

Prison Rape Elimination Act (PREA)

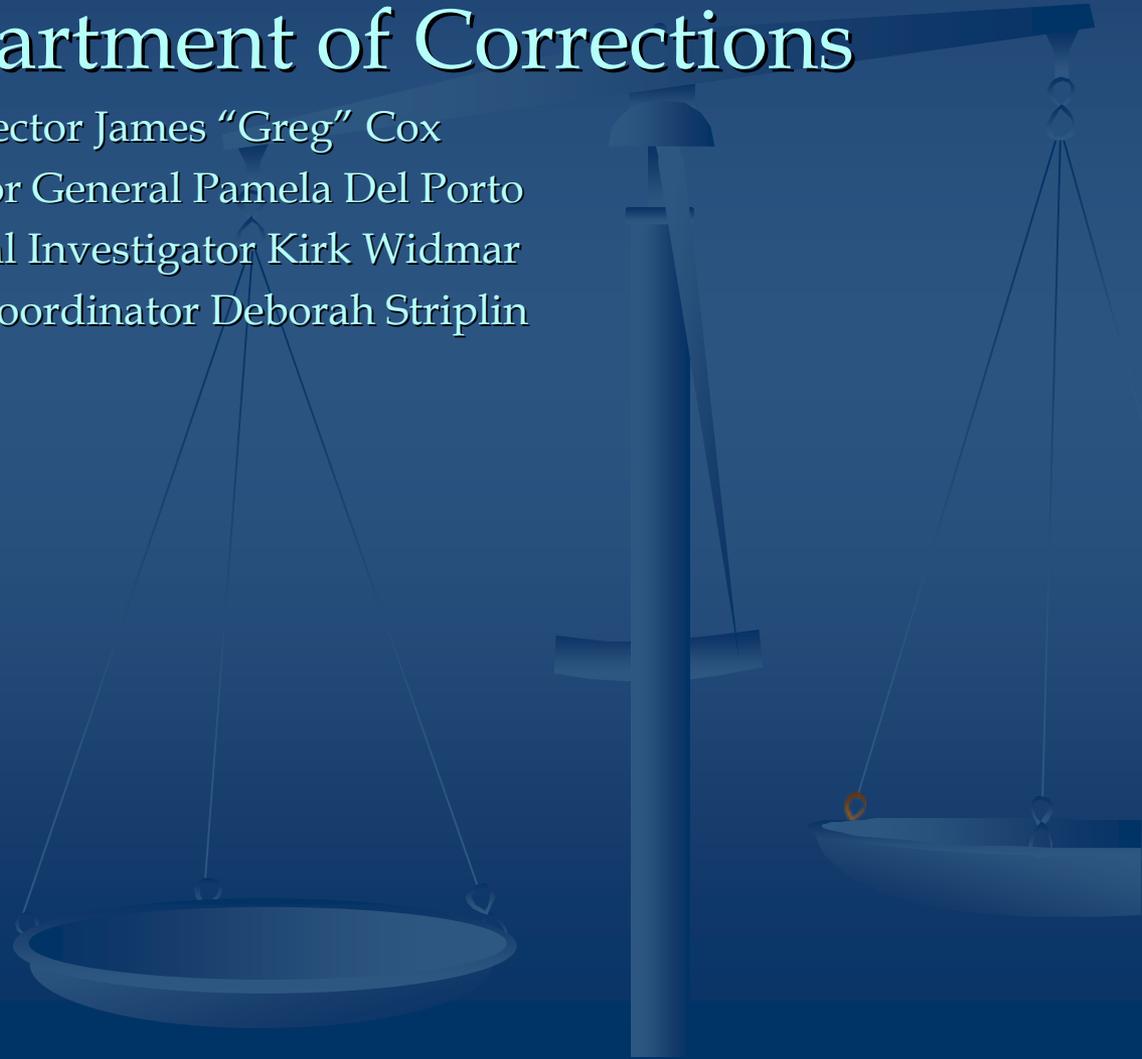
Nevada Department of Corrections

Director James "Greg" Cox

Inspector General Pamela Del Porto

Criminal Investigator Kirk Widmar

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PREA Law - 42 U.S.C. § 15601

Summary

- ❖ Signed by President Bush, September 4, 2003
 - ❖ Applies to all federal and state prisons
 - ❖ jails
 - ❖ police lock-ups
 - ❖ private facilities
 - ❖ community correctional settings such as residential facilities
 - ❖ (includes adult and juvenile agencies)

PREA Law - 42 U.S.C. § 15601

Summary

- ❖ Establish a zero-tolerance standard
- ❖ Make the prevention of prison rape a top priority in each prison system
- ❖ National Prison Rape Reduction Commission
 - Appointed to develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape

PREA Law - 42 U.S.C. § 15601

Summary

- ❖ The Bureau of Justice Statistics shall carry out, for each calendar year, a comprehensive statistical review and analysis of the incidence and effects of prison rape
- ❖ Protect the Eighth Amendment rights of Federal, State, and local prisoners

PREA Law - 42 U.S.C. § 15601

Summary

- ❖ National Institute of Corrections
offer training*, technical assistance, and clearinghouse functions
- ❖ U.S. Attorney General's Office
authorized to provide grants, currently only available to Juvenile Justice and Jails.

