated survivors]” (Anonymous advocate, personal communication, November 7, 2012).

Survivors can benefit from a program's services regardless of when the assault occurred.

9. **Maintain clear lines regarding the roles and responsibilities of your organization.** Some facilities or institutions may suggest that your advocates become a volunteer of DOC. MCADSV would recommend that very serious consideration be given before agreeing to be an official DOC volunteer. Organizational boundaries could be important to the victim and his/her perception of your impartiality and their ability to speak confidentially to you. It is also unclear from a legal standpoint if confidentiality from your program extends to you if you are an extension-staff of DOC.
10. **Understand confidentiality. When working with an institution or facility to develop an agreement for services,** be clear that your agency is bound by strict confidentiality laws. Discuss with them when you should report inappropriate behaviors by the inmate, including threats to harm themselves or to others.

When working with a victim, his or her ability to disclose is limited. Disclosure that one has survived a sexual assault in a facility can be extremely risky. Similar to other hotline callers they always have others who can hear their conversations. Also, inmate calls are recorded and can be monitored. Although you will want to keep a survivor's communications with you confidential, in many ways confidentiality and privacy—the ability to be alone and escape from one's fear and abuser—are non-existent for inmates.

Facilitating a support group for sexual assault survivors in prison

Beyond handling individual crisis situations, there are agencies in Missouri that have provided support groups to prisoners who are survivors of sexual assault. The following are some additional lessons learned from an advocate who facilitated such groups (Anonymous advocate, personal communication, November 7, 2012).

BE PREPARED

Survivors might not want to participate during the support groups. They may fear judgment from other group members. Facilitators can prevent judgmental state-

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ments from being made during support group. Facilitators do not, however, know what happens afterward.

Survivors might try to pass advocates letters that were not approved through the Institutional Activity Coordinator (IAC). These types of activities would have gotten the advocates into trouble if they had not turned them over to IAC.

In some cases, offenders' manipulation will challenge advocates to do better in setting boundaries.

EXPECT POSITIVE OUTCOMES

Some support group members are very open about why they are there as survivors and want to tell their stories.

Survivors want homework, and they do it. They are also open to various projects. Most of the time you can tell which ones really are engaged from the beginning.

Capping the support group at 20 members allows for deeper discussions and more openness than in bigger groups.

KEY STATISTICS AND DEADLINES RELATED TO PREA IMPLEMENTATION IN MISSOURI

DOC has observed regular increases in the amount of reports of sexual abuse in prisons, detention centers and other community confinement facilities. According to data provided by the DOC PREA Coordinator, there were 284 reports of sexual abuse occurring during calendar year 2011 (or in the previous 12 months); another 367 reports were made from January to November 2012 (DOC PREA Coordinator, personal communications, November-December 2012).

DOC is required to be in compliance with federal PREA standards by August 19, 2013. By summer 2013 Missouri Governor Jay Nixon will need to certify with DOJ that Missouri is in compliance with PREA. Non-compliance can result in a 5 percent loss of funding for Missouri block grants such as the Edward Byrne Memorial Justice Grant and/or the Juvenile Justice and Delinquency Prevention Act formula grants. The specific DOJ grants subject to potential loss have yet to be specifically identified. In addition, Missouri would be listed as non-compliant in a list published by DOJ.

ADDITIONAL RESOURCES

The following resources provide more information regarding PREA and sexual assault and rape in detention:

- The National Prison Rape Elimination Commission Report (2009) (www.ncjrs.gov/pdffiles1/226680.pdf);
- National Standards to Prevent, Detect and Respond to Prison Rape (2012) (www.federalregister.gov/articles/2012/06/20/2012-12427/national-standards-to-prevent-detect-and-respond-to-prison-rape); and
- Just Detention International (JDI) (www.justdetention.org/en/FPREA.aspx).

JDI offers publications on the dynamics of victimization in detention. JDI also offers webinars on service issues. You can find links to those webinars at the National Sexual Violence Resource Center at www.nsvrc.org/elearning.

Attached are excerpts from the PREA National Standards that have direct effects on local non-profits.

EXCERPTS FROM PREA NATIONAL STANDARDS

Standards for Adult Prisons and Jails

Responsive Planning

§ 115.21 Evidence protocol and forensic medical examinations.

(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.

(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. 14043 g(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 non-governmental entity that provides similar victim services.

Standards for Lockups

Responsive Planning

§ 115.221 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.

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"The [confinement] 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."

—National Standards to Prevent, Detect, and Respond to Prison Rape, 28 C.F.R. § 115 (2012).

“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.”

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(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.

(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 community confinement facilities; and

(2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in community confinement facilities.

(h) For the purposes of this standard, 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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