

1

Missouri jails and
the Prison Rape Elimination Act
(PREA)

2

In Missouri, sheriffs are generally in charge of
setting jail policies

Chapter 221

3

§ 221.020, RSMo. in relevant part says:

Except as otherwise provided in this section and sections 221.400 to 221.420, the sheriff of each county in this state shall have the ***custody, rule, keeping and charge of the jail*** within his county, and of all the prisoners in such jail, and may appoint a jailer under him, for whose conduct he shall be responsible.

4

What is PREA?

5

In short, PREA was designed to:

- 1) Create national reporting and prevention standards regarding prisoner sexual assault, and
- 2) Establish financial incentives for States to meet those standards

6

PREA was enacted in 2003:

- federal statutes: 34 USC §§ 30301 - 30309
 - authorized federal regulations
 - created the National Prison Rape Elimination Commission
- The Commission issued draft standards in 2009
- The DOJ published PREA Standards and they became effective in 2012
 - 28 CFR Part 115, National Standards to Prevent, Detect, and Respond to Prison Rape (aka "PREA Standards")

7

DEPT. OF JUSTICE:

This publication is basically a list of model policies.

8

DEPT. OF JUSTICE:

This publication cites to 28 CFR Part 115, but is not itself 28 CFR Part 115. 28 CFR Part 115 itself contains (in pdf form) 128 pages of rules and comments

9

Trick question:
Do the PREA Standards, aka "Prisons and Jail Standards" really "apply" to jails?

10

Any publication that calls itself "prison and jail standards" is going to include concepts that "apply" to jails;
...but this is not the same thing as saying that publication is "binding."

11

National PREA Resource Center:
...jail standards

12

National Sheriffs' Association:
...jail standards

PREA

What is PREA?
The Prison Rape Elimination Act (PREA) of 2003 is a federal law established to address the elimination and prevention of sexual assault and rape in correctional systems. PREA applies to all federal, state, and local prisons, jails, police lockups, private facilities, and community settings such as residential facilities. The major provisions of PREA are to:

- Develop standards for detection, prevention, reduction, and punishment of prison rape
- Collect and disseminate information on the incidence of prison rape
- Award grants and technical assistance to help state governments implement the Act

How Does PREA Apply to Jails?
PREA seeks to insure that jails and other correctional settings protect inmates from sexual assault, sexual harassment,

13

PREA

- PREA, by itself, is:
 - NOT binding on states
 - NOT binding on sheriffs
 - NOT binding on county jails

14

PREA

- provides for Dept. of Justice to make "PREA Standards"
- makes financial incentives for states to certify that they comply with "PREA Standards"

15

Put another way, PREA provides additional tools (model guidelines) and resources (money for states) to combat rape and sexual assault in prisons and jails.

16

- The carrot for states officially following PREA Standards:
 - money
- The stick if Missouri sheriffs decline to officially adopt PREA Standards:
 - None. DOJ has no authority to force adoption.

17

The DOJ correctly recognizes that it has zero authority to force any state or local office to officially adopt PREA Standards.

18

DEPT. OF JUSTICE:

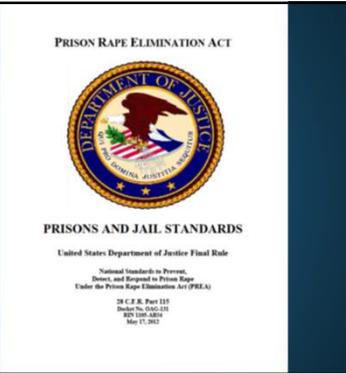
This includes commentary regarding DOJ goals.



19

DEPT. OF JUSTICE:

This publication is just a list of model policies.



20

DEPT. OF JUSTICE:

"Insofar as it sets forth national standards that apply to confinement facilities operated by State and local governments, this final rule has the potential to affect the States, the relationship between the national government and the States, and the distribution of power and responsibilities among the various levels of government."



