

## Training Bulletin

# The Prison Rape Elimination Act (PREA) Sworn Staff's Role August 2020

### **WHAT IS PREA?**

The Federal Prison Rape Elimination Act (PREA) of 2003 provides guidelines to detect, prevent, identify and deter incidents of sexual misconduct of persons in custody. The law was enacted to establish a zero tolerance standard for incidents of sexual misconduct in prisons, jails, lockups and other confinement facilities.

### **HOW DOES THIS EFFECT THE DEPARTMENT?**

The San Diego Sheriff's Department has a zero tolerance for all forms of sexual misconduct. Sexual misconduct includes but is not limited to sexual abuse and sexual harassment between detainees/inmates, volunteers, contractors, Sheriff's employees or any outside source. The zero tolerance on sexual misconduct applies to all facilities and programs providing services to clients under the jurisdiction of the San Diego Sheriff's Department. All allegations of sexual misconduct will be investigated. The department will impose appropriate disciplinary sanctions and initiate criminal charges against individuals who violate this policy.

Staff must be aware of relevant laws regarding reporting, the laws regarding sexual misconduct, and the consequences thereof. This training bulletin was established to ensure all sworn staff, working in custody operations, to be in compliance with PREA.

### **DEFINITIONS**

Sexual Misconduct: Any behavior or act of sexual nature, directed toward a detainee/inmate under the care, custody or supervision of the Department/collateral contract, by a detainee/inmate, volunteer, contractor, Sheriff's employee or any outside source. Sexual misconduct includes but is not limited to sexual abuse and sexual harassment.

#### Sexual Abuse:

Sexual abuse of an inmate by another inmate includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- Contact between the penis and the vulva or the penis and the anus.
- Contact between the mouth and the penis, vulva, or anus.
- Penetration of the anal or genital opening of another person by a hand, finger, object, or another instrument.
- Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh or the buttocks of another person.
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Sexual abuse of an inmate by a staff member, contractor, or volunteer includes any of the following acts, with or without the consent of the inmate:

- Contact between the penis and the vulva or the penis and the anus.
- Contact between the mouth and the penis, vulva, or anus.
- Contact between the mouth and any body part where the staff member has the intent to abuse, arouse, or gratify sexual desire.
- Penetration of the anal or genital opening of another person by a hand, finger, object, or another instrument, that is unrelated to official duties or where the staff member has the intent to abuse, arouse, or gratify sexual desire.

## Training Bulletin

### The Prison Rape Elimination Act (PREA) Sworn Staff's Role August 2020

- Any other intentional contact, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh or the buttocks that is unrelated to official duties or where the staff member has the intent to abuse, arouse, or gratify sexual desire.
- Any attempt, threat, or request by a staff member to engage in the above mentioned activities.
- Any display by a staff member their uncovered genitalia, buttock, or breast in the presence of an inmate.
- An invasion of privacy of an inmate by staff for reasons unrelated to official duties (voyeurism). This may include peering at an inmate who is using the toilet, requiring an inmate to expose their buttocks, genitals, or breasts, or taking images of all or part of an inmate's naked body or performing bodily functions.

Sexual Harassment: Includes repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature from one inmate directed toward another or by a staff member, contractor, or volunteer to an inmate. This includes demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

LGBTQ+: Acronym for a group of sexual minorities including those who identify as lesbian, gay, bisexual, transgender, questioning and the "+" includes all others within the spectrum.

#### **HOW DOES THIS AFFECT ME?**

As always, you will be required to display professionalism in the performance of your duties, be knowledgeable and resourceful, be diligent in your observations, and take actions to prevent and detect instances of sexual misconduct. Knowing what to do and following through on required actions is imperative. Knowing what to do before an incident happens will assist in maintaining the credibility of not only yourself, but that of your colleagues and the department.

#### **RED FLAGS**

Potential "Red Flags" that may indicate an inmate has been a victim, or at risk of, sexual misconduct from another inmate:

1. Self-isolation and avoiding staff members.
2. Attempting to spend more time around staff members if they are being threatened.
3. Trying to hide physical injuries.
4. Asking for repeated cell changes or refusing to cell up with other inmates.
5. Inmates pairing up that do not appear to belong together.
6. Inmates who have commissary or money could be victims of extortion in lieu of sexual favors.

Potential "Red Flags" that may indicate an inmate has been a victim of sexual misconduct by a staff member:

1. Drastic changes in the behavior of an inmate or staff member.
2. Staff member discusses too much personal information with an inmate.
3. Inmate spends too much time with a particular staff member.
4. An inmate uses a staff member's first name.
5. An inmate stands too close to a staff member while having a conversation.
6. Horseplay or over familiarity between a staff member and an inmate.

## Training Bulletin

### The Prison Rape Elimination Act (PREA) Sworn Staff's Role August 2020

7. Too much personal knowledge of a staff member or their habits.
8. Rumors about a particular inmate and staff member.
9. Ignoring violations or being blind to a particular inmate's actions.
10. Receiving special favors from a staff member or inmate.
11. Possession of unusual contraband.
12. Staff member constantly frequents an area of a particular inmate.

#### **REPORTING PROCEDURES**

All staff is required to immediately or as soon as reasonably practical report any knowledge, suspicion, instances of retaliation, staff neglect or violation of responsibilities, or information regarding an incident of sexual misconduct that occurred in a facility or program providing services to detainees/inmates under the jurisdiction of the San Diego Sheriff's Department.

