

TRAINING CURRICULUM:

**Human Resources and
Administrative Investigations**

JANUARY 2014

The Project on Addressing Prison Rape
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Human Resources and Administrative Investigations

Facilitator's Guide

January 2014[♦]

[♦] All materials and information provided in this publication (e.g. state laws, civil case law examples, BJS statistics) are accurately represented as of October 2013.

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NATIONAL
PREA
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**Human Resources and Administrative Investigations
Notification of Curriculum Use
April 2014***

The enclosed Human Resources and Administrative Investigations 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 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 Human Resources and Administrative Investigations curriculum to satisfy specific PREA standards requirements.

It is recommended that the Human Resources and Administrative Investigations 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 in 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.

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Introduction

The *Human Resources and Administrative Investigations* training is a 20-hour training covering the National Prison Rape Elimination Act (PREA) Standards and their implications for administrative investigations and human resource policies and procedures.

The following are the goals of the training:

1. Review the PREA Standards and identify their impact on administrative investigations and human resources.
2. Identify components of investigative and human resource policies and procedures that relate to sexual abuse of persons in custody.
3. Understand legal and investigative implications and strategies to responding.

Using the Curriculum

Content:

This curriculum consists of 10 modules. We have arranged the modules in the manner that we believe makes most sense. Agencies and trainers can arrange the modules to meet the specific training needs of participants.

Time:

The time allotted to conduct the training is 20 hours or two and a half days. We list the total time for each module at the beginning of each module. Agencies and trainers are welcome to shorten the training by conducting the training over a longer period of time e.g. a module per week or by shortening the materials. Please make sure to keep a record of the modifications you make to the training in the event you need to show the information that staff received. .

Curriculum Layout:

The lesson plans appear in in three columns. The first column has topic headings and is a quick reference for the presenter. The second column has the text of the PowerPoint slide. The third column has speaking notes. Trainers are free to use that information on the speaking notes and add additional information. As before, make sure that you keep a record of any deviations from the training curriculum for future inquiries.

Any **bolded** text denotes points that trainers should emphasize. .

The method of presentation for the training includes lecture with visual aids (using videos and a PowerPoint® slide format). Pictures of the actual slides are a part of the instructor's guide so that the curriculum is easier to update and so that groups or jurisdictions can customize the curriculum to fit their needs. PowerPoints and handouts listed in each section can be found online at:

<http://www.wcl.american.edu/endsilence/training.cfm> or at the PREA Resource Center training page (<http://www.prearesourcecenter.org/node/1912>)

The word "**Activity**" or "**Discussion**" appears whenever there is an individual or group exercise. These are only suggested activities or discussions based on our experiences training this material. You should feel free to substitute your own activities and discussion questions where you are comfortable doing so.

Presentation Tips:

Do not read or talk "to" the slides. Use a remote control or ask a co-trainer to forward the slides so you are not forced to remain by the equipment the whole time you are teaching. Trainers should practice using the equipment before the training.

Often we encourage trainers to use hypotheticals to operationalize certain concepts. We do not provide hypotheticals in this curriculum because it is most useful for staff to have hypotheticals from your facility, agency and or state. Good sources of hypotheticals are completed investigations—substantiated or unsubstantiated, facts of cases found in civil case law and news stories.

Trainer Expertise and Preparation

This curriculum is not a script. We expect that trainers who deliver this material will be knowledgeable and will review and prepare for the training prior to delivering it. Additionally, several sections, especially those with legal content, require a trainer who is familiar with the law such as an agency's general counsel or human resources professional.

Group Work:

There are group activities included in each module where appropriate. Group interactions with the trainer involving mutual inquiry, shared experiences and personal observations help keep the training interesting and relevant. These activities can assist in meeting that goal

Accommodating Different Learning Styles:

Adult learning theory recommends that instructors use "non-lecture" activities approximately every ten minutes; this strategy increases attention and aids in students' gaining knowledge. The curriculum includes non-lecture activities including instructor-generated questions, small group discussion and group activities.

People learn in different ways – some are visual learners, some need to be more "hands on", while others prefer a lecture format. Mix up your teaching style to reach the maximum number of people. Explain things in different ways and monitor your audience for comprehension through verbal interaction - watching their behavior and feedback.

Training Agenda*

START	END	SUBJECT
		DAY 1
8:00 a.m.	8:30 a.m.	Registration/ Check In
8:30 a.m.	9:45 a.m.	Welcome Conventions Introductions Pre-test
9:45 a.m.	10:00 a.m.	<i>Activity: Identification of Critical Issues</i>
10:00 a.m.	10:15 a.m.	Module 1: Training Objectives Training Objectives Assignment for the week
10:15 a.m.	10:30 a.m.	Break
10:30 a.m.	12:00 p.m.	Module 2: The Prison Rape Elimination Act PREA's Trajectory Statistics Applicable PREA Standards
12:00 p.m.	1:00 p.m.	Lunch
1:00 p.m.	2:00 p.m.	Module 3: State Laws Mandatory Reporting Vulnerable Persons Staff Sexual Misconduct Sexual Abuse Sex Inmate Registration Licensing Malfeasance
2:00 p.m.	3:00 p.m.	Module 4: PREA Guided Policies Identify administrative investigative policies Identify necessary HR policies
3:00 p.m.	3:45 p.m.	Break <i>Activity and Report Out: Assessment of your agency administrative investigation and HR policies per PREA Standards</i>
3:45 p.m.	4:50 p.m.	Module 5: Agency Culture The culture of internal investigations Hiring and promotion practices and perceptions The role of the code of silence in reporting cultures Professional boundaries and ethics of the agency
4:50 p.m.	5:00 p.m.	Wrap Up Day 1
		DAY 2

* **NOTE:** This is a sample agenda for a 20 hour, two and a half day training. Agencies and groups can change the order, train over a different time period, or may add or delete modules. Please keep a record of the changes you make.

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START	END	SUBJECT
8:00 a.m.	8:30 a.m.	Breakfast Check-in
8:30 a.m.	8:45 a.m.	Review of Day 1 Logistics Overview of Day 2
8:45 a.m.	9:15 a.m.	Module 5 Continued
9:15 a.m.	10:15 a.m.	Module 6: Operational Practices Operationalizing the PREA Standards as they relate to administrative investigations and human resources <ul style="list-style-type: none"> Administrative Investigations Screening and hiring Reference checks and waivers Criminal background checks Where to look for information Promotion Termination and resignation Cross sex supervision and BFOQ positions
10:15 a.m.	11:00 a.m.	Break <i>Activity and Report Out: Operational practices that respond to PREA Standards</i>
11:00 a.m.	12:00 p.m.	Module 7: Techniques for Strong Administrative Investigations Identifying foundations for successful administrative investigations <ul style="list-style-type: none"> Considerations for effective administrative investigations Useful administrative investigative techniques (including interviewing staff and victims, evidence collection, etc.)
12:00 p.m.	1:00 p.m.	Lunch
1:00 p.m.	2:00 p.m.	Module 7 continued
2:00 p.m.	3:00 p.m.	<i>Activity and Report Out: Mapping the investigative process and response to allegations</i>
3:00 p.m.	3:15 p.m.	Break
3:15 p.m.	4:50 p.m.	Module 8: Human Resources and Pre-Employment Practices <ul style="list-style-type: none"> Reference checks and waivers Where to find information Screening and hiring Negligent hiring Background checks [criminal and other]
4:50 p.m.	5:00 p.m.	Wrap Up Day 2

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START	END	SUBJECT
		DAY 3
8:00 a.m.	8:30 a.m.	Breakfast Check-in
8:30 a.m.	8:45 a.m.	Review of Day 2 Logistics Overview of Day 3
8:45 a.m.	10:00 a.m.	Module 9: The Law and Human Resource Issues <i>Activity: Is this okay?</i> Employee rights during an investigation Promotion Union and Non-union settings Arbitration and Negotiations Resignations and Termination Off duty conduct/ anti-fraternization Claims by Staff Discrimination Defamation
10:00 a.m.	10:15 a.m.	Break
10:15 a.m.	10:45 a.m.	Module 9 Continued
10:45 a.m.	12:00 p.m.	Module 10: Legal Liability and Administrative Investigations Constitutional challenges State Tort Law Types of civil liability Elements of liability Bona Fide Occupational Qualification (BFOQ) challenges
12:00 p.m.	1:00 p.m.	Lunch
1:00 p.m.	2:00 p.m.	Module 10 Continued
2:00 p.m.	2:30 p.m.	Addressing Unanswered Questions
2:30 p.m.	3:30 p.m.	Wrap-up Post-test Evaluations

Teaching Tips

Selecting Trainers:

Those in charge of selecting trainers should use the following criteria to ensure a consistently representative faculty:

- Content expertise
- Effectiveness as a speaker
- Diversity (race, gender, age, ideas)
- Credibility
- Availability
- Reliability
- Competency with presentation technology (e.g., PowerPoint® slides)
- Someone from the local site in addition to national presenters
- Commitment to and interest in the topic

Have speakers provide current “bios” for their introductions and for inclusion in the participant materials to highlight speakers’ relevant experience and qualifications.

Recommended Trainers for this curriculum include: (1) agency leadership; (2) agency training staff; (3) agency PREA Coordinator; (2) legal counsel; (3) lead human resources professionals; (4) directors of operations; and or (5) trained investigators.

In addition to the primary trainers, you may include local guest speakers for some of the modules. Talk with selected faculty members and representatives from the host site for suggestions and assessment of relative strengths of the proposed speakers.

Have personal contact with all trainers and guest speakers well in advance of the training event to: (1) articulate your expectations and needs; (2) answer any questions they may have; and (3) to describe the training class so that their presentation is targeted appropriately.

Make sure all trainer handouts are copied and distributed in advance of his/her presentation.

Knowing Your Audience:

The target audience for this training is high-level correctional administrators who hold positions of leadership and have the ability to initiate change within their agency such as Deputy Commissioners, lead human resources personnel, lead administrative investigators, PREA Coordinators, Jail Administrators, and Division

Directors.

Trainers need to know the audience they are training. They need to find out who they are, what they want to know and learn, their level of experience, and any politics or particular group dynamics among the players.

Some trainers may wish to develop pre-training questionnaires to help gather this information. Trainers need to understand and learn as much as they can ahead of time about participants' issues, concerns and profile data.

Training to Maximize Effectiveness:

Supplies to consider having for the training include: folders for the materials, pens, highlighters, notepads, 3x5 index cards, name tags and/or tent cards, large easel pads, markers, tape and zip drives.

Arrive at the training room at least 45 minutes before the session begins. This allows time for you to be sure all the audio-visual equipment is there and functioning and that the appropriate room arrangements have been made and that all handouts are ready for participants.

Tape on the wall two or three large blank pages from the easel pad for "Critical Issues" and questions participants want to address throughout the training.

Ask participants to turn off the ringers on their cell phones and other devices (encourage the use of less disruptive notification systems such as vibration or digital display) and remind them there are plenty of breaks built into the training so they can check their messages.

As a trainer, review your own commitment and passion for the topic. In other words, project that you are ready to train.

Move around the room as you talk. Make eye contact with the participants. Convey your energy about the work to your audience.

Help quiet participants speak up and be included.

Be supportive, non-judgmental, and give compliments to participants: (e.g., "That's a good question. I am glad you raised that...")

Keep language simple and avoid jargon; be clear. If you use acronyms or abbreviations, explain them (BJA, NIC, WCL, HIPAA, etc.).

Encourage participants to share their own experiences at the appropriate places, but keep the class moving along.

Help participants who have difficulty presenting information by asking, "Is this an accurate summary of what you are saying...?" or state their position and ask, "Did I get it right?"

After you answer a question from a participant, ask, "Does that answer your question?"

Challenge participants to speak up and be engaged. Always try to get clear answers from participants and make sure that you fully understand their comments. Ask for clarification if necessary and encourage participants to be succinct in voicing comments and concerns.

Continually remind participants that the information presented during this training is a combination of specific strategies and concrete examples as well as a philosophical change in the "way of doing business." This training is not "cookie-cutter." Each agency is unique, with particular issues, demographics, crime characteristics, personalities and existing structures. Pose "what if" scenarios, for the jurisdictions, agencies or entities.

Do not take comments personally or become defensive. Encourage participants to think critically and to challenge how policy affects programs and how correctional programs do what they do. Participants may challenge and ask questions about what is contained in the curriculum or examples you use.

During the first break, informally seek feedback from an audience member or co-presenter. Ask for his or her perception of how the training is going including room temperature, pace, appropriateness of information, presentation style, level of participants' interest and engagement. Make adjustments as needed.

Allow adequate time for moving into small group exercises and make certain there is adequate, pre-arranged space for the small groups.

Many activities involve writing ideas on an easel pad. Be sure you can do this easily and still facilitate/instruct. Also, write large and legibly. You may also want to ask a participant or co-presenter to write the responses for you.

Be flexible-- issues arise, coffee is late, cell phones go off, audio-visual equipment stops working, people cough, egos emerge, guest speakers get stuck in traffic, someone forgets the name tags and participants have their own agendas. When you anticipate these things before they occur, some can be avoided but some simply cannot. Just keep going, recognizing that the best-laid plans sometimes have to be

adjusted. Always have a back-up plan. A prepared trainer can go with the flow and still successfully present the materials.

Handling Challenging Participants:

Be sure your values and emotions are in check prior to teaching. This is not about you! Anticipate emotionally charged and/or challenging questions and develop a response that is clear, reasonable and non-judgmental. Specific examples of responses appear in the lesson plans. Choose words that are not "hot buttons" for people, but rather help further communication and understanding.

Encourage participants to be creative and non-traditional in their approach to problems– this will bring about better results. Help participants use the training as an opportunity to reflect on desired outcomes and how best to reach them.

During the training, manage the discussion and do not let one or two people dominate. Start a session by saying "I would like to start this discussion by inviting people who have not spoken to share their thoughts." It is important that different viewpoints get expressed.

A good instructor allows everyone a chance to speak and facilitates opportunities for less vocal people in all parts of the room to be heard. If people do not participate in discussions or appear to have their minds elsewhere, call on them by name to give an answer, opinion or recount an experience.

If a participant is belligerent or rude, walk closer to the person, even standing next to them.

If a discussion escalates and becomes highly emotional, divert the conversation away from the people participating before it gets out of hand. Use it as a learning moment for everyone. Intense emotions can also be a good indicator of major issues in the system (which is made up of people and values). You may want to give extra time for discussion to see if some clarity or understanding can come out of it.

Another option with heated discussions is to move the discussion along; indicate that we can agree to disagree; take a break; talk to the person on the break in private; and be clear but polite with expectations about respect for others' opinions.

As you go along, register steps of agreement and disagreement with participants. "Am I correct in assuming we all agree (or disagree) on this point?" or "you may simply agree to disagree on certain issues since each jurisdiction is unique."

If you need to control the person who "knows it all," acknowledge the person's

contribution and then ask others in the group for their opinion of the person's statement.

If you have a person who "knows their job and doesn't want to be told how to do it," explain that s/he is just the individual you are looking for, that the training is to exchange ideas and points of view that will benefit everyone and that their experience will be valuable to all.

You may choose to allow fellow participants to respond to difficult or confrontational people in the class

Generally, try not to interrupt participants. Be respectful and listen. Be open, yet firm, and manage the discussion keeping in mind what is best for the whole group.

Responding to Questions:

Anticipate the types of questions participants might ask and plan how to address them. Before you begin the training, prepare a list of questions you are most likely to get and prepare your answers. You can also use these questions to stimulate group discussions throughout your presentation. Make sure your questions are designed to get thoughtful reactions to specific points. Open-ended questions generate the best audience participation.

Questions from participants are a good indication of the level of their awareness, attention and interest in your subject. Questions have value in helping you to clarify, modify or fortify points or to test an idea for its potential. Remember that answering a question is impromptu. Pause if you need to, relax, maintain your poise, keep your answers short and to the point, and give the short answer first (e.g., yes/no) then explain why.

Some correctional issues or questions may border on giving legal advice. Be clear about when it is appropriate to refer a question to a lawyer in the group if he or she is willing to answer or suggest the questioner check with his or her own agency's legal staff.

If you do not know the answer to a question, acknowledge that fact and offer to find the information or check with the audience to see if anyone knows the answer. Not all questions have to be answered. Sometimes the most effective response is one that allows the audience to keep thinking about the issue or concern. Some instructors keep a running list of questions or issues on a displayed easel pad then come back to the questions throughout the training.

When a person asks a question, restate the question for the entire group and direct your answer to the audience, not the individual questioner. Make sure everyone has

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heard the question. Rephrase questions that are unclear or rambling. Try to diffuse emotional questions by politely asking for clarification.

Avoid one-to-one conversations/arguments with participants during training.

Welcome and Introductions

Topic	Speaking Points
Welcome	<p>Welcome training participants. Introduce yourself. Other trainers will be introduced later during faculty introductions.</p> <p>Welcome local dignitaries (local DOC director, administrators, etc.). Ask them to welcome training participants so they know this is an important issue and to reinforce organizational support for addressing this issue.</p>
History of Work	<p>Have your agency’s representative give his welcome and describe the agency’s role, history and support addressing this topic. A good example of a representative to welcome the group would be the DOC Commissioner, Jail Administrator, Sheriff or Agency Chief.</p>
Logistics	<p>Indicate the location of restrooms, telephones, where people should be parking and address any special needs. Ask participants to turn off their, blackberries and cell phones. Indicate that there will be frequent breaks that will allow time for making phone calls.</p>
Feedback	<p>Throughout the training, let participants know you would appreciate hearing from them– what they liked or didn’t like, “creature comfort” issues like it is too hot or cold in the room, issues, questions you might have and so on. Ask participants to write comments on the 3” x 5” cards on their tables.</p> <p>These are confidential and participants do not have to list their name. Ask participants to put the cards [indicate location] at any time during the training.</p>

Topic	Speaking Points
Participant Materials	<p>Describe all the sections of the participant notebook and indicate that they contain paper copies of all PowerPoint® presentations and handouts for the training. Suggest participants write their names on their notebooks. The notebooks are for them to keep.</p> <p>Invite participants to add materials from their programs to the resource table. Ask if anyone brought information for the table and allow them to announce what they brought.</p>
Faculty Introductions	<p>Let each faculty member do a self-introduction. Tell participants that faculty biographies are located in their participant notebooks.</p>
Participant Introductions	<p>Go around the room and do self-introductions. In addition to the usual name, title and agency, add an icebreaker to the introductions—some examples include:</p> <ol style="list-style-type: none"> 1. It is important for us to proceed in a positive and powerful. I would like each of you to give me your word of power for the training. [write the words down; repeat them from time to time; and notice patterns] 2. Tell us something about yourself that others would not know by looking at you. In a joking manner, caution to not reveal anything illegal or embarrassing. Generally individuals will talk about what they enjoy or sometimes reveal interesting things that neither you nor their co-workers know. 3. If you had to make a dish – cook something – to save your life, what would it be? 4. Substitute your own ice breaker. <p>Let participants know there is a participant list in their materials.</p>
Pre-test	<p>Hand out the pre-test and give participants 10-15 minutes to complete it. Have them raise their hand after they complete it. Collect them. You may grade them during training or after.</p>

Lesson Plans

Module 1: Training Objectives

Time: 30 minutes

Recommended Faculty:

Lead Trainer or PREA Coordinator or Monitor

Resources Needed:

LCD projector, computer and media screen

Easel pad, markers, tape

Participant Handouts:

- PowerPoint®

PowerPoint® Programs:

Module 1: Training Objectives

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objective 1	Review the Prison Rape Elimination Act of 2003 (PREA) and the final national standards and identify the connections between administrative investigations of sexual misconduct involving persons under correctional supervision and agency human resources practices.	
Objective 2	Identify and describe the legal implications of staff sexual misconduct with inmates /residents – state criminal laws, human resource law and civil litigation.	
Objective 3	Identify and describe agency culture, policies and operational practices as they relate to the national PREA Standards for administrative investigations and human resource practices.	
Objective 4	Identify and describe techniques for strong administrative investigations.	
Objective 5	Identify and describe pre-employment human resource actions and responsibilities in response to the national PREA Standards.	
Activity: Identification of Critical Issues	<p>What are the critical issues you face in implementing PREA in your agency?</p> <p>What are the critical issues you face when conducting administrative investigations in custodial settings?</p> <p>What are the critical issues you face when addressing human resource requirements under PREA?</p> <p>What are the critical issues you face post investigation?</p>	<p>Discuss in the large group and write examples on easel pad. Allow the participants to generate the list.</p> <p>The list of participants' critical issues should be placed on the wall around the room. Let people know they can add to the list throughout the training.</p> <p>Check the list at the end of</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>the training to be sure all issues have been addressed.</p> <p>Evaluation: Remind participants to fill out this section of their evaluation of the materials covered, activities and the performance of the instructor.</p>

Module 2: The Prison Rape Elimination Act: Overview and Update

Time: 1 hour 30 minutes

Recommended Faculty:

PREA Coordinator or Monitor

Resources:

LCD projector, computer and media screen

Participant Handouts:

- The National Prison Rape Elimination Act Standards (be sure to have the various standards for every agency type present)
- Data Collection Reports from the Bureau of Justice Statistics

PowerPoint® Programs:

Module 2: Prison Rape Elimination Act

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objectives	<p>Define PREA’s purpose</p> <p>Demonstrate an understanding of the prevalence of sexual victimization in correctional facilities</p> <p>Describe the findings reported by correctional authorities and inmates</p> <p>Describe some of the key differences between the National Prison Rape Elimination Commission (NPREC) standards and the final Standards</p> <p>List and describe the responsibilities and obligations of agencies</p>	
Objectives	<p>Define the evidentiary standard for administrative investigations</p> <p>List and describe the disciplinary sanctions for states and the corrective actions for contractors and volunteers</p> <p>Describe the sexual abuse incident reviews and list the obligations of the sexual abuse incident review team</p>	
What is PREA?	<p>Prison Rape Elimination Act (PREA). Initial version focused on male prison rape</p> <p>Second iteration included staff sexual misconduct, but continued to focus heavily on male-on-male rape</p> <p>In 2003, PREA passed unanimously in both houses of Congress.</p>	
PREA Purposes	Increase accountability of prison officials who fail to detect, prevent,	You can read the slide picking out key provisions.

