

Testimony Before the National Prison Rape Elimination Commission
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Mr. Chairman and Members of the Commission:

I am Barbara Broderick, Chief Probation Officer of the Maricopa County Adult Probation Department in Phoenix, Arizona. I am also the president-elect of the American Probation and Parole Association. I have worked in the community corrections field for almost 30 years. I am pleased to have this opportunity to testify on issues related to community corrections and the Prison Rape Elimination Act.

To give you an idea of the number of persons supervised within the community, the number of adult men and women on probation and parole in the United States is estimated at approximately 5 million people (Glaze and Bonczar, 2006). As clarification, parole denotes supervision in the community for those who have been released from prison. Probation denotes court-ordered supervision within the community as an alternative to imprisonment.

More than half of all probationers in the United States are White, with about one-third African American, and one-eighth Hispanic. Approximately one-quarter of the adult probation population are female. Data from 2005 indicate that one in eight parolees are female. Forty-one percent of parolees in the US are White, followed by 40% African American, and 20% Hispanic (Glaze and Bonczar, 2006).

It is my understanding that in making public policy recommendations, the Commission often limits its consideration of community corrections issues to the 30 states that have statewide probation and parole agencies (where a single state agency administers probation and parole). In doing so, however, the Commission leaves out the probation and parole agencies in five of the most populous states: California, New York, Texas, Illinois, and Ohio. In these states, probation is administered by local jurisdictions (counties).

It is important to note that statewide administration is most prevalent in states with smaller, more rural populations. Consequently, many public policy considerations neglect community corrections agencies with more urban populations. The issues we see from the standpoint of locally-administered probation/parole agencies are similar to the issues facing jails across the country, which are also locally run.

It is also important to note that while many statewide probation/parole agencies have explicit policies for dealing with issues raised by the Prison Rape Elimination Act, smaller community corrections agencies operated by local governments might not have similar policies.

I would like to speak with you today about key barriers the Commission should address.

First, the provisions of PREA are not easily incorporated into most community corrections organizations. Agencies differ within states and from state to state. As a result, application of the law is not standardized, and agencies are mostly left to their own devices in developing policy for addressing sexual misconduct issues.

Specifically, how community corrections agencies interpret and address staff sexual misconduct issues are a tremendous challenge. In my own agency, we have had boundary violations. Traditionally, and even to this day, some staff and managers have operated under the belief that when the sexual contact is between two adults, that it is an acceptable behavior. However, as we in this forum understand, and as the criminal justice community increasingly understands, when one of the parties is on probation, parole, or under some form of custody or supervision, you do not have a consenting situation. I have taken these matters very seriously because it is probably among the most egregious violations a community corrections professional can commit. And my department has included in our Conditions of Employment policy a prohibition of sexual intimacies with clients.

The barriers to addressing sexual misconduct in a community corrections setting presents many situations that are not present in a confinement setting. Instead of the limited space of a correctional or residential facility, community supervision deals with the world at large, where staff contact clients in their homes, at their places of business, at community offices, at counseling offices and educational programs, etc. Because we operate in such a vast space, and because community corrections staff work with significantly less direct supervision than their counterparts within the prison system, it is easier to hide abuses than it is in a structured setting, making the task of detecting and responding to abuse all the more difficult.

Additionally, the issue of intimidation or retaliation may be greater when the abuse occurs outside of an institutional setting. For example, abuse that occurs in the client's home by a person who has control over the client's freedom can have a great impact on a client's likelihood to disclose. And the impact of PREA on community corrections programs extends further than simply the potential for sexual misconduct among probation/parole staff and clients. It includes the interaction of others with pretrial/presentence and post-conviction offenders: pretrial staff, work furlough staff, bail agents, counselors, teachers, etc.

Regardless of how each jurisdiction's programs are structured, it is essential for agencies to communicate their policies so that a consistent message is provided to clients: that there is zero tolerance for abusive behavior. Agencies must develop policies that clearly convey the expectations for reporting any disclosure of abuse. Community supervision employees are not typically the appropriate entities for investigating sexual misconduct allegations, so the applicable law enforcement agency must be notified.