21

DEPT. OF JUSTICE:

"However, with respect to the thousands of State and local agencies, and private companies, that own and operate confinement facilities across the country, PREA provides the Department with no direct authority to mandate binding standards for their facilities. Instead, PREA depends upon State and local agencies to make voluntary decisions to adopt and implement them."



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Part II

Department of Justice
REGULATIONS:
General Standards To Prevent, Detect, and Respond to Prison Rape
Final Rule

22

DEPT. OF JUSTICE:

"For county, municipal, and privately run agencies that operate confinement facilities, PREA lacks any corresponding sanctions for facilities that do not adopt or comply with the standards."



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Part II

Department of Justice
REGULATIONS:
General Standards To Prevent, Detect, and Respond to Prison Rape
Final Rule

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DEPT. OF JUSTICE:

"...In drafting the standards, the Department was mindful of its obligations to meet the objectives of PREA while also minimizing conflicts between State law and Federal interests."



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Part II

Department of Justice
REGULATIONS:
General Standards To Prevent, Detect, and Respond to Prison Rape
Final Rule

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PRISON RAPE ELIMINATION ACT
(PREA)

§ 30302, Purposes:

- (1) establish a zero-tolerance standard for the incidence of prison rape in prisons in the United States;
- (2) make the prevention of prison rape a top priority in each prison system;
- (3) develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape;

25

PRISON RAPE ELIMINATION ACT
(PREA)

§ 30302, Purposes:

- (4) increase the available data and information on the incidence of prison rape, consequently improving the management and administration of correctional facilities;
- (5) standardize the definitions used for collecting data on the incidence of prison rape;
- (6) increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison rape;

26

PRISON RAPE ELIMINATION ACT
(PREA)

§ 30302, Purposes:

- (7) protect the (already existing) Eighth Amendment rights of Federal, State, and local prisoners;
- (8) increase the efficiency and effectiveness of Federal expenditures through grant programs such as those dealing with health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison construction, maintenance, and operation; race relations; poverty; unemployment; and homelessness; and
- (9) reduce the costs that prison rape imposes on interstate commerce.

27

DEPT. OF JUSTICE:

"Despite the absence of statutory authority to promulgate standards that would bind State, local, and private agencies, other consequences may flow from the issuance of national standards, which could provide incentives for voluntary compliance."



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Department of Justice
48 CFR 101.116
General Schedule To Prison, Detainee, and Inmate of Prison Plans
Final Rule

28

DEPT. OF JUSTICE:

"For example, these standards may influence the standard of care that courts will apply in considering legal and constitutional claims brought against corrections agencies and their employees arising out of allegations of sexual abuse."



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Final Rule

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However, PREA does not create any new rights for inmates, and does not authorize inmate claims based on alleged PREA violations.

30

See *Gonzaga Univ. v. Doe*, 536 U.S. 273, 286, 122 S. Ct. 2268, 153 L. Ed. 2d 309 (2002) ("[W]here the text and structure of a statute provide no indication that Congress intends to create new individual rights, there is no basis for a private suit, whether under § 1983 or under an implied right of action.").

31

"...courts addressing this issue have found that the PREA does not establish a private cause of [*8] action . . ." *Krieg v. Steele*, 599 F. App'x 231, 232 (5th Cir.) (per curiam) , cert. denied, 136 S. Ct. 238, 193 L. Ed. 2d 178 (2015). See also *Diamond v. Allen*, No. 7-14-CV-124, 2014 U.S. Dist. LEXIS 161170, 2014 WL 6461730, at *4 (M.D. Ga. Nov. 17, 2014)(citing cases); *Amaker v. Fischer*, No. 10-CV-0977, 2014 U.S. Dist. LEXIS 136117, 2014 WL 4772202, at *14 (W.D.N.Y. Sept. 24, 2014)(noting that "every court to address the issue has determined that PREA cannot support such a cause of action by an inmate"); *Simmons v. Solozano*, No. 3:14-CV-P354-H, 2014 U.S. Dist. LEXIS 129249, 2014 WL 4627278, at *4 (W.D. Ky. Sept.16, 2014) (holding that the PREA creates no private right of action).

