

What Happens Now?

Advocating for Incarcerated Survivors When Your Carefully Negotiated MOU Goes Out the Window

Since the passage of the Prison Rape Elimination Act (PREA) in 2003, rape crisis advocates across the country have increasingly begun to work with corrections facilities to make sure that survivors behind bars get the help they need.

Getting in the door, or past the gates, can take time. Once rape crisis counselors have developed working relationships with corrections staff, negotiated the scope of services, obtained security clearances, and signed a memorandum of understanding (MOU), they might expect that the bulk of the challenges are behind them.

As in any advocacy work, however, new challenges always emerge: key contacts at the prison may change, resources and policies may shift, and situations will arise that no one could foresee during the careful development of the MOU.

When barriers prevent the smooth provision of emotional support services, rape crisis counselors must be ready to be flexible, creative, and persistent.

Let's look at some common problems and possible solutions.

1 After an initial contact, you cannot reach the survivor to provide follow-up services.

Many rape crisis counselors have trouble reaching incarcerated survivors after the initial crisis contact via hospital accompaniment or hotline call. Some next steps could include:

- Determine the reason for the lack of contact. Is it a logistics problem, a barrier thrown up by a particular staff member, a miscommunication with the prison, or a larger systems issue? Is it a one-time occurrence due to a lock-down or other emergency circumstance, or is this an ongoing problem?
- Reach out to the PREA Coordinator, PREA Compliance Manager (PCM), or other key contact at the facility to discuss the reasons for your failure to reach the survivor, and develop a plan to address the problem.
- Remind the PCM or other facility contact person that, per the PREA standards, inmates should be able to have access to an advocate whether or not they report the

abuse or cooperate with an investigation, and whether or not the abuse took place in the facility. Review the scope of your services with the facility staff to make sure they understand that rape crisis advocates provide services to survivors for any sexual abuse they have experienced — not just abuse that occurred recently or inside a corrections facility.

- If there is a logistical problem, discuss whether you can communicate with the survivor in a different way. For example, if an in-person contact cannot be arranged, perhaps you can schedule a phone call or video visit. Explore whether confidential mail can be used as an interim measure. Although an in-person visit may be best, remember that any support can be a lifeline to survivors who cannot get help another way.
- Review and revise the agreements made in the MOU. Identify all possible contact people, clarify communication procedures and scope of services, and develop a mechanism for preventing and addressing any problems reaching survivor in the future. Hold regular check-in meetings with the primary contact people at the facility to review protocols and procedures, so such check-ins become customary rather than happening only when there is a problem.

2 A survivor is punished for making “false reports.”

The PREA standards do not allow corrections facilities to discipline inmates for reporting sexual abuse in “good faith,” even if an investigation does not substantiate the

claim. Yet advocates often hear from survivors who were punished for engaging in “sexual activity” when they reported abuse, were disciplined for having contraband that was discovered in the course of the sexual abuse investigation, or were punished for lying if the report was not substantiated by an investigation. If you learn that a survivor has been punished for reporting, you can:

- Determine if an investigation was completed and whether the report was unfounded, meaning there was evidence that the incident did not or could not have happened. If the report was unfounded, talk with your primary contact at the facility to explore if they found clear evidence that the report was made in bad faith. If the evidence seems unclear, advocate for the discipline to be removed from the survivor’s record or for the consequences to be reversed.
- Make sure that facility staff know that the PREA standards prohibit retaliation for reporting sexual abuse or sexual harassment, and that staff have a responsibility to monitor for retaliation against any inmates or staff who have reported. Help staff recognize common reactions to sexual abuse, to reduce the chances that survivors will be punished for the effects of trauma. Ensure that investigators understand how trauma reactions may make a survivor’s story change, or why survivors may recant. Educate staff about intimate partner violence dynamics that might make it difficult to disentangle consent.
- Enlist the help of sex crimes and domestic violence investigators from the community

to help train facility investigators in conducting trauma-informed, victim centered investigations. Invite corrections officials, especially sexual abuse investigators, to attend your community's SART meeting.