For example, pretrial agencies (agencies whose staff is responsible for the supervision of defendants who have been charged but not convicted of an offense), may be included as part of the probation department, but many operate as either a separate court department, part of the jail, or in association with the prosecutor's office. What responsibilities does PREA require for these staff?

A related issue involves the interactions between bail agents and pretrial defendants. Some bail agents operate as part of a court, but many operate as private businesses. While they have extensive interaction with pretrial offenders many courts may not recognize that PREA provisions may apply. And clearly, pretrial staff needs to understand that they are required to report any sexual abuse by bail agents to the applicable law enforcement agency.

The situation is similar for clients supervised in work furlough or work release programs. These programs are often operated by probation agencies, but some are operated by the local jail. Staff for these programs must also understand that not only are they prohibited from any sexual contact with the defendants, but that they have a duty to report any sexual contact that occurs between jail or probation staff and inmates.

In addition, many community corrections agencies refer their clients to educational programs and counseling. We need to make it clear that in these situations as well, there is not a consensual relationship possible; that any sexual contact between counselors or teachers (either employed by the agency or by an outside organization) and clients is not acceptable, and that any knowledge of such misconduct must be reported.

In short, not only do community corrections agencies need to clearly advise their staffs that sexual contact with clients is not acceptable, community corrections employees need to be made aware of the expectations for reporting any disclosures of abuse as well as offering services and support for abused clients. Any disclosure of abuse needs to be reported to the applicable law enforcement agency for investigation.

However, while staff may be aware of the reporting structure for local law enforcement agencies, they may not be similarly familiar with reporting acts that occur on sovereign land, such as Native American reservations. Training in this area is strongly encouraged so that staff clearly understand the protocols for working with tribal law enforcement and crimes that occur on tribal land. Regardless of the reporting procedure in these situations, the bottom line is that abuses that occur on tribal land must still be reported to the applicable authority.

It is important to note that the reporting structure for clients in the community is much less clear than in a correctional setting. In a jail or prison setting, the client may be moved for their safety. Such provisions are not necessarily feasible when the client is supervised in the community. Additionally, while many jails and prisons have a clear grievance process where the facts of the alleged abuse can be heard in a confidential setting, the process is much less clear for community corrections agencies.

A further barrier for the community corrections community is the reluctance of this population to report sexual abuse. For example, some Native American clients may be hesitant to disclose

their victimization due to trust or cultural issues. Moreover, many male clients may resist disclosure due to the stigma often attached to male sexual abuse victims. While these barriers are not limited to the community corrections setting, it is a challenge nonetheless that should be considered.

Staff needs to understand that it does not matter where the abuse took place: in a residential facility, police lock-up, county jail, state prison, detention facility, tribal jail, etc. Or whether or not the abuser is an employee of the custodial agency or a contracted, hired, or referred agency. The duty to report extends to any situation where the client has been abused. Whether or not the abuse is covered by PREA provisions is secondary: staff must understand what constitutes unauthorized sexual contact and to report any incidents to the applicable law enforcement agency.

Once reports are made to the appropriate law enforcement agency for investigation, community corrections staff should concentrate on what services and support clients need. For example, is the client in crisis? Is the client in fear for their safety or the safety of others? Are they willing to attend treatment?

A question for the Commission is what options are open for community corrections staff if they are made aware that law enforcement is not pursuing the investigation? Or, what happens if it appears the law enforcement agency is retaliating against the client? To address this and other related issues, additional provisions at the Federal level may be necessary.

Obviously, PREA provisions require education and training of staff as well as client populations. Department expectations regarding reporting requirements as well as treatment referrals should be mandatory for new staff as well as existing staff. Perhaps more importantly, all staff and agency representatives must be trained and educated on the zero tolerance position with regard to staff sexual abuse of clients. In my own agency, we have provided all of our managers with PREA training and have sought the assistance of the Moss Group in the development of our policies. I will also be participating on a panel at the American Probation and Parole Association's Winter Training Institute to address implications of PREA on community corrections.

