

Responding to Sexual Abuse of Youth in Custody: Addressing the Needs of Boys, Girls, and Gender Nonconforming Youth Notification of Curriculum Use
April 2014

The enclosed Responding to Sexual Abuse of Youth in Custody: Addressing the Needs of Boys, Girls, and Gender Nonconforming Youth curriculum was developed by the Project on Addressing Prison Rape at American University, Washington College of Law as part of contract deliverables for the National PREA Resource Center (PRC), a cooperative agreement between the National Council on Crime and Delinquency (NCCD) and the Bureau of Justice Assistance (BJA). The Prison Rape Elimination Act (PREA) standards served as the basis for the curriculum's content and development with the goal of the Responding to Sexual Abuse of Youth in Custody: Addressing the Needs of Boys, Girls, and Gender Nonconforming Youth curriculum being to satisfy specific PREA standard requirements.

It is recommended that the Responding to Sexual Abuse of Youth in Custody: Addressing the Needs of Boys, Girls, and Gender Nonconforming Youth curriculum be reviewed in its entirety before choosing which modules to use. Any alterations to the original materials require either acknowledgement during their presentation or removal of the PRC and Project on Addressing Prison Rape logos.

BJA is currently undergoing a comprehensive review of the enclosed curriculum for official approval, at which point the BJA logo may be added.

Note: Use of the enclosed curriculum, either in part or whole, does not guarantee that an auditor will find a facility "meets standards." Rather, an auditor will take into consideration the curriculum used as part of their overall determination of compliance.

Notice of Federal Funding and Federal Disclaimer – This project was supported by Grant No. 2010-RP-BX-K001 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice nor those of the National Council on Crime and Delinquency (NCCD), which administers the National PREA Resource Center through a cooperative agreement with the Bureau of Justice Assistance.



PRE-TRAINING CHECKLIST

RESPONDING TO SEXUAL ABUSE OF YOUTH IN CUSTODY: ADDRESSING THE NEEDS OF BOYS, GIRLS AND GENDER NON-CONFORMING YOUTH¹

*The following pre-training checklist **should be used** by trainers in conjunction with the 'Responding to Sexual Abuse of Youth in Custody: Addressing the Needs of Boys, Girls and Gender Non-Conforming Youth' curriculum. The purpose of this pre-training checklist is to summarize the information from the training modules and provide the trainer a checklist of items to consider prior to training. This information is not intended for participants, but to help trainer(s) assess their own readiness and the readiness of their agency or facility for training.*

I. Goals and Objectives (Module 1)

This training curriculum educates participants on the Prison Rape Elimination Act of 2003 (PREA) and the final national standards applicable to juvenile facilities. The goals of this training are to have participants:

1. Learn why gender responsive strategies are important in responding to sexual abuse of youth;
2. Acquire vocabulary to discuss gender and its impacts on sexual abuse in custody;
3. Understand how gender affects legal remedies for sexual abuse of youth – state criminal laws, human resource law and civil litigation;
4. Learn the impact of gender on culture, policy development and operational practice and its relationship to the implementation of the PREA standards; and
5. Become familiar with the vectors of sexual abuse of youth– gender, sexuality, sexual behavior and victimization.

¹ When we refer to gender non-conforming, we mean lesbian, gay, bisexual, transgender, intersex (LGBTI).

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II. The Prison Rape Elimination Act of 2003 (Module 2)

Important Training Points:

- The Prison Rape Elimination act was passed unanimously by both houses of congress in 2003.
- The aim of PREA is to create zero tolerance for prison rape.
- PREA applies to any confinement facility whether run by the government or a private organization on behalf of the government.
- Under PREA, the first audit cycle begins in August 2013.
- There are more than 2,000 allegations of sexual violence reported in juvenile facilities each year.
- According to the 2012 Bureau Justice Statistics Report on *Sexual Victimization Reported by Youth*, an estimated 9.5% of adjudicated youth in state juvenile facilities and state contract facilities reported experiencing one or more incidents of sexual victimization by another youth or staff in the past 12 months or since admission, if less than 12 months.
- Among youth who reported victimization by staff, 89.1% were males reporting sexual activity with female staff and 3.0% were males reporting sexual activity with both male and female staff.
- Juveniles in confinement are much more likely than incarcerated adults to be sexually abused, and they are particularly at risk when confined with adults.
- PREA standards are minimum standards. States can and are encouraged to do more to protect the rights of those in custody.

