

**Responding to Sexual Abuse of Inmates in Custody: Addressing
the Needs of Men, Women, and Gender Nonconforming
Populations
Notification of Curriculum Use
April 2014**

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

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

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

Note: Use of the enclosed curriculum, either in part or whole, does not guarantee that an auditor will find that 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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TRAINING CURRICULUM:

Responding to Sexual Abuse of Inmates in Custody:

Addressing the Needs of Men, Women and Gender Non-Conforming Populations

February 2014

The Project on Addressing Prison Rape
American University Washington College of Law
4801 Massachusetts Ave, NW
Washington, DC 20016
202-274-4385

endsilence@wcl.american.edu

<http://www.wcl.american.edu/endsilence>

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The Project on Addressing Prison Rape
American University Washington College of Law
4801 Massachusetts Ave, NW
Washington, DC 20016
202-274-4385
endsilence@wcl.american.edu



Responding to Sexual Abuse of Inmates in Custody: Addressing the Needs of Men, Women and Gender Non-Conforming Populations

Facilitator's Guide

February 2014♦

♦ All materials and information provided in this publication (e.g. state laws, civil case law examples, BJS statistics) are accurate as of December 2013.

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American University Washington College of Law
4801 Massachusetts Ave, NW
Washington, DC 20016
202-274-4385
<http://www.wcl.american.edu/endsilence>

Professor Brenda V. Smith
Professor of Law and Director

Jaime M. Yarussi, M.S.
Assistant Director

Rebecca Heinsen, J.D.
Research Fellow

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A special thanks to the Project Team:

Brenda V. Smith
Melissa C. Loomis
Caleb J. Bess
Kathy Dennehy
Lorie Brisbin
T.J. Parsell

Jaime M. Yarussi
Rebecca Heinsen
Tonya Davis
A.T. Wall
Marion Morgan
Larry Fergusson

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Introduction

The *Responding to Sexual Abuse of Inmates in Custody: Addressing the Needs of Men, Women and Gender Non-Conforming Populations* is a 24-hour training covering the national Prison Rape Elimination Act (PREA) Standards and implications for responding to the different needs of men, women and gender non-conforming inmates who are sexually abused in custody.

The following are the goals of the training:

1. Review the applicable PREA Standards for responding to sexual abuse in custody and their gender impact
2. Review the dynamics of custodial sexual abuse for men, women and gender non-conforming populations
3. Identify the components of human sexuality and institutional culture and understand their impact on sexual abuse of inmates
4. Discuss immediate and long-term medical and mental health care needs of inmate victims of sexual abuse
5. Identify legal, investigative and other implications and strategies of responding to custodial sexual abuse.

How to Use This 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 24 hours or three 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 demonstrate to an auditor what information 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 the 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 text is **bold** 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:

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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 - agency general counsel or HR 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 discussions 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. Vary 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.

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Training Agenda*

START	END	SUBJECT
Day 1		
7:30 a.m.	8:30 a.m.	Check In/ Registration
8:30 a.m.	9:30 a.m.	Welcome Conventions Introductions Pre-test
9:30 a.m.	9:45 a.m.	<i>Activity: Identification of Critical Issues</i>
9:45 a.m.	10:00 a.m.	Module 1: Training Objectives
10:00 a.m.	10:15 a.m.	Break
10:15 a.m.	11:15 a.m.	Module 2: The Prison Rape Elimination Act PREA's Trajectory Statistics Final PREA Standards
11:15 a.m.	12:00 p.m.	Module 3: Vectors of Sexual Abuse in Custody--Gender, Sexuality and Victimization The history of female inmates in custody Title VII and the entrance of women into corrections Institutions as sexualized living and working environments Gender and staff involvement in sexual abuse of inmates
12:00 p.m.	1:00 p.m.	Lunch
1:00 p.m.	2:30 p.m.	Module 4: Sexuality and Sexual Behaviors in Correctional Settings Human Sexuality Male sexuality Female sexuality LGBTI Populations and sexuality Attitudes about sex and sexuality Perceptions of sex in prison What men do What women do Continuum of sexual activity Violence and power
2:30 p.m.	3:30 p.m.	Module 5: Implications of Institutional and Staff Culture on Addressing Sexual Abuse in Custody Components of Culture

* **NOTE:** This is a sample agenda for a 24 hour, three- 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
		Factors that influence institutional culture How institutions perceive sex and sexuality Factors that influence staff culture Staff perceptions of sex and sexuality in custody The Code of Silence Impact of culture on responses to sexual abuse in custody Tools for changing culture
3:30 p.m.	3:45 p.m.	Break
3:45 p.m.	4:15 p.m.	Module 5 Continued
4:15 p.m.	5:15 p.m.	Module 6: Implications of Inmate Culture on Addressing Sexual Abuse in Custody Inmate perceptions of sex in prison Why women may choose to engage in sexual activity Why men may choose to engage in sexual activity The inmate code The impact of inmate culture on sexual abuse in custody Challenges in changing inmate culture
5:15 p.m.	5:30 p.m.	Wrap Up Day 1 <i>Homework: what is one way you can change culture in your agency—staff culture and inmate culture?</i>
Day 2		
8:00 a.m.	8:30 a.m.	Check In/ Registration
8:30 a.m.	8:45 a.m.	Review of Day 1 Logistics Overview of Day 2
8:45 a.m.	9:30 a.m.	Module 7: Gender and Victimization Gender-influenced socialization, communication and behaviors Abuse histories and implications Responses to victimization Vulnerable populations and victimization Contributors to victimization
9:30 a.m.	10:30 a.m.	Module 8: State Criminal Laws State Criminal Laws Mandatory Reporting Vulnerable Persons Staff Sexual Misconduct Sexual Abuse Sex Offender Registration

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START	END	SUBJECT
		Licensing Malfeasance
10:30 a.m.	10:45 a.m.	Break
10:45 a.m.	12:00 p.m.	Module 9: Policy Elements of PREA Guided Policies Policy considerations, challenges and dilemmas Measuring the effectiveness of policy Why gender matters in policy <i>Activity and Report Out</i>
12:00 p.m.	1:00 p.m.	Lunch
1:00 p.m.	2:15 p.m.	Module 10: Medical and Mental Health of Victims in Custody Immediate medical concerns Patient centered care Victimization histories of inmates Vulnerable victims Gender Differences Reactions to trauma Impact of victimization in correctional settings The impact of being a survivor and being in custody Need for ongoing mental health care interventions Gender-based resources Building relationships with community crisis services Confidentiality issues
2:15 p.m.	3:15 p.m.	Module 11: Operational Practices Operationalizing PREA standards as they relate to gender responsiveness Limits to cross-gender viewing and searches Training and education Screening Medical health care Mental health care Reporting Investigations Disciplinary sanctions for inmates <i>Activity and Report Out</i>
3:15 p.m.	3:30 p.m.	Break
3:30 p.m.	4:00 p.m.	Module 11 Continued
4:00 p.m.	5:00 p.m.	Module 12: Gender Implications for

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START	END	SUBJECT
		Investigations Gender specific investigative tools and techniques Questioning victims
5:00 p.m.	5:15 p.m.	Wrap Up Day 2
Day 3		
8:00 a.m.	8:30 a.m.	Check In/ Registration
8:30 a.m.	8:45 a.m.	Review of Day 2 Logistics Overview of Day 3
8:45 a.m.	9:30 a.m.	Module 12 Continued
9:30 a.m.	10:30 a.m.	Module 13: Human Resources and the Impact of Gender <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
10:30a.m.	10:45 a.m.	Break
10:45 a.m.	11:15 a.m.	Module 13 Continued
11:15 a.m.	12:00 p.m.	Module 14: Legal Liability and Gender Constitutional challenges State Tort Law Types of civil liability Elements of liability
12:00 p.m.	1:00 p.m.	Lunch
1:00 p.m.	2:15 p.m.	Module 14 Continued
2:15 p.m.	2:30 p.m.	Addressing Unanswered Questions
2:30 p.m.	3:30 p.m.	Wrap-up Post-test Evaluations Next Steps

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

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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:

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.

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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

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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 to 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

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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

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your answer to the audience, not the individual questioner. Make sure everyone has heard the question. Rephrase questions that are unclear or rambling. Try to diffuse emotional questions by politely asking for clarification.

Avoid a one-to-one conversation/argument with a participant.

Welcome and Introductions

Topic	Speaking Points/ Notes
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, "Blackberrys" and cell phones. Indicate that there will be frequent breaks that will allow time for making phone calls.</p>
Feedback	<p>Throughout the training, we would appreciate hearing from you – what you 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. Please write your comments on the 3" x 5" cards you will find on your tables. These are confidential. You do not have to list your name. Put them [indicate location] at any time during the training.</p>

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Topic	Speaking Points/ Notes
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.</p> <p>Alternatively, you can make most handouts available electronically for participants. At a minimum you should provide a hard copy of all PowerPoints® as well as a copy of the standards. You can make other documents available on an intranet or by handing out zip drives.</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 way. 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. <p>Let participants know there is a formal participant list in their materials (if applicable).</p>
Pre-test	<p>Hand out the pre-test and give participants 10-15 minutes</p>

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Topic	Speaking Points/ Notes
	to complete it. Have them raise their hand after they complete it. Collect them. You may grade them during training or after.

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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

Training Curriculum: Responding to Sexual Abuse of Inmates in Custody: Addressing the Needs of Men, Women and Gender Non-Conforming Populations
The Project on Addressing Prison Rape

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objective 1	Review the Prison Rape Elimination Act of 2003 (PREA) and the final national standards and identify the importance of gender responsive strategies in responding to sexual abuse of inmates.	
Objective 2	Acquire vocabulary to discuss gender and its impacts on sexual violence in custody.	
Objective 3	Understand how gender affects legal remedies for sexual abuse of inmates – state criminal laws, human resource law and civil litigation.	
Objective 4	Discuss the impact of gender on culture, policy development and operational practice and its relationship to the implementation of the PREA standards.	
Objective 5	Understand the vectors of sexual abuse of inmates – gender, sexuality, sexual behavior and victimization.	
Activity: Identification of Critical Issues	What are the critical issues you face in implementing PREA and gender responsive policies in your agency?	<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. Check the list at the end of week to be sure all issues have been addressed.</p> <p>Evaluation: Remind participants to fill</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		out this section of their evaluation of the materials covered, activities and the performance of the instructor.

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

Time: 1 hour

Recommended Faculty:

PREA Coordinator or Monitor

Resources:

LCD projector, computer and media screen

Participant Handouts:

- PowerPoint®
- The National Prison Rape Elimination Act Standards
- Data Collection Reports from the Bureau of Justice Statistics
- Final report from the National Prison Rape Elimination Commission
- Reports from the Review Panel on Prison Rape
- The Prison Rape Elimination Act: Implementation and Unresolved Issues

PowerPoint® Programs:

Module 2: The Prison Rape Elimination Act

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objectives	<p>Identify and describe the purposes of the Prison Rape Elimination Act (PREA)</p> <p>Recognize the populations that are most vulnerable to sexual abuse in custody</p> <p>Identify why gender responsive strategies are important in responding to sexual abuse in custody</p>	
What is PREA?	<p>Prison Rape Elimination Act (PREA).</p> <p>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>PREA passed unanimously in both houses of Congress in 2003.</p>	
PREA Purposes	<p>Increase accountability of prison officials who fail to detect, prevent, 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>	
PREA Purposes	<p>Establish zero tolerance</p> <p>Make prevention a top priority</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Develop national standards for detection, prevention, reduction and punishment</p> <p>Increase available data and information on incidence in order to improve management and administration</p> <p>Standardize definitions used for collecting data on the incidence of rape in custody</p>	
Major Sections	<p>Section 4: Collection of prison rape statistics, data and research (BJS)</p> <p>Section 5: Prison Rape Prevention and Prosecution (NIC)</p> <p>Section 6: Grants to Protect Inmates and Safeguard Communities (BJA)</p> <p>Section 7: National Prison Rape Elimination Commission</p> <p>Section 8: Adoption and Effect of National Standards</p> <p>Section 9: Accreditation organizations must adopt standards or lose federal funds</p>	<p>BJS: Bureau of Justice Statistics</p> <p>NIC: National Institute of Corrections</p> <p>BJA: Bureau of Justice Assistance</p>
Key Milestones	<p>2003: PREA legislation passes</p> <p>2004: First meeting of the National Prison Rape Elimination Commission (NPREC)</p> <p>2004-2009: Information gathering and hearings held by the NPREC</p>	

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	<p>June 2009: Report and draft standards published by NPREC</p> <p>2009-2012: Establishment and Convening of PREA Work Group</p>	
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>August 2013-2014: First year of first audit cycle</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 the floor - they are <u>minimum standards</u></p> <p>States can and are encouraged to do more particularly if your state has set higher requirements</p> <p>Overall goal: 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> <ul style="list-style-type: none"> • Florida and South Carolina: staff in adult custodial settings are mandatory reporters by law • Instruct participants to consult with their general counsel and determine if their state law is more stringent

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		<p>The Preamble to the standards states, "The standards are not intended to define the contours of constitutionally required conditions of confinement. Accordingly, compliance with the standards does not establish a safe harbor with regard to otherwise constitutionally deficient conditions involving inmate sexual abuse." (at page 4)</p> <p>Also see, <i>Ulibarri v. City & County of Denver</i>, 2011 WL 2559838 (D. Colo., Jun. 28, 2011) (holding that the ACA standards could not be used as a standard of care, although they could be used to inform the standard of care).</p> <p>- This case does not address accreditation liability – the holding only relates to an expert witness seeking to use ACA standards to present the standard of care.</p>
What we Know: BJS Data	<p>Adult administrative survey collections:</p> <ul style="list-style-type: none"> • 2007-8 <ul style="list-style-type: none"> ◦ http://www.wcl.american.edu/endsilence/documents/SexualAbuseReportedbyCorrectionalAuth2007-8.pdf • 2006 <ul style="list-style-type: none"> ◦ http://www.wcl.american.edu/ 	<p>One of the most important features of the Prison Rape Elimination Act has been data collection.</p> <p>First data collections occurred in 2005.</p> <p>These were surveys of what agencies knew from administrative survey</p>

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	<p>endsilence/adult_resources.cfm</p> <ul style="list-style-type: none"> • 2005 <ul style="list-style-type: none"> ◦ http://www.wcl.american.edu/endsilence/adult_resources.cfm • 2004 <ul style="list-style-type: none"> ◦ http://www.wcl.american.edu/endsilence/documents/BeckandHughes_BJSReport2004.pdf?rd=1 	collections in adult and juvenile facilities.
What we Know: BJS Data	<p>Victim self-reports: Adult Offenders</p> <ul style="list-style-type: none"> • 2007 Jail Inmates <ul style="list-style-type: none"> ◦ http://www.wcl.american.edu/endsilence/documents/SexVictimizationinLocalJails2007.pdf • 2007 State and Federal Prisoners <ul style="list-style-type: none"> ◦ http://www.wcl.american.edu/endsilence/documents/sexualvictimizationstateandfedprisons2007.pdf • 2008-9 Prison and Jail Inmates <ul style="list-style-type: none"> ◦ http://www.wcl.american.edu/endsilence/documents/SexualVictimizationinPrisonsandJailsReportedbyInmates2008-9.pdf • 2008 Former Prisoners <ul style="list-style-type: none"> ◦ http://www.wcl.american.edu/endsilence/documents/BJSReportFormerPrisoners2008May2012.pdf 	<p>In addition to administrative survey collections, BJS also collected data directly from inmates and youth in custody.</p> <p>This was the first systematic collection of information from inmates and youth about their experience of sexual abuse and harassment in custodial settings.</p>
Findings:	Sexual Victimization Reported by Adult Correctional Authorities, 2007-8	<p>Here are the key findings.</p> <p>About 61% of incidents of staff sexual misconduct and</p>

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	<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). <p>The increase in total allegations of sexual victimization between 2005 and 2008 was largely due to prisons, where allegations increased 21%, from 4,791 incidents to 5,796.</p>	<p>21% of incidents of staff sexual harassment were perpetrated by females.</p> <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>Female inmates were disproportionately victimized by both other inmates and staff in federal and state prisons, as well as local jails.</p>
Findings:	<p>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>This rate is about twice the rate in the inmate survey and four times the rate in the administrative surveys.</p> <p>Discussion Questions: What accounts for these higher numbers reported by former state prisoners?</p> <p>Inmates may feel safer reporting abuse once they have left custody.</p> <p>Discuss this rate compared to the rates reported by your agency.</p> <p>What contributes to inmates deciding to report?</p> <p>What contributes to inmates deciding <u>not</u> to report?</p>

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		<p>Ask for class to write their responses on note cards or volunteer them orally.</p> <p>Other statistics the instructor could discuss:</p> <p>Half of victims of staff sexual misconduct said they had been offered favors or special privileges.</p> <p>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 of misconduct.</p> <p>Discussion: The rate of inmate-on-inmate sexual victimization among former state prisoners was 3 times higher among females (13.7%) than males (4.2%). Why?</p> <p>Sample of response:</p> <ul style="list-style-type: none"> • Women more likely to be victimized • Women more comfortable talking about victimization • Men may not define sex with female staff as misconduct • Men are less willing to discuss misconduct

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		<p>The rate of “willing” sexual activity with staff was higher among males (4.8%) than females (2.6%).</p> <p>What accounts for this statistic?</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>What accounts for this statistic?</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>What do you think accounts for this?</p>
Findings:	<p>Sexual Victimization Reported by Former State Prisoners, 2008</p> <p>Former prisoners reported a wide variety of other inappropriate sexual experiences with staff:</p> <ul style="list-style-type: none"> • An estimated 8.9% reported that staff had hassled or harassed them in a sexual way. • 27.9% said that staff had stared or watched them at inappropriate times (e.g., while the inmate was dressing or taking a shower). • 13.5% said that staff had forced 	<p>Which of the PREA Standards might address these behaviors?</p> <ul style="list-style-type: none"> • Limits on cross gender searches • Limits on cross gender viewing

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	<p>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> <ul style="list-style-type: none"> • 32.4% of all former inmates reported one or more of these types of experiences. <p>While inappropriate, these lesser forms of staff sexual misconduct were not included in the analysis unless combined with reports of “willingly” or unwillingly having sex or sexual contact with staff.</p>	
Findings:	<p>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>13% of male prison inmates and 19% of male jail inmates said they were victimized within the first 24 hours after admission</p>	<p>Other statistics the instructor could decide to discuss:</p> <p>Among prison inmates with a sexual orientation other 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,</p>

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		<p>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>Victims in jail reported a similar pattern, 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>Eight male prisons, 2 female prisons, and 6 jails were identified as having high rates of inmate-on-inmate sexual victimization.</p> <p>Four male prisons, 2 female prisons, and 5 jails were identified as having high rates of staff sexual misconduct.</p> <p>Seven male prisons, 4 female prisons, and 9 jails were identified as “low rate” for sexual victimization overall.</p>
The National Prison Rape Elimination Commission	<p>Nine members authorized (8 served)</p> <p>Charge:</p> <ul style="list-style-type: none"> • Conduct legal and factual study of the effects of prison rape in the US • Recommend national standards <ul style="list-style-type: none"> ◦ Consultation with accreditation organizations 	

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	<ul style="list-style-type: none"> ○ Can't impose something that would mandate substantial increased costs to agency ○ Hold hearings ● Issue report w/in 2 years of initial meeting 	
Findings: NPREC	<p>Protecting inmates from sexual abuse remains a challenge correctional for 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>	<p>After completing its work, NPREC made a number of findings.</p> <p>Discussion: Do you agree with the findings?</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>	

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	A large and growing number of detained immigrants are in danger of sexual abuse.	
Adoption and Effect of National Standards	<p>One year after NPREC issues report – U.S Attorney General to publish a final rule with standards</p> <ul style="list-style-type: none"> • 90 days after publication - transmission to state departments of correction • FBOP is immediately covered by rule • Possible reduction of 5% each year for failure to meet the standard • Annual report on non-compliance 	<p>The schedule in the statute indicated that commission would finish its report in two years and the Attorney General would issue final standards within a year.</p> <p>You know from earlier slides that the process that was to take at most 3 years and be completed in 2007 was completed in 2012.</p> <p>Reasons:</p> <ul style="list-style-type: none"> • Administrative issues getting commission started • Much bigger job than anticipated to create standards for all custodial settings • On the DOJ/AG side had to exercise independent judgment • Could rely on NPREC findings but had to go farther.
PREA Standards	<p>Attorney General Working Group</p> <ul style="list-style-type: none"> • Composition: NIC, OJJDP, HHS, BJA, NIJ, BOP, OJP, ICE, HS, CRT, OFDT, OLP, USMS, OVW • Tasks <ul style="list-style-type: none"> ○ Reviewed standards one by one ○ Commissioned a cost study (OJP) 	<p>The resulting PREA standards were not arbitrary; they were based in an enormous amount of work by many players and many compromises.</p> <p>We are now learning about the standards and how to implement them.</p>

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	<ul style="list-style-type: none"> 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 working group completed by end of 2011 and standards were sent to OMB for review</p> <p>Final standards released May 17, 2012</p>	<p>HHS: health and human services 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> <p>OMB: Office of Management and Budget</p>
Differences between the NPREC and the Final Standards	<p>Coverage of immigration detention facilities</p> <p>Protections for LGBTI individuals</p> <p>Required staffing levels for youth in custody</p> <p>Sight and sound separation for youthful inmates</p> <p>Limitations on cross gender viewing and searches</p> <p>Acknowledgment that non-coercive sexual contact between inmates and between youth are not necessarily sexual abuse</p>	<p>One of the biggest differences was the inclusion of immigration detention in the proposed standards from NPREC.</p> <p>DOJ added protections for LGBTI inmates, set staffing ratios for juvenile facilities and proposed a standard for youthful inmates, none of which NPREC outlined in the proposed standards</p>
Applicable PREA Standards	115.15: Limits to cross-gender viewing and searches	Be sure that all agencies in attendance have a copy of the standards applicable to

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>115.21: Evidence protocol and forensic medical examinations</p> <p>115.31: Employee training</p> <p>115.41: Screening for risk of victimization and abusiveness</p> <p>115.42: Use of screening information</p> <p>115.81: Medical and mental health screenings; history of sexual abuse</p> <p>115.82: Access to emergency medical and mental health services</p> <p>115.83: Ongoing medical and mental health care for sexual abuse victims and abusers</p>	<p>their facility.</p> <p>These should always be on hand and are not very long documents. Read, highlight and understand these standards.</p> <p>These are references to the prison and jail standards; add the standard sections for juvenile, lockups and community confinement, if applicable.</p>
115.15: Limits to cross-gender viewing and searches	<p>(a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.</p> <p>(b) As of August 20, 2015, or August 20, 2017 for a facility whose rated capacity does not exceed 50 inmates, the facility shall not permit cross-gender pat-down 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-</p>	<p>Immediately the standard prohibited cross-gender strip and visual body cavity searches except in exigent circumstances or when performed by medical staff.</p> <p>However, medical staff are unlikely to perform these searches unless there is an underlying medical reason. (See NCCHC guidance on this issue)</p> <p>Beginning on August 20, 2015, any facility with a rated capacity of more than 50 inmates will stop doing cross-gender pat searches of female inmates except in exigent circumstances.</p>

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	gender visual body cavity searches, and shall document all cross-gender pat-down searches of female inmates.	<p>For others the prohibition begins on August 20, 2017.</p> <p>All of these searches have to be documented.</p>
115.15: Limits to cross-gender viewing and searches	<p>(d) The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit.</p> <p>(e) The facility shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. If the inmate's genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.</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,</p>	<p>Facilities have to implement policies and procedures to allow inmates to shower, change clothing and use the bathroom without being viewed by opposite gender staff (exceptions for exigent circumstances and incidental viewing on routine cell checks.)</p> <p>Opposite gender have to announce their presence in inmate housing units and other places where inmates may be disrobing.</p> <p>Searches solely for the purposes of checking the genital status of transgender and intersex inmates are prohibited.</p> <ul style="list-style-type: none"> • Talk to inmate • Review medical records • As part of broader medical exam conducted in privacy with a medical practitioner <p>Agencies must train security staff on conducting these searches</p> <ul style="list-style-type: none"> • Cross-gender

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	consistent with security needs.	<ul style="list-style-type: none"> gender non-conforming inmates
115.21: Evidence protocol and forensic medical examinations .	<p>(a) To the extent the agency is responsible for investigating allegations of sexual abuse; the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.</p> <p>(b) The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice’s Office on Violence Against Women publication, “A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,” or similarly comprehensive and authoritative protocols developed after 2011.</p> <p>(c) The agency shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs</p>	<p>Follow a uniform evidence collection protocol</p> <p>Adapted from OVW National Protocol</p> <p>They are telling you where to go to develop it</p> <p>Victims shall have access to forensic medical examinations</p> <p>These exams can be onsite or offsite and should be done by medically qualified professionals preferably SAFE or SANEs</p>

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	or SANEs.	
115.41: Screening for Risk of Victimization and Abuse	<p>(a) All inmates shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates.</p> <p>(b) Intake screening shall ordinarily take place within 72 hours of arrival at the facility.</p> <p>(c) Such assessments shall be conducted using an objective screening instrument.</p>	
115.41: Screening for Risk of Victimization and Abuse	<p>(d) The intake screening shall consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization:</p> <ul style="list-style-type: none"> (1) Whether the inmate has a mental, physical, or developmental disability; (2) The age of the inmate; (3) The physical build of the inmate; (4) Whether the inmate has previously been incarcerated; (5) Whether the inmate's criminal history is exclusively nonviolent; (6) Whether the inmate has prior convictions for sex offenses against an adult or child; (7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming; (8) Whether the inmate has previously experienced sexual 	Agency or facility may add other criteria.

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	<p>victimization;</p> <p>(9) The inmate's own perception of vulnerability; and</p> <p>(10) Whether the inmate is detained solely for civil immigration purposes.</p>	
115.41: Screening for Risk of Victimization and Abuse	<p>(e) The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency, in assessing inmates for risk of being sexually abusive.</p> <p>(f) Within a set time period, not to exceed 30 days from the inmate's arrival at the facility, the facility will reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.</p> <p>(g) An inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness.</p> <p>(h) Inmates may not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (d)(1), (d)(7), (d)(8), or (d)(9) of this section.</p> <p>(i) The agency shall implement appropriate controls on the dissemination within the facility of responses to questions asked</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	pursuant to this standard in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates.	
115.42: Use of Screening Information	<p>(a) The agency shall use information from the risk screening required by § 115.41 to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.</p> <p>(b) The agency shall make individualized determinations about how to ensure the safety of each inmate.</p> <p>(c) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.</p>	<p>Information from risk assessment should be used in making individualized determinations about :</p> <ul style="list-style-type: none"> • Housing • Bed • Work • Education • Program assignments • Separation of inmates at risk from those who pose greatest risk
115.42: Use of Screening Information	<p>(d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.</p> <p>(e) A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.</p>	The same rule about individualized determinations applies to gender non-conforming inmates.

