

**NATIONAL POLICE ACCOUNTABILITY PROJECT CLE SEMINAR:
Police and Prison Litigation**

September 4, 2014

**Sample Discovery Requests and Deposition Outlines related to the Prisoner Rape
Elimination Act**

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SAMPLE REQUESTS FOR PRODUCTION:

From _____ until the present date, all documents related to DOC's compliance with the Prison Rape Elimination Act of 2003 (Public Law 108-79) ("PREA"), including, but not limited to:

All reports made to the state PREA coordinator, including PREA checklists and PREA After-Action checklists.

All documents, including but not limited to reports, internal memoranda, meeting minutes, and data generated by and/or reviewed by the State's PREA standing Committee.

All documents related to the training DOC staff on PREA, including but not limited to curricula, presentations, reading materials and PREA questionnaires that were completed by training recipients during this time period.

All inmate orientation materials.

All correspondence between DOC and the Bureau of Justice Statistical of the U.S. Department of Justice related to the statistical review and analysis described in the Prison Rape Elimination Act 42 U.S.C. 15603 (a).

Prove all grant applications and reports for any grants the DOC has received from the U.S. Department of Justice pursuant to the Prison Rape Elimination Act of 2003, 42 U.S.C. 15605.

Any comments the DOC submitted to the U.S. Department of Justice related to the promulgation of regulations related to PREA.

Any testimony the DOC submitted to the PREA Commission.

For every inmate who received a disciplinary infraction for sexual misconduct and/or sexual assault, please provide all documents related to the disciplinary infractions and the inmates' master files.

SAMPLE PREA RELATED DEPOSITION FRCP 30 (b)(6) DEPOSITION NOTICE

The Designee(s) should be prepared to testify about the following policies, practices, regulations and protocols that were in effect from _____ until _____:

1. Policies, practices, regulations and protocols related to the discipline of prisoners who are alleged to have broken DOC regulations, or rules including, but not limited to the range of sanctions that could be imposed upon such prisoners and the procedure(s) for determining appropriate sanctions.
2. Policies, practices, regulations and protocols regarding security and staffing in the Correctional Center.
3. Policies, practices, regulations and protocols regarding the use of segregation (either administrative, investigative or disciplinary) at Correctional Center.
4. Policies, practices, regulations, protocols and training materials related to DOC's efforts to reduce, eliminate and/or protect prisoners from rape and/or sexual assault, including but not limited to DOC investigations into alleged allegations of rape or sexual assault, and the use of segregation and "DDT" (deception detection test) examinations during such investigations.
5. Policies, practices, regulations and protocols pertaining to the Department of Corrections classification system—including but not limited to screening provided to prisoners upon entry into DOC custody (*e.g.*, at a reception center), screening provided to prisoners upon entry into a specific correctional facility, the information considered by the DOC when assigning people to specific correctional facilities.

SAMPLE DEPOSITION QUESTIONS

FRCP 30b6 DOC Designee

Describe the process through which individuals (staff and prisoners alike) can report sexual misconduct.

How frequently have inmates been disciplined for giving false information regarding a sexual assault?

What is the rationale for allowing inmates to be disciplined after reporting an assault?

How does the DOC ensure that the disciplinary consequences don't lead to an under-reporting of sexual assault/misconduct?

When a person reports sexual misconduct, is that person moved from her cell?

Is a reporter placed in any kind of segregation/isolation/protective custody?

Describe conditions in segregation/isolation/protective custody

Did the DOC have a policy in place for preventing sexual assault? For identifying victims of sexual assault? For addressing complaints of sexual assault?

Describe the basic operational principles of this policy

Do DOC staff receive training on this policy?

Describe the training

- Who receives the training?
- How often does it occur?
- What educational tools are used during the training? (videos, handouts, role plays, etc)
- Who provides the training?
- Describe the trainers' qualifications/background.

Did the DOC have a policy in place to ensure that prison staff members understood its sexual assault policies? Were they required to sign anything after being trained to indicate their understanding of the policies?