32

Inmates cannot use 42 USC 1983 to sue for alleged "PREA violations," because:

- PREA itself does not give inmates any new federal rights
- And § 1983 only applies to alleged violations of federal rights (not just *federal laws*)

33

MULTIPLE FEDERAL COURT DECISIONS SAY THE SAME THING:

"A failure to comply with PREA is not a constitutional violation, and ***PREA does not grant prisoners any specific rights.***"

* *Howell v. St. Louis City*, 2022 U.S. Dist. LEXIS 69854, *13, 19 (E.D. Mo. Apr. 15, 2022)(emphasis added)(citing *Johnson v. Garrison*, 859 F. App'x 863 (10th Cir. 2021), *Williams v. Wetzel*, 827 F. App'x 158, 162 (3d Cir. 2020); *Krieg v. Steele*, 599 F. App'x 231, 232 (5th Cir. 2015).

34

MULTIPLE FEDERAL COURT DECISIONS SAY THE SAME THING:

"In other words, ***PREA does not give prisoners a personal right to sue*** for an official's failure to comply with the Act."

* *Howell v. St. Louis City*, 2022 U.S. Dist. LEXIS 69854, *13, 19 (E.D. Mo. Apr. 15, 2022)(emphasis added)(citing *Johnson v. Garrison*, 859 F. App'x 863 (10th Cir. 2021), *Williams v. Wetzel*, 827 F. App'x 158, 162 (3d Cir. 2020); *Krieg v. Steele*, 599 F. App'x 231, 232 (5th Cir. 2015).

35

MISSOURI LAW

As applied to Missouri sheriffs, the PREA Standards are merely a potential resource for drafting policies.

In Missouri, sheriffs (not the DOJ) are generally in charge of their jails.

See § 221.020, RSMo.

36

MISSOURI LAW

- There are no published Missouri court opinions describing PREA, because PREA is a federal law, not a state law
- There are no Missouri statutes that claim to wholly adopt or incorporate all the PREA Standards into Missouri law
- There is only one Missouri statute that even mentions PREA

37

In 2021, SB 53 & 60 made several changes to Missouri's justice system.

38

SB 53 & 60

- Signed by the Governor 7/14/21
- Made several revisions to several statutes regarding the administration of justice
- This included changes to juvenile process, described in Chapter 211
- Did NOT change § 221.020, RSMo. or that sheriffs are in charge of jails
- Did NOT incorporate PREA into Missouri law
- Out of multiple statutes revised by SB 53 & 60 and 60, there is only one brief reference to PREA

39

§ 211.072, RSMo.

40

§ 211.072.6, RSMO.

Out of *all of the Missouri statutes*, the only statutory reference to PREA is in subsection 6 of 211.072, RSMo.

41

§ 211.072.6, RSMO.

All pre-trial certified juveniles under eighteen years of age who are held in adult jails pursuant to the best interest of justice exception *shall continue to be subject to the protections of the Prison Rape Elimination Act (PREA) and shall be physically separated from adult inmates.*

(emphasis added)

42

§ 211.072.6, RSMO.

What does this mean?

43

§ 211.072.6, RSMo. is the only Missouri statute to even mention PREA

This statute has never been cited in any published court decision

There has been no change to § 221.020, RSMo. and sheriffs are still in charge of jails

...and the law tells us that when we try to decipher statutes, we are supposed to use common sense and plain language to interpret the meaning

44

Determine the intent of the legislature based on the words used in the statute. See *Butler v. Mitchell-Hugeback, Inc.*, 895 S.W.2d 15, 19 (Mo. 1995)(citing *Tralliner Corp. v. Director of Revenue*, 783 S.W.2d 917, 920 (Mo. banc 1990)).

When the words of a statute are clear, there is nothing to construe beyond the plain meaning. See *State v. Myers*, 386 S.W.3d 786, 794 (Mo.App. S.D. 2012).

