



COLORADO

Department of Corrections

Priority: R-5

Prison Rape Elimination Act Continuation Funding

FY 2014-15 CHANGE REQUEST

Cost and FTE

- The Department requests a General Fund increase of \$252,006 and 2.7 FTE in FY 2014-15, a 5.2 percent increase in the Inspector General subprogram. FY 2015-16 annualizes to \$273,552 General Fund and 3.0 FTE, and beyond. The request replaces expiring federal funds and creates additional compliance activities.

Current Program

- The Prison Rape Elimination Act (PREA) is federally and state mandated to prevent, detect, respond to and investigate incidents of sexual abuse, sexual assault, and sexual harassment in correctional facilities.
- Offenders receive PREA education upon entering the prison system at Denver Reception and Diagnostics Center (DRDC), and again when they are assigned to a permanent facility.
- New staff receive PREA training during basic training by Training Academy staff. Annual PREA refresher training is required of all staff via online training (over 6,000 FTE in FY 2012-13).
- Grant-funded PREA staff conduct training with contractors, private prison staff, and community corrections facilities where DOC offenders might be housed.

Problem or Opportunity

- The PREA program in DOC started in 2005 with federal grant funds. The Department received additional federal funding from October 2011 to September 2013 and is requesting a one year extension of the grant funding to cover FY 2013-14. However, without this request funding for PREA compliance activities will not be available in FY 2014-15.
- PREA compliance is ongoing and fluctuating based on the evolving requirements from the Department of Justice, requiring updated training.

Consequences of Problem

- There may be safety risks for staff, offenders, and the general public if sexual abuse/assault victims are not offered treatment/services and sexual aggressors are not held accountable.
- Without continuance of these full-time positions, PREA compliance is jeopardized. If the Governor cannot certify full compliance, the State is subject to a five percent loss (approximately \$280,000 for DOC) of any Department of Justice grant funds for prison purposes(42 U.S.C 15607).

Proposed Solution

- Continued funding of the existing 2.0 FTE will help DOC meet State and Federal PREA requirements to manage the program.
- DOC requests an additional 1.0 FTE for a PREA compliance auditor to conduct annual internal audits to assist with meeting implementation, reporting, and compliance requirements. This position would conduct preliminary investigations of reported sexual harassment.

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FY 2014-15 REQUEST
Priority R-5:Prison Rape Elimination Act Continuation Funding
Request Detail

Problem or Opportunity:

The Department of Corrections (DOC) is requesting continuation funding for the Prison Rape Elimination Act (PREA) program for FY 2014-15 in order to support the program when existing grant funds expire in September 2014. The Department's PREA program started in 2005 with federal grant funds. At that time, existing General Fund DOC staff helped develop the program and conduct ongoing PREA awareness/response training and coordinate victim services. The Department received additional federal funding from October 2011 to September 2013 (with funded FTE), and is requesting a grant extension until September, 2014 to complete implementation of the program. PREA compliance is ongoing and fluctuating based on the evolving Department of Justice regulations, requiring updated training and reporting.

The implementation of PREA standards in the Department is part of the 2013-14 Strategic Plan and Performance Measures. This includes reviewing Department policies, fiscal costs and any legislative changes that might be needed. In addition, standards require development of training curriculum and other staff education material for community correction facilities and education of offenders in community corrections. This strategic push became even more important in light of a recent report indicating that the Denver Women's Correctional Facility was reported to have had the highest rate of staff sexual misconduct throughout the nation. These resources directly impact the Department's ability to meet this ongoing challenge and fully implement PREA requirements.

PREA Background

PREA was passed in 2003 with unanimous support from both parties in Congress. The purpose of the Act was to "provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations and funding to protect individuals from prison rape" (Prison Rape Elimination Act, 2003). In addition to creating a mandate for significant research from the Bureau of Justice Statistics and through the National Institute of Justice, funding through the Bureau of Justice Assistance and the National Institute of Corrections supported major efforts in many state correctional, juvenile detention, community corrections, and jail systems.

The Act also created the National Prison Rape Elimination Commission and charged it with developing standards for the elimination of prison rape. Those standards were published in June 2009, and were submitted to the Department of Justice for review and passage as a final rule, which became effective August 20, 2012.