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>(f) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.</p> <p>(g) The agency shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates.</p>	
115.31: Employee training	<p>(a) The agency shall train all employees who may have contact with inmates on:</p> <ul style="list-style-type: none"> (1) Its zero-tolerance policy for sexual abuse and sexual harassment; (2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures; (3) Inmates' right to be free from sexual abuse and sexual harassment; (4) The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment; (5) The dynamics of sexual abuse and sexual harassment in confinement; (6) The common reactions of sexual abuse and sexual 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>harassment victims;</p> <p>(7) How to detect and respond to signs of threatened and actual sexual abuse;</p> <p>(8) How to avoid inappropriate relationships with inmates;</p> <p>(9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and</p> <p>(10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.</p>	
115.31: Employee training	<p>(b) Such training shall be tailored to the gender of the inmates at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male inmates to a facility that houses only female inmates, or vice versa.</p> <p>(c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide each employee with refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures. In years in which an employee does not receive refresher training, the agency shall provide refresher information on current sexual abuse and sexual harassment policies.</p>	<p>Training has to be gender specific. That's why we are doing this training.</p> <p>We must document the training. That is why we:</p> <ul style="list-style-type: none"> • Have you sign in • Do pre-tests • Do post-tests

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	(d) The agency shall document, through employee signature or electronic verification, that employees understand the training they have received	
115.81: Medical and mental health screenings; history of sexual abuse	<p>(a) If the screening pursuant to § 115.41 indicates that a prison inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.</p> <p>(b) If the screening pursuant to § 115.41 indicates that a prison inmate has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening.</p> <p>(c) If the screening pursuant to § 115.41 indicates that a jail inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.</p>	Whether inmates indicate prior sexual victimization or prior perpetration of sexual abuse, either in or outside of custody, there has to be a follow up with medical or mental health
115.81: Medical and mental health screenings;	(d) Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical	Medical and mental health practitioners must obtain informed consent from inmates to disclose

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
history of sexual abuse	<p>and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law.</p> <p>(e) Medical and mental health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18.</p>	information about prior victimization that did not occur in custody unless the inmate is under 18.
115.82: Access to emergency medical and mental health services	<p>(a) Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.</p> <p>(b) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim pursuant to § 115.62 and shall immediately notify the appropriate medical and mental health practitioners.</p> <p>(c) Inmate victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>professionally accepted standards of care, where medically appropriate.</p> <p>(d) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.</p>	
115.83: Ongoing medical and mental health care for sexual abuse victims and abusers	<p>(a) The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.</p> <p>(b) The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.</p> <p>(c) The facility shall provide such victims with medical and mental health services consistent with the community level of care.</p> <p>(d) Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.</p>	<p>The standards require ongoing medical and mental health care for victims and abusers.</p> <p>This care includes pregnancy tests when appropriate.</p>
115.83: Ongoing medical and mental health care for sexual abuse victims and	<p>(e) If pregnancy results from the conduct described in paragraph (d) of this section, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.</p>	<p>If there is a pregnancy, the inmate victim shall receive timely and appropriate access to all lawful pregnancy related medical services.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
abusers	<p>(f) Inmate victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.</p> <p>(g) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.</p> <p>(h) All prisons shall attempt to conduct a mental health evaluation of all known inmate-on-inmate abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.</p>	
What does this mean?	<p>Increased scrutiny at state, federal and local level</p> <p>You must get started</p> <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:</p> <p>How do these items relate to your particular agency or facility?</p>
What does this mean?	<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>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	Set of national standards that establish minimum standards for addressing sexual violence in custody	
Our Aims	<p>Provide resources for meeting the PREA Standards in your agency</p> <p>Provide a blueprint for implementing gender responsive strategies</p> <p>Provide networking opportunities with other agencies involved in PREA work</p>	
Resources for Doing This Work	<p>Grants and cooperative agreements from BJA</p> <p>Project Addressing Prison Rape http://www.wcl.american.edu/endsite/nce/</p> <ul style="list-style-type: none"> History of PREA and all PREA and National Prison Rape Elimination Commission documents, 50-state surveys, checklists, maps, webinars, graphic novels, case law digests, news, training curricula, links to other important websites <p>National PREA Resource Center http://www.prearesourcecenter.org</p> <ul style="list-style-type: none"> Training, technical assistance, webinars (live and archived), general information, resource library, audit information and auditor trainings <p>Work of other agencies in this area</p> <ul style="list-style-type: none"> NIC http://nicic.gov/ OJJDP http://www.ojjdp.gov/ 	<p>Identify the resources your agency has</p> <p>Note that there is a lot of free information out and available. Talk about the ones you have used.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Summary	<p>What are the purposes of PREA?</p> <p>Who are the most vulnerable to sexual abuse in custody?</p> <p>Why are we discussing gender responsive strategies?</p>	<p>Activity:</p> <p>Divide the group into groups of 4-6 participants based on where they are sitting and have each group come up with a question and answer about the information covered.</p> <p>Return to the large group; have each group ask the group to their right the question; and have the asking group explain their answer.</p> <p>Moderate this activity to determine whether the question and answers are correct; correct questions and responses; explain the reason for the corrections.</p> <p>Evaluation:</p> <p>Remind participants to fill out this section of their evaluation of the materials covered, activities and the performance of the instructor.</p>

Module 3: Vectors of Sexual Abuse in Custody—Gender, Sexuality and Victimization

Time: 45 minutes

Recommended Faculty:

Lead Trainer, PREA Coordinator or Monitor

Resources:

LCD projector, computer and media screen

Participant Handouts:

- PowerPoint®
- Uncomfortable Places, Close Spaces: Female Correctional Workers' Sexual Interactions With Men and Boys in Custody

PowerPoint® Programs:

Module 3: Vectors of Sexual Abuse in Custody—Gender, Sexuality and Victimization

Training Curriculum: Responding to Sexual Abuse of Inmates in Custody: Addressing the Needs of Men, Women and Gender Non-Conforming Populations
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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objectives	<p>Understand the history of women as inmates</p> <p>Identify the growing role of women in the correctional workforce</p> <p>Recognize the prevalence of female correctional officers as perpetrators of staff sexual misconduct</p>	
History of Female Inmates in Custody	<p>Punishment, including institutional punishment, has always been gendered</p> <p>Correctional institutions have always struggled against sexualization</p>	<p>That means that your biological sex has always made a difference in why and what you were punished for</p> <p>Example: Are boys or girls more likely to be punished by the state for running away and being beyond their parent's supervision?</p> <p>Can you provide some other examples where gender matters?</p> <p>What kinds of programs do we provide for women?</p> <p>What kind of programs do we provide for men?</p>
History of Female Inmates in Custody	<p>Early female inmates were poor women who had deviated from societal expectations of gender norms</p> <p>Female inmates subjected to abuse at the hands of male correctional staff</p> <p>Female staff introduced to ameliorate</p>	<p>"Gender appropriate" training included: sewing, cooking, cleaning</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	poor treatment, putting emphasis on reforming female inmates	
History of Female Inmates in Custody	<p>After female correctional staff entered male correctional facilities, male correctional workers reappeared in female facilities</p> <p>Male correctional staff are responsible for most of the staff-perpetrated sexual abuse against female inmates</p>	<p>Conversely, female staff is responsible for the majority of staff sexual misconduct with male inmates.</p> <p>Note however, that male staff are more likely to be implicated is staff sexual harassment of male inmates.</p> <p>We will discuss this in greater detail in a few minutes.</p>
BJS, National Inmate Survey, 2008-09	<p>Female inmates reporting sexual abuse in prison:</p> <ul style="list-style-type: none"> • Number of inmates: 2,123 <ul style="list-style-type: none"> ◦ Male staff: 71.8% ◦ Female staff: 9.3% ◦ Both male and female: 18.9% <p>Female inmates reporting sexual abuse in jail:</p> <ul style="list-style-type: none"> • Number of inmates: 1,485 <ul style="list-style-type: none"> ◦ Male Staff: 62.6% ◦ Female Staff: 27.7% ◦ Both male and female staff: 9.8% 	
	Title VII and the Entrance of Women into Corrections	
Title VII	"[i]t shall be an unlawful employment practice for an employer — (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a) (2012).	
Bona Fide Occupational Qualification	<p>Exception to Title VII: the "bona fide occupational qualification" (BFOQ)</p> <p>Permits employers to discriminate in hiring or firing decisions.</p> <p>Specifically permits an otherwise discriminatory hiring practice when it is "reasonably necessary to the normal operation of that particular business or enterprise." 42 U.S.C. § 2000e-2(e)(1) (2012).</p>	<p>This is the BFOQ test:</p> <ol style="list-style-type: none"> 1) the job qualifications offered to justify the BFOQ must relate to the essence or central function of the facility, and 2) they must be "reasonably necessary" to the facility's business. <p>Courts have indicated the BFOQ defense is an "extremely narrow exception" to the general prohibition of discrimination of the basis of sex.</p>
Bona Fide Occupational Qualification	<p><i>Dothard v. Rawlinson</i>, 433 U.S. 321 (1977) (eliminating height and weight restrictions for positions within all male institution, while upholding male gender as a BFOQ for the Alabama Maximum Security Prison).</p> <p><i>Gunther v. Iowa State Men's Reformatory</i>, 462 F. Supp. 952 (N.D. Iowa 1979), <i>aff'd</i>, 612 F.2d 1079 (8th Cir. 1980) (holding that male gender cannot be used as a BFOQ to keep women out of contact positions).</p>	<p>These two cases are cases where the BFOQ came up.</p> <p>In <i>Dothard</i>, the court allowed women to work in Alabama Maximum Security Prison but not in contact positions. They held that the conditions in the prison were such that female staff would be sexually assaulted.</p> <p>A later case, <i>Gunther</i>, was the first of many getting rid of the distinction and opening the door for women in contact positions.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Women in Corrections	<p>2001: women made up 24.5% of the correctional workforce in male custodial facilities</p> <p>2007: female workers made-up 40% of all correctional staff in adult facilities</p> <p>2008: women comprised 42% of juvenile facility staff</p>	<p>Sources:</p> <p>Mtc Inst., Women Professionals in Corrections: A Growing Asset 1 (2008), available at http://mtctrains.com/institute/publications/WomenProfessionalsInCorrections-Aug08.pdf.</p> <p>Joann Brown Morton, ACA & Women Working in Corrections, Corrections Today, Oct. 1, 2005, at 86, 87.</p>
Men in Corrections	<p>According to the last correctional census in 2005, male employees outnumbered female employees by a ratio of 2 to 1, while men in direct contact positions outnumbered women by a ratio of 3 to 1.</p> <p>Breakdown</p> <ul style="list-style-type: none"> • Federal Facilities <ul style="list-style-type: none"> ◦ 87% men/13% women • Private Facilities <ul style="list-style-type: none"> ◦ 52% men/48% women • State operated facilities <ul style="list-style-type: none"> ◦ 74% men/26% women 	<p>As of last correctional census in 2005, an estimated 445,000 employees were working in state and federal correctional facilities</p>
Gender Non-Conforming in Corrections	<p>Difficult to quantify at this time due to lack of data</p> <p>According to Supreme Court jurisprudence, discrimination on sexual orientation or gender identity may receive only intermediate scrutiny</p> <p>Title VII does not offer protection for sexual orientation or gender identity, but state civil rights statutes may. See e.g., Sexual Orientation Non-Discrimination Act, Ch. 2, 2002 N.Y. Laws 46</p>	<p><i>Lawrence v. Texas</i> hints at intermediate scrutiny for sexual orientation, but does not come right out and say it. The Supreme Court recently mentioned a new standard in striking down Defense of Marriage Act called “careful consideration” while alluding in passing to a heightened scrutiny.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	Institutions as Sexualized Living and Working Environments	
Female Staff Commit Sexual Misconduct Disproportionate to Their Numbers	<p>As noted above, women make up approximately 40% of all adult correctional staff, and approximately 42% of staff in juvenile facilities.</p> <p><u>Correctional authorities</u> reported that female staff commit 61% of sexual staff misconduct and 21% of staff sexual harassment.</p> <p>69% of <u>jail and prison inmates</u> reporting victimization by staff sexual misconduct reported that it was perpetrated by female staff.</p> <p>A recent survey of <u>former state prisoners</u> found that female staff accounted for roughly 85% of all incidents of staff sexual misconduct.</p>	<p>Discussion:</p> <p>Is anyone here surprised by these numbers? Why or why not?</p>
Female Staff Commit Sexual Misconduct Disproportionate to Their Numbers	<p>In a 2010 study, Janet Warren described male inmates as viewing themselves as being sexually predatory towards female correctional officers</p> <p>Of the male inmates interviewed:</p> <ul style="list-style-type: none"> • 8.7% reported perpetrating noncontact coercive sexual conduct, while 2.8% reported contact sex acts. • 9.7% reported engaging in noncontact bartered sexual activity, while 8% reported contact bartered sexual activity. • 24.3% reported engaging in noncontact consensual encounters, and 17.4% reported contact consensual activity. 	<p>There is very little qualitative data about same sex interactions between correctional officers and inmates. That means that while we know numbers we don't know a lot about how or why these relationships begin or the nature of the relationships.</p> <p>Source: United States. The Department of Justice/ National Institute of Justice. Risk Markers for Sexual Predation and Victimization in Prison. Comp by Warren et.al.. Washington, DC. May 2010.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Female Staff Commit Sexual Misconduct Disproportionate to Their Numbers	<p>Surveys of juvenile correctional authorities and youth in custody reflect the same disparity</p> <p>Women account for 42% of staff in juvenile facilities, yet youth implicate female staff in 95 percent of incidents of staff sexual abuse, where 92% of those abused youth are boys</p>	
What we Currently Know: BJS Data	Sexual Victimization Reported by Adult Correctional Authorities, 2007-8 Substantiated Incidents of Sexual Abuse	<p>This is a chart of findings from BJS.</p> <p>Trainers can pick one or two statistics to discuss from the chart.</p>
What we Currently Know: BJS Data	Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-9 Sex of Perpetrator of Staff Sexual Misconduct	<p>This is a chart of findings from BJS.</p> <p>Trainers can pick one or two statistics to discuss from the chart.</p>
What we Currently Know: BJS Data	Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-9 National Prevalence Data for Sexual Victimization by Gender	<p>This is a chart of findings from BJS.</p> <p>Trainers can pick one or two statistics to discuss from the chart.</p>
What we Currently Know: BJS Data	Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-9 Prevalence of Sexual Victimization by Sexual Orientation	<p>This is a chart of findings from BJS.</p> <p>Trainers can pick one or two statistics to discuss from the chart.</p>
Summary	Women inmates have a history of victimization while in custody	<p>Evaluation:</p> <p>Remind participants to fill out this section of their</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>While female corrections officers are relatively new in the field, they are often the perpetrators of staff sexual misconduct against both male and female inmates</p> <p>Male inmates and youth may not feel that they are victims in their sexual interactions with female</p>	<p>evaluation of the materials covered, activities and the performance of the instructor.</p>

Module 4: Sexuality and Sexual Behaviors in Correctional Settings

Time: 1 hour and 30 minutes

Recommended Faculty:

Lead Trainer, PREA Coordinator or Monitor, Medical or Mental Health staff, Social Worker, Crisis Counselor or Community Advocate

Resources:

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

Participant Handouts:

- PowerPoint®
- Risk Markers for Sexual Predation and Victimization in Prison
- Gendered Violence and Safety: A Contextual Approach to Improving Security in Women's Facilities (Part I: Improving Security in Women's Facilities)
- The Culture of Prison Sexual Violence
- Rethinking Prison Sex: Self Expression and Safety
- The Effect of Conjugal Visitation on Sexual Violence in Prison

PowerPoint® Programs:

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objectives	<p>Identify and discuss key issues related to sexuality including:</p> <ul style="list-style-type: none"> • The definitions, development and relationship of sex, gender and sexuality • How biological sex, gender expression, sexual orientation and sexual acts work together • Sexual orientation • Gender and sexual minorities • Trends and factors related to sexuality • Discussing sexuality • When reality meets sexuality 	These are the skills that participants should gain after this module.
Objectives	<p>Explore and discuss the continuum of sexual behavior in institutional settings</p> <p>Define sexual behavior in institutional settings</p> <p>Identify perceptions about sex in prison</p> <p>Discuss sexual activities of men, women and gender non-conforming inmates</p> <p>Discuss the risk of sexual violence in correctional settings</p>	When defining sexual behavior in institutional settings, discuss similarities between custody and therapeutic relationships—esp. related to power and control.
Disclaimers	<p>Pretty explicit language</p> <p>Not the way you or I talk every day</p> <p>This training is meant to give you a sense of the language and culture that has developed around sex in institutional settings</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	Human Sexuality	
Human Sexuality	<p>Sexuality is made up of several factors including biological sex, gender, gender expression and sexual acts. Each factor has a set of independent issues to consider:</p> <p>Sex (what you got or what you get) Biological and anatomical identity assigned at birth (sometimes earlier)</p> <ul style="list-style-type: none"> • Chromosomes, external sex organs, internal sex organs, reproductive organs • Historically, only two options – male or female recognized by law and society • Historically, initial determination lasts once determination is made at birth • Today, sex can be reassigned surgically and/or chemically after initial determination • Increasing recognition of intersex conditions 	<p>Prevalence of intersex conditions (source: http://www.isna.org/faq/frequency)</p> <p><u>One in 1,666 births, the infants do not have the XX or XY chromosomes generally associated with being male or female.</u></p> <p><u>Total number of people whose bodies differ from standard male or female one in 100 births</u></p> <p><u>Total number of people receiving surgery to “normalize” genital appearance one or two in 1,000 births</u></p> <p>http://www.isna.org/faq/frequency</p>
Human Sexuality	<p>Gender (Outside-In) The set of qualities and behaviors expected by society</p> <ul style="list-style-type: none"> • Expectations based on sex determination • Communicated via images, language, text, media, symbols • Can vary widely within and among cultures, religions, nations, and families structures and institutional settings • Impacted by factors such as past experiences, education, physical abilities and/or economics. 	<p>Outside-in refers to impact that external factors has on how we express our gender.</p> <p>Inside-out refers to how a person feels about his/her gender internally and displays that publicly.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<ul style="list-style-type: none"> • Can evolve over time <p>Gender Expression/Identity (Inside/Out) The way a person communicates sexual and/or gender identity via behavior, attitude, conduct, and language</p> <ul style="list-style-type: none"> • Can be verbal and non-verbal, conscious or unconscious, intentional or unintentional, sexual or non-sexual • What a person communicates and what the world perceives may not be the same thing • Sexual minorities may or may not conform to gender expectations 	
Human Sexuality	<p>Sex Acts (What you do) Any form of intentionally sexual physical conduct including masturbation, oral sex, anal sex, intercourse, and frottage</p> <ul style="list-style-type: none"> • Can be consensual or non-consensual or something in between • May be consistent with traditional expectations established by one's gender and gender expression, biological sex • Sexual minorities may engage in sex acts that are inconsistent with traditional expectations established by one's biological sex, gender and gender expression <p>Sexuality Catch-all phrase used to describe the interplay of physical, psychological, social, emotional, and</p>	Sexual Minorities: Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI) and/or gender non-conforming populations.

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>spiritual makeup of an individual</p> <ul style="list-style-type: none"> • Can encompass sex, gender, gender expression, sexual orientation, sexual preference, and social norms as they affect physical, emotional, and spiritual life • In addition (or in lieu of) physical conduct, sexuality can involve sexual thoughts, desires and longings, erotic fantasies, turn-ons and past experiences – positive and negative 	
Biological Sex	<p>INDICIA OF BIOLOGICAL SEX</p> <ul style="list-style-type: none"> • Penis • Testicles • Scrotum • Vas Deferens • Adam's Apple • Facial Hair • Uterus • Breasts • Clitoris • Vagina • Fallopian Tubes • Ovaries • Labia <p>POSSIBLE BIOLOGICAL SEX DETERMINATIONS: male, female, intersex</p> <p>Once determination is made, societal expectations on biological, physical, emotional, intellectual, gender, sexual conduct and sexuality quickly attach.</p> <p>Societal Expectations = Gender</p>	


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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Biological Sex and Gender: Indicia of Gender Expectation	<ul style="list-style-type: none"> • Blue is for boys and pink is for girls • Boys don't cry/girls are emotional • Boys are good at sports/ girls are good at art • Toys (baby dolls, trucks, animals, guns) • Girls are quiet • "Be a man" or "Be a lady" • Girls wear dresses and boys wear pants • Girls are feminine/boys are masculine • Sweet sixteen v. 1st sexual conquest • Bar Mitzvah v. Bat Mitzvah • Girls like boys and boys like girls • Women have sex with men • Men have sex with women 	Discussion Question: Ask the group to add to this list and write down their additions on the board.
Biological Sex and Gender: Indicia of Gender Expression	<ul style="list-style-type: none"> • Sexual orientation • Appearance/style • Personal hygiene • Body movements • Bathroom habits • Athleticism • Sexually aggressive v. coy • Masculinity v. femininity • Intelligence v. caring • Emotional v. physical • Career v. homemaker • Protector v. vulnerable • "I wear the pants here!" • Passive v. aggressive • Sexual conduct • Sexuality • Muscles v. curves 	Gender expression is how we display who we are - male, female, something in between. These terms are increasingly constrained for young people who are much more fluid sexually and are more open about that fluidity.
Gender, Gender Expression, Sexual Acts	MALE Society stereotyping and influence on behavior	In terms of sexuality, these are some of the common societal attributes of how men and women express

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
and Sexuality	<p>Sexuality is easily detached from emotional feelings</p> <p>Same sex sexual conduct does not equal bisexuality or homosexuality</p> <p>Showing any emotion is a form of weakness</p> <p>Sex is primarily physical</p> <p>FEMALE Sexual acts historically connected to reproduction, not pleasure</p> <p>Physical intimacy is often connected to emotional intimacy</p> <p>Sexuality is linked to attraction and feelings of love</p> <p>Intimacy between women more acceptable than between men</p>	<p>themselves and the connection to gender and sexuality.</p>
Other Factors Affecting Sexuality	<p>Race</p> <ul style="list-style-type: none"> • African American • Hispanic • Caucasian • Asian • Native American <p>Religion and Ethnicity</p> <ul style="list-style-type: none"> • Jewish • Hindu • Muslim • Christian <p>Class</p> <ul style="list-style-type: none"> • Housing • Access to health care • Education 	<p>These are some of the factors, other than gender that have an impact on how male and females express themselves sexually.</p> <p>Discussion: Have participants talk about how these factors might affect sexual expression. These are some examples of the comments you might try to elicit:</p> <ul style="list-style-type: none"> • Age that it is appropriate to date • Notions about chastity of boys and girls

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<ul style="list-style-type: none"> • Neighborhoods • Career Goals <p>Geography</p> <ul style="list-style-type: none"> • Urban v. rural • South v. northeast v. mid-west v. west coast 	<ul style="list-style-type: none"> • Openness about sexual identity • Bigger city, more relaxed ideas about sexuality
Sexual Orientation	 <p>A Venn diagram with three overlapping circles. The top circle is pink and labeled 'STRAIGHT'. The bottom-left circle is green and labeled 'GAY/LESBIAN'. The bottom-right circle is tan and labeled 'BISEXUAL'. The intersections between the circles are shaded with a mix of the respective colors.</p>	This is a visual representation of the intersection of sexual orientation.
Gender, Sexuality and Terminology	<p>A person is a gender and/or sexual minority when their actual or perceived gender expression, sexual conduct and/or sexuality are inconsistent with traditional expectations established by biological sex.</p> <p><u>LGBTI</u>: An acronym that refers to sexual minorities, including lesbian, gay, bisexual, transgender and intersex</p> <p><u>Gender expression</u>: a person's expression of his/or gender identity, including appearance, dress, mannerisms, speech, and social interactions</p> <p><u>Gender identity</u>: distinct from sexual orientation and refers to a person's internal, deeply felt sense of being male or female</p> <p><u>Gender non-conforming</u>: gender</p>	Go through each of the terms

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	characteristics and/or behaviors that do not conform to those typically associated with a person's biological sex	
Gender, Sexuality and Terminology	<p><u>Questioning</u>: active process in which a person explores her or his own sexual orientation and/or gender identity and questions the cultural assumptions that they are heterosexual and/or gender conforming</p> <p><u>Intersex</u>: an individual born with external genitalia, internal reproductive organs, chromosome patterns, and/or endocrine systems that do not seem to fit typical definitions of male or female</p> <p><u>Transgender</u>: person whose gender identity differs from their birth sex</p> <ul style="list-style-type: none"> • <u>Transgender woman</u>: person whose birth sex was male but who understands herself to be, and desires to live her life as, a female • <u>Transgender man</u>: person whose birth sex was female but who understands himself to be, and desires to live his life as, a male 	
Society and Sexuality	<p>The Greatest Generation</p> <ul style="list-style-type: none"> • No sex before marriage • Vaginal intercourse is the only sex • Sex is for procreation <p>Baby Boomers</p> <ul style="list-style-type: none"> • Sex, drugs and rock and roll 	This is how our parents thought about sex – this is for baby boomers.

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<ul style="list-style-type: none"> ○ Free love ○ Hippies ○ Experimentation <p>Women's Movement</p> <ul style="list-style-type: none"> • Birth Control Pill • Abortion legalized • Sex without life changing consequences • Title 9 	
Current Trends Affecting Sexuality	<p>Gen X and/or Y</p> <ul style="list-style-type: none"> • HIV/AIDS • "Post" civil rights era • High divorce rate/single parent homes/dual income Families • Multiple partners • Experimentation is accepted and expected • Shifting gender expectations • Improved sex reassignment procedures and medications • War on drugs and increase in incarceration rates and length of sentences 	
Current Trends Affecting Sexuality	<p>Gen NEXT (Millennials)</p> <ul style="list-style-type: none"> • HIV/AIDS • Constitutional protection for same-sex sexual conduct • Several states recognize same sex marriage, domestic partnerships, or civil unions • Divorce as the norm with single parent homes • Multiple partners • Experimentation is accepted and expected • Oral/Anal sex is not sex • Internet/Virtual Sex 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Discussing Sexuality	<p>Step 1: Know Yourself</p> <ul style="list-style-type: none"> • Do you have sufficient relevant information to discuss this? • What is your sex, gender and sexuality? • What makes you uncomfortable? • What are your strengths and limitations? • What are your values? <p>Step 2: Know your Context</p> <ul style="list-style-type: none"> • What is the objective(s) of the discussion? • What is the location/physical setting? • What is your role? • What are the parameters/ boundaries at play? 	<p>Activity:</p> <p>This is an appropriate place to have small group discussions about these many questions.</p> <p>Break the participants up into groups of 3-4 and discuss each question in each step. Take about 5-10 minutes on each step. Be sure to tell all participants that this is a “safe space” to discuss these issues, and to be honest and frank if anyone is violating your safe space.</p> <p>The goal of the activity is to have the group discuss difficult questions of sexuality. Uncovering one’s own feeling and biases can break down barriers that these folks might have with inmates.</p>
Discussing Sexuality	<p>Step 3: Know your audience</p> <ul style="list-style-type: none"> • Age, language, culture, setting, identity • What are the specific characteristics of your audience that will impact a discussion on sexuality? • What are the most effective forms of communicating with your audience? <p>Step 4: Connecting</p> <ul style="list-style-type: none"> • Use cultural references to represent healthy and non- 	<p><u>Some things to think about!</u></p> <p>Certain past experiences are important to effectively engaging in a discussion about sexuality.</p> <p>Word choice decisions will depend on your audience.</p> <p>Culturally specific references can help to relieve discomfort and awkwardness of discussion. It may also assist in</p>

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	<p>healthy representations of sexuality.</p> <ul style="list-style-type: none"> • Avoid making superficial cultural references. 	<p>facilitating trust.</p> <p>References that are appropriate for different genders as well as age groups are also appropriate.</p> <p>If you are going to have fruitful discussions about sex it is best to know your audience and how they view sex based on gender, age, race and culture.</p>
Discussing Sexuality: When Reality Meets Sexuality	<p>Sexuality issues are relevant to every stage of life – there are few, if any, contexts, where sexuality issues are not at play</p> <p>Discussions about sexuality can be unsettling, comforting and/or challenging</p> <p>Right and wrong answers should not be the objective – there are no absolutes</p>	
Strategies for Discussing Sexuality	<p>Determine whether given the time, place, situation and parties involved it is appropriate to discuss sexuality</p> <p>Determine your objective – security, information sharing, exertion of power</p> <p>Determine whether the situation requires attention to issues unique to sexual minorities</p>	
Talking About Sex and Sexuality	<p>Who</p> <ul style="list-style-type: none"> • Issues related to sexuality impacts all humans at every 	<p>Discussion:</p> <p>When is it appropriate to discuss this in your setting?</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>stage of life and beyond. Language, age, race, societal factors, power dynamics will all impact who is the appropriate participant in sexuality discussions</p> <p>What</p> <ul style="list-style-type: none"> • All aspects of sexuality require attention to the facts, the audience, and the context. The discussants should also note the role that society, biology, emotional and physical desire play in determining the content of the discussion <p>When</p> <ul style="list-style-type: none"> • Timing issues are important to engaging productive discussions of sexuality and/or sexual conduct 	With inmates? With staff?
Talking About Sex and Sexuality	<p>How</p> <ul style="list-style-type: none"> • With knowledge, respect, and appreciation for differences and challenges of discussing sexuality <p>Where</p> <ul style="list-style-type: none"> • The location of discussion of sexuality is important in determining parameters of discussions on sexuality. Institutional, educational, private, medical settings will all impact who, what, when and why and how. <p>Why</p> <ul style="list-style-type: none"> • It is important to understand how attitudes about sex impact our lives and work and how their 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	role in society in order to keep ourselves and others safe and healthy	
	Sexual Behaviors in Institutional Settings	
Continuum of Sexual Activity: Adults		<p>This is a continuum of sexual behavior in custodial settings for inmates. As you can see one side represents rape and the other consent. However, you have a number of other options in between such as coerced consent, sex for trade, etc. On any given day, consensual sex can turn into sex for protection or something else. Training staff to understand this continuum of behavior and consequences will be helpful in the overall understanding of what types of sexual activity inmates may engage in and how staff can determine the differences between them.</p> <p>Participants should also understand that rarely is sexual behavior static. Sexual interactions can move from consensual to coerced and back again.</p> <p>What implications does this have for addressing abuse in custody? Sex that is consensual at one point can change to coerced or even forced sex.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		Because of victimization histories and how men and women see sex differently, victims may not know where to put their behavior—they may not self-classify sexual activity as coerced.
Sexual Behavior in Institutional Settings: Descriptive Language	<p>Men</p> <ul style="list-style-type: none"> • Turn out <ul style="list-style-type: none"> ◦ heterosexual man pressured into sex in prison • Ass Chaser <ul style="list-style-type: none"> ◦ sexual predator • Fag <ul style="list-style-type: none"> ◦ man who is weak and coerced into sex • Hard addict <ul style="list-style-type: none"> ◦ a man who does what he has to for drugs • Housewife <ul style="list-style-type: none"> ◦ a fag who cares for a man's cell <p>Women</p> <ul style="list-style-type: none"> • Boo <ul style="list-style-type: none"> ◦ love name for women inmates • Bull-Dagger <ul style="list-style-type: none"> ◦ masculine woman • Bushwacker <ul style="list-style-type: none"> ◦ sexual predator • Femme <ul style="list-style-type: none"> ◦ girly girl • Garbage Disposal <ul style="list-style-type: none"> ◦ sleeps around • Strictly Dicky <ul style="list-style-type: none"> ◦ A woman who does not engage in homosexual 	<p>These are terms that NIJ researchers heard when they talked to inmates about how they would describe sexual behavior in institutional setting.</p> <p>It is important to discuss this because this is the language inmates use. They may not know standards terms for sex like intercourse, fellatio, cunnilingus, etc.</p> <p>Discussion: Ask participants if they have additional language that should be added to the list.</p> <p>Note, that most of us are not comfortable using this language, at least in a professional setting.</p> <p>Source: United States. Department of Justice/ National Institute of Justice. The Culture of Prison Sexual Violence. Comp. Mark Fleisher and Jessie Krienert. Washington, DC: November 2006.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	behavior	
Sexual Behavior in Institutional Settings: Descriptive Language	<p>Men</p> <ul style="list-style-type: none"> • Skull • Hitting it • Leave it at the gate • Lock Up • Lose Manhood • Shoot • Take it • Cap <p>Women</p> <ul style="list-style-type: none"> • Fist F*%&ing • Hitting it from the back • Riding the dome • Ride Head • Marry 	<p>Clearly, this is slang that was heard throughout this study and not language we would use everyday</p> <p>Source: United States. Department of Justice/ National Institute of Justice. The Culture of Prison Sexual Violence. Comp. Mark Fleisher and Jessie Krienert. Washington, DC: November 2006.</p>
Sexual Behavior in Institutional Settings: Descriptive Language	<p>Slang for actions of both men and women can include:</p> <ul style="list-style-type: none"> • Graveyard Love • Running a Game • Rape • Thirsty • Beat it • Break the Back Door • Hustle • Pressure • Shoot 	<p>Source: United States. Department of Justice/ National Institute of Justice. The Culture of Prison Sexual Violence. Comp. Mark Fleisher and Jessie Krienert. Washington, DC: November 2006.</p>
Perceptions of Sex in Prison: Generalizations about Potential Victims	<ul style="list-style-type: none"> • Used for sex • Treated as a commodity • Young; new to incarceration • Weak; inexperienced; naïve • Disabled (mentally, physically, etc.) • History of abuse • Sex offenders 	<p>Source: Hensley, et. al., "Examining the Characteristics of Male Sexual Assault Targets in a Southern Maximum Security Prison." Journal of Interpersonal Violence. 20:6 (June 2005): 667-679.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Perceptions of Sex in Prison: Generalizations about Potential Victims	<ul style="list-style-type: none"> • Racial and ethnic minorities within prison walls • Stigmatized by their status as victims • Soft; feminine in appearance • Used in games of extortion and for exploitation • Gender non-conforming/ LGBTI 	Source: Hensley, et. al., "Examining the Characteristics of Male Sexual Assault Targets in a Southern Maximum Security Prison." Journal of Interpersonal Violence. 20:6 (June 2005): 667-679.
Perceptions of Sex in Prison: Generalizations About Potential Predators	<p>Likely to be older</p> <p>Have been incarcerated for longer period of time</p> <p>Have street history of rape and assault</p> <p>Physically aggressive, manipulative</p>	Source: United States. Department of Justice/ Bureau of Justice Assistance. Sexual Violence in the Texas Prison System. Comp. James Austin, et. al., Washington, DC: September 2006.
Perceptions of Sex in Prison: Generalizations About Potential Predators	<p>Masculine in appearance</p> <p>Protected by physical strength, reputation as dangerous</p> <p>Adept at extorting and exploiting victims</p> <p>Members of a gang</p>	Source: Hensley, et. al., "Examining the Characteristics of Male Sexual Assault Targets in a Southern Maximum Security Prison." Journal of Interpersonal Violence. 20:6 (June 2005): 667-679.
Why Women may Engage in Sexual Activity in Custody	<p>Inappropriate sexualization</p> <p>Sex defined as "love" or as a commodity</p> <p>Boundary issues</p> <p>Challenges in defining domestic violence</p> <p>Fears about disclosure & reporting</p> <p>PTSD and re-traumatization</p>	Source: Webinar: The context of sexual violence in facilities for women & girls by Barbara Owen (February 2008)

