Prison Rape Elimination Act (PREA)
&
Sexual Misconduct

Initial & Annual Training for

Identified Contractors & Volunteers

LESSON OBJECTIVES

By the end of this presentation, you will be able to:

- Differentiate between PREA and Sexual Misconduct
- Define ‘zero tolerance’.
- Identify your responsibilities in preventing, detecting, reporting, and responding to sexual misconduct in accordance with PREA standards, state law, and DOC policies.
- Describe how to report PREA and sexual misconduct within DOC.

TERMS

The term **"Individual"** is used throughout this training and refers to any and all of the following:

Incarcerated Individuals/Offenders

Individuals/Residents in Work/Training Release

Individuals who reside in the community who are under DOC Supervision

ANYONE CURRENTLY UNDER THE JURISDICTION OF THE DOC

TERMS

The term **"staff"** is defined in DOC Policy 490.800, Prison Rape Elimination Act (PREA) as any of the following:

Department Employees

Contract Staff/Vendors

Volunteers

~ or ~

Any person providing services in Department facilities or offices.

Understanding PREA & Sexual Misconduct

What is PREA?

PREA is federal legislation that addresses sexual assault/abuse/harassment of adult and juvenile individuals, and applies to:

- Federal and state prisons, juvenile detention facilities, lock-ups, jails, and ICE detention facilities
- Public and private correctional institutions
- Certain community-based residential facilities

  (e.g., in-patient substance abuse treatment facilities for individuals on community supervision)

PREA
vs.
CUSTODIAL SEXUAL MISCONDUCT

PREA

- **FEDERAL LAW**
- Protects incarcerated adult and juvenile offenders/residents that are housed in federal, state, county, or city facilities or work/training release facilities.

Custodial Sexual Misconduct

- **STATE LAW**
- Protects incarcerated adult and juvenile offenders/residents that are housed in federal, state, county, or city facilities or work/training release facilities.

~ AND ~

- Protects individuals residing in the community who are under DOC jurisdiction

Sexual Misconduct

Definitions & Impact

SEXUAL MISCONDUCT

- There is no such thing as a "consensual" sexual relationship between an individual under department jurisdiction and staff.
- Due to the imbalance of power, in the eyes of the law, individuals under Department supervision (including those residing in the community) are NOT able to give consent to any type of sexual contact with staff.
  - The individual under Department jurisdiction will ALWAYS be considered the victim.
  - The staff will ALWAYS be considered the perpetrator.

Remember:
You ARE Staff

Staff will always be held accountable for any inappropriate relationships.

SEXUAL MISCONDUCT

The term “Sexual Misconduct” is an overall term that includes the following:

- Aggravated Sexual Assault
- Offender-on-Offender Sexual Assault
- Offender-on-Offender Sexual Abuse
- Sexual Harassment
- Staff Sexual Misconduct

Clink here to review Policy
DOC 490.800, PREA definitions

Aggravated Sexual Assault

Aggravated Sexual Assault

includes sexual acts perpetrated by either staff or an offender that occurred within the previous 120 hours and involve penetration or exchange of body fluids.

Offender-on-Offender Sexual ASSAULT

Offender-on-Offender Sexual ASSAULT is an incident in which one or more of the following acts occurs between 2 or more offenders without an offender's consent or when an offender is unable to consent or refuse:

1. Contact between genitalia (i.e., penis, vagina) or between genitalia and the anus involving penetration, however slight. This does not include kicking, grabbing, or punching genitals when the intent is to harm or debilitate rather than sexually exploit.
2. Contact between the mouth and the penis, vagina, or anus.
3. Penetration of the anal or genital opening of another person by a hand, finger, or other object.
4. Coerced sexual activity in response to pressuring, offer of protection, payment of debt, etc.

Offender-on-Offender Sexual ABUSE

Offender-on-Offender Sexual ABUSE:

Includes contact between 2 or more offenders without an offender's consent or when an offender is unable to consent or refuse, including intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttock of the victim. This does not include kicking, grabbing, or punching when the intent is to harm or debilitate rather than sexually exploit.