Were any records kept documenting which staff members had completed training on sexual assault policies and when?

Were any DOC employees required to complete additional training relating to preventing and handling sexual assaults beyond the basic training given to all staff? Were investigators required to complete additional training? Was the warden required to complete additional training? Were nurses employed by the DOC required to complete additional training? What were the additional requirements?

What kind of training should investigators receive on proper investigative procedure?

How often should they receive this training?

Who is in charge of this training?

How is the training administered? What is covered?

Were independent contractors (including medical professionals) who worked regularly at Correctional Facility required to complete any training at Correctional Center? Were they required to document any prior training related to sexual assault that they had received elsewhere?

In _____, was the DOC making any efforts to follow literature or dialogue within the greater corrections context about best practices for conducting investigations of sexual assault claims? How? Did its findings inform the DOC's policies in that area?

Have the DOC's policies related to training employees on preventing sexual assault and responding to sexual assault claims changed since _____? If so, how? Why were those changes made?

Sexual Assault Prevention

Did the DOC have a policy in place for screening inmates to determine their risk of being sexually abused or sexually abusive? When should that screening have taken place? Upon being admitted to a facility? What factors were considered? How was that information used? Was it used for making housing assignments?

Does the DOC have a policy addressing what level of staffing is adequate for a facility?

What is that policy? Who is involved in that decision?

Who makes final staffing decisions?

What factors are taken into account? Incidence of sexual abuse reports? Security level? Physical layout of the facility? Composition of the inmate population?

How often does the DOC reevaluate the staffing needs of each facility? Is it the same for each facility or does it vary?

Did the DOC employ video surveillance in its prisons in 2011?

Did the DOC have a written policy in place indicating that sexual assaults would not be tolerated? If so, how were inmates made aware of this policy?

Resources Available to Inmates

Did the DOC have any policies in place for educating inmates about their right to be free from sexual abuse? About how to report incidents of sexual abuse? About the right to be free from retaliation for reporting? What are those policies?

Did DOC have a policy covering how an inmate can report sexual assault?

According to DOC policy, what options were available for an inmate to report that he has been sexually assaulted?

Were there any options available for inmates to report sexual assaults to authorities outside of the Correctional Center?

Was there any way to anonymously report a sexual assault? How were inmates made aware of these options?

Did DOC policy require prisons to provide inmates with access to outside organizations that provide support for victims of sexual assault? What kind of info was provided? How was that info provided?

Investigating Sexual Assault Claims

What is supposed to happen after an inmate alleges a sexual assault?

What is the DOC policy regarding where a victim is placed upon reporting a sexual assault?

Is the victim always removed from his cell?

Where should alleged victims then be placed? Administrative detention? Protective custody? Is this the same as segregation?

Is protective custody functionally different in any way from disciplinary segregation?

Can people in administrative segregation maintain jobs? Classes? Attend religious services? Go to yard? What is their out of cell time each day? Showering privileges? Socialize with other inmates? What is their library access? What property are they allowed in their cells?

Does/did the DOC have any concerns that the practice of placing inmates reporting sexual abuse in segregation might discourage inmates from reporting sexual abuse?

Has the DOC they received any complaints about this policy? Any actions taken in response to such complaints?

Has the DOC undertaken any research to determine whether this policy does in fact deter reporting of sexual abuse in its prisons?

What was the DOC policy regarding the performance of physical/medical exams on inmates who allege that they have been sexually assaulted?

Are physical exams performed in every case of an alleged sexual assault?

What should those exams consist of? A rape kit? A visual examination of the victim's body?

Who performs those exams? Where are they performed?

Does the DOC make any efforts to ensure that the doctors who perform those exams are properly trained in administering rape kits? In conducting physical examinations? In interacting with victims of sexual assault? Is any documentation of training required?

How soon must a physical exam be performed after an inmate makes an allegation?