Why this is important: Sexual abuse of people in custody occurs in prisons, jails, juvenile detention centers, lockups and community confinement facilities across the country. Being sexually abused while in custody is not an inevitable feature of incarceration. Sexual abuse in custody is preventable. Correctional agency staff and others who come into contact with youth in custody need to know their responsibilities and obligations under the law to protect people in custody from sexual abuse. It is equally important for correctional agency staff to know and understand the Bureau of Justice Statistics' findings regarding sexual abuse of youth in custody. These findings will help staff recognize vulnerable groups and potential offenders.

Pre-training checklist

	Yes	No
Does the agency have a zero tolerance policy towards all forms of sexual abuse and sexual harassment?		
Does the agency have a PREA Coordinator and/or PREA Compliance manager?		
Does the agency have a staffing plan that provides for adequate levels to protect against sexual abuse?		
Does the agency inform youth about reporting sexual abuse to authorities?		
Does the agency have a policy prohibiting verbal and physical harassment of youth based on sexual orientation or gender identity, by staff or youth?		
Does the agency train staff and youth on sexual abuse perpetrated by staff?		

III. Vectors of Sexual Abuse (Module 3)

Applicable PREA Standards:

- ✓ Standards on Screening for Risk of Sexual Victimization and Abusiveness 115.341-115.342
- ✓ Standards on Supervision and Monitoring 115.313

Important Training Points:

- Sexual abuse has always been a problem for custodial settings.
- State sanctioned punishment for youth began in the late 1800s and has changed throughout the years. The current trend is to avoid prosecuting youth as adults and recognize the impact of adolescent development.
- 9.5% of adjudicated youth reported being sexually victimized by staff or other youth.
- Gender non-conforming youth are vulnerable to sexual victimization; youth who identified their sexual orientation as gay, lesbian, bisexual, or other reported a substantially higher rate of youth-on-youth victimization (10.3%) than heterosexual youth (1.5%). There were similar rates of abuse by staff reported by youth who identified as gay, lesbian, bisexual, or other (7.5%) and heterosexual youth (7.8%).
- Sexual abuse encompasses anything from light touching in an inappropriate way, to violent or aggressive behavior.
- Female staff has also experienced sexual abuse by co-workers and youth.

- Females account for 42% of staff in juvenile facilities, yet females are named as perpetrators in 95% of incidents of sexual abuse by staff.
- Title VII prohibits employers from discriminating on the basis of race, color, national origin, sex, or religion.
- Title VII does permit gender specific positions if gender is a Bona Fide Occupational Qualification (BFOQ) for the position

Why this is important: This section educates participants about the history of the juvenile justice system and its implications on current policies and operational practice in juvenile institutions. In addition, this section explores the history of women employed in correctional facilities, sexual harassment, and BFOQ and how they relate to sexual abuse of youth in custody.

The juvenile justice system has shifted its focus over the past few decades, moving from rehabilitation to punishment back to rehabilitation. This shift is significant because it recognizes the importance of adolescent development which can be hindered by custodial confinement. This module discusses BJS’s statistics on sexual abuse of youth in custody and examines in closer detail the prevalence of sexual abuse reported by youth in different types of facilities, according to their gender, and sexual orientation.

The training uses the recent recognition of the importance of adolescent development and the BJS findings to guide participants in discussions about: (1) the differences in supervising youth in adult facilities and supervising youth in juvenile facilities for purposes of addressing sexual abuse in custody and (2) the differences in housing boys and girls for purposes of addressing sexual abuse in custody. Finally, this in depth look at the BJS findings helps participants identify vulnerable youth and potential offenders.