The State of Colorado has enacted legislation that addresses sexual misconduct in correctional facilities. Specifically, Sections 18-3-401, C.R.S. through 415.5 deal with unlawful sexual behavior, Section 18-7-702, C.R.S. includes sexual conduct in Correctional Institutions, and Sections 24-4.1-301, C.R.S. through

24-4.1-304 assure the rights of victims and witnesses to crimes. These sections reflect the tone and intent of the law, which directs the Department to take the steps necessary to protect the safety of the public, the employees, and the offenders who are under the legal authority of the Department. The State Legislature has also enacted Section 17-1-115.5, C.R.S., the Prison Sexual Assault Prevention Program. The Department is required under this statute to conform to and follow the requirements of the Prison Rape Elimination Act of 2003, Pub.L. 108-79.

The PREA program is implemented department wide to ensure coordination of effort, procedural continuity, and sharing of information among Department staff. These programs include the private prison providers and community correction facilities where offenders under DOC jurisdiction are housed.

The duties, obligations, and workload of the PREA Administration and Compliance Program will increase due to the federal PREA standards that became effective August 2012. The federal government provided grant funding to implement standards of the program, but does not provide continuation funding for continued compliance. The Department has been utilizing federal grant funds to develop programs, processes, and fund full time employees. Due to the expiration of federal grant funds, the Department is requesting funding to continue to support the increased obligations and reporting requirements.

The Department will track the effectiveness of the PREA program on the number of sexual assaults/harassment of offender-on-offender and staff-on-offender, when these incidents fall within the scope and guidelines of the PREA standards. The Department also monitors instances of sexual misconduct by either offenders or employees.

Proposed Solution:

This request is for an increase in General Fund (GF) of \$252,006 for personal services and operating and 2.7 FTE in the Inspector General subprogram for FY 2014-15. The request annualizes in FY 2015-16 to 3.0 FTE and a total of \$273,552, and beyond. The Department is not requesting start-up funding as federal grant funds have paid for the start-up costs, including computers, desks, printers, and telephones.

The Department is mandated by federal and state statutes to comply with the requirements of the Prison Rape Elimination Act. Without adequate funding the Department will not be able to achieve and maintain the standards as defined by the U.S. Department of Justice. The lack of funds could create legal exposure and costs of litigation for failure to execute statutory and public safety responsibilities. It could lead to the failure to deter the offender population from committing administrative or legal violations due to lax accountability standards.

Currently, DOC employs 2.0 FTE under a federal PREA grant, who perform the following duties mandated by the Prison Rape Elimination Act of 2003:

1) The Trainer (1.0 FTE) develops and conducts PREA training for staff, contractors, and volunteers in DOC and community correction facilities. The position develops PREA offender education (PREA standard 115.33), orientation, refresher training and provide preventative information for offenders in DOC

and community corrections facilities. This position develops manuals and reference guides as well as reviews PREA assessments for sexually aggressive behavior (SAB) or sexual vulnerability risk (SVR) levels and assists in database entry of PREA cases. The position provides technical assistance to employees regarding SAB/SVR assessments as well as general PREA questions regarding training such as definitions, situations, etc. Other duties include:

- Locating and collecting data on PREA incidents from various databases, including the Department of Corrections Information System (DCIS and PCDCIS), Office of Inspector General's case management system and the Colorado Integrated Criminal Justice Information System (CICJIS), as well as by contacting the Private Prison Monitoring Unit (PPMU), Human Resources, and other departments;
- Assisting in analysis and data input for PREA incidents into monitoring and tracking systems; and
- Providing customer service and technical support, and responding to inquiries, information requests, telephone requests, e-mails, and written correspondence.

2) The Victim Rights Coordinator (1.0 FTE) develops and coordinates victim services for DOC employees, contract workers, vendors, visitors and offenders. The position provides victim rights information, emotional support to victims of sexual abuse, monitors staff conduct and treatment of offenders and staff who report sexual abuse. Additionally, this position responds to inquiries from offender victims through correspondence or meeting with them keeping them informed on the status of their case). The position coordinates communication of victim advocacy, rights, and compensation information to offenders and staff who are victims of sexual assault and other crimes that are required under Colorado Revised Statutes Title 24 Article 4.1 Crime Victim Compensation and Victim and Witness Rights. Other duties include:

- Assisting with the education of DOC staff and outside parties on PREA requirements, statistics, procedures, and policies;
- Providing customer service and technical support, responding to inquiries, information requests, telephone requests, e-mails, and written correspondence pertaining to victim rights, advocacy, rape crisis and compensation; and
- Responding to offender grievances, lawsuits and reports/complaints regarding victim rights, advocacy, rape crisis and compensation.