Did the DOC employ Sexual Assault Nurse Examiners (SANE) or Sexual Assault Forensic Examiners (SAFE)? Has the DOC made any efforts to obtain such experts?

What steps are investigators supposed to take upon receiving a prisoner complaint of sexual assault?

Aside from the victim examination, did the DOC have policies in place regarding the collection and preservation of other physical evidence in sexual assault cases?

Who was trained in this policy? How? How often?

Does the DOC have a policy regarding how deception detection tests should be used during investigations? What is that policy?

Is it common practice to use DDTs as part of an investigation? Are they used in all investigations? What types of investigations are they most frequently used in? Are they frequently used for “false information” allegations?

Is it common practice to allow one party in an altercation to take a polygraph and prevent the other party from doing so?

Does the DOC supervise or review the activities of investigators? How?

What happens when an investigation is complete??

What burden of proof should be used to substantiate allegations of sexual abuse?

Is physical evidence required to substantiate such a claim? Should a lack of physical evidence be viewed as proof that abuse did not occur?

Is it appropriate to make a determination that there is a lack of physical evidence before the results of a rape kit are available? Should disciplinary decisions in sexual assault cases be delayed until after the results of a rape kit are available?

Should the professional opinions of mental health specialists who have treated the alleged victim, with respect to whether or not an assault occurred, be taken into account? What weight should they be given?

What was the DOC policy regarding treatment of victims of sexual assault?

What kind of mental health treatment was available?

For how long were alleged victims treated?

Does the DOC provide alleged victims of sexual assault with the opportunity to talk to rape crisis advocates?

Should the investigation of a sexual assault allegation have any bearing on the medical and psychological treatment of the alleged victim?

Is it possible for an inmate to be disciplined by the prison for falsely reporting a sexual assault, while at the same time receiving treatment and medication from the prison for illnesses/issues resulting from the alleged assault?

PREA

Are you familiar with the Prison Rape Elimination Act (aka PREA)?

What is the purpose of PREA, as far as you know?

Did Correctional Center have a PREA compliance officer in _____?

Who was it? How was he/she chosen? What were his/her responsibilities?

How long did this person serve as PREA compliance officer?

Who did this individual report to?

PREA Reporting

Did the DOC require its facilities to report incidents of alleged sexual abuse using the PREA Survey of Sexual Violence?

When did that reporting begin? Was it occurring in _____?

Who was in charge of reporting alleged sexual assaults at Correctional Center?

Who did that person report the information to? How often?

What information was reported as part of the survey?

Did the DOC keep records of the survey results by individual facility?

Do you recall how the sexual assault statistics specific to Correctional Center compared to those of other DOC facilities?

Did the DOC do anything internally with the PREA Survey of Sexual Violence statistics? If so, what?

Exhibit: Survey of Sexual Violence in Adult Correctional Facilities, 2009–11 - Statistical Tables, Table 1

This table shows the aggregate statistics for reported sexual assaults in state prisons, by state for 2011.

According to this table, there were 25 alleged reports of inmate-on-inmate nonconsensual sexual acts in DOC prisons, and only 2 of those reports were substantiated. Does this strike you as a low percentage? Has the DOC made any effort to look into why so few of those claims are substantiated? What are some possible rationales?

Was the PREA National Inmate Survey ever administered to the inmates at Correctional Center? If so, when? What were the results?

Have inmates in other state prisons completed the National Inmate Survey? Which prisons?

Exhibit: Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12
Table 2: Percent of prison inmates reporting sexual victimization, by type of incident and facility, National Inmate Survey, 2011–12

This chart shows the percentage of inmates who reported being abused by another inmate in response to the National Inmate Survey, by facility.

Did the DOC ever review this data? For what purpose?

9.2% of the inmates at Correctional Facility reported abuse by another inmate. Does this strike you as high? Did the DOC ever look into why that is the case? Was any action ever taken?

Has the DOC compared these results to the statistics it maintains regarding reported sexual assaults?