Programs for in-custody clients are often in place for prisoners but can also be implemented in jail settings. However, conveying the zero-tolerance message to clients who have not been incarcerated at any point in the process poses more of a challenge. Another area of training may be to educate staff on what it is like to live in prison; the experience and culture of living in a prison environment is a foreign concept to most community corrections staff. Learning more about the prison culture may help staff become more understanding of clients reintegrating into the community from prison and understanding why clients may have delayed reporting any abuses while incarcerated.

Without a doubt, the field of community corrections needs clarification on its roles/responsibilities with regard to PREA. In addition to the concerns already raised in this testimony, issues related to the abuse of a probationer/parolee's extended family are not defined or identified in PREA. Nor does PREA address the potential for misconduct with regard to

changing technology (e.g. Internet forums such as myspace.com or facebook.com). The myriad unanswered questions make policy development difficult at best.

We in the community corrections field address these concerns through general staff misconduct or staff sexual misconduct policies because it is sound professional practice rather than a direct response to PREA (unless the agency operates a lock-up, residential facility or jail facility).

In closing, further clarification of these many issues is needed. And while many departments are making a good-faith effort to address the issue of staff sexual misconduct with regard to probationers and parolees, the Commission could help in this effort by addressing how PREA applies in a wealth of areas not mentioned in the law.

I thank you for the opportunity to address the Commission. I have attached working drafts of my department's employee sexual misconduct and PREA response policies. I would be pleased to answer any questions you might have.

Bibliography

Glaze, L., and Bonczar, T. Probation and Parole in the United States, 2005. Bureau of Justice Statistics Bulletin (November, 2006).

Working Draft

11.034 – Employee Sexual Misconduct Policy

R: 11/15/2007

Effective Date: TBD

Employee Sexual Misconduct Policy

Authority: Administrative Directive, Federal Prison Rape Elimination Act (PREA): Public Law 108-79, 108th Congress

Purpose: This policy defines expectations for preventing, reporting, and responding to employee sexual misconduct against offenders supervised by the Maricopa County Adult Probation Department. Engaging in any act of a sexual nature with probationers and pretrial clients supervised by the Adult Probation Department seriously undermines the Department's ability to provide services to offenders and reduces offenders' ability to successfully transition into the community and a law-abiding life style.

Philosophy: The Maricopa County Adult Probation Department has a zero tolerance policy with regard to any employee engaging in any act of a sexual nature with probationers or pretrial clients. Research indicates that offenders who are subjected to unwanted acts of a sexual nature by correctional staff present a public health risk in that they are less likely to successfully complete community supervision and demonstrate a higher potential risk for substance abuse and revocation. Moreover, offenders subjected to employee sexual misconduct may experience a number of mental health setbacks including Post Traumatic Stress Disorder (PTSD) and may be subjected to medical problems including sexually transmitted diseases such as Human Immunodeficiency Virus (HIV).

This department responds to any and all allegations of employee sexual misconduct, including anonymous complaints.

Notes: Refer to APD PREA Response Process policy for procedures when a client discloses sexual abuse that has occurred by an individual employed outside the MCAPD or its contracted providers or referred providers.

Refer to Sexual Harassment policies for procedures when unwanted sexual advances or sexual abuse is reported between employees.

I. Definitions:

- A. **Employee** – for the purposes of this policy, “employee” refers to any person employed by the Maricopa County Adult Probation Department, volunteer, intern, representative of the Department, or any person contracted with the Department.
- B. **Offender** – Any adult or transferred youth supervised as a pretrial defendant or any sentenced/adjudicated probationer.
- C. **Prison Rape Elimination Act (PREA)** - Public Law 108-79, enacted by the 108th Congress to establish a zero tolerance standard for the incidence of sexual assault in correctional facilities. PREA establishes national standards for the detection, prevention, reduction, and punishment of sexual assault in correctional settings and applies to all federal, state and local prisons, jails, police lock-ups, private facilities and community settings such as residential facilities.
- D. **Unlawful Sexual Conduct:** sexual assault or sexual touching of an offender through force, coercion, inducement, enticement, persuasion or where the offender is incapable of giving consent because of his/her youth, temporary/permanent mental/physical incapacity, or status as an incarcerated or community supervised offender.