NOTE: Consensual, non-coerced sexual activity between offenders is prohibited by Department rule, but is not defined as a violation of PREA policies.

Sexual Harassment

- Deliberate and repeated, unsolicited statements or comments of a sexual nature directed to an individual, including demeaning references to gender or derogatory comments about body or clothing, to include:
  - Comments made by staff about an offender's body intended to abuse, humiliate, harass, degrade, or arouse any person.
  - Demeaning or sexually oriented statements/gestures made by staff in the presence of an offender.
  - Staff threatening, intimidating, coercing, or using abusive language toward an offender.
- Repeated profane or obscene language/gestures of a sexual nature.
- Threats of sexual misconduct made by one offender to another offender.

Staff Sexual Misconduct

This includes the following acts when performed by staff:

1. Engaging in sexual intercourse with an offender.
    a. Sexual intercourse includes vaginal, anal and oral intercourse, as well as the penetration of an offender's vagina or anus with an object when such penetration is not performed for the purpose of providing medical care or is without a legitimate penological purpose.
2. Allowing an offender to engage in sexual intercourse as defined above with another staff.
3. Intentionally touching, either directly or through clothing, the genitalia, anus, groin, thigh, or buttock of an offender or the breast of a female offender without a legitimate penological purpose.

Staff Sexual Misconduct (cont.)

4. Compelling or allowing an offender to touch the genitalia, anus, groin, thigh, breast, or buttock of any staff or another offender, either directly or through clothing, without a legitimate penological purpose.
5. Kissing an offender or allowing oneself to be kissed by an offender.
6. Knowingly exposing one's genitalia, anus, groin, thigh, breast, or buttock to an offender.
7. Voyeurism – observing an offender's partially or fully naked body or an offender engaging is a sexual act with him/herself or another offender without legitimate penological purpose. This does not include inadvertent or unavoidable observation or when such observation is the result of offender-initiated actions (e.g. flashing).

Staff Sexual Misconduct (cont.)

8. Engaging in any of the following acts for the purpose of gratifying the sexual desire(s) of any person or getting an offender to engage in staff sexual misconduct, or when the act has sexual undertones (i.e. can reasonably be inferred to be sexual in nature, judged according to a reasonable person's reaction to a similar act under similar circumstances):

    a. Writing letters, showing pictures, or offering gifts or special privileges to an offender.

    b. Engaging in a personal relationship with an individual known to be under Department jurisdiction, without legitimate penological purpose unless expressly authorized by the Secretary/designee.

Staff Sexual Misconduct (cont.)

8. c. Pat or strip searches conducted in violation of DOC 420.310 Searches of Offenders, DOC 420.325 Searches and Contraband for Work Release, DOC 420.390 Arrest and Search, and/or operational memorandums.
9. Threatening, bribing, or coercing an offender to engage in staff sexual misconduct.
10. Attempting to engage in staff sexual misconduct.
11. Purposefully helping another person engage in staff sexual misconduct.
12. Discouraging or preventing offenders and/or staff from making good faith reports of staff sexual misconduct.

IMPACTS OF SEXUAL MISCONDUCT

The impacts of sexual misconduct are harmful to all!

- Violates constitutional rights
- Destroys trust among staff and individuals under the Department's jurisdiction
- Exposes staff to civil and criminal liability
- Exposes agency to civil liability
- Jeopardizes safety and security
- Undermines the public support and trust of the agency
- Victimizes those already vulnerable

IMPACTS OF SEXUAL MISCONDUCT (cont.)

What could happen to you?

If you engage in Sexual Misconduct, you face the possibility that you may:

- Lose your job and career
- Lose your friends
- Lose your family
- Be fined and burdened with legal fees
- Be criminally prosecuted
- Be required to register as a sex offender
- Be sent to prison

WHAT DOES ‘ZERO TOLERANCE’ MEAN?

All allegations of sexual misconduct WILL:

- be taken seriously and investigated
- be referred to local law enforcement when appropriate

- The Department WILL take appropriate action against perpetrators of sexual misconduct up to and including termination of contract and/or services. Criminal investigation may be conducted resulting in criminal charges.

