 Prison Rape Elimination Act (PREA)

Frequently Asked Questions for Advocates

As correctional facilities in Maine work to gain or maintain compliance with the Prison Rape Elimination Act (PREA) Standards, MECASA is committed to providing tools, resources, and information to advocates who serve incarcerated survivors. Below, you will find a list of Frequently Asked Questions to help guide your work.

# Accessing Clients in Correctional Facilities

#### Who do I contact to schedule appointments with a person who’s incarcerated?

This will differ facility-by-facility, but the PREA contact is a great place to start. If your client was referred to your services through a caseworker, mental health worker, or healthcare provider, the person who referred them should be able to help you navigate the system.

#### Should I bring anything with me when I go to the facility?

Yes. Advocates should bring identification, PREA rights and victims’ services information, the facility PREA contact’s information, and Department of Corrections PREA Coordinator contact information. Note that facility lockers may not be secure, so consider locking sensitive or confidential information in your car.

# Confidentiality

#### If someone in the facility committed the sexual assault, am I mandated to report?

No. If a person who’s incarcerated or a correctional facility staff member commits an assault, the correctional facility will want to ensure the safety and security of everyone in the facility. PREA & Department of Corrections policy require that correctional facility staff and volunteers report any violence they learn about or witness within the jail or prison. However, your confidentiality obligations as an advocate do not change when serving people who are incarcerated. The only reporting procedures you must follow are the same ones you’d follow with a survivor in the community (that is, to child protective services or adult protective services as required by Maine statute). Your confidentiality obligations may be difficult for correctional facility staff to understand, but your job is the same no matter who you are serving—and it’s okay to respectfully tell them that.

#### What do I say if a correctional facility staff member requests that I provide information I’ve learned from a survivor with whom I’m working?

Corrections staff may not understand why an advocate would learn about a sexual assault perpetrated in a facility and not report the assault to facility staff.

However, just as you would with law enforcement outside of the facility, you can only share information if your client has signed a release for you to do so.

You might say something along the lines of, “I know our approach may be different, but we have the same goal, which is to maintain the safety and security of those in this facility. We know that a survivor working with an advocate is more likely to make a formal report to law enforcement because they feel supported and have an idea of what will happen with their report. So, whereas a meeting between an advocate and a survivor is confidential, these meetings may be the best chance the facility has to receive a report.”[[1]](#endnote-1) 1 You may also emphasize that people who are incarcerated have a right to an advocate regardless of when sexual violence was perpetrated against them, which could mean that you aren’t meeting with a client to discuss a PREA incident.

#### How will the correctional staff maintain confidentiality, and how can a client contact me with as few people as possible knowing?

Because correctional facility staff are required by PREA and DOC policy to report violence they learn about or witness within the jail or prison, they are not able to maintain confidentiality. As such, if the request for an advocate came through correctional staff, a report *should have* been made and an investigation will probably follow. However, if you or your client has doubts as to whether a report mandated by policy was made, it may be useful to talk to your client about the option to follow up with the facility’s PREA contact. Of course, you should never communicate with anyone about an assault or a report without a written release from a client.

However, even if correctional facility staff have made a report, your client can choose whether or not to cooperate with any investigations that may result.

The most confidential advocacy service possible would be initiated by a direct request from the survivor who is incarcerated. To make that request directly they can call the helpline or send mail to your agency. If the facility is following PREA standards, both of these options should be unmonitored by staff. You can request – through the facility’s PREA contact – to meet with survivors where people who are incarcerated meet with their attorneys, which is often in a confidential place. If you are working with a correctional facility staff member who referred your client to sexual assault support services, you may be able to use their office. However, consider that many correctional facility staff members are unwilling to leave advocates and clients unsupervised in their office, and those staff members may insist on being present. Of course, that would not be a good option for clients who wish to maintain confidentiality.

# Medical Care & Forensic Exams

#### What should I do if I’m the first person to learn of a recent assault and the client wants a medical intervention? Who do I contact at the correctional facility?