How did the two sets of data compare? Were more sexual assaults reported using the National Inmate Survey than had been reported to the DOC?

If so, how does the DOC explain the difference? Does it indicate that some inmates are fearful of reporting assaults to DOC staff?

EXHIBIT: PREA Reporting Instructions and Checklist

Do you recognize this document?

What is it? What requirements does it impose?

When was this document created?

Was it distributed to the staff at Correctional Center? When?

When did these reporting requirements officially go into effect?

On the first page, it states the following: “These reporting instructions ONLY INVOLVE REPORTS TO THE STATE’S PREA COORDINATOR, CONTINUE TO REPORT SUCH EVENTS AS PREVIOUSLY HANDLED THROUGH THE CHAIN OF COMMAND.” What does this mean?

Describe the existing internal DOC reporting procedure. What was the purpose of this policy?

Why was personal information about the inmate recorded on the checklist while information about an employee accused of sexual abuse was not to be included?

Does the DOC use the data collected on reported sexual assaults in DOC facilities internally for any internal purposes? How? To update policies? Attempt to reduce the incidence of sexual abuse in its facilities?

PREA Standards

Did the DOC review the Bureau of Justice's proposed PREA standards before they became effective in 2012?

When did the DOC first begin to review those standards? Why?

Were the proposed PREA standards used to update any DOC policies prior to 2012? If so, which ones? When? What specific changes were made?

Were the DOC's policies relating to prevention, detection, and investigation of sexual assaults in compliance with the proposed PREA standards in 2011?

Are those policies now in compliance with PREA standards?

What efforts has the DOC taken to ensure that DOC facilities comply with PREA standards?

PREA Implementation

Before 2012, was the DOC aware of any resources, including funding, technical assistance, training assistance, and other forms of assistance that the federal government made available to help corrections departments implement PREA?

Did the DOC request any grants for the purpose of implementing PREA? Did it receive any? If so, when? What were they used for?

Did the DOC request access to any of the other resources offered by the federal government? Did it receive any? What? When?

Did Correctional Center specifically request access to any special resources to help it implement PREA? Did it receive any?

Did the DOC make use of any external resources in connection with implementing PREA standards?

Did it hire any outside consultants of any kind?

Did it seek any outside organizations to visit its facilities and conduct evaluations?

Did it seek any outside help to evaluate its existing policies?

Did it request help from any outside sources in training DOC employees to properly implement PREA standards?

Has the DOC required that the staff at Correctional Center attend any training in connection with PREA?

When was the first time this training took place? How often after that?

What was the form of this training? A video?

What were the employees told about PREA?

Were the employees provided with any written materials about PREA? Were they directed to any additional resources?

Was the training that employees received regarding PREA documented? Were the employees required to sign anything indicating that they had been informed of PREA standards?

Were any efforts made to ensure that DOC employees understood the PREA standards?

Did any of the staff members at Logan ever attend outside training programs related to PREA implementation?

Has Correctional Center ever been audited to determine whether it is complying with PREA standards? If so, when? What were the results?

Changes in Policy

How often does the DOC reevaluate its policies regarding prevention, detection, and investigation of sexual assaults?

When was the last time those policies were updated? Before that, when was it updated?

What specific changes has the DOC made to its policies regarding prevention, detection, and investigation of sexual assaults since 2011? Why were those changes made?

Does the DOC make efforts to keep up with research in the area of sexual abuse in the prison context? Does the DOC use that information to inform its policies? How? Examples? Was that the case in 2011?

Does the DOC make efforts to keep up with literature or conversations in the wider corrections community about what are considered to be best practices for preventing, detecting, and treating

victims of sexual assault? Does the DOC use that information to inform its policies? Was that the case in 2011?

Does the DOC use data collected regarding reported sexual abuse in prison to inform its policies? How?

INVESTIGATOR

In what circumstances are you asked to investigate an incident?

Who assigns investigations to you?

How many investigations have you completed?