- The Department PROHIBITS retaliation against any person because of his/her involvement in the reporting or investigation of a PREA allegation.

Reporting PREA Allegations

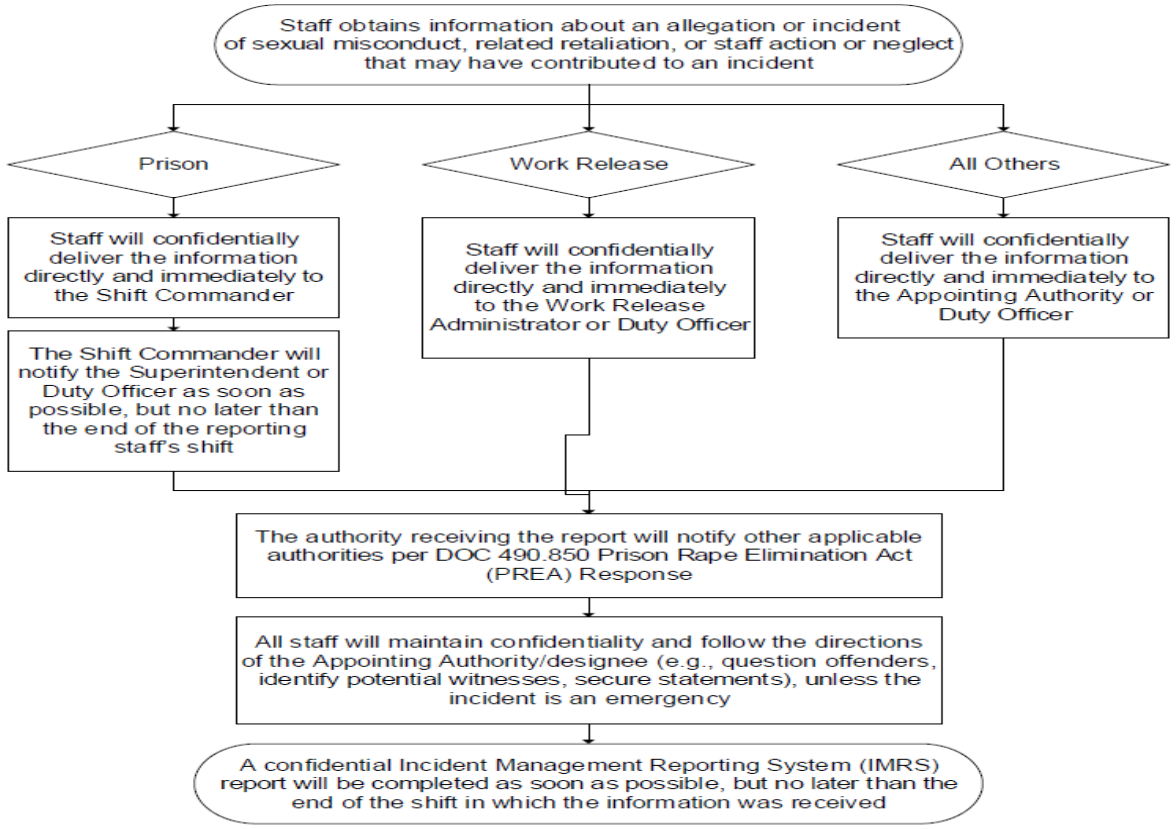
DOC Policy 490.850

REPORTING PREA ALLEGATIONS

If you become aware of sexual misconduct, YOU immediately become the First Responder. As first responder, it is your responsibility to:

- Ensure the victim and the accused are separated
- Tell an employee that you need to speak with the appropriate person (listed below) *immediately*. Due to confidentiality, you are **NOT** authorized to share details with any other person.
  - In a Prison facility: Shift Commander
  - In a Work Release: Work/Training Release Administrator or the Duty Officer
  - In Community Corrections: Field Administrator or the Section Duty Officer
- Follow instructions given by the appropriate authority listed above.
- Relay important observations.