II. Expectations:

- A. Sexual activity between offenders and staff is prohibited except as indicated in APD Conditions of Employment policy.

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- B. Any unlawful sexual conduct with an offender, or intimidation/retaliation against an offender who refuses to submit to sexual activity or who discloses he/she has been a victim of unlawful sexual contact is prohibited.
- C. Staff shall report violations of this policy to their supervisor or Judicial Branch Human Resources no later than the close of the next business day.
- D. Staff aware of violations of this policy who do not report the violations to a supervisor or Judicial Branch Human Resources may be subject to disciplinary action up to and including termination pursuant to APD Investigating Misconduct Allegations policy.
- E. Staff who violates this policy may not only be subject to disciplinary action pursuant to APD Investigating Misconduct Allegations policy but may also be subject to criminal prosecution for violations of Federal and/or state statute.

III. Reporting Requirements (Violation by APD Staff): It is the policy of this department that regardless of when or where any alleged unlawful sexual contact occurred (e.g. police lock-up, tribal jail, prison, county jail, residential treatment, detention facility) that once an offender or collateral discloses that the offender has been victimized, APD staff has the duty to report. However, while APD staff must report any alleged incidents, staff shall not investigate the allegations. In situations where an allegation is made, the following procedures apply:

- A. The employee receiving the complaint shall advise his/her supervisor or Judicial Branch Human Resources as soon as possible but no later than the close of the next business day.
- B. APD staff to whom the disclosure is made shall determine the offender's needs for medical or mental health services and refer the offender to appropriate treatment providers.
- C. The supervisor advised of the situation shall notify his/her chain of command up to the chief probation officer no later than the close of the next business day.
- D. APD Executive management shall notify the applicable law enforcement agency if it appears a violation of the law has occurred.
- E. The chief probation officer or designee shall arrange for the commencement of an internal investigation into the allegations pursuant to APD Investigating Misconduct Allegations policy.

IV. Confidentiality: The sharing of information regarding unlawful sexual conduct with an offender should be limited to those who need to know for decision-making, investigation, and prosecution. Staff shall otherwise refrain from discussing these issues. Department managers shall immediately address inappropriate comments or conversations relating to these incidents.

V. Victim Services: When appropriate, the Department Victim Services Coordinator shall assist in the coordination of referring the offender to treatment and counseling services.

VI. False Reports: If it is found that an allegation of sexual conduct was falsely made, the case shall be referred to law enforcement for prosecution.

-- END SECTION 11.034: EMPLOYEE SEXUAL MISCONDUCT POLICY --

Working Draft

11.035 – PREA Response Process (Allegations Outside MCAPD)

R: 11/15/2007

Effective Date: TBD

PREA Response Process (Allegations Outside MCAPD)

Authority: Administrative Directive, Federal Prison Rape Elimination Act (PREA): Public Law 108-79, 108th Congress

Purpose: This policy defines expectations for preventing, reporting, and responding to unlawful sexual conduct committed by outside correctional agency/law enforcement personnel (not affiliated with the Maricopa County Adult Probation Department) against offenders supervised by the Maricopa County Adult Probation Department. Engaging in any act of a sexual nature with probationers and pretrial clients supervised by the Adult Probation Department seriously undermines the Department's ability to provide services to offenders and reduces offenders' ability to successfully transition into the community and a law-abiding life style.

Philosophy: Research indicates that offenders who are subjected to unlawful sexual conduct by correctional staff present a public health risk in that they are less likely to successfully complete community supervision and demonstrate a higher potential risk for substance abuse and revocation. Moreover, these offenders may experience a number of mental health setbacks including Post Traumatic Stress Disorder (PTSD) and may be subjected to medical problems including sexually transmitted diseases such as Human Immunodeficiency Virus (HIV).

MCAPD has a "zero-tolerance" standard for unlawful sexual conduct against offenders. The Department does not tolerate inappropriate comments or jokes from APD staff regarding acts of a sexual nature. This department responds to any and all allegations of unlawful sexual conduct, including anonymous complaints.

