

PREA Part II: Overview of Substantive Standards

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My [last post](#) discussed the applicability of the Prison Rape Elimination Act (PREA) to North Carolina's jails. Today's post looks at the substantive standards themselves. These are the standards with which state prisons *must* comply to avoid the state losing five percent of certain federal grant funds, and with which local jails *may* have to comply for one of the reasons outlined in my prior post.

The overarching theme of PREA is that covered agencies must adopt a written policy of zero tolerance toward all forms of sexual abuse and sexual harassment. [28 C.F.R. § 115.11](#). Sexual abuse and sexual harassment are defined broadly to include all the types of contact, threats, advances, displays, and comments you would expect. [§ 115.6](#). Some of the PREA standards will already be satisfied under sheriffs' existing regulatory, statutory, and constitutional duties to protect the inmates in their custody. See, e.g., [G.S. 153A-224\(a\)](#) (duty to protect prisoners from assaults by other prisoners). But some will not. The summary that follows emphasizes those standards that strike me as most likely to require substantial changes to current jail practices in North Carolina.

Supervision and monitoring. PREA standards do not set a specific staff-to-inmate ratio for jails, but they do require "adequate levels of staffing," augmented by video monitoring where applicable. [§ 115.13](#). Facilities are required to adopt a policy of having intermediate or higher-level supervisors conduct unannounced rounds on both day and night shifts to deter staff sexual abuse and harassment. § 115.13(d). Supervisor rounds are not required under existing North Carolina regulations. See [10A NCAC 14J .0601](#) (requiring observations by detention officers twice per hour for all inmates, and four times per hour for inmates displaying certain behaviors).

Youthful inmates. Inmates under age 18 placed in adult jails must, under [§ 115.14](#), be housed in areas where they have no sight, sound, or physical contact with adult inmates through use of a shared dayroom, common space, shower area, or sleeping quarters. Outside of housing areas, facilities have two options under PREA: either maintain sight and sound separation between youthful inmates and adult inmates, or provide direct staff supervision of the inmates. *Id.* These rules go beyond existing North Carolina regulations, which require only that male inmates under 18 be confined in separate cells from adult inmates during sleeping hours. [10A NCAC 14J .0303](#). Our regulations include no similar provision for women, and make no mention of separation or special supervision requirements outside of housing units. PREA discourages facilities from using isolation to comply with the segregation requirement. The standards also direct that young inmates be allowed daily large-muscle exercise, which goes beyond the three-days-per-week requirement that kicks in after 14 consecutive days of confinement under North Carolina regulations. [10A NCAC 14J .1004](#).

Cross-gender viewing and searches. Under [§ 115.15](#), facilities may not conduct cross-gender strip searches or visual body cavity searches, except in exigent circumstances or when performed by medical staff—an approach the School of Government has been recommending for almost 30 years. See Michael R. Smith, *Searches of Newly Admitted Detainees*, Jail Law Bulletin (Feb. 1986). As of August 20, 2015, facilities rated for over 50 inmates may not do cross-gender pat-down searches of women absent exigent circumstances. The deadline is August 21, 2017 for smaller facilities. § 115.15. PREA also requires a knock-and-announce rule for opposite gender entries into housing areas, and prohibits physical examinations solely to confirm the genital status of a transgender or intersex inmate. *Id.*

Hiring and promotion. Agencies may not hire, promote, or enlist the services of anyone with a record of any sexual

abuse in a confinement facility, or of sexual abuse involving force or coercion in the community, if that person may come into contact with inmates. [§ 115.17](#). Before hiring a new employee an agency must conduct a criminal background check and make its best effort to contact all prior institutional employers for information on allegations of sexual abuse. The agency must also conduct background checks or conduct similar investigations on existing employees and contractors every five years. *Id.*

Education and training. Agencies must, under [§ 115.31](#), train all employees on a list of topics related to sexual abuse, including avoiding inappropriate relationships with inmates; communicating effectively with gay, lesbian, bisexual, transgender, intersex, or gender nonconforming inmates; and PREA reporting requirements. Refresher training is mandatory every two years. §115.31(c). Special training is required for jail investigators, [§ 115.34](#), and medical staff, [§ 115.35](#). Inmates must also be educated. Upon intake officers must inform inmates of their right to report sexual abuse, and more comprehensive information must be provided, either in person or by video, within 30 days. [§ 115.33](#).

Screening. All inmates must, within 72 hours of their arrival at the facility, be screened for their risk of being sexual abused or sexually abusive toward others. [§ 115.41](#). The National PREA Resource Center will make screening tools available on its [website](#). If screening uncovers a prior history of victimization or abuse, staff must ensure that the inmate is offered a follow-up meeting with a medical or mental health provider within 14 days. [§ 115.81](#).

Incident reporting. Agencies must provide multiple ways for inmates to privately report incidents of sexual abuse, including at least one way that allows reporting to a public or private entity that is not a part of the agency itself but can communicate with the agency, such that the reporting inmate may remain anonymous. [§ 115.51](#).

There are other standards, which are addressed in the many other resources and checklists available from the National PREA Resource Center. For instance, I found [this handbook](#) to be particularly helpful. There are also many opportunities for [training and technical assistance](#). Ultimately, though, there is no substitute for reading the PREA standards themselves. They seem daunting at first, with over 125 pages in the Federal Register devoted to PREA. But the [actual standards for adult prisons and jails](#) are only 16 pages long, and a careful agency will certainly want to review them.