PREA, Public Policy and Jails: Quantum Growth in Best Practices and Evolving Constitutional Standards

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Introduction - It is a serious call for this correctional administrator to be able to address the PREA Panel. Given a virtual entire career in the jails sector of line correctional operations I feel a responsibility in offering comments to the Commission and through the web to correctional colleagues throughout the country. The integration of web based communication into the public policy process has changed the world of public policy and public service and has brought us all directly to the table on virtually every issue before us. I am mindful of the professional responsibility that is created or generated through both presenting in this venue on this steadily evolving topic of PREA and also the virtual immediate sharing with colleagues across the country.

Line Operations, PREA and Jail Administration - I am a line administrator who after speaking today goes right back to a county of one million residents and a jail system that engages over 16,000 detainees and convicted offenders each year. That is a size and scope significantly larger than 90% of the jails in this country, and infinitely smaller than the largest 50 county corrections/systems that cover the local corrections field. While there are nuisances and policy iterations that distinguish between jails by size, the public

policy core or PREA impacts every local correctional facility leaving none out except by self-imposed political determination to look the other way in the face of federal legislation and case law and compelling historical practice that underlines both PREA as an area of public policy and most of the proposed standards that await forthcoming determination by the Attorney General of the United States.

While my comments may carry a focus on jails, they really are equally relevant to prisons, community correctional programs, and juvenile detention facilities and police lockups. They warrant full review by military facilities and clearly will drive practice over time throughout the corrections profession. As a line administrator I am as liable for criticism and potential litigation as any system represented here today. That is one of the reasons I so readily accepted the invitation to speak and comment on the PREA issue area as it relates to Jails and Local Corrections in this country.

I venture here not as a commentator or advocate or journalist or litigator or victim, but as a line 24/7 correctional administrator responsible for integrating the macro policy focus of PREA and the forthcoming regulations into our daily operations in Montgomery County – Department of Correction and Rehabilitation. That needs to be crystal clear if I am to be an honest and transparent presenter. I come with no special imprimatur of truth or great accomplishment or being above any of the responsibilities that have created significant debate or concerns within the corrections profession since PREA arrived on the scene during the almost silent initial debate and effort to generate legislation in the early 2000s.

PREA and Corrections - A Serious Movement Forward - Let me remind those here today that when the Federal legislation was passed, it arrived virtually without notice for it was never taken with great seriousness at its inception except by the determined advocates who sought to bring this issue forward and demand enormous policy engagement within the macro organizational and policy context of correctional operations. The day that President Bush signed the PREA legislation the absence of serious interest dramatically changed and now PREA stands at the center of policy considerations as the standards process moves towards conclusion. PREA demonstrates that literally street level advocacy can succeed and must be taken seriously by main line elements of any public policy topic. It happened, it is here and it is likely to significantly impact every correctional facility and program in this country. That warrants our serious and concerted attention.

The Prison Rape Elimination Act must be understood in an historical and public policy context. It did not come from nowhere, and while it may not have been initiated through more traditional process of judicial determination or standards development from the field, it does flow quite smoothly from an historical background in the early 1970s. PREA, its legislative initiation/application and the standards to follow are not particularly different than strident judicial intervention, use of masters and experts and the brilliant standards movement that developed through the enlightened work of the American Correctional Association, the National Commission on Correctional Health Care, those states with ironclad correctional standards and the Correctional Education Association.

Strict adherence to evolving constitutional minima has long been in place. Perhaps some of the concern and unrest flows from younger administrators who were never part of that period from the early 1970s through the mid-1990s, as the hands-off doctrine was engaged, challenged and abolished forever under clear guidelines of constitutional interpretation and practice. When examined in an historical context which generated profound changes in public policy and correctional operations, PREA carries far less new policy than the scores of federal court decisions that decisively changed the face of corrections from 1970 through 1991.

The Jail and its Growing Importance in American Corrections and Public Safety - Jails still remain largely misunderstood and often bypassed in the public policy literature of criminal justice and public safety. PREA fortunately is fully applicable to jails and local correctional facilities throughout the United States, which ensures policy and operational improvements as well as some form of audit review, will come to over 3,000 county jurisdictions in the United States. This is as it should be. Jails as an issue area is growing in importance within the justice field given its enormous scope, numbers of engaged individuals, potential for participation in reentry and dominant opportunities for engaging community health care and mental health issues. Jails are not some mom and pop operation or overnight residences without focus or purpose. They are a driving element in the criminal justice system which carries an enormous opportunity for societal improvement if used in an aggressive and changing manner for those who pass through the local correctional system in the United States.