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>reduce and punish prison rape</p> <p>Protect 8th amendment rights of federal, state and local prisoners</p> <p>Establish grant programs</p> <p>Reduce costs of prison rape on interstate commerce</p>	<p>Explain why the standards referenced interstate commerce: "The only way that the federal government can intervene in state functions is if state action affects activities that have an impact on commerce between the states or in other words have an impact beyond just on state."</p> <p>Use your discretion to decide which of this background to go over and omit. If the participants are already well-versed in PREA, go over this section quickly.</p>
<p>PREA Purposes</p>	<p>Establish zero tolerance</p> <p>Make prevention a top priority</p> <p>Develop national standards for detection, prevention, reduction and punishment</p> <p>Increase available data and information on sexual assault in custody in order to improve management and administration</p> <p>Standardize definitions used for collecting data on the incidence of rape in custody</p>	
<p>Major Sections</p>	<p><u>Section 4</u>: Collection of prison rape statistics, data and research- Bureau of Justice Statistics (BJS)</p> <p><u>Section 5</u>: Prison Rape Prevention and Prosecution- National Institute of Corrections (NIC)</p>	<p>Section 4 includes the activities we are most familiar with – the data collections by BJS.</p> <p>NIC received \$5M to assist in prevention and</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p><u>Section 6:</u> Grants to Protect Inmates and Safeguard Communities- Bureau of Justice Assistance (BJA)</p> <p><u>Section 7:</u> National Prison Rape Elimination Commission</p> <p><u>Section 8:</u> Adoption and Effect of National Standards</p> <p><u>Section 9:</u> Accreditation organizations must adopt standards or lose federal funds</p>	<p>prosecution efforts and continued that work until BJA became primarily responsible for PREA implementation.</p> <p>Commission had its first meeting in July 2004 and issued its report and final standards in June 2009'</p> <p>Section 8 – we will discuss in greater detail below.</p> <p>Section 9 means that organizations like ACA and NCCHC have to adopt the PREA standards in their accreditation measures or lose federal funds.</p>
Key Milestones	<p>2003: PREA legislation passes</p> <p>2004: First meeting of the National Prison Rape Elimination Commission</p> <p>2004-2009: Information gathering and hearings held by the NPREC</p> <p>June 2009: Report and draft standards published by NPREC</p> <p>2009-2012: Establishment and Convening of PREA Work Group</p>	<p>Highlight that legislation passed unanimously in both houses of Congress</p> <p>Commission took 5 years to do its work-- DOJ took 3 years to do its work</p> <p>Lots of thinking and consultation went into the development of the standards</p> <p>PREA Work Group had representative from affected federal agencies like the National Institute of Corrections (NIC), Office of Justice Programs (OJP), Office of Juvenile Justice and Delinquency Prevention (OJJDP), Department of Homeland Security (DHS),</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		Special Litigation
Key Milestones	<p>2010: DOJ opens public comment period for NPREC standards</p> <p>Feb. 2011: Draft DOJ standards released</p> <p>Feb-April 2011: Public comment period for DOJ standards</p> <p>May 17, 2012: Final DOJ standards released</p> <p>June 20, 2012: Final standards published in the Federal Register</p> <p>August 20, 2012: Standards applicable to BOP</p> <p>2013-2014: First audit cycle</p>	<p>Standards were immediately applicable to BOP on August 20, 2012</p> <p>BOP was subject to the first audits</p> <p>All federal confinement facilities including Department of Homeland Security (DHS), military facilities, the U.S. Marshall’s Service, Bureau of Indian Affairs, and Health and Human Services facilities must follow the standards or develop their own.</p> <p>Thus far, all military branches except the Air Force are using PREA standards. DHS proposed its own standards. No information on the others.</p>
Key Principles	<p>PREA encompasses any federal confinement facility whether run by the government or a private organization on behalf of the government</p> <p>These standards are a floor of protections – they are minimum standards</p> <p>States can and are encouraged to do more particularly if your state has set higher requirements</p> <p>The goal here is the protect the constitutional rights of those in custody</p>	<p>Some states already have stronger state laws than the protections the current standards provide</p> <p>Florida and South Carolina: staff in adult custodial settings are mandatory reporters by law</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
What we Know: BJS Data	Combined Administrative Survey Collections: <ul style="list-style-type: none"> • 2004 Adult Administrative Survey Collections: <ul style="list-style-type: none"> • 2007-8 • 2006 • 2005 • 2005-6 Juvenile Administrative Survey Collections: <ul style="list-style-type: none"> • 2005-6 	This is a list of all of the data collections that have been done as of the writing of this curriculum.
What we Know: BJS Data	Victim Self-Reports: Adult Inmates <ul style="list-style-type: none"> • 2007 Jail Inmates • 2007 State and Federal Prisoners • 2008-9 Prison and Jail Inmates • 2008 Former Prisoners • 2011-12 Prison and Jail Inmates 	
What we Know: BJS Data	Victim Self Reports: Juveniles <ul style="list-style-type: none"> • 2007-8 • 2012 	<p>Discussion</p> <p>What are your perceptions of the prevalence of sexual victimization in correctional facilities?</p> <p>Use true or false questions to identify and debunk myths participants may have re: sexual victimization in correctional facilities</p> <p>Example: Females were more likely than males to report having been bribed or blackmailed into engaging in a sexual activity = False</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
<p>FINDINGS: Sexual Victimization Reported by Adult Correctional Authorities, 2007-8</p>	<p>Correctional administrators reported 7,444 allegations of sexual victimization in 2008 and 7,374 allegations in 2007.</p> <ul style="list-style-type: none"> - Total allegations of sexual victimization increased significantly between 2005 (6,241 incidents) and 2008 (7,444). - This increase was largely due to prisons, where allegations increased 21%, from 4,791 incidents to 5,796 <p>A greater percentage of allegations of abusive sexual contacts and incidents of staff sexual misconduct were substantiated in local jails than in prisons.</p> <p>About 61% of incidents of staff sexual misconduct and 21% of incidents of staff sexual harassment were perpetrated by females.</p> <p>Female inmates were disproportionately victimized by other inmates and staff in federal and state prisons, and local jails.</p>	<p>Pick relevant facts to read from slides.</p> <p>Does any of this information surprise you? Why?</p> <p>Are these numbers consistent with what you know about the incidence and prevalence of sexual abuse in (y)our agency?</p> <p>If the answer is "I don't know" indicate that you will discuss the numbers in (y)our agency shortly.</p>
<p>FINDINGS: Sexual Violence Reported by Juvenile Correctional Authorities, 2005-06</p>	<p>More than 2,000 allegations of sexual violence reported each year in juvenile facilities</p> <ul style="list-style-type: none"> - The estimated total number of allegations for the nation was - 2,047 in 2005 (16.7%) - 2,025 in 2006 (16.8%) <p>About 1 in 5 allegations of sexual violence were substantiated</p> <ul style="list-style-type: none"> - 36% of the reported allegations of sexual violence involved youth-on-youth 	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>nonconsensual sexual acts</p> <ul style="list-style-type: none"> - 21% involved youth-on-youth abusive sexual contacts - 32% involved staff sexual misconduct - 11% involved staff sexual harassment <p>Nearly two-thirds (64%) of the victims of sexual violence in state systems and local or private facilities were male and a third (36%) were female</p>	
<p>FINDINGS: Sexual Victimization Reported by Former State Prisoners, 2008</p>	<p>9.6% of former state prisoners reported one or more incidents of sexual victimization during the most recent period of incarceration in jail, prison, or a post-release community-treatment facility</p> <p>The rate of inmate-on-inmate sexual victimization among former state prisoners was 3 times higher among females (13.7%) than males (4.2%)</p> <p>The rate of “willing” sexual activity with staff was higher among males (4.8%) than females (2.6%)</p> <p>39% of male inmates who were homosexual or gay indicated they had been victimized by another inmate and 12% by staff.</p> <p>Lesbian inmates and bisexual female former inmates had rates of staff sexual misconduct that were at least double the rate among heterosexual female former inmates.</p>	<p>Former prisoners reported a wide variety of other sexual experiences with staff that were inappropriate</p> <p>An estimated 8.9% reported that staff had hassled or harassed them in a sexual way.</p> <p>27.9% said that staff had stared or watched them at inappropriate times (e.g., while the inmate was dressing or taking a shower).</p> <p>13.5% said that staff had forced them to undress in their presence or had brushed against their private parts when “they did not think it was an accident or it was not required by their job.”</p> <p>32.4% of all former inmates reported one or more of these types of experiences. While inappropriate, these lesser forms of staff sexual</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>misconduct were not included in the analysis unless combined with reports of “willingly” or unwillingly having sex or sexual contact with staff.</p> <p>Half of victims of staff sexual misconduct said they had been offered favors or special privileges; a third had been persuaded or talked into it; a quarter had been bribed or blackmailed</p> <p>Most victims (86%) of staff sexual misconduct reported more than one incident</p> <p>Discussion Question: Are you surprised that the rate of inmate-on-inmate victimization is higher among female inmates? What could be the reasons for the difference? [Point out that men may be more reluctant to report male-on-male victimization because of gender norms]</p>
<p>FINDINGS: Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-9</p>	<p>An estimated 4.4% of prison inmates and 3.1% of jail inmates reported experiencing one or more incidents of sexual victimization by another inmate or facility staff</p> <p>Sexual activity with facility staff was reported by 2.9% of male prisoners and 2.1% of male jail inmates, compared to 2.1% of female prisoners and 1.5% of female jail inmates.</p>	<p>Males were more likely than females to report having been bribed or blackmailed to take part in the sexual activity (42% compared to 26%), offered protection (39% compared to 19%), or threatened with harm or a weapon (48% compared to 30%).</p> <p>Among prison inmates with a sexual orientation other</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>13% of male prison inmates and 19% of male jail inmates said they were victimized within the first 24 hours after admission</p>	<p>than heterosexual (including bisexual, homosexual, gay or lesbian, or other), 11.2% reported being sexually victimized by another inmate, and 6.6% reported being sexually victimized by staff.</p> <p>Similar differences were reported among jail inmates, with heterosexual inmates reporting lower rates of inmate-on-inmate victimization (1.1%) and staff sexual misconduct (1.9%) than non-heterosexual inmates (7.2% and 3.5%, respectively).</p> <p>Among victims in prison, male victims of staff sexual misconduct (64%) were more likely than female victims (30%) to report incidents that involved no pressure or force.</p> <p>A similar pattern was reported by victims in jail, with an estimated 56% of male victims and 31% of female victims reporting one or more incidents that involved no pressure or force by staff.</p> <p>In this report: <i>Eight male prisons, 2 female prisons, and 6 jails were identified as having high rates of inmate-on-inmate sexual victimization</i> <u>Male Prisons</u>: Hughes Unit (TX), Allred Unit (TX), Pontiac</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>Corr. Ctr. (IL), Plainfield Corr. Fac. (IN), Michael Unit (TX), State Prison - Warren (ME), California Med. Fac. (CA), Pleasant Valley State Prison (CA)</p> <p><u>Female Prisons</u>: Taycheedah Corr. Inst. (WI), Fluvanna Corr. Ctr. (VA)</p> <p><u>Jails</u>: Orleans Parish - South White Street Jail (LA), Madison Co. Det. Fac. (AL), Miami-Dade Co. - Pre-trial Det. Ctr. (FL), Houston Co. Jail (AL), Jefferson Co. Jail (MO), Madison Co. Det. Ctr. (IN)</p> <p><i>Four male prisons, 2 female prisons, and 5 jails were identified as having high rates of staff sexual misconduct</i></p> <p><u>Male Prisons</u>: Crossroads Corr. Fac. (MO), Attica Corr. Fac. (NY), Elmira Corr. Fac. (NY) Ferguson Unit (TX)</p> <p><u>Female Prisons</u>: Bayview Corr. Fac. (NY), Fluvanna Corr. Ctr. (VA)</p> <p><u>Jails</u>: Caroline Co. Jail (MD), Eastern Shore Regional Jail (VA), Clallam Co. Corr. Fac. (WA), Orleans Co. Jail (NY), Cook Co. Jail - Division 6 (IL)</p> <p><i>Seven male prisons, 4 female prisons, and 9 jails were identified as "low rate" for sexual victimization overall</i></p> <p><u>Male Prisons</u>: C. Moore Transfer Fac. (TX), Fed. Corr. Inst. (BOP), Fed. Corr. Inst. (BOP), Centinela State Prison (CA), Maximum Security Fac. (RI), Northern Nevada Corr. Ctr. (NV), Corr. Reception Ctr. (OH)</p> <p><u>Female Prisons</u>: Halbert Substance Abuse Felony Punishment Fac. (TX), Bridgeport Pre-Parole Fac. (TX), Swannanoa Corr. Ctr. for</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>Women (NC), Lincoln Corr. Ctr. (IL)</p> <p><u>Jails</u>: Hinds Co. Penal Farm (MS), Lake Co. - Adult Max. Security Det. Ctr. (OH), Tulsa Co. - David L. Moss Criminal Justice Ctr. (OK), Lake Co. - Hill Road Corr. Fac. (CA), Nassau Co. Det. Fac. (FL), Bristol Co. - New Bedford Fac. (MA), Lenawee Co. Jail (MI), Carson City Jail (NV), Coweta Co. Prison (GA)</p>
<p>FINDINGS: Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12</p>	<p>An estimated 4.0% of prison inmates and 3.2% of jail inmates reported experiencing one or more incidents of sexual victimization by another inmate or facility staff</p> <p>Sexual activity with facility staff was reported by 2.4% of male prisoners and 1.9% of male jail inmates, compared to 2.3% of female prisoners and 1.4% of female jail inmates.</p>	<p>Compare this to the previous slide. Generally rates have decreased very slightly for prison inmates and male victims of staff sexual misconduct, but increased for females victims of staff sexual misconduct in both prisons and jails, and overall jail rates.</p>
<p>FINDINGS: Sexual Victimization Reported by Juveniles, 2012</p>	<p>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.</p> <ul style="list-style-type: none"> - About 2.5% of youth reported an incident involving another youth - About 7.7% reported an incident involving facility staff <p>Youth who identified their sexual orientation as gay, lesbian, bisexual, or other reported a substantially</p>	<p>4.7% of youth reporting sexual victimization by staff were female [3% reported victimization by a male staff member .8% reported victimization by both male and female staff]</p> <p>Approximately 95% of all youth reporting staff sexual misconduct said they were victimized by female staff [92% were males reporting activity with female staff 2.5% were males reporting sexual activity with both male and female staff]</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>higher rate of youth-on-youth victimization (10.3%) than heterosexual youth (1.5%).</p> <p>Among youth who reported victimization by staff:</p> <ul style="list-style-type: none"> - 89.1% were males reporting sexual activity with female staff - 3.0% were males reporting sexual activity with both male and female staff. 	<p><i>13 facilities were considered to have the highest rates of prevalence.</i></p> <ul style="list-style-type: none"> - Among the 13 high-rate facilities most reports of sexual victimization involved nonconsensual sexual acts with other youth and serious sexual acts with facility staff - 4 had rates of youth-on-youth sexual victimization that exceeded 10% - 11 had rates of staff sexual misconduct that were more than twice the national average - 4 had rates of youth-on-youth sexual victimization that exceeded 10% - Corsicana Residential Treatment Center (TX): 13.9%; Indianapolis Juvenile Correctional Facility (IN): 16.3%; Shawono Center (MI): 18.2%; Samarkand Youth Development Center (NC): 12% <p><i>11 had rates of staff sexual misconduct that were more than twice the national average</i></p> <ul style="list-style-type: none"> - Pendleton Juv. Corr. Fac. (IN), Corsicana Res. Trtmt. Ctr. (TX), Victory Field Corr. Acad. (TX), Shawono Ctr. (MI), Samarkand Yth. Dev. Ctr. (NC), Woodland Hills Yth. Dev. Ctr. (TN), Culpeper Juv. Corr. Ctr., Long Term (VA), Backbone Mtn. Yth. Ctr., Swanton (MD),

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>L.E. Rader Ctr. (OK), Bon Air Juv. Corr. Ctr. (VA), The New Jersey Training Center (NJ)</p>
<p>Prevalence and RIA Findings: Final PREA Standards (p 10-11)</p>	<p>In 2008, more than 209,400 persons were victims in prison, jails and juvenile facilities</p> <p>At least 78,500 prison and jail inmates and 4,300 youth in juvenile facilities were victims of the most serious forms of sexual abuse</p>	<p>The below paragraph is how RIA determined these numbers. This was not an actual number but an extrapolation of actual numbers based on statistics applied to the entire incarcerated population in the US that year. They number accounted for over and under reporting.</p> <p><i>“Relying largely on tabulations made by the Department’s Bureau of Justice Statistics (BJS) and Office of Juvenile Justice and Delinquency Prevention (OJJDP), we examine the available statistics on the prevalence of each type of inappropriate sexual contact and address a number of concerns with those statistics, including the problem of serial victimization (prevalence vs. incidence), cross-section vs. flow, underreporting of sexual victimization (false negatives), and false allegations (over-reporting). We also look at difficulties in measuring the prevalence of sexual abuse in CCFs and lockups. We present three alternatives for estimating the prevalence of sexual abuse, each relying on different assumptions to account for the possibility of underreporting (false negatives) and over-reporting (false positives) of sexual abuse.”</i></p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>Discussion: Lead a short group discussion to gauge participants reaction to the findings.</p> <p>Were they surprised by any of the findings?</p> <p>What surprised them most and why?</p> <p>Why is the number of former state prisoners reporting sexual abuse (9.6%) so much larger than the number reported by correctional authorities?</p>
<p>The National Prison Rape Elimination Commission</p>	<p>9 members authorized (8 served)</p> <p>Charged with:</p> <ul style="list-style-type: none"> - Conduct legal and factual study of the effects of prison rape in the US - Recommend national standards - Consult with accreditation organizations - Hold hearings - Cannot impose a mandate that would substantially increase costs to agency - Issue report w/in 2 years of initial meeting 	<p>Use your discretion on whether to present this information and how long to discuss. If your participants already have this knowledge, you can skip this, it's here so you have some background on the process.</p> <p>Commissioners: Judge Reggie B. Walton, Chairman John A. Kaneb, Vice-Chairman James E. Aiken Jamie Fellner Pat Nolan Gus Puryear Brenda V. Smith Cindy Struckman-Johnson</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
FINDINGS: NPREC	<p>Protecting inmates from sexual abuse remains a challenge for correctional facilities across the country.</p> <p>Sexual abuse is not an inevitable feature of incarceration- leadership matters.</p> <p>Certain individuals are more at risk of sexual abuse than others.</p>	
FINDINGS: NPREC	<p>Few correctional facilities are subject to the kind of rigorous internal monitoring and external oversight that would reveal why abuse occurs and how to prevent it.</p> <p>Many victims cannot safely and easily report sexual abuse, and those who speak out often do so to no avail.</p> <p>Victims are unlikely to receive the treatment and support known to minimize the trauma of abuse.</p>	
FINDINGS: NPREC	<p>Juveniles in confinement are much more likely than incarcerated adults to be sexually abused, and they are particularly at risk when confined with adults.</p> <p>Individuals under correctional supervision in the community are at risk for sexual abuse.</p> <p>A large and growing number of detained immigrants are in danger of sexual abuse.</p>	
Adoption and Effect of National Standards	<p>One year after National Prison Rape Elimination Commission issues report- Attorney General published a final rule with standards</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Specific Standards for:</p> <ul style="list-style-type: none"> - Prisons and Jails - Community Corrections - Lock-ups - Juvenile Facilities <p>90 days after publication, transmission to state departments of correction</p> <p>FBOP is immediately covered by rule</p> <p>Possible reduction of 5% each year for failure to meet the standard</p> <p>Annual report on non-compliance</p>	
<p>Draft Standards</p>	<p>Attorney General Working Group Composition: NIC, OJJDP, HHS, BJA, NIJ, BOP, OJP, ICE, HS, CRT, OFDT, OLP, USMS, OVW</p> <p>Tasks</p> <ul style="list-style-type: none"> - Reviewed standards one by one - Commissioned a cost study (OJP) - Established a framework for public comments on the standards <p>AG's proposed final rule was released in Feb 2011</p> <p>Public Comment Period was open until April 2011</p> <p>Review of comments by workgroup completed by end of 2011 and standards were sent to OMB for review</p>	<p>HHS: health and human services BJA: Bureau of Justice Assistance NIJ: National Institute of Justice BOP: Bureau of Prisons ICE: Immigration and Customs Enforcement CRT: Civil Rights Division (DOJ) OFDT: Office of the Federal Detention Trustee (DOJ) OLP: Office of Legal Policy (DOJ) USMS: US Marshall Services OVW: Office on Violence Against Women</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	Final standards released May 17, 2012	
Differences between NPREC and Final Standards	Coverage of immigration detention facilities Protections for gender non-conforming individuals Required staffing levels for juvenile facilities Sight and sound separation for youthful inmates Limitations on cross gender viewing and searches Acknowledgment that non-coercive sexual contact between inmates, detainees and residents are not necessarily sexual abuse	Presidential letter accompanying DOJ standards requires that all federal agencies that have confinement facilities use PREA standards until they develop their own standards.
What Agencies Have Done- General	Self-assessments of current practices Training for staff (including volunteers and contractors) Requests for technical assistance Culture surveys and assessments Early adoption of NPREC draft standards Amending state criminal laws	Specific Examples of what Agencies have done: <ul style="list-style-type: none"> • Self-audit • Education and training for staff (including volunteers and contractors) and PREA partners • Education for inmates/ residents • Strengthening community relationships and partnerships • Policy review • Working on the capacity to protect vulnerable populations (gender non-conforming youth in adult facilities, immigration detainees) • Vulnerability assessments and

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>screening tools</p> <ul style="list-style-type: none"> • Reviewing and strengthening investigative frameworks– administrative and criminal • Strengthen data collection capabilities • Staffing Plans • Involvement of medical and mental health resources • Improving reporting mechanisms– agency, staff, inmate and third-party <p>Activity: Give groups a hypothetical and ask them to identify what the agency in the hypothetical has done to create a safe environment and/or what they could do to improve. Discuss answers as a class.</p>
Hiring and Promotion Decisions (115.17, 115.117, 115.217 and 115.317)	<p>(a) The agency shall not hire or promote anyone who may have contact with inmates, and shall not enlist the services of any contractor who may have contact with inmates, who—</p> <p>(1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);</p> <p>(2) Has been convicted of engaging or attempting to engage in sexual activity in</p>	<p>I am going to go quickly through the key standards that affect human resources. [Go through each pointing out highlighted points].</p> <p>We will come back to these specific standards during the training. Make sure to refer to the standards in the copies that you have as we discuss them so you can get used to looking at the standards for answers.</p> <p>This language is taken from</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or (3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.</p> <p>(b) The agency shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with inmates.</p>	<p>the prison and jails standard so we use the word "inmate" throughout</p> <p>Read the bolded language of each standard</p>
<p>Hiring and Promotion Decisions (115.17, 115.117, 115.217 and 115.317)</p>	<p>(c) Before hiring new employees who may have contact with inmates, the agency shall:</p> <p>(1) Perform a criminal background records check; and</p> <p>(2) Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.</p> <p>(d) The agency shall also perform a criminal background records check before enlisting the services of any contractor who may have contact with inmates.</p> <p>(e) The agency shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates or have in place a system for otherwise</p>	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>capturing such information for current employees.</p>	
<p>Hiring and Promotion Decisions (115.17, 115.117, 115.217 and 115.317)</p>	<p>(f) The agency shall ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.</p> <p>(g) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.</p> <p>(h) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to</p>	
<p>Referrals of Allegations for Investigation (115.22, 115.122, 115.222 and 115.322)</p>	<p>(a) The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.</p> <p>(b) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>behavior. The agency shall publish such policy on its website or, if it does not have one, make the policy available through other means. The agency shall document all such referrals.</p> <p>(c) If a separate entity is responsible for conducting criminal investigations, such publication shall describe the responsibilities of both the agency and the investigating entity.</p>	
<p>Referrals of Allegations for Investigation (115.22, 115.122, 115.222 and 115.322)</p>	<p>(d) Any State entity responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.</p> <p>(e) Any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.</p>	
<p>Specialized Training: Investigations (115.34, 115.134, 115.234 and 115.334)</p>	<p>(a) In addition to the general training provided to all employees pursuant to § 115.31, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.</p> <p>(b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>evidence required to substantiate a case for administrative action or prosecution referral.</p> <p>(c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.</p> <p>(d) Any State entity or Department of Justice component that investigates sexual abuse in confinement settings shall provide such training to its agents and investigators who conduct such investigations.</p>	
<p>Criminal and Administrative Agency Investigations (115.71, 115.171, 115.271 and 115.371)</p>	<p>(a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.</p> <p>(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to § 115.34.</p> <p>(c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.</p>	
<p>Criminal and Administrative Agency Investigations</p>	<p>(d) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to</p>	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
<p>(115.71, 115,171, 115.271 and 115.371)</p>	<p>whether compelled interviews may be an obstacle for subsequent criminal prosecution.</p> <p>(e) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person’s status as inmate or staff. No agency shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.</p> <p>(f) Administrative investigations:</p> <p>(1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and</p> <p>(2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.</p>	
<p>Criminal and Administrative Agency Investigations (115.71, 115,171, 115.271 and 115.371)</p>	<p>(g) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.</p> <p>(h) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.</p> <p>(i) The agency shall retain all written reports referenced in paragraphs (f) and (g) of this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.</p>	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Criminal and Administrative Agency Investigations (115.71, 115,171, 115.271 and 115.371)	<p>(j) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.</p> <p>(k) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.</p> <p>(l) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.</p>	
Evidentiary Standard for Administrative Investigations (115.72, 115.172, 115.272 and 115.372)	The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.	
Reporting to Inmates (115.73, 115, 173, 115.273 and 115.373)	<p>(a) Following an investigation into an inmate’s allegation that he or she suffered sexual abuse in an agency facility, the agency shall inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.</p> <p>(b) If the agency did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the inmate.</p> <p>(c) Following an inmate’s allegation that a staff member has committed sexual abuse against the inmate, the agency shall subsequently inform the inmate (unless the agency</p>	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>has determined that the allegation is unfounded) whenever:</p> <ul style="list-style-type: none"> (1) The staff member is no longer posted within the inmate’s unit; (2) The staff member is no longer employed at the facility; (3) The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or (4) The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility. 	
<p>Reporting to Inmates (115.73, 115, 173, 115.273 and 115.373)</p>	<p>(d) Following an inmate’s allegation that he or she has been sexually abused by another inmate, the agency shall subsequently inform the alleged victim whenever:</p> <ul style="list-style-type: none"> (1) The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or (2) The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility. <p>(e) All such notifications or attempted notifications shall be documented.</p> <p>(f) An agency’s obligation to report under this standard shall terminate if the inmate is released from the agency’s custody.</p>	
<p>Disciplinary Sanctions for Staff (115.76, 115.176, 115.276 and 115.376)</p>	<p>(a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.</p> <p>(b) Termination shall be the presumptive disciplinary sanction</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>for staff who have engaged in sexual abuse.</p> <p>(c) Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.</p> <p>(d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.</p>	
<p>Corrective Action for Contractors and Volunteers (115.77, 115.177, 115.277 and 115.377)</p>	<p>(a) Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.</p> <p>(b) The facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with inmates, in the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer.</p>	
<p>Sexual Abuse Incident Reviews (115.86,</p>	<p>(a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including</p>	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
115.186, 115.286 and 115.386)	where the allegation has not been substantiated, unless the allegation has been determined to be unfounded. (b) Such review shall ordinarily occur within 30 days of the conclusion of the investigation. (c) The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.	
Sexual Abuse Incident Reviews (115.86, 115.186, 115.286 and 115.386)	(d) The review team shall: (1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse; (2) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility; (3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse; (4) Assess the adequacy of staffing levels in that area during different shifts; (5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and (6) Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1)-	Activity: Break participants into groups and provide a handout with a short hypothetical for each group. Have each group use the previously discussed standards to identify how the PREA standards affect the outcome of each scenario– both positive results and gaps. Present and discuss in large group.

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	<p>(d)(5) of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager.</p> <p>(e) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.</p>	
<p>What Does PREA Mean for My Agency?</p>	<p>Increased scrutiny at state, federal and local level</p> <p>You must get started</p> <ul style="list-style-type: none"> - Get the right people at the table as you would when any other big issue to address comes up <p>Have an understanding of what PREA does and does not do and what your obligations are</p> <p>Get guidance from other experts in your agency and the field</p>	<p>Discussion Question: What do you think PREA means for this facility/ agency?</p>
<p>What Does PREA Mean for My Agency?</p>	<p>Enhanced focus on investigations, prosecution and administrative sanctions</p> <p>Services for victims</p> <p>Reentry services for victims and perpetrators and role of community corrections</p> <p>Set of national standards that establish minimum standards for addressing sexual violence in custody</p>	
<p>Resources for Doing This Work</p>	<p>Grants and cooperative agreements from BJA</p>	<p>Activity: Give handout with short hypotheticals from your</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>End Silence: Project Addressing Prison Rape resources http://www.wcl.american.edu/endsilence/</p> <p>National PREA Resource Center http://www.prearesourcecenter.org/ Training, technical assistance, regional meetings, webinars, general information, FAQs</p> <p>Work of other agencies in this area NIC http://nicic.gov/ OJJDP http://www.ojjdp.gov/</p>	<p>agency’s PREA work, ask participants to place a check by the hypotheticals that are acceptable based on what they just learned about the standards.</p> <p>Example: An agency provides multiple internal ways for inmates to privately report sexual abuse, harassment and retaliation; the agencies staff accepts reports made verbally, in writing, anonymously, and from 3rd parties; the agency also provides a method for the staff to privately report sexual abuse/harassment of inmates.</p> <p>This is not acceptable because the agency does not provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency.</p>
Summary	<p>PREA’s Purpose</p> <ul style="list-style-type: none"> • Zero tolerance • Increase ability to safely report • Outside trauma counseling <p>Prevalence of sexual victimization in correctional facilities</p> <ul style="list-style-type: none"> • Female staff inmates • Vulnerable groups <p>Responsibilities & obligations of the agency</p>	<p>Evaluation: Remind participants to fill out this section of their evaluation of the materials covered, activities and the performance of the instructor.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<ul style="list-style-type: none">• Data collection• MOU's with outside organizations• Staff and Inmate training Sexual abuse investigations	

Module 3: State Criminal Laws

Time: 1 hour

Recommended Faculty:

Prosecuting Attorney or General Counsel

Resources:

LCD projector, computer and media screen

Participant Handouts:

- PowerPoint®
- 50 State Surveys of State Criminal Laws on: Staff Sexual Misconduct, Sex Inmate Registration, Vulnerable Persons, Mandatory Reporting, Sexual Abuse, Child Exploitation and Malfeasance in Office
- Legal Responses to Sexual Violence in Custody: State Criminal Laws Prohibiting the Sexual Abuse of Individuals under Custodial Supervision
- Legal Responses to Sexual Violence in Custody: Sex Inmate Registration Statutes: Impact on Addressing Sexual Abuse in Custodial Settings
- Legal Responses to Sexual Violence in Custody: Using Existing State Mandatory Reporting Statutes to Improve Disclosure of Sexual Violence in Correctional Settings

PowerPoint® Programs:

Module 3: State Criminal Laws

NOTE: In this module, examples of different state laws are given. However, if you are conducting training for a specific state or agency you should include the laws for that state in this presentation and only use the laws in other states as a comparison.