#### **Responsibilities include:**

- Staff shall accept reports made verbally, in writing, anonymously and/or from third parties, and promptly document any of these verbal reports.
- The Department will provide staff with a method to privately report sexual misconduct of detainees/inmates. Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual misconduct report to anyone other than to the extent necessary, as specified to make treatment and investigative decisions.
- If the alleged victim is under the age of 18 or considered a vulnerable adult under a state or local vulnerable person's statute, the Department will report the allegation to the designated state or local services agency under applicable mandatory reporting laws.

#### **Detainees/Inmates:**

- Detainees/inmates can privately report retaliation from other detainees/inmates or from staff for reporting sexual misconduct and staff neglect or violation of responsibilities that may have contributed to such incidents.
- Detainees/inmates will have at least one way to report sexual misconduct to a public or private entity or office that is not part of the Department and is able to receive and immediately forward detainee/inmate reports of sexual misconduct to Department officials, allowing the detainee/inmate to remain anonymous upon request. Housing unit postings will have the telephone numbers of outside agencies and resources.
- Detainees/inmates with disabilities or limited in English proficiency, have equal opportunity to participate in or benefit from all aspects of our efforts to prevent, detect and respond to sexual misconduct. Interpreters will be provided to ensure effective communication. Detainees/inmates will receive information verbally, through the inmate orientation video, housing posted signs and upon individual request made to staff.

#### **RESPONSE TO INCIDENTS OF SEXUAL ABUSE**

Sworn first responders learning of an allegation that a detainee/inmate was sexually abused shall:

## Training Bulletin

### The Prison Rape Elimination Act (PREA) Sworn Staff's Role August 2020

Separate the alleged victim and abuser.

Notify their respective sexual abuse investigators or area detectives.

Notify the Division of Inspection Services.

If the alleged sexual abuse is reported or discovered prior to 120 hours after the incident, secure and preserve any crime scene until appropriate steps can be taken to collect any evidence. In addition, the victim should be asked if they retained any evidence of the sexual abuse (e.g., soiled bedding, clothing, etc.)

Notify facility medical staff to coordinate necessary medical and social services. If the abuse occurred within 120 hours, the alleged victim shall be taken to an appropriate medical facility for a Sexual Assault Response Team (SART) examination.

If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate: washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating.

If the first responder is not a sworn staff member, the responder shall be required to request the alleged victim not take any actions that could destroy physical evidence, then notify sworn staff.

#### Medical and Mental Health Care:

Victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment. Treatment services shall be provided to the victim regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

#### **INVESTIGATIONS**

All allegations of sexual misconduct will be conducted promptly, thoroughly and objectively, including third-party and anonymous reports.

- The Detentions Investigation Unit (DIU) will investigate and conduct criminal investigations conducted within detention facilities and areas which house inmates in our custody that are supervised by the Sheriff's CPAC unit.
- Any responding investigator, from their respective bureau, will have completed specialized training in conducting sexual abuse investigations.
- The Internal Affairs Division will conduct administrative investigations.
- All criminal and administrative reports relating sexual misconduct of detainees/inmates shall be retained as long as the alleged abuser is incarcerated or employed by the Department, plus five years.

If a criminal investigation is warranted, investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

## Training Bulletin

### The Prison Rape Elimination Act (PREA) Sworn Staff's Role August 2020

When the quality of evidence appears to support criminal prosecution, the Department shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as a detainee/inmate or relationship/role.

No detainee/inmate who alleges sexual abuse will be required to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of such an investigation. Administrative investigations shall include an effort to determine whether staff actions or failures to act contributed to the sexual misconduct incident. They shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments and investigative facts and findings. Substantiated allegations of sexual abuse, that appears to be criminal, shall be referred for prosecution. The departure of an alleged abuser or victim from the employment or control of the Department shall not provide basis for terminating an investigation.

Following an investigation into a detainee's/inmate's allegation of sexual abuse, the detainee/inmate shall be notified as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. Following a detainee's/inmate's allegation that a staff member has committed sexual abuse; the Department shall inform the client of the following:

- Whether or not the staff member is assigned to the detainee's/inmate's housing area.
- Whether or not the staff member is assigned to that facility.
- The Department learns that the staff member has been indicted on a charge related to sexual abuse within the facility.
- The Department learns that the staff member has been convicted on a charge related to sexual abuse within the facility. This requirement shall not apply to allegations that have been determined to be unfounded.

#### **PROFESSIONALISM**

As employees of the Sheriff's Department, we are expected to exude professionalism and respect in the course of our duties. Staff shall treat all inmates with respect and maintain professional positive interactions and effective communication with inmates. Deviation from equitable treatment can lead to criminal and civil liability as well as disciplinary action.

Remain professional and objective when communicating with LGBTQ+ inmates. Do not use derogatory language. Avoid stereotyping. Be aware of pronoun usage. Ask how they would like to be addressed. If you are uncomfortable or unsure of what pronoun to use, address by last name.

For more information on PREA, please review [Department P & P 6.127 Prison Rape Elimination Act \(PREA\)](#).

## Training Bulletin

### The Prison Rape Elimination Act (PREA) Sworn Staff's Role August 2020

**\*\*\* By clicking "Yes" on the next page, you acknowledge: I have reviewed the LMS presentation on the Prison Rape Elimination Act (PREA) enacted in 2003, which encompasses the subject of Sexual Abuse/Assault/Misconduct Prevention and Intervention Protocol. I understand that I am responsible for complying with these policies and procedures. Should I have any questions about this protocol, I will discuss them with my supervisor or the department PREA coordinator.**

This training bulletin was prepared by the Detention In-Service Training Unit (DTU) and the Division of Inspectional Services (DIS), with input from the Professional Staff Training Unit.