As a result of PREA, a confidential Tipline was introduced within the DOC and private prisons. The tip line is available through the DOC Colorado Inmate Phone System line as well as to the general public. Information can be left through a confidential phone system. The tips are checked by an investigator with the DOC Office of the Inspector General (IG) and passed on to the appropriate investigator or person to investigate.

There is also a PREA Crisis hotline where offenders in DOC, private prisons, and community corrections can call to receive confidential sexual assault/rape crisis counseling from an advocate associated with a community rape crisis center, and a Reporting Line where DOC, private prison, and community correction offenders can report sexual assault, sexual abuse, sexual harassment and retaliation to an answering service who will take reports where the offender can remain anonymous and then refer to reports directly to an on-call investigator or community parole assistant director (PREA standard 115.51 (b)). Currently, DOC is

paying for these services through grant funding. The request would pay for these services through contract funding.

In addition to the existing 2.0 FTE, the Department is requesting to hire a PREA Compliance Auditor (1.0 FTE) whose responsibilities entail assisting with auditing facilities for PREA standard compliance, auditing PREA-related investigations into sexual harassment, unlawful sexual contact and retaliation complaints (in 2012, there were 216 offender-on-offender and staff-on-offender sexual harassment and sexual misconduct reports) which are generally misdemeanor crimes. These cases are reviewed by IG investigators, and if they do not rise to the felony level, are returned to the facility for administrative charges. This position can also assist the IG background unit by running current staff background checks to comply with PREA standard 115.17 (e).

With federal funding set to expire in September 2014 (and no additional grants anticipated), filling these positions is critical to continued PREA operations. This request seeks funding for 1.0 General Professional III, 1.0 General Professional II, and 1.0 General Professional III Compliance Auditor. Without funding, compliance with the programs (Prison Rape Elimination Act of 2003, standards, and Section 17-1-115.5 C.R.S. Prison Sexual Assault Prevention Program) cannot be sustained as incidents of prison sexual abuse endanger safety of offenders and staff while incarcerated in DOC prisons. These incidents must be thoroughly documented, tracked, and updated so the information is maintained for public safety and statistical reporting as well as compliance with federal standards.

Furthermore, it is imperative that full compliance be achieved and that any future issue, similar to that which was reported at Denver Women's Correctional Facility, never happens again. Continued issues are not acceptable, and these resources will be part of ensuring that each facility is in full compliance.

The PREA Administration and Compliance Program benefits numerous stakeholders. The program provides for enforcement and compliance with federal standards. Through these programs offenders and staff are more fully aware of the reporting of any offenses that occur within the facilities. The program provides victim rights and advocacy to offenders who have been victims of sexual assault/sexual harassment. Family members of victims also have assistance through reporting lines and access to counseling services with victim advocates.

PREA Reporting

As defined in 52 U.S.C. 15607 (c) the Governor of the state must certify full compliance with the act. This certification applies to all facilities in the state under the operational control of the state's executive branch, including facilities operated by private entities. Failure to comply is subject to the loss of five percent of any U.S. Department of Justice (DOJ) grant funds that the State would receive for prison purposes, unless the Governor submits an assurance that such five percent will be used only for the purpose of enabling the state to achieve and certify full compliance with the standards in future years. The Department calculates the potential five percent loss would be \$280,318 (Table 1 below).

The Prison Rape Elimination Act mandates that yearly reporting is required to the U.S. Department of Justice Bureau of Justice Statistics. Table 6 is the reporting for calendar year 2012 to the Bureau of Justice. Table 7 is the reporting from 2006 to 2011. The Department has a zero tolerance policy regarding sexual assault/rape, sexual misconduct, sexual abuse, and sexual harassment in administrative regulation AR 100-40.

