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

The enclosed Human Resources and Administrative Investigations curriculum was developed by the Project on Addressing Prison Rape at American University, Washington College of Law as part of contract deliverables for the National PREA Resource Center (PRC), a cooperative agreement between the National Council on Crime and Delinquency and the Bureau of Justice Assistance (BJA). The Prison Rape Elimination Act (PREA) standards served as the basis for the curriculum's content and development, with the goal of the Human Resources and Administrative Investigations curriculum to satisfy specific PREA standards requirements.

It is recommended that the Human Resources and Administrative Investigations curriculum be reviewed in its entirety before choosing which modules to use. Any alterations to the original materials require either acknowledgement during their presentation or removal of the PRC and Project on Addressing Prison Rape logos.

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

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

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

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**Training Curriculum:
Human Resources and Administrative Investigations**

**MODULE 2:
THE PRISON RAPE ELIMINATION ACT OF 2003**

**The Project on Addressing Prison Rape
January 2014**

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Objectives

- Define PREA's purpose
- Demonstrate an understanding of the prevalence of sexual victimization in correctional facilities
- Describe the findings reported by correctional authorities and inmates
- Describe the differences between NPREC and the final Standards
- List and describe the responsibilities and obligations of the agency



Objectives

- Define the evidentiary standard for administrative investigations
- List and describe the disciplinary sanctions for state and the corrective actions for contractors and volunteers
- Describe the sexual abuse incident reviews and list the
- Obligations of the sexual abuse incident review team



What is PREA?

- **Prison Rape Elimination Act (PREA)**
- Initial version focused on male prison rape
- Second iteration **included staff sexual misconduct**, but **continued to focus heavily on male-on-male** rape
- In **2003**, PREA passed **unanimously** in both houses of Congress



PREA Purposes

Increase **accountability** of prison officials who fail to detect, prevent, reduce and punish prison rape

Protect 8th amendment rights of federal, state and local prisoners

Establish **grant** programs

Reduce **costs** of prison rape on interstate commerce



PREA Purposes

Establish **zero tolerance**

Make **prevention** a top priority

Develop **national standards** for detection, prevention, reduction and punishment

Increase available **data** and **information** on sexual assault in custody in order to **improve management** and administration

Standardize definitions used for collecting data on the incidence of rape in custody



Major Sections

- Section 4: **Collection** of prison rape statistics, data and research- Bureau of Justice Statistics (BJS)
- Section 5: Prison Rape **Prevention and Prosecution**- National Institute of Corrections (NIC)
- Section 6: **Grants to Protect Inmates and Safeguard Communities**- Bureau of Justice Assistance (BJA)
- Section 7: National Prison Rape Elimination **Commission**
- Section 8: Adoption and Effect of **National Standards**
- Section 9: **Accreditation** organizations must adopt standards or lose federal funds



Key Milestones

- 2003:** PREA legislation passes
- 2004:** First meeting of the National Prison Rape Elimination Commission (NPREC)
- 2004-2009:** Information gathering and hearings held by the NPREC
- June 2009:** Report and draft standards published by NPREC
- 2009-2012** Establishment and Convening of PREA Work Group



Key Milestones

- | | |
|-------------------------|---|
| 2010: | DOJ opens public comment period for NPREC standards |
| Feb. 2011: | Draft DOJ standards released |
| Feb-April 2011: | Public comment period for DOJ standards |
| May 17, 2012: | Final DOJ standards released |
| June 20, 2012 | Final standards published in the Federal Register |
| August 20, 2012: | Standards applicable to BOP |
| 2013-2014: | First audit cycle |



Key Principles

PREA encompasses **any** federal confinement facility whether run by the government or a private organization on behalf of the government

These standards are a floor of protections - they are minimum standards

States **can and are encouraged to** do more particularly if your state has set higher requirements

The goal here is to protect the constitutional rights of those in custody



What We Know: BJS Data

Combined Administrative Survey Collections:

- 2004

http://www.wcl.american.edu/endsilence/documents/Beck_andHughes_BJSReport2004.pdf?rd=1

Adult Administrative Survey Collections:

- 2007-8

<http://www.wcl.american.edu/endsilence/documents/SexualAbuseReportedbyCorrectionalAuth2007-8.pdf>

- 2006

http://www.wcl.american.edu/endsilence/adult_resources.cfm

- 2005

http://www.wcl.american.edu/endsilence/adult_resources.cfm

Juvenile Administrative Survey Collections:

- 2005-6

<http://www.wcl.american.edu/endsilence/documents/sexualabusejuvenilecorrauth2005-6.pdf?rd=1>