Pre-training Checklist

	Yes	No
Does the agency obtain and use information about each resident's personal history and behavior to reduce the risk of sexual abuse by or upon a resident?		
Does the agency use the information obtained through assessments and the residents’ personal history to make housing, bed, program, education, and work assignments for residents?		
Does the agency train staff on vulnerable populations?		
Does the agency train staff on the purpose of juvenile custody?		
Does the agency have gender specific training when staff move from facility to facility (i.e. when a staff person goes from working in a facility housing boys to a facility housing girls)?		
Does the agency train staff on respectful communications with		

	Yes	No
gender non-conforming youth?		
Does the agency have and follow a policy prohibiting discrimination on the basis of sex, race, national origin, color and religion in the hiring and firing decisions of staff?		

IV. Adolescent Development and Sexuality (Modules 4 and 5)

Applicable PREA Standards:

- ✓ Standards on Prevention Planning 115.311-155.318
- ✓ Standards on Responsive Planning 115.321-115.322
- ✓ Standards on Training and Education 115.331-115.335
- ✓ Standards on Screening for Risk of Sexual Victimization and Abusiveness 115.341-115.342
- ✓ Standards on Investigations 115.371-115.373.

Important Training Points:

- Teens have a fully developed language and spatial ability and can look mature, but the areas of the brain that regulate emotion, decision making, risk assessment, and rational decision making do not develop until adulthood.
- Girls who develop at an early age have a higher risk of engaging in at risk behaviors.
- Boys who develop at an early age receive greater respect from their peers and have higher self-esteem.
- Abuse, neglect, mental health issues, and confinement in detention settings are among some of the challenges to health adolescent development.
- Youth in custody commonly experience development issues such as sexual and moral development, self-regulation, developing a sense of belonging.
- Custody places limits on adolescent development such as inhibiting opportunities to assert independence and take risks, and limits opportunities for healthy sexual questioning and experimentation.
- Pediatrics generally states that sexual orientations are established by early childhood or even before birth. They are normal and healthy developmental outcomes.
- The term, “gender non-conforming” youth refer to youth who do not follow other people’s ideas or stereotypes about how they should look or act based on the male or female sex they were assigned at birth. These youth are more likely to experience violence and abuse, and are at increased risk for suicide.
- Research shows that lesbian, gay, bisexual, and transgender youth face isolation, violence and fear due to societal disapproval and the resulting victimization and discrimination.

Why this is important: The recent shifts in the juvenile justice system demonstrate the importance of adolescent development. This section breaks down stages of cognitive,

behavioral, and social-emotional development for youth in order to give participants a better understanding of the importance of healthy adolescent development.

The section explores: the components of normal adolescent development; barriers to healthy adolescent development; ways confinement may hinder or support adolescent development; and developmental issues of youth while in custody. This section educates participants on ways to maximize the adolescent development of youth while they are in custody.

Additionally, this section educates participants on theories of gender, gender identity, gender expression, and sexual orientation. It also educates participants on the aspects of sexuality and gender and the experience of growing up gender non-conforming. Youth identify their sexual orientation at different stages. It is possible for a youth to change or accept a different gender identify while in custody. Gender non-conforming youth in custody are at a greater risk for sexual abuse, violence, and suicide.

The module explores ways agencies and staff can support gender non-conforming youth in custody and prepares them to handle situations that may arise involving gender non-conforming youth and the response of other youth and staff to these youth in custody.

Pre-training Checklist

	Yes	No
Does the agency have a staffing plan in place that provides for adequate levels of staffing to protect residents against sexual abuse?		
Does the agency prohibit isolation as a method of protecting residents?		
Have staff members received specialized training for interviewing juvenile sexual abuse victims?		
Does the agency provide comprehensive age-appropriate education to residents regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents?		
Does your agency have a policy in place prohibiting verbal and physical harassment of youth based on sexual orientation or gender identity?		
Does your agency assess each youth’s history as it relates to sexual abuse, sexual acting-out, and sexual assault?		
Does you agency provide youth with a means to anonymously report sexual abuse to an outside provider or hotline?		