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Crisis and long-term treatment issue</p> <p>Trauma remains untreated and cycle continues</p>	
Why Women may Engage in Sexual Activity	<p>History of previous confinement</p> <p>Longer sentences</p> <p>Arrested earlier</p> <p>Higher levels of aggression</p>	
Why Men May Engage in Sexual Activity	<p>Want</p> <p>Deprivation</p> <p>Companionship</p> <p>Favors or Benefits</p> <p>Protection</p> <p>Force</p>	
Why Men May Engage in Sexual Activity	<p>Aggressors are men in a racial or ethnic majority within the facility– victims are in the racial or ethnic minority</p> <p>Older inmates</p> <p>Violent offenses</p> <p>Not gang affiliated</p>	
Why Gender Non-Conforming Inmates may Engage in Sexual Activity	<p>Sex defined as “love” or as a commodity</p> <p>Boundary issues</p> <p>Fears about disclosure & reporting</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>History of previous confinement and/or longer sentences</p> <p>Want/ need</p> <p>Favors or benefits</p> <p>Protection</p> <p>Force</p>	
Challengers for Administrators	<p>Allowing conjugal visits</p> <p>Training officers to know the difference between forced, coerced, and non-coercive sex</p> <p>Housing and treatment of sexual minorities</p> <p>What is permissible sexual behavior?</p>	<p>Discuss other facility specific challenges that might be occurring.</p> <p>Note that PREA Standard 115.78 (g) states that "An agency may, in its discretion, prohibit all sexual activity between inmates and may discipline inmates for such activity. An agency may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced."</p>
Strategies for Responding to Inmate Sexual Violence	<p>Establish zero-tolerance initiatives for all sexual violence</p> <p>Increase sanctions for inmate predators</p> <p>Establish preventative measures</p> <p>Increase facility staff coverage & visibility</p> <p>Decrease inmate idle time</p> <p>Enhance family visiting programs</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Investigate all reports of sexual violence</p> <p>Develop and enforce protocols & policy</p> <p>Educate and train staff about inmate sexual violence</p> <p>Educate inmates about resources, steps, protections, and preservation of physical evidence</p>	
Other Resources	<p>Lager, Robert. "Lesbianism Among Female Prisoners: Participants and Non-participants." <u>Criminal Justice and Behavior</u>. 14:4 (December 1987): 448-467.</p> <p>Greer, Kimberly. "The Changing Nature of Interpersonal Relationships in Women's Prisons." <u>The Prison Journal</u>. 80: 4 (December 2000): 442-468.</p> <p>Eigenburg, Helen M. "Correctional Officers and Their Perceptions of Homosexuality, Rape and Prostitution in Male Prisoners." <u>The Prison Journal</u>. 80: 4 (December 2000): 415-433.</p> <p>Eigenburg, Helen M. "Corrections' Officers Definitions of Rape in Male Prisons." <u>Journal of Criminal Justice</u>. 28 (2000): 435-449.</p> <p>Hensley, et. al.,. "The Evolving Nature of Prison Argot and Sexual Hierarchies." <u>The Prison Journal</u>. 83:3 (September 2003): 289-300.</p> <p>Hensley, et. al.,. "Examining the Characteristics of Male Sexual Assault Targets in a Southern Maximum</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Security Prison." <u>Journal of Interpersonal Violence</u>. 20:6 (June 2005): 667-679.</p> <p>United States. US Department of Justice/ National Institute of Corrections. <u>Staff Perspectives: Sexual Violence in Adult Prisons and Jails</u>. Comp. The Moss Group Inc. Washington, DC: June 2006.</p> <p>United States. Department of Justice/ Bureau of Justice Assistance. <u>Sexual Violence in the Texas Prison System</u>. Comp. James Austin, et. al,. Washington, DC: September 2006.</p> <p>United States. Department of Justice/ National Institute of Justice. <u>The Culture of Prison Sexual Violence</u>. Comp. Mark Fleisher and Jessie Krienert. Washington, DC: November 2006.</p> <p>Smith, Brenda V. <u>Rethinking Prison Sex: Self Expression and Safety</u>, Columbia Journal of Gender and the Law, 15 (2006): 185-234.</p>	
Summary	<p>What are the differences between gender, sexual orientation and sexuality?</p> <p>What are some differences between the sexuality of women, men and gender non-conforming individuals in custody?</p> <p>What are some strategies to discuss the sexual activity of inmates? How can you implement these strategies in your agency?</p>	<p>Evaluation:</p> <p>Remind participants to fill out this section of their evaluation of the materials covered, activities and the performance of the instructor.</p>

Module 5: Implications of Institutional and Staff Culture on Addressing Sexual Abuse in Custody

Time: 1 hour and 30 minutes

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
- Staff Perspectives: Sexual Violence in Adult Prisons and Jails
- Prison Warden Attitudes Toward Prison Rape and Sexual Assault: Findings Since the Prison Rape Elimination Act (PREA)
- Correctional Officers and Their Perceptions of Homosexuality, Rape and Prostitution in Male Prisoners

PowerPoint® Programs:

Module 5: Implications of Institutional and Staff Culture on Addressing Sexual Abuse in Custody

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objectives	<p>Define and identify components of institutional culture</p> <p>Define how institutions perceive sexuality and sexual violence</p> <p>Recognize and understand staff perspectives on inmate sexuality and sexual violence</p>	
Objectives	<p>Describe the collision of institutional culture, the code of silence and responses to inmate sexual violence</p> <p>Define the impact of staff and agency culture on addressing sexual violence</p>	
Institutional Culture	<p>An institution's culture is the sum total of the attitudes, beliefs, traditions, symbols, ceremonies and prejudices of current and past staff, the character of the surrounding community and work environment, the history of the operations and the events in the institution and the personalities and ethics of leaders, formal and informal, both past and present</p>	<p>The culture can be positive or negative and will differ among institutions in the same state and in the same region.</p> <p>Culture can resist change, or embrace change.</p> <p>In order to change the culture, the leader (Warden/ Superintendent/ other high level officials) must first recognize, understand, and appreciate the existing culture. Observing relationships within the institution - staff to staff, inmate to inmate and staff to inmates - will provide insight on culture.</p>
Components of Culture	<p><u>Beliefs</u>: Shared Explanations of Experience</p>	<p>Highlight the difference between a belief and a</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<ul style="list-style-type: none"> Example: You can't be promoted by always bringing the boss bad news <p><u>Values</u>: What is considered right and good</p> <ul style="list-style-type: none"> Example: If it's offenders vs. staff, the decision supports the staff member 	value.
More Components	<p><u>Norms</u>: Shared Rules, "the way things are done"</p> <ul style="list-style-type: none"> Example: Don't volunteer for assignments <p>So deeply held that they aren't even noticed unless they are violated</p> <p>Norms are often more powerful than formal sanctions</p>	
Factors that Influence Institutional Culture		<p>This is a visual representing the factors that influence culture.</p> <p>The factors that influence the function and operations within a facility, make up the institutional culture. This chart reflects major influences.</p> <p>In this section we will discuss the human factors influencing the culture of the institution, and thus the factors that influence staff sexual misconduct. It is critical for both administrators and investigators to be aware of these complex factors which</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>include:</p> <ul style="list-style-type: none"> • The unique nature of staff sexual misconduct investigations; and • The elements that comprise the dynamics of staff/inmate relationships.
How Institutions Perceive Sexuality and Sexual Violence	<p>How an institution thinks about sexuality and sexual violence is reflected in their policies</p> <ul style="list-style-type: none"> • Visiting – family/ conjugal • Access to reading material • Masturbation • Physical closeness (touching, fondling etc.) • Sexual Abuse 	Tell participants to start thinking about the policies in their facilities and their influence in the culture of the facility.
Family/ Conjugal Visiting Policies	<p>California DOC</p> <p>Eligible inmates may apply for family visits. These visits take place in an apartment type setting and are for up to 43 hours in duration. Family visits include only the inmate's immediate approved family members. The inmate purchases food from the institution. The inmate and their family may review the different menus and make purchases prior to the visit. Minors may not normally participate in a family visit without the presence of another adult member of the inmate's immediate family. Exceptions may be made on a case-by-case basis.</p>	<p>This is just an example of one such policy.</p> <p>Source: National Training Curriculum: Responding to Inmate on Inmate Sexual Abuse Curriculum "Institutional Culture" NIC and the Project on Addressing Prison Rape (July 2008)</p>

Training Curriculum: Responding to Sexual Abuse of Inmates in Custody: Addressing the Needs of Men, Women and Gender Non-Conforming Populations
The Project on Addressing Prison Rape

TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Family/ Conjugal Visiting Policies	<p>Mississippi DOC</p> <p>Conjugal visits are allowed to eligible legally married inmates (married is defined as the union of a <i>man and a woman</i>). The spouse of the inmate must provide proof of marriage. Inmates are given one hour for a conjugal visit and provided with the following items: soap, condoms, tissue, sheets, pillowcase, face towel and a bath towel. The inmate and spouse are searched before and after each visit for security reasons.</p> <p>Offenders must be "A" or "B" custody and/or have at least a Behavior Management Level of 3 to be eligible for a conjugal visit.</p> <p>An offender will have no findings of guilt for a Rule Violation Report for six months to be eligible for a conjugal visit.</p>	<p>Discussion Questions:</p> <p>How might these policies affect LGBT inmates?</p> <p>What does it say about the culture of the agency or state?</p> <p>Source: National Training Curriculum: Responding to Inmate on Inmate Sexual Abuse Curriculum "Institutional Culture" NIC and the Project on Addressing Prison Rape (July 2008)</p>
Family Visitation Policies	<p>Ohio DOC</p> <p>Mom and Kids Day: During the month of December and for Mother's Day, incarcerated mothers, children, and other family members are permitted to spend the entire day together to celebrate the holiday. A variety of games, conversation, food and entertainment provide the families with an atmosphere of love, closeness, and sharing. This special visitation program promotes family reunification.</p> <p>The Achieving Baby Care Success (ABC'S) Program allows incarcerated</p>	<p>Discussion Questions:</p> <p>What can you discern about the agency's culture from these policies?</p> <p>Have participants do a quick read and then take volunteers or call on participants to get their views.</p> <p>Source: National Training Curriculum: Responding to Inmate on Inmate Sexual Abuse Curriculum "Institutional Culture" NIC and the Project</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	pregnant inmates to maintain custody of their infants after they are born. Each participant has an individualized treatment plan so that the problems that resulted in her incarceration are thoroughly addressed. Hands-on parenting instruction is available for every mother in the program.	on Addressing Prison Rape (July 2008)
Publication Policies	<p>Montana DOC</p> <p>Prohibits mail, including publications, that contain or feature nudity or sexually explicit material</p> <p>North Carolina DOC</p> <p>Prohibit materials which impede inmate rehabilitation</p> <p>Any item or depiction which encourages or reinforces the perception of other persons as potential objects for physical or sexual aggression</p>	Source: National Training Curriculum: Responding to Inmate on Inmate Sexual Abuse Curriculum "Institutional Culture" NIC and the Project on Addressing Prison Rape (July 2008)
Masturbation Policies	<p>Ohio DOC</p> <p>Prohibits seductive or obscene acts, including indecent exposure and masturbation</p> <p>Arkansas DOC</p> <p>Does not have a specific rule violation for masturbation but does have rules regarding indecent exposure or making profane/obscene gestures to a staff member</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Touching Policies	<p>Iowa DOC</p> <p>Prohibits sexual contact or relationships with another person through gestures, such as, kissing, petting, etc.</p> <p>West Virginia DOC</p> <p>Prohibits "Sexual Acts – Engaging or attempting to engage in any sexual act, including kissing or fondling, with any other person"</p> <p>Dakota Women's Correctional Rehab Center</p> <p>Strict "no touch" policy which includes hugs, handshakes, and other non-sexual touching. Limited exception for hair-braiding at specific times</p>	<p>Source: National Training Curriculum: Responding to Inmate on Inmate Sexual Abuse Curriculum "Institutional Culture" NIC and the Project on Addressing Prison Rape (July 2008)</p>
Sexual Assault Policies	<p>Tennessee DOC</p> <p>The act of forcing or coercing (through violence or threats of violence) an individual to submit to sexual intercourse (vaginal or anal) or other sexual acts to include cunnilingus and fellatio. It shall also include the sex act of forcibly introducing foreign objects into an individual's body cavity (vaginal or anal) without the victim's consent</p> <p>Michigan DOC</p> <p>Sexual penetration of, or sexual contact with, another person without that person's consent; non-consensual physical contact for sexual purposes</p>	<p>Source: National Training Curriculum: Responding to Inmate on Inmate Sexual Abuse Curriculum "Institutional Culture" NIC and the Project on Addressing Prison Rape (July 2008)</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Continuum of Staff Responses to Sexual Violence	<p>Sympathetic Staff Well trained Recognizes symptoms of sexual assault Referrals for medical and mental health Takes preventive actions</p> <ul style="list-style-type: none"> Increases rounds Requests moves for inmate victims <p>Sees need for victim services</p> <p>Contributor Staff Use rape or threat or rape to control Uses housing assignments to control inmates Threat to house with sexual predators to gain compliance Reward predators with “fresh meat” when they comply Tolerate coercive sexual activity as part of the divide and conquer technique Indicate disrespect for victims by using derogatory names (fag, punk, queen)</p>	<p>Discussion: Ask participants if they have any additional characteristics to add to these lists.</p>
	<p>Staff perceptions of sex and sexuality have an impact on institutional culture</p>	<p>Activity: Consider the following story and identify culture issues.</p> <p>Instructor should decide whether to do this activity in small groups or individually. If individually, instructor should print out this story and add to materials for all participants, if group instructor should just print out a few copies and have groups share.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p><i>From</i> http://www.cnn.com/2013/02/05/justice/new-york-guard-inmates/</p> <p>A pregnant prison guard was accused of having sex with an incarcerated cop killer, according to a source close to the investigation.</p> <p>Federal Bureau of Prisons officer Nancy Gonzalez, 29, was arrested on suspicion of unlawful sexual abuse on a ward, according to a federal complaint.</p> <p>Gonzalez had relationships in 2012 with two inmates at the Metropolitan Detention Center in Brooklyn, authorities said.</p> <p>The federal complaint did not mention the names of the inmates, but the source told CNN that one of them is Ronell Wilson, the presumed father. He was convicted of killing two police officers in March 2003.</p> <p>In a recorded call, according to the complaint, Gonzalez told the second inmate about her pregnancy, allegedly by the other inmate: "I took a chance because I was so vulnerable and wanted to be loved and now I am</p>

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		<p>carrying his child."</p> <p>The guard said she "kind of got sucked into his world" and "felt like, well, why not give him a child as far as giving him some kind of hope," according to the complaint.</p> <p>"People find love in the strangest places, and people get together in the most difficult circumstances," Gonzalez's attorney, Anthony Ricco, told CNN affiliate NY1.</p> <p>"We live in a society where these events happen. They are unusual, but they are not uncommon."</p> <p>Gonzalez allegedly told colleagues she became pregnant in June 2012, while she was having a relationship with Wilson. She is now eight months pregnant.</p> <p>The Long Island resident was released on \$150,000 bond after an initial appearance.</p> <p>An affidavit states that there are videotapes showing Gonzalez and the inmate spending several minutes alone together at various times. Other witnesses say they were</p>

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		<p>seen "hugging and kissing."</p> <p>Gonzalez could face a maximum sentence of 15 years if convicted of the charge.</p> <p>"She's really distraught. I mean, she's in the worst place that a woman can be eight months pregnant," Ricco told NY1.</p> <p><i>Update:</i> In July, 2013 Wilson was again sentenced to death.</p>
How Staff Perceive Sex and Sexuality	<p>Influences on staff definitions of rape</p> <p>Embarrassment</p> <p>Not understanding coerced consent</p> <p>Choose to ignore because they feel it is consensual</p> <p>Masculinity</p>	<p>Sources:</p> <p>United States. National Institute of Corrections. Staff Perspectives: Sexual Violence in Adult Prisons and Jails. Developed by The Moss Group Inc., under NIC cooperative agreement 05S18GJ10. Washington, DC: June 2006.</p> <p>Eigenburg, Helen M. "Correctional Officers and Their Perceptions of Homosexuality, Rape and Prostitution in Male Prisoners." The Prison Journal. 80:4 (December 2000): 415-433.</p>
How Staff Perceive Sex and Sexuality	<p>Attitudes about homosexuality</p> <p>Inmates having sex are heterosexual and responding to sexual deprivation</p> <p>Heterosexual men may choose to participate in same-sex behavior in certain instances</p>	<p>Sources:</p> <p>United States. National Institute of Corrections. Staff Perspectives: Sexual Violence in Adult Prisons and Jails. Developed by The Moss Group Inc., under NIC cooperative agreement 05S18GJ10. Washington, DC: June 2006.</p> <p>Eigenburg, Helen M.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	Inmates performing sexual acts consensually are homosexual	"Correctional Officers and Their Perceptions of Homosexuality, Rape and Prostitution in Male Prisoners." The Prison Journal. 80:4 (December 2000): 415-433.
How Staff Perceive Sex and Sexuality	Attitudes towards prostitution Engage in acts of their own free will Engage in sex for protection Prostitution is <u>not</u> a response to deprivation Prostitutes are inmates who need money for survival	Sources: United States. National Institute of Corrections. Staff Perspectives: Sexual Violence in Adult Prisons and Jails. Developed by The Moss Group Inc., under NIC cooperative agreement 05S18GJ10. Washington, DC: June 2006. Eigenburg, Helen M. "Correctional Officers and Their Perceptions of Homosexuality, Rape and Prostitution in Male Prisoners." The Prison Journal. 80:4 (December 2000): 415-433.
How Staff Perceive Sex and Sexuality	Attitudes about inmates as victims Complications confirming incident leads to non-belief Inmates use claims of sexual violence against inmates they don't like Inmates use sexual violence as leverage to move facilities or cells	Sources: United States. National Institute of Corrections. Staff Perspectives: Sexual Violence in Adult Prisons and Jails. Developed by The Moss Group Inc., under NIC cooperative agreement 05S18GJ10. Washington, DC: June 2006. Eigenburg, Helen M. "Correctional Officers and Their Perceptions of Homosexuality, Rape and Prostitution in Male Prisoners." The Prison Journal. 80:4 (December 2000): 415-433.
How Staff Perceive Sex and Sexuality	Attitudes about domestic violence Relationships begin as consensual and turn coercive over time	Sources: United States. National Institute of Corrections. Staff Perspectives: Sexual Violence in Adult Prisons and Jails.

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>There is shame after the initial act</p> <p>Embarrassment or worry about getting discovered</p> <p>Disapproval from family</p> <p>Discomfort with the behavior</p>	<p>Developed by The Moss Group Inc., under NIC cooperative agreement 05S18GJ10. Washington, DC: June 2006.</p> <p>Eigenburg, Helen M. "Correctional Officers and Their Perceptions of Homosexuality, Rape and Prostitution in Male Prisoners." The Prison Journal. 80:4 (December 2000): 415-433.</p>
How Staff Perceive Sex and Sexuality	<p>Causes of sexual violence</p> <p>Interpersonal conflicts</p> <p>Exploitive nature of inmate culture</p> <p>Pursuit of power</p> <p>Respect</p> <p>Sex as a commodity</p> <p>Forced abstinence</p>	<p>Sources:</p> <p>United States. National Institute of Corrections. Staff Perspectives: Sexual Violence in Adult Prisons and Jails. Developed by The Moss Group Inc., under NIC cooperative agreement 05S18GJ10. Washington, DC: June 2006.</p> <p>Eigenburg, Helen M. "Correctional Officers and Their Perceptions of Homosexuality, Rape and Prostitution in Male Prisoners." The Prison Journal. 80:4 (December 2000): 415-433.</p>
How Staff Perceive Sex and Sexuality	<p>Where sexual violence happens</p> <p>Multi-person housing</p> <p>Chapel</p> <p>Showers</p> <p>Kitchens</p> <p>Work areas</p> <p>Cells</p> <p>Day-rooms</p>	<p>Sources:</p> <p>United States. National Institute of Corrections. Staff Perspectives: Sexual Violence in Adult Prisons and Jails. Developed by The Moss Group Inc., under NIC cooperative agreement 05S18GJ10. Washington, DC: June 2006.</p> <p>Eigenburg, Helen M. "Correctional Officers and Their Perceptions of Homosexuality, Rape and Prostitution in Male Prisoners." The Prison Journal. 80:4 (December 2000): 415-433.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
How Staff Perceive Sex and Sexuality	<p>Challenges for staff</p> <p>Knowing and understanding their own values and attitudes</p> <p>Reporting may be at odds with ethical obligations</p> <p>Identifying consent and non-consensual sexual activity</p>	<p>Sources:</p> <p>United States. National Institute of Corrections. Staff Perspectives: Sexual Violence in Adult Prisons and Jails. Developed by The Moss Group Inc., under NIC cooperative agreement 05S18GJ10. Washington, DC: June 2006.</p> <p>Eigenburg, Helen M. "Correctional Officers and Their Perceptions of Homosexuality, Rape and Prostitution in Male Prisoners." The Prison Journal. 80:4 (December 2000): 415-433.</p>
How Staff Perceive Sex and Sexuality	<p>Attitudes specific to staff in women's facilities</p> <p>Dynamics of female sexual violence are not known</p> <p>Sexual coercion happens more than violence</p> <p>Aggressive women are not always coercive</p> <p>Intimidation is the most used form of coercion</p> <p>Sexual violence is too difficult to detect</p> <p>More likely to report abuse - do not abide by the no snitching rule</p>	<p>Sources:</p> <p>United States. National Institute of Corrections. Staff Perspectives: Sexual Violence in Adult Prisons and Jails. Developed by The Moss Group Inc., under NIC cooperative agreement 05S18GJ10. Washington, DC: June 2006.</p> <p>Eigenburg, Helen M. "Correctional Officers and Their Perceptions of Homosexuality, Rape and Prostitution in Male Prisoners." The Prison Journal. 80:4 (December 2000): 415-433.</p>
What does this have to do with culture?	<p>If staff don't define conduct as sexual abuse and inmates don't believe staff will report or respond there will be a culture of silence and denial.</p>	<p><i>Wood v. Beauclair</i></p> <p>Former Idaho prison guard Sandra de Marti is accused of sexual harassment in</p>

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		<p>groping male inmate Conway Wood. Wood v. Beauclair, 2012 U.S. App. LEXIS 18575 (9th Cir.).</p> <p>The guard is described by the court as having a “reputation for . . . being overly friendly with the inmates.”</p> <p>She reportedly was transferred to Wood’s block and allegedly began to pursue him sexually.</p> <p>However, when Wood (who had found religion in prison) discovered that she was married, he told her that he did not want to have a personal relationship. He testified “she had to be honest with me.</p> <p>Because I did express to her before that my feelings on adultery. . . I was kind of crushed in a way because. . . I believed that we were working on something . . . that we had a future together . . . I said that we needed to back off. . . [W]e got to stop.”</p> <p>When she persisted and came into this cell and groped him, he allegedly objected and told her not to. This was followed by what Wood described as aggressive pat downs where</p>

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		<p>she fondled him.</p> <p>Discussion: What are the red flags here?</p> <p>What is an appropriate way to deal with a CO who had a reputation for being overly friendly with inmates?</p> <p>In what way was culture involved in this case?</p>
The Code of Silence Intersection		<p>This is a visual representation of the intersection of culture, staff perceptions, responding to inmate sexual violence, the inmate code of silence, and the staff code of silence.</p>
Baron v. Hickey, 242 F. Supp. 2d. 66 (D. Mass. 2003): <u>Facts</u>	<p>Baron, a corrections officer in Suffolk County House of Correction, witnessed a supervisor playing cards 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</p> <ul style="list-style-type: none"> Defaming posters claiming Baron watched child pornography; threatening phone calls; smeared feces on his car; slashed tires. <p>Hickey, another corrections officer, was the ring leader of the harassment</p>	<p>Discussion: What does this case tell you about the culture of the Suffolk County House of Correction?</p> <p>Was there a code of silence?</p> <p>Any other features of the culture you can identify?</p>

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	<ul style="list-style-type: none"> • Called Baron a “rat-fink” and threw cheese at him • Also called him a “Low down Jewish rat bastard coward” 	
Baron v. Hickey, 242 F. Supp. 2d. 66 (D. Mass. 2003): <u>Facts</u>	<p>Baron verbally complained on 30 separate occasions and submitted 20 reports in writing</p> <ul style="list-style-type: none"> • Hickey was ordered to cease harassment, but not disciplined • A supervisor told Baron to “be a man” <p>Baron was charged, and acquitted of indecent assault and battery</p> <p>Baron suspended for five days for giving food to a female inmate</p> <p>He 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 was to take place</p>	
Baron v. Hickey, 242 F. Supp. 2d. 66 (D. Mass. 2003): <u>Outcome</u>	<p>Legal Claims: 42 U.S.C. § 1983 First Amendment Due Process State law claims</p> <p>Holding The supervisors’ tolerance of harassment was a “matter of public concern,” sufficient to satisfy a First Amendment claim</p> <p>Jury awards Baron \$500,000 for severe harassment Affirmed 402 F.3d 225 (1st Cir. Mass.)</p>	<p>This decision is available free of charge at: http://law.justia.com/cases/federal/appellate-courts/F3/402/225/510084</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Battles v. Russell Cnty., 2013 WL 4029289 (M.D. Ala Aug. 7, 2013): <u>Facts</u>	<p>Plaintiff was a correctional officer who was being sexually harassed by a superior.</p> <p>Battles was also aware of many incidents of sexual activity between officers and with inmates.</p> <p>Battles broke the code of silence and complained about the sexual harassment directed at him and was thereafter subject to severe retaliation including:</p> <ul style="list-style-type: none"> • Other officers intentionally not responding to Battles' radio calls for back-up, even in dangerous situations • Pressured to resign numerous times by supervisors • Radio was once stolen from his Pod 	
Battles v. Russell Cnty., 2013 WL 4029289 (M.D. Ala Aug. 7, 2013): <u>Outcome</u>	<p>The court dismissed the 1983 claims against the county by stating that the county did not have legal authority over the employment policies of the jail</p> <p>Additionally, the title VII claims were dismissed against the county because it could not be considered an "employer" for title VII purposes</p> <p>However, individual claims against 6 supervisors who either ignored complaints or were involved in the retaliation remain open</p>	
The Impact of Culture on Responses to Sexual Abuse in Custody	<p>Culture plays a role in sexual violence in prisons and jails</p> <p>Culture can either support or obstruct</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>efforts to address sexual violence</p> <p>Culture has an impact on:</p> <ul style="list-style-type: none"> • Safety, security, reporting, investigatory practices, support for the victim 	
Why is Culture Important?	<p>Provides a context for behaviors of staff and inmates</p> <p>Attitudes and conduct are shaped by the culture</p> <p>Addressing the problem in a systematic way is about cultural change</p> <p>Involves shifting the existing norms</p> <p>Culture change is the challenge for leadership</p>	
Addressing Culture	<p>Acknowledge its existence</p> <p>Assess the culture</p> <p>Education</p> <p>Plans of action</p> <p>Policies and procedures</p> <p>Operations match policies</p> <p>Role modeled behavior</p> <p>Meaningful zero tolerance with consequences</p> <p>Effective investigations</p> <p>Protection from retaliation</p>	
How to Change Culture	<p>Establish a vision: make it a priority</p> <p>Redefine the issue:</p> <ul style="list-style-type: none"> • It's not about sex, it's about <u>public safety</u> and <u>security</u> • It's not about sex, it's about the protection of inmates under our 	

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	<p>care and control</p> <p>Public safety and security are compromised whenever boundaries break down</p> <p>Sexual violence is the most extreme form of violation boundaries</p>	
How to Change Culture	<p>Educate Staff</p> <p>For managers: there is liability</p> <p>For supervisors and line staff: it's a security/ public safety issue</p> <p>Educate Inmates</p> <p>Sex in prison is a <u>safety</u> issue</p> <p>Sex in prison is a <u>public health</u> issue</p> <p>Sex in prison can be <u>life and death</u></p>	<p>For staff there is also administrative discipline and potential criminal liability for failure to report or accessory liability. However, do your best to emphasize <i>positive</i> reasons to change culture, not simply punishments for a failure to.</p>
Tools for Changing Culture	<p>Train and support first line supervisors in their efforts to supervise staff, and recognize signs of sexual violence</p> <p>Ensure that there are open dialogues specific to the issue, using regular staff meetings, regular discussions and sharing of information and concerns, and any other format that will keep staff talking about the issue</p> <p>Ensure that practices match policy and procedure</p> <p>Model ethical behavior and insist that all managers and supervisors do the same</p>	<p>Activity:</p> <p>Break the group up into small discussion groups of 3-4 people.</p> <p>Have the group discuss the impact of culture, silence, retaliation, and inmate sexual safety on line staff and how to discuss these issues with line staff.</p> <p>Have the groups provide feedback about tactics that were successful and not successful.</p>
Summary	What is the culture around inmate sexuality in your agency?	<p>Evaluation:</p> <p>Remind participants to fill out this section of their</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>What policies exist in relation to inmate sexuality?</p> <p>Is there a culture of silence amongst inmates? Amongst correctional officers?</p> <p>What steps will you take to change the culture in your institution?</p>	<p>evaluation of the materials covered, activities and the performance of the instructor.</p>

Module 6: Implications of Inmate Culture on Addressing Sexual Abuse in Custody

Time: 1 hour

Recommended Faculty:

Lead Trainer, PREA Coordinator or Monitor, former inmate, or community advocate

Resources:

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

Participant Handouts:

- PowerPoint®
- Examining the Characteristics of Male Sexual Assault Targets in a Southern Maximum Security Prison
- The Evolving Nature of Prison Argot and Sexual Hierarchies
- Rape Among Incarcerated Men: Sex and Coercion and STDs
- Masturbation Uncovered: Autoeroticism in a Female Prison
- Sexual Assault and Coercion Among Incarcerated Women Prisoners
- The Changing Nature of Interpersonal Relationships in Women's Prisons
- Lesbianism Among Female Prisoners: Participants and Non-Participants.
- Sexual Coercion Reported by Women in Three Midwestern Prisons.
- Sexual Coercion Rates in Seven Midwestern Prison Facilities for Men
- A Comparison of Sexual Coercion Experiences Reported by Men and Women in Prison

PowerPoint® Programs:

Module 6: Implications of Inmate Culture on Addressing Sexual Abuse in Custody

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objectives	Describe inmate perspectives of sexual violence, power and sexual behavior in custody Identify how inmate culture impacts sexual behavior in institutional settings	
Inmate's Perception of Sex in Prison	S/he liked it S/he had it coming Shouldn't a been weak Was that way anyway Them instead of me	Source: Hensley, et. al., "The Evolving Nature of Prison Argot and Sexual Hierarchies." The Prison Journal. 83:3 (September 2003): 289-300.
Inmate's Perception of Sex in Prison	Whadda you gonna do? Shame; shouldn't a happened New here. S/he'll figure it out Doesn't stand a chance in here	Source: Hensley, et. al., "The Evolving Nature of Prison Argot and Sexual Hierarchies." The Prison Journal. 83:3 (September 2003): 289-300.
Dynamics of Sex in Prison	Manhood & Masculinity Power Dynamics Sexual Roles - Dominance & Submission Inmate Value Systems Theatre of Bullying Racism	Source: Hensley, et. al., "The Evolving Nature of Prison Argot and Sexual Hierarchies." The Prison Journal. 83:3 (September 2003): 289-300.
Dynamics of Sex in Prison	LGBTI Populations <ul style="list-style-type: none"> • Vulnerabilities • Coping Strategies • Challenges w/ Promiscuity • Homophobia • Racism • Religion Youthful Offenders	Source: Hensley, et. al., "The Evolving Nature of Prison Argot and Sexual Hierarchies." The Prison Journal. 83:3 (September 2003): 289-300.

