

What are some best practices related to sexual misconduct prevention, detection, and response that are not included in the Prison Rape Elimination Act (PREA) standards?

The PREA standards represent an important step toward establishing a culture of zero tolerance for sexual abuse and sexual harassment of youth in juvenile and adult facilities. However, the Justice Department did not include a number of best practices within the standards themselves, choosing instead to leave them to agencies' discretion.

To build upon the PREA standards and develop the most effective mechanisms for preventing, detecting, and responding to sexual abuse and sexual misconduct, agencies can take the following additional steps.

Prevention

- Ensure that all juvenile facilities and agencies supervising youth in out of home placements, not just those under state control, comply with the PREA standards;
- Implement financial sanctions against or refuse to contract with private providers that fail to comply with agency requirements related to prevention, detection, and response to sexual misconduct;
- House youth transferred to the adult criminal justice system in juvenile facilities instead of adult prisons and jails;
- Revise the PREA standards' definition of "sexual harassment" so that it does not require that an individual make multiple comments or gestures before the conduct rises to the level of sexual harassment;
- Expand the PREA standards' definition of "sexual abuse" because some conduct currently listed as "sexual harassment" in the PREA standards would be considered abuse when committed against a child;
- Ensure that policies and practices related to sexual abuse prevention, detection, and response (e.g., incident reporting procedures) also address sexual harassment;
- Establish a clear preference for direct supervision of youth by well-trained staff members, with video surveillance as a back-up only;

- Set minimum staffing ratios of 1:6 during awake hours and 1:12 during sleeping hours, and only include staff who engage in continuous direct supervision of youth when calculating those figures;
- When developing a facility's staffing analysis, expand the PREA standards' list of factors to consider to include consideration of grievances at the facility, the needs of vulnerable youth, the ease with which individual staff members can be alone with youth in a given location, and the need to provide enhanced protection to youth who have abused or victimized other youth;
- Consult with transgender and intersex youth about which gender of facility staff they would like to have search them, and comply with those requests except in exigent circumstances
- To ensure professional accountability, require a staff observer for all pat and strip searches and physical restraints except in exigent circumstances; and
- Prohibit viewing of youth by staff of the opposite gender when youth shower, perform bodily functions, and change clothing, except in exigent circumstances.

Training and Education

- Require staff refresher training on issues related to prevention, detection, and response to sexual abuse and misconduct to occur annually instead of once every two years;
- Provide guidance to staff on conducting professional, respectful strip and pat-down searches of all youth, with specialized training for searching transgender and intersex residents;
- Expand the list of required staff training topics to include adolescent development; sexual health; sexual development; handling disclosures of sexual abuse, sexual harassment or sexual misconduct by youth in a sensitive manner; information on the prevalence of trauma and abuse histories among youth; and the possible reactions and behaviors of youth with trauma and abuse histories;
- Use findings from incident reviews to identify training needs for staff;
- Expand the list of topics for youth education to include basic sexual education, sexual anatomy, and sexual orientation; and

- Ensure that youth education programs are conducted in a developmentally appropriate manner; that they are presented by qualified community educators or specially trained and selected staff members who are able to present the information in a respectful, sensitive, and caring manner; that they include examples of what constitutes sexual abuse and harassment; and that they are understandable by youth with disabilities and youth with limited English proficiency.

Screening

- Forbid the hiring and promotion of individuals who have engaged in substantiated incidents of sexual harassment;
- Expand the list of offenses that bar hiring to include convictions for domestic violence, stalking, and sexual abuse, even when they did not involve the use of force or coercion;
- Consider any civil protection orders when making hiring and promotion decisions; and
- Require background checks when considering staff for promotion.

Investigations and Response

- Establish relationships with community service providers to make accommodations for limited English proficient youth throughout the entire investigation and response process;
- Allow the use of qualified staff members as victim advocates only as a last resort, and only when those staff have been either certified as rape crisis counselors or, at a minimum, trained on a range of topics related to sexual misconduct prevention and response by a qualified rape crisis agency or counselor;
- Implement memoranda of understanding or establish protocols with other agencies responsible for responding to sexual misconduct to help coordinate investigations;
- Require that agencies notify not only the youth's attorney, but also the juvenile court, upon receiving allegations of sexual abuse in a juvenile facility;
- Require that the agency communicate at least every 30 days with outside entities conducting investigations into sexual misconduct within the agency;

- Provide a youth's family members the opportunity to communicate with youth through visitation, telephone, and mail; the ability to participate meaningfully in decisions made about the youth's treatment and safety; and the information needed to communicate with the youth's victim advocate during an investigation of sexual misconduct with the youth's consent; and
- Continue to inform youth of the outcome of investigations even after the youth is released from the agency's custody, in accordance with best practices in the community for victim notification, including taking care to protect the youth's privacy in his or her new housing setting. Provide notification of the progress and outcome of investigations through the victim advocate whenever possible, and offer additional counseling services to the youth at the time of notification.

Discipline

- Limit the use of isolation to no more than 72 hours in situations involving protective isolation and discipline for youth who have engaged in sexual misconduct;
- Ensure that isolated youth receive regular access to staff and administrators, attorneys, mail and telephone, religious services, frequent observation by and opportunity to talk with qualified mental health professionals, and other programming;
- Review and document the need for isolation to keep a youth safe every 24 hours;
- Provide guidance on handling discipline in situations where residents engage in voluntary sexual conduct with other residents;
- Add the requirement that substantiation of an allegation of youth-on-staff victimization involve a finding of force or threat of force in addition to lack of consent in order to reduce the likelihood that abusive staff members will use the threat of discipline or counter-complaint of abuse as a deterrent to reporting;
- Ensure that youth who victimize other youth are not denied rewards solely for refusing treatment; and
- Require that discipline of youth for sexual misconduct take into account a youth's prior victimization, in consultation with mental health and medical professionals.

Medical and Mental Health Care

- Require that only medical or mental health staff obtain sensitive information from youth during intake and screening, such as past victimization, sexual orientation, and gender identity;
- Ensure that medical and mental health professionals do not ask youth about prior offending behavior during intake, which can jeopardize youth's willingness to share important information about their medical and mental health histories;
- Ensure that youth who have been sexually abused receive immediate crisis counseling, including access to a community rape crisis counselor in-person or via a rape crisis hotline, and a mental health evaluation within 24 hours of the allegation;
- Shorten the timeline for follow up care to 3 days (from 14) for youth who report prior victimization and 7 days (from 14) for youth who report prior abusiveness; and
- Shorten the timeline to provide evaluation of residents who engage in sexual abuse from 60 days to 7 days.

Data Collection and Review

- Complete an incident review no sooner than 72 hours and no longer than one week after an allegation or incident of sexual abuse to make sure that the survivor has received needed medical and mental health care, the investigation is proceeding, the survivor and alleged perpetrator (in cases of a youth perpetrator) are appropriately and safely housed, the alleged staff perpetrators are on-leave or reassigned to a non-contact position pending the outcome, and all agency response policies have been followed;
- Require incident review teams to review potentially important factors at the conclusion of a sexual abuse investigation, such as the sufficiency of staff training and input from youth and family members or guardians on how to improve the investigation and response process; and
- Use information gathered at such reviews to revise policies and practices and inform staff training and youth education programs.

Audits

- Require facilities to submit self-assessments of compliance with the PREA standards to the designated auditor on an annual basis;
- Permit auditors to make unannounced visits and ensure that auditors have access to all youth and staff for private and confidential conversations; and
- Require that agencies develop corrective active plans based upon the auditor's findings within three months of receiving the auditor's report.

For more information, please contact:

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