V. Impact of Culture (Module 6)

Applicable PREA Standards:

- ✓ Standards on Prevention Planning 115.311-115.318
- ✓ Standards on Responsive Planning 115.321-115.322
- ✓ Standards on Training and Education 115.331-115.335
- ✓ Standards on Reporting 115.351-115.354
- ✓ Standards on Official Response 115.361-115.368
- ✓ Standards on Investigations 115.371-115.373
- ✓ Standards on Discipline 115.376-115.378
- ✓ Standards on Data Collection and Review 115.386-115.389
- ✓ Standard on Audit and Compliance 115.401-115.405, 115.501

Important Training Points:

- Culture is the shared assumptions, values, beliefs, attitudes, norms, and practices of an organization or group.
- Culture tells people in an agency what will be expected of them and what they can expect of others.
- According to a National Institute of Ethics study regarding “code of silence”, 46% of 3,714 police officers admitted to having witnessed misconduct by another employee but took no action.
- Red flags are actions, words, situations or settings that should warn a person something may be wrong. Examples of red flags in staff sexual misconduct instances are staff over identifying with resident, resident knowing personal information about staff, residents in unauthorized areas repeatedly, staff granting special requests, etc.
- According to the 2012 BJS report on Sexual Victimization in Juvenile Facilities Reported by Youth, among youth who reported being abused by staff, roughly half (49.2%) said that the abusive staff member gave them pictures or wrote them letters. Almost a third said that staff contacted them from outside the facility. More than two-thirds said that staff told them about their personal lives.
- Red flags of youth on youth sexual abuse are the victim isolating themselves, self-abuse, afraid to shower, etc.
- Examples of red flags for youth on youth sexual abuse exhibited by the perpetrator are difficulty controlling anger, past victimization, and poor coping skills.

Why this is important: This section educates participants about the impact that agency culture can have on sexual abuse. An agency’s culture is critical in preventing sexual abuse of youth in custody. Culture affects reporting, discipline, and overall safety of youth in custody. The language and actions of staff can have a profound effect on staff and youth misconduct alike.

This module defines culture, describes the components of agency culture, and explores the influences on culture. It provides a starting point for agencies to breakdown the code of silence and to adopt a culture of reporting the misconduct of fellow officers and employees. This

module also trains participants to recognize warning signs of staff and youth misconduct and provides participants with self-assessment tools and other tools to assess agency culture.

Pre-training Checklist

	Yes	No
Is there a “code of silence” in your agency?		
Does your agency discipline staff for not reporting misconduct by other staff?		
Does your agency fairly and consistently discipline staff for misconduct?		
Does your agency have a policy to prohibit retaliation for reporting staff misconduct?		
Does your agency conduct appropriate background checks during the hiring process?		
Does your agency define boundaries for employees through policies that are clear, concise and definitive about what is acceptable and unacceptable?		
Does your agency train staff on recognizing red flags?		
Does your agency provide employees with self-assessment tools to help them learn when they might be crossing boundaries?		
Does your agency provide employees with access to advice and assistance when they have concerns and questions about boundaries?		
Does your agency support supervisors in their efforts to supervise employees and recognize red flags?		

VI. Policy and Operational Practices (Modules 9 and 11)

Applicable PREA Standards:

- ✓ Standards on Prevention Planning 115.311-155.318
- ✓ Standards on Responsive Planning 115.321-115.322
- ✓ Standards on Training and Education 115.331-115.335
- ✓ Standards on Screening for Risk of Sexual Victimization and Abusiveness 115.341-115.342
- ✓ Standards on Reporting 115.351-115.354

- ✓ Standards on Official Response 115.361-115.368
- ✓ Standards on Investigations 115.371-115.373
- ✓ Standards on Discipline 115.376-115.378
- ✓ Standards on Medical and Mental Health Care 115.381-115.383
- ✓ Standards on Data Collection and Review 115.386-115.389
- ✓ Standard on Audit and Compliance 115.401-115.405, 115.501

Important Training Points:

- The size of the facility has a strong correlation with its levels of abuse. (Youth detained in facilities holding at least 101 detainees were nearly 5 times as likely to report victimization as those in facilities holding fewer than 10 detainees.).
- The longer a youth was detained, the more likely he or she was to be sexually abused.
- Good policies are consistently and routinely reviewed, revised, monitored, and enforced.
- Policies should be reviewed to address the needs of boys, girls, and gender non-conforming youth.
- Auditors will look for all elements of the PREA Standards that is required in agency's policies.
- Operational practices must address the responsibilities of staff in great detail.
- There are key operational practices to consider for boys, girls and/or gender non-conforming youth
- All agencies and facilities should have a preliminary implementation plan for a critical operational practice.

