



PA Institutional  
Law Project

## Resources and Info For Survivors of Sexual Assault and Sexual Abuse In PA Prisons and Jails



Lewisburg  
Prison Project

Sexual assault in detention facilities is unacceptable. **Regardless of your gender or the gender of the perpetrator, incarcerated people have a right to be free from sexual abuse.** If you feel your sexual safety is at risk, it is important that you notify staff. This makes them aware of your concern for your safety, and they may be able to help prevent an assault from occurring. If you have been sexually assaulted, you should report the assault directly to a staff member or follow the sexual abuse reporting policy at your facility, if you feel safe doing so. Reporting is the first step to preserving your ability to file a lawsuit.

### **If you have experienced sexual assault or abuse by another incarcerated person:**

You may have a *failure to protect* claim under the Eighth or Fourteenth Amendments.<sup>1</sup> Institutions have a duty to protect incarcerated people from a serious risk of harm. *Farmer v. Brennan*, 511 U.S. 825 (1994).

To succeed on a failure to protect claim, you must show that:

- 1) the institution staff **knew** about a “**substantial risk of serious harm**”; AND
- 2) staff **failed to take adequate steps to protect you** despite knowing about the substantial risk.

There are two main ways to show that staff knew about a substantial risk of harm:

- 1) if you **notified staff of the specific risk to your safety** before the incident(s) occurred; or
- 2) if there was an **obvious risk** present.

An obvious risk may include situations when the person who assaulted you has sexually assaulted others before or if you are in a high-risk category, such as LGBTQ+ or a juvenile in an adult facility.

### **If you have experienced sexual assault or abuse by a staff member:**

***Cruel and Unusual Punishment:*** If you are sexually assaulted or abused by a staff member, courts are clear that this is a violation of the Eighth Amendment. *Ricks v. Shover*, 891, F.3d 468, 475 (3rd Cir. 2018).

In Pennsylvania, an incarcerated or institutionalized person cannot consent to sexual activity with staff, and it is a criminal offense for staff to engage in any sexual acts with an institutionalized person. Sexual conduct between prison staff and an incarcerated person may be an automatic violation of the Eighth Amendment, whether or not staff believes there was consent. *E.D. v. Sharkey*, 928 F.3d 299, 308 (3d Cir. 2019).

***Failure to Intervene:*** If other staff members witness or are aware that you are being sexually assaulted or abused by a staff member, you may have a claim for *failure to intervene*. A corrections officer’s failure to intervene in an assault can form an Eighth Amendment violation if the officer “had a **reasonable opportunity to intervene** and failed to do so.” *Smith v. Mensinger*, 293 F.3d 641, 650 (3d Cir. 2002).

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<sup>1</sup> You may be able to bring **state law claims** of Battery, Assault, Negligent or Intentional Infliction of Emotional Distress (IIED); however, this information sheet will only deal with **federal claims**.

**Failure to Supervise:** If the facility failed to properly supervise staff members, resulting in a sexual assault or sexual abuse, you may have a claim for *failure to supervise*. This claim is commonly brought when a supervisor is aware of a pattern of sexual assaults and does not respond appropriately to prevent future assaults. *Beers-Capitol v. Whetzel*, 256 F.3d 120, 134 (3d Cir. 2001).

### **The Prison Rape Elimination Act (PREA):**

The Prison Rape Elimination Act (PREA) created a set of guidelines that facilities must follow to address sexual abuse and harassment. PREA does not create legal rights or a pathway to file a lawsuit. However, it may be useful to report incidents of sexual assault through your facility's PREA reporting process, both to protect your rights to file a lawsuit in the future, and to notify the facility that your safety is at risk.

### **Retaliation:**

One concern with reporting, particularly following sexual assault or abuse by a staff member, is retaliation. Engaging in the PREA reporting or grievance processes is a Constitutionally protected right and you may have a First Amendment claim against the facility if you face retaliation because you filed a report. *Rausser v. Horn*, 241 F.3d 330, 333 (3d Cir. 2001). Being placed in the hole or solitary confinement for filing a report constitutes retaliation and is against PREA guidelines.

### **Some things you can do that may strengthen your claims:**

- Tell a counselor or mental health provider what happened if you have already experienced assault.
- File a PREA complaint. Include as many details as possible.
- Notify medical staff. If you feel safe doing so, request that staff perform a "rape kit" to collect evidence. Be aware that a rape kit includes an invasive physical exam.
- Write down everything you remember about the assault immediately after.

**If you have been sexually assaulted or abused and staff are not letting you report, are not taking steps to protect you, or if you are retaliated against for filing a report, please write or call us at one of the addresses below:**

PA Institutional Law Project  
718 Arch St., Suite 304 S  
Philadelphia, PA 19106  
(215) 925-2966  
[www.pailp.org](http://www.pailp.org)

Lewisburg Prison Project  
P.O. Box 128  
Lewisburg, PA 17837  
(570) 523-1104  
[www.lewisburgprisonproject.org](http://www.lewisburgprisonproject.org)

PA Institutional Law Project  
247 Fort Pitt Blvd, 4<sup>th</sup> Floor  
Pittsburgh, PA 15222  
(412) 434-6004  
[www.pailp.org](http://www.pailp.org)

*Please note the Pennsylvania Institutional Law Project and the Lewisburg Prison Project assist incarcerated people with issues related to the conditions of their confinement (e.g., medical, mental health, excessive force, etc.). We **cannot** assist people with criminal matters, habeas cases, sentencing issues, parole issues, or early or compassionate release.*

**If you have been sexually assaulted or sexually abused while incarcerated, you deserve support.** If you feel safe doing so, speak with a counselor about what happened. You can also call the RAINN sexual assault hotline at **1-800-656-HOPE (4673)** to speak with a crisis counselor.

*\*Remember that calls to hotlines will likely be recorded by your detention facility\**