Courts will not interpret a statute in a manner that defeats the purpose of that statute. See *Mitchell v. Residential Funding Corp.*, 334 S.W.3d 477, 497 (Mo. App. W.D. 2010).

The words used in a statute must be considered in context, *State v. McLaughlin*, 265 S.W.3d 257, 267 (Mo Banc 2008), and statutory provisions are read as a whole. *State v. Haskins*, 950 S.W.2d 613, 615-616 (Mo. App. S.D. 1997).

45

So what protections of PREA are being referenced in this subsection?

This one:

All pre-trial certified juveniles under eighteen years of age who are held in adult jails pursuant to the best interest of justice exception shall continue to be subject to the protections of the Prison Rape Elimination Act (PREA) and shall be physically separated from adult inmates.

46

Separation of juveniles from adult inmates is a recommended protection in the PREA Standards.

This statutory subsection, which consists of a single sentence, requires physical separation of pre-trial certified juveniles.

47

Example of PREA Standards language:

Youthful inmate means any person under the age of 18 who is under adult court supervision and incarcerated or detained in prison or jail.

§ 115.5

48

Example of PREA Standards language:

- (a) A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters.
- (b) In areas outside of housing units, agencies shall either:
 - (1) Maintain sight and sound separation between youthful inmates and adult inmates, or
 - (2) Provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact.

§ 115.14

49

Example of PREA Standards language:

(c) Agencies shall make best efforts to avoid placing youthful inmates in isolation to comply with this provision. Absent exigent circumstances, agencies shall not deny youthful inmates daily large-muscle exercise and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible.

§ 115.14

50

Is it reasonable to interpret this single-sentence subsection as incorporating the entirety of the PREA Standards into Missouri law?

All pre-trial certified juveniles under eighteen years of age who are held in adult jails pursuant to the best interest of justice exception shall continue to be subject to the protections of the Prison Rape Elimination Act (PREA) and shall be physically separated from adult inmates.

51

No.

52

Again:

- No Missouri statute expressly incorporating PREA
- No change to § 221.020, RSMo.
- The *only* reference to PREA is in the one-sentence subsection that *only* expressly describes separating pre-trial certified juveniles from adult inmates

53

IMPLIED CAUSES OF ACTION ARE DISFAVORED

"The creation of a private right of action by implication is not favored and the general trend under Missouri law is away from judicial inferences that a violation of a statute is personally actionable."

Bradley v. Ray, 904 S.W.2d 302, 313 (Mo. App. 1995).

54

UNFUNDED MANDATE

Statutes are presumed constitutional, and courts construe statutes to be consistent with the constitution.

See e.g. *City of Jefferson v. Missouri Dept. of Nat. Resources*, 863 S.W.2d 844 (Mo. banc 1993)(holding SB 530 permitted, and did not mandate, a city to join a waste management district)

55

UNFUNDED MANDATE

The state is hereby prohibited from reducing the state financed proportion of the costs of any existing activity or service required of counties and other political subdivisions. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, *unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.*

Mo. Const. Art. X, Sec. 21, subs. 1 (emphasis added).

56

Not only that, but the rest of that single-sentence subsection also describes the law as applied to pre-trial certified juveniles (not all inmates) "shall continue..."

All pre-trial certified juveniles under eighteen years of age who are held in adult jails pursuant to the best interest of justice exception *shall continue* to be subject to the protections of the Prison Rape Elimination Act (PREA) and shall be physically separated from adult inmates.

57

"... shall *continue*..."

"*Continuous*" = Uninterrupted; unbroken; not intermittent or occasional

- *Black's Law Dictionary*, 6th Ed.

58

"... shall *continue*..."

"*Continuous*" = going on or extending without interruption or break; unbroken; connected

- *Webster's New World College Dictionary*, 4th Ed.

59

So, aside from emphasizing to separate juveniles, the law with respect to Missouri jails and PREA continues to be the same as before.

