

Community Corrections And The Prison Rape Elimination Act

By Robert M. Maccarone

The Prison Rape Elimination Act of 2003 was implemented to eliminate rape and sexual assault in jails and prisons in the United States. So what does PREA have to do with community corrections? And how does it affect public safety? These are important questions whose answers many corrections and criminal justice professionals already know — many offenders flow through correctional facilities and are ultimately released on parole supervision. An even larger number of offenders, indeed six times as many, are sentenced to probation supervision, and many of them serve part of their supervision sentence incarcerated.

PREA directly affects not only federal, state and local prisons and jails, but also community corrections agencies, namely probation and parole authorities. Since many community corrections agencies provide direct care to juvenile and/or adult offenders through the use of detention, lock-ups, shelters, placement or community residential facilities, they are responsible for the safety and well-being of individuals committed to their care and custody, and the National Prison Rape Elimination Commission has determined that they are also subject to the provisions of PREA.

What Does PREA Require?

PREA is a federal law established to address the elimination and prevention of sexual assault and rape in correctional systems. PREA applies to all federal, state and local facilities. When fully implemented, PREA will:

- Establish standards for the detection, reduction, prevention and punishment of prison rape; and
- Provide for the collection and dissemination of information on the incidence of prison rape.

PREA established a National Prison Rape Elimination Commission that comprises nine members, appointed by both the president and Congress, whose primary mission is to carry out a comprehensive legal and factual study of the penal, physical, mental, medical, social and economic impacts of prison rape in the United States. In doing so, the commission must provide an assessment of the impacts of prison rape on individuals, families, social institutions and the economy, including an assessment of the extent to which the incidence of prison rape contributes to recidivism and to the increased incidence of sexual assault.

The commission is required by statute to submit a report that includes national standards for reducing prison rape to the president, Congress, the attorney general, the secretary of the Department of Health and Human Services, the director of the Federal Bureau of Prisons, and the chief executive of each state. These national standards will address a comprehensive list of priorities, including but not limited to:

- The classification and assignment of inmates, using proven standardized instruments and protocols, in a manner that limits the occurrence of prison rape;
- The investigation and resolution of rape complaints by responsible authorities;
- The preservation of physical and testimonial evidence;
- Acute-term trauma care for rape victims;
- Referrals for long-term continuity of care for rape victims;
- Educational and medical testing measures for reducing the incidence of transmission of HIV due to prison rape;
- Post-rape prophylactic medical measures for reducing the incidence of transmission of sexual diseases;
- The training of correctional staff;
- The timely and comprehensive investigation of staff sexual misconduct involving rape or other sexual assault on inmates;
- The confidentiality of prison rape complaints and protection of inmates who make complaints;
- The creation of a system for reporting incidents of prison rape;
- Data collection and reporting on prison rape; and
- All other matters as may reasonably be related to the detection, prevention, reduction and punishment of prison rape.

In PREA terminology, the word “prison” has been broadly interpreted to include prisons, jails, lockups, detention and placement facilities, shelters, and community residences for juvenile and adult offenders. The term “inmate” means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for or adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial release or their diversionary program. Rape is defined as sexual assault or sexual fondling through force or where the victim is incapable of giving consent because of his or her youth, temporary or permanent mental/physical incapacity, or confinement. Prison rape endangers public safety by making brutalized inmates more likely to commit crimes when they are released. Additionally, it is known that HIV and AIDS are major public health problems in America’s correctional facilities. Infection rates for other sexually transmitted diseases, tuberculosis, and hepatitis B and C are also far greater in the inmate population than in the American population. Prison rape undermines public health by contributing to the spread of these diseases; its prevention enhances the public health of communities.

PREA and Community Corrections

According to the Bureau of Justice Statistics, the total number of prison inmates under the jurisdiction of federal or state adult correctional authorities was 1,525,924 at year-end 2005. BJS also reports that the probation population reached 4,162,536 on Dec. 31, 2005, and the adult parole population reached 784,408. About 3.2 percent of the U.S. adult population, or one in every 32 adults, was incarcerated or on probation or parole at year-end 2005.