Jails often defy concerted data driven analysis because there are so many of them. It is far easier to collect data on 50 state prison systems or a singular Federal Bureau of Prisons than on over 3,300 jails in the United States. Quality data collection is definitely improving. Over several years then Chief of Correctional Statistics within the Justice Department Bureau of Justice Statistics, Allen Beck, significantly expanded data collection and detailed explanations of the U.S. jail population. This gave the jail an understandable face of significant dimensions that was forcefully presented for the first time with vigor and intensity and accurate data collection from the 1980s through 2005. The work of his successor, William Sabol, has continued this commitment to engaging between 10 and 13 million annual jail bookings and releases that dwarves the state and federal systems. Average Daily Population (ADP) data/numbers tell us nothing about the American jail system, as one grows weary constantly hearing that on a given day there are 1.4 million convicted offenders in American prisons, but only 700,050 individuals in over 3,300 jails.

The jail seems miniscule by comparison but it is not and that makes PREA dramatically important in developing and sustaining a humane correctional system in this country. If one measures correctional practice by the yardstick of bookings and releases and how many individuals are impacted, jails far surpass state and federal prisons in their impact upon individuals and every jurisdiction in this country. Prison systems may engage well less than 1 million individuals per year who pass through the system while jails engage a mammoth number of 10-13 million. Even if one third are repeat admissions a number of

10 million distinct individuals carry enormous responsibility for constitutional operations, and PREA sits squarely in the middle of such a responsibility.

PREA, Prisoner Vulnerability in Jail and Due Diligence - let us except the data element of 10-13 million admissions on a yearly basis to jails in this country. Prisoner vulnerability to sexual engagement would be at its highest and most profound threat in a jail setting. Large numbers of unclassified detainees find themselves in a very strange setting where little information may be available about those with the greatest protection needs. PREA guidelines make it abundantly clear that correctional staff have a score of responsibilities to guarantee prisoner safety during a timeframe (jail detention) when vulnerability is most pronounced.

The jail portion of incarceration may be as short as an hour or as long as a few years, so the level of verified information on each inmate will be significantly less than it would be in a prison setting. It is precisely because of new inmate vulnerability that greater supervision and attention to classification detail become a mandatory part of the intake and reception process, even in the shortest of jail stays. This is serious business and PREA demands absolute attention to prisoner safety in this extreme area of correctional practice. The jail as an element of social dynamics, with its enormous turnover and an absence of sophistication of many detainees, absolutely needs the structure and responsibility that is reenergized through PREA and meeting its standards.

Prisoner vulnerability is also an element of mental health needs that are very significant in the jail setting. Detainees with developmental disabilities will also require more

focused attention at a time when movement is most pronounced and documented information is at its lowest level. Vulnerability is clearly magnified as a function of fear in a new environment especially when the absence of criminal sophistication is present which would characterize the jail setting far more than that of prisons. PREA cannot be faulted for focusing attention over and over again on prisoner safety when vulnerability is at its most pronounced during initial incarceration in a strange and new social environment. While most of the PREA proposed standards are already accepted practice in many jurisdictions, their restatement in a new form encourages and indeed demands new training and a reaffirmation of best practices in a very complex area of correctional practice. There can be no rational substitute for intensive supervision of prisoner activity, behavior and major classification elements in accepting zero tolerance for any sexual behavior from any quarter.

An Historical Reference – PREA Offers No Significant Hurricane or Earthquake of Change in American Corrections. – There are certain advantages that accompany age and years of experience in any profession assuming that the cerebral process remains intact and working. Concerns over PREA appeared loud and encompassing over the past few years, but frankly the concerns and issues are minor when compared to a period of 21 years when the "hands off doctrine" was abolished through judicial intervention. I served as an Assistant Warden, of a mega State prison and Warden/Director of County Corrections during that fascinating period that so dramatically changed the face of American corrections. From 1970 through 1991 Corrections was discovered by the

Constitution of the United States and judicial intervention at the federal level discovered the field of corrections and changed it in its entirety - far greater than any implied or suggested revisions that might flow from PREA.

