

Good essay on prison rape enforcement act memo

[Law](#), [Criminal Justice](#)



MEMORANDUM

Re: Prison Rape Elimination Act and the County Jail

Status: Confidential/Attorney-Client Privilege

In response to growing concerns about the underreported and little understood epidemic of rape and sexual abuse in American confinement facilities, in 2003 Congress unanimously passed the Prison Rape Elimination Act (PREA). PREA was enacted to detect, respond to, and eliminate sexual abuse during incarceration in a prison. In Congress' analysis rape is and should never be considered punishment for a crime.

In order to accomplish its goals, PREA mandated the establishment of the National Prison Rape Elimination Commission (NPREC). The NPREC was tasked with two duties, namely carrying out a comprehensive legal and factual analysis of prison rape and its impact, and developing draft standards for the detection, prevention, reduction, punishment, and elimination of prison rape (NPRC, 2015). It completed both tasks by June 2009, at which point it submitted its findings to the U. S. Attorney General. In 2011, the Attorney General issued the Final Rule on National Standards to Prevent, Detect and Respond to Prison Rape.

Under PREA, prisons are defined to include private and public, city and county jails, state and federal prisons, police lock-ups, and juvenile facilities. Accordingly, our county jail is a covered facility.

As a covered facility, PREA requires compliance with the Final Rule on National Standards mentioned above. While the Final Rule lists a number of aspects to the standards that we will be required to follow, some of the more important provisions include: the designation of a PREA point person at the

facility, who will be responsible for coordinating the jails compliance efforts; the establishment of an adequate staffing plan that will be able to protect inmates from sexual abuse; strict standards for separating adult inmates from juveniles housed in the jail; a ban on cross-gender viewing and searches; and a comprehensive training program for facility staff on sexual abuse prevention.

One Final Rule requirement that must be emphasized, is that all covered facilities must undergo an audit for compliance every three years, by a U. S. Department of Justice (DOJ) certified PREA examiner. It is important to note, that these audits are arranged and scheduled by the covered facilities themselves. In our case, the closest certified examiner is Pierce County Sheriff's Office's (PCSO) Chief Deputy Karen Daniels. She can be reached at the PCSO Headquarters, County-City Building, First Floor, 930 Tacoma Avenue South, Tacoma, WA 98402 or by telephone at (253) 798-7530.

I have found no personal or individual liability for a covered facility that fails to comply with the Final Rule. As the official in charge of the administration of the jail, however, the sheriff does have a duty to comply with the standards of the Final Rule or face penalties. Indeed, the state's governor is required to confirm that all covered facilities in the state comply. Non-compliance of even one covered facility will result in a five (5) percent loss of DOJ grants made to the state for prison purposes.

One of the evolving developments of PREA litigation that you should be aware of is that it has been use as part of a determination of whether a facility has violated its constitutional requirements under the Eight Amendment. For example, under the Final Rule standards, a correctional

facility's staff is prohibited from participating in the sexual abuse of an inmate. Moreover, if a staff member is found to have violated the prohibition, he is required to be disciplined. In the federal case, *Chao v. Ballista*, 806 F. Supp. 2d 358 (D. Mass 2011), a correctional officer was found guilty of having a coercive sexual relationship in violation of the Eight Amendment with a female inmate that resulted between 50-100 sexual counters. The prison superintendent was found guilty of violating the Eight Amendment through is deliberate indifference to supervise and discipline the officer for his actions. Both the correctional officer and the prison superintendent were found jointly liable for damages. Needless to say the facility was not in compliance with PREA. For more details on that case, the full case is available here: <https://casetext.com/case/chao-v-ballista-4>

References

National PREA Resource Center – NPRC. (2015). Prison Rape Elimination Act. Retrieved from <http://www.prearesourcecenter.org/about/prison-rape-elimination-act-prea>