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Inmate's Perception of Sex in Prison	<p>Short Film</p> <p>No Escape: Prison Rape (A Documentary)</p> <p>Found online at: http://www.youtube.com/watch?v=0MOtz-eJIPE </p>	<p>Discussion:</p> <p>Ask for feedback from participants.</p>
The Reality is...	<p>Currently, approximately 7 million people are under some form of criminal justice supervision</p> <p>May be:</p> <ul style="list-style-type: none"> • Daughter, son, brother, sister, father, mother, friend, relative of close friend <p>Some Reasons:</p> <ul style="list-style-type: none"> • Substance abuse related, DUI, non-paid traffic violations-FTA, false ID, mentally challenged, bad choices, bad child, dare devil, criminal 	
What Would You Do?	<p>Who is responsible to ensure safe and secure environments regardless of what inmates have done?</p>	<p>Activity:</p> <p>Break the group up into smaller groups of 4-5 and have the smaller groups discuss how their agencies describe to their staff the responsibility every staff member has in protecting inmates.</p> <p>When?</p> <p>How often?</p> <p>What type of language is used?</p>
Why Female Inmates Engage in Sex?	<p>Consensual</p> <p>For sex; related to deprivation</p> <p>As a sedative, to forget</p>	<p>Source:</p> <p>Webinar: "The context of sexual violence in facilities for women & girls" by Barbara Owen February 2008</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Romantic, partner – part of larger relationship</p> <p>Experimental With same gender- too dangerous to try at home; have a male partner outside</p> <p>Hurt/ abused by men, turning to women</p>	
Why Female Inmates Engage in Sex?	<p>Strategic Acceptance into certain crowd, 'family'</p> <p>Favors - shared commissary, other benefits</p> <p>Attention, companionship, 'love'</p> <p>As a way to establish dominance, exercise power, imitate what they've experienced</p> <p>Coercive For protection from person wanting sex or from others</p> <p>Based on past history - not understanding it's possible to refuse; believing always dangerous to refuse</p> <p>Mentally ill, unable to cope or respond</p>	<p>Source: Webinar: "The context of sexual violence in facilities for women & girls" by Barbara Owen February 2008</p>
Why Female Inmates Engage in Sex?	<p>Assaultive Obtained by threats of harm</p> <p>Obtained by force, assaults with objects [rare in women's facilities]</p>	<p>Source: Webinar: "The context of sexual violence in facilities for women & girls" by Barbara Owen February 2008</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	Part of battering relationship/domestic violence	<p>Force by objects are rare in women's facilities but do happen</p> <p>Discussion Question: Ask participants what might differ between males and females in their reasons for engaging in sex while in custody.</p>
Why Male Inmates Engage in Sex?	<p>Forced Abstinence Celibate while in prison</p> <p>Does not participate in any sexual behavior</p> <p>Denial of sexual appetite</p> <p>Prohibition on masturbation</p>	<p>Discussion: If there is a prohibition on masturbation in your agency or facility, what is acceptable sexual behavior when you are forcing abstinence?</p> <p>Sources:</p> <p>United States. Department of Justice/ National Institute of Justice. <u>The Culture of Prison Sexual Violence</u>. Comp. Mark Fleisher and Jessie Krienert. Washington, DC: November 2006.</p> <p>United States. Department of Justice/ Bureau of Justice Statistics. <u>HIV in Prisons, 2004</u>. Comp. Laura Maruschak. Washington, DC: November 2006.</p> <p>United States. Department of Justice/ Bureau of Justice Assistance. <u>Sexual Violence in the Texas Prison System</u>. Comp. James Austin, et. al,. Washington, DC: September 2006.</p> <p>Hensley, et. al,. "Examining the Characteristics of Male Sexual Assault Targets in a Southern Maximum Security Prison." <u>Journal of Interpersonal Violence</u>. 20:6 (June 2005): 667-679.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		Hensley, et. al., "The Evolving Nature of Prison Argot and Sexual Hierarchies." The Prison Journal. 83:3 (September 2003): 289-300.
Why Male Inmates Engage in Sex?	<p>"Gay for the Stay" More accepted in prison</p> <p>Peer pressure</p> <p>Bi-curious - a straight person curious about and will try a same sex relationship</p> <p>Fit In, Everybody Does It Consensual</p> <p>Sex related to deprivation</p> <p>Companionship</p> <p>Favors and/or benefits</p>	<p>Sources:</p> <p>United States. Department of Justice/ National Institute of Justice. <u>The Culture of Prison Sexual Violence</u>. Comp. Mark Fleisher and Jessie Krienert. Washington, DC: November 2006.</p> <p>United States. Department of Justice/ Bureau of Justice Statistics. <u>HIV in Prisons, 2004</u>. Comp. Laura Maruschak. Washington, DC: November 2006.</p> <p>United States. Department of Justice/ Bureau of Justice Assistance. <u>Sexual Violence in the Texas Prison System</u>. Comp. James Austin, et. al.,. Washington, DC: September 2006.</p> <p>Hensley, et. al., "Examining the Characteristics of Male Sexual Assault Targets in a Southern Maximum Security Prison." Journal of Interpersonal Violence. 20:6 (June 2005): 667-679.</p> <p>Hensley, et. al., "The Evolving Nature of Prison Argot and Sexual Hierarchies." The Prison Journal. 83:3 (September 2003): 289-300.</p>
Why Male Inmates Engage in Sex?	<p>Protection Strategic to get things</p> <p>Individual - "find a friend/partner" to take under wing</p> <p>Fear from others wanting sex</p>	<p>Sources:</p> <p>United States. Department of Justice/ National Institute of Justice. <u>The Culture of Prison Sexual Violence</u>. Comp. Mark Fleisher and Jessie Krienert. Washington, DC: November 2006.</p> <p>United States. Department of</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Afraid to refuse</p> <p>Group affiliation</p> <p>Sex with Staff</p> <p>Employee</p> <p>Contractor</p> <p>Vendor</p> <p>Intern</p> <p>Volunteer</p>	<p>Justice/ Bureau of Justice Statistics. HIV in Prisons, 2004. Comp. Laura Maruschak. Washington, DC: November 2006.</p> <p>United States. Department of Justice/ Bureau of Justice Assistance. Sexual Violence in the Texas Prison System. Comp. James Austin, et. al,. Washington, DC: September 2006.</p> <p>Hensley, et. al,. "Examining the Characteristics of Male Sexual Assault Targets in a Southern Maximum Security Prison." <i>Journal of Interpersonal Violence</i>. 20:6 (June 2005): 667-679.</p> <p>Hensley, et. al,. "The Evolving Nature of Prison Argot and Sexual Hierarchies." <i>The Prison Journal</i>. 83:3 (September 2003): 289-300.</p>
Differences for Short Term Facilities/ Jails	<p>May have less serious sexual relationships</p> <p>More sexual acting out directly off the street</p> <p>More drug/drug withdrawal influenced sexual behaviors</p>	
Differences for Short Term Facilities/ Jails	<p>More crowding & less opportunity for staff to observe</p> <p>Inmates less affected by concern with long-term safety & reputation within facility</p> <p>Transient Nature of Jails leads to greater anonymity</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
The Impact of Inmate Culture	Peer Pressure Dangers in refusal, reporting [snitching] Attitudes Values Beliefs Norms Language Code of Silence Criminal Thinking Theatre of the Absurd	
The Impact of Inmate Culture	Survival Protection Group Affiliations Companionship/ Friend Reputation Fear Deprivation Curiosity/Exploration	
	Challenges to Changing Inmate Culture	Activity: Break participants into small groups to answer the following questions: <ul style="list-style-type: none"> • What are the challenges to addressing inmate culture? • What are the cultural/social barriers to addressing healthy sexual behaviors in custody? • What would you do differently if you were a long (or short) term facility? Discuss the answers as a large group.

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Summary	<p>Why does addressing inmate culture matter?</p> <p>What impact does changing inmate culture have on sexual abuse in custody?</p> <p>What impact does changing inmate culture have on implementing the standards?</p>	<p>Evaluation:</p> <p>Remind participants to fill out this section of their evaluation of the materials covered, activities and the performance of the instructor.</p>

Module 7: Gender and Victimization

Time: 45 minutes

Recommended Faculty:

PREA Coordinator or Monitor, social worker or mental health clinician or community crisis advocate

Resources:

LCD projector, computer and media screen

Participant Handouts:

- PowerPoint®
- The Neurobiology of Sexual Assault

PowerPoint® Programs:

Module 7: Gender and Victimization

Training Curriculum: Responding to Sexual Abuse of Inmates in Custody: Addressing the Needs of Men, Women and Gender Non-Conforming Populations
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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objectives	<p>Demonstrate an understanding of gender-influenced socialization, communication styles and behaviors of men, women and gender non-conforming individuals</p> <p>Explore past abuse histories & implications for institutional victimization</p> <p>Describe vulnerable victims and implications</p> <p>Identify staff characteristics and behavior that contributes to inmate victimization</p>	
	Gender-influenced Socialization, Communication Styles and Behaviors	Explain briefly why this is relevant to the participants' work (e.g. Helps to understand better the inmates you are working with and to create more effective policies).
Men	<p>Guard inner feelings</p> <p>Emphasis on suppression of emotions considered weak</p> <p>Identity based on defining self with focus on independence, self-sufficiency, autonomy</p> <p>Reluctant to ask for help</p> <p>Non-verbal</p> <p>Focus on strategy</p> <p>More able to express anger;</p>	These generalizations will differ for gender non-conforming folks.

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	less able to express fear, anxiety, sadness	
Women	<p>Emotionally expressive, even if emotions are displaced or reactive</p> <p>Identity based on defining self in relation to others; survival in inter-dependence</p> <p>Emphasis on connection</p> <p>More likely to ask for help</p> <p>Often verbal; attempt resolution thru speech</p> <p>More able to express feelings, weaknesses, vulnerability, confusion</p>	
	Past Victimization Histories: Implications for Institutional Victimization	
Previously Victimized	<p>Often have:</p> <p>A history of <u>early</u> victimization - family, neighborhood, school</p> <p>Exposure to aggression, dominance, & control</p> <p>Distorted view of self & relationships</p> <p>Merged concepts of love & aggression</p>	When we discuss victimization—we mean all victimization (sexual, physical etc.)
Abuse Histories: Men	History of abuse by parents or guardians	Source: National Training Curriculum:

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Involvement in subsequent childhood or adolescent aggression & delinquency</p> <p>Connection between sexual/ physical victimization & aggressive & self-destructive behavior</p> <p>Report past abuse associated with violent crime</p>	<p>Responding to Inmate on Inmate Sexual Abuse Curriculum "Impact of Past Victimization" NIC and the Project on Addressing Prison Rape (July 2008)</p>
Abuse Histories: Men	<p>Defend against feelings associated with victimization (shame, stigma)</p> <p>Victimization experience falls outside gender role of being strong & in control</p> <p>May have fears about sexual identity & preference</p> <p>Feel the best defense is a good offense</p> <p>May imitate their aggressors</p>	<p>Source: National Training Curriculum: Responding to Inmate on Inmate Sexual Abuse Curriculum "Impact of Past Victimization" NIC and the Project on Addressing Prison Rape (July 2008)</p>
Implications: Men	<p>Feel shame & denial</p> <p>Felt (or were) unheard & unrecognized as abuse victims</p> <p>Guard feelings to mask vulnerability</p> <p>Are acutely aware of prison code & their ranking inside</p> <p>Fear that if they come forward they will be seen as gay (if male perpetrator)</p>	<p>Discussion:</p> <p>How do you think past abuse histories and implications differ for women?</p> <p>What is the impact on staff in custodial settings?</p> <p>Source: National Training Curriculum: Responding to Inmate on Inmate Sexual Abuse Curriculum "Impact of Past Victimization" NIC and the Project on Addressing Prison Rape (July 2008)</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Abuse Histories: Women	<p>History of abuse by parents/guardians; other family; friends of family</p> <p>Involvement in subsequent childhood or adolescent delinquency & substance abuse</p> <p>Often have prior history of abuse in institutional or inpatient settings</p> <p>Abuse begins in childhood; continues into adulthood with intimate partners & strangers</p>	<p>Source: National Training Curriculum: Responding to Inmate on Inmate Sexual Abuse Curriculum "Impact of Past Victimization" NIC and the Project on Addressing Prison Rape (July 2008)</p>
Abuse Histories: Women	<p>Sexual molestation increases risk for delinquency, addiction, offending, and early offending</p> <p>Report violent crime associated with abusive associates, male partners</p> <p>May imitate their aggressors</p> <p>At risk for unhealthy relationships with authority figures, based on perceptions of their power to harm <u>or</u> to help</p>	<p>Discussion: Have participants consider a story developing a history of abuse and ask the group what the implications of such abuse might be. This exercise can involve a male, female or gender non-conforming individual.</p> <p>One possible story to use is Mary Doe in Louisiana. Note—this case involves a juvenile.</p> <p>The point of this exercise is not to determine what implications Mary Doe <i>actually</i> had, but just to have participants think and discuss in detail how an extensive history of abuse could manifest in different behaviors.</p> <p>Mary Doe, now 20 and the mother of two children,</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>suffers from several psychiatric disorders, according to testimony from doctors and information in court papers. The die was cast for a life of tragedy, according to facts presented in the case, from the time she was just out of toddlerhood.</p> <p>According to court papers and testimony, Ms. Doe was sexually molested at the age of 5 by her swimming teacher and at the age of 9 by a construction worker. During that same year, her mother was killed in an auto wreck; a year later, she was raped by an uncle and those assaults continued for two years. During that time, court papers say, the uncle gave the girl alcohol, heroin, marijuana, cocaine and methamphetamine.</p> <p>"He also tried to kill her on three different occasions, once trying to slit her throat," the court papers read, going on to say that at the age of 11 she was raped by her step-sister's cousin. In addition, she was largely incarcerated from the ages of 10 through 18 in seven different facilities.</p> <p>Source: http://www.tri-parishtimes.com/news/article_ca_005374-f953-11e2-9168-001a4bcf887a.html?TNNoMobile</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Implications: Women	<p>Difficulty adjusting to coercive, invasive, restrictive environments</p> <p>Lack of right to privacy, cell searches, and bodily searches may replicate past abuse</p> <p>Constant triggers</p> <p>Vulnerable to abusive authority figures</p> <p>Concern with how reporting may interrupt relationships (calls and visits)</p>	Source: National Training Curriculum: Responding to Inmate on Inmate Sexual Abuse Curriculum "Impact of Past Victimization" NIC and the Project on Addressing Prison Rape (July 2008)
Implications: Women	<p>Faced with sexual abuse situations</p> <ul style="list-style-type: none"> • May not understand it is <u>possible</u> to refuse • May lack perception of a 'right' to refuse • May believe it is always dangerous to refuse <p>Realistic appraisal of</p> <ul style="list-style-type: none"> • Retaliation by perpetrator or their friends for non-compliance (especially with staff) • Lack of safe, non-stigmatizing response options 	
Previously Victimized People	<p>Often have:</p> <p>Deep mistrust & sense of danger</p> <p>Emotional (and for women, physical) pain</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Post-trauma effects - depression, anxiety, anger, substance abuse/addiction</p> <p>Post-traumatic Stress Disorder (PTSD)</p> <p>Past histories of institutional abuse</p> <p>Ingrained emphasis on keeping secrets</p>	
MAPPING	<p>Prison Procedures and Prior Abuse Experiences</p> <ul style="list-style-type: none"> • Bodily/body cavity searches • Observed, enforced nudity • Must obey orders; right to escalate penalties • Personal effects, living space searches • 24-hour vulnerability & lack of privacy • Restraint, seclusion, confinement • Control of contact with family • Use of force, command voice, threats 	
Potential Victim Responses to Sexual Victimization	<p>Comply, repeat victimization</p> <p>Pretend it never happened</p> <p>Seek other affiliations for protection</p> <ul style="list-style-type: none"> • other staff; gangs; protective pairing 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Withdraw from activities, associations</p> <p>Take control by deciding sexual activity is/was wanted</p> <ul style="list-style-type: none"> • Can't be forced if... 	
Potential Victim Responses to Sexual Victimization	<p>Commit violation to pull move <u>to</u> segregated housing</p> <p>Refuse to report to <u>avoid</u> segregated housing</p> <p>Seek help [where?]</p> <p>Take anger out on others</p> <p>Self-harm, suicide ideation/attempts</p>	
Contributors to Repeat Victimization	<p>Repeated sex with perpetrator(s) facilitated by</p> <ul style="list-style-type: none"> • Danger of retaliation for refusal, reporting • Responses to sexual assault/rape - numbing, PTSD, fatalism, depression • Perception of no safe remedies within the facility • Fear of being put in protective housing, of getting victim status inside, so don't report • Facility non-identification or non-response 	Fatalism is an attitude of resignation in the face of some future event or events which are thought to be inevitable.
Implications	<p>Psychological effects</p> <p>HIV/STD infections</p>	These are implications of sexual abuse in correctional settings and may impact how

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	Physical injury Pregnancy Control issues Suicide or attempts Self-harm Staff responsibilities Ethical issues <ul style="list-style-type: none"> • Reporting - medical and mental health care professionals 	inmates interact with staff.
	Vulnerable Populations	
Preparation Before You Need it	Understand <u>who</u> the vulnerable victims are Understand <u>how</u> vulnerable victims can impact the investigative process Identify <u>tools</u> which will allow you to best deal with these victims during the investigative process Identify <u>resources</u> that will be helpful to you in managing vulnerable victims; build links to these resources	
Especially Vulnerable Victims	Previously victimized Limited language ability Developmentally disabled Mentally ill	Discussion: Is this an exhaustive list? If groups were left out, ask them to explain why this

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	Hearing impaired Untreated addicts Gender non-conforming Juveniles	group is especially vulnerable. Gender non-conforming includes LGB inmates
Developmentally Disabled	Wants to please people in authority Relies on authority figures for solution Watches for clues from interviewer; wants to be friends; wants to please Real memory gaps Short attention span Quick to take blame	
Developmentally Disabled	Allow person to use their own words Do not ask leading questions Use concrete ideas (who, what, when, where, how) Be respectful, let them take their time	
Deaf/Hearing Impaired	Use a certified sign language interpreter (ADA) Consider videotaping (if not re-traumatizing) Do not use staff if not certified Ask the interpreter if they are	Do not ask a deaf or hearing impaired person to write information down. This is not an effective way of translating and understanding someone who speaks ASL.

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	comfortable with the subject matter. If not, make other arrangements	
Persons with Mental Illness	<p>Construct an environment where the victim is most likely to feel safe</p> <p>Remember that those charged with keeping the victim safe were unable to</p> <p>Have pre-interview safety planning</p> <p>Be prepared to let the victim walk/pace during the interview if safe</p> <p>Keep the interview short</p> <p>Time the interview in terms of the victim's medications & sleep patterns</p>	
Recent/Untreated Addicts	<p>Estimate time since last ingestion of substance(s)</p> <p>Know medical history and current medications</p> <p>Expect heightened sense of generalized fear, of defensiveness</p> <p>Expect lack of trust</p> <p>Expect history of severe prior victimization</p> <p>Be prepared for attention span/organization problems</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Understand that emotional reaction may not be what you expect for the story (lack of match)</p> <p>Utilize your resources for addiction prevention and recovery programs (certified)</p>	
Gender Non-Conforming	<p>Only ask questions that are absolutely necessary regarding gender</p> <p>Use identifiers the <u>interviewee</u> prefers</p> <ul style="list-style-type: none"> Gender identity is a persons' sense of their own gender, communicated to other's by their gender expression <p>Use gender neutral language (e.g., "partner" instead of girlfriend or boyfriend)</p> <p>Utilize support groups, advocates, mental health services, as resources</p> <p>Have an accurate & current base of information for making effective referrals & obtaining critical knowledge</p>	<p>Understand and do your best to accommodate if this person feels more comfortable speaking about an incident to a staff member of one gender or another. Also, be aware of prior victimization including harassment and bullying.</p>
Juveniles	<p>Be aware of their perception of the interviewer – an adult, in authority</p> <p>Know that peer relationships are their first priority</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Remember that intimacy and sexuality develop slowly; their views of sex and use of terms may be different from an adult's</p> <p>Watch for non-verbal communication. Know that inability to communicate does not equal untruth</p> <p>Be aware of prior victimization histories</p> <p>Utilize advocates, outside resources, therapists, etc.</p>	
	Staff Characteristics that May Contribute to Victimization	
Staff Characteristics	<p>Stress from daily heavy emotional demands on staff</p> <p>Burnout due to:</p> <ul style="list-style-type: none"> low morale, lack of respect, low pay, managing difficult & demanding inmates, understaffing, overtime, shift work, overcrowding, disillusionment <p>Unfulfilling private life; substance abuse</p> <p>Lack of normal support networks</p>	
Staff Characteristics	Role ambiguities: counseling and treatment responsibilities	Activity: Break group up into smaller

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>vs. surveillance and control</p> <p>Inadequate preparation for supervising offenders and understanding their complexity</p> <p>Tendency to victimize; prior abuse histories</p> <p>Inadequate supervision</p> <p>Familiarity/over-identification with offender</p> <p>Problems in personal life contributing to onset</p> <p>Personal vulnerability to manipulation or intimidation by inmate</p>	<p>groups of 4-6 participants and ask the groups to come up with strategies to detect these risk factors before an incident.</p> <p>Have the group designate one person to be a spokesperson to relay that groups strategies.</p>
Summary	<p>Gender plays important part in risk & response to victimization in institutional settings</p> <p>Past victimization and special issues can affect abuse and investigations into abuse</p> <p>Agency policies, procedures and practices can increase or decrease impact of victimization</p>	<p>Evaluation:</p> <p>Remind participants to fill out this section of their evaluation of the materials covered, activities and the performance of the instructor.</p>

Module 8: 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 Offender 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 Offender 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 8: State Criminal Laws

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objectives	<p>Identify sections of state criminal law relevant to sexual abuse of adults and youth under custodial supervision</p> <p>Understand how laws are interpreted and applied based on gender or sexual orientation/gender identity</p>	<p>Lay out what your staff could be looking at in terms of criminal and civil liability</p> <p>Some state criminal laws on sexual abuse are gendered. Clear that as a society we take male sexual assault of females much more seriously than males.</p> <p>If that is true, think about why and the impact that has on men reporting abuse.</p>
State Laws	<p>Sexual assault laws (including sodomy)</p> <p>Child exploitation</p> <p>Staff sexual misconduct laws</p> <p>Sex offender registration</p> <p>Vulnerable adult statute</p> <p>Mandatory reporting</p>	<p>These are the standard state laws that address sexual abuse.</p>
Sexual Assault	<p>Historically aimed at protecting only women, men not contemplated as victims of sexual assault</p> <p>Then</p> <ul style="list-style-type: none"> • Penetration requirement • Women had to “fight back” in order to prove assault <p>Now</p> <ul style="list-style-type: none"> • Lack of consent is element of crime <p>Complainant credibility is an issue</p>	<p>Still gendered</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Sexual Assault Law: Tennessee	<p><u>Rape</u> Tenn. Code Ann. § 39-13-503 (2005).</p> <p>(a) Rape is unlawful sexual penetration of a victim by the defendant or of the defendant by a victim accompanied by any of the following circumstances:</p> <p>(1) Force or coercion is used to accomplish the act;</p> <p>(2) The sexual penetration is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the penetration that the victim did not consent;</p> <p>(3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or</p> <p>(4) The sexual penetration is accomplished by fraud.</p>	<p>(2) Class B felony, not less than eight (8) nor more than thirty (30) years. In addition, the jury may assess a fine not to exceed twenty-five thousand dollars (\$25,000), unless otherwise provided by statute;</p> <p>Still penetration requirement – still aimed at women.</p> <p>Women cannot sexually assault men under this law.</p>
Sexual Assault Indiana	<p><u>Rape</u> Ind. Code Ann § 35-42-4-1 (West 2011).</p> <p>(a) Except as provided in subsection (b), a person who knowingly or intentionally has sexual intercourse with a member of the opposite sex when:</p> <p>(1) the other person is compelled by force or imminent threat of force;</p> <p>(2) the other person is unaware that the sexual intercourse is occurring; or</p> <p>(3) the other person is so mentally disabled or deficient that consent to sexual intercourse cannot be</p>	

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	given; commits rape, a Class B felony.	
Sodomy	<p>Prohibits certain sexual practices, traditionally aimed at same-sex sexual acts</p> <p>Still have these laws on the books:</p> <ul style="list-style-type: none"> • Many states don't define oral and anal sex as intercourse • Many states don't define sex between same sex individuals as intercourse – even if it involves penetration 	
Sodomy Law: Maryland	<p><u>Sodomy</u> Md. Code. Ann. Crim. Law. § 3-321 (West 2011).</p> <p>A person who is convicted of sodomy is guilty of a felony and is subject to imprisonment not exceeding 10 years</p>	<p><i>Davis v. State</i>, 3 H. & J. 154, 1810 WL 178, Md., December Term 1810</p> <p>"The crime of sodomy is too well known to be misunderstood, and too disgusting to be defined farther than by merely naming it."</p> <p>Not as common anymore after <i>Lawrence v. Texas</i>: found these laws to be overbroad.</p>
Sodomy Law: Alabama	<p><u>Sodomy in the first degree</u> ALA. CODE § 13A-6-63 (West 2011)</p> <p>(a) A person commits the crime of sodomy in the first degree if:</p> <p>(1) He engages in deviate sexual intercourse with another person by forcible compulsion; or</p> <p>(2) He engages in deviate sexual intercourse with a person who is incapable of consent by reason of being physically helpless or</p>	<p>This type of statute is more common now, BUT still really aimed at homosexual behavior. This term may not be cosmopolitan. The laws cannot just outlaw consensual sodomy now.</p> <p>This type of sexual conduct would not be picked up under Alabama's rape law, but will come under this sodomy law instead.</p>

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	mentally incapacitated; or (3) He, being 16 years old or older, engages in deviate sexual intercourse with a person who is less than 12 years old.	Still involves some type of force or conduct with a minor.
Child Exploitation/ Statutory Rape	Traditionally these laws were meant to protect only female youth <i>Michael M. v. Superior Court of Sonoma County</i> , 450 U.S. 464 (1981) Seventeen year old boy raped a sixteen year old girl and was prosecuted under CA statute: <ul style="list-style-type: none"> • "an act of sexual intercourse accomplished with a female not the wife of the perpetrator, where the female is under the age of 18 years." 	These statutes could still apply to youthful inmates incarcerated in adult facilities.
Child Exploitation/ Statutory Rape	Michael sued under equal protection, claiming only men could be held criminally liable Supreme Court upheld the law, citing CA's interest in preventing pregnancies <ul style="list-style-type: none"> • "We are satisfied not only that the prevention of illegitimate pregnancy is at least one of the 'purposes' of the statute, but also that the State has a strong interest in preventing such pregnancy." 	
Child Exploitation Law: California	<u>Unlawful sexual intercourse with person under 18; age of perpetrator; civil penalties</u> Cal. Penal Code § 261.5 (West 2011) (a) Unlawful sexual intercourse is	Now, laws are gender neutral and could apply to male or female perpetrators. Can also apply to youthful inmates in adult facilities.

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	an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a "minor" is a person under the age of 18 years and an "adult" is a person who is at least 18 years of age.	
Child Exploitation/ Statutory Rape	<p>Passage of Adam Walsh Act encompasses more than intercourse</p> <p>Generally covers non-physical misconduct as well as physical abuse</p> <ul style="list-style-type: none"> • photos, letter writing, online communications, voyeurism and distribution of illicit materials • fondling, kissing, inappropriate touching, sexual abuse <p>Important to understand how this applies to youth serving sentences as adults</p>	
Child Exploitation Law: Iowa	<p>Sexual abuse in the first degree</p> <p>Sexual abuse in the second degree</p> <p>Sexual abuse in the third degree</p> <p>Indecent exposure</p>	
Child Exploitation Law: Iowa	<p><u>Lascivious acts with a child</u> IOWA CODE § 709.8 (West 2011):</p> <p>It is unlawful for any person sixteen years of age or older to perform any of the following acts</p>	

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	<p>with a child with or without the child's consent unless married to each other, for the purpose of arousing or satisfying the sexual desires of either of them:</p> <ol style="list-style-type: none"> 1. Fondle or touch the pubes or genitals of a child 2. Permit or cause a child to fondle or touch the person's genitals or pubes 3. Solicit a child to engage in a sex act or solicit a person to arrange a sex act with a child. 4. Inflict pain or discomfort upon a child or permit a child to inflict pain or discomfort on the person <p>Any person who violates a provision of this section involving an act included in subsection 1 or 2 shall, upon conviction, be guilty of a class "C" felony. Any person who violates a provision of this section involving an act included in subsection 3 or 4 shall, upon conviction, be guilty of a class "D" felony.</p>	
<p>Child Exploitation Law: Iowa</p>	<p><u>Indecent Contact with a Child</u> IOWA CODE § 709.12 (West 2011)</p> <p>A person eighteen years of age or older is upon conviction guilty of an aggravated misdemeanor if the person commits any of the following acts with a child, not the person's spouse, with or without the child's consent, for the purpose of arousing or satisfying the sexual desires of either of them:</p> <ol style="list-style-type: none"> 1. Fondle or touch the inner thigh, 	

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	<p>groin, buttock, anus, or breast of the child</p> <p>2. Touch the clothing covering the immediate area of the inner thigh, groin, buttock, anus, or breast of the child</p> <p>3. Solicit or permit a child to fondle or touch the inner thigh, groin, buttock, anus, or breast of the person</p> <p>4. Solicit a child to engage in any act prohibited under section 709.8, subsection 1, 2, or 4</p> <p>The provisions of this section shall also apply to a person sixteen or seventeen years of age who commits any of the enumerated acts with a child who is at least five years the person's junior, in which case the juvenile court shall have jurisdiction under chapter 232.</p>	
Child Exploitation Laws		<p>In the context of women offenders, these laws are not always taken seriously. Look at this website of "hot" female sex offenders.</p> <p>No one is talking about "hot" male sex offenders Women not seen as criminals, boys are seen as "heros"</p>
Staff Sexual Misconduct	<p>Felony in most states</p> <p>Consent may be an issue for prosecution</p> <p>Victim credibility is an issue</p>	

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	<p>Code of Silence/Lack of corroboration</p> <p>Lack of physical evidence and timely reporting</p>	
Staff Sexual Misconduct	Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-9 Sex of perpetrator of staff sexual misconduct	<p>This is a chart of the BJS data indicating the large number of female staff involved in staff sexual abuse of men and boys.</p> <p>Trainers should pick a few of the data points for discussion.</p> <p>Finding that penalties for women are much less severe</p>
State Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody		<p>This is a map representing the penalties for staff sexual misconduct in all 50 states—as you will see red indicates felonies, blue indicates misdemeanors and the grey states indicate graduated sanctions.</p> <p>States with graduated sanctions are:</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</p>

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		<p>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>VA. CODE ANN. § 18.2-64.2 Carnal knowledge of an inmate, parolee, probationer, detainee or pretrial or post-trial offender; penalty.</p> <p>Lack of knowledge of status as offender is a defense.</p> <p>Carnal knowledge = felony (minimum of 1.5 years)</p> <p>Sexual battery = misdemeanor (not more than 1 year, fine of 2,500, or both)</p>
State Criminal Laws Prohibiting Sexual Abuse of Individuals Under Community Corrections Supervision		<p>This map represents the coverage of community corrections for staff sexual misconduct in all 50 states.</p> <p>This includes both facilities and probation and parole staff.</p>
State Criminal Laws Prohibiting Sexual Abuse of Youth Under		<p>This map represents the coverage for juvenile justice agencies for staff sexual misconduct in all 50 states.</p> <p>Depending on the inmate or</p>

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Correctional Supervision		resident, mandatory reporting statutes and vulnerable persons statutes may apply. We will discuss those later.
State Criminal Laws Prohibiting Sexual Abuse of Individuals Under Correctional Supervision: Consent as a Defense		<p>This map represents the ability to use consent of the inmate a defense to staff sexual misconduct in all 50 states.</p> <p>11 Del.C. § 1259 A person is guilty of sexual relations in a detention facility when, being an employee working at a detention facility, a contractor or employee of a contractor at a detention facility, or a volunteer at a detention facility, the person engages in consensual sexual intercourse or sexual penetration with a person in custody on the premises of a detention facility. Violation of this section shall be a class G felony.</p> <p>This is a recent change in law. Delaware used to permit inmates to be prosecuted for “consensual” sexual interactions with staff. Nevada still allows prosecution of inmates for “consensual” sex with staff.</p>
Staff Sexual Misconduct Law: Massachusetts	<p>Mass Gen. Law. Ann. 268 § 21A (West 2012)</p> <p>Officer or other employee of penal or correctional institution; sexual relations with inmate; punishment.</p> <p>An officer or other person who is</p>	<p>Rape charge: can get life</p> <p>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.</p>

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	<p>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. In a prosecution commenced under this section, an inmate shall be deemed incapable of consent to sexual relations with such person.</p>	<p>2d 358 (D. Mass. 2011): Female inmate had between 50-100 sexual encounters with a male correctional officer.</p> <p>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.</p> <p>The individual officer and the prison superintendent were found jointly liable for \$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>This is a very modest amount but an important ruling.</p>
Staff Sexual Misconduct Law: Texas	Tex. Penal Code. Ann. § 39.04 (Vernon 2012).	