PREA REPORTING PROCESS



Staff may report allegations of a highly sensitive nature (e.g., allegations against the Shift Commander/CCS or in which that person may have a conflict of interest) directly to the Appointing Authority or Duty Officer

Allegations made against the Appointing Authority will be reported to the next higher authority

Terms are defined in Attachment 1 of DOC 490.800 Prison Rape Elimination Act (PREA) Prevention and Reporting

Rev. (2/19) DOC 490.850 Attachment 4

CONFIDENTIALITY AS IT RELATES TO PREA

Regardless of your role (medical, clergy, chemical dependency, mental health, etc.), if you become aware of a sexual misconduct situation, you are **required** to report.

- You must not reveal any information related to sexual misconduct/PREA apart from reporting to the appropriate authority.
- Those who breach confidentiality may be subject to termination of services and/or contract.
- Whether you are directly or indirectly involved, investigations can be very stressful. If necessary, you may take questions or concerns to your Appointing Authority (Superintendent, Work/Training Administrator, or Field Administrator).

COMMUNICATION

Diversity

Stereotyping

Boundaries

Secrets

DIVERSITY & COMMUNICATION

It is important to understand that there are underlying factors to consider when communicating with individuals. These factors are especially important when communicating about issues of a sensitive nature.

Gender:

Keep in mind that men and women may respond very differently to sexual assault and trauma. Some may wish to talk about it and some may not.

Geographical:

Misunderstanding may occur between people that come from rural setting and those that come from major cities. Their life experiences and awareness may be slightly different.

DIVERSITY & COMMUNICATION (cont.)

Generational:

Older generations tend to be more private and may hesitate to disclose abuse; while younger generations may define sexual issues differently. For example, the belief that forced oral sex is not a form of sexual assault.

Cultural:

Be aware of cultural differences and understand that this may impact the way an individual communicates. An example of this is how some cultures avoid direct eye contact, or have differing opinions on personal space and physical touch.

It is the Department's expectation that staff will communicate in a professional manner with all individuals *under the Department's jurisdiction, regardless of similarities or differences.*

INTERACTIONS WITH THE LGBTI COMMUNITY

Within the Department of Corrections there are individuals and staff who identify as lesbian, gay, bisexual, transgender, or intersex (LGBTI).

- You are responsible for the way you interact with others.
- Create and maintain an environment that supports open dialogue.
- Be mindful of your own beliefs, cultural norms, and gaps in knowledge surrounding LGBTI issues and individuals.
- Treat everyone with respect.

AVOID STEREOTYPING

Be cautious not to make assumptions based upon stereotypes:

- Understand that anyone can be a victim.
- Do not assume, based on an individual's appearance, that he/she cannot be a victim.
- Do not assume that LGBTI individuals cannot be sexually assaulted.
- Do not assume that mentally ill individuals are not credible witnesses or that they are incapable of telling the truth.
- Do not assume that a history of prostitution means that individuals want to have sex with staff or other individuals.

COMMUNICATION

- Take EVERY report of sexual abuse, assault, and/or harassment as credible.
- Promote a culture where individuals feel safe communicating with you.

BOUNDARIES

Working with individuals can be very challenging:

You may be surprised at some of the feelings, both negative and positive, that you may develop.

It is important to pay close attention to your feelings and respond appropriately to ensure your boundaries are not being compromised.

“Red Flags”

Below are situations that should immediately cause a red flag for you! These are signs that your boundaries could be eroding.

- Do you talk about your personal issues with individuals?
- Are you keeping a secret with a specific individual?
- Do you believe you can ask an individual to do personal favors for you or they can ask personal favors of you.
- Do you seek personal advice from a specific individual?

“Red Flags” *(cont.)*

- Are you saying anything to an individual that you would not want recorded?
- Would you be reluctant to have another staff member or a family member overhear a conversation that you are having with an individual?
- Do you find yourself looking for extra opportunities to be around a specific individual?
- Do you have thoughts or fantasies about touching or kissing a particular individual?
- Do you try to find ways to be alone with an individual?

SECRETS

Remember – NO SECRETS!

Eroding boundaries are often characterized by the need to keep a secret.

1. Never share confidential information about one individual with another.

2. In your service to DOC, **you are obligated** to report situations that pose a risk to public safety, and/or are in violation of law, policy, agency rules, or conditions of confinement.