## We know that a survivor working with an advocate is more likely to make

a formal report to law enforcement because they feel supported and have an idea of what will happen with their report.

Inmates have a right to an advocate regardless of when sexual violence was perpetrated against them, which could mean that you aren’t meeting with an inmate to discuss a PREA incident.

This will differ facility-by-facility, but the PREA contact would be a great person to ask. They would be the person you contact during business hours, and they should be able to provide you with a contact for non-business hours. Standards state that an person who’s incarcerated must be offered a forensic exam (most likely in a local community hospital), medical care if they refuse a forensic exam, information related to sexually transmitted infection prophylaxis, and access to emergency contraception.2 Some facilities do not offer on-site emergency contraception, but they will refer the survivor to additional medical care. Check with your local facility.

#### If a person doesn’t want to go to the hospital for a forensic exam, can they still see a medical provider promptly?

Yes. Regardless of whether a survivor chooses to have a forensic exam done or whether they decide to cooperate with an investigation, PREA requires that

they be allowed to see a medical provider promptly within the facility. If the assault is perpetrated after hours and there are no qualified medical providers available onsite, PREA requires that first responder staff take immediate steps to protect the survivor and notify the appropriate providers.3

#### What kind of mental health/trauma services are available to survivors while they’re incarcerated? Is there a therapist or counselor I can refer clients to?

PREA requires that each facility offer free medical, mental health, and advocacy services, “regardless

of whether the victim names the abuser or cooperates with any investigation arising out of the incident”4. Such access must be “timely (and) unimpeded.”5 The facility’s medical and mental health services are your best option in terms of referrals for survivors while they’re incarcerated.

#### Will survivors who are incarcerated be charged for medical care following a sexual assault?

No, they should not be. PREA requires that people who are incarcerated should not be charged for any medical care they receive in connection with a sexual assault.6

#### During a hospital accompaniment with a person who’s incarcerated, how should I communicate with a corrections officer if they are present? What rights regarding the medical exam does the patient have?

We are in the process of working with the Department of Corrections and the SAFE Program to define policies and protocols related to forensic exams for people who are incarcerated. You should assume that a corrections officer will be present in the room during the forensic exam. You may want to talk with corrections staff before an exam begins to discuss your respective roles, any security concerns they may have, and where everyone in the room will sit or stand to best ensure the privacy and well-being of the survivor.

“One of our advocates met with someone in a jail and the client was ‘beaming’ having seen the advocacy posters and feeling ‘finally someone would listen’ because she never knew advocacy services existed.”

-Southern Maine Advocate

1. § 115.83 Ongoing medical and mental health care for sexual abuse victims and abusers
2. Ibid, subsection b.
3. § 115.82 Access to emergency medical and mental health services, subsection d.
4. Ibid, subsection a.
5. § 115.83 Ongoing medical and mental health care for sexual abuse victims and abusers, subsection g. 3

# Reporting

#### Who answers the PREA hotline?

The statewide PREA Coordinator at the Department of Corrections answers the PREA hotline. The hotline is one reporting option for people who are incarcerated. It is not a 24-hour service, but messages are checked regularly. The phone number is 1-855-279-4763.

#### Are there confidential reporting options?

There are anonymous reporting options, but they may not remain confidential. PREA requires a “third-party reporting option,”7 which is a partnership between incarcerated facilities in the state and is specific to each facility.

Anyone who is incarcerated can send a letter to the statewide DOC PREA Coordinator at the following address:

*PREA Coordinator*

*Maine Department of Corrections*

*111 State House Station*

*Augusta, ME 04333-0111*

Residents in the following facilities can send a letter to the following addresses to make a third-party report:

#### Maine Correctional Center:

*PREA Coordinator, Cumberland County Sheriff’s Office*

*50 County Way*

*Portland, Maine 04102*

Long Creek Youth Development Center:

*PREA Coordinator, York County Sheriff’s Office*

*1 Layman Way*

*Alfred, ME 04002*

#### Mountain View Correctional Facility:

*PREA Coordinator, Penobscot County Sheriff’s Office*

*85 Hammond Street*

*Bangor, ME 04401*

Bolduc Correctional Facility & Maine State Prison:

*PREA Coordinator, Knox County Sheriff’s Office*

*327 Park Street*

*Rockland, ME 04841*

# Investigation Process

#### What is the process following a report?

See the [MECASA PREA Reporting Flow Chart](http://mecasainterventiontoolkit.weebly.com/uploads/4/4/3/6/44365787/prea_reporting_flowchart.pdf).

