How the Prison Rape Elimination Act Impacts Jails

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Prison Rape Elimination Act

September 4, 2003

President Bush signs PREA

(42 U.S.C.A. §15601)

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May 17, 2012

U.S. DOJ promulgates PREA regulations

August 20, 2012

PREA regulations become effective

28 CFR 115

Does PREA Apply to Your Agency?

Federal Bureau of Prisons

- PREA immediately binding

State, Local, and Private Contractors

- 1-year implementation period
  August 20, 2013
- Applies to all custodial corrections setting, prisons, jails, lock-ups, juvenile detention facilities and community residential settings.

PREA Requirements

49 PREA Standards – adult prisons and jails

- Policy
- Protocols
- Technology
- Annual Audits

PREA Requirements

- Appoint PREA Coordinator
- Zero Tolerance
- Educate Staff and Inmates
- Respond to and Investigate ALL Allegations
- Discipline for Violations

Prison Rape - Statistics

2005 to 20XX



39%

Substantiated Incidents

Only Inmates **52%**

Staff & Inmate **48%**

DOJ Bureau of Justice Statistics

Cost of Compliance

2012 – 2026 - $6.9 billion ($470 million/year)

Average Cost per Facility

$55,000 – Prisons

$50,000 – Jails

$24,000 – Community Confinement Center

$54,000 – Juvenile Facility

$16,000 – Police Lock-ups

"PREA Incident"

- PREA DOES NOT
  Create a Private Right of Action
  - *Alexander v. Sandoval*
  - *LeMasters v Fabian*
  - *Rindahl v. Weber*
  - *Bell v. County of Los Angeles*
  - *Pirtle v. Hickman*

"PREA Incident"

- PREA DOES Create
  - Awareness
  - Due Process
  - Higher Expectations

Types of PREA-related Cases

- 8th Amendment

  Deliberate Indifference towards sexual abuse of an inmate (*Farmer v. Brennan*)

  Claims must be objectively, sufficiently serious (*Boddie v Schnieder*)

Types of PREA-related Cases

- 4th Amendment

  Intrusive, excessive searches and pat-downs

  (Seltzer-Bey v. Delo and *Watson v. Jones*)

Types of PREA-related Cases

- 14th Amendment

  Grants same protections to pretrial detainees as 8th Amendment provides imprisoned convicts (*Sandin v. Conner*)

  Farmer v. Brennan

  1) Conditions posing substantial risk or serious harm
  2) Deliberate indifference

Types of PREA-related Cases

- State Law Claims
- Assault, Intentional or Negligent Infliction of Emotional Distress, Negligent Hiring, Training and Supervision

Potential Defenses

- Prison Litigation Reform Act
  - Exhaust Administrative Remedies
  - Submit timely written complaints/grievances

Potential Defenses

- No Physical Injury
  - 42 U.S.C. § 1997(e)

    No civil action for emotional injury without showing of physical injury
  - However, sexual assaults qualify as a matter of common sense, as more than a de minimis injury

Potential Defenses

- Scope of Employment
  - No repondeat superior – sex assault never within scope of employment

  OR

  - Question for the jury

Consequences for Non-Compliance with PREA

- Loss of 5% of federal grant funds
- Attorney General's PREA compliance report
  - 2014 – 2 States Certified
  - 2015 – 11 States Certified
    – 40 Jurisdictions Assured

Bureau of Justice Assistance - www.bja.gov

PREA Reference Material

- National PREA Resource Center
  prearesourcecenter.org
- DOJ Office of Justice Programs
  ojp.gov/programs/prisonrapeelimination.htm
- FY 2015 List of PREA Certification and Assurance Submissions
  bja.gov/Programs/15PREA-AssurancesCertifications.pdf

Questions?

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