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objective	Demonstrate an understanding of state criminal laws and be able to identify staff criminal liability.	
Introduction	<p>Notice:</p> <ul style="list-style-type: none"> - Send a message about prohibited conduct and populations that merit greater protection - Flag staff as a risk <p>Prevention: Disincentive to engage in abusive behavior</p> <p>Punishment: Deter future misconduct</p>	<p>Criminal law provides three functions: (1) notice; (2) prevention; and (3) punishment</p> <p>Staff criminal liability for sexual abuse incidents of any kind has to do with human resources.</p> <p>Indication that someone is a do not hire for this kind of position.</p>
Introduction	<p>Brief overview of criminal laws</p> <ul style="list-style-type: none"> - Sexual assault laws - Child exploitation - Staff sexual misconduct laws - Vulnerable person/other abuse laws <p>Sex inmate registration Mandatory reporting</p>	<p>These are laws that are critical to know as you begin to address sexual abuse in custody.</p> <p>Sexual Assault: sex in custody between an inmate and another staff or inmate is a crime.</p> <p>Child Exploitation: depending on age of victim these laws apply</p> <p>Staff Sexual Misconduct (SSM) laws: specifically cover abuse on inmates</p> <p>Vulnerable person: Inmates may have characteristics that make them more vulnerable. Law protects these populations</p> <p>Sex offender registration:</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>provides notice to agencies</p> <p>Mandatory reporting: Statutory obligation</p> <p>Determine what the basis of knowledge is within the group- what new information is needed? Look at the old information the group already has in a new way.</p>
Sexual Assault Law: D.C.	<p>D.C. CODE § 22-3002 (West 2013): First degree sexual abuse</p> <p>(a) A person shall be imprisoned for any term of years or for life, and in addition, may be fined in an amount not to exceed \$250,000, if that person engages in or causes another person to engage in or submit to a sexual act in the following manner:</p> <p>(1) By using force against that other person;</p> <p>(2) By threatening or placing that other person in reasonable fear that any person will be subjected to death, bodily injury, or kidnapping;</p> <p>(3) After rendering that other person unconscious; or</p> <p>(4) After administering to that other person by force or threat of force, or without the knowledge or permission of that other person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that other person to appraise or control his or her conduct.</p>	
Sexual Assault Law: North Carolina	<p>N.C. GEN. STAT. ANN § 14-27.2 (West 2013): First-degree Rape</p> <p>(a) A person is guilty of rape in the</p>	<p>Other information that may be useful in this statute is: Any person who commits an</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>first degree if the person engages in vaginal intercourse:</p> <p>(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or</p> <p>(2) With another person by force and against the will of the other person, and:</p> <p>a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or</p> <p>b. Inflicts serious personal injury upon the victim or another person; or</p> <p>c. The person commits the offense aided and abetted by one or more other persons.</p>	<p>offense defined in this section is guilty of a Class B1 felony. (b)</p> <p>Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes. (c)</p>
Sodomy	<p>Traditionally aimed at same-sex sexual acts</p> <p>Some jurisdictions still prosecute under sodomy laws because:</p> <ul style="list-style-type: none"> - Many states do not define oral or anal sex as sexual intercourse - Many states do not define sex between same sex actors as intercourse, even when it involves penetration 	<p>Discussion Question:</p> <p>Male on male assault-- does (y)our state still have a sodomy statute?</p>
Sexual Assault Law: North Carolina	<p>N.C. GEN. STAT. ANN § 14-27.4 (West 2013): First-degree Sexual Offense</p> <p>(a) A person is guilty of a sexual offense in the first degree if the person engages in a sexual act:</p> <p>(1) With a victim who is a child under the age of 13 years and the</p>	<p>In this section "Sexual act" means cunnilingus, fellatio, anilingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>defendant is at least 12 years old and is at least four years older than the victim; or</p> <p>(2) With another person by force and against the will of the other person, and:</p> <ul style="list-style-type: none"> a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or b. Inflicts serious personal injury upon the victim or another person; or c. The person commits the offense aided and abetted by one or more other persons. 	<p>genital or anal opening of another person's body: provided, that it shall be an affirmative defense that the penetration was for accepted medical purposes.</p>
<p>Child Exploitation/ Statutory Rape</p>	<ul style="list-style-type: none"> • Many state child exploitation statutes encompass more than direct sexual contact • Generally cover non-physical misconduct as well as physical abuse: <ul style="list-style-type: none"> – photos, letter writing, online communications, voyeurism and distribution of illicit materials – fondling, kissing, inappropriate touching, sexual abuse • Important to understand how this applies to youthful inmates 	<p>Latarsha Latoria Allen, 30 (West Virginia), a female correctional officer, was indicted for "use of obscene matter with intent to distribute" after she was found sending sexually explicit letters to a 15-year-old boy in custody at the James H. "Tiger" Morton Juvenile Center.</p> <p>The investigating officer had discovered eight letters to the minor in custody, four of them were found to be obscene and sexually abusing.</p> <p>She was sentenced to 18 months of probation and 20 hours of community service but will not have to register as a sex offender.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Child Exploitation Law: Arizona	<p>Ariz. Rev. Stat. Ann § 13-1418 (West 2013): Sexual misconduct; behavioral health professionals; classifications.</p> <p>Ariz. Rev. Stat. Ann § 13-1402 (West 2013): Indecent Exposure; exception; classification</p> <p>Ariz. Rev. Stat. Ann § 13-1406 (West 2013): Sexual Assault</p> <p>Ariz. Rev. Stat. Ann § 13-1423 (West 2013): Violent sexual assault, natural life sentence</p>	Arizona's child exploitation laws are found throughout its code
Child Exploitation Law: Arizona	<p>Ariz. Rev. Stat. Ann. § 13-1403 (West 2013): Public sexual indecency; public sexual indecency to a minor; classifications</p> <p>Ariz. Rev. Stat. Ann. § 13-1405 (West 2013): Sexual conduct with a minor</p> <p>Ariz. Rev. Stat. Ann. § 13-1417 (West 2013): Continuous sexual abuse of a child</p> <p>Ariz. Rev. Stat. Ann. § 13-1404 (West 2013) Sexual abuse</p> <p>Ariz. Rev. Stat. Ann. § 13-1410 (West 2013) Molestation of a child; classification</p> <p>Ariz. Rev. Stat. Ann. § 13-3206 (West 2013): Taking a child for the purpose of prostitution</p>	12 laws specifically pertaining to children
Child Exploitation Law: Arizona	ARIZ. REV. STAT. ANN. § 13-3212 (West 2013): Child prostitution	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>ARIZ. REV. STAT. ANN.§ 13-3552 (West 2013): Commercial sexual exploitation of a minor</p> <p>ARIZ. REV. STAT. ANN.§ 13-3553 (West 2013): Sexual exploitation of a minor</p> <p>ARIZ. REV. STAT. ANN.§ 13-3554 (West 2013): Luring a minor for sexual exploitation</p> <p>ARIZ. REV. STAT. ANN.§ 13-3560 (West 2013): Aggravated luring a minor for sexual exploitation</p> <p>ARIZ. REV. STAT. ANN.§ 13-1307 (West 2013): Sex trafficking of a minor</p>	
<p>Staff Sexual Misconduct</p>	<p>Felony in most states</p> <p>Consent typically not an issue</p> <p>Victim credibility is an issue</p> <p>Code of Silence/Lack of corroboration</p> <p>Lack of physical evidence and timely reporting</p>	<p>Delays in reporting are often an issue</p>
<p>State Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody</p>	<p>This is a map representing the sanctions for staff sexual misconduct in each state.</p>	<p>Blue States: Sexual misconduct defined as a misdemeanor.</p> <p>Red: Some form of Sexual misconduct defined as a felony.</p> <p>Grey States: Sexual misconduct defined as either a felony or misdemeanor</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>depending on the nature and severity of the assault.</p> <p>States with Graduated Sanctions:</p> <p>Iowa: When a person is convicted of an aggravated misdemeanor, and a specific penalty is not provided for, the maximum penalty shall be imprisonment not to exceed 2 years. There shall be a fine of at least \$625 but not to exceed \$6,250.</p> <p>Maryland: (d) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$3,000 or both.</p> <p>Wisconsin: (i) For a Class I felony, a fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months, or both.</p> <p>California: Once is a misdemeanor, do it again = felony</p>
<p>Federal Staff Sexual Misconduct Law</p>	<p>18 U.S.C.A. § 2241: Aggravated Sexual Abuse</p> <p>(a) Whoever . . . in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly causes another person to engage in a sexual act (1) by using force against that</p>	

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	<p>other person; or (2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; (3) or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.</p>	
<p>Federal Staff Sexual Misconduct Law</p>	<p>18 U.S.C.A. § 2241: Aggravated Sexual Abuse</p> <p>(b) Whoever . . . in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly-</p> <p>(1) renders another person unconscious and thereby engages in a sexual act with that other person; or</p> <p>(2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby-</p> <p>(A) substantially impairs the ability of that other person to appraise or control conduct; and</p> <p>(B) engages in a sexual act with that other person; or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.</p>	
<p>Federal Staff Sexual Misconduct</p>	<p>18 U.S.C.A. § 2243: Sexual abuse of a minor or ward.</p> <p>(a) Whoever, in the special maritime</p>	<p>Background on this change: success story</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Law	<p>and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General, knowingly engages in a sexual act with another person who–</p> <p>(1) has attained the age of 12 years but has not attained the age of 16 years; and</p> <p>(2) is at least four years younger than the person so engaging; or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.</p>	<p>Prior to Jan. 4, 2006 Sexual Abuse of a ward (seeming willingness) was a misdemeanor with a year sentence.</p> <p>It was increased to 5 years, effective from Jan. 5, 2006-July 26th, 2006.</p> <p>The penalty is now fifteen years.</p>
Federal Staff Sexual Misconduct Law	<p>18 U.S.C.A. § 2243: Sexual abuse of a minor or ward.</p> <p>(b) Of a ward - Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General, knowingly engages in a sexual act with another person who is (1) in official detention; and (2) under the custodial, supervisory, or disciplinary authority of the person so engaging or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.</p>	
State Criminal Laws Prohibiting Sexual Abuse of Individuals	<p>This is a map representing the states that define consent as a defense for staff sexual misconduct</p>	<p>Purple States: Consent is not a defense to staff sexual misconduct with an inmate</p> <p>Pink States: Consent is not</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Under Correctional Supervision: Consent as a Defense		addressed by the statute Yellow: Statute penalizes inmate for engaging in sexual relations with correctional staff, thus, consent can be inferred
Staff Sexual Misconduct Law: Nebraska	<p>Neb. Rev. Stat. Ann. § 28-322.01 (West 2013): Sexual abuse of an inmate or parolee. A person commits the offense of sexual abuse of an inmate or parolee if such person subjects an inmate or parolee to sexual penetration or sexual contact as those terms are defined in section 28-318.</p> <p>Neb. Rev. Stat. Ann. § 28-322.02 (West 2013): Sexual abuse of an inmate or parolee in the first degree; penalty. Any person who subjects an inmate or parolee to sexual penetration is guilty of sexual abuse of an inmate or parolee in the first degree.</p> <p>Neb. Rev. Stat. Ann. § 28-322.03 (West 2013): Sexual abuse of an inmate or parolee in the second degree; penalty. Any person who subjects an inmate or parolee to sexual contact is guilty of sexual abuse of an inmate or parolee in the second degree.</p>	<p>Below are the definitions of the key words in the statute, use your discretion to decide what information to provide.</p> <p>(2) Person means (a) an individual employed by the Department of Correctional Services or by the Office of Parole Administration, including any individual working in central administration of the department, any individual working under contract with the department, and any individual, other than an inmate's spouse, to whom the department has authorized or delegated control over an inmate or an inmate's activities, (b) an individual employed by a city or county correctional or jail facility, including any individual working in central administration of the city or county correctional or jail facility, any individual working under contract with the city or county correctional or jail facility, and any individual, other than an inmate's spouse, to whom the city or county correctional or jail facility has authorized or delegated control over an inmate or an inmate's activities, and (c) an individual employed by the Office of Probation Administration who performs official duties within any facility operated by the Department of Correctional Services or a city or county</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>correctional or jail facility.</p> <p>(5) Sexual contact means the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact shall also mean the touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact shall include only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party. Sexual contact shall also include the touching of a child with the actor's sexual or intimate parts on any part of the child's body for purposes of sexual assault of a child under sections 28-319.01 and 28-320.01;</p> <p>(6) Sexual penetration means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical or non-health purposes. Sexual penetration shall not require emission of semen;</p> <p>The penalty for a Class III felony is imprisonment for a</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>maximum of 20 years or a \$25,000 fine, or both, and minimum imprisonment of 1 year.</p> <p>The penalty for a Class IV imprisonment for a maximum of 5 year, or a \$10,000 fine or both, and no minimum.</p>
<p>Staff Sexual Misconduct Law: Massachusetts</p>	<p>Mass Gen. Law. Ann. 268 § 21A (West 2013) Officer or other employee of penal or correctional institution; sexual relations with inmate; punishment. An officer or other person who is employed by or contracts with any penal or correctional institution in the commonwealth, and who, in the course of such employment or contract or as a result thereof, engages in sexual relations with an inmate confined therein, within or outside of such institution, or an inmate who is otherwise under the direct custodial supervision and control of such officer or other person, shall be punished by imprisonment for not more than five years in a state prison or by a fine of \$10,000 or both.</p> <p>In a prosecution commenced under this section, an inmate shall be deemed incapable of consent to sexual relations with such person.</p>	<p>Rape charge: can get life, even as a first time inmate.</p> <p>We are talking about criminal laws here, but there are also civil litigation considerations to keep in mind:</p> <p><i>Chao v. Ballista</i>, 806 F. Supp. 2d 358 (D. Mass. 2011): Female inmate had between 50-100 sexual encounters with a male correctional officer. The jury found that the coercive sexual relationship was sufficiently harmful to sustain an Eighth Amendment violation although the encounters were consensual (meaning the inmate did not explicitly refuse).</p> <p>The court also found the individual officer could be held liable for the state law claim of intentional infliction of emotional distress, as well as a violation of the state's civil rights act. The individual officer and the prison superintendent were found jointly liable for</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>\$67,500, and the individual officer was held liable for punitive damages of \$6,200.</p> <p>In that case, not only could the individual staff member be criminally liable, but the facility was held civilly liable as well.</p>
<p>Staff Sexual Misconduct Law: Texas</p>	<p>Tex. Penal Code. Ann. § 39.04 (Vernon 2013). Violations of the Civil Rights of Person in Custody; Improper Sexual Activity with Person in Custody.</p> <p>(a) An official of a correctional facility, an employee of a correctional facility, a person other than an employee who works for compensation at a correctional facility, a volunteer at a correctional facility, or a peace officer commits an offense if the person intentionally:</p> <p>(1) denies or impedes a person in custody in the exercise or enjoyment of any right, privilege, or immunity knowing his conduct is unlawful; or</p> <p>(2) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual in custody or, in the case of an individual in the custody of the Texas Youth Commission, employs, authorizes, or induces the individual to engage in sexual conduct or a sexual performance</p>	<p>Dickson v. State, 144 S.W.3d 61 (Tex. App. Fort Worth, 2004): Even though consent not expressly mentioned in the statute, the court did not even present the issue of consent to the jury 180 days to 2 years</p> <p>Petty v. Venus Correctional Unit, 2001 WL 360868 (N.D. Tex. 2001): The court dismissed the defendants' motion for summary judgment, finding that consensual acts are not constitutional violations.</p> <p>Therefore, even when sexual activity is criminally prohibited, the individual staff officer may not be subject to suit – in some jurisdictions. There is plenty of case law going the other way.</p>
<p>Vulnerable Person Abuse</p>	<p>Ariz. Rev. Stat. Ann. § 13-3623 (West 2013): Child or vulnerable adult abuse</p> <p>A. Under circumstances likely to produce death or serious physical injury, any person who causes a</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>child or vulnerable adult to suffer physical injury or, having the care or custody of a child or vulnerable adult, who causes or permits the person or health of the child or vulnerable adult to be injured or who causes or permits a child or vulnerable adult to be placed in a situation where the person or health of the child or vulnerable adult is endangered is guilty of an offense as follows:</p> <ol style="list-style-type: none"> 1. If done intentionally or knowingly, the offense is a class 2 felony and if the victim is under fifteen years of age it is punishable pursuant to § 13-705. 2. If done recklessly, the offense is a class 3 felony. 3. If done with criminal negligence, the offense is a class 4 felony. 	
<p>Vulnerable Person Abuse</p>	<p>Ariz. Rev. Stat. Ann. § 13-3623 (West 2013): Child or vulnerable adult abuse "Child" means an individual who is under eighteen years of age. "Vulnerable adult" means an individual who is eighteen years of age or older and who is unable to protect himself from abuse, neglect or exploitation by others because of a mental or physical impairment.</p>	<p>Activity: Break the participants into five groups and give each group a copy a state law on one of the following: sexual assault, child exploitation, staff sexual misconduct, vulnerable persons and mandatory reporting.</p> <p>Ask the group to identify good elements of the law as well as gaps and have them report out to the larger group. If all of the participants are not from the same state, instructors can break the group into teams from the same state and have them analyze the law together.</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Sex Inmate Registration	<p>Not considered a penalty Registration available for both juveniles and adults</p> <p>Many other requirements come with it depending on state</p> <ul style="list-style-type: none"> • Community notification • Restrictions on employment • Restrictions on residency 	
Sex Inmate Registration	<p>But...</p> <p>To be registered as a sex inmate, you must have been convicted for a registrable sex offense</p> <p>If the perpetrator is not convicted, or pleads to a lesser offense, the perpetrator will not be required to register</p> <p>Registration can be bargained away in a plea</p> <p>Can lead to underrepresentation on sex inmate lists</p>	<p>Registration for juveniles is different. A lot of systems, there is a way to bypass registration. Kids are seen as salvageable.</p> <p>E.g., in North Dakota, registration is not automatic for juveniles, judges are given limited discretion to decide on a case by case basis whether that juvenile should be required to register. N.D. Cent. Code § 12.1-32-15 (2)(c).</p> <p>In order to determine whether a juvenile does not exhibit mental abnormality or predatory conduct in the commission of the offense, "a juvenile court may order the preparation of a report or evaluation for purposes of registration, may require production of the report or evaluation at a registration hearing, and may rely on the report or evaluation in making necessary findings on the requirements for registration or for a deviation from registration." In Re D.J., 800 N.W.2d 333</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		(N.D. 2011).
Adult Sex Inmate Registration Law: Federal	The following offenses are registrable: <ul style="list-style-type: none"> • Sex trafficking committed against a minor. 18 U.S.C. § 1591 (West 2013). • Coercion and enticement committed against a minor. 18 U.S.C. § 2422(b) (West 2013). • Transportation with intent to engage in criminal sexual activity committed against a minor. 18 U.S.C. § 2423(a) (West 2013). • Abusive sexual contact committed against a minor. 18 U.S.C. § 2244 (West 2013). • Aggravated sexual abuse or sexual abuse. 18 U.S.C. §§ 2241 and 2242 (West 2013). • Abusive sexual contact committed against a minor who has not attained the age of 13 years. 18 U.S.C. § 2244 (West 2013). • Video voyeurism – 18 U.S.C. § 1801 (2013). 	
Adult Sex Inmate Registration Law: Maine	A conviction for one of the following offenses or for an attempt or solicitation of one of the following offenses if the victim was less than 18 years of age at the time of the criminal conduct: <ul style="list-style-type: none"> • Unlawful sexual contact. ME. REV. STAT. ANN. tit. 17, § 255-A(1)(A), (B), (C), (G), (I), (J), (K), (L), (M),(N), (Q), (R), (S) or (T) (West 2013). 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<ul style="list-style-type: none"> • Visual sexual aggression against child. ME. REV. STAT. ANN. tit. 17-A, § 256 (West 2013). • Sexual misconduct with a child under 14 years of age. ME. REV. STAT. ANN. tit. 17-A, § 258 (West 2013). • Solicitation of a child by computer to commit a prohibited act. ME. REV. STAT. ANN. tit. 17-A. § 259 (2013). • Sexual exploitation of minor. ME. REV. STAT. ANN. tit. 17-A, § 282 (West 2013). • Dissemination of sexually explicit material. ME. REV. STAT. ANN. tit. 17-A, § 283 (West 2013). • Possession of sexually explicit material. ME. REV. STAT. ANN. tit. 17-A, § 284 (West 2013). 	
Adult Sex Inmate Registration Law: Maine	<ul style="list-style-type: none"> • Kidnapping (unless actor is a parent of the victim). ME. REV. STAT. ANN. tit. 17-A, § 301 (West 2013). • Criminal restraint (unless actor is a parent of the victim). ME. REV. STAT. ANN. tit. 17-A, § 302 (West 2013). • Violation of privacy. ME. REV. STAT. ANN. tit. 17-A, § 511(1)(D) (West 2013). • Incest. ME. REV. STAT. ANN. tit. 17-A, § 556 (West 2013). • Aggravated promotion of prostitution. ME. REV. STAT. ANN. tit. 17-A, § 852(1)(B) (West 2013). • Patronizing prostitution of a 	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>minor. ME. REV. STAT. ANN. tit. 17-A, § 855 (West 2013).</p> <ul style="list-style-type: none"> • Sexual abuse of minors. ME. REV. STAT. ANN. tit. 17-A, § 254 (West 2013). • Gross sexual assault. ME. REV. STAT. ANN. tit. 17-A, §§ 253(1), 253(2)(A), (B), (C), (D) (E), (F), (G), (H), (I) or (J)(West 2013). 	
<p>Adult Sex Inmate Registration Law: California</p>	<p>Cal. Penal Code § 290</p> <p>A violation of CAL. PENAL CODE § 289.6, Staff Sexual Misconduct law, is one of the enumerated offenses listed under section 290 and therefore requires mandatory registration.</p> <p>However, a California court has recently held that the registration requirement is unconstitutional as applied to correctional officers and consenting adults. <i>People v. Ruffin</i>, 133 Cal.Rptr.3d 27, 29 (Cal.App. 5 Dist. Nov 02, 2011).</p>	<p>Ruffin has not been cited in other cases, and this issue has not been decided by any higher courts.</p> <p>Discussion: How the cases can be plead or charged so there is no registration. Lots of critique of registration, may be the only way for agencies to identify a bad actor.</p>
<p>Juvenile Sex Inmate Registration Law: Minnesota</p>	<p>Minn. Stat. §243.166: Subd 1b. Registration required.</p> <p>(a) A person shall register under this section if:</p> <p>(1) the person was charged with or petitioned for a felony violation of or attempt to violate, or aiding, abetting, or conspiracy to commit, any of the following, and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances:</p> <p>(i) murder under section 609.185, paragraph (a), clause (2);</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	(ii) kidnapping under section 609.25; (iii) criminal sexual conduct under section 609.342; 609.343; 609.344; 609.345; 609.3451, subdivision 3; or 609.3453; or (iv) indecent exposure under section 617.23, subdivision 3	
Juvenile Sex Inmate Registration Law: Minnesota	(2) the person was charged with or petitioned for a violation of, or attempt to violate, or aiding, abetting, or conspiring to commit criminal abuse in violation of section 609.2325, subdivision 1, paragraph (b), false imprisonment in violation of section 609.255, subdivision 2; soliciting a minor to engage in prostitution in violation of section 609.322 or 609.324; soliciting a minor to engage in sexual conduct in violation of section 609.352; using a minor in a sexual performance in violation of section 617.246; or possessing pornographic work involving a minor in violation of section 617.247, and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances; (4) the person was convicted of or adjudicated delinquent for, including pursuant to a court martial, violating a law of the United States, including the Uniform Code of Military Justice, similar to the offenses described in clause (1), (2), or (3).	Suggested Discussion: Present group with a short scenario re: whether a staff person in a given state must register or not; questions can be answered as a whole, individually, or in small groups; discuss answers and explanations.
Mandatory Reporting Laws	Mandatory reporting laws require certain individuals to report cases of physical or sexual abuse committed against children and vulnerable adults.	While policy may say to report up the chain, state law may indicate that individuals are mandatory reporters and again, have to

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Two types of statutes:</p> <ul style="list-style-type: none"> - Child Abuse - Vulnerable Adult Abuse 	<p>actually report it</p> <p>There is an issue about whether you have to report abuse against youthful inmates. Are they subject to mandatory reporting even if in adult settings- look at your state statute.</p> <p>Advocacy and Protection agencies typically have independent authority to come in and look at treatment of youth and other vulnerable groups. They have independent authority.</p>
<p>Mandatory Reporting Laws: PREA</p>	<p>§ 115.51: Inmate reporting</p> <p>§ 115.61: Staff and Agency Reporting Duties</p> <p>§ 115.87: Data Collection</p>	<p>§ 115.51: Inmate reporting</p> <p>(a) The agency shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.</p> <p>(b) The agency shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request.</p> <p>Inmates detained solely for civil immigration purposes shall be</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.</p> <p>(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.</p> <p>(d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of inmates.</p> <p>§ 115.61: Staff and Agency Reporting Duties</p> <p>(a)The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.</p> <p>(d) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.</p> <p>§ 115.87: Data Collection</p> <p>(a) The agency shall collect accurate, uniform data for</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.</p> <p>(b) The agency shall aggregate the incident-based sexual abuse data at least annually.</p> <p>(e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates.</p> <p>(f) Upon request, the agency shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.</p>
<p>Mandatory Reporting Laws</p>	<p>Child Abuse Reporting Statutes Generally– Reporters</p> <ul style="list-style-type: none"> • Seven states specifically include “corrections officials” as mandatory reporters • Three states explicitly identify staff of juvenile detention centers as mandatory reporters. • Several states include probation and parole officers within the list of those required • A significant number of states classify “police officers,” “peace officers,” or “law enforcement officers” as mandatory reporters. 	<p>Corrections officers: ALASKA STAT. § 47.17.020 (2011); HAW. REV. STAT. § 350-1.1 (2011); 325 ILL. COMP. STAT. ANN. 5/4 (West 2011); KAN. STAT. ANN. § 38-2223 (2011); MINN. STAT. ANN. § 609.556 (West 2011); MO. REV. STAT. § 217.410 (West 2012); WASH REV. CODE ANN. § 26.44.030 (West 2012).</p> <p>Juvenile: MD CODE ANN. FAM. LAW. § 5-704 (West 2011); IOWA CODE § 232.69 (2011); TEX. FAM. CODE ANN. § 261.101 (VERNON 2012).</p> <p>Parole/ probation: COLO. REV. STAT. § 19-3-304 (2012)</p> <p>Police officers: D.C. CODE § 4-1321.02 (2011); GA. CODE ANN § 30-5-4 (2011); N.H. REV. STAT. ANN. § 169-C:29 (West 2012).</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Mandatory Reporting Laws	<p>Adult Abuse Reporting Statutes Generally– Reporters</p> <ul style="list-style-type: none"> • 8 states exclude correctional staff from their adult mandatory reporting statutes • Only New York has NO adult mandatory reporting statute at all • North Dakota’s statute permits, but does not require, reporting 	<p>States that exclude correctional staff: Arizona, Alaska, Ohio, Maryland, New Jersey, Vermont, Pennsylvania, Wisconsin.</p>
Mandatory Reporting: Minnesota	<p>Minn. Stat. Ann. § 609.556 (West 2013): Reporting of Maltreatment of Minors.</p> <p>(a)A person who knows or has reason to believe a child is being neglected or physically or sexually abused, as defined in subdivision 2, or has been neglected or physically or sexually abused within the preceding three years, shall immediately report the information to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person is:</p> <p>(1) a professional or professional's delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, correctional supervision, probation and correctional services, or law enforcement</p> <p>(b) Any person may voluntarily report to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person knows, has reason to</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	believe, or suspects a child is being or has been neglected or subjected to physical or sexual abuse.	
Mandatory Reporting Laws	Florida, Missouri, and South Carolina also have specific duty to report clauses under their staff sexual misconduct laws in addition to their mandatory reporting laws.	Some states have those laws – standard creates additional mandatory reporting obligation (bolsters)
Mandatory Reporting: Missouri	<p>Abuse of inmate, duty to report, penalty--confidentiality of report, immunity from liability--harassment prohibited Mo. Ann. Stat. § 217.410 (West 2013).</p> <p>(1) Reasonable cause to believe that an inmate in a correctional center operated or funded by the department has been abused.</p> <p>Inmate abuse, penalty--employees not to use physical force, exception. Mo. Ann. Stat. § 217.405 (West 2013).</p> <p>(1) Any employee of the department of corrections.</p> <p>Abuse of inmate, duty to report, penalty--confidentiality of report, immunity from liability--harassment prohibited Mo. Ann. Stat. § 217.410 (West 2013).</p> <p>(1) Immediately report inmate abuse in writing to the director.</p> <p>(2) Upon receipt of a report, the department shall initiate an investigation within twenty-four hours.</p>	
Mandatory Reporting: Florida	Authorized use of force; malicious battery and sexual misconduct prohibited; reporting required; penalties. Fla. Stat. Ann. § 944.35	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>(West 2013). (3)(d) Each employee who witnesses, or has reasonable cause to suspect, that an inmate or an inmate under the supervision of the department in the community has been unlawfully abused or is the subject of sexual misconduct.</p>	
<p>Why is this Important?</p>	<p>Describing prohibited conduct to reference in your policy development</p> <p>Creating a record for human resources purposes, to indicate that an employee poses a risk</p> <p>Tailoring your criminal investigations and evidence collection</p> <p>Understanding the possible conflicts between mandatory reporting and confidentiality.</p>	<p>Discussion: Read a news article to the large group and ask them to identify criminal laws broken– can use one of the following or a case or article from your jurisdiction. Discuss the results</p> <p><i>Baltimore County Detention Center</i> http://articles.baltimoresun.com/2013-10-07/news/bs-md-indicted-attorney-details-20131007_1_detention-center-jill-swerdlin-county-jail or http://nation.time.com/2013/04/24/sex-with-guards-in-baltimore-prison-scandal/</p> <p><i>DC Jail Doctor</i> http://washington.cbslocal.com/2013/01/23/d-c-jail-doctor-admits-sexually-abusing-male-inmate/</p>
<p>Summary</p>	<p>(1) Criminal Sexual Abuse Laws; (2) Staff Sexual Misconduct; (3) Sex Inmate Registry; and (4) Mandatory Reporting.</p> <p>What are the laws in your state? Check out the Project’s Fifty State Surveys: http://www.wcl.american.edu/endsilence/statesurveys.cfm</p>	<p>Evaluation: Remind participants to fill out this section of their evaluation of the materials covered, activities and the performance of the instructor.</p>

Module 4: PREA Guided Policies

Time: 1 hour and 45 minutes

Recommended Faculty:

PREA Coordinator or Policy Coordinator

Resources:

LCD projector, computer and media screen

Easel pad, markers, tape

Participant Handouts:

- PowerPoint®
- Policy Development/ Review Guides: Community Corrections, Jails, PREA and gender Non-Conforming focused

PowerPoint® Programs:

Module 4: PREA Guided Policies

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objectives	<p>Identify policies needed to respond to sexual abuse in custody</p> <p>Identify and describe policy considerations and decisions</p> <p>Identify elements of effective policies</p>	<p>Policies v. directives</p> <p>Policies are rigid– departmental policies with numbers on it.....</p> <p>Procedures and directives are what happens– what you do?</p> <p>What is in contracts, MOUS, procedures, statutes and existing curriculum - at the end of the day- all will inform action and reactions.</p> <p>Does your facility practice differ from your policies and directives?</p> <p>Is there an “informal” procedure/practice at play?</p>
Policies Needed to Address Sexual Abuse in Custody	<p>Policies relevant to Staff:</p> <ul style="list-style-type: none"> • Sexual abuse and harassment (of inmates/residents and other staff) • Ethics and Codes of Conduct • Anti-fraternization • Human Resources– pre and post employment • Investigations • Reporting <p>Policies relevant to Inmates, Residents and Detainees:</p> <ul style="list-style-type: none"> • Classification <ul style="list-style-type: none"> – Security level, housing units, who you work with • Medical and mental health 	<p>Definitions in terms of context are important Define: inmates, residents, and detainees.</p> <p>Do definitions in state statutes match PREA definitions?</p> <p>PREA Standards are the floor– state law may provide greater protection– if they do that is the framework you are working in.</p> <p>Preamble for PREA Standards makes clear that PREA is not a “safe harbor” e.g. won’t protect you from litigation or liability.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<ul style="list-style-type: none"> • Sexual behavior • Sexual Assault Response Teams (SART) • Investigations • Grievance • Gender non-conforming 	<p>You have to follow PREA but you must consider other obligations that may not be covered under PREA that protect inmates from abuse.</p> <p>Sexual behavior– do you have a policy about sexual contact and when it is non-coercive between inmates or residents?</p>
<p>What Makes a Good Policy: General</p>	<p>Clear and inclusive definitions</p> <p>Clear and inclusive responsibilities for staff</p> <p>Clear and inclusive procedures</p> <p>Reporting points for others (volunteers, family members, etc.)</p> <p>Clear sanctions for not following policy</p> <p>Periodic review of policies by interdisciplinary group</p>	<p>Policy should answer who what when where and why- if possible.</p> <p>The best written policies must have the following or they will fail:</p> <ol style="list-style-type: none"> 1. Support of upper management and all levels of supervisory management. It starts at the top. Leadership must believe in the rules they make and set the example of the importance of the policies. 2. Consistent application of policies/ practices/ sanctions. 3. Training, training and more training- including reinforcement of training and monitoring of practices.