**What is retaliation?**

Retaliation occurs when a person is punished for reporting abuse. In a detention facility, retaliation can be perpetrated by the abuser, other inmates, or staff members. Retaliation can involve a range of behaviors, but it commonly includes isolation, harassment, withholding of privileges, threats, and/or violence.

#### How do I support clients who tell me that they are experiencing retaliation as a result of their report?

Advocates are not mandated to report retaliation. As such, you should help clients understand what to expect if they choose to formally report retaliation (or not). If they do opt to report, encourage them to document the retaliation in as much detail as possible. It might not be safe for clients to keep documentation on them though, so you may need to safety plan around that concern.

With the permission of the survivor, you may relay information about retaliation either to the facility’s PREA contact or to the statewide DOC PREA Coordinator. Each reported instance of retaliation should prompt a new investigation. Legal services through the ACLU of Maine or private attorneys may be available. If there are no legal or procedural options for resolution, you can engage in safety planning with the survivor and offer emotional support.

## “Many people think that sexual violence is merely a byproduct of incarceration. A lot of people struggle with the idea that prisoners who have been raped deserve services. However, that leads us down a dangerous path of deciding who the perfect victim is and who services are meant for.”

### -MECASA, goo.gl/GEJwSm

4

1. § 115.54 Third-party reporting

#### What information does a person who’s incarcerated have a right to know about the resolution of their case? Who will relay that information to the survivor?

PREA states that the person should be informed of the outcome of their case, including whether the facility chose to investigate and why.

In the event that the sexual assault was perpetrated by a facility staff member, the survivor should also be told the outcome of any disciplinary action taken against that staff member. For example, PREA states that a survivor should be informed if the staff member is no longer posted in the survivor’s unit or employed at the facility. Further, if the facility learns that an alleged staff perpetrator has been indicted on or convicted of a charged related to sexual abuse in the facility, the survivor should be told. 8

With regard to sexual assault perpetrated by another person who’s incarcerated, the survivor should be told if the agency learns that the alleged abuser has been indicted on or convicted of a charge related to sexual abuse within the facility. Additionally, “all such notifications or attempted notifications shall be documented”. However, if the survivor is released from the facility’s custody, the obligation under this standard is “terminated.”9

You may be the one to relay that information to the survivor, although the survivor will most likely find out from the facility’s PREA contact.

#### What happens after an investigation if there are findings?

PREA states that survivors should know the outcomes of an investigation regardless of whether the allegation is substantiated, unsubstantiated, or unfounded (see glossary below for an explanation of these terms).10 If the allegation is substantiated, the perpetrator (whether staff or person who’s incarcerated) must be administratively and criminally disciplined.11 These cases are referred to the local district attorney’s office for prosecution.

1. § 115.73 Reporting to inmates
2. Ibid.
3. Ibid.

In cases where a staff member is the perpetrator, the case will most likely go before the Maine Criminal Justice Academy Board of Trustees, where it will be reviewed for decertification. A corrections officer can be decertified even if a district attorney chooses not to prosecute.

# Juveniles

**Are there different protocols for juveniles?**

Yes and no.There are separate PREA standards for juvenile facilities, but the rights of the people who are incarcerated are largely the same.

Facility staff may be confused about your mandated reporting obligations. It’s important to respectfully emphasize that you are only obligated to report abuse to Child Protective Services—not to anyone in the facility.

# Resources for Survivors who are Incarcerated

#### What outside PREA resources are available to survivors who are incarcerated besides advocates?

[Just Detention International](http://www.justdetention.org/) is a great resource for survivors who are incarcerated that they can access online if that is a safe option for them. They also engage in a letter writing program with survivors from across the country.