NOTES: **For alleged unlawful sexual conduct committed by an APD employee, refer to APD Investigating Misconduct Allegations policy.**

Refer to Sexual Harassment policies for procedures when unwanted sexual advances or sexual abuse is reported between employees.

VII. Definitions:

- E. **Employee** – for the purposes of this policy, "employee" refers to any person employed by the Maricopa County Adult Probation Department, volunteer, intern, representative of the Department, or any person contracted with the Department.
- F. **Offender** – Any adult or transferred youth supervised as a pretrial defendant or any sentenced/adjudicated probationer.
- G. **Prison Rape Elimination Act (PREA)** - Public Law 108-79, enacted by the 108th Congress to establish a zero tolerance standard for the incidence of sexual assault in correctional facilities. PREA establishes national standards for the detection, prevention, reduction, and punishment of sexual assault in correctional settings and applies to all federal, state and local prisons, jails, police lock-ups, private facilities and community settings such as residential facilities. PREA also includes the unlawful sexual conduct/sexual assault of offenders by other offenders while incarcerated in prisons, jails, lock-ups, private facilities and residential facilities.
- H. **Unlawful Sexual Conduct:** sexual assault or sexual touching of an offender through force, coercion, inducement, enticement, persuasion or where the offender is incapable of giving consent because of his/her youth, temporary/permanent mental/physical incapacity, or status as an incarcerated or community supervised offender.

Working Draft

VIII. Expectations:

- A. Staff shall report any known incidence of unlawful sexual conduct or any disclosure of unlawful sexual conduct made by probationers or pretrial defendants to his/her supervisor or Judicial Branch Human Resources as soon as possible but no later than the close of the next business day.
- B. Staff aware of unlawful sexual conduct against offenders, regardless of the alleged perpetrator, who do not report the behavior as indicated in this policy may be subject to disciplinary action up to and including termination pursuant to APD Investigating Misconduct Allegations policy

IX. Reporting Requirements: It is the policy of this department that regardless of when or where any alleged unlawful sexual contact occurred (e.g. police lock-up, tribal jail, prison, county jail, residential treatment, detention facility) that once an offender or collateral discloses that the offender has been victimized, APD staff has the duty to report. However, while APD staff must report any alleged incidents, staff shall not investigate the allegations. In situations where an allegation is made, the following procedures apply:

- X. Regardless of when the alleged incident occurred, if an APD employee learns that an offender was subjected to unlawful sexual conduct while in a police lock-up, tribal jail, prison, county jail, residential treatment or detention facility, or who has knowledge of this type of incident occurring, he/she shall notify his/her supervisor or Judicial Branch Human Resources as soon as possible but no later than the close of the next business day.
 - A. Staff shall also follow the same reporting requirements for any allegations of unlawful sexual conduct committed by other potential perpetrators working in the periphery of the criminal justice system (e.g. bail agents, teachers, counselors, therapists).
 - B. APD staff to whom the disclosure is made shall determine the offender's needs for medical or mental health services and refer the offender to appropriate treatment providers.
 - C. The supervisor advised of the situation shall notify his/her chain of command up to the chief probation officer no later than the close of the next business day.
 - D. The chief probation officer or designee shall notify the applicable law enforcement agency if it appears a violation of the law has occurred.

XI. Confidentiality: The sharing of information regarding unlawful sexual conduct with an offender should be limited to those who need to know for decision making, investigation, and prosecution. Staff shall otherwise refrain from discussing these issues. Department managers shall immediately address inappropriate comments or conversations relating to these incidents.

XII. Victim Services: When appropriate, the Department Victim Services Coordinator shall assist in the coordination of referring the victimized offender to treatment and counseling services.

XIII. False Reports: If it is found that an allegation of sexual assault or sexual activity was falsely made, the case shall be referred to law enforcement for prosecution.

-- END SECTION 11.035: PREA RESPONSE (ALLEGATIONS OUTSIDE MCPD) --