DOC Policies

Federal Law & State Law

RELATED DOC POLICIES & LAWS

490.800 PREA Prevention & Reporting

490.850 PREA Response

490.860 PREA Investigations

Public Law 108-79-Prison Rape Elimination Act of 2003

RCW 9A.44.160 Custodial Sexual Misconduct

To view documents:

1. Place cursor over document you wish to open.
2. Right mouse click
3. Click on "open Weblink in Browser"

RCW 9A.44.160: CUSTODIAL SEXUAL MISCONDUCT IN THE FIRST DEGREE.

(1) A person is guilty of custodial sexual misconduct in the first degree when the person has sexual INTERCOURSE with another person:

(a) When:

(i) The victim is a *resident* of a state, county, or city adult or juvenile correctional facility, including but not limited to jails, prisons, detention centers, or work release facilities, *or is under correctional supervision*; and

(ii) The perpetrator is an *employee* or *contract personnel* of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or

(b) When the victim is being detained, under arrest[,] or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.

(2) Consent of the victim is not a defense to a prosecution under this section.

(3) Custodial sexual misconduct in the first degree is a class C felony.

RCW 9A.44.170: CUSTODIAL SEXUAL MISCONDUCT IN THE SECOND DEGREE.

(1) A person is guilty of custodial sexual misconduct in the SECOND degree when the person has sexual CONTACT with another person:

(a) When:

(i) The victim is a *resident* of a state, county, or city adult or juvenile correctional facility, including but not limited to jails, prisons, detention centers, or work release facilities, *or is under correctional supervision*; and

(ii) The perpetrator is an *employee* or *contract personnel* of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or

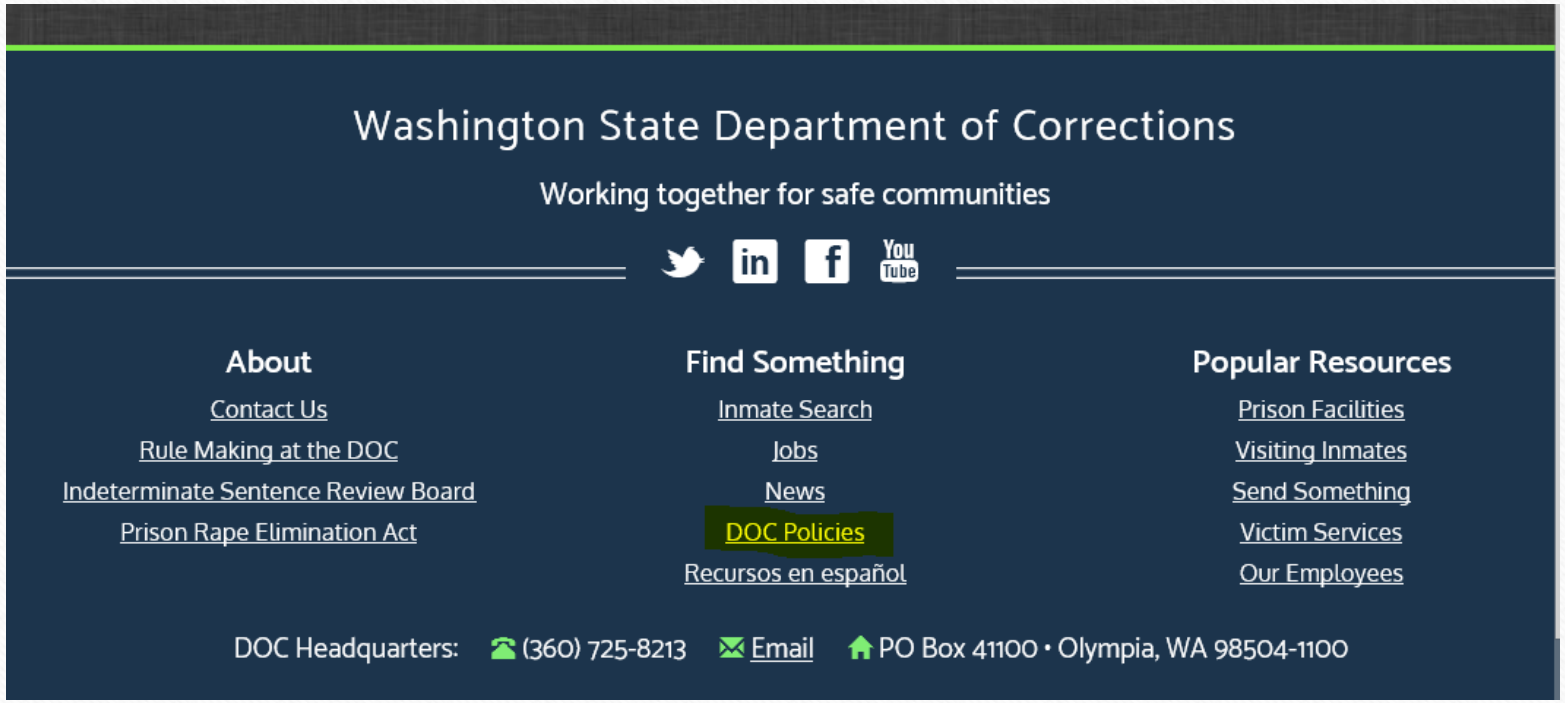
(b) When the victim is being detained, under arrest[,] or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.

