



DEPARTMENT OF THE NAVY
BUREAU OF NAVAL PERSONNEL
5720 INTEGRITY DRIVE
MILLINGTON, TN 38055-0000

BUPERSINST 1640.23
BUPERS-00D

13 JUN 2014

BUPERS INSTRUCTION 1640.23

From: Chief of Naval Personnel

Subj: COMPLIANCE WITH DEPARTMENT OF JUSTICE NATIONAL STANDARDS
TO PREVENT, DETECT, AND RESPOND TO PRISON RAPE UNDER THE
PRISON RAPE ELIMINATION ACT AT NAVY SHORE CONFINEMENT
FACILITIES

Ref: (a) 42 § USCS 15601, et al.
(b) 28 CFR 115
(c) OUSD(P&R) DTM 13-002 of 10 Feb 13 (Ch 1 of 19 Sep 13)
(NOTAL)
(d) SECNAVINST 1640.9C
(e) BUPERSINST 1640.22

Encl: (1) PREA Definitions of Sexual Abuse and Sexual
Harassment

1. Purpose. To implement Department of Justice (DOJ) national standards to prevent, detect, and respond to prison rape under the Prison Rape Elimination Act (PREA) within the Navy corrections system. As used in this instruction, the term "prisoner" associates with both pre-trial and post-trial prisoners. The term "inmate" as used in enclosure (1) is synonymous with "prisoner."

2. Applicability. This instruction is applicable to the following Level I-III Navy shore pre-trial and post-trial confinement facilities within the United States, referred to herein as "PREA compliant facilities:"

a. Naval Air Station (NAS) Jacksonville Pre-trial Confinement Facility (PCF), Jacksonville, FL (Level I male and female);

b. Naval Consolidated Brig (NAVCONBRIG) Miramar, San Diego, CA (Level II male and female; Level III female);

c. NAVCONBRIG Miramar Detachment (DET) Pearl Harbor, Pearl Harbor, HI (Level I male and female);

d. NAVCONBRIG Charleston, Charleston, SC (Level II male);
and

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e. NAVCONBRIG Chesapeake, Chesapeake, VA (Level I female, II male).

3. Background

a. The PREA of 2003, reference (a), was enacted to address the problem of sexual abuse of persons in the custody of United States prisons and jails. The PREA calls for Federal, State, and local corrections systems to have a zero-tolerance policy regarding sexual abuse and sexual harassment (as defined by reference (b)) and making prevention of prison rape a top priority.

b. In 2013, reference (c) directed the Military Departments operating Department of Defense (DoD) Level I-III confinement facilities to develop and implement necessary rules and procedures to satisfy the requirements of PREA with strict enforcement measures and universally high standards. This instruction serves to implement the DOJ rules and procedures, as codified in reference (b), within all PREA-compliant facilities. It clearly expects that prevention of rape and sexual violence is a primary focus that guides our most important correctional decisions.

c. For the purposes of this policy, the term "agency," as annotated within reference (a), refers to the Navy corrections system and "agency head" refers to Navy Personnel Command (NAVPERSCOM), Director, Corrections and Programs Office (PERS-00D). The term "facility head" refers to PREA-compliant facility commanding officers or designees (i.e., confinement facility officers-in-charge).

4. Policy

a. The Navy corrections system shall provide a safe, humane, and secure environment free from threat of sexual abuse for all prisoners in custody by maintaining a program of prevention, detection, response, investigation, and tracking of all incidents of alleged sexual abuse and sexual harassment within the meanings of reference (b).

b. The Navy corrections system has a zero-tolerance policy for all forms of sexual abuse and sexual harassment within its confinement facilities. For the purposes of this policy, the

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terms "sexual abuse" and "sexual harassment" will have the meanings described by enclosure (1), as directed by reference (b).

c. NAVPERSCOM (PERS-00D) and Navy confinement facilities are committed to working diligently to prevent, detect, and respond to sexual abuse and sexual harassment and, to the best of their ability in a military corrections context, immediately adopt and comply with the DOJ rules and procedures as codified in reference (b). Additional guidance and interpretation of reference (b) shall also be adopted as issued by NAVPERSCOM (PERS-00D).

d. An administrative or criminal investigation, as applicable, shall be completed for all allegations of sexual harassment and sexual abuse. In addition, all allegations of sexual harassment and sexual abuse, regardless of severity or merit, will be immediately referred to the Naval Criminal Investigative Service (NCIS) for investigation.

5. Action

a. NAVPERSCOM (PERS-00D)

(1) Designate, in writing, an upper-level, agency-wide PREA coordinator and provide sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards.

(2) Provide oversight of the PREA implementation process and facilitate coordination within all PREA-compliant facilities on related issues and requirements.

(3) Provide, as necessary, interpretation and clarification of PREA standards in a military corrections context, with recommended approaches for compliance.

(4) Develop agency-wide memoranda of agreement for external support services including but not limited to criminal investigative measures, medical care provisions, mental health providers, and military reporting mechanisms to support compliance with PREA standards.

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(5) Coordinate the continuous agency-wide cycle of facility PREA audits within the Navy corrections system as required by reference (b).

(6) Support the DoD Corrections Council PREA Working Group in its effort to promote coordination, consistency, and uniformity among the Military Departments in the implementation of the PREA.

(7) Update, as necessary, references (d) and (e) to reflect compliance, in a military corrections context, with the DOJ rules and procedures as codified in reference (b).

b. Commanding Officers of PREA-compliant Facilities

(1) Publish command policy and procedures to implement the Navy's zero tolerance approach to preventing, detecting, responding, investigating, and tracking of sexual abuse and sexual harassment incidents.

(2) Designate, in writing, a PREA compliance manager and provide sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards.

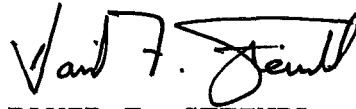
(3) Pursue local memoranda of agreement for support services from external parties to support compliance with PREA standards.

(4) Ensure an administrative or criminal investigation, as applicable, is completed for all allegations of sexual harassment and sexual abuse.

c. NAVPERSCOM (PERS-00D) and PREA-compliant Facility Commanding Officers. Adopt, in a military context, the rules and procedures to satisfy the requirements of the PREA with strict enforcement measures and universally high standards.

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6. Records Management. Records created as a result of this instruction, regardless of format and media, shall be managed per Secretary of the Navy M-5210.1 of January 2012.



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PREA Definitions of Sexual Abuse and Sexual Harassment

Per the guidance promulgated by the Department of Justice in 28 C.F.R. Part 115, "National Standards to Prevent, Detect, and Respond to Prison Rape Under the Prison Rape Elimination Act (PREA)" the term-

Sexual abuse includes:

- (1) Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident; and
- (2) Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer.

Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- (4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the inmate, detainee, or resident:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

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- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (4) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (5) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (6) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1)-(5) of this section;
- (7) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and
- (8) Voyeurism by a staff member, contractor, or volunteer.

Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

Sexual harassment includes—

- (1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and

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(2) Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.