60

Why even mention PREA in § 211.072.6, RSMo., since the statute could have just said to separate juveniles, without regard to the fact that separation is consistent with PREA Standards?

To emphasize to the DOJ that at the state level, Missouri claims to be in conformance with PREA Standards.

61

Missouri certifies that it is PREA compliant:

FY 2022 List of Certification and Assessment Institutions for Adult Year 1 of Cycle 3
August 28, 2020 - August 28, 2023

On September 1, 2020, the Office of Justice Programs (OJP) Acting Assistant Attorney General (AAG) sent letters to the state's state and territorial governments and the Mayor of the District of Columbia on behalf of the U.S. Department of Justice (DOJ) regarding the FY 2022 PREA-related matters. These letters were sent to the state's OJP program and assessment-related entities (state and territorial governments) to inform them of the requirements and standards for Adult Year 1 of Cycle 3. A link to the OJP program and assessment-related matters is provided below.

The letters for the Adult Year 1 of Cycle 3, which include an assessment to the PREA status, were issued on December 15, 2020. This change to the PREA status provides a second chance for the state to meet the PREA standards. The state has 180 days to complete the PREA assessment. For those states following the date of assessment, government law the status is shown as "Not Assessed" or "Not Assessed" for the state or the PREA program or program or as "Not Assessed" or "Not Assessed" by the state. See 42 U.S.C. § 19154(a)(2)(D).

Below is a list of states and territories that submitted certification and assessment for Adult Year 1 of the Adult Year 1 of Cycle 3.

Agency that submitted the certification and assessment	State or Territory
Alabama	Alabama
Arizona	Arizona
Arkansas	Arkansas
California	California
Colorado	Colorado
Connecticut	Connecticut
Delaware	Delaware
District of Columbia	District of Columbia
Florida	Florida
Georgia	Georgia
Hawaii	Hawaii
Idaho	Idaho
Illinois	Illinois
Indiana	Indiana
Iowa	Iowa
Kansas	Kansas
Kentucky	Kentucky
Louisiana	Louisiana
Maine	Maine
Maryland	Maryland
Massachusetts	Massachusetts
Michigan	Michigan
Minnesota	Minnesota
Mississippi	Mississippi
Missouri	Missouri
Montana	Montana
Nebraska	Nebraska
Nevada	Nevada
New Hampshire	New Hampshire
New Jersey	New Jersey
New Mexico	New Mexico
New York	New York
North Carolina	North Carolina
North Dakota	North Dakota
Ohio	Ohio
Oklahoma	Oklahoma
Oregon	Oregon
Rhode Island	Rhode Island
South Carolina	South Carolina
South Dakota	South Dakota
Tennessee	Tennessee
Texas	Texas
Utah	Utah
Vermont	Vermont
Virginia	Virginia
Washington	Washington
West Virginia	West Virginia
Wisconsin	Wisconsin
Wyoming	Wyoming

A PREA assessment under the Justice for All Reauthorization Act of 2018 was issued on December 15, 2020, which requires that program assessment by OJP. Therefore, beginning FY 2022, all OJP grant programs are subject to PREA.

Additional information regarding the PREA assessment under the Justice for All Reauthorization Act of 2018 can be found at: <https://www.ojp.gov/office-of-justice-programs/prea>.

62

Why?

63

PREA GRANTS § 30305

(a) **Grants authorized.** From amounts made available for grants under this section, the Attorney General shall make grants to States to assist those States in ensuring that budgetary circumstances (such as reduced State and local spending on prisons) do not compromise efforts to protect inmates (particularly from prison rape) and to safeguard the communities to which inmates return. The purpose of grants under this section shall be to provide funds for personnel, training, technical assistance, data collection, and equipment to prevent and prosecute prisoner rape.

64

PREA GRANTS § 30305

(b) **Use of grant amounts.** Amounts received by a grantee under this section may be used by the grantee, directly or through subgrants, only for one or more of the following activities:
(1) **Protecting inmates.** Protecting inmates by—
(A) undertaking efforts to more effectively prevent prison rape;
(B) investigating incidents of prison rape; or
(C) prosecuting incidents of prison rape.