- Ask to see the facility's inmate education class or materials about PREA and reporting sexual abuse and harassment. Make sure that information about the definitions of sexual abuse and sexual harassment, and what can and should be reported, is clear. Encourage staff to use the phrases "sexual abuse" and "sexual harassment report" instead of "PREA report" to reduce any possible confusion.

3 A survivor has made a sexual abuse report and heard nothing about an investigation.

PREA requires corrections officials to take seriously and investigate all reports of sexual abuse and sexual harassment, and to inform survivors about the outcome of their investigations. Nonetheless, incarcerated survivors often report that they never spoke to an investigator after making a report, or that they were never given information about the outcome of the investigation. If you are working with a survivor who made a report but never heard anything more about it, you can:

- Ask the survivor if they were told that there would not be an investigation, or if they were told that there would be an investigation but they never received an update. Find out how the report was made — did the survivor file a grievance, make a

verbal report, call a reporting line, or report in another way?

- Ask the survivor what help they want, including whether they want you to follow up with the facility staff on their behalf. If so, obtain a release of information to speak with the PCM or investigator about the survivor's case. If the survivor does not give consent to release information, review with them all of the possible reporting mechanisms, both internal and external to the facility, including any outside oversight bodies, like an Inspector General. Help the survivor develop a plan to follow up on the report.
- If the survivor gives you permission to speak with facility staff, reach out to your primary contact person at the facility first. Approach the staff with curiosity and without assumptions — an investigation may be in progress and you can help the survivor and the facility by updating the survivor.
- Educate facility staff about how to minimize trauma to a survivor who participates in an investigation. The PREA standards require the facility to inform survivors about the outcomes of investigations, but do not require the facility to update them at every step of the way — meaning that survivors can go months without hearing anything about the progress of the investigation. Help investigators and other staff understand that the survivor, as the key witness, is an important part of the team; keeping the survivor informed will be beneficial to the investigation because it helps the survivor stay engaged and trust staff.

- If necessary, help the PCM develop a new protocol for informing survivors about the progress of active investigations. Sharing information with prisoners represents a culture change for many facilities and it may not be obvious to staff that, even if there is no conclusive information to share, survivors will be relieved to hear about progress being made.

- If an investigation has not been conducted, work with your facility contacts to determine the reason. Advocate for an investigation to be conducted, reminding staff of the requirement to do so under the PREA standards. If necessary, offer to help appropriate staff obtain training on conducting sexual abuse investigations.

4 A survivor is concerned about their safety and wants a housing change.

A basic responsibility of corrections officials is to protect the people in their care. In particular, the PREA standards require that officials take steps to keep survivors safe from retaliation, whether from staff or other inmates, in the aftermath of making a sexual abuse report. While some survivors may feel safe remaining in their housing unit, others may want to be moved. If a survivor asks for your help in securing a transfer, you can:

- Work with the survivor to determine their needs. They might have support networks, staff they trust, and programs that would be difficult to lose if they transfer to another unit. Establish with the survivor if they need to move cells or bunks, units, or where possible, facilities. If the survivor asks for

you to advocate on their behalf, obtain a release of information.

- Help the survivor develop a safety plan in their current situation. Review their concerns and determine if there are safer places, people, and situations they can seek out until a move is completed.

- If the safety concern is related to an imminent threat of sexual abuse, inform the PCM or your contact person at the facility immediately, with permission from the survivor. The PREA standards require that facilities have an emergency grievance procedure to protect people from threats of imminent abuse.

- If the threat is not imminent, reach out to the PCM or primary contact person at the facility to explain the survivor's safety concerns, discuss housing options, and make a recommendation based on what you know about the facility. Remember that the move might be challenging for staff; they have many factors to consider, such as facility safety, overcrowding, or inmates who have to be kept separate from each other. Also remember that many corrections staff worry that sexual abuse concerns will be used to manipulate housing changes. Acknowledge the facility's concerns and challenges while advocating for the survivor's safety.