What information are you provided at the outset of an investigation?

How many investigations have you completed that related to an allegations of sex assault/inappropriate sexual contact?

And are you responsible for making a determination re: whether the assault happened?

In how many of the ____ cases re: sexual assault/misconduct did you substantiate the allegation?

Have you ever had a case during which you believed that the assault happened—but you couldn't find the supporting evidence?

Describe the steps of an investigation after you've received an allegation of an inmate on inmate sexual assault?

Who do you interview/how do you identify interviewees?

Do you explain the purpose of the interview? How? What do you tell people about the investigative process?

Do you tell inmates that they could be subject to disciplinary sanctions if they give inaccurate information?

Do you tell staff anything about the importance of telling the truth during these interviews?

What questions do you ask?

Do you assess credibility of your interviewees? How?

Do you use deception detection tests?

Describe the test for me?

How do you determine when to use a deception detection test?

What evidence is most important in investigating a claim of sexual assault?

- Physical
- Statements from victim/alleged assailant?
- Witnesses?
- Demeanor of victim/alleged assailant?
- Forensic evidence? (lab report?)
- Deception Detection test?
- Other

What happens when an inmate makes a claim that you cannot substantiate?

How often do inmates make false claims about sexual assault?

In your experience, what is an inmate's motivation for making a false allegation about sexual assault?

How do you determine that an inmate has provided you with false information?

If you determine that an inmate has provided you with false info, is that inmate subject to discipline?

What kind of consequences is that inmate subject to?

And do you initiate the discipline?

How many times have you initiated discipline because you determined an inmate gave you false information?

Describe those cases.

Have you ever substantiated a claim of sexual assault in the absence of physical evidence?

Have you received any training about the following topics? **(if yes, please describe and give dates for training, and identify who conducted the training)**

- Conducting investigations
- Interviewing
- Interviewing people who recently experienced a traumatic event
- Evaluating the credibility of interviewees
- Prison Rape elimination Act
- Mental health and trauma amongst people who are incarcerated
- The use of Deception Detection technology
- Identifying vulnerable and predatory inmates
- Discipline of inmates
- Examining evidence

MEDICAL PROFESSIONALS

Describe your examination of the reporter.

Please describe reporter's demeanor during the exam?

Did you use an alternative light source to look for semen?

Did you use an analscope to check for internal tearing?

Did you comb the pubic hair for evidence?

Did you take samples from beneath the nails?

Did you take an oral swab?

Did you examine the premium?

Did you provide prophylactic treatment?

What kind of forensic training do you have?

Describe your conclusions regarding the assault.

MENTAL HEALTH PROVIDER

How does an inmate get placed on your rotation/caseload? Referral process

When an inmate is on her caseload—how often does she see him or her?

What is the goal of seeing inmates? (provide therapy? Med checks? Suicide evals?)

Average length of time spent with inmate?

Characterize the inmate population—estimates about prevalence of mental health issues.

Estimates about prevalence of trauma

Estimates about prevalence of history of sexual abuse

What are the symptoms displayed by people who have survived sexual abuse?

What kind of training did you receive prior to working at Logan?

- Trauma related interviewing?
- Sexual abuse interviewing?
- Forensic training?
- Did this include PREA training?
- PREA reporting?
- Who provided this training?
- What are your impressions about Correctional Center's PREA related reporting?

Walk us through how DOC staff should respond when an inmate alleges a sexual assault.

At what point in an investigation would a survivor of an alleged assault be referred to you?

During your time at Correctional Center how many people have you met with who survived an alleged sexual assault?

What can you recollect about each alleged assault? (without revealing protected information)

Approximately how many inmates have you treated?

During your treatment, how do you determine if someone is telling the truth? How do you evaluate credibility?

When did you first meet the reporter?

What were your general impressions?

How often did you meet with the reporter?

How long did each meeting last?

What symptoms did he demonstrate?

Did you find his account of the assault credible? Why?