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
<p>What Makes a Good Policy: Specific to Administrative Investigations and Human Resources</p>	<p>Multiple reporting points for staff and inmates/ residents</p> <p>Strong investigative protocols</p> <p>Staff training and skills</p> <ul style="list-style-type: none"> • Development • Refinement • Application • Monitoring <p>Effective inmate/ resident orientation</p> <ul style="list-style-type: none"> • Reception/ intake • Existing populations 	<p>Strong investigative protocols include credentials of those conducting investigations, reporting requirements, supervision of investigators, time frames, role of others if applicable (DA, etc)</p>
<p>Policy Considerations</p>	<p>Gender differences</p> <p>Thread issue through policies</p> <p>Periodic review and update policies</p> <ul style="list-style-type: none"> • Case law (federal, state) • State law (State statutes and administrative rules) • Attorney General opinions • Association standards • PREA standards • Agency culture <p>Integration of external MOUs</p> <ul style="list-style-type: none"> • e.g., inclusion of prosecution office, rape crisis center, SANE, SART, etc. 	<p>Gender differences: men/ boys; women/girls and gender non-conforming populations</p>
<p>Policy Decisions</p>	<p>Actions to include</p> <p>Responsibility assignments and timeframes</p> <p>Reporting structures</p> <p>Safety v. confidentiality</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	Discipline After action report and review Data collection	
Challenges and Dilemmas	Leadership <ul style="list-style-type: none"> • Role modeling behaviors and commitment Culture and history <ul style="list-style-type: none"> • Unions and employee groups • External partners • External interest groups • Past attempts to address sensitive issues Actual practices being “in synch” with policy	External partners- District Attorney, Rape Crisis Centers, and volunteers are all constituents that need to be considered in implementing and designing policies. Importance of consistency by management-- at all levels-- policy is enacted every day at the front line of an organization-it is one thing to lead, but we need all on board managing the monitoring and prevention efforts.
Challenges and Dilemmas	How to address ongoing mental health care of various populations <ul style="list-style-type: none"> • Gender responsive strategies (women/girls, men/boys and gender non-conforming) • Equality and parity Attitudes and beliefs of staff (personal, religious, biases) <ul style="list-style-type: none"> • Gender non-conforming residents • Men and boys as sexual victims of female staff Investigative protocols/practices <ul style="list-style-type: none"> • Not automatically accepting the “consensual” response for incidents between inmates or 	What do you do about/ what is your policy about “consensual” or non-coercive sex between inmates or between residents? How do you address the personal beliefs and attitudes of your staff regarding gender non-conforming residents? Emphasize dignity and respect as the common ground. While there are always challenges and issues, there are also positives: culture

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>residents (consensual is never appropriate between staff and an inmate/ resident)</p> <ul style="list-style-type: none"> • Defining internal and external roles • Ability to conduct thorough investigations 	<p>change and more acceptance of understanding of special populations; better safety and security; greater skills for correctional officers in handling inmates, etc.</p> <p>Focus on the positive results that your PREA efforts will yield.</p> <p>Suggested Discussion: Lead a short group discussion using the questions in the note section of the previous slide: (1) What do you do about/ what is your policy about “consensual” or non-coercive sex between inmates or between residents? (2) How do you address the personal beliefs and attitudes of your staff regarding gender non-conforming populations?</p>
<p>Elements of Effective PREA Policies</p>	<p>Zero tolerance statement</p> <p>Definitions</p> <p>Applicability</p> <p>Data Collection</p> <p>Division responsibilities</p> <p>Standard operating procedures</p> <p>Staff and inmate/ resident training</p> <p>Prevention and detection efforts</p> <p>Signage, brochures, info</p>	<p>Applicability: think about who this will be directed at—staff inmates/residents, volunteers contractors etc. be clear!</p> <p>For staff/inmate training: must think about frequency, duration, and content.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	Interagency cooperation Monitoring culture SART Safety of vulnerable populations Victim safety and support Medical and mental health Timelines for responses Investigative responsibility and procedure Reporting Training	
Elements of Effective Classification Policies	Risk and vulnerability screening and assessment tools Who is responsible for classification Housing and work placements Separation Frequency of classification	Frequency of classification: spells out what should trigger a reassessment– it’s a dynamic process may change with information
Elements of Effective Sexual Abuse Policies	Prevention <ul style="list-style-type: none"> • classification, training for staff and inmates/residents, administrative processes Identification and monitoring <ul style="list-style-type: none"> • screening, housing, work assignments, separation Response and follow up <ul style="list-style-type: none"> • investigations, preservation of 	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	evidence, victim centered care, safety, reporting, monitoring and data collection	
Elements of Effective Medical/ Mental Health Policies	Reporting and Confidentiality <ul style="list-style-type: none"> • incident reports, reporting up the chain of command • Procedures • Evidence collection, off-site medical care, referral for mental health services • Providing emergency care Consent of victim for services Notification of parents/guardians (for minors) Follow up	Unique Juvenile Issues: Utilize extra sensitivity during evidence collection procedures for juveniles who, depending on age, may have never had sexual exam. Medical personnel should carefully explain what is happening to the youth during process. Do parental consent for medical/mental health treatment apply? Are there state statutes in play? (Example: Texas Family Code Chapter 32 § 32.001. allows, "(7) an adult responsible for the actual care, control, and possession of a child under the jurisdiction of a juvenile court or committed by a juvenile court to the care of an agency of the state or county" to consent to medical, dental, psychological, and surgical treatment of a child if the parent cannot be contacted and has not expressed feelings to the contrary.)
Elements of Effective Sexual Behavior Policies	Visitation What if any sexual behavior is allowed <ul style="list-style-type: none"> • Masturbation, touching, fondling, kissing • What type of publications are allowed? 	Unique Juvenile Issues: Is "consensual" sex between residents ever allowed in a juvenile facility? Is it a major rule violation, minor rule violation or not a violation? Can juveniles under 21 have

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>What does your policy say about consensual or non-coercive sex between residents or between inmates</p>	<p>access to any sexual or risqué publications?</p>
<p>Elements of Effective SART Policies</p>	<p>Sexual Assault Response Teams</p> <p>SARTs respond to sexual abuse as a collaborative team.</p> <p>SARTs are composed of:</p> <ul style="list-style-type: none"> • Medical and Mental Health • Agency Investigators and/or Law Enforcement • Agency and Facility Representatives • Prosecution Representatives • Advocacy Organizations (such as Rape Crisis Centers) 	<p>Sexual Assault Response Teams (SARTs) are coalitions of agencies that serve sexual assault victims. Core membership for SARTs typically includes victim advocates, law enforcement officers, forensic medical examiners, forensic scientists, and prosecutors.</p> <p>Multidisciplinary SARTs work together to formalize interagency guidelines that prioritize victims' needs, hold inmates accountable, and promote public safety.</p> <p>Note that the PREA standards do not specify SARTs to comply with the standards, rather 115.65 speaks to the need for a coordinated approach and a SART is one way to achieve that.</p> <p>SART models range from informal, cooperative partnerships to more formalized, coordinated, and multidisciplinary responses on local, regional, state, tribal, or territory levels.</p> <p>Resources: SART Toolkit at</p> <p>DOJ's Office for Victims of Crime website: http://ovc.ncjrs.gov/sartkit</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Elements of Effective Reporting Policies	<p>Avenues for reporting– including receiving third-party reports</p> <p>Procedure for reporting for staff and inmates/ residents</p> <p>Methods for reporting</p> <ul style="list-style-type: none"> • writing, anonymous, 800 lines, verbal report to staff, community reporting <p>Reporting requirements</p> <p>Inclusions in report</p> <p>Record keeping</p>	<p>Unique Juvenile Issues:</p> <p>Do you have a state law that requires parents be notified on how to report abuse of their child in a juvenile facility? If so, include this in your policies.</p> <p>Example: Texas Family Code Section 261.405 provides that:</p> <p>(e) As soon as practicable after a child is taken into custody or placed in a juvenile justice facility or juvenile justice program, the facility or program shall provide the child's parents with:</p> <ul style="list-style-type: none"> (1) information regarding the reporting of suspected abuse, neglect, or exploitation of a child in a juvenile justice facility or juvenile justice program to the Texas Juvenile Probation Commission; and (2) the commission's toll-free number for this reporting.
Elements of Effective Grievance Policies	<p>Authority and responsibility</p> <p>Contents of grievance</p> <p>Procedure for filing a grievance</p> <p>Procedural requirements</p> <p>Responding to a grievance</p> <ul style="list-style-type: none"> • Timeframes • Confidentiality provisions <p>Emergency procedures</p> <p>Appeal procedures</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	Record-keeping Periodic formal review of grievance process and dispositions by administrators	
Elements of Effective Gender Non-Conforming (LGBTI) Policies	Screening Classification <ul style="list-style-type: none"> • Housing, work assignments, program assignments Medical health care <ul style="list-style-type: none"> • Hormone therapy Mental health care Clothing and hygiene products Searches, supervision and elements of privacy Training for staff and other inmates **Respect is central to all these elements	
General Elements of Effective Investigative Policies	Reporting and notification Evidence collection Medical and mental health services responsibilities Separation of victim Reassignment of alleged perpetrator Procedures <ul style="list-style-type: none"> • Recent v. non-recent sexual abuse • Administrative v. criminal cases 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	Timeframes	
Additional Elements of Effective Administrative Investigation Policies	Use of Garrity warning Union representation Information sharing with criminal investigators Timing Investigations of staff actions that may have contributed to abuse but that may not rise to criminal actions Evidentiary standards Termination of an investigation Discipline Incident reviews	Critical issue: Who is conducting the investigation – internal or external -- and who decides that?
Elements of Effective Human Resource Policies	Pre-employment checks <ul style="list-style-type: none"> • Reference, background, applicable databases, licensing bureaus Employee waivers Staff development and training Process governing applicability for promotions Periodic background checks for current employees Review process for current employees	Employee waivers– will you require them? Need to have clarity about the investigative process– temporary reassignment, detachment with/ without pay Child abuse registry checks—this process varies from state to state and can take days to weeks to complete. How will you handle this time lag in hiring? Do career ladder movements count as promotions thereby

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Labor relations</p> <p>Affirmative duty to disclose misconduct</p> <p>Preservation of employee rights</p> <p>Discipline</p>	<p>triggering background/ registry checks?</p> <p>Consider if title/duties really change.</p> <p>What about social media checks (e.g. Facebook, Myspace, Twitter, etc.) and credit checks?</p> <p>You can find an amazing amount of information on westlaw or lexis. This information doesn't mean you don't hire the person but it does give you additional options for inquiry.</p>
<p>How do Employees Know the Policy?</p>	<p>Informal v. formal "education"</p> <p>Leadership by example</p> <p>Practice v. policies and procedures</p> <p>Enforcement</p>	<p>Importance of past practice –uniform/consistent enforcement.</p> <p>How do you reinforce your training on the policies? Do you have mentors or coaches that check to be sure what is being taught is what is being practiced?</p>
<p>Measuring Effectiveness</p>	<p>Policies/procedures modeled by supervisors, managers, and leaders</p> <ul style="list-style-type: none"> • Accountability and compliance • Realistic and understandable language <p>Common sense practice</p> <p>Integrated into operations</p> <p>Aligns with state law</p> <p>Reporting and responding</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Leadership understands and acknowledges the aftermath of allegations and investigations</p>	
<p>Measuring Effectiveness</p>	<p>Human resource policies and practices are leveled consistently</p> <p>Investigations are thorough, timely and professional</p> <ul style="list-style-type: none"> • Conclusions reached • Staff cooperate • Disciplinary sanctions consistent <p>Are outcomes sustained/ overturned on appeal?</p>	<p>In the long-term this is about reducing and eliminating abuse. Rates will likely increase during implementation– good reporting systems can do that</p> <p>Increased number of reports in the short term does not necessarily mean increased sexual abuse in the facility, could just mean the culture of silence has changed and inmates are reporting more frequently.</p>
<p>Activity: Identifying Elements of Your Policies</p>	<p>Each team has been assigned a PREA standard.</p> <p>As a team, you are asked to:</p> <ol style="list-style-type: none"> 1. Assess your current relevant department policy(ies) and determine if the requirements of the standard are addressed in your department’s policy instrument. 2. Identify gaps in your policy and places for improvement 3. Assess whether your agency has any promising practices 4. Identify what key decisions need to be made at the agency level 5. Identify any barriers you may have in your policy 	<p>Directions for Activity:</p> <p>Break trainees into groups (group size will be determined by the number of trainees). Assign each an area of the standards and ask them to examine the standards keeping in mind the policy implications discussed during the presentation.</p> <p>Ask each group to answer the 5 questions on the slide in relation to its assigned standard.</p> <p>Give the groups 25 minutes to do this and come back as a larger group.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	development process.	<p>Use the remaining 20 minutes of this activity and module to have groups to report out on the findings. Get to as many groups as you can in the time allotted.</p> <p>It's okay to not get to all the group report outs.</p>
Activity: Assignments	<p>Limits to cross-gender viewing and searches 115.15, 115.115, 115.215, 115.315</p> <p>Hiring and promotion decisions 115.17, 115.117, 115.217, 115.317</p> <p>Evidence protocol and forensic medical examinations 115.21, 115.221, 115.321</p> <p>Policies to ensure referrals of allegations for investigations 115.22, 115.122, 115.222, 115.322</p> <p>Specialized training: Investigations 115.34, 115.134, 115.234, 115.334</p> <p>Inmate Reporting 115.51, 115.151, 115.251, 115.351</p> <p>Criminal and administrative agency investigations 115.71, 115.171, 115.271, 115.371</p>	
Summary	<p>What policies are necessary to address sexual abuse in custody?</p> <p>What are key elements of effective policies?</p> <p>How does an agency measure the effectiveness of policies?</p>	<p>Evaluation: Remind participants to fill out this section of their evaluation of the materials covered, activities and the performance of the instructor.</p>

Module 5: Agency Culture

Time: 1 hour

Recommended Faculty:

Lead Trainer, PREA Coordinator or Monitor, or agency leadership (deputy commissioner etc.)

Resources:

LCD projector, computer and media screen

Participant Handouts:

- PowerPoint®
- Culture Assessment Survey
- Ethical Decision Making
- The Daily Dozen

PowerPoint® Programs:

Module 5: Agency Culture

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objectives	<p>Define agency culture</p> <p>List and describe the components of culture</p> <p>Identify influences on agency culture</p> <p>Describe the impact of culture on all correctional agencies</p> <p>Identify strategies for changing culture</p>	<p>Incidents do not materialize out of nowhere. They do not just happen. They may not be the disease. They are symptoms of the culture.</p>
<p>Webster's Definition of <u>Culture</u></p>	<p>The integrated pattern of human knowledge, belief, and behavior that depends upon the capacity for learning and transmitting knowledge to succeeding generations;</p> <p>The customary beliefs, social forms, and material traits of a racial, religious, or social group;</p> <p>The set of shared attitudes, values, goals, and practices that characterizes an institution or organization;</p> <p>The set of values, conventions, or social practices associated with a particular field, activity, or societal characteristic.</p>	<p>Discussion Question: Ask participants about the influences on culture. Call them out in the larger group and write them on large paper– hang them on the classroom wall and let participants add to them as the training continues.</p> <p>Sample answers: Race, gender, culture, geography, history of the organization, nature of the custodial setting, bond between staff</p>
Foundation of Culture	Culture is communication, communication is culture	<p>This means – Culture is very powerful and transmitted from one generation to the next.</p> <p>“Forget what you learned in the training academy, this is what you do here.”</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		Culture is learned, therefore it can be changed. It doesn't have to be this way forever.
Components of Agency Culture	Beliefs: Shared explanations of experience Values: What is considered right and good Components of Agency Culture Norms: Shared rules, "the way things are done" Norms are often <u>MORE</u> powerful than formal guidelines.	CULTURE EATS STRATEGY FOR LUNCH EVERY DAY <u>Examples for Beliefs:</u> Inmates/ residents should be treated with respect and dignity. Inmates/ residents cannot be trusted and will always lie. <u>Example for Values:</u> If it's inmate/ residents vs. staff, the decision supports the staff member. <u>Examples of Norms:</u> Don't volunteer for assignments. Don't be late on third shift. Don't use bad language. Don't turn in fellow employees that violate rules.
Components of Agency Culture	Phantom Rules: Rules that people create that they THINK are the real rules based on their own misunderstanding or past history - these rules have NOTHING to do with the actual rule.	Activity: Give people 2 notecards and ask them to write down two phantom rules they know of on the card and pass it forward- read some out loud to the group <u>Sample Answers:</u>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>Agency will always believe the inmate/resident versus the staff member.</p> <p>If you restrain an inmate/resident, you will be investigated.</p> <p>Everyone wears blue on Fridays.</p>
Influences on Culture	<p>History</p> <p>Hiring process</p> <p>Promotional process</p> <p>Leadership and agency ethics</p> <p>Public opinion</p>	<p>History: critical events, consent decree, change in administrative objectives, law suits</p> <p>Hiring process: qualities sought, backgrounds considered, questions asked, fairness of process, objectivity</p> <p>Promotional process: best for job or best friend</p>
Influences on Culture	<p>Staff-staff interactions</p> <p>Staff-inmate/ resident dynamics</p> <p>Inmate-inmate and resident-resident dynamics</p> <p>Agency policy and procedures</p> <p>Language</p> <p>Disciplinary process</p>	
The Employee "Code of Silence"	<p>What is the "Code of Silence"?</p> <p>A code of silence is when a person opts to withhold what is believed to</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>be vital or important information voluntarily or involuntarily.</p> <p>A shroud of secrecy, agreement to keep quiet.</p> <p>The code of silence is usually either kept because of threat of force, danger to oneself, or fear of being branded as a traitor or an outcast within the unit or organization</p>	
<p>The Employee "Code of Silence"</p>	<p>How prevalent is the "Code of Silence" in corrections and law enforcement?</p> <p>National Institute of Ethics conducted survey of 3,714 police officers regarding "code of silence".</p> <p>42% admitted to having witnessed misconduct by another employee but took no action.</p>	
<p>The Employee 'Code of Silence'</p>	<p>Protection of self and co-workers and even management or supervisors</p> <p>Non-cooperation with management and investigators</p> <p>Staff will risk discipline and even termination rather than violate this powerful norm</p> <p>Culture imposes penalties on staff who break the code of silence</p>	<p>Discussion:</p> <p>Ask the participants to discuss examples of what the code of silence is and how you might be able to spot it in your facility.</p>
<p>Baron v. Hickey, 242 F. Supp. 2d. 66 (D. Mass. 2003)</p>	<p><u>The Facts:</u></p> <p>Baron, a corrections officer in Suffolk County House of Correction, witnessed a supervisor playing cards</p>	<p><i>Baron v. Hickey</i> is a case that illustrates the very real consequences of the code of silence.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>with inmates, a violation of facility policy</p> <p>Baron filed a report, and the supervisor was suspended</p> <p>Baron claimed that he was ostracized and harassed after making the report</p> <p>Defaming posters claiming Baron watched child pornography; threatening phone calls; smeared feces on his car; slashed tires.</p> <p>Hickey, another corrections officer, was the ring leader of the harassment</p> <p>Called him a "rat-fink" and threw cheese at him</p>	<p>Pick relevant fact to read from the slides.</p>
<p>Baron v. Hickey, 242 F. Supp. 2d. 66 (D. Mass. 2003)</p>	<p><u>The Facts:</u></p> <p>Baron verbally complained on 30 separate occasions and submitted 20 reports in writing</p> <p>Hickey was ordered to cease harassment, but not disciplined</p> <p>A supervisor told Baron to "be a man"</p> <p>Baron was charged, and acquitted of indecent assault and battery</p> <p>Baron then suspended for five days for giving food to a female inmate</p> <p>Baron claimed that charges and suspension were retaliatory</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Baron was to be suspended for 20 days for submitting an inmate communication directly to the Boston Police rather than his supervisor, but resigned before the suspension</p> <p>Baron claimed constructive firing because of retaliation</p>	
<p>Baron v. Hickey, 242 F. Supp. 2d. 66 (D. Mass. 2003)</p>	<p><u>Legal Claims and Holding:</u></p> <p>Legal Claims:</p> <ul style="list-style-type: none"> • 42 U.S.C. § 1983 • 1st Amendment • Due Process • State law claims <p>Holding</p> <ul style="list-style-type: none"> • The supervisors’ tolerance of harassment was a “matter of public concern,” sufficient to satisfy a 1st Amendment claim • Jury awards Baron \$500,000 for severe harassment <ul style="list-style-type: none"> – Affirmed 402 F.3d 225 (1st Cir.(Mass.)) http://law.justia.com/cases/federal/appellate-courts/F3/402/225/510084 	<p>The legal claims:</p> <p>42 U.S.C. §1983 – deprivation of a right secured by the constitution or state law by someone acting under color of state law</p> <p>First Amendment- right to express oneself</p> <p>Due Process– deprivation of life, liberty or property without due process of law</p>
<p>Impact of Staff Culture on Administrative Investigations</p>	<p>Culture can either support or obstruct investigations</p> <p>Need to understand culture in which investigations take place</p> <p>Important for participants from other agencies to understand the features of culture in your agency</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Outcomes of investigations can in turn influence culture</p> <p>Understand the challenge of conducting independent investigations in close / small communities</p>	
Red Flags	<p>What is a "red flag" and why is it important?</p> <p>A warning signal.</p> <p>Something that demands attention or provokes an irritated reaction.</p> <p>Red flags are actions, words, situations or settings that should warn a person that something may be wrong.</p>	<p>Activity: Read the participants a letter that has been confiscated from an inmate/ resident in your facility from a staff member. Have them write down all the red flags they hear. Once you are done reading the letter, have the participants call out red flags and discuss them.</p>
Red Flags: Staff Sexual Misconduct	<p>Over-identifying with any inmate/ resident or their issues (i.e., blind to inmate's actions)</p> <p>Inmate/ resident knows personal information about staff</p> <p>Inmate/ resident has letters or photos of staff</p> <p>Staff granting special requests or showing favoritism</p> <p>Inmate/ resident in unauthorized area or repeatedly out of their assigned space</p>	<p>These are some examples of red flags</p>
Red Flags: Staff Sexual Misconduct	<p>Staff spending an unexplainable amount of time with an inmate/ resident</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Staff taking inmate/ resident out of cell/ housing space at unusual times</p> <p>Staff in personal crisis (divorce, ill health, bankruptcy, death in family)</p> <p>Overheard conversations between staff and inmate/ resident which is sexualized in nature, or refers to the physical attributes of staff or inmate/ resident</p>	
<p>Red Flags: Staff Sexual Misconduct</p>	<p>Hygiene changes for staff</p> <p>Contraband</p> <p>Creating opportunities to be alone</p> <p>Familiarity with inmate/ resident</p> <p>Extra interest in unpopular inmates/ residents</p> <p>Being only person who understands the inmate/ resident</p>	<p>Are there others we are missing?</p>
<p>Challenges for Leadership</p>	<p>Discover the root of the problem</p> <p>Problem can be a symptom of the culture</p> <p>Addressing the problem in a systematic way is about cultural change</p> <p>Cultural change is the challenge for leadership</p> <ul style="list-style-type: none"> • Must shift deeply ignored norms and attitudes • Ideology and attitude lies in key positions 	<p>How do we change the culture... more later on this!</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Inmate/ Resident Culture: <i>A Toxic Recipe</i>	<p>Development is often delayed or interrupted clearly affecting rational decision-making for adults and resident</p> <p>Impulsiveness, risk taking, short-sightedness</p> <p>Histories of victimization- abuse and neglect, mental illness, developmental delays, academic failure/ special education</p> <p>Questionable staff ethics such as sexual joking and innuendos, tolerance, complacency</p>	<p>Inmate/Resident characteristics can affect culture</p> <p>Delayed development makes for more impulsive behavior</p> <p>Trauma can affect behavior and behavior can affect culture</p> <p>Horseplay, dirty jokes and sexual banter create a loose environment where staff and inmate become the subject of sexual banter</p>
Inmate/ Resident Culture	<p>Peer Pressure</p> <p>Dangers in refusal, reporting [snitching]</p> <p>Language</p> <p>Code of Silence</p> <p>Criminal Thinking</p> <p>Survival</p> <p>Protection</p>	<p>The culture of silence and the notion that there is a certain way to survive in facilities has a tremendous impact on culture</p>
Inmate/ Resident Culture	<p>Group Affiliations</p> <p>Companionship/Friend</p> <p>Reputation</p> <p>Fear</p> <p>Deprivation</p>	<p>Sexual conduct can be an entry point to affiliation and protection in a facility.</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Differences for Short-term Facilities	<p>Curiosity/Exploration</p> <p>May have fewer "consensual" sexual relationships</p> <p>More sexual acting out directly off the street</p> <p>More drug/alcohol withdrawal influenced sexual behaviors</p> <p>More crowding & less opportunity for staff to observe</p> <p>Inmates/ resident less affected by concern with long-term safety & reputation within facility</p>	
Changing Culture	<p>3 Steps to Culture Change</p> <ul style="list-style-type: none"> • Understand the current culture (the way things are now) • Decide what the organizational culture should look like to support success • The individuals in the organization must decide to change their behavior to create the desired culture 	<p>Culture is comprised of three things</p> <ul style="list-style-type: none"> • People • Attitudes • Actions <p>Education and awareness of sexual dynamics in key!</p> <p>Discussion: Ask participants to think about the following question "What is one element of culture you would change in your agency or facility and how would you go about making that change?" Ask them to write their responses on a piece of paper and give them to the instructor– read some of them out loud and discuss.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Strategies for Changing Agency Culture	Involve all key entities: <ul style="list-style-type: none"> • Line staff, mid-management, management • Governing boards/CJPO/CEO • External stakeholders (law enforcement, prosecutors) <p>A top-down approach is essential to success of culture change</p> <p>Ensure that behavior matches policies, good policies that are not actually practiced does not work</p> <p>Create a culture and community of accountability</p> <p>Model the behavior</p>	
Strategies for Changing Agency Culture	PREA Commission Report states: <ul style="list-style-type: none"> • Sexual abuse is not an inevitable feature of incarceration. • Leadership matters. Corrections administrators can create a culture within facilities that promotes safety instead of one that tolerates abuse. 	Organizational culture change does not mean it extends to all parts of organization... each facility is a unique community and your organization reflects the entire community's values, beliefs <p>Corrections can be the community leader and community change agent thru education and awareness of this human rights issue!</p>
Strategies for Changing Agency Culture	Envision the big picture <ul style="list-style-type: none"> • Define your agency/organization mission, vision and values <p>Change the organizational culture</p> <ul style="list-style-type: none"> • Executive Support • Training: Include community 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>partners and experts</p>	
<p>Strategies for Changing Agency Culture</p>	<p>Create value and belief statements</p> <p>Evaluate whether staff at all levels buy into the value and belief statements</p> <p>Target areas where there are disconnects</p> <p>Practice effective communication</p> <p>Review organizational structure</p> <p>Redesign your approach to rewards and recognition</p>	
<p>Strategies for Changing Agency Culture</p>	<p>Meet with local officials regarding culture change within the agency</p> <p>Inform local officials about your culture change initiatives and invest them in the success of them.</p> <p>Involve other key stakeholders [inmates/ residents, families, religious community, advocates]</p>	
<p>Strategies for Changing Staff Culture</p>	<p>Conduct appropriate screening during hiring process</p> <p>Define boundaries for employees through policies that are clear, concise and definitive about what is acceptable and unacceptable</p> <p>Provide employees appropriate tools for self-assessment, to help them learn when they might be crossing boundaries</p> <p>Provide employees with access to</p>	<p>Employees need a safe environment for the discussion of concerns and questions without fear of embarrassment or retaliation</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>advice and assistance when they have concerns and questions about boundaries</p>	
<p>Strategies for Changing the Staff "Code of Silence"</p>	<p>Create a culture where staff place loyalty to agency's mission above loyalty to other staff/peers/supervisors.</p> <p>Place honor above loyalty to other staff members/friends/peers</p> <p>Behavior must be modeled by all levels of management on down to line staff</p> <p>Regular training on ethics is absolutely necessary</p>	
<p>Strategies for Changing the Staff "Code of Silence"</p>	<p>Create opportunities for discussion about:</p> <ul style="list-style-type: none"> • Professionalism • Mission and purpose of work • Sexual dynamics • Appropriate inmate/resident sexual behavior in detention <p>Create environment for staff to support each other:</p> <ul style="list-style-type: none"> • Recognize red flags • Safe outreach to each other: <ul style="list-style-type: none"> ○ Are you ok? ○ I am concerned about you... 	<p>Agencies can decide whether this safe outreach is formal or informal. If informal, how will you support these informal relationships where staff feels comfortable relying on each other? What will formal support look like?</p>
<p>Strategies for Changing Staff Culture</p>	<p>Make it clear that you take the issue of sexual abuse of inmates/residents seriously</p> <ul style="list-style-type: none"> • Develop a firm zero tolerance policy • Zero tolerance must mean zero tolerance • Consequence: Something has 	<p>Culture needs to be about more than just the issue it needs to be about how your agency does business</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>to happen to someone</p> <p>Model the behavior daily</p> <ul style="list-style-type: none"> • Insist that all managers and supervisors do the same • The culture will not tolerate hypocrisy • Consequences must be fair and consistent <p>Train, train, train on expectations</p>	
Strategies for Changing Staff Culture	<p>Educate staff</p> <ul style="list-style-type: none"> • Requirements of the law • Liability of management and staff • Human resources consequences • Criminal consequences • Professionalism and ethics • Development • Sexual Dynamics 	
Strategies for Changing Staff Culture	<p>Train and support first line supervisors in their efforts to supervise employees, and recognize red flags</p> <p>Ensure that there are open dialogues specific to the issue</p> <ul style="list-style-type: none"> • Regular employee meetings • Regular discussions and sharing of information and concerns 	
What Are the Strategies for Changing Inmate/ Resident Culture?	<p>Change the environment</p> <ul style="list-style-type: none"> • Create an environment in the facility where inmates/residents feel safe reporting sexual abuse and are confident their allegations will be investigated. 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<ul style="list-style-type: none"> • Orient and educate inmates/residents • Teach inmates/residents about boundaries, being safe and how to report abuse, their rights and responsibilities • Empower inmates/residents • Allow inmates/residents to have responsibilities; peer mentors 	
Summary	Understanding Agency Culture Impact of Culture Strategies for Changing Culture	Remind participants that culture does not change overnight, this process takes time and work. Evaluation: Remind participants to fill out this section of their evaluation of the materials covered, activities and the performance of the instructor.