5 A survivor has needs that are beyond the scope of your organization's services.

Survivors of sexual abuse in detention often have multiple and complex needs, not all of which you will be able to address. Ideally,

you will have reviewed the scope of your services with facility staff during the MOU negotiation process and before starting your program for incarcerated survivors. Even if you have discussed the limits of what you can offer, facility staff and survivors may ask you for additional help. You can:

- Gently set limits with survivors. Be clear about what you can and cannot do. Do not make promises you cannot keep.
- Understand that you might be the only person who has responded to the survivor at all, so they are likely to take the opportunity to ask for everything they need at once. If they ask for something that you cannot do, if appropriate, provide them with referrals to additional resources.
- Work with facility staff to develop a referral list for prisoners. Find out what services are available inside the facility and what other community organizations provide support to incarcerated survivors. Reach out to community providers to find out if they are able and willing to help.
- Periodically review any information and materials about your services that are shared with staff or inmates; make sure they are clear and consistent.

6 Despite your MOU and careful negotiations around confidentiality, a corrections official is not allowing you to meet privately with a survivor.

Confidentiality can be the most challenging part of negotiating agreements around

providing services to incarcerated survivors. Corrections officials' success in protecting safety and security depends on their knowledge of what is happening in their facilities. Many officials find it difficult to understand or accept that prisoners need to be able to speak confidentially to outside advocates. Even when detailed agreements have been developed, challenges to confidentiality will arise. When that happens, you can:

- Be ready to negotiate confidentiality and privacy on the spot during forensic exams, especially with corrections officials who might be new to working with an victim advocate. Strike a balance between being an advocate for the survivor and respectfully educating the staff. Look for ways the officer can provide security while still offering the survivor the most privacy possible, such as by positioning themselves so that they can see, but not hear, the survivor. Explain to the survivor what you are advocating for and why at every step of the way. Make arrangements with the survivor to reach back to them for follow-up services after the forensic exam.
- If you are providing in-person services at the prison and your usual, agreed-upon meeting space is not available, understand that corrections facilities are busy places and space is at a premium. Ask staff if there is another option, such as a space that is used by inmates to meet with lawyers or medical or mental health staff. Be ready to be flexible. If a less private room is the only option, check with the survivor if they would rather meet in the less private option or reschedule the session.

- Be sure to follow up with the PCM or your primary facility contact whenever corrections staff do not adhere to the confidentiality agreements in your MOU. Review protocols and procedures together to reaffirm your agreements and the importance of providing confidential services to survivors. Remind staff that safety and confidentiality are not contradictory; survivors who have confidential services are likely to feel safer reaching out to corrections staff for help.

Victim services providers nationwide increasingly recognize that incarcerated survivors of sexual abuse need and deserve support as they heal. This work is crucial, but also complex. It takes patience and persistence to maintain partnerships with corrections officials, and survivors in detention face unique challenges in the aftermath of an assault. It is essential to get to know staff at the facilities in your community, learn about their policies, practices, communications styles, and values. The time you invest in building these relationships will pay off for the survivors you serve. Remember that you can call on Just Detention International if you need help navigating the corrections environment.

Endnotes

1. National PREA Resource Center, “PREA Essentials,” available at: www.prearesourcecenter.org/training-technical-assistance/prea-essentials

JDI Contact Information

Los Angeles Office

3325 Wilshire Boulevard, Suite 340
Los Angeles, CA 90010

(p) 213-384-1400

D.C. Office

1900 L St. NW, Suite 601
Washington, DC 20036

(p) 202-506-3333

This project is supported by a grant awarded by the Office for Victims of Crime, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed herein are those of the presenters and do not necessarily reflect the views of the Department of Justice, Office for Victims of Crime.

