



# PREVENTING AND ADDRESSING SEXUAL ABUSE IN TRIBAL DETENTION: SAFEGUARDING OUR FACILITIES, PROTECTING OUR COMMUNITIES

**T**ribal detention facilities protect public safety through the incarceration of criminal defendants and convicted offenders who have committed crimes in the community. Primary among our responsibilities and obligations, however, is to provide a safe and secure facility for inmates and ensure that appropriate programs and services are available for rehabilitation.

Sexual abuse and assault committed against inmates jeopardize the safety and security of tribal detention facilities, inmates, staff, and the community. Therefore, every measure should be taken to prevent and respond to sexual violence within tribal facilities.

## Legal protections against sexual violence in detention settings

Inmates in Indian Country benefit from the protections provided by the Indian Civil Rights Act (ICRA), which applies the 8th Amendment of the U.S. Constitution (preserving the right against cruel and unusual punishment) to tribal nations. More recently, the Prison Rape Elimination Act (PREA) of 2003 became the first-ever federal legislation to address the issue of sexual assault in correctional settings. Unfortunately, the name of the act can be misleading—it is not just about prisons, and it is not just about rape. The act addresses sexual abuse in all custodial corrections settings, including prisons, jails, police lock-ups, juvenile detention facilities, and community residential settings. It also covers all types of sexual abuse in which an inmate, detainee, or resident is the victim, including abuse by fellow inmates/detainees/residents as well as sexual misconduct committed by a staff person of the correctional facility.

PREA established a zero tolerance policy for sexual assault in America's correctional settings. Once fully implemented, PREA will:

- establish national standards for the detection, reduction, prevention, and punishment of sexual abuse and violence within correctional settings;
- provide for data collection and information dissemination on the incidence of prison rape; and
- provide training, technical assistance, and grant funding to help states and localities reduce and prevent the incidence of sexual violence.
- Failure to implement the national standards, once they are fully developed, may result in a 5% reduction in federal funds for prison programs.

While legal and jurisdictional questions pertaining to the application of PREA to detention facilities in Indian Country remain, national standards to prevent, detect, and respond to prison rape will likely result in increased civil liabilities

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for correctional facilities—for native and non-native facilities alike. With the enhancement of standard corrections practices that will occur through the implementation of PREA standards, detention facilities across the country will certainly be held to a higher legal standard for the prevention of and response to sexual abuse, and could potentially face increased civil penalties if they fail to do so.

## **Why should we care about sexual violence in tribal detention facilities?**

In addition to the legal liabilities posed by the occurrence of sexual violence in detention settings, sexual abuse against inmates poses a danger to the well-being of our communities. Virtually all inmates incarcerated in tribal jails are ultimately released to our communities, and inmates who have been victimized while incarcerated bring the trauma of their assaults with them back to the community. If not properly addressed, their victimization may make it more difficult for them to transition back into community life successfully, leading to additional criminal behavior, re-arrest, and re-incarceration, further contributing to the revolving door phenomenon that so commonly plagues our correctional systems.

Sexual violence in detention settings also poses a public health risk through the spread of the human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis B and C, tuberculosis, and other communicable diseases—all of which are more prevalent among jail inmates. Such diseases pose a serious threat to the general public following the release of infected inmates.

Finally, sexual abuse of inmates by detention staff, or staff sexual misconduct, erodes trust in and respect for tribal government and detention agencies, which have been entrusted by the public to provide safe facilities for detention purposes. Detention staff members who engage in sexual misconduct with inmates not only harm the victim, but also put the safety of their colleagues, other inmates, and the community at risk by compromising the system of power and authority necessary to hold inmates accountable and ensure public safety.

## **Does this really happen here? Sexual abuse cases in tribal detention facilities**

It may seem far-fetched that a problem like sexual abuse, common in large state prison systems, would plague tribal detention facilities. Unfortunately, however, several known cases, including those described below, indicate that tribal jails and juvenile detention facilities are not immune from sexual violence.

- In 2002, a male detention officer at a tribal juvenile facility in Montana raped a 17-year-old female inmate while transporting the inmate for medical treatment.
- In 1997, a youth being held at an adult detention facility in Indian Country was raped by an inmate.
- In July 2010, a former corrections officer with the Bureau of Indian Affairs pled guilty in federal court to sexual abuse of a ward. The officer was sentenced to time served and 5 years of supervised release, including 5 months of home confinement, and will be required to register as a sex offender.