Module 6: Operational Practices

Time: 1 hour and 45 minutes

Suggested Faculty:

Lead Trainer, PREA Coordinator or Monitor, or Deputy of Security and/or Operations

Resources:

LCD projector, computer and media screen
Easel pad, markers, tape

Participant Handouts:

- PowerPoint®

PowerPoint® Programs:

Module 6: Operational Practices

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objectives	<p>Describe how to operationalize administrative investigations consistent with PREA standards</p> <p>Describe how to operationalize human resources consistent with PREA Standards</p> <p>Describe key operational issues and their impact on administrative investigations and human resources</p> <p>Outline the elements of critical operational practices</p>	
Take a Comprehensive Approach	<p>Everyone needs to be involved in this process- everyone has a role in compliance</p> <p>Consider departmental and staff roles and responsibilities as it relates to PREA compliance</p> <p>Look at all policies and procedures that affect compliance with the standards</p>	
Administrative Investigations: Who Should be at the Table?	<p>Slide contains a picture of a conference table and it lists the people at the table by title as follows:</p> <ul style="list-style-type: none"> • HR Representatives • IA Investigators • Mental Health Care • Union Reps • Prosecutors • Classification/ Case work staff • General Counsel • Security Staff • Policy Staff • Law Enforcement • Medical Health Care • Training • PREA Manager/ Coordinator 	<p>Union Reps- discussion of process not specific cases.</p> <p>Who else should be at the table?</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
<p>Key Operational Practices: Administrative Investigations</p>	<p>Identify how administrative investigators are receiving reports</p> <ul style="list-style-type: none"> • inmates/ residents, staff, third-party, anonymous, community • written, oral, 800 lines, grievances <p>Define the timing of beginning the investigation</p>	<p>Tell participants that they should be using the standards applicable to their agency to guide policies on receiving reports.</p> <p>Discussion: In an administrative investigations of inmate-on- inmate/ resident-on-resident, how is this connected with criminal investigations in your agency?</p> <p>Generally a separate investigation but often indicate things that administratively you need to deal with for staff.</p> <p>At minimum– is staff may be negligent in dealing with sex abuse– implications even if staff are not directly involved in the sexual abuse</p>
<p>Key Operational Practices: Administrative Investigations</p>	<p>Identify who is charged with investigating</p> <p>Provide specialized training for this group of investigators</p> <p>Define investigative protocol in policy and procedures</p> <p>Duties of first responders</p>	<p>Tell participants that they should be using the standards applicable to their agency to guidance policies on investigations.</p> <p>Document specialized training and retrain if/ when needed</p> <p>First Responder Information: When do staff call investigators, what evidence is collected and by</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
<p>Key Operational Practices: Administrative Investigations</p>	<p>Review employee files of alleged perpetrator</p> <p>Determine if evidence points to the need for a criminal investigation</p> <ul style="list-style-type: none"> • MOUs with local law enforcement regarding investigative procedures, timing and information sharing <p>Determine if other staff's actions or inactions contributed to abuse and proceed with actions related to those staff</p> <p>Define responsibilities and procedures to continue investigations even if staff resign</p>	<p>whom, who is interviewed and by whom</p> <p>Use the standards applicable to their agency to guide policies on administrative investigations.</p> <p>Determine if evidence points to the need for a criminal investigation: make sure that you understand <i>Garrity</i>, which we will discuss later</p> <p>Determine if other staff's actions or inactions contributed to abuse: talk about code of silence</p> <p>Define responsibilities and procedures to continue investigations even if staff resign: Waivers– also let people know about this when they are hired</p>
<p>Key Operational Practices: Administrative Investigations</p>	<p>Determine responsibility and process for notification to the inmate/resident during and after the investigation</p> <p>Have full written reports and documentation regarding decisions and conclusions from the investigation</p> <p>Define the evidentiary standard for substantiating an allegation as preponderance of the evidence</p>	<p>Use the standards applicable to their agency to guidance policies on administrative investigations.</p> <p>For youth, make sure that you know the state law about notification of parents, counsel and the court.</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Key Operational Practices: Administrative Investigations	Review incidents following the conclusion of investigations <ul style="list-style-type: none"> • Reporting procedures, training efforts, physical plant issues Discipline <ul style="list-style-type: none"> • Consistent, establish a table of penalties, track discipline, track key indicators (gender, race, age, ethnicity, time in service, nature of offense) 	Use the standards applicable to their agency to guidance policies on administrative investigations. Consistency is what you are aiming for in discipline. Treat like complaints the same with the same discipline. Document why the discipline is different for a similar offense and why. Suggested Discussion: Have participants think about and discuss their individual roles in compliance? Identify barriers to compliance/investigations? Come up with ways to overcome those barriers? Have each group share with the class one of the barriers they identified and ways to overcome that barrier.
Human Resources: Who Should be at the Table?	<ul style="list-style-type: none"> • HR Representatives • IA Investigators • EAP Reps • Union Reps • Staff in charge of contractors and volunteers • General Counsel • Security Staff • Policy Staff • PREA Manager/ Coordinator • Member of the arbitration board 	Slide contains a picture of a conference table and it lists the people at the table by title Ask participants if there is anyone they would add to the table
Key Operational Practices:	Define information gathered during reference checks <ul style="list-style-type: none"> • has engaged in sexual abuse 	Make sure you get the information packet back from people and have them

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
<p>Pre-Employment Human Resources [115.17; 115.117; 115.217; 115.317]</p>	<ul style="list-style-type: none"> • convicted of engaging or attempting to engage in sexual activity • civilly or administrative adjudications for sexual activity • incidents of sexual harassment • substantiated allegations of sexual abuse • resignations during investigations <p>Identify if the agency will require potential employees to sign waivers for reference information</p> <p>Identify psychological screening tools for pre-employment checks</p> <p>Identify who is responsible for pre-employment checks for contractors</p> <p>Consider adding volunteers to “pre-employment” checks– not a PREA standard but will increase prevention and reduce potential liability</p>	<p>sign that they have fully provided information</p> <p>What you can get in pre-employment information is defined by state law</p> <p>Psychological screening: only good for about a year but can use to not hire those who would be problematic at the onset</p> <p>Often agencies require contractors to provide certification of their employees. Make sure you write this into their contract and make sure they get information required by PREA</p>
<p>Key Operational Practices: Pre-Employment Human Resources [115.17; 115.117; 115.217; 115.317]</p>	<p>Identify where information can/ should be gathered from</p> <ul style="list-style-type: none"> • State criminal databases, child abuse registries, closed registries held by state police, civil litigation records check, sex inmate registry, licensing bureaus, Westlaw, Lexis <p>Define responsibility for criminal background checks</p> <ul style="list-style-type: none"> • Who will conduct checks? Will all employees have a check every five years or will a group of employees be checked each year? 	<p>Don’t forget checks for contractors as part of PREA Standards– volunteers not included by standards but are a recommended by best practice</p> <p>Can also check: Credit checks– sometimes viewed as discriminatory because of impact of racial and ethnic minorities Civil litigation– matter of public record</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Determine at what point in the application/ interview process to ask/raise PREA related questions</p> <p>Determine what you say (if anything) to applicants who are not eligible for employment because of PREA-related issues</p>	
<p>Key Operational Practices: Pre-Employment Human Resources [115.17; 115.117; 115.217; 115.317]</p>	<p>Define information gathered during promotion eligibility checks</p> <ul style="list-style-type: none"> • has engaged in sexual abuse • convicted of engaging or attempting to engage in sexual activity • civil or administrative adjudications for sexual activity • incidents of sexual harassment • substantiated allegations of sexual abuse • resignations during investigations <p>Define employees' affirmative duty to report misconduct</p> <p>Define discipline should material omissions occur</p>	<p>For promotions, thus for current employees.</p>
<p>Key Operational Practices: Pre-Employment Human Resources [115.17; 115.117; 115.217; 115.317]</p>	<p>Define employees' rights during investigations</p> <ul style="list-style-type: none"> • Rights of contractors and volunteers <p>Clearly define expectations for staff, obligations to report misconduct and discipline for off-duty conduct and anti-fraternization in the employee code of conduct/ethics</p> <p>Define union members rights during investigations as well as during arbitration and terminations</p>	<p>Suggested Discussion Questions:</p> <p>Where do you currently gather background information?</p> <p>What do you say to an applicant that was not eligible because of PREA related issues?</p> <p>What do you tell an</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>employee who cannot be promoted because of a PREA related issue?</p> <p>When do you ask PREA related questions of applicants?</p> <p>Do you disclose findings of PREA related issues with applicants– why or why not?</p>
<p>The Impact of Operational Practices on Administrative Investigations and Human Resources</p>	<p>Operational practices can affect investigations by impeding or facilitating the flow of information</p> <p>Failure to be attentive to operational issues places the organization at risk</p> <p>Knowing where to look for information will be key to operationalizing PREA standards on administrative investigations and human resources</p> <p>Clearly established practices set the benchmark</p>	
<p>The Impact of Operational Practices on Administrative Investigations and Human Resources</p>	<p>Leadership should facilitate identification of deviations from established rules</p> <p>Leadership should participate in PREA initiatives to illustrate its importance</p> <p>Investigators and HR representatives should be visible and available to employees at times other than crisis (e.g. EAP and training efforts)</p>	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>First contact between staff and investigators or HR professionals should be positive</p>	
<p>The Impact of Operational Practices on Administrative Investigations and Human Resources</p>	<p>Quick identification of red flags and ethical issues are essential for investigations and human resources—staff, contractors and volunteers</p> <p>Supervisors need to supervise at all times on all shifts</p> <ul style="list-style-type: none"> • Unannounced rounds, visits to third shift <p>Collection and analysis of data is key in responding to sexual abuse</p> <ul style="list-style-type: none"> • Grievance procedures; timing, place of incidents; physical plant issues; review of adequacy of multiple internal and external reporting avenues <p>Clarity in roles and expectations for investigations will allow for quick response times when an allegation is reported</p>	
<p>Activity</p>	<p>Each group will:</p> <ol style="list-style-type: none"> 1. Discuss the PREA standard and review a key relevant operating practice and critical components that must be put in place. 2. Develop a preliminary implementation plan for this practice. 3. How the agency will put in place what is on paper (describe how will you implement or operationalize 	<p>Directions: Break the participants into groups (group size will depend on the number of participants).</p> <p>Each group is assigned PREA standard. As jurisdictions work to implement PREA standards and to address human resources and administrative investigations, they will need to revisit and develop operating practices that</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>this practice)?</p>	<p>support the intent of the standards.</p> <p>Ask them to address each of the 3 questions on the slide during the group discussion. Allow 25 minutes for the group discussion and 20 minutes for report outs to the large group.</p>
<p>Activity: Assignments</p>	<p><u>Group 1</u>: Limits to cross-gender viewing and searches [115.15, 115.115, 115.215, 115.315]</p> <p><u>Group 2</u>: Hiring and promotion decisions [115.17, 115.117, 115.217, 115.317]</p> <p><u>Group 3</u>: Policies to ensure referrals of allegations for investigations [115.22, 115.122, 115.222, 115.322]</p> <p><u>Group 4</u>: Specialized training: Investigations [115.34, 115.134, 115.234, 115.334]</p> <p><u>Group 5</u>: Inmate Reporting [115.51, 115.151, 115.251, 115.351]</p> <p><u>Group 6</u>: Criminal and administrative agency investigations [115.71, 115.171, 115.271, 115.371]</p>	
<p>Summary</p>	<p>How to operationalize administrative investigations and human resources consistent with PREA Standards</p> <p>The impact of key operational issues and their impact on administrative investigations and human resources</p>	<p>Evaluation: Remind participants to fill out this section of their evaluation of the materials covered, activities and the performance of the instructor.</p>

Module 7: Techniques for Strong Administrative Investigations

Time: 3 hours

Recommended Faculty:

PREA Coordinator or Monitor or Lead Agency Investigator

Resources:

LCD projector, computer and media screen

Participant Handouts:

- PowerPoint®
- Signs of Staff Sexual Misconduct
- "Not a Rat"
- United States. U.S. Department of Justice/ Office of Inspector General. The Department of Justice's Efforts to Prevent Staff Sexual Abuse of Federal Inmates

PowerPoint® Programs:

Module 7: Techniques for Strong Administrative Investigations

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objectives	<p>Discuss the National Prison Rape Elimination Commission findings and identify and describe the challenges for investigating sexual abuse</p> <p>Identify applicable PREA Standards for investigations</p> <p>Identify foundations for successful administrative investigations</p> <p>List the reasons why administrative investigations fail</p>	
Identify applicable PREA Standards for investigations	<p>Define considerations made in effective administrative investigations</p> <p>Identify useful techniques for administrative investigations</p> <p>Describe how administrative and criminal investigations are linked and outline the process for conducting coordinated investigations</p>	<p>Before we start, let's review two cases– one where there were precursors and the other is where you land when investigations fail</p>
Tafoya v. Salazar 516 F.3d 912 (10th Cir. 2008)	<p>Female inmate in a county jail was sexually assaulted by a male correctional officer, Ruiz.</p> <p>The court found the sheriff was aware of conditions that were substantially likely to result in sexual assault, as he knowingly continued to employ detention officers with criminal records.</p> <p>The background check showed a DWAI conviction, a conviction for assault, and an arrest for</p>	<p>These are some discussion questions about this case, there is no right or wrong answers, but it would assist the group in thinking about what these convictions mean and whether their agency would employ someone with this record.</p> <p>Discussion: Should these convictions disqualify an officer for employment. If so, which ones?</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>resistance, destruction of city property, disturbance, and assault. After hiring, Ruiz was arrested for domestic violence and DWAI.</p> <p>The court accepted the expert’s explanation that “periodic evaluations including criminal background checks could have identified staff members that posed a particular threat to inmates.”</p>	<p>How does each offense or the combination of them relate to suitability for employment?</p> <p>Do these conviction show violent tendency? Disrespect for authority? Alcoholism?</p> <p>Risk of victimizing a person in custody?</p> <p>Worth it?</p>
<p>Riley v. Olk-Long 282 F.3d. 592 (8th Cir. 2002)</p>	<p>The Facts:</p> <ul style="list-style-type: none"> • Officer made inappropriate comments to Riley about having sex with her roommate. He entered her room after lockdown, attempted to reach under her shirt, grabbed her from behind, and rubbed up against her. • Inmate did not report because “she doubted that she would be believed and feared the resulting discipline.” • Officer later entered her cell and raped her. She was forced to perform oral sex so she would not become pregnant. • The officer was terminated and convicted under state law. 	
<p>Riley v. Olk-Long 282 F.3d. 592 (8th Cir. 2002)</p>	<p>Court’s Analysis:</p> <ul style="list-style-type: none"> • Prior to this incident other female inmates had made complaints. • Officer had a history of 	<p>Activity: Ask participants to generate a list of warning signs of predatory behavior of corrections staff toward</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>predatory behavior; four prior investigations were closed as inconclusive. A collective bargaining unit precluded permanent reassignment.</p> <ul style="list-style-type: none"> • Director of security suspected the officer was abusive but did not take action and did not terminate the officer when he had the opportunity. • Warden did not think officer posed a threat. 	<p>inmates. How might you prevent such an outcome?</p>
<p>Challenges for Investigating Sexual Abuse in Correctional Settings</p>	<p>There is a culture of underreporting out of fear</p> <ul style="list-style-type: none"> • Retaliation • Loss of privileges • Moving facilities • Will not be believed <p>Poor quality of the evidence</p> <p>Lack of credibility of victims and witnesses</p> <p>Time elapsed between incident and report</p> <p>Who is involved in the investigation and what agency is taking the lead</p>	<p>These are challenges we know exist because of BJS data reports, NPREC hearings and anecdotal reports from field investigators</p>
<p>Challenges for Investigating Sexual Abuse in Correctional Settings</p>	<p>Lack of training for investigators on sexual abuse in custody</p> <p>Coordinating responders</p> <p>Prosecutors who turn down cases</p> <p>What to do with unsubstantiated cases that are not untrue</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>The frequent flier syndrome</p> <p>Many of the investigative PREA Standards are in response to findings by the National Prison Rape Elimination Commission</p>	
Applicable PREA Standards	<p>Policies to ensure referrals of allegations for investigations (115.22; 115.122; 115.222; 115.322)</p> <p>Specialized training: investigations (115.34; 115.134; 115.234; 115.334)</p> <p>Staff and agency reporting duties (115.61; 115.161; 115.261; 115.361)</p> <p>Staff first responder duties (115.64; 115.164; 115.264; 115.364)</p>	
Applicable PREA Standards	<p>Coordinated response (115.65; 115.165; 115.265; 115.365)</p> <p>Criminal and administrative agency investigations (115.71; 115.1171; 115.271; 115.371)</p> <p>Evidentiary standard for administrative investigations (115.72, 115.172; 115.272, 115.372)</p> <p>Sexual abuse incident reviews (115.86; 115.186; 115.286; 115.386)</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
<p>Operationalizing PREA Standards: This is Good Investigative Practice</p>	<p>Have an investigative policy (115.22, 115.122, 115.222, 115.322)</p> <p>Have a procedure for collecting evidence (115.21, 115.121, 115.221, 115.321)</p> <p>Train investigators (115.34, 115.134, 115.234, 115.334)</p> <p>Train medical and mental health staff (115.35, 115.135, 115.235, 115.335)</p> <p>Have multiple reporting avenues for inmates/ residents, staff and third party reporters including a confidential means (115.51-115.54, 115.151-154, 115.251-115.254, 115.351-115.354)</p>	<p>Included with evidence collection: Use a law enforcement approach to securing the area, chain of custody, etc.</p> <p>Make sure that first responders are aware of these procedures and know what to do until the investigator or other staff arrive</p> <p>Investigative training – what should it include?</p> <ul style="list-style-type: none"> • Interview training • Report writing (vital) • Evidence handling and procedures <p>First Responders – what else should they know?</p> <ul style="list-style-type: none"> • Secure the scene • Who to notify • What to ask the victim/what to tell the victim (same for perpetrator) • Expectation of documentation needs to be clear
<p>Operationalizing PREA Standards: This is Good Investigative Practice</p>	<p>Give inmates/ residents adequate medical and mental health treatment matching community expectations (115.82-115.83, 115.1182-183, 115.281-115.282, 115.381-115.382)</p> <p>Be clear about what the reporting structure is in and outside of your agency</p>	<p>Included with evidence collection: Use a law enforcement approach to securing the area, chain of custody, etc.</p> <p>Make sure that first responders are aware of these procedures and know what to do until the</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>(115.61, 115.161, 115.261, 115.361)</p> <p>Have clear instructions for first responders (115.64, 115.164, 115.264, 115.364)</p>	<p>investigator or other staff arrive</p> <p>Investigative training – what should it include?</p> <ul style="list-style-type: none"> • Interview training • Report writing (vital) • Evidence handling and procedures <p>First Responders – what else should they know?</p> <ul style="list-style-type: none"> • Secure the scene • Who to notify • What to ask the victim/what to tell the victim (same for perpetrator) • Expectation of documentation needs to be clear
<p>Operationalizing PREA Standards: This is Good Investigative Practice</p>	<p>Have coordinated response SART Team (115.65, 115.165, 115.265, 115.365)</p> <p>Be clear about access to and need for both criminal and administrative investigations</p> <ul style="list-style-type: none"> • Involve law enforcement or other agencies such as the Department of Health and Human Services as needed <p>Let inmates/ residents know what is happening with the allegation– provide updates (115.73, 115.173 115.273, 115.373)</p> <p>Review (post-investigation) the allegation, the process you</p>	<p>SART – Who should be on the team?</p> <ul style="list-style-type: none"> • Depends on your agency, location, structure and local resources • Examples – prosecutor, rape crisis provider, investigator, PREA coordinator, medical personnel from facility <p>Involving other agencies –</p> <ul style="list-style-type: none"> • Develop relationships before the crisis (MOUs) • Identify other agencies that can step in as outside investigators if you need it

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>followed and be honest about what you could have done better (115.86, 115.186, 115.286, 115.386)</p>	<p>Keep inmates informed of progress –</p> <ul style="list-style-type: none"> Who does it and how is it documented – may be dependent on status of case who has the responsibility <p>After action review –</p> <ul style="list-style-type: none"> You may want to be careful how this gets documented but the open and honest dialogue part of the process is essential
<p>Foundations of Successful Administrative Investigations</p>	<p>Strong and clear zero tolerance policy for sexual misconduct and abuse</p> <p>Strong investigative policy</p> <p>Training staff and inmates/ residents about investigative process</p> <p>Knowing the channels of reporting (including your mandatory reporting guidelines)</p> <p>Keeping victim-inmate involved in process</p>	<p>What do we mean by 'successful' investigations?</p> <ul style="list-style-type: none"> Does that mean that we catch someone and punish them? Does that mean we have a reasonable expectation of reaching the truth? <p>Success also means having a case file that is complete and accurate, and a report that is well written, complete and accurate. Your report needs to stand up under scrutiny, even if there is a criminal investigation by another agency.</p> <p>What does a strong investigative policy mean?</p> <ul style="list-style-type: none"> Clear process for initiating investigations with a recognizable protocol (Investigation must be initiated by Director or

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		Administrator) <ul style="list-style-type: none"> • Consistent pattern of response with recognizable steps
Foundations of Successful Administrative Investigations	<p>Including appropriate outside agencies to aid in the investigation</p> <p>Understanding evidence timelines</p> <p>Ensure the investigative process is viewed as credible</p> <p>Determine applicable criminal laws and administrative procedures and make certain investigative process is consistent</p> <p>Define the successful completion of an investigation as a security issue</p> <p>Protect inmates/residents who are victims from retaliation</p> <p>Ensure safety and security</p>	<p>Caution about making promises of protection</p> <p>Are there others the participants can identify?</p>
Challenges to Successful Administrative Investigations	<p>Attitude toward victim/witnesses</p> <p>Reaction of first responders</p> <p>Lack of communication with investigative partners both internal and external</p> <ul style="list-style-type: none"> • Law enforcement • Mental health • Medical • Prosecutors • HR office <p>Lack of support for the victim's</p>	<p>Attitude toward victim by both your staff and outside investigators; problem with non-credible witnesses</p> <p>Attitude of victim and witnesses --- male victims (inmate/inmate and staff/inmate)</p> <p>Failure of first responders to follow policy/protocols Prosecutorial bias regarding gender of staff member</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	safety Administrative Reasons <ul style="list-style-type: none"> • Weak policy • Lack of support from administration • Poor teamwork 	
Why Administrative Investigations Fail	Timing and pace of the investigation Distrust of investigators Poorly trained investigators Process <ul style="list-style-type: none"> • Leaks • Uncooperative victims • Vulnerable Victims • Uncooperative staff – code of silence 	
Why Administrative Investigations Fail	Evidence that is <ul style="list-style-type: none"> • Limited • Weak • Poorly collected • Poorly preserved Not properly utilizing all of the available investigative tools Lack of commitment to task Poor coordination of agency partners	
Considerations for Effective Administrative Investigations	WHO <ul style="list-style-type: none"> • Department of Internal Affairs • Local Law Enforcement • Employee Assistance 	Any additional considerations of who should be involved?