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	<p>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>	
Sex Offender Registration	<p>Not considered a penalty</p> <p>Registration available for both youth 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 Offender Registration	But...	If sex offender registration is important for any group – it's

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	<p>To be registered as a sex offender, you must have been convicted of 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</p> <p>Can lead to underrepresentation of women on sex offender lists</p>	important for those who are working with vulnerable populations
Adult Sex Offender Registration Law: Texas	<p>The following offenses are registrable:</p> <ul style="list-style-type: none"> • Indecency with a child • Sexual assault • Aggravated sexual assault • Prohibited sexual conduct • Compelling prostitution • Sexual performance by a child • Possession or promotion of child pornography • Aggravated kidnapping if the actor committed the offense or engaged in the conduct with the intent to violate or abuse the victim sexually 	
Adult Sex Offender Registration Law: Texas	<ul style="list-style-type: none"> • Burglary, if the offense or conduct is punishable under subsection (d) and the actor committed the offense or engaged in the conduct with the intent to commit indecency with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct, or aggravated 	

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	<p>kidnapping</p> <ul style="list-style-type: none"> • Unlawful restraint, if the victim was under 17 years of age • Kidnapping, if the victim was under 17 years of age • Aggravated kidnapping, if the victim was under 17 years of age • Second violation for indecent exposure, unless the second violation results in a deferred adjudication • Attempt, conspiracy or solicitation to commit an offense or engage in conduct listed above. 	
Adult Sex Offender Registration Law: Texas	<ul style="list-style-type: none"> • A violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of an offense listed above. • Sex Offender Registration is NOT required for Staff Sexual Misconduct in Texas 	
Adult Sex Offender Registration Law: California	<p>Cal. Penal Code § 290</p> <p>A violation of Cal. Penal Code § 289.6 (Staff Sexual Misconduct Statute), is one of the enumerated offenses listed under section 290 and therefore does require mandatory registration.</p> <p>However, a California court has</p>	<p>Discussion:</p> <p>Have the class critique registration – but ultimately say that this is one of the only ways to identify bad COs.</p> <p>Registration lists MUST be checked.</p>

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	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).	
Mandatory Reporting Laws	<p>Mandatory reporting laws require certain individuals to report cases of physical or sexual abuse committed against children and vulnerable adults.</p> <p>Two types of statutes:</p> <ul style="list-style-type: none"> • Child Abuse • Vulnerable Adult Abuse 	<p>Discussion: Ask participants to raise their hands if they know if they are a mandatory reporter in their state.</p> <p>Discuss obligations.</p>
Mandatory Reporting Laws	<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. Inmates detained solely for civil</p>	Transition back to PREA standards.

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	<p>immigration purposes shall be 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>	
Mandatory Reporting Laws	<p>§ 115.161: 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</p>	

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	laws.	
Mandatory Reporting Laws	<p>§ 115.87: Data Collection</p> <p>(a) The agency shall collect accurate, uniform data for 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>	
Mandatory Reporting Laws	<p>Child Abuse Reporting Statutes – Reporters</p> <p>Seven states specifically include “corrections officials” as mandatory reporters</p> <p>Three states explicitly identify staff of juvenile detention centers as mandatory reporters.</p> <p>Several states include probation and parole officers within the list of those required</p>	<p>Corrections officer are mandatory reporters:</p> <p>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>MD Code Ann. Fam. Law. § 5-704 (West 2011); Iowa Code § 232.69 (2011); Tex. Fam. Code</p>

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	A significant number of states classify "police officers," "peace officers," or "law enforcement officers" as mandatory reporters.	Ann. § 261.101 (Vernon 2012). Colo. Rev. Stat. § 19-3-304 (2012) D.C. Code § 4-1321.02 (2011); Ga. Code Ann § 30-5-4 (2011); N.H. Rev. Stat. Ann. § 169-C:29 (West 2012).
Mandatory Reporting Laws	<p>Adult Abuse Reporting Statutes – Reporters</p> <p>8 states exclude correctional staff from their adult mandatory reporting statutes</p> <p>Only New York has NO adult mandatory reporting statute at all</p> <p>North Dakota's statute permits, but does not require, reporting</p>	<p>States that exclude correctional staff:</p> <p>Arizona, Alaska, Ohio, Maryland, New Jersey, Vermont, Pennsylvania, Wisconsin.</p>
Mandatory Reporting Laws: Massachusetts	<p>Mass. Gen. Laws Ann. ch. 19A, § 15 (West 2012). (a) Reasonable cause to believe that an elderly person is suffering from or has died as a result of abuse.</p> <p>Mass. Gen. Laws Ann. ch. 19A, § 14 (West 2012). Abuse, an Act or omission which results in serious physical or emotional injury to an elderly person or financial exploitation of an elderly person; or the failure, inability or resistance of an elderly person to provide for him one or more of the necessities essential for physical and emotional well-being without which the elderly person would be unable to safely remain in the community; provided, however, that no person</p>	

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	shall be considered to be abused or neglected for the sole reason that such person is being furnished or relies upon treatment in accordance with the tenets and teachings of a church or religious denomination by a duly accredited practitioner thereof.	
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	
Mandatory Reporting: Missouri	<p>Mo. Ann. Stat. § 217.410 (West 2005). (1) Reasonable cause to believe that an offender in a correctional center operated or funded by the department has been abused.</p> <p>Mo. Ann. Stat. § 217.405 (West 2005). (1) Any employee of the department of corrections.</p> <p>Mo. Ann. Stat. § 217.410 (West 2005). (1) Immediately report offender abuse in writing to the director. (2) Upon receipt of a report, the department shall initiate an investigation within twenty-four hours.</p>	
Mandatory Reporting: Florida	<p>Fla. Stat. Ann. § 944.35 (West 2012). (3)(d) Witnessing, or reasonable cause to suspect, that an <u>inmate or an offender</u> under the supervision of the department in the community has been unlawfully</p>	

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	<p>abused or is the subject of sexual misconduct.</p> <p>Fla. Stat. Ann. §944.35 (West 2012).</p> <p>(3)(d) <u>Each employee</u> who witnesses, or has reasonable cause to suspect, that an inmate or an offender under the supervision of the department in the community has been unlawfully abused or is the subject of sexual misconduct.</p>	
Vulnerable Adult Statutes	<p>Generally cover “special populations”</p> <ul style="list-style-type: none"> • Mentally ill • Mentally retarded • Elderly • Youth • Those in treatment <p>LGBTI populations</p> <p>May also have civil liability consequences</p>	Mentally retarded is language used in some state statutes.
Vulnerable Adult Law: Arizona	<p><u>Child or vulnerable adult abuse; emotional abuse; classification; exception; definitions.</u> A.R.S. § 13-3623 (West 2011)</p> <p>A. Under circumstances likely to produce death or serious physical injury, any person who causes a 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</p>	

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	<p>situation where the person or health of the child or vulnerable adult is endangered is guilty of an offense as follows:</p> <p>1. If done intentionally or knowingly, the offense is a class 2 felony and if the victim is under 15 years of age it is punishable pursuant to 13-604.01.</p>	
Vulnerable Adult Law: Florida	<p><u>Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person</u> FL. ST. § 825.1025 (West 2011)</p> <p>(2)(a) "Lewd or lascivious battery upon an elderly person or disabled person" occurs when a person encourages, forces, or entices an elderly person or disabled person to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity, when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent.</p> <p>(3)(a) "Lewd or lascivious molestation of an elderly person or disabled person" occurs when a person intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of an elderly person or disabled person when the person knows or reasonably should know that the elderly person or disabled</p>	

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	person either lacks the capacity to consent or fails to give consent.	
Vulnerable Adult Law: Florida	<p><u>Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person</u> FL. ST. § 825.1025 (West 2011)</p> <p>(4)(a) "Lewd or lascivious exhibition in the presence of an elderly person or disabled person" occurs when a person, in the presence of an elderly person or disabled person:</p> <ol style="list-style-type: none"> 1. Intentionally masturbates; 2. Intentionally exposes his or her genitals in a lewd or lascivious manner; or 3. Intentionally commits any other lewd or lascivious act that does not involve actual physical or sexual contact with the elderly person or disabled person, including but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity, when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent to having such act committed in his or her presence. 	
Vulnerable Adult Law: Arizona	<p><u>Child or vulnerable adult abuse: emotional abuse; classification; exception; definitions</u> A.R.S. § 13-3623 (West 2011)</p> <p>B. Under circumstances other than those likely to produce death or serious physical injury to a child or</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>vulnerable adult, any person who causes a child or vulnerable adult to suffer physical injury or abuse or, having the care of 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> <p>1. If done intentionally or knowingly, the offense is a class 4 felony.</p>	
Summary	<p>Why is this Important?</p> <p>Describing prohibited conduct to reference in your policy development</p> <p>Tailor your criminal investigations and evidence collection</p> <p>Standards leave a number of items on the table</p> <p>Reporting for ALL offenders</p> <p>Protecting ALL survivors of sexual assault</p>	<p>Evaluation:</p> <p>Remind participants to fill out this section of their evaluation of the materials covered, activities and the performance of the instructor.</p>

Module 9: Policy

Time: 1 hour and 15 minutes

Recommended Faculty:

PREA Coordinator or Monitor, Policy Coordinator

Resources:

LCD projector, computer and media screen

Participant Handouts:

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

PowerPoint® Programs:

Module 9: Policy

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objectives	<p>Identify and discuss the role policy plays in the field of corrections.</p> <p>Discuss why gender matters when making policy.</p> <p>Identify and discuss the factors that contribute to an agency's organizational context for policy development and implementation.</p> <p>Identify key elements of good PREA policies.</p> <p>Conduct a review of elements of your jurisdiction's policy.</p>	<p>Policy is critically important in the field of corrections. While it may be literally impossible to have policy that covers every possible issue/event - we as practitioners know we have no shortage of policies and procedures. They play a critical role in the management of correctional facilities.</p> <p>Given that our core mission involves limitations on personal freedoms, it isn't surprising that we have an abundance of policies to ensure due process.</p> <p>The field runs on policy; it runs well on good, effective policy.</p> <p>Ask participants what role policy plays in the field of corrections?</p>
What Role Does Policy Play In Corrections?	<p>Policy:</p> <p>Provides a clear statement of the agency's mission, goals and values</p> <p>Gives direction to staff</p> <p>Helps to manage risk and keep staff and inmates safe and secure</p> <p>Helps to avoid costly litigation</p>	<p><i>Provides a clear statement of agency mission and values</i></p> <p>While staff may not always personally share agency values and buy into agency goals - they should know and understand their professional obligations.</p> <p><i>Gives direction to staff</i></p> <p>Policy provides direction at all levels – at the agency, facility and individual levels.</p> <p>Some staff may be lesbian, gay, bi-sexual, etc. and may deal with these issues on a personal</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>level as well as in their interactions with inmates.</p> <p>Direction to staff is key, especially when staff members are confronted with situations that are new to them and do not have prior experience from which to draw.</p> <p>Clear policy and direction can increase the comfort level of staff.</p> <p>Informal policy is enacted every day by front line workers. Policy may be constructed to reduce or empower discretionary decision making by staff.</p> <p><i>Helps to maintain safety and security</i></p> <p>Adherence to policy that anticipates issues/situations helps to maintain order and safety.</p> <p><i>Avoids costly litigation</i></p> <p>While policy development can be challenging and rather unglamorous. It is far riskier to NOT have clear policy.</p>
	Why should we address the needs of men, women and gender non-conforming populations in PREA policy?	<p>Discussion:</p> <p>Direct the question to the participants.</p> <p>What challenges does gender create in day to day life activities?</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>Solicit feedback from participants - List their responses on the board/flip chart</p> <p>Many of the reasons suggested by participants will reflect a focus on safety and security, respect for human rights, practical considerations and personal values. Verbally, categorize participants' responses using this framework - adding to this framework as necessary based upon feedback from the audience.</p> <p>If the class seems "stuck" suggest one of the following lens to get the conversation going:</p> <ul style="list-style-type: none"> • From a safety and security lens: Why address these issues? How does addressing them improve safety and security? • From a human rights perspective: Why address these issues? How does addressing them preserve human rights? • From a practical perspective: Why address these issues? How does addressing them reap practical benefits? • From a personal perspective: Are there any personal gains realized by addressing these issues? <p>In closing, before you move to the next slide and summarize -</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		ask if there any other reasons to address these issues? Any other perspectives/lenses?
Why Cont'd	<p>From a safety and security lens:</p> <p>We know from the BJS data that the LGBTI population's rate of sexual victimization while in custody is higher than the rates of heterosexual men and women.</p> <p>We know sexual assault of transgender individuals is 13 times more prevalent among transgender women compared to men- 59% reported assaults. (Center for Evidence Base Corrections, 2009)</p> <p>From the BJS data we know gender is a factor in the rate of prison-based sexual victimization</p> <p>Addressing offenders' needs can increase their safety and improve security.</p>	<p>Source: Valerie Jenness et al., Violence in California correctional facilities: An empirical examination of sexual assault. Irvine, CA: Center for Evidence-Based Corrections (2009).</p>
Why Cont'd	<p>From a human rights perspective:</p> <p>These incidents account for untold personal costs...physical and emotional harm...to victims and their families.</p> <p>We have an ethical, professional obligation to keep those committed to our custody</p>	<p>Addressing gender is policy is also a human rights issue.</p> <p>LGBTI people in the criminal justice system experience challenges that start at the point of arrest and continue post release: including abusive and demeaning contact with officials and other offenders, being inappropriately classified and housed, a lack of resources,</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	safe from sexual abuse.	<p>especially specialized medical and mental health care and verbal, emotional, physical and sexual abuse from others (staff and inmates).</p> <p>Addressing these issues in policy can help us to meet our moral, ethical and professional responsibilities.</p>
Why Cont'd	<p>From a practical perspective:</p> <p>These incidents can result in costly litigation.</p> <p>Implementation of PREA standards generates a sense of urgency and opportunity to address these issues more proactively.</p> <p>Policies can increase staff comfort level</p> <p>From a personal perspective:</p> <p>It is the right thing to do.</p>	<p><i>Costly Litigation</i></p> <ul style="list-style-type: none"> • Anecdote about monograph entitled "Red Tape" from an Administrative Law Class. • According to the Boston Globe, the Corrections Commissioner is the single most sued individual in the Commonwealth. Imagine this is the case elsewhere, too. <p><i>Opportunity</i></p> <ul style="list-style-type: none"> • PREA standards address the heightened vulnerability of LGBTI populations. <p><i>Staff comfort levels</i></p> <ul style="list-style-type: none"> • Staff comfort levels can be increased by increasing their knowledge about LGBTI people and how to respectfully communicate with this population. <p><i>Personal</i></p> <ul style="list-style-type: none"> • There are personal benefits as well. • Here may be the right time to utter the customary

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>disclaimer - any opinions expressed are the sole opinions of the presenters – also not BJA, PRC, AU, etc.</p> <p>**End by encouraging participants to seize the opportunity PREA presents.</p>
Agency Policy Context	<p>Agency culture</p> <p>Role of leadership</p> <p>Data</p> <p>Legal requirements</p> <p>Implementation barriers</p>	<p>Policy does not exist in a vacuum. Policy has a context that influences its meaning and effect. As you develop policy, you need to consider the context of your effort. Here are several factors to consider – this list isn't all inclusive but will serve to illustrate the point</p> <p>Agency Culture</p> <ul style="list-style-type: none"> • Culture is an important consideration. • It plays an important role in policy development and execution. • Culture is the context in which policy is embedded. <p>Culture is multidimensional. It can be:</p> <ul style="list-style-type: none"> • Organizational – agency wide – ex. punishment philosophy. Is being disrespectful tolerated in the agency? Is the agency under a cloud of a recent critical incident? • Occupational – security staff has a different culture than the medical staff • Facility-Specific – the culture may vary by gender

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		<p>of staff at a facility, age of facility, geography- urban vs. rural, intuitional history, level of security, architecture.</p> <ul style="list-style-type: none"> • Temporal – varies by shift – varies by day – weekend culture different than during the week when the brass is present. • Cultural change takes time and commitment. Some say it can be as channeling as “turning the Titanic on manual”. <p>Role of leadership</p> <ul style="list-style-type: none"> • The role of leadership is also critically important. • Set tone – be an agent of change • Set clear expectations – explain the “whys” to staff and inmates • Assess culture – gaps, levers and barriers • Assess and determine the role of staff in policy development process • Assess- agency staff and administration’s current knowledge and attitudes • Consistently enforce expectations • Model behavior – leadership by example <p>Data</p> <ul style="list-style-type: none"> • Policy is and should be informed by these data/information • BJA stats

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<ul style="list-style-type: none"> • What are rates of victimization for men, women and LGBTI population • Local data – incidents and reports • Grievances • Consider surveying a random, small group of inmates for input • Are there informal or formal practices staff engage in when dealing with issues related to gender? <p>Legal Requirements</p> <ul style="list-style-type: none"> • Constitutional Law • Federal & State Law • Litigation • Consent Decrees • Case Law • Attorney General Opinions • National Association Standards – Ex. NCCHC – Professional Codes of Ethics • PREA Standards • Findings from any investigative bodies • Oversight reports external and internal <p>Barriers</p> <ul style="list-style-type: none"> • Determine what work needs to be done? Ex. - do you need to raise staff awareness before training? • What are the attitudes and beliefs of staff (personal, religious, biases)? • Ask class - any other types

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>of barriers?</p> <ul style="list-style-type: none"> • Lack of training in gender Identify • Lack of common language to refer to LGBTI individuals • Lack of appropriate housing options for LGBTI individuals • Lack of experience in addressing medical and mental health care needs of LGBTI individuals <p>All these contextual factors impact the development of agency policy.</p>
Policy Process: Considerations	<p>Assessment of Current Agency/Facility Norms, Written Policies, Informal Practice and Norms and Training that address Gender Issues</p> <ul style="list-style-type: none"> • Identify Gaps <p>Structural Preference</p> <ul style="list-style-type: none"> • Going forward, will you have one policy or embed specifics in each policy? <p>Role of Stakeholders</p> <ul style="list-style-type: none"> • Which staff members should be at the table? • Should external stakeholders be invited, if any? <p>Implementation Issues</p> <ul style="list-style-type: none"> • Determine the desired level of transparency • Is a pilot necessary? 	<p>Developing policy can be a very complicated process requires a deliberative approach – it is not a simple cut and paste activity.</p> <p>We can learn from each other - but each jurisdiction's context is unique - while we encourage information sharing and cross-learning – we <i>discourage</i> cutting and pasting as policy development strategy.</p> <p>Assessing Culture Does your facility's current practices differ from your written policies and directives?</p> <p>Is there an "informal" procedure/practice at play? Is academy training "undone" once staff takes their places on the front line?</p> <p>In bureaucracies, there is often</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<ul style="list-style-type: none"> Monitor/oversight mechanisms 	<p>a formal organization and an informal org chart. Are they in sync?</p> <p>Structural Preference If you do one policy – suggest cross-referencing content to ensure staff are aware of full extent of implications</p> <p>One policy for transgender individuals, female specific references throughout all policies.</p> <p>Role of Stakeholders</p> <ul style="list-style-type: none"> Who needs a place at the table? <ul style="list-style-type: none"> Security Treatment Victim Services Investigations Human Resources Contracted Program Providers Medical /Mental Health Providers Case management Attorneys Union Reps Employee Groups Information Technology Should you include community-based advocates/providers? <ul style="list-style-type: none"> External partners External Interest Groups External Subject Matter Experts

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<ul style="list-style-type: none"> • Do you want to assign policies – create ownership? Buy in? • Do you want to share drafts along the way? • Does something lend itself to a pilot? A lot of things fail– not because of poor policy– but poor implementation? <p>Are there any other factors we should consider when developing policy?</p> <p>It is a complicated process – but one that provides a strong foundation for your agency.</p>
Key Elements of a Good PREA Policy	<p>Includes clear language regarding:</p> <p>Intent</p> <p>Definitions</p> <p>Staff responsibilities</p> <p>Scope of applicability</p> <p>Prohibited activities</p> <p>Consequences of failure to follow requirements</p> <p>Addresses:</p> <p>Addresses the needs of men, women and gender non-conforming individuals</p> <p>References relevant procedures</p> <p>Training, reporting, documentation and confidentiality requirements, if any</p>	<p>Policies provide a guide for how organizations operate. They are intended to control the conduct of staff and the activities of an agency. Policy presents the agency's position on an issue of importance. Policies provide the fundamental guideline for agencies...they describe how the agency intends to operate.</p> <p>A lot of folks use the term policy and procedure interchangeably – I want to draw a distinction.</p> <p><u>Procedures</u> describe the normal method of tackling things in an agency. They are protocols for implementation.</p> <p>It is one thing to say, for</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	Need for periodic review of policy by interdisciplinary group	<p>example, "Dept. xxx's policy is not to discriminate against LGBTI individuals"...but that question does not sufficiently provide direction to staff. The statement leaves many unanswered questions.</p> <p><u>Procedures</u> operationalize the policy by outlining the sequenced steps to attaining the policy's goal.</p> <p>So, what are the elements of a good policy? Write this list up.</p> <p>Looking for answers that include the following:</p> <p>Intent: Provides insight into what the agency considers important...it stakes out the agency's position. Zero tolerance, safety of all, safety of vulnerable inmates, victim safety and support, interagency cooperation.</p> <p>Definitions: It is consistent and clear in its use of definitions</p> <p>Direction: Provides direction to all levels and types of staff by outlining the scope of their responsibilities and any prohibited actions, clarifies their obligations and the reasoning behind those obligations and the consequences of failure to adhere to the requirements.</p> <p>Outlines training requirements</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>Addresses the needs of men, women and gender non-conforming individuals as needed</p> <p>Addresses documentation requirements and any requirements for or limits to information sharing</p> <p>Requires periodic review and updates</p> <p>It is viewed as equitable and fair by staff and inmates</p> <p>References relevant procedural statements</p> <p>Follow up from the last question by asking participants: Are there any <i>other</i> elements to good policy we should mention?</p>
Policy "Must Haves"	<p>Support of all management supervisory staff</p> <p>Consistent application of policies/practices/sanctions.</p> <p>Training, training and more training...</p> <p>Reinforcement</p>	<p>The best written policies must have the following or they will fail:</p> <p>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.</p> <p>Consistent application of policies/practices/sanctions.</p> <p>Training, training and more training...including reinforcement of training and monitoring of practices.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Key Policies to Revisit: Are They Gender Responsive?	<p>Policies that are relevant to or address specific activities should be reviewed with an eye to addressing the needs of men, women and gender non-conforming inmates.</p> <p>What policies/topics areas should be included in this review?</p>	<p>What are the relevant policies that should be reviewed with an eye to the needs of men, women and gender non-conforming inmates?</p> <p>Ask for a volunteer to record list as generated by participants- either someone in the audience or co-presenter.</p> <p>Policies listed may include, but are not limited to:</p> <ul style="list-style-type: none"> • Anti-Discrimination Policies and Statements • Intake Screening & Risk Assessment – risk as perpetrator and/or victim • Inmate Classification – housing, program and work assignments • Housing Protocols - including daily living activities • Housing Placement Options and Limitations • Inmate Grooming Issues - hair, makeup, shaving • Information Management – reporting and confidentiality, need to know • Property – gender non-conforming, reading materials • Visitation • Transportation • Inmate Orientation/Education • Pat and Strip Search Procedures • Provision of Medical and

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>Mental Health Treatment-appropriately trained staff</p> <ul style="list-style-type: none"> • Staff/Inmate Interactions and Communications • Cross Gender Supervision
<p>Group Activity: Review Elements of Your Current Policies</p>	<p>Each state team has been assigned a PREA standard. As a team, you are asked to :</p> <p>Assess your current relevant department policy(ies) and determine if the requirements of the standard and the associated needs of men, women and gender non-conforming populations are addressed in your department's policy instrument</p> <p>Identify gaps in your policy and places for improvement</p> <p>Assess whether your agency has any promising practices. What are they? Why are they promising?</p> <p>Identify what key decisions need to be made at the agency level</p> <p>Identify any barriers you may have in your policy development process</p>	<p>Directions:</p> <p>A list of assignments is available, so you can see which jurisdictions have been assigned specific standards. You may have a standard specific question and it might be helpful to interact with the jurisdiction assigned that standard.</p> <p>Each group should appoint a note-taker and a spokesperson.</p> <p>Provide each group with a piece of flipchart paper to document their findings.</p> <p>As a group, you will have 20-minutes to discuss before you report out to the entire group. Depending on the size of the group, not all teams will have a chance to report.</p> <p>Allow spokesperson three minutes to report out.</p> <p>If time does not permit full reporting by all teams - target those who self-identify as having a promising practice.</p>
<p>Activity: Assignments</p>	<p>§ 115.15 Limits to cross-gender viewing and searches.</p> <p>§ 115.21 Evidence protocol and</p>	<p>Assign each group a standard and pass around list of assignments.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	forensic medical examinations	Ask if everyone has or has access to a copy of text of standards; be sure to bring copies just in case.
	§ 115.31 Employee training	
	§ 115.33 Inmate education	
	§ 115.34 Specialized training: Investigations	
	§ 115.35 Specialized training: Medical and mental health care	
	§ 115.41 Screening for risk of victimization and abusiveness	
	§ 115.42 Use of screening information	
	§ 115.43 Protective custody	
	§ 115.64 Staff first responder duties	
	§ 115.67 Agency protection against retaliation	
	§ 115.71 Criminal and administrative agency investigations.	
	§ 115.78 Disciplinary sanctions for inmates	
	§ 115.81 Medical and mental health screenings; history of sexual abuse	
	§ 115.82 Access to emergency medical and mental health services	
	§ 115.83 On-going medical and	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	mental health care for sexual abuse victims and abusers	
Activity: Report Outs		<p>Select teams to report out</p> <p>Consider appointing a timekeeper and give each group 3-5 minutes</p> <p>Collect flip charts so material can be summarized and shared</p>
Summary	Where Do We Go From Here?	<p>Encourage ongoing dialogue – create a learning community. Golden opportunity to network with colleagues who speak the same language.</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: Medical and Mental Health of Victims in Custody

Time: 1 hour

Recommended Faculty:

PREA Coordinator or Monitor, social worker or mental health clinician, lead medical staff or community crisis advocate

Resources:

LCD projector, computer and media screen

Participant Handouts:

- PowerPoint®
- A National Protocol for Sexual Assault Medical Forensic Examinations
- Recommendations for Administrators of Prisons, Jails, and Community Confinement Facilities for Adapting the U.S. Department of Justice's A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents
- The Impact and Recovery of Prisoner Rape
- HIV/ AIDS and Other Infectious Diseases among Correctional Inmates

PowerPoint® Programs:

Module 10: Medical and Mental Health of Victims in Custody

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objectives	<p>Understand inmates' past history of victimization</p> <p>Identify medical health services for men, women and gender non-conforming inmates</p> <p>Review SART evaluation and evidence collection</p> <p>Describe how victimization may affect the correctional environment</p> <p>Identify needed mental health interventions for victims of sexual violence in correctional settings</p> <p>Recommendations for correctional agencies regarding necessary mental health interventions</p>	
Victimization Histories of Offenders 1997 U.S. Census Bureau	<p>Offenders who reported experiencing physical abuse</p> <ul style="list-style-type: none"> • 72.8% of women • 73.5% of men <p>Offenders who reported experiencing sexual abuse</p> <ul style="list-style-type: none"> • 39% of women • 6% of men 	<p>Sources:</p> <p>Browne, Angela and A.J. Sabree "Responding to Inmate on Inmate Sexual Violence: Presentation on the Impact of Victimization" (National Institute of Corrections Project at the Washington College of Law, Washington D.C.) March 2007</p> <p>Angela Browne, Brenda A. Miller & Eugene Maguin, Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women, 22 Int'l. J.L. & Psychiatry 301, 301-22 (1999).</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		Caroline Harlow, Bureau of Justice Statistics, Prior Abuse Reported by Inmates and Probationers, 1 (1999)
Victimization Histories of Offenders 1999 BJS Study	<p>Offenders reporting any physical or sexual abuse</p> <ul style="list-style-type: none"> • 19% of state prisoners • 10% federal prisoners • 16% of men and women in local jails or on active probation <p>Offenders reporting they had been physically or sexually abused before age 18</p> <ul style="list-style-type: none"> • 6% to 14% of male offenders • 23% to 37% of female offenders 	Source: Caroline Harlow, Bureau of Justice Statistics, Prior Abuse Reported by Inmates and Probationers, 1 (1999)
Victimization Histories: Male Offenders	<p>Study done in rural Northeastern Jail (1999)</p> <ul style="list-style-type: none"> • 40% experienced childhood sexual abuse – (sexual contact when under age 16) <p>Average age, onset of sexual abuse = 10</p>	Sources: Browne, Angela and A.J. Sabree "Responding to Inmate on Inmate Sexual Violence: Presentation on the Impact of Victimization" (National Institute of Corrections Project at the Washington College of Law, Washington D.C.) March 2007
Victimization Histories: Female Offenders	<p>Study done at Bedford Hills Women's Institution in NY (1999)</p> <ul style="list-style-type: none"> • 82% reported childhood victimization • 92% reported severe violence as an adult 	Source: Angela Browne, Brenda A. Miller & Eugene Maguin, Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women, 22 Int'l. J.L. & Psychiatry 301, 301-22 (1999).
How Victimization May Translate into	Serving time for violent offenses	Source: Caroline Harlow, Bureau of

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Crime	<ul style="list-style-type: none"> • 61% of reportedly abused men • 34% of reportedly abused women <p>Serving time for sexual offenses</p> <ul style="list-style-type: none"> • 19% of men who reported abuse before prison 	Justice Statistics, Prior Abuse Reported by Inmates and Probationers, 1 (1999)
How Victimization May Translate into Crime	<p>Serving time for homicide</p> <ul style="list-style-type: none"> • 16% of reportedly abused men • 14% of reportedly abused women <p>Using illegal drugs regularly</p> <ul style="list-style-type: none"> • 76% of reportedly abused men • 80% of reportedly abused women • Many of those reported being under the influence at the time of their offense 	Source: Caroline Harlow, Bureau of Justice Statistics, Prior Abuse Reported by Inmates and Probationers, 1 (1999)
115.82: Access to emergency medical and mental health services	<p>(a) Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment</p> <p>(b) If no qualified medical or mental health practitioners are on duty at the time a</p>	<p>We are going to review the applicable Prison and Jail standards.</p> <p>Be sure to also list the PREA section for other agencies if they are present.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim pursuant to § 115.62 and shall immediately notify the appropriate medical and mental health practitioners</p> <p>(c) Inmate victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate</p> <p>(d) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident</p>	
115.83: Ongoing medical and mental health care for sexual abuse victims and abusers	<p>(a) The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility</p> <p>(b) The evaluation and treatment of such victims shall include, as appropriate,</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody</p> <p>(c) The facility shall provide such victims with medical and mental health services consistent with the community level of care</p> <p>(d) Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests</p>	
115.83: Ongoing medical and mental health care for sexual abuse victims and abusers	<p>(a) The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility</p> <p>(b) The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody</p> <p>(c) The facility shall provide such victims with medical and mental health services consistent with</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>the community level of care</p> <p>(d) Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests</p>	
	Medical health care and evidence collection	
115.21: Evidence protocol and forensic medical examinations	<p>(a) To the extent the agency is responsible for investigating allegations of sexual abuse; the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions</p> <p>(b) The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011</p> <p>(c) The agency shall offer all</p>	<p>We are going to review the applicable Prison and Jail standards.</p> <p>Be sure to also list the PREA section for other agencies if they are present.</p>

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	victims of sexual abuse access to forensic medical examinations , whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs	
Role of Health Care Provider	Confidentiality Reporting Dual Purpose Services <ul style="list-style-type: none"> • Patient Centered • Criminal Justice • Security and Safety 	
Immediate Medical Concerns	Primary Survey <ul style="list-style-type: none"> • ABC's Secondary Survey <ul style="list-style-type: none"> • Bleeding • Head Trauma • Shock • Genital Trauma 	
Multidisciplinary Process	Utilizing a multidisciplinary team offers expertise from: <ul style="list-style-type: none"> • First responders • Sexual assault forensic examiners 	Discussion: Ask what kind of approach does your agency use?