Why this is important: This section educates participants on creating effective policies to address sexual abuse and putting those policies into operational practice. Good policies provide clear statements of the agency's mission, goals and values; directs staff; helps to manage risk and keep staff and youth safe and secure; helps to avoid costly litigation; and creates positive agency culture. Leadership is critical in implementing agency culture

This training guides participants through the process of developing good policy that reflects the PREA standards. Policy should be developed by an interdisciplinary group of agency leaders and stakeholders. It is important that legal counsel be involved in developing PREA policy because state, federal and local laws must be considered. Well-developed policies answer who, what, when, where and how. Operational practices will differ for girls, boys and gender non-conforming youth.

Pre-training Checklist

	Yes	No
Does your agency's policy reflect the PREA standards?		
Does your agency's policy provide a clear statement of the agency's mission, goals and values?		
Do your agency's current practices differ from its written policies and directives?		
Does your agency's policy create a culture that promotes safety?		
Does your agency's policy address the challenges gender non-conforming youth face while in custody?		
Does your agency's policy address the needs of men, women and gender non-conforming individuals?		
Does your policy follow Federal, state and local laws and regulations?		
Does agency leadership understand, respect and follow policy?		
Do your agency's actions operationalize PREA standards?		
Do you (as the trainer) understand the gaps between policy and practice?		

VII. Gender, Victimization and Vulnerable Youth: Medical and Mental Health of Victims (Modules 7 and 10)

Applicable PREA Standards:

- ✓ Standards on Prevention Planning 115.311-155.318
- ✓ Standards on Responsive Planning 115.321-115.322
- ✓ Standards on Screening for Risk of Sexual Victimization and Abusiveness 115.341-115.342
- ✓ Standards on medical and Mental Health Care 115.381-115.383;

Important Training Points:

- Boys tend to guard their inner feelings and suppress their emotions. Boys are more likely to express anger and less able to express fear, anxiety, and sadness.
- Boy's identities are based on defining self with focus on independence, self-sufficiency, autonomy.
- Girls tend to be emotionally expressive. Girls are more likely to ask for help and are more able to express feelings, weaknesses, vulnerability, and confusion.

- Girls’ identity based on defining self in relation to others.
- Victims respond to sexual abuse in different ways based on gender
- Gender plays important part in assessing risk and responding to victimization in custodial settings.
- Confidentiality for medical and mental health staff is not usually applicable when there is potential for harm to the victim or others, but it is important for practitioners to follow state specific laws.
- Both immediate and ongoing medical and mental health care are required by the PREA standards and imperative for victims in custodial settings.

Why this is important: These sections are important because participants will learn to identify: staff characteristics and behavior that contribute to youth victimization; medical health service needs for boys and girls; and needed mental health interventions for victims of sexual abuse in juvenile justice.

Sexual abuse creates trauma and agencies must understand the medical and mental health impacts on a juvenile. These impacts are not the same for every victim; responses differ based on gender and history of trauma. Through these modules, staff will gain an understanding of gender specific responses and needs in order to best assist sexual abuse victims and vulnerable populations.

There are distinctions in gender-influenced socialization, communication styles and behaviors of boys, girls and gender non-conforming youth. It is critical for correctional staff to understand these distinctions because the implications of sexual abuse are different for boys, girls, and gender non-conforming youth.

Pre-training Checklist

	Yes	No
Does the agency obtain and use information about each resident’s personal history and behavior within 72 hours of arrival as well as periodically to reduce the risk of sexual abuse?		
Does the agency allow transgender and intersex youth to shower separately from other youth?		
Does the agency decide whether to assign transgender and intersex residents to male or female facilities on a case-by-case basis to ensure the health and safety of youth?		
Does your agency provide ongoing training for youth and staff?		
Does your agency use a victim-centered approach when responding to allegations of sexual abuse?		
Does your agency provide timely, unimpeded access to emergency medical treatment and crisis intervention services to		

	Yes	No
resident victims of sexual abuse?		
Does your agency offer resident victims of sexual abuse information about and timely access to emergency contraception and sexually transmitted infections prophylaxis?		
Does your agency offer medical and mental health evaluation and treatment to all residents who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility?		
Does your agency follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions?		
Does your agency offer all victims of sexual abuse access to forensic medical examinations?		
Do SART teams or medical professionals who are conducting sexual assault examinations follow applicable chain of custody guidelines for evidence kits?		