*Impacted by sequestration

Key PREA Timeline

- **2004:** First meeting of the National Prison Rape Elimination Commission (NPREC)
- **06/2009:** Report and draft standards published by NPREC
- **2009-2012:** Establishment and Convening of DOJ PREA Working Group
- **02/2011:** Draft DOJ standards released
- **05/17/ 2012:** Final DOJ standards released
- **06/20/ 2012:** Final standards published in the Federal Register

Key PREA Timeline (Cont'd)

- 8/20/2012:** Standards applicable to state and local facilities
- 05/01/2013:** Target date for DOJ to fully implement auditor certification process (estimated)
- 08/20/2013:** Three-year audit cycle begins
- Summer, 2013:** Due date for Governors' certification (TBD)
- 09/30/2013:** DOJ publishes a list of noncompliant grant recipients
- 10/01/2013:** First date on which federal grant funds may be impacted (FY 2014)
- 08/19/2014:** One-third of facilities must be audited
- 08/19/2016:** First three-year audit cycle complete

Federal Register

Department of Justice

28 CFR Part 115

National Standards To Prevent, Detect,
and Respond to Prison Rape;

Final Rule: June 20, 2012



Definition of Sexual Abuse

- Sexual Abuse includes:
 - Sexual Abuse of an inmate, detainee, or resident by another inmate, detainee, or resident by another inmate, detainee, or resident; and
 - Sexual Abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer.

Definition of Sexual Abuse

Custodial* Sexual Abuse

- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- Contact between the mouth and the penis, vulva, or anus; contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

*Custodial is related to staff member, contractor or volunteer.

Custodial Sexual Abuse

cont.

- Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

Custodial Sexual Abuse

cont,

- Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described above;
- Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and

Custodial Voyeurism

- An invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as
 - peering at an inmate who is using a toilet in his or her cell to perform bodily functions;
 - requiring an inmate to expose his or her buttocks, genitals, or breasts; or
 - taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

Custodial Sexual Harassment

- Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer;
- Includes demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures

Inmate on Inmate Sexual Abuse

- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- Contact between the mouth and the penis, vulva, or anus; penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person,
- Excluding contact incidental to a physical altercation.

Standards for Adult Prisons

Each of the below referenced standards have subsections that are specific compliance points.

- **Prevention Planning**
- **Responsive Planning**
- **Training**
- **Screening for risk of sexual victimization and abusiveness**
- **Reporting**
- **Official response following an inmate report**

Standards for Adult Prisons

cont.

- **Investigations**
 - **Discipline**
 - **Medical / Mental Health**
 - **Data collection and review**
 - **Audits**
- 

The determination of whether or not the Department is in compliance is made through an Audit.

Auditors. The final standards provide that audits may not be conducted by an internal inspector general or ombudsperson who reports directly to the agency head or to the agency's governing board.

All auditors must be certified by the Department, pursuant to procedures, including training requirements, to be issued subsequently.

Audit Standards

§ 115.401 Frequency and scope of audits.

- During the three-year period starting on August 20, 2013, and during each three-year period thereafter, the agency shall ensure that each facility operated by the agency, or by a private organization on behalf of the agency, is audited at least once.
- During each one-year period starting on August 20, 2013, the agency shall ensure that at least one-third of each facility type operated by the agency, or by a private organization on behalf of the agency, is audited.

Audit Standards

- The Department of Justice shall develop and issue an audit instrument that will provide guidance on the conduct of and contents of the audit.
- The Department, to date, has not received the audit instrument, but will continue in its effort of working towards compliance with the posted standards.

§ 115.501 State determination and certification of full compliance.

- In determining pursuant to 42 U.S.C. 15607(c)(2) whether the State is in full compliance with the PREA standards, the Governor shall consider the results of the most recent agency audits.
- The Governor's certification shall apply to all facilities in the State under the operational control of the State's executive branch, including facilities operated by private entities on behalf of the State's executive branch.

§ 115.501 State determination and certification of full compliance, cont.

The PREA statute, itself, encompasses the term “full compliance” in the required state certification.

Full compliance means compliance with all material requirements of each standard except for de minimis violations, or discrete and temporary violations during otherwise sustained periods of compliance.

§ 115.501 State determination and certification of full compliance, cont.

The standards require that “[i]n determining... whether the State is in full compliance with the PREA standards, the Governor shall consider the results of the most recent agency audits.”

§ 115.501 State determination and certification of full compliance, cont.

- Neither the statute, nor the standards, restrict the sources of information the Governor may rely upon in deciding whether or how to certify compliance.
- Hence, the standard requires the Governor to consider the PREA audit results (if any exist), but may consider other information as well.
- This is particularly so given that the first audit cycle need not be completed until 2016.

U.S. Dept. of Justice

- Recognizes that during the initial implementation phase of the PREA standards, agencies may not be able to achieve full system-wide compliance with the standards in the early months of the initial year's audit review period.

BJS Yearly Reporting Definitions

- Substantiated - Allegation determined to have occurred
- Unsubstantiated - Evidence was insufficient to make a final determination whether incident occurred
- Unfounded - Determined incident did not occur
- Investigation ongoing - Final determination had not been made at time of data collection.

Civil Liability -- Constitutional Claims

- Most common legal bases for challenges
 - 42 U.S.C. 1983
 - Eighth Amendment
 - Fourth Amendment
 - Fourteenth Amendment
 - State tort claims

Development by the Department

Update policies and procedures including but not limited to:

- appointment of PREA Managers at Institutions

- Zero tolerance for misconduct

- Investigations and response(s)

- Training of employees and contractors (WSCC and LCC done, NNCC in the process)

- Background investigations of all staff, contractors, and vendors (currently in the process)

Next Steps

cont'd

Review Inmate risk assessment

Intake screening and on going assessments

Youthful inmates determination

Review of the Department's Medical and Mental care
relative to PREA and/or LGBTI population needs

Prepare Data Collection and Review practices

Review for implementation victim advocacy for victims.

Next Steps

Audit instrument and internal adjustments in response to the instrument application.