## **Who's at Risk? The "Typical" Victim of Corrections-Based Sexual Abuse**

While all inmates are at risk of sexual abuse and violence within correctional settings, certain types of inmates are more likely to be abused. These include:

- Young inmates
- Inmates who are inexperienced, naïve, or lack "street sense"
- Mentally ill or developmentally challenged inmates
- Inmates who are not affiliated with a gang

- Gay, lesbian, bisexual, transsexual, or intersex (GLBTI) inmates
- First-time offenders
- Inmates convicted of sexually based crimes
- “Snitches,” “rats,” and inmates who break the code of silence
- Inmates who have previously been victimized

Anyone, however, can be a victim of sexual abuse within a detention setting.

## **So now what? Taking steps to prevent and address sexual abuse in tribal jails**

Primary among the purposes of PREA is the establishment of a zero tolerance standard for the incidence of sexual assault in corrections settings. But what exactly does a zero tolerance standard mean for jails and detention facilities in Indian Country, and how can it be achieved? In essence, a zero tolerance standard indicates that an agency will not tolerate sexual abuse of any kind within its environment and that it will take any necessary steps to ensure that incidents of sexual abuse are responded to appropriately. What does this mean for tribal jail and juvenile detention administrators? It means that jail and detention administrators must:

- establish clear policies and procedures for the prevention of and response to sexual abuse;
- ensure that all staff members are adequately trained on policies and procedures related to sexual abuse prevention and response;
- assure staff that policies on sexual abuse prevention and response will be strictly enforced;
- set the standard for appropriate behavior within the workplace and lead by example;
- develop an environment in which individuals (including inmates and staff members) feel comfortable and safe reporting incidents of sexual abuse; and
- hold those who perpetrate abuse accountable for their behavior, whether it is an inmate preying on other inmates or a staff member engaged in a sexual relationship with an inmate.

Creating a culture of zero tolerance is an important first step in improving efforts to prevent and address sexual abuse in correctional settings, but it cannot be successful by itself. Rather, a comprehensive approach must be adopted that incorporates strategies for training, sexual abuse investigations, and enhanced policies and procedures. The following suggestions can help guide efforts to improve the capacity of tribal detention facilities and staff to properly prevent and respond to sexual violence.

## **TRAINING: WHO should be trained? Everyone!**

- All employees should receive extensive, regular training on the agency’s sexual abuse prevention and response policies and procedures.
- Contractors, vendors, volunteers, and visitors should receive training on the agency zero tolerance policy, the definitions of sexual abuse, mandatory reporting, and consequences for involvement or not reporting.
- Inmates should receive training on their right to be free from sexual abuse, the dynamics of sexual victimization, how to report, and protection from retaliation.

## **INVESTIGATIONS:**

### **WHAT are the keys to competent investigations?**

- Investigators are specially trained in conducting sexual assault investigations.
- Diligent supervision of investigations by the appropriate authority.
- Consistent and fair sanctions imposed upon completion of the investigative process.
- Confidentiality maintained throughout the investigation process.
- Knowledge of and respect for the special nature of sexual assault investigations.

## **POLICY AND PROCEDURE:**

### **WHAT makes policy and procedure effective?**

- Being specific to the issue and using definitive language throughout sexual assault policies and procedures.
- Defining prohibited behavior clearly and definitively.
- Being developed with the intent to protect inmates, staff, and facility and to guide all measures toward this overarching goal.
- Being accompanied by appropriate training for staff, contractors/vendors/volunteers, and inmates.
- Including clear expectations.
- Defining a clear disciplinary process.
- Being updated regularly to address emerging issues, concerns, and challenges.

### **What's MY role in addressing corrections-based sexual abuse?**

As a tribal leader, you can play an important role in supporting initiatives to safeguard detention facilities against sexual abuse and violence. In fact, effective efforts rely on leadership at all levels of tribal government and throughout the community. The following list includes some specific steps that you can take to support efforts to address corrections-based sexual abuse within your tribe:

- ☑ Learn about the risks that sexual abuse poses to inmates, detention facilities, detention staff, and the community;
- ☑ Ask local detention administrators how they are addressing the issue of sexual abuse within their facility;
- ☑ Provide community-wide educational opportunities about corrections-based sexual abuse, ways to report incidents of abuse, and available resources to assist victims;
- ☑ Support the allocation of resources to assist tribal detention administrators in addressing this issue within the facilities they manage; and
- ☑ Contribute to a culture of zero tolerance by affirming that perpetrators of sexual abuse will be held accountable for their crimes.