Additionally, the PREA Resource Center created an inmate handbook called [*An End to Silence: Inmates’ Handbook on Identifying*](http://www.prearesourcecenter.org/sites/default/files/library/anendtosilenceinmateshandbook3rdedition.pdf)[*and Addressing Sexual Abuse*](http://www.prearesourcecenter.org/sites/default/files/library/anendtosilenceinmateshandbook3rdedition.pdf). However, it is a substantial document, and it may not be safe for clients to carry it with them. You may want to bring a copy with you and have sections marked that you could look at together.

Finally, [Black and Pink](http://www.blackandpink.org/) is a good resource for LGBTQ clients. They have a pen pal service and send monthly newsletters to survivors who are incarcerated.

1. § 115.71 Criminal and administrative agency investigations 5

# PREA Compliance

#### What happens if correctional facilities don’t adhere to PREA standards?

#### It depends on whether the facility is a prison or a jail. PREA compliance is mandated by federal law for any facilities that receive federal funding, which prisons do. As such, prisons are audited for PREA compliance every year. If prisons fail their audits, they lose 5% of their federal funding. On the other hand, county jails do not typically receive federal funding. They are not audited for compliance and there are no direct, enforceable financial penalties for jails that do not comply. However, if jails are noncompliant, they can still be sued by private citizens (like inmates or their family members) for noncompliance and/or they may lose contracts to hold state or federal inmates. [Learn more here](https://www.prearesourcecenter.org/frequently-asked-questions/which-federal-grant-programs-will-five-percent-penalty-non-compliance).

#### Can we ask correctional facility staff to join our SART?

Yes! In fact, PREA standard 115.65 requires that facilities develop a coordinated response plan like those of community Sexual Assault Response Teams. Inviting correctional facility staff (such as the facility’s PREA contact or the correctional facility’s leadership) may help them successfully meet this standard.

**Does PREA require facilities to provide interpretation for survivors with limited English proficiency?**

Yes. PREA standard 115.16 requires that facilities provide interpretation for PREA-related language needs (under which sexual assault services would fall).

However, we know policy and practice are not always perfectly aligned, both locally and nationally. Particularly in jails—where PREA standards may not be enforced and/or there may not be a language access policy—you might find different protocols in place. Further, SASCs *also*have a legal obligation to provide language access to clients. So, while facilities should be paying for these services, if they don’t, we would never let that stop us from providing advocacy to a person who is incarcerated. That means that even though federal law puts the burden on the facility, centers should be prepared to provide interpretation as needed to provide client advocacy. Of course, it could be helpful to give feedback to the facility’s PREA contact about any instances of PREA or internal policies not being followed. The goal in providing such feedback is to advocate for a different result in the future.

# Glossary

**Inmate:** Term used for an incarcerated individual in a county jail setting. However, in PREA documents, “inmate” may refer to incarcerated individuals in either jail or prison settings.

.

**Resident:** Term used for an incarcerated person in a state-run facility setting.

**Substantiated allegation:** An allegation that was investigated and determined to have been perpetrated.

**Unsubstantiated allegation:** An allegation that was investigated, and the investigation produced insufficient evidence to make a final determination as to whether the assault was perpetrated. This case will remain open in case new information becomes available.

**Unfounded allegation:** An allegation was investigated and determined not to have been perpetrated.

# Inmates’ Rights Under PREA

The following is a summation of inmates’ rights under PREA, as adapted from *An End to Silence: Inmates’ Handbook on Identifying and Addressing Sexual Abuse*. For the full list of PREA standards, visit the PREA Resource Center website. You can also email Carlie Fischer (MECASA Systems Advocacy Coordinator) at carlie@mecasa.org if you have questions or need more information.