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	Program <ul style="list-style-type: none"> • Union • Division of Youth Services • Advocacy and Protection Agencies • Prosecutors • Victim Services 	
Considerations for Effective Administrative Investigations	WHERE <ul style="list-style-type: none"> • Probation or Parole Department • Community • County/Local Jail • State or Federal Prison • House Arrest • Half-way House • Work Release 	
Considerations for Effective Administrative Investigations	INVESTIGATIVE TEAM <ul style="list-style-type: none"> • Gender • Ethnicity • Expertise • Qualifications • Language ability WHAT <ul style="list-style-type: none"> • Incident (crime) scene management • Size of agency • Financial and legal restrictions • Policy 	
Considerations for Effective Administrative Investigations	NEEDS <ul style="list-style-type: none"> • Medical • Safety HOW <ul style="list-style-type: none"> • Evidence Collection 	Need to know law on single party consent on wiretaps even for administrative investigations.

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<ul style="list-style-type: none"> • Wiretaps • Interviews • Notifications 	
Involving Other Agencies	WHEN <ul style="list-style-type: none"> • Embrace and develop mutual opportunities prior to need • Immediately and in accordance with criminal law • Immediately and in accordance with carefully developed protocols and MOUs • Embrace and assess throughout investigative process WHY <ul style="list-style-type: none"> • Maximize resources • Building relationships for the future • Enhance effective public policy • Enhancement of institutional and public safety 	Explain PREA Hold training Have conversations before an incident
Techniques for Administrative Investigations	<ul style="list-style-type: none"> • Property and room search of victim/perpetrator • Letters, notes, gifts • Check account activity of victim • Telephone activity • Mail • Records- logbooks, roll call, medical records • Reports from other staff and/or inmates/ residents 	Talk about getting evidence from perpetrator. Evidence collection. Even in administrative investigation can search staff. **Need to know your law, policy and union contract. Where you are matters. Know your state laws.

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
<p>Techniques for Administrative Investigations</p>	<p>Construct a timeline to put people in a particular location at a particular time</p> <p>Aggressive Techniques:</p> <ul style="list-style-type: none"> • Body Wire • Electronic Monitoring • Controlled Calls • Polygraph 	<p>First and foremost consideration should be the health and safety of the victim</p> <p>Know the law in your jurisdiction for aggressive techniques. Must involve legal counsel</p> <p>Unless there is overwhelming evidence to unfound an allegation, action should be taken to separate the victim and accuser, at least until the investigation concludes</p> <p>The standards do not allow use of polygraph on inmate victims 115.71(e)</p>
<p>Sample Interview Questions for Successful Administrative Investigations</p>	<p>Describe the staff member's physical characteristics?</p> <ul style="list-style-type: none"> • Hair pattern on body • Type of underwear • Bellybutton • Scars/ Moles • Tattoos / piercing • Circumcised / uncircumcised • Hygiene • Skin pigmentation • Perfume or cologne <p>Do you know the staff member's financial status?</p> <p>To whom does the staff member owe money?</p> <p>What do you know about the staff member?</p>	<p>These are just sample questions and are meant to establish a wide range of violations from sexual abuse to fraternization and conduct unbecoming an officer.</p> <p>These are descriptive questions meant to illicit information from an inmate that could prove that the inmate has intimate knowledge of the person the allegation is against.</p> <p>This is especially helpful when the victim is not cooperative. You can use these questions to prove or disprove the allegation in some circumstances.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>What type of vehicle does s/he drive?</p> <p>What are the staff member's hobbies? Days off?</p> <p>Where did the staff member go on vacation?</p> <p>What type of home does the staff member have?</p> <p>Has the staff member ever given you cards, tokens, notes, photos?</p>	<p>While these questions are used as descriptive indicators in allegations of staff sexual misconduct, investigators can certainly use these questions in allegations of inmate-on-inmate sexual abuse.</p> <p>Each permits sanctions which then can provide notice of a propensity to blur boundaries and potentially to abuse inmates/residents.</p> <p>These questions can also be used to get cursory information from the victim so that investigators can build rapport with the victim.</p> <p>As an example, if an inmate can tell you small details about a staff person such as financial status that may mean at the base of what's going on the staff person is breaking a boundary by talking about personal business with or within ear shot of an inmate.</p> <p>You may not always be able to prove sex occurred, but some of these questions can help an investigator establish a break in professional boundaries.</p> <p>Additionally, don't be afraid to ask questions about/ targeted to emotions- questions such as:</p> <ul style="list-style-type: none"> • How did he/she treat you?

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<ul style="list-style-type: none"> • Do you have strong feelings for them? • Did you think the sex was going to continue? • Did you make plans for the future? • How do you feel about him/her? <p>Even if inmate/resident does not answer these questions honestly, you can sometimes pick up important clues about motivation for either or both parties.</p> <p>Written documentation should not use language that could be construed as consensual.</p> <p>Describe the body part and the contact, but don't use terms like "they had oral sex" or "she fondled him."</p> <p>These terms imply consent and pleasure.</p> <p>Use the phrase "he placed his penis in her mouth and ejaculated," or "she touched his penis with her fingers."</p> <p>Most importantly document the answers exactly as they are told to you.</p>
<p>Sample Interview Questions for Successful</p>	<p>When did the sex begin?</p> <p>What occurred?</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Administrative Investigations	<p>When / frequency?</p> <p>Where did act take place?</p> <p>Did ejaculation occur?</p> <p>Who was the last person you saw before the act took place?</p> <p>Who was the first person you saw after the act took place?</p> <p>Does the staff member own his/her home or rent?</p> <p>What type of music does the staff member like?</p> <p>What are the names of the staff's family members, wife, kids, friends, pets?</p> <p>Where does the officer live?</p> <p>What is the staff member's telephone number?</p> <p>Have you told anyone about this? Whom? When?</p> <p>Description of area where act took place?</p> <ul style="list-style-type: none"> • Detail • Locks • Keys • Announcements • Radio transmission 	
Union Member Right's During Administrative Investigations	<p>Staff may request a union steward to be present in an interview if they are the "target" of the allegation</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>They must make the request</p> <p>Steward may participate, ask questions, speak to the employee, and act as their advisor</p> <p>Steward may not hinder the investigation</p> <p>All administrative requirements, regulations and statutes remain in full force and effect.</p>	
<p>Know Your Law, Policy and Procedure</p>	<p>Evidence collection and analysis</p> <p>When to include other agencies</p> <p>Calling in victim services</p> <p>Aggressive investigative techniques</p> <ul style="list-style-type: none"> • Using inmates • Wiretaps • Polygraphs <p>Use of <i>Garrity v Miranda</i> warnings</p> <p>Interviews of both victim and staff</p>	<p>This is a review of what has been covered already, but a helpful list for participants to go over.</p>
<p>Victims and Administrative Investigations</p>	<p>Consider the victim’s perspective: fear, terror, the inmate/ resident code, the effect of prior victimization</p> <p>Complex motives of the victims</p> <p>Ability to relate to the victim</p> <p>Pace of the investigative process</p>	<p>Prior sexual abuse may trigger all kinds of reactions in your victim that you do not expect or anticipate.</p> <p>Don’t have such an agenda that you can’t be flexible with victims and their need to communicate with you on their terms.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Victim safety pending investigation</p> <p>Use victim services to advocate for the victim</p> <p>Victim’s history of trauma</p>	<p>Take your time during the interview.</p> <p>Prior victimization issues hold true for both male and female victims</p>
<p>Staff Members and Administrative Investigations</p>	<p>Written reports</p> <p>Confidentiality</p> <p>Interview with detailed notes</p> <p>What to do with accused staff member</p> <ul style="list-style-type: none"> • Reassign • Administrative leave without pay • Allow to resign • E.A.P. referral • Go to licensing agencies • Determining <i>Garrity</i> or <i>Miranda</i> • Refer to D.A. for investigation and potential prosecution 	<p>If you allow someone to resign, do you terminate the investigation?</p> <p>What about cases that are truly ‘unfounded’? Do you offer support to staff member?</p>
<p>Linking Administrative and Criminal Investigations for Success</p>	<p>What you learn <i>independent of the interview</i> of the suspect can be turned over to law enforcement</p> <p><i>Garrity</i> does not prohibit law enforcement from turning over information to you</p> <p>The administrative investigation can be conducted simultaneously with the criminal investigation</p>	<p><i>Garrity</i> will be discussed further in Module 9.</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
<p>Linking Administrative and Criminal Investigations for Success</p>	<p>The criminal investigation should have the higher priority and due to this, the administrative investigation may be put on hold so as not to interfere with the criminal investigation</p> <p>Have MOUs regarding information sharing with administrative and criminal investigators</p>	
<p>Remember!</p>	<p>Be tenacious.</p> <p>Be creative.</p> <p>Be intelligent.</p> <p>Keep good records.</p> <p>Know your agency's policy and procedure and the state and federal criminal law.</p> <p>Bring in other skill sets – lawyers, physicians, forensics, treatment partners, and available community resources</p>	<p>Important to also consider the aftermath... licensing boards etc.</p>
<p>Activity: Mapping the Investigative Process</p>		<p>Directions: Hand out a large piece of butcher paper and markers to teams of three.</p> <p>Ask the groups to map out the investigative process for the agency from the time a report is made until the finding is completed-- administrative and criminal.</p> <p>Ask teams to address and identify the following:</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<ul style="list-style-type: none"> • Bottlenecks • Gaps • Revisions to the process based on the PREA Standards • Where changes may be needed. <p>Allow 30 minutes for the groups to meet and map the investigations</p> <p>Allow 30 minutes for groups to report out to the larger group about their findings.</p> <p>During the report outs ask teams to identify gaps in reporting and investigation as they see it and how those could be remedied.</p>
Summary	<p>Challenges for Investigating Sexual Abuse</p> <p>Applicable PREA Standards</p> <p>Foundations & Techniques for Successful Administrative Investigations</p> <p>Reasons Administrative Investigations Fail</p>	<p>Evaluation: Remind participants to fill out this section of their evaluation of the materials covered, activities and the performance of the instructor.</p>

Module 8: Human Resources and Pre-Employment Practices

Time: 1 hour and 30 minutes

Recommended Faculty:

Human Resources Manager or General Counsel

Resources:

LCD projector, computer and media screen

Participant Handouts:

- PowerPoint®
- Sample reference waivers
- State Survey of Child Abuse Registries
- Report by the Office of the Inspector General: Enhanced Screening of BOP Officer Candidates Could Reduce Likelihood of Misconduct
- "Issues in Investigating Sexual Assaults in Correctional Facilities" Staff Perspectives: Sexual Violence in Adult Prisons and Jails. The Moss Group Inc.
- Correctional Internal Affairs Investigators: Job Analysis. Comp. by The Moss Group Inc.

PowerPoint® Programs:

Module 8: Human Resources and Pre-Employment Practices

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objectives	<p>Describe PREA’s impact on pre-employment and post-employment agency practices</p> <p>Identify proactive steps that agencies can take to comply with PREA requirements</p> <p>Identify proactive steps agencies can take to meet the PREA standards relating to human resources matters</p>	
Stages of Employment	<p>Pre-hire/promotion</p> <p>Prevention policies</p> <p>Misconduct investigations</p> <p>Termination/discipline</p>	
Pre-hire and Promotion	<p>Screening</p> <ul style="list-style-type: none"> • Reference Checks • Background Checks (including criminal & sex inmate registry) • Promotion • Anti-discrimination law 	
Summary of PREA Requirements	<p>Agencies must not hire employees with backgrounds of sexual misconduct</p> <p>Agencies must continue to monitor current employees for incidents of sexual misconduct</p> <p>Agencies must conduct background checks before hiring new employees</p>	
PREA on Screening and Hiring	28 CFR § 115.17: Hiring and promotion decisions	Let’s review the actual language of the relevant

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>(a) The agency shall not hire . . . anyone who may have contact with inmates, and shall not enlist the services of any contractor who may have contact with inmates, who</p> <p>(1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility or other institution;</p> <p>(2) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse;</p> <p>(3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.</p>	<p>regulations</p>
<p>PREA on Screening and Hiring</p>	<p>28 CFR § 115.17: Hiring and promotion decisions</p> <p>(b) The agency shall consider any incidents of sexual harassment in determining whether to hire . . . anyone, or to enlist the services of any contractor, who may have contact with inmates.</p> <p>(f) The agency shall ask all applicants and employees who may have contact with inmates directly about</p>	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring.</p>	
<p>PREA Requirements to Conduct Background Investigations</p>	<p>28 CFR § 115.17: Hiring and promotion decisions</p> <p>(c) Before hiring new employees who may have contact with inmates, the agency shall:</p> <p style="padding-left: 40px;">(1) Perform a criminal background records check</p> <p>(d) The agency shall also perform a criminal background records check before enlisting the services of any contractor who may have contact with inmates.</p> <p>(e) The agency shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates or have in place a system for otherwise capturing such information for current employees.</p>	
<p>PREA on Reference Checks</p>	<p>28 CFR § 115.17: Hiring and promotion decisions</p> <p>(c) Before hiring new employees who may have contact with inmates, the agency shall:</p> <p style="padding-left: 40px;">(2) Consistent with Federal,</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.</p>	
<p>How to Conduct Reference Checks: Potential Problems</p>	<p>Other employers may decline to provide anything more than confirming dates of employment</p> <p>Why? <i>Defamation law</i></p>	
<p>Defamation Law</p>	<p><u>Defamation</u> is a tort which protects a person from harm to their reputation based on another person/entity “publishing” something that:</p> <ul style="list-style-type: none"> • Injures character • Is untrue <p>For private persons, the defendant generally has to show that the statement made was untrue</p> <p>This means that defamation suits can be expensive to defend, even if you win in the end</p>	
<p>Defamation Suits by Former Employees</p>	<p>Public policy supports former employers telling the truth about “bad apple” former employees</p> <p>So the law grants a qualified privilege which says that employers are not liable for defamation:</p>	<p>Example of Qualified Privilege:</p> <p>Cal. Evid. Code § 1035.4 (West 2013): Confidential communication between the sexual assault counselor and the victim</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<ul style="list-style-type: none"> • If a statement was made in the course of a communication involving legitimate business interest • If it was made in "good faith" (<i>i.e.</i>, not maliciously or for a bad purpose) 	<p>The court may compel disclosure of information received by the sexual assault counselor which constitutes relevant evidence of the facts and circumstances involving an alleged sexual assault about which the victim is complaining and which is the subject of a criminal proceeding if the court determines that the probative value outweighs the effect on the victim, the treatment relationship, and the treatment services if disclosure is compelled.</p>
<p>Problem with Qualified Privilege</p>	<p>The defendant still has to litigate over whether the statement was made for:</p> <ul style="list-style-type: none"> • a legitimate business purpose and in good faith <p>Cautious legal counsel often tell employer-clients to avoid a lawsuit altogether by only confirming dates and position of employment</p>	
<p>Dealing with Defamation Law</p>	<p>Key solution is to ask job applicants to sign a waiver of their right to sue their former employer for any negative information provided in response to a request for a job reference</p> <p>Courts will uphold such waivers</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>This may make former employers more willing to disclose information about former employees</p>	
<p>Other Options</p>	<p>“Back channel” communications</p> <ul style="list-style-type: none"> • HR offices often will not provide substantive references <i>but</i> • People you know within the former employer organization may be willing to speak off the record about a former employee • This kind of information can be very helpful, but because it is not on the record, it cannot be disclosed as the reason for not hiring someone <ul style="list-style-type: none"> ○ This can create potential allegations of unequal treatment or discrimination, as we will discuss later 	
<p>Under PREA: Key Sources of Information Should be Checked</p>	<p>Legal records- criminal, financial, etc.</p> <p>Internet available information</p> <ul style="list-style-type: none"> • Facebook – increasing numbers of employers are requiring employees to provide their passwords <ul style="list-style-type: none"> ○ The legality of this is still being tested but it is likely, legal 	<p>Westlaw is an excellent source to do background information. Incredible what you will find.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<ul style="list-style-type: none"> Legal databases, e.g., Westlaw 	
<p>Use a Written Protocol</p>	<p>Define how the organization will conduct background investigations</p> <p>This should be the same for all similarly situated applicants.</p> <p>Prepare a check list, and follow it</p> <p>Should not contact prior employers for some similarly situated applicants and not others.</p> <p>Should not waive standards for one applicant but not another.</p>	
<p>Negligent Hiring Claims</p>	<p>May apply if an employer hires an employee and should have known by doing a background check that that employee has caused harm to others in the past</p> <p>And that employee then causes harm on the job</p> <p>The employer may be liable for the tort of negligent hiring, <i>if</i> the plaintiff (person harmed by the employee, such as inmate) can show that:</p> <p>If the employer had taken reasonable steps to investigate the employee's background, it would have</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>discovered the information</p>	
<p>PREA and Negligent Hiring: Take-Aways</p>	<p>Employers should take reasonable steps to investigate job applicants' background</p> <p>What steps are reasonable?</p> <ul style="list-style-type: none"> • Look to the PREA Standards for guidance 	
<p>"Quiz" Question</p>	<p>Plaintiff was a probationary employee at a police department but was not retained after her probationary period. As a condition for plaintiff's agreement to depart voluntarily, the police department agreed it would not release the information that she had failed her probationary period to future employers.</p> <p>The plaintiff later applied for a job with the U.S. Marshall's Service (USMS). The USMS required her to sign an authorization for release of information from prior employers. She did so. When the USMS asked the police department for information about her, it told USMS that the plaintiff had failed the probationary period.</p>	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
<p>What A Court Said: <i>Smith v. Holley</i>, 827 S.W 2d 433 (Tex. App. 1992)</p>	<p>The plaintiff sued the police department for defamation, alleging that it had acted wrongfully by giving information to the USMS after it agreed not to release the information as a condition of her voluntary departure.</p> <p>The court held that the plaintiff, by signing the authorization requested by the USMS investigators, had consented to the release of this information, and was therefore barred from pursuing her defamation action.</p>	
<p>Promotion</p>	<p>PREA requires the agency to take reasonable steps to evaluate the promotion applicant’s background and work record</p> <p>PREA offers concrete guidance about what matters need to be looked into</p> <p>Also be aware of equal treatment issues</p>	<p>What are the steps? Look at the standards.</p> <p>Do criminal background check</p> <p>Inquire past substantiated incidents that had criminal or administrative consequences</p> <p>What are the other things you should be asking?</p>
<p>What is Illegal?</p>	<p>Federal, state, and some municipal laws say:</p> <ul style="list-style-type: none"> • It is illegal to discriminate on the basis of certain “protected characteristics” • What are these? <ul style="list-style-type: none"> ○ Race (minority OR majority) 	<p>You can’t run background checks or refuse to hire and promote some but not others. Everything must be uniform.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<ul style="list-style-type: none"> ○ Ethnicity ○ Religion ○ Gender, sex, and sometimes sexual orientation ○ Age (older than 40 yrs. old) ○ Disability 	
Anti-Discrimination Law and PREA	<p>Equal treatment requirement comes up in all contexts related to employees' "terms and conditions of employment," <i>e.g.</i>,</p> <ul style="list-style-type: none"> • Hiring • Salary and major features of work assignments • Avoiding "hostile environment," <i>e.g.</i>, one that demeans employees of a certain race or gender • Discipline • Promotion • Termination/discharge 	
How Do Plaintiff-side Anti-discrimination Lawyers Think?	<p>They look for a "case theory" supporting a story of discrimination</p> <p>How do they show discrimination?</p> <ul style="list-style-type: none"> • They show that one person was treated differently than another • <i>E.g.</i>, the Muslim male employee was not promoted based on a misconduct incident but the Christian male employee with a similar 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>misconduct incident was promoted</p>	
<p>Other Evidence Helpful to Plaintiff's Lawyers: Situations to Avoid</p>	<p><u>"Smoking Gun"</u> admissions: where someone with decision-making authority admits that a decision was made on the basis of a protected characteristic</p> <ul style="list-style-type: none"> • This is increasingly rare but sometimes still happens • If the statement is made by non-decision maker, it is "stray comment" relevant but not proof of discrimination 	
<p>More Evidence Helpful to Plaintiffs' Lawyers</p>	<p><u>Hostile environment</u>: workplace full of animosity towards a protected group</p> <ul style="list-style-type: none"> • E.g., Hate words, slurs, "jokes," pranks, verbal abuse, physical abuse or acts, etc. <p>Obviously, this kind of culture needs to be avoided for many reasons.</p>	
<p>Danger for Employers Today: Retaliation Lawsuits</p>	<p>Today it is easier to win a case based on a retaliation claim than a bias claim</p> <p>What is <u>retaliation</u>? An employee claims discrimination and/or files a complaint with the EEOC or state agency, and then</p> <ul style="list-style-type: none"> • The employer takes adverse action against that employee, allegedly 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>to retaliate against the employee for complaining</p>	
<p>More on Retaliation Claims</p>	<p>The standards for proving retaliation are easier than for proving discrimination</p> <p>The plaintiff has to show that employer did something that would discourage a reasonable employee from complaining in the future</p> <ul style="list-style-type: none"> • E.g., an undesirable shift change or less favorable work assignment <p>*Most cases today are won on retaliation and not discrimination claims</p>	
<p>Avoiding Retaliation Claims</p>	<p>Supervisors, coworkers and other staff must be instructed NOT to engage in any kind of negative conduct towards any person who has filed discrimination claims.</p>	
<p>Prior Criminal Records</p>	<p>The EEOC has issued "guidance," warning employers that policies that require a clean criminal records background may violate Title VII</p> <p>This is because there is often a "disparate impact" on racial grounds (e.g., more minority applicants have criminal records)</p> <p>However, it is legal to disqualify applicants if having a clean criminal record is "job</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>related and consistent with business necessity”</p> <p>Note: it is not legal to disqualify a candidate based on an arrest record not leading to a conviction, without more information</p>	
Criminal Records	<p>It is very likely that a clean criminal record is necessary for corrections jobs involving contact with inmates for obvious reasons</p> <p>Litigation risk here is low</p> <p>Plus, disparate impact cases require a lot of technical help including use of statistics</p> <p>PREA suggests that Congress wants correctional institutions to avoid hiring persons with relevant criminal infractions, especially related to sexual abuse</p>	
EEOC’s Rec’d on Criminal Records	<p>Tailor policy to need</p> <ul style="list-style-type: none"> • E.g., are juvenile records relevant? Are very old criminal convictions relevant? <p>Give individualized consideration</p> <ul style="list-style-type: none"> • Allow the individual to explain why a prior conviction should not be disqualifying • Don’t just throw application in the discard pile if a prior conviction is disclosed, look a bit more 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>carefully at the situation</p> <ul style="list-style-type: none"> • Again, must give same chance to everyone who is similarly situated and apply same standards to all 	
<p>Discrimination Issues: View of Managers</p>	<p>If you are a manager, you may see two situations as very differently</p> <ul style="list-style-type: none"> • E.g., maybe the incident involving the Muslim employee was much worse than the incident involving the Christian employee • Religion was not any consideration at all! • A good plaintiff's lawyer can tell a different story if the paper record doesn't explain differences in treatment 	
<p>"Take Aways" on Antidiscrimination Law</p>	<p>Documentation Be clear on why you are making the decisions you are making and why one situation is different from another one, note it in writing</p> <p>Consistency Be sure that your supervisors are consistent in how they treat employees</p> <p>Professional Workplace Culture Avoid workplace atmospheres tainted by prejudice and bias of any kind. Even (especially) jokes can come back in problematic ways</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
<p>"Quiz" Question</p>	<p>A corrections agency fired a male African American supervisor following an investigation into allegations of sexual misconduct. He sued for race discrimination, pointing out that the criminal charges against him had been dismissed and alleging that a white officer had not been terminated despite having been involved in a similar case.</p> <p>How would a court view this claim?</p> <p>What evidence would matter?</p>	
<p>What A Court Said: <i>English v. Colo. Dep't of Corr.</i>, 248 F.3d 1002 (10th Cir. 2001)</p>	<p>The court held that the dismissal of criminal charges had no bearing on the evidentiary results of the internal investigation, and that the case of the white officer whom the agency had not terminated involved a factually dissimilar situation.</p>	
<p>Summary</p>	<p>PREA's Impact on Pre & Post-Employment Agency Practices Proactive Steps Agencies Can Take To:</p> <ul style="list-style-type: none"> • Comply with PREA Standards • Meet PREA Standards relating to HR • Avoid Costly Litigation 	<p>Evaluation: Remind participants to fill out this section of their evaluation of the materials covered, activities and the performance of the instructor.</p>

Module 9: Human Resources and The Law

Time: 2 hours

Recommended Faculty:

Human Resources Manager or General Counsel

Resources:

LCD projector, computer and media screen

Participant Handouts:

- PowerPoint®
- Memorandum: Anti-fraternization Policies
- Labor and Employment Law: Tools for Prevention, Investigation and Discipline of Staff Sexual Misconduct in Custodial Settings
- Integrity in Jail Operations: Addressing Employee/ Inmate Relationships
- Policy on Worker Relations Helps Ensure Office Integrity
- Case Law Summary: Anti-fraternization Policies

PowerPoint® Programs:

Module 9: Human Resources and the Law

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objectives	<p>Identify and describe the extent of potential agency legal liability for human resources matters</p> <p>Describe PREA's impact on existing and future collective bargaining agreements</p> <p>Identify proactive steps agencies can take to meet the PREA standards relating to human resources matters</p>	
What is your context?	<p>Union Collective bargaining obligations</p> <p>Public employer Constitutional protections</p> <ul style="list-style-type: none"> • 4th Amendment: privacy • 1st Amendment: freedom of association <p>Non-Union Employer will have great discretion in adopting and modifying policies Some common law privacy issues</p> <p>Private employer e.g., subcontractor</p>	<p>It is important to first determine what area you are working in to determine what considerations will be. Have agencies find the box that best fits them.</p>
Key HR Issues in Prevention	<p>Union environments:</p> <ul style="list-style-type: none"> • Modifying Collective Bargaining Agreements <p>Public employee environments</p> <ul style="list-style-type: none"> • Privacy (will discuss under investigations) • Anti-fraternization rules – concerns about 1st Amendment Freedom of Association challenges 	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
<p>PREA and Collective Bargaining</p>	<p>Many comments received during rule making Final rules seek to clarify the interaction between PREA and labor law obligations</p> <p>These try to make it clear that key PREA obligations trump contractual commitments in collective bargaining agreements</p> <p>What PREA says . . .</p>	
<p>§ 115.66 Preservation of ability to protect inmates from contact with abusers</p>	<p>(a) Neither the agency nor any other governmental entity responsible for collective bargaining on the agency’s behalf shall enter into or renew any collective bargaining agreement or other agreement that limits the agency’s ability to remove alleged staff sexual abusers from contact with any inmates pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted</p>	
<p>§ 115.66 Preservation of ability to protect inmates from contact with abusers</p>	<p>(b) Nothing in this standard shall restrict the entering into or renewal of agreements that govern:</p> <p>(1) The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of §§ 115.72 and 115.76; or</p> <p>(2) Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member’s personnel file following</p>	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>a determination that the allegation of sexual abuse is not substantiated.</p>	
<p>§ 115.72 Evidentiary standard for administrative investigations.</p>	<p>The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.</p>	
<p>§ 115.76 Disciplinary sanctions for staff.</p>	<p>(a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.</p> <p>(b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.</p> <p>(c) Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member’s disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.</p>	
<p>§ 115.76 Disciplinary sanctions for staff.</p>	<p>(d) All terminations for violations of agency sexual abuse or sexual harassment policies, resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	criminal, and to any relevant licensing boards.	
What these rules mean for Collective Bargaining Agreements (CBA)	Agencies cannot agree to CBA terms <ul style="list-style-type: none"> • Keeping employees in contact positions while an investigation is proceeding • Imposing anything other than presumptive termination for sexual abuse • Imposing any standard of proof of sexual abuse higher than a preponderance of the evidence, or more likely than not, or 51% probability, standard 	
Modifying Collective Bargaining Agreements	Legal rule: Modifications in terms and conditions of employment must be bargained about with collective bargaining representative <ul style="list-style-type: none"> • Some policy changes related to PREA technically will require at least "effects" bargaining; others won't • Rules about hiring will not require any bargaining (because applicants are not covered by the CBA) • Rules about promotion, discipline and termination, surveillance, may require bargaining as § 115.66 states 	
Suggestions about Minimizing Bargaining	In next collective bargaining agreement (CBA), include a provision that states that all	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Obligation	<p>matters involving coming into compliance with federal and/or state law and regulations are reserved by management or fall within management's rights</p> <p>Check whether your current CBA has such language;</p> <ul style="list-style-type: none"> • If it does then rely on it to assert no duty to bargain about policy changes to comply with PREA obligations 	
More on Collective Bargaining	<p>Send notice of policy changes adopted in light of PREA to the union by mail, hope it does not respond</p> <ul style="list-style-type: none"> • Many arbitrators will rule that this amounts to consent by the union <p>Review past practice; if the union has not asserted a right to bargain about federal regulatory matters that affect terms and conditions of employment in the past you have a good argument that this is the parties' past practice</p> <p>If you determine you do need to bargain, assert that the bargaining is effects bargaining only, since the decisions to institute policy changes required by PREA, thus required by law</p>	
Anti-fraternization Policies in the Public Employee Context	<p>HR concern has always been that some restrictions could violate public employees' 1st Amendment rights to freedom of association</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>However, except for one “outlier” lower court opinion, all of the case law has determined that in the corrections context (both penal and police) upholds employers’ rights to impose such policies, even when they are quite restrictive</p>	
<p>What’s OK?</p>	<p>Termination of a state corrections officer who was married to a man who was previously incarcerated in the state prison system for a felony.</p>	<p>Is this okay? Yes or No</p>
<p>What’s OK?</p>	<p>Termination of a state corrections officer who was married to a man who was previously incarcerated in the state prison system for a felony.</p> <p><i>Keeney v. Heath, 57 F.3d 579 (7th Cir. 1995)</i></p>	<p>Yes.</p> <p>A female correctional officer became acquainted with a male inmate.</p> <p>Agency officials suspected that the officer and inmate had begun an inappropriate relationship and transferred the inmate to another facility.</p> <p>The court reasoned that the burden on the officer’s right to marry was light, or at most moderate. Indiana has a unitary system of prisons and jails, and inmates frequently move among these facilities.</p> <p>Therefore an officer who is romantically involved with an inmate could facilitate unlawful communication or give favored treatment.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>Also, the court noted that this would give male inmates an incentive to romance female correctional officers, and inmates could claim any differences in treatment were due to an improper relationship.</p>
<p>What's OK?</p>	<p>Termination of probation officer for buying a car at a dealership where a probationer under her supervision worked, though he was not involved in the sale.</p>	<p>Is this okay? Yes or No</p>
<p>What's OK?</p>	<p>Termination of probation officer for buying a car at a dealership where probationer under her supervision worked though he was not involved in the sale.</p> <p><i>Montgomery v. Stefaniak</i>, 410 F.3d 933 (7th Cir. 2005)</p>	<p>Yes.</p> <p>The court found the interference with the probation officer's right to association was minimal. She was free to buy a car from any other dealership, and free to interact with the probationer in other ways. "The code of conduct at issue here is rationally related to the court's interest in ensuring the impartiality of its probation officers."</p>
<p>What's OK?</p>	<p>Termination of probation officer who exchanged letters with a man she had previously dated who was serving life sentence in prison outside her jurisdiction.</p>	<p>Is this okay? Yes or No.</p>
<p>What's OK?</p>	<p>Termination of probation officer who exchanged letters with a man she had previously dated who was serving life sentence in prison outside her jurisdiction.</p>	<p>Yes.</p> <p>The first plaintiff, a Wayne County probation officer, was contacted by a man she had</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p><i>Akers v. McGinnis</i>, 352 F.3d 1030, 1034 (6th Cir. 2003).</p>	<p>dated before she became an employee. At the time he contacted her, he was serving a life sentence without parole in a prison outside her jurisdiction. She exchanged several letters with him.</p> <p>The Sixth Circuit held that the MDOC's regulation easily met the rational basis test. The court found that MDOC had a legitimate interest in preventing fraternization between its employees and inmates and their families, and that the rule was a rational means for advancing that interest.</p>
<p>Here's the outlier case:</p>	<p><i>Reuter v. Skipper</i>, 832 F. Supp. 1420 (D. Or. 1993)</p> <p>A female corrections officer was placed on administrative leave due to her intimate association with an ex-felon. She brought a claim alleging violation of her First Amendment rights.</p> <p>The court granted her motion for summary judgment, relying upon the fact that the parties had developed an intimate relationship which <i>predated</i> the enactment or implementation of the sheriff's rules that made association with a person who was convicted of a felony within the past ten years a "presumptive conflict of interest."</p>	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
<p>Here is the more typical court attitude:</p>	<p><i>Poirier v. Massachusetts Dept. of Correction, 558 F.3d 92 (1st Cir. 2009)</i></p> <p>Female corrections officer developed a relationship with male inmate and continued the relationship. She requested permission for the inmate to reside with her and was fired for unauthorized contact. Poirier claims that the DOC and its commissioner violated her First Amendment right, specifically the right to intimate association, and her Fourteenth Amendment right.</p> <p>The court found the officer's rights were not violated and dismissed her complaint.</p>	
<p>Investigations</p>	<p>What are the types of investigations that exist?</p> <p>How does your agency handle investigations?</p> <p>What is an unsubstantiated claim?</p> <p>How does your agency determine what constitutes an unsubstantiated claim?</p> <p>What are the pros and cons of an external investigator(s).</p>	<p>These are all important questions and points to make in the HR context for investigating allegations of sexual abuse.</p> <p>Have the participants discuss some of these if time allows.</p>
<p>28 CFR § 115.71: Criminal and administrative agency investigations</p>	<p>(a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and</p>	<p>Have to have a system for receiving the reports § 115.71, 115.171; 115.271: Criminal & administrative investigations</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>anonymous reports.</p> <p>(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to §115.34.</p>	<p>115.371: cannot terminate an investigation solely because the source of the allegation recants the allegation</p>
<p>Implications</p>	<p>Must have a system for receiving reports of sexual abuse</p> <ul style="list-style-type: none"> • Internally • Externally • Anonymously • By a third party <p>Information about how to file such reports should be made available</p> <p>A regular system for investigating them should be developed</p>	
<p>28 CFR § 115.71: Criminal and administrative agency investigations</p>	<p>(e) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person’s status as inmate or staff.</p> <p>(f) Administrative investigations: (1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse</p> <p>(h) Substantiated allegations of conduct that appear to be criminal shall be referred for prosecution</p> <p>(j) The departure of the alleged abuser or victim from</p>	<p>(f) Separate from the actual act of sex abuse/ misconduct, did other staff contribute by acting to facilitate this or failing to stop it– getting to culture of the agency.</p> <p>(h) remember you cannot control the prosecutor</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>the employment or control of the facility or agency shall not provide a basis for terminating an investigation</p>	
<p>28 CFR § 115.72: Evidentiary standard for administrative investigations</p>	<p>The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.</p>	<p>This is review from a previous module.</p>
<p>Some Key Legal Issues in Investigations</p>	<p>Constitutional law protections in criminal law context</p> <p>Privacy issues</p> <ul style="list-style-type: none"> • Public employers • Private employers <p>Union context</p> <ul style="list-style-type: none"> • Rights to union representative in investigative interview 	
<p>Constitutional Law Issues</p>	<p>5th Amendment <i>Garrity</i> issues</p> <p>4th Amendment Surveillance</p>	
<p><i>Garrity v. New Jersey</i> 385 U.S. 493 (1967)</p>	<p>Holding: The government cannot use information in a subsequent criminal proceeding that has been obtained from an employee who was threatened with negative job consequences for failure to cooperate in an investigation.</p> <p>Under <i>Garrity</i>:</p> <ul style="list-style-type: none"> • Corrections staff can be required to answer 	<p>In <i>Garrity</i>, the Court reversed the criminal conviction of police officers on the basis of statements they had made acknowledging involvement in employment-related wrongdoing.</p> <p>The officers successfully argued that the employer had coerced these admissions by threatening that, if the</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>questions in an administrative investigation</p> <ul style="list-style-type: none"> • And can be fired for refusing to answer or based on the answers they give • But the government cannot subsequently use these answers in a criminal proceeding. <p>Therefore, the agency must initially decide between criminal OR administrative investigations, and stage properly</p>	<p>officers refused to answer, they would lose their jobs.</p>
<p>PREA Observes the <i>Garrity</i> Rule:</p>	<p>28 CFR § 115.71: Criminal and administrative agency investigations</p> <p>(c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence; any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.</p> <p>(d) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for criminal</p>	<p><i>Garrity</i> – compelled interviews</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>prosecution.</p>	
<p>Privacy Rights, Mostly in the Public Employee Context</p>	<p>Public employees have some 4th Amendment protections</p> <p>Private employees subject to criminal investigation also have constitutional protections</p> <p>Private employees subject to administrative investigations have some common law privacy protections, but only against intrusions that would “shock the conscience”</p> <ul style="list-style-type: none"> • Cases addressing email and social media surveillance 	
<p>4th Amendment – Public Employee Privacy Rights</p>	<p>In the employment context, courts will use a balancing test</p> <p>– courts will weigh the intrusion on employee’s privacy rights against the weight of the employer’s interest</p> <ul style="list-style-type: none"> • Comes up in searches of employee property or person and in employee surveillance <p>This protects only the employee’s “reasonable expectation of privacy”</p> <p>So a key issue under the balancing test is the “reasonableness”</p> <ul style="list-style-type: none"> • Of the employee’s expectation • Of the employer’s intrusion 	<p>This often comes up in searches</p>
<p>Ways to Make Investigation</p>	<p><u>Surveillance</u></p>	<p>Employers can usually look at office computer and cell</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
<p>Methods More Reasonable</p>	<p>Provide general notice regarding areas under surveillance</p> <p>Methods</p> <ul style="list-style-type: none"> • Random vs. targeted • If targeted surveillance, should have some objective cause or reasonable suspicion <p>Balance between intrusiveness and employer need</p> <p>Avoid highly intrusive searches or surveillance</p> <ul style="list-style-type: none"> • E.g., avoid video in bathroom stalls or changing areas 	<p>phones (if the employer provides it)</p>
<p>Reasonableness depends on Work Context</p>	<p>Whether employee has reasonable expectation of privacy <u>depends heavily on work context:</u></p> <ul style="list-style-type: none"> • Corrections officers working in secured areas have low expectations of privacy • Probation officers and others working in the community may have higher expectations of privacy <ul style="list-style-type: none"> ○ E.g., in personal or apparently “personal” cars and offices <p>Extremely intrusive searches such as body cavity searches need high justification</p> <ul style="list-style-type: none"> • In contrast, random urine drug tests of employees working with inmate population are okay 	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
<p>Avoiding 4th Amendment/ Privacy Rights Challenges</p>	<p>Provide general notice about employee surveillance methods</p> <p>Restrict surveillance methods to those reasonably necessary</p> <p>Use even-handed procedures for selecting surveillance targets</p> <p>Think through/document the need for the search or surveillance method and tailor it to that need</p> <ul style="list-style-type: none"> • E.g., is video needed or will audio capture the misconduct being investigated? 	
<p>Union Employees: Right to Representation</p>	<p>Under federal labor laws both private and public sector bargaining unit members generally have the right to have a union representative present in interviews if they request this</p> <ul style="list-style-type: none"> • In private sector, these are called <i>Weingarten</i> Rights • Similar rights have been recognized under the Federal Service Labor-Management Relations Statute <p>In some states, state labor laws covering public employees grant rights to union representation in interviews</p> <p>These representatives may not disrupt the proceedings or instruct the witness not to answer; they are there to assist the employee but not to obstruct the process</p>	<p>Labor representatives commonly refer to these rights as <i>Weingarten</i> rights, referring to the case in which the Supreme Court found that federal, private-sector labor law provides the right to the presence of a union representative in investigatory interviews.</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Termination/Disc harge or other Significant Discipline	<p>What do we know about terminating employees?</p> <p>What do we know about disciplining employees?</p> <p>What are some methods of discipline available in the correctional context?</p>	
Remember PREA: 28 CFR § 115.17: Hiring and promotion decisions	<p>(g) Material omission regarding [sexual] misconduct, or the provision of materially false information, shall be grounds for termination</p> <p>***And of course engaging in sexual misconduct is just cause for termination</p>	<p>Discussion: What is the difference between grounds for termination, and just cause for termination? Have participants discuss in a large group.</p>
Issues by Context	<p>Public Employment Due process rights</p> <p>Union context Rights to follow grievance and arbitration procedures</p> <p>Private, Non-union employees Employment "at will" – an employee can be fired at any time for any reason that is not illegal</p> <ul style="list-style-type: none"> • E.g., any reasons as long as there is no discriminatory discharge and no discharge in "violation of public policy" 	
Due Process Rights In Public Employment	<p>Generally there is a right to a pre-termination hearing</p> <ul style="list-style-type: none"> • But, where there is a strong employer need to remove the employee from the workplace, this hearing can 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>generally be held after the employee is removed from work</p> <ul style="list-style-type: none"> • Some cases even say there is no need to pay salary during suspension, but many employers do continue the employee on payroll pending the hearing • Also must check state civil service statutes 	
<p>5th/14th Amendment Due Process Rights</p>	<p>Public employees sometimes have a kind of property interest in their employment, which may entitle them to some type of notice and hearing, either prior to, or after termination.</p> <p>What these rights are generally are defined in civil service statutes.</p> <p>Sometimes a constitutional challenge may be raised; there courts will balance:</p> <ul style="list-style-type: none"> • The employee's interest • The risk of an error affecting the employee's protected interests through the procedures the employer uses; and • The public employer's interest in resolving the situation quickly. 	
<p>What's Okay?</p>	<p>Suspension of corrections officer without pay or hearing where he was accused of providing marijuana to an inmate.</p>	<p>Is this okay? Yes or No</p>
<p>What's Okay?</p>	<p>Suspension of corrections officer without pay or hearing where he</p>	<p>Yes, if a hearing is provided later.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>was accused of providing marijuana to an inmate?</p> <p><i>Virgili v. Allegheny County</i>, 132 F. Appx. 947 (3d Cir. 2005)</p>	<p>Although the officer had a property interest in his position, protected by notice and hearing requirements, the court held that these protections do not always require pre-termination procedures.</p>
<p>Another Case</p>	<p><i>Macklin v. Huffman</i>, 976 F. Supp. 1090 (W.D. Mich. 1997)</p> <p>Prison food service employee was accused of sexual misconduct, and suspended without pay for two weeks pending investigation.</p> <p>Balancing the minimal intrusion on the employee’s rights against the prison’s substantial interest in the investigation and its safety concerns, the court held that the employee did not have a right to a hearing prior to his suspension.</p>	
<p>Union Context</p>	<p>In this context, employment is not at will</p> <p>Termination generally must be for “just cause”</p> <p>This question is resolved through the grievance and arbitration procedure defined in the collective bargaining agreement</p>	
<p>Grievance and Arbitration</p>	<p>Unions are under a duty of fair representation (“DFR”)</p> <ul style="list-style-type: none"> • They can be sued (for back pay) if they do not process 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>an employee's grievance</p> <p>A union may take a case of a "bad apple" employee to arbitration even though it may not actually support him or her</p> <ul style="list-style-type: none"> • Here they may be acting under their DFR <p>Explore the possibility of getting the union on board as a partner in preventing sexual misconduct</p> <ul style="list-style-type: none"> • Many unions detest sexual offenses by staff just as management does because they damage the reputation of the profession 	
Summary	<p>Potential Agency Liability</p> <p>PREA's Impact on Existing/Future CBAs</p> <p>Constitutional and State Law Issues.</p>	<p>Evaluation: Remind participants to fill out this section of their evaluation of the materials covered, activities and the performance of the instructor.</p>

Module 10: Legal Liability and Administrative Investigations

Time: 2 hours

Recommended Faculty:

Prosecuting Attorney, General Counsel, or a Lawyer with experience litigating civil rights claims either for government or on behalf of inmates

Resources:

LCD projector, computer and media screen

Participant Handouts:

- PowerPoint®
- Case Law Summary: Cross Gender Supervision
- Case law Summary: Sexual Abuse

PowerPoint® Programs:

Module 10: Legal Liability and Administrative Investigations

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objectives	<p>List and describe the civil liability issues</p> <p>Identify and describe the applicable laws and the impact these laws have on civil claims</p> <p>Identify and describe the constitutional implications</p> <p>Describe the forms of liability</p>	
Objectives	<p>Identify and discuss applicable case law from both an HR perspective and investigations perspective and list the potential legal claims</p> <p>Identify and describe the legal responsibilities and obligations for cross-gender supervision</p> <p>Define the standard for BFOQ</p> <p>Review case law pertaining to employee discipline and identify potential legal claims</p>	
Introduction	<p>Civil Liability Major Issues</p> <p>Staff Sexual Misconduct</p> <p>Inmate-on-inmate Conduct</p> <p>Cross-gender Searches</p> <p>Title VII Claims</p> <p>Employee Discipline</p>	<p>This is the legal framework</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Introduction	<p>Staff Sexual Misconduct & Cross-gender Searches – Important</p> <p>Factors who raises the issue?</p> <ul style="list-style-type: none"> • Male inmate • Female inmate <p>Who is the actor?</p> <ul style="list-style-type: none"> • Male staff? • Female staff? 	
Introduction	<p>Staff Sexual Misconduct – Important Factors</p> <p>Agency/Facility History:</p> <ul style="list-style-type: none"> • Complaints about misconduct • Complaints about other institutional concerns • Community standing <p>Context in Which the Issue Is Raised:</p> <ul style="list-style-type: none"> • Litigation • Investigation • Agency oversight 	<p>If the agency is always in the news for misconduct it will be easier to imagine that this misconduct occurred.</p>
Introduction	<p>Inmate on Inmate – Important Factors</p> <p>Who Raises the Issue?</p> <ul style="list-style-type: none"> • Male inmate • Female inmate <p>Nature of the Conduct:</p> <ul style="list-style-type: none"> • Forced • Coerced • Non-Coerced 	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Legal Framework	<p>Legal Responsibilities</p> <p>Prison Rape Elimination Act</p> <p>Civil Rights of Institutionalized Persons Act</p> <p>Prison Litigation Reform Act</p> <p>Federal Torts Claims Act</p> <p>Constitutional Framework</p> <p>State Tort Framework</p>	<p>These are the main sources of your legal obligations to protect inmates from sexual abuse in custody.</p>
Civil Rights of Institutionalized Persons Act	<p>Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997</p> <ul style="list-style-type: none"> • Federal Statute • DOJ Special Litigation enforces: <ul style="list-style-type: none"> ○ Prisons and jails ○ State and local nursing homes ○ Juvenile facilities ○ Facilities for mentally ill ○ Facilities for developmentally disabled and mentally retarded • Must be widespread pattern of abuse • Facility under a CRIPA investigation can be monitored for a period of months, or even years 	
Prison Litigation Reform Act	<p>Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat 1321 (1995)</p>	<p>IFP means in forma pauperis; waiver of costs, appointment of counsel.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Exhaustion requirement</p> <p>Limits on attorney fees</p> <p>Limits consent decrees</p> <p>Limits on appointment of special masters</p> <p>Physical injury requirement</p> <p>Limits on proceeding IFP</p>	<p>The Exhaustion Requirement is not only a method for courts to turn away inmates' cases, but serves as an early warning system for facilities.</p> <p>Your grievance procedures should give you the opportunity to address claims as they arise, without waiting for litigation.</p> <p>VAWA Amendment: SEC. 1101. SEXUAL ABUSE IN CUSTODIAL SETTINGS. (a) SUITS BY PRISONERS.— Section 7(e) of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997e(e)) is amended by inserting before the period at the end the following: "or the commission of a sexual act (as defined in section 2246 of title 18, United States Code)".</p> <p>VAWA amends the physical injury requirement by adding commission of a sexual act. (b) UNITED STATES AS DEFENDANT—Section 1346(b)(2) of title 28, United States Code, is amended by inserting before the period at the end the following: "or the commission of a sexual act (as defined in section 2246 of title 18)".</p> <p>This means that sexual assault in custody meets the physical injury requirement under the PLRA.</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Federal Torts Claims Act	<p>Federal Torts Claims Act, 28 U.S.C. 1346, et. seq.</p> <p>In limited circumstances, the FTCA waives sovereign immunity and provides a cause of action against federal agencies for:</p> <ul style="list-style-type: none"> • The negligent or wrongful act or omission of any employee of the government. • Acting within the scope of his or her employment. <p>Most common claims include:</p> <ul style="list-style-type: none"> • Assault and battery. • Negligent hiring, training, or supervision. • Negligent or intentional infliction of emotional distress. 	<p>The Supreme Court has recently decided, in <i>Millbrook v. United States (2013)</i>, that correctional officers can be held liable under the FTCA for abuse of inmates, and that the FTCA waives sovereign immunity for correctional officers who commit intentional torts against inmates while acting within the scope of their employment.</p> <p>The petitioner, Kim Millbrook was an inmate at the United States Penitentiary in Lewisburg Pennsylvania.</p> <p>Mr. Millbrook alleged that a correctional officer forced him to perform oral sex, while a second officer held him in a choke hold, and a third officer stood watch nearby.</p>
Constitutional Framework	<p>Constitutional Claims</p> <p>42 U.S.C. 1983</p> <p>Bivens Action</p> <p>8th Amendment</p> <p>14th Amendment</p> <p>4th Amendment</p>	
Constitutional Framework	<p>42 U.S.C. 1983</p> <p>Creates a federal cause of action for the vindication of rights found elsewhere.</p>	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Key elements:</p> <ul style="list-style-type: none"> • Deprived of a right secured by the US Constitution or law of the United States. • Deprivation by a person acting under color of state law. <i>West v. Atkins</i>, 487 U.S. 42 (1988) (“A defendant in a section 1983 suit acts under color of state law when he abuses the position given to him by the state.”) 	
<p>Constitutional Framework</p>	<p>42 U.S. C. § 1983, “Under the Color of State Law”</p> <ul style="list-style-type: none"> • City employee who supervised jail inmates working with the city public works department was “acting under color of state law” and could be sued under 42 U.S.C. § 1983. <i>Washington v. City of Shreveport</i>, 2006 WL 1778756 (W.D. La. 2006). • Inmate assigned to work in state driver’s license bureau as part of her sentence could sue state driver’s license examiner for sexual misconduct under the eighth amendment. State agency that is delegated the responsibility of the state can be liable under the Eighth Amendment. <i>Smith v. Cochran</i>, 339 	<p>ACLU is currently litigating a case involving a private corrections company’s management of an immigration facility. The company and the federal government are being sued. The company is arguing that the transport officer who sexually assaulted women who were being released on bond was providing a complimentary transportation service and therefore was not a government actor for purposes of § 1983. The government is seeking indemnification from the private company.</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>F.3d 1205 (10th Cir. 2003).</p>	
<p>Constitutional Framework</p>	<p><i>Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971)</i></p> <p>Bivens action is the federal counterpart to a §1983 action.</p> <ul style="list-style-type: none"> • Bivens held that a constitutional violation by a federal agent acting under color of his authority gives rise to a cause of action for damages. <p>Federal officials can be brought into federal court for violating the federal constitution.</p>	
<p>Constitutional Framework</p>	<p>8th Amendment</p> <p>Prohibits cruel and unusual punishment.</p> <p>Legal standard is “deliberate indifference,” for which the Supreme Court has created a two-part test. <i>Farmer v. Brennan, 511 U.S. 825 (1994)</i>.</p> <ul style="list-style-type: none"> • The injury must be objectively serious. • The official must have a sufficiently culpable state of mind and have acted with deliberate indifference or reckless disregard for the inmate’s constitutional rights. 	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Constitutional Framework	<p>8th Amendment, “Objectively serious injury”</p> <p>Sufficient:</p> <ul style="list-style-type: none"> • Improper touching without a legitimate penological purpose can be sufficient. <i>Calhoun v. Detalla</i>, 319 F.3d 936 (7th Cir. 2003). • Repeated conduct can be sufficient. <i>Kahle v. Leonard</i>, 477 F.3d 544 (8th Cir. 2007). <p>Not Sufficient:</p> <ul style="list-style-type: none"> • Single, isolated incidents that do not result in physical harm are generally not sufficient. <i>Wade v. Cain</i>, 2011 WL 612732 (M.D. La. 2011). • Verbal comments alone are generally not sufficient. <i>Boddie v. Schneider</i>, 105 F.3d 857 (2d Cir. 1997). 	<p>You can turn this into a question/activity session by framing the court rulings as questions. See next two slides for example.</p> <p>This can be done by turning these examples into a worksheet like the next slide.</p> <p>Ask participants what the outcome might be before saying what is and is not sufficient.</p>
Constitutional Framework	<p>8th Amendment, “Deliberate indifference”</p> <p>Deliberate indifference to inmate vulnerability—safety or health.</p> <ul style="list-style-type: none"> • Official knew of and disregarded an excessive risk to inmate safety or health. • Official must be aware of facts from which an inference could be drawn that a substantial risk of 	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>harm exists and he/she must draw the inference.</p>	
<p>Constitutional Framework</p>	<p>14th Amendment</p> <p>Lower legal standard than Eighth Amendment-- asks whether the individual was deprived of life, liberty, or property without due process of law.</p> <p>Applicable to juveniles and pre-trial detainees.</p>	<p>There is a developing view that there is new 8th amendment jurisprudence for youth in adult settings as well – no life without parole; no death penalty; sight and sound separation between youthful inmates and adults in PREA Standards; and Inter-American Commission on Human Rights hearing on youth in solitary confinement.</p>
<p>Constitutional Framework</p>	<p>4th Amendment</p> <p>Whether the individual has a legitimate expectation of privacy.</p> <p>Whether the search or intrusion was reasonable.</p> <p>Important implications for cross-gender searches.</p>	<p>Women have greater expectation of privacy than men for the most part.</p> <p>Suggested Discussion:</p> <p>Is it true that women have a greater expectation of privacy? Why?</p> <p>Do the statistics about female involvement of boys and men in custody suggest a reevaluation is necessary?</p>
<p>State Tort Framework</p>	<p>State Tort Claims</p> <ul style="list-style-type: none"> • Assault • Battery • Intentional infliction of emotional distress • Negligent infliction of emotional distress • Negligent hiring, firing, supervision, training • States are generally protected from tort suits under sovereign 	<p><i>DeWitt v. State</i>, 2012 WL 399885, Neb. App., February 07, 2012</p> <p>Permitting an inmate in the DOC to bring a state tort claim against Nebraska for negligence, for injuries sustained in an inmate-on-inmate sexual abuse incident. The inmate was ultimately unsuccessful on the claim.</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>immunity. Some states, however, have passed legislation that allows inmates to bring tort suits against the state.</p>	
Forms of Liability	<p>Potential Liability</p> <p>Municipal</p> <p>Official</p> <p>Individual</p> <p>Personal</p>	
Forms of Liability	<p>Municipal Liability – Monell v. Department of Social Services, 436 U.S. 658 (1978)</p> <p>Municipality is a person that can be held liable under § 1983.</p> <p>Injury must be inflicted due to an officially executed policy or toleration of custom.</p> <ul style="list-style-type: none"> • Inaction • Failure to train or supervise • Failure to investigate <p>Cannot be held responsible under respondeat superior or vicarious liability.</p> <ul style="list-style-type: none"> • Must make showing that this officer was likely to inflict a particular injury and that agency had facts from which it concludes that it was likely. 	<p>Municipality is city, county or state.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Forms of Liability	<p>Official Liability</p> <p>Will cause liability to municipality.</p> <p>Did it happen on your watch?</p> <p>Were you responsible for promulgating and enforcing policy?</p> <p>Did you fail to act or ignore information presented to you?</p>	
Forms of Liability	<p>Individual Liability</p> <p>Officials sued in individual capacity may be protected from damages if the alleged wrongful conduct was committed while they performed a function protected by qualified immunity.</p>	<p>Generally, when correctional officials are involved, they are sued in both their official and individual capacities. Courts usually drop claims in either the official or individual capacity and official are sued as either or one or the other.</p>
Forms of Liability	<p>Individual Liability – Elements</p> <p>Participated directly in the alleged constitutional violation;</p> <p>After being informed of the violation through a report or appeal, failed to remedy the wrong;</p> <p>Created a policy or custom under which unconstitutional practices occurred, or allowed the continuance of such a policy or custom;</p> <p>Grossly negligent in supervising subordinates who committed the wrongful acts; or</p>	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Deliberate indifference to others' rights by failing to act on information indicating unconstitutional acts were occurring.</p>	
Forms of Liability	<p>Personal Liability</p> <p>Plaintiff must provide notice that the suit is against the official in his/her personal capacity.</p> <p>Direct participation not required.</p> <p>Actual or constructive notice of unconstitutional practices.</p> <p>Demonstrated gross negligence or deliberate indifference by failing to act.</p>	<p>Notice by the plaintiff must be given to the defendant.</p>
Forms of Liability	<p>Qualified Immunity</p> <p>No violation of federal law—constitutional or otherwise.</p> <p>Rights and law not clearly established at the time of the incident.</p> <p>Official's action was objectively legally reasonable in light of clearly established legal rules at time of the incident.</p>	<p>This is what agencies and official are aiming for.</p> <p>Given the state of the law, the only way for officials and agencies to limit or escape liability by showing that their actions were objectively reasonable.</p>
	<p><i>Sexual Abuse Cases: HR Perspective</i></p>	<p>For all of the following case examples, instructors can choose to use a case as an activity.</p> <p>Activity: Ask participants to write down</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>the PREA issues in a case and then discuss. Ask participants how they think the outcome should go and discuss that as well.</p> <p>Plan to spend a few minutes on each case.</p>
<p>Case Law – Staff Sexual Misconduct Male Correctional Employee/ Female Inmate</p>	<p>Heckenlaible v. Virginia Peninsula Regional Jail Authority, 2007 WL 1732385 (E.D. Va. Jun. 13, 2007)</p> <p>The Facts:</p> <p>Male correctional officer escorted a mentally ill female pre-trial detainee to the shower and stared at her while she was showering in violation of agency policy.</p> <p>That same day, he sexually assaulted her in her cell, forcing her to perform oral sex on him.</p> <p>Heckenlaible cleaned herself off with a towel, which she kept under the bed, and cried herself to sleep.</p>	
<p>Case Law – Staff Sexual Misconduct Male Correctional Employee/ Female Inmate</p>	<p>Heckenlaible v. Virginia Peninsula Regional Jail Authority, 2007 WL 1732385 (E.D. Va. Jun. 13, 2007)</p> <p>The Facts:</p> <p>Heckenlaible reported to supervisory staff the next day, and they placed Steele on administrative leave.</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>They recovered towel and determined the presence of semen.</p> <p>Steele was fired for sex with inmate and refusal to cooperate in investigation.</p> <p>Steele was convicted of carnal knowledge of an inmate in 2004—a class 6 felony, and was still locked up at time of the writing of the opinion.</p>	
<p>Case Law – Staff Sexual Misconduct Male Correctional Employee/ Female Inmate</p>	<p>Heckenlaible v. Virginia Peninsula Regional Jail Authority, 2007 WL 1732385 (E.D. Va. Jun. 13, 2007)</p> <p>Legal Claims:</p> <p>Against jail authority and Steele</p> <ul style="list-style-type: none"> • Assault and battery • Intentional infliction of emotional distress • Negligent hiring • Negligent retention • Negligence <p>Against Steele</p> <ul style="list-style-type: none"> • 42 U.S. C. §1983: Fourteenth Amendment substantive due process right to bodily integrity. 	
<p>Case Law – Staff Sexual Misconduct Male Correctional Employee/ Female Inmate</p>	<p>Heckenlaible v. Virginia Peninsula Regional Jail Authority, 2007 WL 1732385 (E.D. Va. Jun. 13, 2007)</p> <p>Court’s Ruling:</p>	<p>MSJ means: motion for summary judgment</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Jail liable - distinguishes from cases where acts of employee were incidental to employment</p> <p>MSJ denied</p> <ul style="list-style-type: none"> • Intentional infliction of emotional distress • Assault and battery • Negligence • Substantive due process claim <p>MSJ granted</p> <ul style="list-style-type: none"> • Negligent hiring. • Negligent retention. 	
<p>Case Law – Staff Sexual Misconduct Male Correctional Employee/ Female Inmate</p>	<p>Heckenlaible v. Virginia Peninsula Regional Jail Authority, 2007 WL 1732385 (E.D. Va. Jun. 13, 2007)</p> <p>Court’s Analysis:</p> <p>Precautionary measures of agency:</p> <ul style="list-style-type: none"> • Policy prohibiting abuse of inmates. • Policy prohibiting sex with inmates. • Policy prohibiting search of female inmates by male staff unless accompanied by female staff, except in emergency. <p>History of agency:</p> <ul style="list-style-type: none"> • No complaints against Steele. • No complaints of sexual abuse of inmates. 	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
<p>Case Law – Staff Sexual Misconduct Male Correctional Employee/ Female Inmate</p>	<p>Riley v. Olk-Long, 282 F.3d. 592 (8th Cir. 2002)</p> <p>The Facts:</p> <p>Officer made inappropriate comments to Riley about having sex with her roommate. He entered her room after lockdown, attempted to reach under her shirt, grabbed her from behind, and rubbed up against her.</p> <p>Inmate did not report because “she doubted that she would be believed and feared the resulting discipline.”</p> <p>Officer later entered her cell and raped her. She performed oral sex so she would not become pregnant.</p> <p>The officer was terminated and convicted under state law.</p>	<p>If this training is done in order from start to finish instructors should tell participants that although we discussed this case before when we talked about investigations, we want to look at it again now because it is a great case to look at for all the warning signs.</p> <p>If this section is done as a stand-alone training session you can omit this caveat because participants would not have seen the case in any previous modules.</p>
<p>Case Law – Staff Sexual Misconduct Male Correctional Employee/ Female Inmate</p>	<p>Riley v. Olk-Long, 282 F.3d. 592 (8th Cir. 2002)</p> <p>Legal Claims:</p> <p>Against warden and director of security</p> <ul style="list-style-type: none"> • 42 U.S.C. § 1983: under Eighth Amendment. <p>Court’s Ruling:</p> <p>Warden and director of security were deliberately indifferent to the substantial risk of harm that correctional officer presented to</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>female inmates.</p> <p>Held personally liable to inmate in amount of \$20,000 from director and \$25,000 in punitive damages from the warden.</p>	
<p>Case Law – Staff Sexual Misconduct Male Correctional Employee/ Female Inmate</p>	<p>Riley v. Olk-Long, 282 F.3d. 592 (8th Cir. 2002)</p> <p>Court’s Analysis:</p> <p>Prior to this incident other female inmates had made complaints.</p> <p>Officer had a history of predatory behavior; four prior investigations were closed as inconclusive. A collective bargaining unit precluded permanent reassignment.</p> <p>Director suspected the officer was abusive but did not take action and did not terminate the officer when he had the opportunity.</p> <p>Warden did not think officer posed a threat.</p>	<p>This case is also important from human resources point of view.</p> <p>The director and head of security claimed that they could not fire or reassign the officer because of the collective bargaining agreement.</p> <p>The court found that the collective bargaining agreement was no defense to the failure to ensure inmate safety.</p>
<p>Case Law – Staff Sexual Misconduct Male Correctional Employee/ Female Inmate</p>	<p>Gonzales v. Huerfano County, 403 F.3d 1179 (10th Cir. 2005) cert. den. Salazar v. Gonzales, 546 U.S. 1003, 126 S.Ct. (U.S. Nov 07, 2005)</p> <p>The Facts:</p> <p>The jail administrator sexually assaulted inmate Teresa Gonzales. Later that day the</p>	<p>Discussion:</p> <p>Can you identify the human resource issue(s) in this case?</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>senior detention officer sexually assaulted another female inmate, Amanda Guel.</p> <p>Both women submitted written statements describing the assaults to detention officers who called the sheriff. The sheriff went to the jail but did not see the women until the next day. The sheriff was related to both the senior detention officer (son-in-law) and the jail administrator (nephew by marriage).</p>	
<p>Case Law – Staff Sexual Misconduct Male Correctional Employee/ Female Inmate</p>	<p>Gonzales v. Huerfano County, 403 F.3d 1179 (10th Cir. 2005) cert. den. Salazar v. Gonzales, 546 U.S. 1003, 126 S.Ct. (U.S. Nov 07, 2005)</p> <p>Legal Claims:</p> <p>Against County and Sheriff</p> <ul style="list-style-type: none"> • § 1983: Eighth Amendment: Duty to employ competent law enforcement officers and to supervise. • Negligent supervision. <p>Offending Officers</p> <ul style="list-style-type: none"> • Assault and battery 	
<p>Case Law – Staff Sexual Misconduct Male Correctional Employee/ Female Inmate</p>	<p>Gonzales v. Huerfano County, 403 F.3d 1179 (10th Cir. 2005) cert. den. Salazar v. Gonzales, 546 U.S. 1003, 126 S.Ct. (U.S. Nov 07, 2005)</p> <p>Court’s Ruling:</p>	<p>No municipal liability for the county because no indication that bad policy was the cause of the injury.</p> <p>Note that many state and federal statutes provide immunity to municipalities</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>County Dismissed</p> <ul style="list-style-type: none"> • No allegation that county or sheriff set the policy which caused the injury. • Otherwise immune from suit under state statute – Colo. Rev. Stat. §30-11-105. 	<p>except in certain instances.</p> <p>Fact is thought that if a major representative of the municipality is liable, the municipality is going to pay.</p>
<p>Case Law – Staff Sexual Misconduct Male Correctional Employee/ Female Inmate</p>	<p>Gonzales v. Huerfano County, 403 F.3d 1179 (10th Cir. 2005) cert. den. Salazar v. Gonzales, 546 U.S. 1003, 126 S.Ct. (U.S. Nov 07, 2005)</p> <p>Court’s Ruling:</p> <p>Sheriff not dismissed—“Knew of and disregarded ‘an excessive risk to inmate health and safety.’”</p> <ul style="list-style-type: none"> • No employee evaluations since 1994. • Only occasionally visited the jail • Prior incidents established notice. <ul style="list-style-type: none"> ○ The inmates had access to vodka; drunk inmates sat in control room and knew how to run controls. ○ The senior detention officer had exposed himself to female inmates in past and had asked female inmates to expose their breasts. 	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
<p>Case Law – Staff Sexual Misconduct Male Correctional Employee/ Female Inmate</p>	<p>Ice v. Dixon, 2005 WL 1593899 (N.D. Ohio 2005)</p> <p>The Facts:</p> <p>A bi-polar, manic depressive inmate was sexually assaulted during incarceration at Mahoning County Jail. Defendant Dixon promised to arrange Ice’s release from county jail if she performed oral sex and other sex acts on him.</p> <p>Legal Claims:</p> <p>Against County, Sherriff, and Dixon</p> <ul style="list-style-type: none"> • 42 U.S.C. § 1983: Eighth Amendment. <p>Against Dixon</p> <ul style="list-style-type: none"> • Assault and battery. 	
<p>Case Law – Staff Sexual Misconduct Male Correctional Employee/ Female Inmate</p>	<p>Ice v. Dixon, 2005 WL 1593899 (N.D. Ohio 2005)</p> <p>Court’s Ruling:</p> <p>County immune.</p> <p>Sheriff immune in official and individual capacity.</p> <p>Dixon immune in official capacity.</p> <p>Dixon not immune in individual capacity and on claims of assault and battery.</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Court’s Analysis:</p> <p>Specific policy and staff training.</p> <p>Within 48 hours of incident, videotaped plaintiff in interview.</p> <p>Took plaintiff to hospital for rape kit.</p> <p>Called Ohio Bureau of Criminal Investigation.</p> <p>Suspended Dixon.</p> <p>Internal Affairs involved.</p> <p>Sent to Mahoning County Prosecutor’s Office.</p>	
<p>Case Law – Staff Sexual Misconduct Male Correctional Officer/Male Inmate</p>	<p>Doe v. Georgia Dep’t of Corrs., 248 F.Appx. 67 (11th Cir. 2007)</p> <p>The Facts:</p> <p>Inmate alleged he was sexually assaulted by a male correctional officer and reported the assault.</p> <p>Subsequent to his report, the same correctional officer assaulted a second inmate.</p> <p>Legal Claim: 42 U.S.C. § 1983: Eighth Amendment</p> <p>Court’s Ruling: No liability.</p> <p>Court’s Analysis: Facility immediately commenced an investigatory process, and the first claim was</p>	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>unsubstantiated and contested.</p>	
<p>Case Law – Inmate on Inmate Male Inmate</p>	<p>Bishop v. Hackel, 636 F.3d 757 (6th Cir. 2011)</p> <p>The Facts:</p> <p>A young, mentally slow inmate was assaulted by his older, larger cellmate.</p> <p>Deputy on duty did not stop the attack.</p> <p>Legal Claims:</p> <p>Against sheriff and deputies</p> <ul style="list-style-type: none"> • 42 U.S.C. § 1983: Eighth Amendment • Negligence 	<p>Age of inmate not given in opinion or briefs</p>
<p>Case Law – Inmate on Inmate Male Inmate</p>	<p>Bishop v. Hackel, 636 F.3d 757 (6th Cir. 2011)</p> <p>Court’s Ruling:</p> <p>Negligence claims dismissed.</p> <p>Sheriff potentially liable on failure to train theory, if the need for training to prevent sexual predators from sexually assaulting other inmates was obvious.</p> <p>Individual deputy on duty during attack held liable.</p> <ul style="list-style-type: none"> • Deputy was aware of the victim’s status as vulnerable and the offending inmate’s status as predatory. • Possibility the deputy had 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>overheard the sexual assault taking place, which would have put a reasonable prison official on notice of a potential sexual assault.</p> <p>Other deputies not held liable, as there was not sufficient contact to identify inmate as vulnerable.</p>	
	<p>Sexual Abuse Cases: Investigations Perspective</p>	<p>For all of the following case examples, instructors can choose to use a case as an activity.</p> <p>Activity: Ask participants to write down the investigative PREA issues in a case and then discuss. Ask participants how they think the outcome should go and discuss that as well.</p> <p>Plan to spend a few minutes on each case.</p>
<p>Case Law – Investigations Female Correctional Employee/Male Inmate</p>	<p>Manago v. Williams, No. 2:07-cv-2290, 2013 WL 753448 (E.D. Ca. Feb. 27, 2013)</p> <p>The Facts:</p> <p>Male inmate alleged that a female officer was attempting to engage him in sexual activity.</p> <p>Internal investigations asked the inmate to go undercover to implicate the female officer in a</p>	<p>Inmate had mental health problems. Was on nine medications.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>sexual misconduct charge. Inmate claimed the investigator encouraged him to have sex with the officer, which he did.</p> <p>The officer was terminated for overfamiliarity, not for engaging in sexual relations with an inmate, which she denied.</p> <p>Inmate alleged he was threatened by other officers as a result of the officer's termination</p>	
<p>Case Law – Investigations Female Correctional Employee/Male Inmate</p>	<p>Manago v. Williams, No. 2:07–cv–2290, 2013 WL 753448 (E.D. Ca. Feb. 27, 2013)</p> <p>Legal Claims:</p> <p>1st Amendment retaliation</p> <p>8th Amendment cruel and unusual punishment</p> <p>Court's Ruling:</p> <p>Permitted 8th Amendment claims</p> <ul style="list-style-type: none"> • Individual officer • Mental health professionals • Investigators <p>Denied 1st Amendment claims</p>	
<p>Case Law – Investigations Female Correctional Employee/Male Inmate</p>	<p>Manago v. Williams, No. 2:07–cv–2290, 2013 WL 753448 (E.D. Ca. Feb. 27, 2013)</p> <p>Reasoning</p>	<p>Inmate made many other claims regarding adequate mental health care, which are not discussed here.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>1st Amendment claim denied</p> <ul style="list-style-type: none"> • He was not “chilled” from giving testimony regarding the sexual misconduct <p>8th Amendment claims permitted</p> <ul style="list-style-type: none"> • Against individual officer: Plaintiff entitled to presumption that any sexual contact was non-consensual <ul style="list-style-type: none"> ○ Correctional officer did not meet burden to prove it was consensual • Against investigators: Court found they acted with deliberate indifference to his mental health needs by permitting him to participate in the investigation 	
<p>Case Law – Investigations Male Correctional Employee/ Female Inmate</p>	<p>Ware v. Jackson County, Missouri, 150 F.3d 873 (8th Cir. 1998)</p> <p>Facts</p> <p>Male officer sexually assaulted two female inmates, who reported these incidents</p> <p>Administrative Assistant to the Manager of Detention advised termination</p> <p>Investigations into the allegations indicated something had occurred between the officer and the inmates</p>	<p>Widespread allegations of sexual assault</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>A polygraph examination revealed deceptive answers</p>	
<p>Case Law – Investigations Male Correctional Employee/ Female Inmate</p>	<p>Ware v. Jackson County, Missouri, 150 F.3d 873 (8th Cir. 1998)</p> <p>Facts</p> <p>Director declined to terminate the officer, instead sending the officer a memo stating that “he (the director) expected exemplary behavior of him”</p> <p>A second set of allegations were never investigated</p> <p>The officer later sexually assaulted another female inmate</p>	
<p>Case Law – Investigations Male Correctional Employee/ Female Inmate</p>	<p>Ware v. Jackson County, Missouri, 150 F.3d 873 (8th Cir. 1998)</p> <p>Legal Claims: 8th Amendment: Deliberate Indifference</p> <p>Court’s Ruling: The court found there was sufficient evidence to find prison officials were deliberately indifferent, as they knew of widespread allegations of sexual abuse, and failed to terminate the offending officer, or implement any other safety measures to protect Ware and other female inmates</p>	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Cross-Gender Supervision and Bona Fide Occupational Qualifications</p>	<p>For all of the following case examples, instructors can choose to use a case as an activity.</p> <p>Activity: Ask participants to write down the PREA issues in a case and then discuss. Ask participants how they think the outcome should go and discuss that as well.</p> <p>Plan to spend a few minutes on each case.</p>
<p>Cross-Gender Supervision</p>	<p>PREA Standard</p> <ul style="list-style-type: none"> • § 115.15: Cross-gender supervision • <i>See also</i> §§ 115.115, 115.215, 115.315 <p>Constitutional Claims (Liable to inmate)</p> <ul style="list-style-type: none"> • 4th Amendment • 8th Amendment 	<p>Before we get into the case law I just want to remind you of the PREA Standards that are applicable</p>
<p>Cross-gender Supervision – PREA Standards</p>	<p>28 CFR § 115.15: Limits to cross-gender viewing and searches</p> <p>(a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches . . . except in emergency circumstances or when performed by medical practitioners</p> <p>(b) . . . for a facility whose rated capacity does not exceed 50 inmates, the facility shall not permit cross-gender pat-down</p>	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>searches of female inmates, absent exigent circumstances. Facilities shall not restrict female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision</p> <p>(c) The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female inmates</p>	
<p>Cross-gender Supervision – PREA Standards</p>	<p>28 CFR § 115.15: Limits to cross-gender viewing and searches</p> <p>(f) The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.</p>	
<p>Case Law – Cross-Gender Searches Male Correctional Employee/Female Inmate</p>	<p>Colman v. Vasquez, 142 F. Supp. 2d 226 (2d. Cir. 2001)</p> <p>The Facts:</p> <p>Female inmate incarcerated at FCI Danbury in special unit for victims of sexual abuse was subjected to cross-gender searches.</p> <p>She filed a complaint to psychiatrist who informed a lieutenant but received no response by administration.</p>	<p>The inmate was also sexually assaulted, although we focus here only on the cross-gender search claim.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Legal Claims:</p> <p>42 U.S.C. § 1983: 4th and 8th Amendment claims regarding constitutionality of cross-gender searches.</p>	
<p>Case Law – Cross-Gender Searches Male Correctional Employee/Female Inmate</p>	<p>Colman v. Vasquez, 142 F. Supp. 2d 226 (2d. Cir. 2001)</p> <p>Court’s Ruling:</p> <p>4th Amendment claim allowed to proceed, in the absence of a legitimate penological purpose for the search.</p> <p>8th Amendment claim allowed to proceed, due to the special vulnerability of the inmate.</p> <p>Court noted that other jurisdictions typically treat cross-gender searches of female inmates more harshly than cross-gender searches of male inmates.</p>	
<p>Case Law – Cross-Gender Searches Female Correctional Employee/Male Inmate</p>	<p>Johnson v. Phelan, 69 F.3d 144 (7th Cir. 1995)</p> <p>The Facts:</p> <p>Male detainee in Cook County Jail was viewed in the nude by female correctional officers. Was visible to correctional officers while showering, using the toilet, and undressing.</p> <p>Legal Claims:</p> <p>42 U.S.C. § 1983</p>	<p>This is an old case and it is fair to say that the law has changed on this.</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>4th Amendment—unreasonable search and seizure.</p> <p>14th Amendment—due process and cruel and unusual punishment.</p>	
<p>Case Law – Cross-Gender Searches Female Correctional Employee/Male Inmate</p>	<p>Johnson v. Phelan, 69 F.3d 144 (7th Cir. 1995)</p> <p>Court’s Ruling:</p> <p>Monitoring of naked detainees by correctional officer was reasonable under Fourth Amendment.</p> <ul style="list-style-type: none"> • “Good use of staff.” • “Cross-sex monitoring reduces the need for prisons to make sex a criterion of employment, and therefore reduces the potential for conflict with Title VII and the equal protection clause.” <p>Monitoring of naked detainee did not violate his due process rights, nor was cruel and unusual punishment.</p>	
<p>Case Law – Cross-Gender Searches Female Correctional Employee/Male Inmate</p>	<p>Evolving Jurisprudence in Cross-Gender Searches</p> <p><i>Byrd v. Maricopa County Sheriff’s Dept.</i>, 629 F.3d 1135 (9th Cir. 2011): A female cadet conducted a pat-down search on a male detainee in front of at least 10 – 15 people, including male cadets. The court found that the search violated the</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>detainee’s Fourth Amendment rights, distinguishing this case from others by noting that the officer touched the detainee’s penis and scrotum, and that he was essentially unclothed.</p> <p><i>Wilson v. City of Kalamazoo</i>, 127 F. Supp. 2d 855 (W.D. Mich. 2000): Male arrestees detained in a city jail without any clothing or covering for between 6 and 18 hours, exposed to viewing by members of the opposite sex. The court found they adequately stated a Fourth Amendment claims for violation of their right of privacy, even if they were deprived of clothing as a suicide prevention measure.</p>	
<p>Bona Fide Occupational Qualification</p>	<p>Legal Responsibilities and Obligations</p> <p>Title VII (Liable to employee)</p> <p>State Civil Rights Laws (Liable to employee)</p> <p>Courts will balance the inmates’ interest in freedom from sexual assaults and right to privacy against the employment rights of correctional officers</p>	
<p>Bona Fide Occupational Qualification</p>	<p>Legal Responsibilities and Obligations</p> <p><u>Standard</u>: Gender-based job qualification must be related to the central function of the facility, and reasonably necessary to the normal</p>	<p><i>Dothard</i> is an important case because it ended height and weight requirements for employment as a correctional officer. The court did preclude the female complainant from working in the men’s max security prison because of the conditions.</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>operations of the facility.</p> <p><i>Dothard v. Rawlinson</i>, 433 U.S. 321, 332-37 (1977): exclusion of females in contact positions in violent male maximum security prisons may be a BFOQ given the circumstances of the prison.</p> <p><i>Breiner v. Nevada Dep't of Corr.</i>, 610 F.3d 1201 (9th Cir. 2010): Female gender was not a BFOQ for all three lieutenant positions at a women's correctional facility as precluding men was not necessary to reduce instances of sexual abuse</p> <p><i>Henry v. Milwaukee County</i>, 539 F.3d 573 (7th Cir. 2008): Females permitted to supervise male juveniles.</p>	<p>In <i>Breiner</i>, Nevada instituted BFOQ positions in women's facility but could not make all positions females especially those where there was little contact with female inmates.</p> <p>In <i>Henry</i>, the court permitted female guards to supervise male inmates.</p> <p>Outlier – generally gender specific searches and supervision for juveniles. See e.g., <i>In re Juvenile Detention Officer Union County</i>, 837 A.2d 1101(N.J. Super. Ct. App. Div. 2003)(finding male gender BFOQ for eight specific positions for juvenile detention officers in juvenile facility for boys).</p>
<p>Bona Fide Occupational Qualification – Federal Law</p>	<p>Title VII Claim</p> <p><i>Everson v. Michigan Dept. of Corrections</i>, 391 F.3d 737 (6th Cir. 2004)</p> <p>In response to sexual assaults of female inmates, the Michigan Department of Corrections designated approximately <u>250 positions in female housing as "female only."</u> The plaintiff, female male correctional officers filed suit under Title VII and Michigan state law.</p> <p>The court held that <u>gender was a BFOQ for housing positions in female prisons.</u></p>	

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Employee Discipline</p>	<p>For all of the following case examples, instructors can choose to use a case as an activity. Ask participants to write down the PREA issues in a case and then discuss.</p> <p>Activity: Ask participants how they think the outcome should go and discuss that as well.</p> <p>Plan to spend a few minutes on each case.</p>
<p>Case Law – Employee Discipline</p>	<p>Washington v. California City Correction Center 871 F. Supp. 2d 1010 (E.D. Cal. 2012)</p> <p>The Facts:</p> <p>Plaintiff was a female sergeant in a corrections center. Her direct supervisor allegedly told Plaintiff he did not like her because of her race, and that he did not like black women.</p> <p>The supervisor demoted Plaintiff to Corrections Officer</p> <p>After complaining about her demotion, Plaintiff was terminated subsequent to an investigation into rumors Plaintiff had engaged in an inappropriate relationship with an inmate.</p> <p>Legal Claims:</p> <p>Wrongful termination (one of</p>	<p>We are focusing on wrongful termination claim, although there were MANY claims in the case</p> <p>Plaintiff in this case tried to tell a story of discrimination based on race.</p> <p>Her conduct negated what may have been legitimate claims.</p> <p>The finding of the inappropriate relationship with the inmate weakened the discrimination claim.</p> <p>The termination was upheld.</p>

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>many claims in the case)</p> <p>Claimed these allegations had been motivated by racial discrimination and retaliation</p>	
<p>Case Law – Employee Discipline</p>	<p>Washington v. California City Correction Center 871 F. Supp. 2d 1010 (E.D. Cal. 2012)</p> <p>To prove wrongful termination, plaintiff had to show:</p> <ul style="list-style-type: none"> • an employer-employee relationship, • the defendant subjected the plaintiff to an adverse employment action, • the adverse employment action violated public policy and • caused the plaintiff harm <p>Court’s Ruling:</p> <ul style="list-style-type: none"> • The government conducted a thorough, independent investigation and found the accusations meritorious. • Terminated was warranted because there was a reasonable belief that she had entered into an inappropriate relationship with an inmate and gave something of value to him. • “Whether Plaintiff did these things is irrelevant so long as Defendant reasonably believed she did.” 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Summary	<p>Corrections officials can be held liable in their official, individual, and personal capacities for sexual abuse of inmates by either staff or other inmates.</p> <p>Municipalities can be held liable for sexual violence against inmates if the violence is a result of a policy or custom of the county or agency or if it follows official policy set by the agency head.</p> <p>Enacting and enforcing strong policies and procedures can help to limit agency liability.</p>	
Summary	<p>Conducting and documenting training of all staff, volunteers, and contractors can help to protect people in custody and limit agency liability.</p> <p>A robust policy of reference and background checks can help limit agency liability.</p> <p>Credible investigations allow agencies to terminate problematic employees and withstand challenges to the terminations</p>	<p>Evaluation: Remind participants to fill out this section of their evaluation of the materials covered, activities and the performance of the instructor.</p>

Training Wrap Up

TOPIC	SPEAKING POINTS/ NOTES
Answering Unanswered Questions	<p>Before we move on to our last activity, I'd like to take a few minutes to check our critical issues list we have had on the wall all week, as well as answer any other questions you might have.</p> <p>Check off Critical Issues you have discussed and see what remains—ask participants if they need or want to discuss those items not checked off.</p> <p>Summarize the resolution of any major issues from the week.</p>
Training Wrap Up	<p>Post Test Evaluations Certificates Thank participants Remind of resources for further assistance</p>