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<ul style="list-style-type: none"> • Law enforcement representatives • Victims and advocates • Prosecutors • Forensic photographers 	
SART	<p>Sexual Assault Response Teams</p> <ul style="list-style-type: none"> • Comprehensive response to victims of sexual abuse • Multidisciplinary • Coordination • Information sharing • Crisis intervention counseling • Mental health • Victim services • Informed of rights under relevant federal/state crime victims' rights laws • Special Needs 	<p>SART is not required by the PREA standards, but is best practice.</p> <p>PREA just requires a coordinated approach which might include a SART</p>
Sexual Assault Nurse Examiner (SANE)	<p>Evaluation and documentation of event</p> <ul style="list-style-type: none"> • History • Physical Exam • Body Maps <p>Diagnostic Testing</p> <p>Treatment</p> <ul style="list-style-type: none"> • Prophylactic treatment for STI's • Body Fluid Exposure Protocol 	
SANE	<p>Evidence Collection</p> <ul style="list-style-type: none"> • Consent to evaluate and treat 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<ul style="list-style-type: none"> • Consent to release medical information and forensic evidence • Clothing collection • Collection of head and pubic hairs • Oral swabs for victim DNA or perpetrator DNA • Vaginal/rectal swabs and smears <p>Chain of Custody</p>	
Confidentiality	<p>Guidance on reporting obligations</p> <ul style="list-style-type: none"> • Health Insurance Portability and Accountability Act of 1996 (HIPPA) • State Laws • Health Organizations Professional Codes of Ethics • Correctional Institution Policies and Procedures 	<p>Each state law is different so they should consult with their general counsel and understand the state law in their state.</p> <p>Point participants to the Confidentiality FAQs and Fifty State Survey by the Project on Addressing Prison Rape.</p>
Confidentiality	<p>Confidentiality is not applicable when there is potential for harm to the victim or others</p> <p>Communicable diseases must be reported according to applicable laws</p> <p>May need to be modified to further protect the victim, or other innocent parties</p>	<p>Give participants a few hypotheticals and have them discuss whether confidentiality could be broken and why.</p> <p>These questions are mostly for developing a sense of what factors should be weighted and how these decisions should be discussed.</p> <p>Some suggestions of hypothetical could include:</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>Female inmate you are seeing for a recent sexual abuse has not reported the incident. You see that there are small cuts on her arms, but has not come right out and told you she has been cutting herself. She does not ever mention wanting to hurt herself or others.</p> <p>Male inmate was sexually abused in a jail and as he is discussing his feelings during and after the attack he tells you that he wants to slit the perpetrator's throat. You know that the perpetrator is still in the same unit as the inmate, but not in the same cell.</p> <p>Male inmate talks to you about his fear of his cellmate, but that cellmate has never touched the inmate or sexually harassed that inmate in any way.</p>
Implications for Public Health	<p>Spread of infectious disease</p> <ul style="list-style-type: none"> • HIV/AIDS • Hepatitis • Syphilis • Gonorrhea • Chlamydia • Increase health care costs for medical and mental health 	
Dual Purpose of the Exam:	Evaluate and treat injuries	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Patient Centered	<p>Conduct prompt examinations</p> <p>Provide support and counseling</p> <p>Prophylaxis against STI's</p> <p>Assess women for pregnancy risk and discuss options</p> <p>Provide medical/mental health follow-up</p>	
Dual Purpose of the Exam: Criminal Justice	<p>Obtain a history of the assault</p> <p>Document exam findings</p> <p>Properly collect, handle, and analyze data</p> <p>Interpret and analyze findings (post-exam)</p> <p>Present findings and provide expert opinion related to exam/evidence</p>	
Patient Centered Care	<p>Ensures patient privacy</p> <p>Provides a safe environment and acknowledges safety concerns</p> <p>Accommodates victim's request for family or friend to be with them</p> <p>Respects patient's request for providers of a specific gender</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Integrates exam procedures</p> <p>Involves victim services and law enforcement</p>	
Components of Forensic Medical Exam	<p>Consent</p> <p>Sexual assault history</p> <ul style="list-style-type: none"> Standardized forms <p>Physical exam:</p> <ul style="list-style-type: none"> Body maps Standardized colposcopy <p>Treatment plan</p> <ul style="list-style-type: none"> Prophylactic treatment for STI Post-coital contraception Medical and mental health follow-up 	
Forensic Evidence Collection	<p>Forensic evidence collection is challenging</p> <p>Technological advances contribute to documentation of objective findings</p> <p>Prosecution rests on objective data</p>	
Timing of Evidence Collection	<p>Examine patient ASAP to minimize the loss of evidence</p> <p>96-120 hr. limit for obtaining forensic evidence</p> <ul style="list-style-type: none"> Not absolute Could collect up to 5-7 days following sexual abuse 	<p>The national OVW protocol does say 96 hours but evidence can be found well beyond that with new technology. You should check with your local jurisdiction on the timeframes for collection of physical evidence.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Evidence Kits	<p>Evidence kits should contain:</p> <p>Instruction checklist</p> <p>Forms</p> <p>Materials for collecting and preserving evidence</p>	
Special Concerns in a Correctional Setting	<p>Does reporting deter inmates from seeking help?</p> <p>What happens when reporting does more harm than good?</p>	<p>Ask these questions to the large group of participants and work through the answers given.</p> <p>Ensure that less vocal participants are answering questions.</p>
Impact of Sexual Abuse	<p>On inmates</p> <ul style="list-style-type: none"> • STI's • HIV/AIDS • Pregnancy • Hepatitis B and/or C • Substance Abuse • Depression • Suicide • Post traumatic syndrome • May become perpetrators to regain control 	<p>Ask participants if they have examples of inmates' reactions to these traumatic events.</p>
Impact of Sexual Abuse	<p>On Staff</p> <ul style="list-style-type: none"> • Display of unmanageable anger or hostility by inmates • Secondary trauma • Communicable disease transmission • Guilt • Powerless/helpless 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	Immediate and Ongoing Mental Health Care	
115.81: Medical and mental health screenings; history of sexual abuse	<p>(a) If the screening pursuant to § 115.41 indicates that a prison inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening</p> <p>(b) If the screening pursuant to § 115.41 indicates that a prison inmate has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening</p> <p>(c) If the screening pursuant to § 115.41 indicates that a jail inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening</p>	<p>We are going to review the applicable Prison and Jail standards.</p> <p>Be sure to also list the PREA section for other agencies if they are present.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
115.81: Medical and mental health screenings; history of sexual abuse	<p>(d) Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law</p> <p>(e) Medical and mental health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18</p>	
Sexual Victimization: Mental Health Concerns	<p>People who suffer sexual abuse are:</p> <ul style="list-style-type: none"> • 3 times more likely to suffer from depression. • 6 times more likely to suffer from post-traumatic stress disorder. • 13 times more likely to abuse alcohol. • 26 times more likely to abuse drugs. • 4 times more likely to contemplate suicide 	<p>Source: RAINN "Who are the Victims" found at: http://www.rainn.org/get-information/statistics/sexual-assault-victims</p>
Common Reactions to Sexual Abuse:	<p>Emotional shock: I feel so numb. Why am I so</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Feelings	<p>calm? Why can't I cry? Why don't I feel anything?</p> <p>Disbelief: I can't believe this happened to me.</p> <p>Shame: I feel so dirty.</p> <p>Guilt: Did I do something to make this happen? Could I have done something to stop it? If only I had...</p> <p>Powerlessness: Will I ever feel in control again?</p> <p>Denial: It wasn't really rape. Nothing happened.</p>	
Common Reactions to Sexual Abuse: Feelings	<p>Anger: I want to kill that person!</p> <p>Fear: What if I am pregnant or have a STD? These thoughts keep going through my head. I'm afraid to close my eyes.</p> <p>Depression: I'm so tired. I feel so hopeless. Maybe I'd be better off dead.</p> <p>Triggers: I keep having flashbacks.</p> <p>Anxiety:</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>I feel so confused. Am I going crazy?</p> <p>Helplessness: Loss of self-reliance. Will I ever be able to function on my own?</p>	
Common Reactions to Sexual Abuse: Behaviors	<p>Expressive: Crying, yelling, shaking, being angry, swearing, etc. Anger may be directed at friends, family.</p> <p>Calm: May behave extremely composed, controlled or unaffected.</p> <p>Withdrawn: May shrink inside herself; provide one word answers or none at all; offering no information without being prodded.</p> <p>Nightmares: Survivor may have difficulty sleeping or have nightmares of being chased or attacked.</p>	
Common Reactions to Sexual Abuse: Behaviors	<p>Flashbacks</p> <p>Changing eating habits</p> <p>Lack of concentration or energy</p> <p>Rape Trauma Syndrome (RTS) or Post-Traumatic Stress Disorder (PTSD).</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Rape Trauma Syndrome (RTS)	<p>A common reaction to a rape or sexual abuse - to an unnatural or extreme event</p> <p>Four Phases</p> <ul style="list-style-type: none"> • Acute Crisis Phase • Outward Adjustment Phase • Integration Phase • Reactivation 	
Acute Crisis Phase	<p>Occurs right after the abuse</p> <p>Physical Reactions Change in sleep patterns, change of appetite, poor concentration, acting withdrawn, jumpy</p> <p>Emotional Reactions Depression, guilt, anger, anxiety, fear</p> <p>Behavioral Reactions Acting out, change in hygiene, refuse to change room, harm to self, suicidal thoughts, anti-social</p>	
Outward Adjustment Phase	<p>Survivors feel a need to get back to normal</p> <p>Grooming and eating returns to normal but sleeping remains irregular</p> <p>Survivor tries to regain control</p>	
Integration Phase	<p>The survivors idea of who they were before the abuse and after become one and</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>the survivor accepts the abuse</p> <p>Takes months or years to achieve</p>	
Reactivation of Crisis	<p>Can happen at any time and during any of the phases</p> <p>Reactivation mirrors the acute phase</p> <p>Can be triggered by sights, smells, sounds, situations or memories</p>	
RTS in Correctional Settings	<p>Repeated sexual abuse situations</p> <p>No control over environment</p> <p>Continuous contact with abuser</p> <p>Triggers may cause anger or violent reactions</p>	<p>Now that we have discussed RTS generally, we have to talk about the mental health needs of incarcerated people, how their needs differ from victims in the community.</p> <p>Let's think about what barriers to mental health you may face and how you as an agency can move forward to build partnerships to help with necessary interventions?</p> <p>While generally many survivors face the same general mental health issues there are some issues that arise specific to living in a correctional environment.</p> <p>Discussion Question: What are some of these issues?</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Impact of Victimization in the Correctional Setting: Male Victims	<p>Connection between sexual/ physical victimization and aggressive & self-destructive behavior</p> <p>Report past abuse associated with violent crime</p> <p>Defend against feelings associated with victimization (shame, stigma)</p>	
Impact of Victimization in the Correctional Setting: Male Victims	<p>May question sexual identity and preference</p> <p>Feel the best defense is a good offense</p> <p>May imitate their aggressors</p> <p>Acutely aware of the prison code and their ranking</p>	
Impact of Victimization in the Correctional Setting: Female Victims	<p>At risk for unhealthy relationships with authority figures, based on perceptions of their power to harm</p> <p>Difficulty adjusting to coercive, restrictive environments</p> <p>Lack of right to privacy, cell searches, bodily searches may replicate past abuse</p> <p>Concern with how reporting may interrupt relationships</p>	
Impact of Victimization in the Correctional Setting:	Vulnerable to abusive authority figures	Some of these factors have already been discussed in previous modules but are

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Female Victims	<p>Faced with sexual abuse situations:</p> <ul style="list-style-type: none"> • May not understand it is possible to refuse • May lack perception of a “right” to refuse • May believe it’s always dangerous to refuse 	important to review again here.
The Impact of Being Incarcerated and Being a Survivor	<p>More likely to experience physical trauma</p> <p>Systemic infliction of psychological trauma</p> <p>Retaliation and/or retribution</p> <p>Lack of autonomy and safety</p> <p>General distrust</p> <ul style="list-style-type: none"> • Staff, reporting structure, investigation, prosecution 	
The Impact of Being Incarcerated and Being a Survivor	<p>Feelings of disorientation and anxiousness may make people unable to follow rules</p> <p>Sharing or talking about feelings may be a safety risk for an inmate</p> <p>Isolation may be a relief but it could also cause further trauma</p> <p>Increased anger may cause acting out</p> <p>Complex nature of “consent” can lead to self-blame</p> <ul style="list-style-type: none"> • Multiple traumas exacerbate symptoms 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Mental Health: Necessary Interventions	<p>Community Rape Crisis Centers</p> <p>Companion Services</p> <ul style="list-style-type: none"> • A rape crisis counselor to be with you during the SANE exam and at court appearances • Some communities have rape crisis counselors that will meet inmates at the hospital and act as advocates during SANE Exams <p>Short or long-term counseling (group or individual)</p>	<p>It is no secret that correctional budgets are shrinking and that provided services are suffering – however – mental health care after a sexual abuse– both in the acute phase of recovery and in the long-term is essential...</p> <p>Partnering with local crisis centers is a perfect solution – it allows you to provide services necessary for inmates by specialized professionals who are specifically trained to deal with sexual abuse.</p> <p>Further, this satisfies § 115.53 (prison and jail standards) by providing inmates with access to an outside confidential support service.</p>
Mental Health: Necessary Interventions	<p>Safety Planning</p> <p>Self-Defense</p> <p>24-hour Hotlines</p> <p>Mental Health evaluation</p> <p>Group counseling (in some situations)</p>	<p>These are some of the services that outside community crisis centers can include.</p>
Partnering with Local Crisis Centers	<p>PROS</p> <ul style="list-style-type: none"> • Specialized training for care of sexual abuse victims • Victims may be more 	<p>Encourage participants to work with your community crisis centers, but recognize that there are both pros and cons – as there are in every</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>comfortable with a provider outside of the correctional institution</p> <ul style="list-style-type: none"> • Ability to provide a wider range of services <p>CONS</p> <ul style="list-style-type: none"> • Counselors may not be trained in dealing with inmates or regulations of correctional environments • May not agree with or understand policies that may go against ethical codes and beliefs 	<p>situation.</p> <p>Discussion: Ask the participants whether they have any experience working with outside crisis centers? How was that experience? If none do, then discuss other potential pros and cons.</p>
Mental Health Interventions: Cautions	<p>Use of protective custody</p> <p>Specifications for use of mental health services</p> <p>Difference between crisis intervention and ongoing mental health care</p> <p>Training for outside mental health providers</p>	<p>In the realm of mental health care there are some precautions.</p> <p><u>Use of protective custody:</u> isolation could cause more trauma</p> <p><u>Specifications:</u> rules about time and place are for security of the institution but must be balanced with need for intervention at any time – talk about re-trauma... doors closing, certain smells, etc. could move an inmate back to acute trauma phase</p> <p><u>Crisis v. ongoing:</u> Groups and hotline need to develop mental health plans for each stage – they are not all the same and the same care is not needed at all times by all people – also don't want to give mental health care to</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>people who do not want it</p> <p><u>Training:</u> CO training v. counselor training – two different types of people and they need to know what they are getting into for their safety as well as to ensure no harm to the offender</p>
Mental Health Interventions: The Offender/ Victim Dichotomy	<p>Chicken or the Egg syndrome – what came first victimization or victimizing?</p> <p>Does physical locality of victimization matter?</p> <p>Spectrum and cycle of violence</p> <p>Continuum of sexual activity and reasoning</p> <p>Funding for crisis intervention</p>	<p>Cycle of violence: Remind participants of previous victimization issues and the impact on correctional environment (i.e. acting out).</p> <p>Continuum – sex for trade, protection etc. Discuss how consent does not always mean consent.</p>
Recommendations	<p>Victim-centered approach to allegations</p> <p>Ongoing training for inmates and staff</p> <p>Build relationships with community partners</p> <p>Lobby state and local legislative bodies for funding for victim centered care for inmates</p>	
Summary	Males and females respond to sexual victimization differently.	<p>Evaluation:</p> <p>Remind participants to fill out this section of their</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Sexual abuse often leads to many physical and mental health issues for the victim</p> <p>The custodial environment creates added challenges for a victim to heal after a sexual abuse</p> <p>Partnering with community crisis counselors can be beneficial for your agency</p>	<p>evaluation of the materials covered, activities and the performance of the instructor.</p>

Module 11: Operational Practices

Time: 1 hour and 30 minutes

Suggested Faculty:

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

Resources:

LCD projector, computer and media screen

Participant Handouts:

- PowerPoint®

PowerPoint® Programs:

Module 11: Operational Practices

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objectives	<p>Identify the elements of key operational practices that are areas of consideration for male, female and/or LGBTI inmates</p> <p>Understand how to operationalize PREA policies</p> <p>Describe of a key operational practice and critical policy components</p> <p>Develop a preliminary implementation plan for a critical operational practice.</p>	<p>Earlier we talked about the role policy plays in the field and addressing the needs of men, women and gender non-conforming populations in PREA Policies. We talked about what makes a good PREA policy.</p> <p>The policy spells out what the agency wants to accomplish – but how do you make it happen?</p> <p>Make it a point to be clear about the distinction being draw. Acknowledge that it may not precisely apply in every jurisdiction and explain why.</p> <p>Lots of folks use the terms policy and procedure interchangeably – I want to draw a distinction and be clear about the terms I am using.</p> <p>Policies provide the fundamental guideline for agencies...they describe how the agency intends to operate.</p> <p>Procedures describe the normal method of tackling things, doing business in an agency. They are protocols for implementation.</p> <p>Some sites merge policy and description. Some use the terms policy and standard operating procedures, post orders, agency directives,</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>etc. Whatever the term - we are talking about the document that provides staff with much needed detail regarding the execution of their duties.</p> <p>It is one thing to say, for example, "Dept. xxx's policy is not to discriminate against LGBTI individuals"...but that question does not sufficiently provide direction to staff. The statement leaves many unanswered questions. Procedures operationalize the policy by outlining the sequenced steps to attaining the policy's goal and describing activities and practice. Procedures, post orders and other directives answer many of a policy's unanswered questions.</p> <p>Assume you have PREA policies in place that address the men, women and LGBTI inmates. Now what?</p> <p>As challenging as the policy development process may have been, the real challenge is to make what is on paper <i>actually happen</i>.</p> <p>Now the challenge is to operationalize the policy language consistent with the PREA standards and the needs of men, women and gender non-conforming individuals.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
When Gender Matters	<p>Identify operational practices wherein the gender of the inmate matters:</p> <p>List examples involving female inmates</p> <p>List examples involving male inmates</p> <p>List examples of enforcement of policy being impacted by gender</p>	<p>Ask participants "In their experience, when has gender mattered in operational practice? When have operational practices been designed to address gender-based needs? Separate and apart from PREA. "</p> <p>Discussion Question: How many of you have had direct or indirect experience working with female inmates?</p> <p>What operational practices have been influenced by gender?</p> <p><u>Possible answers include:</u></p> <ul style="list-style-type: none"> • Medical • Pregnancy – Provision of specialized health care (women's health care costs more) • Extra snacks for pregnant women • STD clinics for women - not men • Visiting/family reunification • Prison nurseries for infants and their mothers-not fathers • Transportation • Relaxed restraint policy for pregnant inmates • Assignment of staff by gender – at least one woman • Property • Allowable property

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		<p>varies – women allowed jeans – men not in some states</p> <ul style="list-style-type: none"> • Skirts • Housing protocols • Use of privacy panels in units – more common for women • Shower and toileting restrictions • Same sex staff assignments • Announcement of staff's presence • Grooming • Use of hair color • Makeup • Shaving materials • Programming • Gender responsive training • Search policy • Same sex strip searches – generally accepted • Housing unit searches – restriction by court at women's facility <p>After sufficient examples regarding women have been elicited from the group – ask about men. What about examples involving men? What can we list?</p> <ul style="list-style-type: none"> • Kufis for Muslim Men – What about hats for women with hair loss due to chemo? Seem fair? <p>Then move the discussion to implementation.</p>

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		We must also consider implementation issues regardless of what is on paper - the policy for men and women may not vary – BUT - the degree of enforcement/implementation by staff and the administration may.
Key Operational Areas Impacted by Impacted by Gender, Gender Identity and Sexual Orientation	<p>What about the needs of gender non-conforming inmates?</p> <p>What operational practices/areas need to be addressed in consideration of these individuals?</p>	<p>As we can see that some consideration has been made in the field to addressing the distinct needs of male and female inmates.</p> <p>Discussion Question: What about the needs of gender non-conforming inmates?</p> <p>We know the development of the PREA standards was informed by the documented safety risk of inmates - men, women and gender non-conforming individuals. So we need to be responsive to this as we operationalize/ implement standards.</p> <p>So how do we do this?</p>
Key Operational Practice: Screening for Risk of Victimization and Abusiveness	<p>PREA Standard Requirements for Screening for Risk (115.41)</p> <p>Operational Practice must address who, what, when, where, and how of responsibilities of staff.</p>	<p>Let's take a look at a few standards that you could start with 115.41 <u>Screening for risk of victimization and abusiveness</u>.</p> <p>This standard focuses on the inmate screening process. We know how important this process is - as we often have</p>

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		<p>no information or history on new inmates.</p> <p>We have no information about risk and needs of the offender at this point... so we need to gather accurate, relevant information (do not go too deep because one of the groups will be working on this very standard, but illustrate the depth and breadth of the process.)</p> <p>Start off by reviewing language - focus on where gender, gender identity and sexual orientation might be relevant to this standard?</p> <p>Try to put yourself in the place of the staff member doing the job- what do I need to know to do my job?</p> <p>Lots of issues, questions, decisions to be made might come to mind during a quick read.</p> <p>Discussion:</p> <ul style="list-style-type: none"> • Should the agency ask inmates directly about their sexual orientation or gender identity? • If inmates are to be asked directly about their sexual orientation or gender identity, the agency must also determine: <ul style="list-style-type: none"> ○ Who will be asking the questions?

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		<ul style="list-style-type: none"> ○ How should that individual be selected? ○ How should the question be phrased? ○ What, if any follow-up questions will be asked? • At what point in an initial screening should the question be asked? • Should these questions be asked in private to encourage honesty and to respect confidentiality? • How should the answer be documented? • If an inmate does not self-identify as LGBTI, but is presenting him or herself in a gender non-conforming manner should the agency document this information for future use in classification and housing placement? • Data tells us that LGBTI individuals may be more likely to be abused physically and sexually throughout their lifetimes than heterosexuals. If an inmate self-identifies, should staff follow-up with questions about any history of abuse? The language in the standard requires that the inmate's own feelings of vulnerability

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		<p>be taken into consideration.</p> <ul style="list-style-type: none"> What training should the person asking the questions receive? Should it be mandatory? <p>As you can see – as you think through the actual specifics of implementation- several issues/questions requiring decisions emerge. To the extent possible, procedures should anticipate circumstances that staff may encounter.</p>
Key Operational Practice: Sexual Abuse Incident Reviews	<p>PREA Standard Requirements for Sexual Abuse Incident Reviews (115.86)</p> <p>Operational Practice must address who, what, when, where, how of responsibilities of staff.</p>	<p>Look at PREA Standard 115.86. Data Collection and Review for sexual abuse incident reviews.</p> <p>Note specific reference to gender non-conforming inmates in section d(2)</p> <p>What review questions come to mind here?</p> <p>Some questions could include:</p> <ul style="list-style-type: none"> Do the members of the review team and those providing input share a common vocabulary? Do all treat inmates with respect and dignity? Have they participated in any training to increase their knowledge and understanding of how gender, gender identity

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		<p>and sexual orientation?</p> <ul style="list-style-type: none"> • Is there diversity of expertise and experience on these issues? • Do conclusions of review team reflect misconceptions and bias? • Do they understand the impact of gender on staffing levels?
Take a Comprehensive Approach to Implementation	<p>Who should be at the table?</p> <p>Provide training, training and more training...</p> <p>Strive for consistency</p> <p>Support and reinforcement by all management supervisory staff</p> <p>To ensure consistency consider all related policies, procedures, post orders, curriculum, contracts, MOU's that relate to the operational practice and affect compliance with the PREA standards</p>	<p>Although it may be helpful to look at best practices and learn from other sites – this is not a cut and paste activity. Also, as with policy development, procedures and operational practice are not developed in a vacuum. So you need to take a comprehensive approach.</p> <p>Who should be at the table?</p> <p>Stress: A coordinated, inter-disciplinary approach is helpful when operationalizing a policy.</p> <p>Remind: As you determine who should be at the table - consider departmental and staff roles and responsibilities as it relates to PREA compliance. Participants may vary based upon the focus of the operational practice.</p> <p>Train, Train, Train: As they say in training - tell 'em</p>

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		<p>what you are going to tell them, tell them, then tell them again what you told them!</p> <p>Be Consistent in Application and Enforcement</p> <p>Mention – critical need for leadership’s role – walk the talk</p> <p>STRESS: Look at all policies, procedures, post orders, curriculum, contracts, MOU’s and observed practice that affect compliance with the PREA standards</p>
Activity	<p>Each team has been assigned a PREA standard.</p> <p>As jurisdictions work to implemented PREA standards and to address the needs of men, women and gender non-conforming individuals in their custody, they will need to revisit and develop operating practices that support the intent of the standards.</p> <p>Each team will:</p> <p>Discuss the PREA standard and review a key relevant operating practice and critical components that must be put in place.</p> <p>Develop a preliminary implementation plan for this practice.</p>	<p>Directions: Tell participants that they are going to conduct a review of a PREA standard and its implications and impact on operational practice.</p> <p>They will be developing a preliminary implementation plan for addressing the needs of men, women and gender non-conforming inmates vis a vis a critical operational practice</p> <p>Work with the same standard assigned in the previous exercise.</p> <p>Work in your group.</p>

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	<p>Describe how you will put in place what is on paper...how will you implement (operationalize) this practice?</p> <p>Discuss implementation differences for men, women, and gender non-conforming individuals?</p>	<p>Identify a note taker and spokesperson.</p> <p>They will have 20 minutes to discuss the assigned standard and the operating procedures that will need to be in place to address the requirements of the standard as it related to the needs of men, women and gender non-conforming inmates.</p> <p>Describe how you intend to best develop and implement the practice.</p>
Activity: Assignments	<p>§ 115.15 Limits to cross-gender viewing and searches</p> <p>§ 115.21 Evidence protocol and forensic medical examinations</p> <p>§ 115.31 Employee training</p> <p>§ 115.33 Inmate education</p> <p>§ 115.34 Specialized training: Investigations</p> <p>§ 115.35 Specialized training: Medical and mental health care</p> <p>§ 115.41 Screening for risk of victimization and abusiveness</p> <p>§ 115.42 Use of screening information</p> <p>§ 115.43 Protective custody</p>	<p>Assign each agency to a standard and make sure that there are copies of that standard available.</p> <p>Visit with each group and get a sense of what their plan might be.</p> <p>Then use this information to identify good points and points that might be augmented for a better result.</p> <p>Discuss plans together as a group.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>§ 115.64 Staff first responder duties</p> <p>§ 115.67 Agency protection against retaliation</p> <p>§ 115.71 Criminal and administrative agency investigations</p> <p>§ 115.78 Disciplinary sanctions for inmates</p> <p>§ 115.81 Medical and mental health screenings; history of sexual abuse</p> <p>§ 115.82 Access to emergency medical and mental health services</p> <p>§ 115.83 On-going medical and mental health care for sexual abuse victims and abusers</p>	
Summary	<p>What are positive methods of implementation?</p> <p>What are negative methods of implementation?</p> <p>What will you do to implement these operational practices in your agency?</p>	<p>Evaluation:</p> <p>Remind participants to fill out this section of their evaluation of the materials covered, activities and the performance of the instructor.</p>

Module 12: Gender Implications for Investigations

Time: 2 hours

Suggested Faculty:

PREA Coordinator or Monitor or Lead Agency Investigator

Resources:

LCD projector, computer and media screen

Participant Handouts:

- PowerPoint®
- Signs of Staff Sexual Misconduct
- 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
- Staff Perspectives: Sexual Violence in Adult Prisons and Jails "Issues in Investigating Sexual Assaults in Correctional Facilities"
- 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. Compiled by The Moss Group Inc.