The PREA program operates under the Office of the Inspector General. When an incident that falls under the act is committed, the case is investigated by the investigators at DOC. If warranted, the IG will fund the services of a Sexual Assault Nurse Examiner (SANE) nurse to perform a forensic examination of a victim. SANE nurses are specialized in education and clinical preparation in the medical forensic care of a patient who has experienced sexual assault or abuse.

Anticipated Outcomes:

With adequate funding, the DOC PREA Administration and Compliance program will continue to meet the requirements of the PREA Act through education of staff and offenders to reduce the numbers of reported incidents.

The Prison Rape Elimination Act meets the mission statement of the Department to “protect the citizens of Colorado by holding offenders accountable and engaging them in opportunities to make positive behavioral changes and become law-abiding, productive citizens.” The PREA program is performance goal number 34 of the Department’s Strategic Operational Plan.

Through continuing education and counseling, the Department will reduce the number of sexual assaults or reports of sexual harassment as reported yearly to the Bureau of Justice Statistics. This will meet the Department Vision Statement of “Building a Safer Colorado for Today and Tomorrow.”

Assumptions and Calculations:

Included in the Inspector General operating request is \$4,000 for PREA written materials. This includes booklets that are given to the offenders upon entry at the Denver Reception and Diagnostic Center (DRDC), as well as posters and other printed handouts that are distributed throughout the facilities, private prisons, and community corrections facilities. The request also includes \$20,426 for services for the reporting phone lines with an answering service and services provided by advocacy organizations that provide services to offenders and families. These include Pueblo Rape Crisis Services, Fremont Family Crisis Services, TESSA of Colorado Springs, and other advocacy groups.

The Department must also have an annual independent audit performed by an entity that is approved by the DOJ to perform audits under the PREA guidelines. Based upon a Cost Impact Analysis prepared by the firm of Booz, Allen, and Hamilton for the DOJ, the estimated annual cost is \$32,000. This amount is also included in the operating request in the Inspector General subprogram. (Table 4)

The Department is also requesting two vehicles to augment this program due to the audit and response requirements. The program does not currently have vehicles funded by the grant. These vehicles will be used by the PREA staff to travel to state facilities, private facilities, and community corrections facilities throughout the state. The auditor will also be using the vehicles to travel for auditing of these entities. Vehicles will also be used by PREA staff to respond to an incident anywhere in the state. Calculations were based on four months in FY 2014-15 and 12 months in FY 2015-16. Mileage is included in the operating request.

A breakdown of the request for operating expenses is detailed in Table 5.

Personal Services were calculated based on the minimum salary for the General Professional II and III in the FY 2013-14 Department of Personnel and Administration Compensation Plan.

Addendum:

Table 1: U.S. Department of Justice Grants Awarded to DOC FY 2012-13			
	DOC Grant Reference Number	Total Award	CFDA #
Sex Offender Community Reintegration	USDOJ-439	\$1,498,514	16-812
FY11 RSAT - Residential Substance Abuse Treatment	DCJ-442	\$264,431	16.593
MOUNTAIN Reentry Program for Male Offenders	DCJ-467	\$250,000	16.738
Victims Services Unit 2013 VOCA	DCJ-469	\$107,233	16.5750
2013 RSAT - Residential Substance Abuse Treatment	DCJ-470	\$251,971	16.593
CISCO Networking Academy	USDOJ-453	\$747,425	16.8120
Victims Services Unit FY13 Long Bill VALE	DCJ-459	\$128,073	State Sources N/A
SCAAP Grant		\$2,358,707	
Total Federal USDOJ Grants		\$5,606,354	
Five percent penalty		\$280,318	

The Department assumes the following detailed assumptions for FTE calculations:

- FTE requests are based on 11 months of salary for FY 2014-15.
- PERA is calculated at 10.15%.
- Medicare is calculated at 1.45%.
- Health, Life, and Dental is calculated at \$4,421 annually.
- Short-term Disability is calculated at 0.174%.
- AED is calculated at 4.0% for FY 2014-15 for paid months and 4.4% for FY 2015-16.
- SAED is calculated 3.75% for FY 2014-15 for paid months and 4.25% for FY 2015-16.
- Operating expenses are calculated at 12 months for FY 2014-15.