(2) Consent of the victim is not a defense to a prosecution under this section.

(3) Custodial sexual misconduct in the first degree is a class C felony.

Policies can be found at DOC.WA.GOV

Link is located at the center of bottom of the page



FINAL STEPS

You are one step away from completing your PREA Training!!

TO COMPLETE THE COURSE:

- ✓ Print the next slide: PREA Disclosure and Training Acknowledgement
- ✓ (Content of the form is taken straight from DOC Form 03-523 however the appearance has been altered to fit this PowerPoint)
- ✓ Read the form carefully and initial each statement.
- ✓ Sign the form and send a copy to your DOC contract manager, Community Partnership Program Manager, the facility PREA Compliance Manager, or your identified point of contact.

Training is due annually prior to June 30th of each year.

PREA DISCLOSURE AND TRAINING ACKNOWLEDGEMENT (03-523)

Initial on lines

Print Full Name: _____ **Start Date:** _____

Facilitie(s) where you provide services: _____

_____ I confirm that I have not engaged in sexual misconduct with an individual under Department supervision. I acknowledge and understand that I have a continuing duty to disclose and immediately report to the Appointing Authority my involvement in any form of sexual misconduct.

_____ I have not engaged in sexual abuse in a prison/jail//lockup/community confinement/ juvenile facility or other institution defined as follows:
Any facility or institution which is owned, operated, managed by, or providing services on behalf of the State, Federal Government, or political subdivision of a State (i.e., county, city or town). This does not include employment in privately owned and operated facilities such as nursing homes where the sole connection to the State is a state license to operate the establishment unless state and/or federal government agencies contract with the facility or its parent company to house incarcerated individuals. (e.g., facility for the mentally ill, disabled, chronically ill, or handicapped, residential care or treatment facility for juveniles, facility that provides skilled nursing, intermediate or long-term care, or custodial residential care).

_____ I have never been civilly or administratively adjudicated (there was a formal finding and a judgement or a decision was rendered in a civil or administrative proceeding) or otherwise found to have engaged or attempted to engage in sexual abuse/assault in any setting.

_____ I have never been accused of or investigated for sexual harassment or sexual involvement of any type in any place I have worked or volunteered.

_____ I have never been the subject of substantiated allegations of sexual abuse or sexual harassment or resigned during a pending investigation of alleged sexual abuse or sexual harassment.

_____ I have not engaged in any incident of sexual harassment or sexual misconduct not addressed above.

_____ All answers and statements are true and complete to the best of my knowledge. I understand that untruthful answers or deliberate omissions may cause termination of volunteer services.

_____ I have successfully completed the Prison Rape Elimination Act (PREA) volunteer training. I verify that I have reviewed and understand all sections of the training course and all answers and statements are true and complete to the best of my knowledge.

Signature:_____ **Date Training Completed:** _____