PowerPoint® Programs:

Module 12: Gender Implications for Investigations

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objectives	<p>Describe the foundations of successful investigations</p> <p>Identify why investigations fail</p> <p>Identify the considerations for an effective investigation</p> <p>Discuss the implications of <i>Garrity</i></p> <p>Describe the implications of gender and why it matters during investigations</p> <p>Identify useful investigative techniques (including interviewing staff and inmates, evidence collection, etc.)</p>	
Foundations of Successful Investigations	<p>Strong and clear zero tolerance policy for staff sexual misconduct and inmate-on-inmate sexual abuse (115.11)</p> <p>Strong investigative policies (115.22 and 115.71-115.72)</p> <p>Explain and demystify the investigative process</p> <p>Keep inmates involved in process (115.73)</p> <p>Define this as public safety/security issue for individuals, institution, and community partners</p>	<p>Let's discuss the foundations for successful investigations.</p> <p>As you will see many of these foundational items have corresponding PREA Standards – those are noted on the slides.</p> <p>One of the keys here is to know up front what you want your first responder, often a line staff, to know, do and ask versus what you want a trained investigator doing.</p> <p>First responders should:</p> <ul style="list-style-type: none"> • Ask the who, what, when and where questions only – minimally what is needed to make a report up the chain of

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		<p>command</p> <ul style="list-style-type: none"> • Instruct the victim to not eat, use the bathroom or change clothes • Separate the victim and perpetrator (calling for back up if needed) • Cordon off the crime scene to the extent there is one • Report up the chain of command or as defined by agency or facility policy
Foundations of Successful Investigations	<p>Reasonable assurances of retaliation control against inmates, witnesses, and community partners (115.67)</p> <p>Knowing the channels of reporting- - including your mandatory reporting guidelines (115.51 – 115.54)</p> <p>Time is the enemy</p> <p>Reporting should be immediate</p> <p>Staff, inmates, and community partners view process as credible</p> <p>Legal/judicial partners view processes in compliance with applicable laws and criminal procedures</p>	
Foundations of Successful Investigations	Even if the inmate recants from his or her original statement that something happened, or denies something happened and you have	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	evidence to contrary, work the allegation as if it took place and proceed with the investigation	
Investigative Issues	<p>Attitude toward the victim</p> <p>Actions-Reactions-Lack of Action by first responders</p> <p>Complainants with limited capacities [developmental, language, disabilities]</p> <p>Lack of support for the victim's safety</p> <p>Timing, pace and coordination of the investigation</p> <p>Distrust of investigators</p> <p>Poorly trained investigators</p>	<p>Often victims do not believe they are victims – at least they do not understand they are – things such as victimization histories, belief this is consensual and a belief they were just “lucky” can all be present in an inmate’s ability to define themselves as a victim.</p> <p>This is especially true with male inmates and female staff.</p>
Investigative Issues	<p>Process</p> <ul style="list-style-type: none"> • Leaks • Uncooperative victims • Uncooperative staff - code of silence <p>Lack of communication with investigative partners both internal and external</p> <ul style="list-style-type: none"> • Law enforcement, child protective services, medical and mental health, prosecutors, social workers, lawyers/public defenders 	<p>Discussion Questions:</p> <p>How do you run administrative and criminal investigations– are they concurrent or does an administrative investigation stop as soon as the allegation may look criminal?</p> <p>Do you have an agreement with law enforcement (or the investigating authority) to share the reports and outcome of the criminal case for purposes of the administrative case and vice versa?</p> <p>How are <i>Garrity</i> and <i>Miranda</i></p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		warnings impacting this agreement?
Investigative Issues	<p>Administrative</p> <ul style="list-style-type: none"> • Weak or non-existing policy • Lack of support from the administration • Poor teamwork • Poor recordkeeping <p>Not properly utilizing all of the available investigative tools</p> <p>Evidence that is</p> <ul style="list-style-type: none"> • Limited • Weak • Poorly collected and preserved 	
Considerations for Effective Investigations	<p>Who will conduct the investigation</p> <ul style="list-style-type: none"> • Agency personnel • Outside law enforcement • Other outside agency <p>Who is the investigative team</p> <ul style="list-style-type: none"> • Gender • Ethnicity • Expertise • Qualifications • Language ability • Expertise in working with victims who have limitations <ul style="list-style-type: none"> ◦ Language, developmental mental health, hearing impaired, etc. 	<p>Some of this should be decided before an allegation comes to light – such as who conducts the investigations and when to involve external investigative partners.</p> <p>However, sometimes the make-up of the investigative team will depend on who the victim is (i.e. male or female, limited English proficiency etc.)</p>
Other Important Considerations for Effective Investigations	<p>Criminal vs. Administrative</p> <p><i>Garrity</i> Issues</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
<i>Garrity v. New Jersey</i> 385 U.S. 493 (1967)	<p><u>Holding</u>: 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 questions in an administrative investigation • 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>	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. The officers successfully argued that the employer had coerced these admissions by threatening that, if the officers refused to answer, they would lose their jobs.
PREA Observes the <i>Garrity</i> Rule	<p>§ 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>	<i>Garrity</i> compelled interviews

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	(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 prosecution.	
<i>Garrity</i>	<p>What you learn independent of the interview 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>Due to the “fruits” of the <i>Garrity</i> interview, you may want to save your interview of the suspect to one of the last things you complete in the investigation</p>	
<i>Garrity</i>	<p>The administrative investigation can be conducted simultaneously with the criminal investigation as long as they are separate</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</p>	<p>Discussion:</p> <p>Will law enforcement get involved in misdemeanor investigations in your jurisdiction?</p> <p>If some types of sexual abuse are a misdemeanor are they mostly investigated administratively?</p> <p>Does who the perpetrator is matter? Another inmate v. a staff?</p>
The Gender Impact on Investigations	How do you think gender affects an inmate’s response to sexual victimization?	You are going to have to assess what side of the ‘typical’ behavior pattern the

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<ul style="list-style-type: none"> • Men • Women • Gender non-conforming inmates 	<p>subject falls into – be prepared to shift</p> <p>Many people who engage in same gender sexual behaviors during incarceration do not consider themselves gay.</p> <p>Investigators will have to determine if the subject is comfortable with discussing sexuality and how they view themselves.</p> <p>You have to be comfortable with discussing sexuality and familiarize yourself with the continuum of sexual behavior that might be occurring.</p>
How does Gender Impact Investigations?	<p>Specialized training for Investigators (115.34)</p> <p>Staff training that is gender specific to the gender the facility houses (115.31(b))</p> <p>Need to be open in ways to obtain information from inmates</p> <ul style="list-style-type: none"> • Asking what happened instead of how were you abused • Have conversations about what occurred without personal biases or judgments <p>Use language the youth uses– do not paraphrase</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	Be developmentally and culturally appropriate	
How Does Gender Impact Investigations?	<p>Questioning (All)</p> <ul style="list-style-type: none"> • Explain who you are • Why you are there • What you are trying to do • Ask open ended questions first, then narrow • Ask inmates to explain in their own words what happened • If you don't understand a term ask the inmate • Be as neutral as possible about the incident 	
How does Gender Impact Investigations?	<p><u>Questioning for Men</u></p> <p>'Thinking' questions</p> <ul style="list-style-type: none"> • What do you think about how Mrs. Roberts touched you? <p><u>Questioning for Women</u></p> <p>'Feeling' questions</p> <ul style="list-style-type: none"> • How do you feel about the letter Amy gave you? <p><u>Questioning for Gender Non-Conforming Inmates</u></p> <ul style="list-style-type: none"> • May need to question differently/adjust questions based on inmate's gender identity • Try asking both thinking and feeling questions initially to see what the inmate responds to best 	<p>Think back to what we talked about we discussed during the training module on gender and communication – this is just a formulation of questions and a way of asking questions based on gender norms for men and women – this is not static and it's important to remember victims of any gender may not react the way you expect.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Interviewing Men	<p>Typical: Logical and Direct</p> <p>Don't identify with the word "victim"</p> <p>Why do they report?</p>	<p>What does "logical and direct" mean</p> <p>More about violence or bartering, less about 'feelings'</p> <p>Victim or "survivor"; Men generally don't like language that implies weakness of any kind</p> <p>Prior Victimization – one in six males report some type of sexual abuse</p> <p>Why do they report? The reality: <i>Most don't</i></p> <p>What if the "perp" is a staff member: male vs female</p> <p>Report out of fear (abuser is back in population)</p> <p>3rd party reporting *May be carrying a lot of guilt about physical reactions they have no control over</p> <p>Does this make me gay?</p> <p>What did I do to encourage this?</p> <p>Am I still a real man?</p>
Interviewing Women	<p>Typical: More comfortable with emotions</p> <p>Many have past experiences of victimization in custodial settings</p>	<p>Speaking more about inmates in custodial settings including: foster care, psychiatric facilities; other correctional settings –</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	Why do they report?	<p>arrest, jail, etc.</p> <p>What does “more comfortable with emotions” mean?</p> <p>How might experience of victimization affect perceptions? Coping behaviors?</p> <p>Is this an excuse or a reality of their experience? Hyper vigilance, PTSD</p> <p>Prior Victimization – over 85%</p> <p>Why do they report – Again - The reality: <i>Most don’t</i></p> <p>Angry at the other party</p> <p>3rd party reporting (sense of fairness)</p> <p>3rd party reporting (more about jealousy)</p> <p>What if the “perp” is a staff member: male vs female</p> <p>If the perpetrator is a staff member:</p> <p>Woman may think she is having a relationship – may be idolizing the staff</p> <p>Special privileges</p> <p>Coping skills learned over</p>

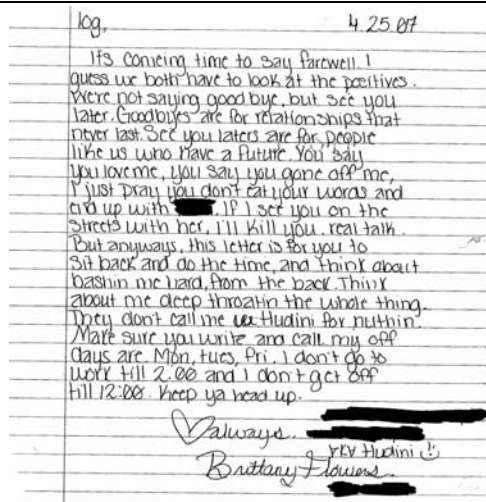
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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		time (this CO is just like every other man)
Investigative Techniques	<p>First and foremost consideration should be the health and safety of the victim</p> <p>Unless there is overwhelming evidence to unfound an allegation, action should be taken to separate the victim and abuser, at least until the investigation concludes</p> <p>Consider constructing a timeline to put people in a particular location at a particular time</p>	<p>Overwhelming evidence would be having the staff or inmate on camera during the entire time of the alleged incident or an allegation against a staff that was not in the building on the date in question.</p> <p>HOWEVER, it is important to keep in mind that very often victims—especially young victims-- may allege abuse by someone who is not the perpetrator of the abuse because they feel safer doing so– they do not always understand the consequences of doing this for the person wrongly accused but they want you to know about the abuse.</p> <p>Example: Samantha is being abused by her closest friend at the facility but when she reports the abuse she says it's another inmate she works with. She may do this because for her, it's a safer person to blame because she is not scared of retaliation or losing her place in the family unit she has created.</p> <p>It's important to note that if an inmate tells you they were abused by someone who clearly could not have been involved in the</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		allegation, it may be a good idea to have another conversation with that inmate to see if something more is going on.
Investigative Techniques	<p>If the allegation is of a sexual abuse and it is fresh, the victim should be examined by a trained professional (115.21 and 115.82)</p> <p>Prior to an incident, determine if you have a SANE program in your area</p> <p>Consider using a forensic interviewer who is trained in using unique tools specifically for questioning men, women or gender non-conforming adults.</p>	Forensic interviewers are also particularly helpful if you have a vulnerable inmate—ESL, deaf, cognitively impaired etc.
Investigative Techniques	<p>Second most important consideration is the preserving and collection of evidence</p> <p>Area where the incident took place should be processed for physical evidence</p> <ul style="list-style-type: none"> • Clothing of both victim and suspect • Bodies of both victim and suspect <p>Potential DNA evidence</p> <ul style="list-style-type: none"> • Blood, semen, saliva, skin, hair 	
Other Potential Evidence	<p>Letters/notes written back and forth between the participants and others (search of inmate's cell)</p> <p>Reports from other staff and</p>	Consider your timing of the cell search so as not to alienate victims early in the investigation.

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>inmates</p> <p>Records</p> <ul style="list-style-type: none"> Logbooks, telephone logs, outgoing mail log, victim's account activity, victim's mail, key check-out logs, duty rosters/timesheets, journals, etc. 	Timesheets are a more accurate records than duty rosters
Other Potential Evidence	<p>Video/live-streaming</p> <p>Cell phone records of staff member</p> <p>Social Media</p> <p>Gifts exchanged between participants</p>	
Sample Letter		<p>This is a sample letter from an inmate in custody to a staff member.</p> <p>You can use this but feel free to substitute with a letter you have found during an investigation(s) at your facility or agency.</p> <p>Activity: Read the letter out loud to the participants. Have them identify the potential evidence and breeches of security as well as contraband issues.</p>
Interviewing the Victim in Cases of Staff Sexual Misconduct	If other agencies are involved in the investigation, coordinate with them so that the victim is not subject to multiple interviews	<p>Neurobiology of trauma</p> <p>Data suggests that people remember more over time – initial interview should be</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Interview as early in the investigation as possible</p> <p>The person who talked with the victim first, initiating the investigation, should be interviewed and if they are staff, required to prepare a detailed memo of that interview immediately after it was conducted</p>	<p>early but re-interview again to see if they remembered more.</p> <p>BUT be sure to explain this to jury if story changes in some way.</p>
Interviewing the Victim in Cases of Inmate on Inmate Sexual Abuse	<p>Conduct and attitude by the first responders and investigators will have a major impact on the cooperation of the alleged victim</p> <p>Treat all alleged victims with dignity and respect</p> <p>Patient, supportive and reassuring</p> <p>Consider having mental health professional present during interview</p>	
Additional Potential Witnesses to Consider	<p>All inmates on the POD with the victim</p> <p>Any inmates who may have been on the POD and recently moved or released</p> <p>Family of the victim</p> <p>Fellow staff members</p> <ul style="list-style-type: none"> • Floats • Supervisors • Control Operators • Counselors 	
Beware of Stereotypes	<p>"You can't rape a gay man." and/or</p> <p>"Don't gay men want to be raped?"</p>	Other common feelings/stereotypes:

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>"All gay men are drag queens." or "All lesbians are dykes."</p> <p>"Aren't gay men and lesbian women similar? Have similar experiences?"</p> <p>"Transgender women want to have sex with other women."</p>	<p>Comment by detective: "You're gay, what did you expect?"</p> <p>"Nobody will believe you. You're an inmate"</p> <p>"You're just trying to manipulate me." Does this matter– no!</p> <p>"Transgender women are just gay men that want to look like women."</p>
Beware of Stereotypes	<p>"Isn't a transgender person just someone who <i>wants</i> to be the opposite sex?"</p> <p>"Having a transgender woman here sexualizes the environment"</p> <p>"Gay men are pedophiles."</p> <p>"Being gay is a choice."</p>	<p>If investigators have these feelings they need to be recognized and worked through because they are poisonous for an effective investigation.</p>
Special Considerations: Staff	<p>In addition to investigating the abuse, staff should be investigated for a lack of supervision</p> <p>If you have sexual offenders in your program, staff should receive additional specialized training in dealing with this population</p>	<p>There is a difference between an inmate who was sent to a sex offender program and an inmate who committed a sex offense.</p> <p>Be clear about the difference and don't stigmatize as those inmates can be very vulnerable to abuse.</p>
Special Considerations: Youthful Inmates	<p>Forcible acts are crimes and should be investigated in much the same way as staff on inmate abuse</p>	<p>Consult with your legal staff and with mental health staff that have treated the youthful inmate as to what</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>The alleged aggressor is entitled to his/her constitutional rights and should be so advised</p> <p>Most are represented by legal counsel on the charges for which they are detained or committed</p>	the special needs are.
Special Considerations: Youthful Inmates	<p>“Non-coercive” sex acts should be investigated to determine if a crime has been committed and for a supervision issue with staff</p> <p>Law enforcement – are they reluctant to investigate misdemeanor crimes?</p>	<p>115.78 Interventions and disciplinary sanctions for inmates.</p> <p>(g) An agency may, in its discretion, prohibit all sexual activity between residents and may discipline residents for such activity. An agency may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.</p> <p>HOWEVER, if there is an incident between a youthful inmate and an inmate over 18, mandatory reporting, lack of ability to consent and vulnerable persons statutes may become important to your investigative process.</p>
Special Considerations: Youthful Inmates	<p>Youthful inmates should be separated from adults</p> <p>Youthful inmates should be examined medically and by mental health</p> <p>Staff should be held accountable for supervision if act occurred on their watch, if it was preventable</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Investigators Should	<p>Document completely everything they do in the investigation</p> <p>Adapt the investigation to</p> <ul style="list-style-type: none"> • gender of victim • gender of accused • facility type • age of victim • cognition and/or mental disabilities of victim <p>Know investigative resources</p> <p>Know how to use technology effectively</p> <p>Understand evidence collection and chain of custody</p> <p>Know when to include other agencies</p> <p>Prepare before you get an allegation</p>	
General Guidance	<p>Use language that is familiar to the subject but be as professional as possible</p> <p>Maintain your professional demeanor</p>	<p>Keep in mind that a recorded interview can make you look like an idiot, but make sure the subject knows what you mean when you say "oral sex" etc.</p> <p>You don't need to reveal your own beliefs or seek acceptance from the subject.</p> <p>Being genuine.</p> <p>And again...nothing is more important than presenting yourself as a professional.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Remember	<p>Be tenacious</p> <p>Be creative - think outside of the box</p> <p>Keep good records</p> <p>Know your agency's policy and procedures</p> <p>Know your state and federal criminal laws</p> <p>Bring in other skill sets</p> <ul style="list-style-type: none"> • Lawyers • Physicians • Forensics • Treatment partners • Available community resources 	<p>Evaluation:</p> <p>Remind participants to fill out this section of their evaluation of the materials covered, activities and the performance of the instructor.</p>

Module 13: Human Resources and the Impact of Gender

Time: 1 hour and 30 minutes

Suggested Faculty:

Human Resources Manager or General Counsel

Resources:

LCD projector, computer and media screen

Participant Handouts:

- PowerPoint®
- Sample reference waivers
- Report by the Office of the Inspector General: Enhanced Screening of BOP Officer Candidates Could Reduce Likelihood of Misconduct
- Memorandum: Anti-Fraternization Policies
- Labor and Employment Law: Tools for Prevention, Investigation and Discipline of Staff Sexual Misconduct in Custodial Settings.
- Policy on Worker Relations Helps Ensure Office Integrity

PowerPoint® Programs:

Module 13: Human Resources and Gender Implications

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Objectives	<p>Understand the legal implications involved in human resource decisions as they relate to gender</p> <p>Identify violations of the privacy rights of inmates</p> <p>Describe how PREA can assist agencies in human resource decisions</p> <p>Recognize legal liability for staff sexual harassment</p> <p>Define legal implications of anti-fraternization policies</p>	
Introduction	<p>In human resources, different legal considerations apply depending on the gender of the staff member:</p> <ul style="list-style-type: none"> • Inmate privacy vs. staff employment rights • Sexual harassment and discrimination • Off duty conduct/anti-fraternization 	
Introduction to Legal Liabilities	<p>Constitutional</p> <ul style="list-style-type: none"> • First Amendment • Fourth Amendment • Fifth/Fourteenth Amendment • Eighth Amendment <p>Federal and State Statutes</p> <p>Common Law Claims</p> <p>PREA Standards</p>	<p>Remember there is no private right of action under PREA, but PREA has potential to set community standard and serve as evidence of other violations.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Key Constitutional and Statutory Provisions For Employees	<p>First Amendment Right to Association</p> <p>Fifth/Fourteenth Amendment Equal Protection</p> <p>Fifth/Fourteenth Amendment Due Process</p> <p>Statutory</p> <p>Federal – Title VII</p> <p>State Civil Rights Law</p>	
Key Constitutional and Statutory Provisions For Inmates/ Detainees	<p>Eighth Amendment: Cruel & Unusual Punishment</p> <p>Fifth/Fourteenth Amendment: Due Process</p> <p>Fourth Amendment: Privacy</p> <p>First Amendment: Religion</p>	
Key PREA HR Provisions	<p>115.15: Cross-gender searches</p> <p>115.17: Hiring and promotion decisions</p> <p>115.71: Criminal and administrative agency investigations</p> <p>155.76: Disciplinary sanctions for staff</p>	<p>These are the prison and jail standards.</p> <p>If you are training for lockups or community corrections add the applicable standards here.</p>
	Inmate Privacy vs. Correctional Officer Employment: Who Wins?	Short answer — it depends on the gender of the staff and inmate involved.

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Balancing Act	<p>Fourth/Eighth Amendment (Liable to inmate)</p> <p>Title VII (Liable to employee)</p> <p>Courts will balance the inmates' interest in freedom from sexual abuse and right to privacy against the employment rights of correctional officers</p>	<p>On one hand, liable to employee under Title VII if you deny an employment opportunity based on gender.</p> <p>On the other hand, you could be liable to an inmate if you permit an employee to search an inmate of the opposite gender, particularly a strip search or extended viewing.</p> <p>Courts take a very gendered approach to this. Most often uphold challenges under Title VII brought by female employees, and most often uphold privacy challenges brought by female inmates.</p>
Inmate Privacy Rights	<p>Limited privacy right in general</p> <p>Some protection offered against cross-gender searches:</p> <ul style="list-style-type: none"> • First Amendment for religious exceptions • Fourth Amendment for privacy • Eighth Amendment for cruel and unusual punishment 	<p>Even the most invasive same-sex searches will be upheld.</p>
Inmate Privacy Rights	<p>In general, courts are more willing to find a Fourth Amendment privacy right for female inmates where a male correctional officer was involved in a strip-search</p> <p>Courts typically do not find Eighth Amendment violations</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	where female correctional officers are involved in strip-searches of male inmates unless there is prolonged viewing of the inmate while nude or touching of inmates' genitals.	
Fourth Amendment – Liable to Inmate	<p><i>Lee v. Downs</i>, 641 F.2d 1117 (4th Cir. 1981)</p> <p>Female nurse removed female inmate's undergarments in the presence of male correctional officers, after the inmate expressed willingness to remove her underclothing if the male officers left.</p> <p>The court affirmed the jury verdict for the plaintiff's § 1983 claim, finding that "[m]ost people...have a special sense of privacy in their genitals, and involuntary exposure of them in the presence of people of the other sex may be especially demeaning and humiliating."</p>	This is a very typical Fourth Amendment claim, brought by a female inmate against correctional facility where male CO was involved in a strip search.
Fourth Amendment – Liable to Inmate	<p><i>Byrd v. Maricopa Cty. Sheriff's Dept.</i>, 629 F.3d 1135 (9th Cir. 2011)</p> <p>A female cadet conducted a pat-down search on a male detainee. The court found that the search violated detainee's Fourth Amendment right to be free from unreasonable searches.</p> <p>The court distinguished this</p>	Byrd is a good example of the exception to the rule.

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	case from other cross-gender pat-down searches that did not violate the Fourth Amendment noting that the officer touched the detainee's penis and scrotum, and that the detainee was essentially unclothed	
Eighth Amendment – Liable to Inmate	<p><i>Jordan v. Gardner, 986 F.2d 1521 (9th Cir. 1993)</i></p> <p>The Washington Corrections Center for Women implemented a policy allowing male correctional officers to conduct random pat down searches of female inmates</p> <p>The court held the policy violated the inmates' Eighth Amendment rights, as many of the female inmates had been sexually abused, and that the searches by male correctional could cause psychological harm</p>	Female inmates are often successful in challenging cross gender searches. As a result, most jurisdictions prohibit them as do the PREA standards (though the standard is phased in).
First Amendment – Liable to Inmate	<p><i>Moore v. Carwell, 168 F.3d 236 (5th Cir. 1999)</i></p> <p>A male inmate claimed female correctional officers performed repeated cross-gender searches and body cavity searches on him</p> <p>The court remanded on the inmate's First Amendment claims, as the inmate had stated his Baptist beliefs prevented him from being viewed naked by a female other than his wife</p>	Religious claims rather than privacy claims are the best avenue for male inmates to challenge cross-gender searches.

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Officer Employment Rights	<p>Title VII:</p> <p>"[I]t shall be an unlawful employment practice for an employer— (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin."42 U.S.C. § 2000e-2(a) (2012).</p>	
Officer Employment Rights: Sexual Orientation and Gender Identity	<p>Not currently covered by Title VII</p> <p>Gender non-conforming staff <i>may</i> receive intermediate scrutiny for equal protection claims. 539 U.S. 558 (2003)</p> <p>This area of the law is constantly evolving. In striking down the Defense of Marriage Act (DOMA), the Supreme Court mentioned a new standard called "careful consideration" while alluding in passing to a heightened scrutiny</p> <p>Some state civil rights statutes may provide protection from discrimination for gender non-conforming staff discrimination</p> <p><i>See, e.g.</i> Sexual Orientation Non-Discrimination Act, Ch. 2, 2002 N.Y. Laws 46</p>	Urge participants to consult with the general counsel for their agency about what their state law obligations may be.

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Officer Employment Rights	<p>BFOQ: Escape clause from Title VII</p> <ul style="list-style-type: none"> • <i>Dothard v. Rawlinson</i>, 433 U.S. 321 (1977) (eliminating height and weight restrictions for positions within all male institution, while upholding male gender as a BFOQ in Alabama Maximum Security Prison) • <i>Gunther v. Iowa State Men's Reformatory</i>, 462 F. Supp. 952 (N.D. Iowa 1979), <i>aff'd</i>, 612 F.2d 1079 (8th Cir. 1980) (holding that male gender cannot be used as a BFOQ to keep women out of contact positions) 	<p>This has already been discussed at length in vectors of sexual abuse presentation.</p> <p>Permits employers to discriminate in hiring or firing decisions.</p> <p>Specifically permits an otherwise discriminatory hiring practice when it is "reasonably necessary to the normal operation of that particular business or enterprise." 42 U.S.C. § 2000e-2(e)(1) (2012).</p>
Bona Fide Occupational Qualification (BFOQ) Defense – Female Gender	<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 250 positions in female housing as "female only." The plaintiffs filed suit under Title VII and Michigan state law</p> <p>The court held that gender was a BFOQ for housing positions in female prisons</p>	
BFOQ Defense – Female gender	<p><i>Breiner v. Nevada Dep't of Corr.</i>, 610 F.3d 1202 (9th Cir. 2010):</p>	<p>Although courts have typically upheld BFOQs for female positions, the positions must be</p>

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	<p>NDOC's Inspector General learned that a female inmate had been impregnated by a male guard, which led to the discovery of a highly sexualized environment in the female facility</p> <p>After this discovery, NDOC created three lieutenant positions that were female only</p> <p>The court found that 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>narrowly tailored.</p> <p>Ask participants to describe their agency's position on meeting the cross gender searches provisions in the PREA standards.</p> <p>This will not only put the cases in context, but will be an opportunity to revisit standards already covered.</p> <p>This review should include: Strip/ body cavity searches, pat down searches, and searches to determine gender.</p>
PREA Standards	<p>PREA standards can help agencies bridge the gap between inmate privacy and establishing BFOQs</p> <p>The standards prohibit cross-gender strip and body cavity searches of all inmates, except in exigent circumstances</p> <p>The standards prohibit pat-searches of female inmates only</p> <p>The standards also require documentation of all searches</p>	<p>Don't have to rely on the contortions of a BFOQ</p>
115.15: Limits to cross-gender viewing and searches	<p>(a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when</p>	

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	<p>performed by medical practitioners.</p> <p>(b) As of August 20, 2015, or August 20, 2017 for a facility whose rated capacity does not exceed 50 inmates, the facility shall not permit cross-gender pat-down 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>	
115.15: Limits to cross-gender viewing and searches	<p>(d) The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit.</p>	

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	<p>(e) The facility shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. If the inmate's genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.</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>	
What's Ok?	A male officer performs a strip-search of a male inmate, while female nurses are present?	
What's Ok?	NO	<p><i>Jackson v. Wiley</i>, 352 F. Supp. 2d. 666 (E.D. Va. 2004)</p> <p>Male inmate was strip searched as a part of the prison intake process, while two female nurses were present, having already been in the room in order to perform a routine medical exam on the inmate.</p>

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		<p>The court found that a corrections officer did not violate a male prisoner's constitutional right to privacy in his genitals by carrying out a "routine" strip search during the intake process.</p> <p>The court distinguished the case at hand from other cross-gender strip searches, noting that medical personnel routinely examine patients of the opposite sex.</p>
What's Ok?	A female officer is present for the strip-search of male inmate?	
What's Ok?	YES	<p><i>Letcher v. Turner</i>, 968 F.2d 508 (5th Cir. 1992)</p> <p>A female correctional employee witnessed strip searches of male inmates.</p> <p>The court found there was no basis for a constitutional violation, as the presence of female officers was required to protect a legitimate government interest of maintaining security at a correctional facility.</p>
What's Ok?	Female officers do not perform pat or strip-searches, but have unlimited access to viewing male inmates while showering or toileting.	
What's Ok?	NO	<p><i>Wilson v. City of Kalamazoo</i>, 127 F. Supp. 2d 855 (W.D. Mich.</p>

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		<p>2000)</p> <p>Male arrestees detained in a city jail without any clothing or covering for between six and eighteen hours, with at least limited exposure to viewing by members of the opposite sex, stated claims for violation of their right of privacy under the Fourth Amendment; even if they were deprived of clothing as a suicide prevention measure.</p> <p>The court found the removal of their underclothing was not adequately justified.</p>
	Sexual Harassment and Discrimination Claims By Staff	
State and Federal Civil Rights Statutes	<p>The Supreme Court has held that Title VII also covers sexual harassment claims. <i>Meritor Sav. Bank v. Vinson</i>, 477 U.S. 57, 75 (1986).</p> <p>Terminated employees can claim sexual discrimination under Title VII or state civil rights law.</p>	
Sexual Harassment Claims	<p><i>Adams v. City of New York</i>, No. 07-CV-2325, 2011 WL 4434226, at *1 (E.D.N.Y. Sept. 22, 2011)</p> <p>A male supervisor made sexually aggressive advances towards a female correctional officer over a period of eight</p>	

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	<p>months. On one occasion, he disrobed in front of the officer, and touched her and made sexual comments on many other occasions.</p> <p>The court found these allegations “were sufficiently severe and pervasive,” and permitted the officer to proceed on her Title VII sexual harassment claim.</p>	
Discrimination Claims	<p><i>English v. Colo. Dep’t of Corr.</i>, 248 F.3d 1002 (10th Cir. 2001)</p> <p>Corrections agency fired a male African American supervisor following an investigation into allegations of sexual misconduct.</p> <p>The court held that the agency had legitimate conflict-of-interest reasons for replacing the investigating officer, the dismissal of criminal charges had no bearing on the evidentiary results of the internal investigation, and the case of the white officer whom the agency had not terminated involved a factually dissimilar situation.</p>	
Discrimination Claims	<p><i>Konah v. District of Columbia</i>, 2013 WL 38981 (D.D.C. Jan. 3, 2013).</p> <p>A female nurse in the DC jail complained of constant sexual harassment from inmates. On one occasions, she was locked</p>	

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	<p>in a vestibule with a male inmate, who made threatening advances toward her. She was eventually terminated from her position.</p> <p>The court denied the District of Columbia's motion for summary judgment on equal protection grounds, as the facility did not ensure "nurses were not subjected to constant gender-based lewd and nasty catcalls or acts by the inmates."</p>	
	Anti-Fraternization Policies	
Legal Responsibilities and Obligations	<p>First Amendment (Liable to employee)</p> <p>Employer interests that support anti-fraternization policies</p> <ul style="list-style-type: none"> • On-the-job performance • Off-the-job conduct that implicates officer's fitness for duty • Public reputation of correctional institution <p>Many court cases involving police and corrections officers uphold policies regulating off-duty conduct</p>	
First Amendment	<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</p>	