Table 2: Summary of Request FY 2014-15	Total Funds	General Fund	FTE
Total Request	\$252,006	\$252,006	2.7
(1)(A) Executive Director's Office Subprogram			
Health, Life and Dental	\$14,570	\$14,570	
Short-term Disability	\$211	\$211	
Amortization Equalization Disbursement	\$4,834	\$4,834	
Supplemental Amortization Equalization Disbursement	\$4,532	\$4,532	
Leased Space	\$14,250	\$14,250	
(1)(C) Inspector General—Personal Services	\$134,854	\$134,854	2.7
(1)(C) Inspector General--Operating Expense	\$75,286	\$75,286	

Table 2: Summary of Request FY 2014-15	Total Funds	General Fund	FTE
(3)(D) Communications--Operating Expense	\$1,350	\$1,350	
(3)(E) Transportation--Vehicle Lease Payments	\$1,444	\$1,444	
(3)(F) Training-- Operating Expenses	\$75	\$75	
(3)(G) Information Systems--Operating Expenses	\$600	\$600	

Table 3~ Summary of Request FY 2015-16	Total Funds	General Fund	FTE
Total Request	\$273,552	\$273,552	3.0
(1)(A) Executive Director's Office Subprogram			
Health, Life and Dental	\$14,570	\$14,570	
Short-term Disability	\$229	\$229	
Amortization Equalization Disbursement	\$5,801	\$5,801	
Supplemental Amortization Equalization Disbursement	\$5,603	\$5,603	
Leased Space	\$14,250	\$14,250	
(1)(C) Inspector General—Personal Services	\$147,124	\$147,124	3.0
(1)(C) Inspector General--Operating Expense	\$75,286	\$75,286	
(3)(D) Communications--Operating Expense	\$1,350	\$1,350	
(3)(E) Transportation--Vehicle Lease Payments	\$8,664	\$8,664	
(3)(F) Training-- Operating Expenses	\$75	\$75	
(3)(G) Information Systems--Operating Expenses	\$600	\$600	

Table 4: PREA Audit Costs Per Facility					
				Juvenile & Community Corrections	Lock Ups
		Prisons	Jails		
	Cost Per Day	(4 day audit)	(3 day audit)	(2 day audit)	(1 day audit)
Auditor's Fee					
Auditors Labor (non fixed cost)	\$2,400	\$9,600	\$7,200	\$4,800	\$2,400
Meals/Incidental Expenses (non-fixed)	\$264	\$1,056	\$792	\$528	\$264
Hotel (non-fixed)	\$440	\$1,760	\$1,320	\$880	\$440
Air Travel (fixed costs)	\$1,080	\$1,080	\$1,080	\$1,080	\$1,080
Mileage (fixed cost)	\$600	\$600	\$600	\$600	\$600
Total Auditors fee		\$14,096	\$10,992	\$7,888	\$4,784
LOE Cost *		\$18,300	\$13,725	\$9,150	\$4,575
TOTAL COST		\$32,396	\$24,717	\$17,038	\$9,359

Source: "Cost Impact Analysis" DOJ Office of Justice Programs, June 18, 2010.