In the 2005 Urban Institute Press book, *But They All Come Back: Facing the Challenges of Prisoner Reentry*, author Jeremy Travis writes that as the U.S. justice system has embarked upon one of our time’s greatest social experiments — responding to crime by expanding prisons — we have forgotten the “iron law” of imprisonment: they all come back.

In 2002, more than 630,000 individuals left federal and state prisons according to the BJS. The challenge of reentry is how they come back. Increasingly, criminal justice professionals throughout the United States are recognizing that the process of reentry starts with commitment. The work correctional staff do with offenders in identifying both risk and needs and addressing the criminogenic factors that researchers indicate drive criminal behavior will impact how offenders behave when they reenter the community. Further, the experience offenders have within the jail and prison walls, specifically whether they are subjected to or engage in violence, will greatly affect their behavior in the community.

Congressional hearings have determined that victims of prison rape suffer severe physical and psychological effects that hinder their ability to integrate into the community and maintain stable employment upon their release from prison. Thus, they are more likely to become homeless and/or require government assistance. Offenders that are treated humanely while they are detained or incarcerated can be expected to integrate more successfully into the community. Ultimately, those entrusted with providing inmate and facility security can have a profound effect on reentry and community safety.

Probation and parole authorities (and to a much larger extent, jail and prison administrators) are governed primarily by state laws that protect individuals in their care from sexual assault. This includes various state laws that require probation and parole authorities, as mandated reporters, to report child abuse and neglect. Federal law also protects individuals from prison rape or sexual assault. In *Farmer v. Brennan*, 511 U.S. 825 (1994), the Supreme Court held that deliberate indifference to the substantial risk of sexual assault violates inmates’ rights under the cruel and unusual punishment clause of the Eighth Amendment and that the due process clause of the 14th Amendment extends its application to states.

Because probation and parole authorities, as members of community corrections agencies, currently provide direct care and custody services to offenders detained or incarcerated in detention, lockups, shelters, placement or community residential facilities, they also are subject to the provisions of PREA and to the national standards that will be promulgated as a result of the findings of the National Prison Rape Elimination Commission. Some PREA provi-

sions became effective with the passage of the new law in 2003, and the national standards are expected to take effect in 2007 and 2008.

With the passage of PREA, community corrections agencies can expect to be included in the annual comprehensive statistical review undertaken by BJS. PREA requires BJS to solicit views from representatives of the state corrections departments, county and municipal jails, juvenile correctional facilities, former inmates (many of whom may be probationers or parolees), victim advocates, researchers, and other experts in the area of sexual assault. In carrying out the review and analysis of prison rape, PREA also requires that BJS use surveys and other statistical studies of current and former inmates from a sample of federal, state, county and municipal prisons. Presumably, one of the more efficient means of contacting former inmates will be through probation and parole authorities. This information will assist the attorney general in better assessing the incidence of inmate rape and in the strategies required for effectively combating it. Similarly, the national commission may call upon probation and parole authorities to testify and provide information about prison rape. And such authorities may be asked by one or more researchers contracted by the commission (through the National Institute of Justice) to provide information and testimony to assist in the development of the national

standards. Moreover, community corrections agencies, like prison and jail authorities, may be eligible to receive grants and technical assistance through the National Institute of Corrections to develop comprehensive policies to detect, prevent, reduce and punish prison rape.

As correctional and community corrections agencies develop comprehensive policies to protect against prison rape, they will become better prepared to ensure the security of their facilities, the safety of their communities and the potential loss of federal funding.

Perhaps more important, community corrections authorities, including probation and parole agencies, may end up being among the best reporters of sexual assault and rape that occurs within custodial settings. Often, victims of these crimes will disclose having survived such violence only when they feel secure enough to share the experience within the context of a trusting and supportive relationship. Community corrections professionals must be prepared to respond to such reports and ensure that appropriate services are in place to address needs of the victims.

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