VIII. Gender Implications for Investigations (Module 12)

Applicable PREA Standards:

- ✓ Standards on Prevention Planning 115.311-115.318
- ✓ Standards on Responsive Planning 115.321-115.322
- ✓ Standards on Training and Education 115.331-115.335
- ✓ Standards on Screening for Risk of Sexual Victimization and Abusiveness 115.341-115.342
- ✓ Standards on Reporting 115.351-115.354
- ✓ Standards on Official Response 115.361-115.368
- ✓ Standards on Investigations 115.371-115.373.

Important Training Points:

- Sexual abuse victims should be examined by a trained professional.
- Conduct and attitude by the first responders and investigators to the victim in a youth on youth sexual abuse case will have a major impact on the cooperation of the victim.
- *Garrity* does not prohibit law enforcement from turning over information to your agency.
- Investigative questions should consider gender norms of boys and girls.
- Unless there is overwhelming evidence to classify an allegation as unfounded, the victim and accuser should be separated, at least until the investigation concludes.

- If other agencies are involved in the investigation, coordinate with them so that the victim does not have to do multiple interviews.
- In addition to investigating abuse, investigators should pursue claims of staff failure to supervise or report abuse.
- If you house or supervise sexual offenders, staff should receive specialized training in working with this population.
- The alleged aggressor should be advised of his/her constitutional rights.
- Agencies should investigate “non-coercive” sex acts between youth to determine if they are truly non-coercive. If they are non-coercive, agencies can choose to sanction the youth or not. According to the PREA standards non-coercive sex between youth is not sexual abuse. If the agency determines that the sex was coercive then it should proceed with either or both, criminal and administrative investigations of youth and staff. All sex acts with staff are considered crimes.

Why it is important: This section teaches participants the foundations of successful administrative investigations. Successful investigations are essential to addressing sexual abuse in custody. Correctional staff should know the elements of successful investigation, their role in the investigation, and the implications gender can have on investigations. As covered in previous modules, boys, girls, and non-conforming youth have different communications styles so interview questions must take that into consideration. This training shows participants the reasons why investigations fail and it also trains them on the key elements of an effective investigation. Participants will leave this training knowing the importance of the *Garrity* rule. Participants will also have a concrete understanding of the foundation of a successful investigation and useful investigative techniques.

Pre-training Checklist

	Yes	No
Does the agency have protocol established to investigate allegations of sexual abuse?		
Does the agency provide multiple ways residents can report incidents of sexual abuse, sexual harassment, retaliation, and staff violations?		
Does the agency provide at least one way that residents can anonymously report sexual abuse incidents to a public or private entity that is not a part of the agency?		
Is there a child advocacy center in your jurisdiction?		
Does your agency’s staff know the state policy for SANE exams of juveniles?		
Does your agency have a particular staff member or group of staff members who investigate sexual abuse?		

	Yes	No
Does your agency provide specialized training to staff that deal with youth detained in your program for sexual offenses?		
Does your agency offer staff training for gender responsive strategies for boys, girls and gender non-conforming youth in custody?		
Does your staff know the channels of reporting, including the mandatory reporting guidelines?		
Does your agency train investigators on how to handle inconsistencies and recanting when interviewing youth victims of sexual abuse?		
Does the investigation team know all the sources of potential evidence and witnesses to interview?		
Are records of investigations kept in a uniform and professional manner?		