Correctional managers and many State Attorney's General loudly proclaimed the usurption of any ability to maintain safety and security within American prisons and jails when judicial intervention arrived on the scene in the early 1970s. Without elaborating specific case law developments it was assumed that stable correctional practices would cease to exist when decision after decision was handed down that impacted American corrections through the First, Fourth, Eighth and Fourteenth Amendments to the U.S. Constitution. Inmates would now be able to challenge the nature of their incarceration in a manner heretofore unknown in legal and judicial process in the United States. Whether it was the right of access to heretofore prohibited religious publications, vast changes in communications, visiting and contact with attorneys, ending open reading of mail when no preceived security violations could be found, mandatory access to legal publications and inmate/attorney communication, massive due process requirements for inmate disciplinary hearings and probation/parole violation hearings, standards in conduct for use of force and scores of applications requiring due process of law, many in control of the American correctional system believed that collapse was iminent and inmates and their attorneys would dominate correctional practice.

While floodgates opened on challenging scores of correctional practices under a Federal Constitutional nexus, the system did not collapse. Correctional administrators, as a

response to judicial intervention, received billions of dollars for physical improvements, programmatic developments, quantum increases in correctional healthcare services, which in almost all instances created safer and more effectively run correctional facilities. Virtual dictatorships of the past were replaced with evolvely professional models and thousands upon thousands of inmates and correctional officers lived and worked under far more humane conditions.

Those in corrections should revisit police concerns accompanying Miranda v. Arizona when police were absolutely sure that the arrest and interrogation process would forever be distroyed when new standards of basic rights were made mandatory on virtually every arrest situation conducted in the United States. Concerns that corrections could never survive the virtual total replacement of the "hands off doctrine" never materialized. When one reads all of the proposed PREA Standards one sees change in small areas of practice, the continuation of good policy in many other areas, and clearly no suggestion that American prisons, jails and other correctional facilities and programs will cease to be safely operated.

The demise of the "hands off doctrine" was likely as deeply focused outcomes for change as the American practice of corrections will ever see. As a teaching point it should diminish fears and the irrational concerns and even some thoughtful suggestions that PREA will create havoc through its mere presence and application in the profession of corrections. Public safety is simply composed of stronger values and proceedures and a

developing cadre of new supervisors, managers and administrators will translate all of the PREA content into reasonable and rationale operations at the local level.

Areas of Focus for PREA Implementation in Jails - the fears and concerns that accompanied vast changes in correctional guidelines and practices from 1970-1991 and through to the present need not characterize PREA. The following basic suggestions are offered to jail colleagues:

- Realization that PREA is Federal law, and the vast majority of PREA operating standards are already well within constitutional correctional practices within the United States;
- Administrators should give verbal approval and recognition in a macro sense to efforts to abolish sexual misconduct by inmates and staff members and fears of sexual reprisal and assault by every inmate under our supervision with no exceptions;
- Training in PREA doctrine and process should flow regularly following the same example as long accepted training in proper use of force, responding to medical concerns, reporting incidents of a broad nature to supervisors, knowledge of first aid practices including CPR that help sustain life and inmate gender equality cross cutting all dimensions of correctional operations – training, training and then more training until PREA is as well understood as inmate disciplinary hearings or inmate access to healthcare services;
- Methods of staff supervision of inmate behavior and inmate social interactions that abolish in significant measure the opportunities for inmate isolation, abuse and sexual engagement in any correctional setting;
- Recognition that zero tolerance as a policy and graded/monitored outcome carries the same predetermined priority as suicide prevention and loss of life in every correctional operation in this country;

- Giving PREA Standards the same priorities that were accorded to inmate healthcare (Estelle v. Gamble 1976), due process prisoner disciplinary hearings (Wolfe v. McDonnell 1975), and system wide determinations of unconstitutional conditions (Holt v. Sarver 1970).
- Acceptance of some form of mandatory inspections incumbent upon every correctional facility and program in the United States.
- Acceptance across the country of already existing superior/best practices standards programs available through the American Correctional Association, National Commission on Correctional Health Care, Correctional Education Association, and other regulatory bodies where PREA related issues are already isolated in effective regimes of safe and effective correctional practice; and
- Growing utilization of technical assistance programs and support initiatives developed through the good offices of the U.S. Department of Justice to facilitate national acceptance of the Prison Rape Elimination Act.

PREA will have an enormously positive impact on jails throughout the United States by further driving attention to conditions that dramatically impact both the safety and behavior of inmates and staff members alike. Budget challenges are simply not an effective argument for deterring improvements already accepted and well understood by thoughtful correctional administrators throughout the United States.

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