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	<p>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>	
First Amendment	<p><i>Poirier v. Massachusetts Dept. of Correction</i>, 558 F.3d 92 (1st Cir. 2009)</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>	
What's OK?	Termination of a state corrections officer who was married to a man who was previously incarcerated in the state prison system for a	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	felony.	
What's OK?	YES	<p>Keeney v. Heath, 57 F.3d 579 (7th Cir. 1995)</p> <p>County jail regulation forbidding employees from becoming socially involved with inmates in or out of jail did not violate Fourteenth Amendment due process to marry, even though inmate whom guard had married had been transferred to a different facility; rather, regulation was justified by fear that if guard became romantically involved with inmate after transfer to another facility, she might become a facilitator of unlawful communication between him and others and a potential provider of favored treatment for him, inmates would have enhanced incentive to "romance" guards, and prisoners not married or engaged to guards would attribute any differences in treatment between themselves and prisoners to the relationship harming morale.</p> <p>Judges should be cautious about disparaging disciplinary and security concerns expressed by correctional authorities; as long as concerns expressed by correctional authorities are plausible, and burden that challenged regulation of jail or prison security places on protected rights a light or</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		moderate one, the court should not interfere.
What's OK?	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.	
What's OK?	YES	<p>Montgomery v. Stefaniak, 410 F.3d 933 (7th Cir. 2005)</p> <p>Portion of code of conduct prohibiting court probation officers from transacting business with any company employing probationers under their supervision, challenged as violative of Indiana probation officer's freedom to associate intimately with her fiancé with whom she had bought car from such a business, survived rational basis review; judges had legitimate interest in ensuring that probation officers conducted themselves in manner that avoided even the appearance of impropriety, and code was rationally related to that interest.</p>
What's OK?	Termination of probation officer who exchanged letters with a man she had previously dated who was serving life sentence in prison outside her jurisdiction.	
What's OK?	YES	<p>Akers v. McGinnis, 352 F.3d 1030, 1034 (6th Cir. 2003).</p> <p>Actual associations allegedly interfered with by Michigan</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>Department of Corrections (MDOC) work rule barring all MDOC employees from any nonwork-related contact with prisoners, parolees, probationers, their relatives and visitors either did not touch on matters of public concern or, in case of right to contact political party official who was uncle of offender, could be otherwise restrained, and rule thus would be subject merely to rational basis scrutiny under First Amendment.</p> <p>Under rational basis test, Michigan Department of Corrections (MDOC) work rule barring all MDOC employees from any non-work-related contact with prisoners, parolees, probationers, their relatives and visitors did not violate employees' constitutional freedom of expressive association; MDOC had legitimate interest in preventing fraternization between its employees and offenders and their families, and rule was rational means for advancing that interest.</p>
What's OK?	<p>Bottom line:</p> <p>Female correctional officers are most often implicated in anti-fraternization cases.</p>	<p>Two known cases involving male staff: Neither involve romantic relationships between employee and inmate</p> <p><u>Wieland v. City of Arnold</u>, 100 F. Supp. 2d 984 (E.D. Mo. 2000) A male officer had an on-going, off-duty, personal relationship</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		<p>with a female felony probationer.</p> <p><u>Lord v. Erie County</u>, 11-3782, 2012 WL 1406474 (3d Cir. Apr. 24, 2012) A male DOC employee maintained a friendship with his former male roommate who was a convicted felon.</p>
<p>But see, <i>Corso v. Fischer</i>, 2013 WL 5807470 (S.D.N.Y Oct. 22, 2013)</p>	<p>Joann Corso, a NYS corrections employee challenged the Work Rule which prohibited corrections employee from associating with current or former inmates or parolees. An exception to this general rule was given to employee on a case by case basis without any guidelines for when a exception might be given.</p> <p>Holding:</p> <p>Work Rule is unconstitutionally overbroad finding that there is "a realistic danger that the statue itself will significantly compromise recognized First Amendment protections of parties not before the Court."</p> <p>The exception clause did not establish constitutionality because there were no articulated standards for exceptions.</p> <p>DOCCS employees do not have to seek permission to associate with close family</p>	<p>Plaintiff had multiple connections to inmates and had sought permission on numerous occasions, some requests were granted, others denied. One of such connection was her husband who she received permission to divorce and correspond with after he was diagnosed with cancer, but permission was denied when she request to cohabitate with him and have in-person visits.</p> <p>Legal claims: (1) as applied to Plaintiff, the DOCCS Work Rule is an unconstitutional infringement on Plaintiff's First Amendment freedom of intimate association; (2) striking the Work Rule as void for vagueness; and (3) striking the Work Rule as facially overbroad in violation of the First Amendment, (4) amended rule was not approved in collective bargaining with the union.</p> <p>Holding: [First two claims were dismissed prior to this ruling] (1) as applied challenge was struck down, (2) rule not</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	members that are inmates or former inmates, however, employees must still inform DOCCS of these associations.	<p>unconstitutionally vague, (3) meritorious, (4) procedure for adopting the rule was consistent with longstanding practice and was not ineffective.</p> <p>In its decision, the Court explained that the Rule as written prohibits employees from ever reestablishing contact with their spouse, children, parents, or siblings when that family member is released and becomes a former inmate.</p> <p>The Court illustrated this issue through a hypothetical scenario stating that “[a] DOCCS employee would be in violation of the Rule if he had any contact with a parent who served thirty days in jail in the 1960’s for dodging the Vietnam War draft”.</p> <p>The Court stated “the number of situations in which the Rule would prohibit constitutionally protected relationships must be substantial.”</p> <p>The Court pointed out that there was no evidence to suggest “that there is a binding judicial or administrative construction requiring such exceptions to be granted” and “no evidence that the practice of granting exceptions for family members is well-established”.</p> <p>Contrarily, testimony from a DOCCS employee implied that there are cases where exceptions are not granted for</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
		family gatherings.
Summary	<p>Current case law supports limitations for searches of female inmates, as well as intrusive male searches.</p> <p>Agencies may institute BFOQs; however, they must be narrowly tailored and specific to a particular position. PREA standards may relieve agencies from use of BFOQs.</p> <p>Agencies can be held liable for both sexual harassment and sexual discrimination.</p> <p>Agencies can institute anti-fraternization policies, and should be mindful these policies may have a greater impact on female staff than male staff.</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 14: Legal Liability and Gender

Time: 2 hours

Suggested Faculty:

Prosecuting Attorney or General Counsel

Resources:

LCD projector, computer and media screen

Participant Handouts:

- PowerPoint®
- Cross Gender Supervision: A Case Law Survey
- Sexual Abuse in Custody: A Case Law Survey
- Watching You, Watching Me

PowerPoint® Programs:

Module 14: Legal Liability and Gender

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Introduction	Civil Liability Major Issues Staff Sexual Misconduct Inmate-on-Inmate Conduct	This is the legal framework
Introduction	Staff Sexual Misconduct – Important Factors Who Raises the Issue? <ul style="list-style-type: none"> • Male inmate • Female inmate Who Was the Perpetrator? <ul style="list-style-type: none"> • Male staff? • Female staff? 	
Introduction	Staff Sexual Misconduct – Important Factors Agency/Facility History: Complaints about misconduct Complaints about other institutional concerns Community standing Context in Which the Issue Is Raised: Litigation Investigation Agency oversight	
Introduction	Inmate on Inmate – Important Factors Who Raises the Issue? <ul style="list-style-type: none"> • Male inmate • Female inmate 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Nature of the Conduct:</p> <ul style="list-style-type: none"> • Forced • Coerced • Non-coerced 	
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 (CRIPA)	<p>Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997</p> <p>Federal Statute</p> <p>DOJ Special Litigation enforces:</p> <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 <p>Must be widespread pattern of abuse</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	Facility under a CRIPA investigation can be monitored for a period of months, or even years	
Civil Rights of Institutionalized Persons Act	<p>King County Correctional Facility Seattle, Washington</p> <p>2007: CRIPA begins investigation, and finds that: "inmates confined at KCCF are not adequately protected from harm, including physical harm and custodial sexual misconduct."</p> <p>2009: DOJ files official complaint against KCCF, citing Eighth Amendment violations</p> <p>2009: Parties reach settlement agreement, wherein KCCF stipulates to structural and personnel changes to remedy constitutional violations</p> <p>Still covered by settlement agreement</p>	
Prison Litigation Reform Act	<p>Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat 1321 (1995)</p> <p>Exhaustion requirement</p> <p>Limits on attorney fees</p> <p>Limits consent decrees</p> <p>Limits on appointment of special masters</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. Your grievance procedures should give you the opportunity to address claims as they arise, without waiting for litigation.</p> <p>Your grievance procedures should give you the</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	Physical injury requirement Limits on proceeding IFP	<p>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 abuse in custody meets the physical injury requirement under the PLRA.</p>
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>	<p>The Supreme Court has recently granted certiorari (judicial review) to decide whether correctional officers can be held liable under the FTCA for abuse of inmates. The Court will hear arguments in the case, <i>Millbrook v. United</i></p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<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 	States, in Winter of 2013.
Federal Torts Claims Act	<p>Federal Torts Claims Act, 28 U.S.C. 1346, et. seq.</p> <p>The Supreme Court has recently granted certiorari to decide whether correctional officers can be held liable under the FTCA for abuse of inmates.</p> <p>The Court heard arguments in the case, Millbrook v. United States, in 2013.</p> <p>Issue: Whether the correctional officers were acting in an investigatory or law enforcement capacity.</p> <p>Can only sue when the law enforcement officer is acting in an investigatory or law enforcement capacity.</p>	<p>The Supreme Court has recently decided, in Millbrook v. United States, 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>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Constitutional Framework	Constitutional Claims 42 U.S.C. 1983 Bivens Actions Eighth Amendment Fourteenth Amendment Fourth Amendment	
Constitutional Framework	42 U.S.C. 1983 Creates a federal cause of action for the vindication of rights found elsewhere Key elements: 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. West v. Atkins, 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"	
Constitutional Framework	42 U.S. C. 1983, "Under the Color of State Law" 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	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.

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Washington v. City of Shreveport, 2006 WL 1778756 (W.D. La. 2006)</p> <p>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. Smith v. Cochran, 339 F.3d 1205 (10th Cir. 2003)</p>	<p>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.</p> <p>The government is seeking indemnification from the private company.</p>
Constitutional Framework	<p>Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971)</p> <p>Bivens action is the federal counterpart to a § 1983 action</p> <p>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> <p>Federal officials can be brought into federal court for violating the federal constitution</p>	
Constitutional Framework	<p>Doe v. Neveleff, 2013 WL 489442 (W.D. Tex. Feb. 8., 2013)</p> <p>Several female detainees in an immigration facility were sexually assaulted by a male driver assigned to transport them away from the facility</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Federal government had contracted with county and a private agency to run the immigration facility</p> <p>Magistrate judge held that federal government can be sued under Bivens when they have contracted out responsibility</p> <p>However, there must be direct action involved</p> <p>Contractor who was not on site, and could not exert direct control, was not responsible for sexual assaults of female detainees</p>	
Constitutional Framework	<p>Eighth 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</i>, 511 U.S. 825 (1994)</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 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Constitutional Framework	<p>Eighth Amendment, “Objectively serious injury”</p> <p>Sufficient: Improper touching without a legitimate penological purpose can be sufficient. Calhoun v. Detalla, 319 F.3d 936 (7th Cir. 2003)</p> <p>Repeated conduct can be sufficient. Kahle v. Leonard, 477 F.3d 544 (8th Cir. 2007)</p> <p>Not Sufficient: Single, isolated incidents that do not result in physical harm are generally not sufficient. Wade v. Cain, 2011 WL 612732 (M.D. La. 2011)</p> <p>Verbal comments alone are generally not sufficient. Boddie v. Schneider, 105 F.3d 857 (2d Cir. 1997)</p>	
Constitutional Framework	<p>Eighth Amendment, “Deliberate indifference”</p> <p>Deliberate indifference to inmate vulnerability—safety or health</p> <p>Official knew of and disregarded an excessive risk to inmate safety or health</p> <p>Official must be aware of facts from which an inference could be drawn that a substantial risk of harm exists and he/she must draw the inference</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Constitutional Framework	<p>Fourteenth Amendment</p> <p>Lower legal standard than Eighth Amendment, asking 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>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>
Constitutional Framework	<p>Fourth 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>Expectations of privacy are directly linked to cross gender searches and their applicability in the correctional setting for men and women.</p>
State Tort Framework	<p>State Tort Claims</p> <p>Assault</p> <p>Battery</p> <p>Intentional infliction of emotional distress</p> <p>Negligent infliction of emotional distress</p> <p>Negligent hiring, firing, supervision, training</p>	<p>DeWitt v. State, 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.</p> <p>The inmate was ultimately unsuccessful on the claim.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>States are generally protected from tort suits under sovereign immunity</p> <p>Some states, however, have passed legislation that 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 – <i>Monell v. Department of Social Services</i>, 436 U.S. 658 (1978)</p> <p>Municipality is a person that can be held liable under Section 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 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	facts from which it concludes that it was likely	
Forms of Liability	Official Liability Will cause liability to municipality Did it happen on your watch? Were you responsible for promulgating and enforcing policy? Did you fail to act or ignore information presented to you?	
Forms of Liability	Individual Liability 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	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 officials are sued as either or one or the other.
Forms of Liability	Individual Liability – Elements Participated directly in the alleged constitutional violation After being informed of the violation through a report or appeal, failed to remedy the wrong Created a policy or custom under which unconstitutional practices occurred, or allowed	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>the continuance of such a policy or custom</p> <p>Grossly negligent in supervising subordinates who committed the wrongful acts or</p> <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>The plaintiff must provide notice to the defendant if s/he intends to sue the defendant in her personal capacity.</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</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>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	at time of the incident.	
	Case Law Digest	<p>Activity: For all of the following case examples, instructors can choose to use a case as an activity.</p> <p>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>
Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate	<p><i>Heckenlaible v. Virginia Peninsula Regional Jail Authority</i>, 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>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate	<p><i>Heckenlaible v. Virginia Peninsula Regional Jail Authority</i>, 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> <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>	
Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate	<p><i>Heckenlaible v. Virginia Peninsula Regional Jail Authority</i>, 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 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Against Steele</p> <ul style="list-style-type: none"> 42 U.S. C. §1983: Fourteenth Amendment substantive due process right to bodily integrity 	
Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate	<p><i>Heckenlaible v. Virginia Peninsula Regional Jail Authority</i>, 2007 WL 1732385 (E.D. Va. Jun. 13, 2007)</p> <p>Court’s Ruling:</p> <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. 	
Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate	<p><i>Heckenlaible v. Virginia Peninsula Regional Jail Authority</i>, 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 	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<ul style="list-style-type: none"> 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 	
Case Law – Investigations Female Correctional Employee/Male Inmate	<p><i>Manago v. Williams</i>, 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 sexual misconduct charge</p> <p>Inmate claimed the investigator encouraged him to have sex with the officer, which he did</p> <p>The officer was terminated for over familiarity, not for engaging in sexual relations with an inmate, which she denied</p> <p>Inmate alleged he was threatened by other officers as</p>	<p>In this case, the inmate made many other claims regarding adequate mental health care, which are not discussed here.</p> <p>Inmate had mental health problems and was taking nine medications.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	a result of the officer's termination	
Investigations Female Correctional Employee/Male Inmate	<p><i>Manago v. Williams</i>, No. 2:07–cv–2290, 2013 WL 753448 (E.D. Ca. Feb. 27, 2013)</p> <p>Legal Claims:</p> <p>First Amendment retaliation</p> <p>Eighth Amendment cruel and unusual punishment</p> <p>Court's Ruling:</p> <p>Permitted Eighth Amendment claims</p> <ul style="list-style-type: none"> • Individual officer • Mental health professionals • Investigators <p>Denied First Amendment claims</p>	
Investigations Female Correctional Employee/Male Inmate	<p><i>Manago v. Williams</i>, No. 2:07–cv–2290, 2013 WL 753448 (E.D. Ca. Feb. 27, 2013)</p> <p>Reasoning</p> <p>First Amendment claim denied</p> <p>He was not "chilled" from giving testimony regarding the sexual misconduct</p> <p>Eighth Amendment claims permitted</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Against individual officer: Plaintiff entitled to presumption that any sexual contact was non-consensual</p> <p>Correctional officer did not meet burden to prove it was consensual</p> <p>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><i>Riley v. Olk-Long</i>, 282 F.3d. 592 (8th Cir. 2002)</p> <p>The Facts:</p> <p>Male officer made inappropriate comments to female inmate, which she did not report because “she doubted that she would be believed and feared the resulting discipline”</p> <p>Officer later entered her cell and attempted to rape her</p> <p>She performed oral sex so she would not become pregnant</p> <p>The officer was terminated and convicted under state law</p>	
Case Law – Investigations Male Correctional Employee/Female	<p><i>Riley v. Olk-Long</i>, 282 F.3d. 592 (8th Cir. 2002)</p> <p>Legal Claims:</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Inmate	<p>Against warden and director of security</p> <p>42 U.S.C. § 1983: under Eighth Amendment.</p> <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 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>	
Case Law – Investigations Male Correctional Employee/Female Inmate	<p><i>Riley v. Ok-Long</i>, 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>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate	<p><i>Gonzales v. Huerfano County</i>, 403 F.3d 1179 (10th Cir. 2005) cert. den. <i>Salazar v. Gonzales</i>, 546 U.S. 1003, 126 S.Ct. (U.S. Nov 07, 2005)</p> <p>The Facts:</p> <p>Male jail administrator sexually assaulted female inmate. Later that day the senior detention officer sexually assaulted another female inmate</p> <p>Both women submitted written statements describing the assaults to detention officers who called the sheriff</p> <p>The sheriff went to the jail but did not see the women until the next day</p> <p>The sheriff was related to both the senior detention officer (son-in-law) and the jail administrator (nephew by marriage)</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 except in certain instances.</p> <p>Fact is though that if a major representative of the municipality is liable, the municipality is going to end up paying.</p>
Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate	<p><i>Gonzales v. Huerfano County</i>, 403 F.3d 1179 (10th Cir. 2005) cert. den. <i>Salazar v. Gonzales</i>, 546 U.S. 1003, 126 S.Ct. (U.S. Nov 07, 2005)</p> <p>Legal Claims:</p> <p>Against County and Sheriff</p> <p>§ 1983: Eighth Amendment: Duty to employ competent law enforcement officers and to</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>supervise</p> <p>Negligent supervision</p> <p>Offending officers</p> <p>Assault and battery</p>	
Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate	<p><i>Gonzales v. Huerfano County</i>, 403 F.3d 1179 (10th Cir. 2005) cert. den. <i>Salazar v. Gonzales</i>, 546 U.S. 1003, 126 S.Ct. (U.S. Nov 07, 2005)</p> <p>Court’s Ruling:</p> <p>County Dismissed</p> <p>No allegation that county or sheriff set the policy which caused the injury.</p> <p>Otherwise immune from suit under state statute – Colo. Rev. Stat. §30-11-105.</p>	
Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate	<p><i>Gonzales v. Huerfano County</i>, 403 F.3d 1179 (10th Cir. 2005) cert. den. <i>Salazar v. Gonzales</i>, 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> <p>No employee evaluations since 1994</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Only occasionally visited the jail</p> <p>Prior incidents established notice</p> <p>The inmates had access to vodka; drunk inmates sat in control room and knew how to run controls</p> <p>The senior detention officer had exposed himself to female inmates in past and had asked female inmates to expose their breasts</p>	
Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate	<p><i>Ice v. Dixon</i>, 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</p> <p>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: 42 U.S.C. § 1983: Eighth Amendment</p> <p>Against Dixon: Assault and battery</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate	<p><i>Ice v. Dixon</i>, 2005 WL 1593899 (N.D. Ohio 2005)</p> <p>Court’s Ruling: County immune in official capacity.</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> <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>	
Case Law – Staff Sexual Misconduct	<i>Doe v. Georgia Dep’t of Corrs.</i> , 248 F.Appx. 67 (11th Cir. 2007)	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Male Correctional Officer/Male Inmate	<p>The Facts:</p> <p>Male 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 unsubstantiated and contested</p>	
Case Law – Staff Sexual Misconduct Female Correctional Employee/Male Inmate	<p><i>Wood v. Beauclair</i>, 692 F.3d 1041(9th Cir. 2012)</p> <p>The Facts:</p> <p>Female correctional officer entered into romantic relationship with a male inmate</p> <p>Personal conversations</p> <p>Hugging, kissing, and touching</p> <p>On one occasion she attempted to touch him sexually</p> <p>Inmate heard rumor that</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>officer was married and attempted to end the relationship. After he attempted to end it, she began to be abusive toward him, conducting unnecessary searches</p> <p>On a second occasion she touched his penis during a search</p>	
Case Law – Staff Sexual Misconduct Female Correctional Employee/Male Inmate	<p><i>Wood v. Beauclair</i>, 692 F.3d 1041(9th Cir. 2012)</p> <p>Legal Claims:</p> <p>42 U.S.C. § 1983</p> <p>Eighth Amendment – sexual harassment Eighth Amendment – failure to protect Fourth Amendment – repeated searches First Amendment – retaliation</p> <p>Court’s Ruling:</p> <p>Sexual harassment claims under 8th amendment could proceed</p> <p>Lack of ability to consent at the forefront of its reasoning</p> <p>Failure to protect claims were dismissed</p> <p>No evidence the officer’s supervisors were aware of the conduct</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>Court dismissed First Amendment claim</p> <p>Jury found no Fourth Amendment violation</p>	
Case Law – Staff Sexual Misconduct Female Correctional Employee/Male Inmate	<p><i>Smith v. Beck</i>, 2011 WL 65962 (M.D.N.C. 2011)</p> <p>The Facts:</p> <p>A male inmate was sexually abused by a female assistant superintendent several times a week over the course of nine months</p> <p>The assistant superintendent was charged and convicted of sexual activity by a custodian</p> <p>Legal Claims:</p> <p>Against prison superintendent and officials at North Carolina Department of Corrections: 42 U.S.C. § 1983; Eighth Amendment</p> <p>Assistant Superintendent: 42 U.S.C. § 1983; Eighth Amendment</p> <p>Intentional Infliction of Emotional Distress</p>	
Case Law – Staff Sexual Misconduct Female Correctional Employee/Male Inmate	<p><i>Smith v. Beck</i>, 2011 WL 65962 (M.D.N.C. 2011)</p> <p>Court’s Ruling:</p> <p>Prison officials could not be</p>	

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Inmate	<p>held liable</p> <p>No evidence that they were aware of a pattern or practice of similarly high-ranking prison officials engaging in sexual abuse of prisoners</p> <p>Assistant superintendent could be held liable on both the Eighth Amendment and state tort law claim</p>	
Case Law – Inmate on Inmate Male Inmate	<p><i>Bishop v. Hackel</i>, 636 F.3d 757 (6th Cir. 2011)</p> <p>The Facts:</p> <p>A young, mentally slow male 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> <p>42 U.S.C. § 1983: Eighth Amendment</p> <p>Negligence</p>	Age of inmate not given in opinion or briefs.
Case Law – Inmate on Inmate Male Inmate	<p><i>Bishop v. Hackel</i>, 636 F.3d 757 (6th Cir. 2011)</p> <p>Court’s Ruling:</p> <p>Negligence claims dismissed</p> <p>Sheriff potentially liable on</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>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> <p>Deputy was aware of the victim's status as vulnerable and the offending inmate's status as predatory</p> <p>Possibility the deputy had 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>	
Case Law – Inmate on Inmate Male Inmate	<p><i>Brown v. Harris County</i>, 409 F. Appx. 728 (5th Cir. 2010)</p> <p>The Facts:</p> <p>A male pre-trial detainee was assaulted by fellow inmates</p> <p>Legal Claims:</p> <p>42 U.S.C. § 1983: Fourteenth Amendment</p> <p>Court's Ruling: No liability</p> <p>County jail officials were not</p>	

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	<p>deliberately indifferent to his safety, although the inmate had expressed his fear of sexual assault due to his medium build and white skin color</p> <p>The officer responsible for supervising the area had failed to notify her replacement of the possibility of a sexual assault on the inmate, but the court found this failure to notify was merely negligence, not deliberate indifference</p>	
<p>Case Law – Cross-Gender Searches Male Correctional Employee/Female Inmate</p>	<p><i>Colman v. Vasquez</i>, 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>Legal Claims:</p> <p>42 U.S.C. § 1983: Fourth and Eighth Amendment claims regarding constitutionality of cross-gender searches</p>	<p>The inmate was also sexually assaulted, although we focus here only on the cross-gender search claim.</p>
<p>Case Law – Cross-Gender Searches Male Correctional</p>	<p><i>Colman v. Vasquez</i>, 142 F. Supp. 2d 226 (2d. Cir. 2001)</p> <p>Court's Ruling:</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Employee/Female Inmate	<p>Fourth Amendment claim allowed to proceed, in the absence of a legitimate penological purpose for the search</p> <p>Eighth 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>	
Case Law – Cross-Gender Searches Female Correctional Employee/Male Inmate	<p><i>Johnson v. Phelan</i>, 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>Fourth Amendment—unreasonable search and seizure</p> <p>Fourteenth Amendment—due process and cruel and unusual punishment</p>	This is an old case and it is fair to say that the law has changed on this.

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Case Law – Cross-Gender Searches Female Correctional Employee/Male Inmate	<p><i>Johnson v. Phelan</i>, 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> <p>“Good use of staff”</p> <p>“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> <p>Monitoring of naked detainee did not violate his due process rights, nor was cruel and unusual punishment</p>	
Case Law – Cross-Gender Searches Female Correctional Employee/Male Inmate	<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)</p> <p>A female cadet conducted a pat-down search on a male detainee in front of at least 10 – 15 people, including male cadets</p> <p>The court found that the search violated the detainee’s Fourth Amendment rights, distinguishing this case from others by noting that the</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	<p>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)</p> <p>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</p> <p>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>	
Case Law – Investigations Male Correctional Employee/Female Inmate	<p><i>Peddle v. Sawyer</i>, 64 F. Supp. 2d 12 (D. Conn. 1999)</p> <p>The Facts:</p> <p>Peddle was a female inmate with a serious history of physical and sexual abuse, incarcerated at FCI Danbury</p> <p>Officer Cephas had history of sexual misconduct complaints, including incident outside of the prison in which he exposed himself to a woman</p> <p>Cephas obtained personal information about Peddle and her family and used it to coerce her into sex with him</p>	

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	<p>Singled Peddle out for pat searches and targeted her for sexual coercion and abuse</p> <p>Cephas and another correctional officer tell Peddle not to tell about the abuse</p>	
Case Law – Investigations Male Correctional Employee/Female Inmate	<p><i>Peddle v. Sawyer</i>, 64 F. Supp. 2d 12 (D. Conn. 1999)</p> <p>OIG Investigation:</p> <p>OIG set up sting to try to catch Cephas in act</p> <p>Peddle's cellmate was to notify OIG investigators when Peddle had left cell in middle of the night</p> <p>Investigators waited for cellmate's call at local police station</p> <p>Cellmate failed to call</p> <p>OIG agents confronted Peddle and Cephus early the next morning</p> <p>Peddle admitted to contact and produced towel containing Cephas' semen</p> <p>Cephas convicted of sexual abuse of a ward</p>	
Case Law – Investigations Male Correctional	<p><i>Peddle v. Sawyer</i>, 64 F. Supp. 2d 12 (D. Conn. 1999)</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Employee/Female Inmate	<p>Legal Claims: 42 U.S.C. § 1983 Fourth Amendment Fifth Amendment Eighth Amendment</p> <p>Outcome: Case settled</p> <p>Primary vulnerabilities from government perspective were Cephas' history and failure of the sting operation</p>	
Gender Non-Conforming Inmates: Why PREA Standards are Good Practice	<p>Eighth Amendment Liability <i>Farmer v. Brennan</i>, 511 U.S. 825 (1994)</p> <p>Facts: A male-to-female transgender woman was moved to the general population in a federal penitentiary, where she was beaten and raped by another inmate</p> <p>Legal Claims: Bivens Action: Eighth Amendment</p> <p>"[R]espondents either transferred petitioner to USP–Terre Haute or placed petitioner in its general population despite knowledge that the penitentiary had a violent environment and a</p>	District court rules for defendants on remand, Seventh Circuit remands again. No further history found.

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	history of inmate assaults, and despite knowledge that petitioner, as a transsexual who 'projects feminine characteristics,' would be particularly vulnerable to sexual attack"	
Gender Non-Conforming Inmates: Why PREA Standards are Good Practice	<p>Eighth Amendment Liability <i>Farmer v. Brennan</i>, 511 U.S. 825 (1994)</p> <p>Legal Claims: Defendants</p> <ul style="list-style-type: none"> • Warden of USP–Terre Haute (official capacity) • Director of the Bureau of Prisons (official capacities) • Warden of FCI–Oxford (personal and official capacities) • Director of the Bureau of Prisons North Central Region Office (personal and official capacities) 	The case itself refers to the attackers status as a "known predator"
Gender Non-Conforming Inmates: Why PREA Standards are Good Practice	<p>Eighth Amendment Liability <i>Farmer v. Brennan</i>, 511 U.S. 825 (1994)</p> <p>Holding:</p> <p>Court creates the deliberate indifference test</p> <p>"Official knows of and disregards an excessive risk to inmate health or safety"</p> <p>"The official must both be aware of facts from which the</p>	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference"	
Gender Non-Conforming Inmates: Why PREA Standards are Good Practice	Eighth Amendment Liability <i>Farmer v. Brennan</i> , 511 U.S. 825 (1994) Holding: Court remands the case for further findings whether the officials were deliberately indifferent	
Gender Non-Conforming Inmates: Why PREA Standards are Good Practice	Eighth Amendment Liability <i>Greene v. Bowles</i> , 361 F.3d 290 (6th Cir. 2004) Facts: Pre-operative male-to-female transsexual inmate at Warren Correctional Institution was placed in protective custody to guard against attacks from other inmates, due to her feminine characteristics A maximum security inmate who was a known predator was placed in the protective custody unit and attacked Greene Beat her with a mop handle and struck her with a fifty-pound fire extinguisher	
Gender Non-Conforming	Eighth Amendment Liability <i>Greene v. Bowles</i> , 361 F.3d	

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
Inmates: Why PREA Standards are Good Practice	<p>290 (6th Cir. 2004)</p> <p>Legal Claims: 42 USC § 1983 Eighth Amendment Fourteenth Amendment</p> <p>Holding: Triable issue of fact as to whether the warden was deliberately indifferent, based on knowledge of:</p> <p>Greene's status as a vulnerable inmate</p> <p>Attacker's status as a predatory inmate</p>	
Gender Non-Conforming Inmates: Why PREA Standards are Good Practice	<p>Eighth Amendment Liability – Transgender Care <i>De'lonta v. Johnson</i>, --- F.3d ---, 2013 WL 310350 (4th Cir. 2013)</p> <p>Male-to-female transgender inmate requested surgical reassignment surgery from the Virginia Department of corrections</p> <p>Inmate had previously attempted self-castration</p> <p>The District Court denied his claim, stating she was not entitled to the care of her choosing</p> <p>The Fourth Circuit has reversed and remanded, and the case is expected to go to trial</p>	<p>The inmate has been released on parole. There is an issue of whether the case can proceed.</p> <p>See, http://www.gayrva.com/news-views/trans-inmate-ophelia-delonta-granted-parole/</p> <p>See also: <i>Kosilek v. Maloney</i>, 221 F. Supp. 2d 156 (D. Mass. 2002) Stating that a treatment plan for an inmate with GID was inadequate to meet the inmate's serious medical need, as the treatment plan was made pursuant to a blanket policy prohibiting hormones that had not been prescribed prior to incarceration.</p>

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TOPIC	SLIDE	SPEAKING POINTS/ NOTES
	Found triable issue of fact of deliberate indifference to a serious medical need	
Gender Non-Conforming Inmates: Why PREA Standards are Good Practice	<p>Bureau of Prisons Changes Transgender Policy</p> <p>In May of 2011, the Bureau of Prisons released a statement rejecting the “freeze frame” approach to treating Gender Identity Disorder and Gender Dysphoria</p> <p>Directed all BOP facilities to conduct an individualized assessment of the inmate’s needs and provide adequate treatment, including:</p> <ul style="list-style-type: none"> • Real life experience • Hormone therapy • Surgical intervention • Counseling 	
Summary	<p>Corrections officials can be held liable in their official, individual, and personal capacities for sexual violence against inmates by either staff or other offenders</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>The respective genders of the staff member and the inmate can have a dramatic effect on liability</p>	<p>Evaluation:</p> <p>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
	<p>Conducting and documenting training of all staff, volunteers, and contractors can help to protect people in custody and limit agency liability</p> <p>Robust policy of reference & background checks can limit agency liability</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</p> <p>Evaluations</p> <p>Certificates</p> <p>Thank participants</p> <p>Remind of resources for further assistance</p>

APPENDIX