IX. Gender and the Law: Human Resources, State Criminal Laws and Legal Liability (Modules 8, 13 and 14)

Applicable PREA Standards:

- ✓ Standards on Cross-gender Searches 115.315
- ✓ Standards on Hiring and Promotion Decisions 115.317
- ✓ Standards on Criminal and Administrative Agency Investigations 115.371
- ✓ Standards on Discipline Sanctions on Staff 115.376
- ✓ Standard on Exhaustion of Administrative Remedies 115.352

Important Training Points:

- In human resources, different legal considerations may apply depending on the gender of the staff member.
- PREA standards can help agencies meet PREA standards related to juvenile privacy.
- Courts recognize that adult female inmates have a greater degree of privacy than male inmates.
- Youth have greater rights to privacy than adults.
- Female correctional officers are most often implicated in anti-fraternization cases.
- Agencies can be held liable for both sexual harassment and sexual discrimination.
- Agencies can institute anti-fraternization policies, and should be mindful these policies may have a greater impact on female staff than male staff—however agencies must be mindful that such policies are not overly broad and have articulable exceptions.
- PREA does not create a private right of action that youth can use to sue an agency

- PREA help to establish an 8th Amendment or 14th Amendment claim.
- DOJ can monitor facilities with Civil Rights of Institutionalized Persons Act (CRIPA) violations for a period of months, or even years.
- Corrections officials can be held liable in their official, individual, and personal capacities for sexual violence against youth committed by either staff or other youth.
- The respective genders of the staff member and the youth can have a dramatic effect on liability.

Why this is important: This section educates participants on relevant laws related to youth privacy, searches, sexual abuse, mandatory reporting, fraternization, and human resources. It also highlights the role that the gender of the youth or staff plays in court decisions.

The legal liabilities agencies and agency staff face are complicated. They include constitutional, federal, state (including mandatory reporting laws), and tort liabilities. These legal frameworks are difficult for a lay person to understand without instruction and explanation from someone who can speak knowledgeably on legal matters.

This section helps staff identify the various forms of legal liability. They should understand that sexual abuse with youth and custody carries criminal, civil and reputational consequences. Participants will leave the training with a thorough understanding of their duties and obligations, and an understanding of the implications of gender as it relates to these legal frameworks. Participants need not memorize these laws and court cases, but merely have an understanding of their legal obligations and the potential consequences for failure to meet them. These modules are state specific and therefore part of your preparation to train should be to obtain the statutes and cases that are relevant to your state. These modules should be trained or presented by someone with legal experience and knowledge e.g. your general counsel.

Pre-training Checklist

	Yes	No
Does your agency have policies that prohibit cross gender strip and body cavity searches of residents?		
Does the agency prohibit cross-gender pat-down searches of youth except in exigent circumstances?		
Does the agency train staff on how to conduct a cross-gender search of youth in the rare circumstances where it may occur?		
Does the agency document and justify all searches permissible in exigent circumstances?		
Does the agency have policies and procedures implemented that enable residents to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender present?		

	Yes	No
Does the agency prohibit staff from searching or physically examining transgender or intersex residents for the sole purpose of determining their genital status?		
Does your agency have a policy in place that allows residents who allege sexual abuse to submit a grievance to someone other than the staff member who is the subject of the complaint?		
Does your agency have a policy in place that provides multiple internal ways for residents to privately report sexual abuse and sexual harassment, retaliation?		
Does your agency provide residents with access to tools necessary to make a written report?		
Does your agency have a policy to protect residents from retaliation after reporting?		
Have you researched and included state specific laws from your jurisdiction?		
Have you researched and included state specific court cases from your jurisdiction to use as examples?		

X. Conclusion

The purpose of this pre-training checklist is to summarize the information from the training modules and provide the trainer a checklist of items to consider prior to training for each module.

If trainers answered ‘no’ for questions such as “have you researched and included state specific laws from your jurisdiction?” it may indicate that the trainer needs to do more preparation or that the lead trainer or training director needs to find a subject matter specialist to present the material. For example, a medical professional might present material on adolescent development while a lawyer from the general counsel’s office might present the module on legal liability.

If trainers answered ‘no’ for questions about policies and procedures, such as “does the agency have a zero tolerance policy towards all forms of sexual abuse and sexual harassment?” it could be an indicator that your agency is not ready to conduct staff training. Policies and procedures form the backbone of agency practice to address sexual abuse and provides a foundation for staff understanding agency expectations and their responsibilities. Absent PREA related policies in force, it will be difficult for trainers to explain to staff what they need to do to address sexual abuse of youth in custody.