Web site - <http://www.ojp.usdoj.gov/programs/pdfs/preacostimpactanalysis.pdf>

*LOE = Level of Effort

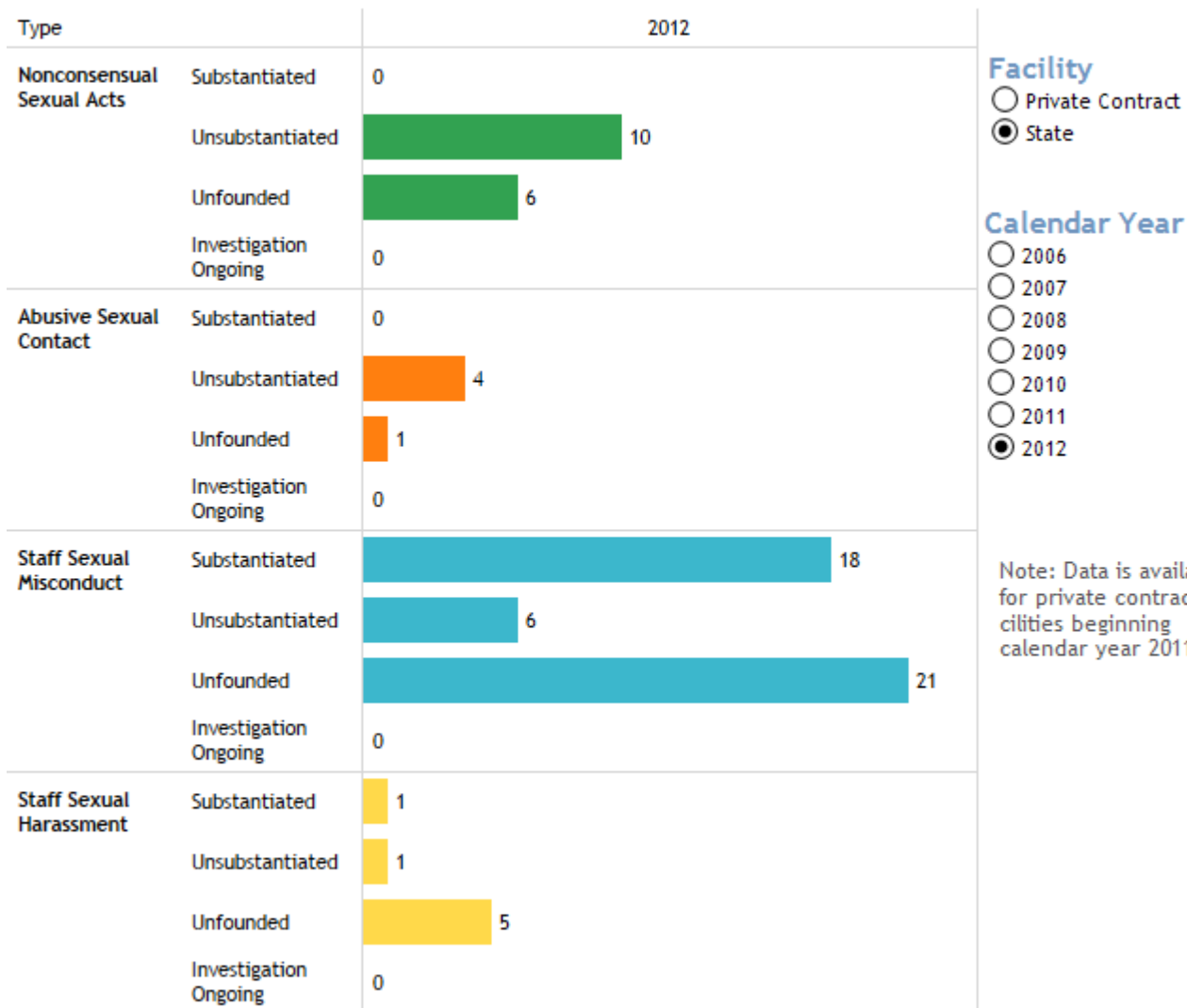
Table 5: Breakdown of IG Operating Request	
Operating Expense	Amount
Operating	\$1,500
Forensic Medical Exams (SANE)	\$5,000
Travel/Per Diem	\$5,040
3 Blackberrys @ \$648 each	\$1,944
Variable Rate Mileage	\$5,376
PREA Materials	\$4,000
Contracts for Services	\$20,426
Annual Audit	\$32,000
Total	\$75,286

The Department assumptions used for operating request:

- Operating expenses are based on \$500 per FTE annually.
- Blackberrys are based on \$648 per phone, per year.
- Travel/Per Diem is based on \$5,040 (3 overnights per month @ 140 = \$420 per month)
- Variable mileage is based on 1,500 miles per month @ 0.149 = \$224 per month or \$2,688 per vehicle per year. Two vehicles is \$5,376 per year.
- Contracts for services are based upon estimated current contracts.
- The annual audit costs are rounded based on the cost analysis report to DOJ. (Table 4)

Table 6

PREA Incidents by Year and Outcome (as reported to Bureau of Justice Statistics)



Facility
 Private Contract
 State

Calendar Year
 2006
 2007
 2008
 2009
 2010
 2011
 2012

Note: Data is available for private contract facilities beginning calendar year 2011.