#### General:

* Inmates have the right to be free from sexual abuse in custodial settings (public or private prisons, jails, lockups, and community residential facilities).12

#### Searches:

* Staff may not perform cross-gender searches (strip or visual cavity) except in urgent circumstances. Pat searches of female inmates by male staff are prohibited, except in urgent circumstances.13
1. § 115.11 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator 6
2. § 115.15 Limits to cross-gender viewing and searches
3. § 115.33 Inmate education

#### Inmates’ PREA Education:

* Facilities must provide inmates with PREA training during intake and within 30 days of incarceration. MECASA and the DOC created a video that facilities can use to meet this requirement. (For DVD copies of the video, contact Carlie Fischer, the MECASA Systems Advocacy Coordinator, at carlie@mecasa.org). For facilities that opt not to use the DVD, the following should be covered during the training:14

-The agency’s zero tolerance policy regarding sexual abuse or sexual harassment;

-How to report incidents or suspicions of sexual abuse or sexual harassment;

-The right to be free from sexual abuse, sexual harassment, and retaliation; and

-Procedures for responding to such incidents.

* Language or disability should not prevent inmates from receiving education regarding PREA standards. Facilities must provide information about sexual violence in a format they understand. PREA should be made available in a language other than English, by signing, or in braille, etc. and be at a low literacy reading level.15

#### Medical, mental health, and advocacy services for victims:

* Victims must be offered services from local sexual assault support centers after they report an assault.16
* Facilities should provide mailing addresses and telephone numbers, including toll-free hotline numbers where available for outside confidential support services.17
* Inmates must have access to outside confidential support services for emotional support related to sexual abuse no matter when the abuse was perpetrated. These communications should be as confidential as possible. Facilities must inform inmates if they are not confidential.18
* Inmates shall receive medical and mental health care immediately following their report of abuse, and on an on-going basis without financial cost. They have a right to this care whether the inmate names the perpetrator or cooperates with any investigation arising out of an incident.19

#### Reporting:

* There is no time limit on when inmates can report sexual abuse.20
* Inmates can have a third party (another inmate, family member, etc.) report sexual abuse.21
* Facilities must provide inmates with access to multiple reporting mechanisms in the facility (written grievances, oral reporting,

hotlines, etc.), as well as one external reporting mechanism so inmates can report to someone outside of the authority of the facility. Advocacy services are often confused as this external reporting mechanism. Advocates may need to remind correctional staff that they are not a reporting entity.22

* Facilities must provide protection from retaliation by staff and other inmates if an inmate chooses to report sexual abuse perpetrated against them.23

# “Each and every day I grow a little more and surprise myself. I can be changed by what happened to me, but I refuse to be reduced by it.”

1. § 115.16 Inmates with disabilities and inmates who are limited English proficient
2. § 115.53 Inmate access to outside confidential support services
3. Ibid.
4. Ibid.
5. § 115.82 Access to emergency medical and mental health services

§ 115.83 Ongoing medical and mental health care for sexual abuse victims and abusers

§ 115.21 Evidence protocol and forensic medical examinations

1. § 115.52 Exhaustion of administrative remedies, section B1.
2. § 115.54 Third-party reporting

§ 115.51 Inmate reporting

1. Ibid.
2. § 115.67 Agency protection against retaliation

### -Anonymous, goo.gl/GEj8VL

7

#### Investigations:

* + Facilities must take all allegations seriously and investigate them both administratively and criminally.24
	+ Facilities must provide inmates with the outcomes of allegations reported to them – whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.25

#### Housing and Vulnerability:

* + Facilities must do vulnerability assessments to assess inmate’s risk of victimization while in the facility. This assessment should take into account an inmate’s own perception of risk and should be used to make housing and programming determinations while in the facility.26
	+ Protective custody of victims is prohibited unless it is the only way to provide safety from perpetrators.27
	+ An inmate should only be in segregated housing for a short period of time until a more suitable housing option is open. Inmates placed in segregated housing for safety or protection should have access to all programming, education, and visitation as if they were housed with the general population.28
1. § 115.71 Criminal and administrative agency investigations
2. § 115.73 Reporting to inmates
3. § 115.41 Screening for risk of victimization and abusiveness 8
4. § 115.43 Protective custody
5. Ibid.
1. [↑](#endnote-ref-1)