65

PREA GRANTS § 30305

(2) **Safeguarding communities.** Safeguarding communities by—
(A) making available, to officials of State and local governments who are considering reductions to prison budgets, training and technical assistance in successful methods for moderating the growth of prison populations without compromising public safety, including successful methods used by other jurisdictions;
(B) developing and utilizing analyses of prison populations and risk assessment instruments that will improve State and local governments' understanding of risks to the community regarding release of inmates in the prison population;

66

PREA GRANTS § 30305

(C) preparing maps demonstrating the concentration, on a community-by-community basis, of inmates who have been released, to facilitate the efficient and effective—

(i) deployment of law enforcement resources (including probation and parole resources); and

(ii) delivery of services (such as job training and substance abuse treatment) to those released inmates;

67

PREA GRANTS § 30305

(D) promoting collaborative efforts, among officials of State and local governments and leaders of appropriate communities, to understand and address the effects on a community of the presence of a disproportionate number of released inmates in that community; or

(E) developing policies and programs that reduce spending on prisons by effectively reducing rates of parole and probation revocation without compromising public safety.

68

Any other ways that PREA can impact jails?

69

FEDERAL INMATES

- If you house federal inmates, then you:
 - Probably have an IGA with the USMS
 - That IGA probably requires complying, or at least trying to comply, with PREA Standards
 - Failure to do so could be a breach of contract

70

Plus, remember that the whole point of PREA is to encourage states and their political subdivisions to adopt policies consistent with the PREA Standards, partly through money, and partly through the PREA Standards influencing how courts view jail policies

71

DEPT. OF JUSTICE:

"Despite the absence of statutory authority to promulgate standards that would bind State, local, and private agencies, other consequences may flow from the issuance of national standards, which could provide incentives for voluntary compliance."



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Department of Justice
 48 CFR (2012)
 National Real Estate To Prisons, Detainees, and Inmates to Promote
 Best Practices

72

DEPT. OF JUSTICE:

"For example, these standards may influence the standard of care that courts will apply in considering legal and constitutional claims brought against corrections agencies and their employees arising out of allegations of sexual abuse."



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Part II

Department of Justice
@ 2012 DOJ
Notice: Available To: Public, Online, and Request to Print: None
Final Rule

73

Fortunately, courts generally reject the DOJ's invitation to use PREA Standards to rewrite the Constitution

74

Courts recognize that:

"...state law, not PREA, governs county jails..."

And at the same time...

Policies that consider PREA concerns demonstrate that offices are not deliberately indifferent to prisoner sexual assault

75

PREA is not a very good sword for DOJ or inmates to use against jails.

But having policies that address concerns raised by PREA can be a *shield* from municipal and officer liability

76

And at the same time...

If an office has (and follows) policies that address PREA concerns (like having zero tolerance), this can be used to show the office was not deliberately indifferent to prisoner sexual assault

77

Example of PREA Standards language:

"An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct."

§ 115.11(a)

78

National Commission on Correctional Health Care (NCCCHC):

Standards for Health Services in Jails, 2018
Model Policy J.F-06

82

Having and following policies can shield your office and staff, but there is also no general legal requirement that jails have particular policies.

83

Courts acknowledge that this sort of warning should be unnecessary

84

Parrish v Ball, 594 F. 3d 993 (8th Cir. 2010)

85

...we found no patently obvious need to train an officer not to rape young women even in the face of actual knowledge of deviant behavior, **we do not believe that there is a patently obvious need to train an officer not to sexually assault women**, especially where there is no notice at all that such behavior is likely. **An objectively reasonable officer would know that it is impermissible to touch a detainee's sexual organs by forcible compulsion.** See *Barney v. Pulsipher*, 143 F.3d 1299, 1308 (10th Cir.1998)(holding that the court was "not persuaded that a plainly obvious consequence of a deficient training program would be the sexual assault of inmates" and that "[s]pecific or extensive training hardly seems necessary for a jailer to know that sexually assaulting inmates is inappropriate behavior"). Moreover, [Road Deputy] himself acknowledged in his testimony that he knew such behavior was wrong. **Thus, while it may have been wise to tell officers not to sexually assault detainees, it is not so obvious that not doing so would result in an officer actually sexually assaulting a female detainee.**

Parrish, 594 F.3d. at 999 (emphasis added).