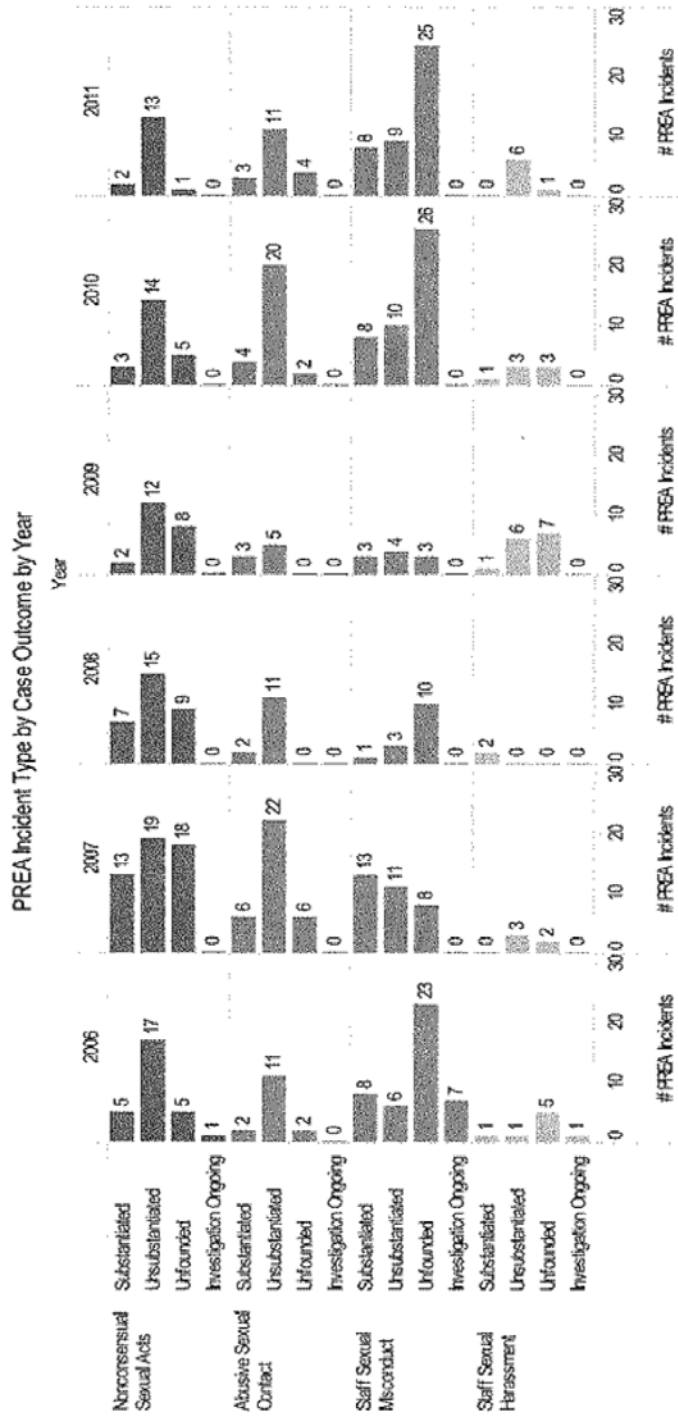
Number of PREA Incidents by type and case outcome



Table 7

PREA Incidents by Year and Outcome (as reported to Bureau of Justice Statistics)

Standards 115.87 (b) and 115.89 (b) of the Prison Rape Elimination Act (PREA) require state departments of corrections to publish aggregate incident-based sexual abuse data at least annually and make that data readily available to the public through its web site or other means. The figure below shows the PREA incident types by case outcome for Colorado Department of Corrections (CDCOC) state facilities from 2006-2011. The number of substantiated non-consensual acts and cases of abusive sexual contact has remained low over the past several years reported. Unfounded and unsubstantiated cases of staff sexual misconduct increased dramatically in 2010 and 2011, and more cases than in the previous 2 years (eight each year) were substantiated. There were no cases of staff sexual harassment in 2010 and 2011, and only one case each in 2009 and 2010. The CDCOC submits this calendar data to the Bureau of Justice Statistics for that agency's annual survey of sexual violence.



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