86

Elements to state an inadequate training claim

In order for local government to be liable under §1983 on an inadequate training theory, the plaintiff must show: 1) that training was actually inadequate, 2) the government entity was deliberately indifferent to the rights of others in adopting those training practices, to the extent that the failure to train reflects a deliberate or conscious choice, and 3) the "alleged deficiency in the ...training...actually caused the [plaintiff's] injury." *Parrish*, 594 F.3d at 997 (quoting *andrews v. Fowler*, 98 F.3d 1069, 1076 (8th cir. 1996)(internal citation omitted).

87

Inadequacy of Training

If Plaintiff cannot show there was patently obvious need for training, then local government cannot have been deliberately indifferent. *See e.g. Parrish*, 594 F.3d at 998. In cases where the alleged right violation is sexual assault, even a complete lack of training may not be enough to state a claim. *See e.g. Parrish, supra.* (quoting *City of Canton v. Harris*, 489 U.S. 378, 390-91 (“That a particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on the [local government]”)(brackets by *Parrish*)).

88

Deliberate Indifference: The Need To Tell Officers Sex With Inmates Is Wrong

When the “particular” alleged right violation is sexual assault, the Eighth Circuit has “found no patently obvious need to train an officer not to rape young women even in the face of actual knowledge of deviant behavior, [and] we do not believe that there is a patently obvious need to train an officer not to sexually assault women, especially where there is no notice at all that such behavior is likely.” *Parrish*, at 999.

89

In order to show deliberate indifference, the Plaintiff must be able to establish that, “...in light of the duties assigned to [the] specific officers...the need for more or different training [must be] so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers...can reasonably be said to have been deliberately indifferent to the need.” *Parrish*, 594 F.3d at 998 (quoting *City of Canton, supra*, 489 U.S. at 390).

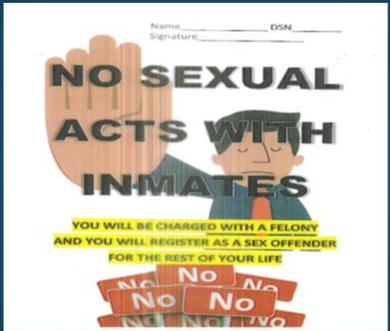
“In other words, [Plaintiff] must demonstrate that the [Sheriff] ‘had notice ... procedures were inadequate and likely to result in a violation of constitutional rights.’” *Parrish, supra.* (quoting *Andrews*, 98 F.3d at 1076)(internal citation omitted). Plaintiff must show the Sheriff exhibited “deliberate indifference to the risk that a violation of a particular constitutional or statutory right will follow the decision.” *Id.* (emphasis by *Parrish*).

90



- The U.S. Constitution, the Missouri Constitution, and Missouri statutes are the primary laws that govern jail operations
- PREA is only a federal law, and it is not Missouri law other than to the extent it is incorporated by Missouri statutes, or to the extent it reflects already existing rights
- PREA is not a good litigation weapon for inmates
- But having and following policies that include PREA concerns can protect inmates, and can help protect the office and staff from frivolous lawsuits
- In contrast, not having any mechanisms for inmates to report and prevent rights violations will increase the risk to inmates, and the odds of litigation.

91



Name _____ DSH
Signature _____

NO SEXUAL ACTS WITH INMATES

YOU WILL BE CHARGED WITH A FELONY AND YOU WILL REGISTER AS A SEX OFFENDER FOR THE REST OF YOUR LIFE

NA No Na No No NO NO NO

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