What We Know: BJS Data

Victim Self-Reports: Adult inmates

- 2007 Jail Inmates
<http://www.wcl.american.edu/endsilence/documents/SexualVictimizationinLocalJails2007.pdf>
- 2007 State and Federal Prisoners
<http://www.wcl.american.edu/endsilence/documents/sexualvictimizationstateandfedprisons2007.pdf>
- 2008-9 Prison and Jail Inmates
<http://www.wcl.american.edu/endsilence/documents/SexualVictimizationinPrisonsandJailsReportedbyInmates2008-9.pdf>
- 2008 Former Prisoners
<http://www.wcl.american.edu/endsilence/documents/BJSReportFormerPrisoners2008May2012.pdf>
- 2011-12 Prison and Jail Inmates
<http://www.wcl.american.edu/endsilence/documents/BJSReport-PrisonandJailInmates2011-12.pdf>



What We Know: BJS Data

Victim Self Reports: Juveniles

– 2007-8

<http://www.wcl.american.edu/endsilence/documents/SexualVictimizationinJuvenileFacilitiesReportedbyYouth2008-9.pdf?rd=1>

– 2012

<http://www.wcl.american.edu/endsilence/documents/2012YouthBJSReport.pdf>



FINDINGS:

Sexual Victimization Reported by Adult Correctional Authorities, 2007-8

Correctional administrators reported 7,444 allegations of sexual victimization in 2008 and 7,374 allegations in 2007.

- Total allegations of sexual victimization increased significantly between 2005 (6,241 incidents) and 2008 (7,444).
- This increase was **largely due to prisons**, where allegations increased 21%, from 4,791 incidents to 5,796.

A greater percentage of allegations of abusive sexual contacts and incidents of staff sexual misconduct were **substantiated** in local jails than in prisons.

About 61% of incidents of staff sexual misconduct and 21% of incidents of staff sexual harassment were **perpetrated by females**.

Female inmates were **disproportionately victimized** by other inmates and staff in federal and state prisons, and local jails.



FINDINGS:

Sexual Violence Reported by Juvenile Correctional Authorities, 2005-06

More than 2,000 allegations of sexual violence reported each year in juvenile facilities

- The estimated total number of allegations for the nation was
 - 2,047 in 2005 (16.7%)
 - 2,025 in 2006 (16.8%)

About 1 in 5 allegations of sexual violence were substantiated

- **36%** of the reported allegations of sexual violence involved youth-on-youth nonconsensual sexual acts
- **21%** involved youth-on-youth abusive sexual contacts
- **32%** involved staff sexual misconduct
- **11%** involved staff sexual harassment

Nearly two-thirds (64%) of the victims of sexual violence in state systems and local or private facilities were **male** and a third (36%) were **female**



FINDINGS:

Sexual Victimization Reported by Former State Prisoners, 2008

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

The rate of inmate-on-inmate sexual victimization among former state prisoners was **3 times higher among females** (13.7%) than males (4.2%)

The rate of “willing” sexual activity with staff was higher among males (4.8%) than females (2.6%)

39% of male inmates who were homosexual or gay indicated they had been victimized by another inmate and 12% by staff.

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.



FINDINGS:

Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-9

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

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.

13% of male prison inmates and 19% of male jail inmates said they were victimized **within the first 24 hours after admission**



FINDINGS: Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12

An estimated 4.0% of prison inmates and 3.2% of jail inmates reported experiencing one or more incidents of sexual victimization by another inmate or facility staff

Sexual activity with facility staff was reported by 2.4% of male prisoners and 1.9% of male jail inmates, compared to 2.3% of female prisoners and 1.4% of female jail inmates.



FINDINGS:

Sexual Victimization Reported by Youth, 2012

An estimated **9.5%** of adjudicated youth in state juvenile facilities and state contract facilities reported experiencing one or more incidents of sexual victimization by another youth or staff in the past 12 months or since admission, if less than 12 months.

- About **2.5%** of youth reported an incident involving another youth
- About **7.7%** reported an incident involving facility staff

Youth who identified their sexual orientation as gay, lesbian, bisexual, or other reported a **substantially higher** rate of youth-on-youth victimization (10.3%) than heterosexual youth (1.5%).

Among youth who reported victimization by staff:

- **89.1%** were **males** reporting sexual activity with **female staff**
- **3.0%** were males reporting sexual activity with **both** male and female staff.



Prevalence and RIA Findings: Final PREA Standards (p 10-11)

In 2008, more than **209,400** persons were victims in prison, jails and juvenile facilities

At least 78,500 prison and jail inmates and **4,300 youth** in juvenile facilities were victims of the most serious forms of sexual abuse



The National Prison Rape Elimination Commission

Nine members authorized (8 served)

Charged with:

- Conduct legal and factual study of the effects of prison rape in the US
- Recommend national standards
 - Consult with accreditation organizations
 - Hold hearings
 - Cannot impose a mandate that would substantially increased costs to agency
- Issue report w/in 2 years of initial meeting



FINDINGS: NPREC

Protecting inmates from sexual abuse remains a challenge for correctional facilities across the country.

Sexual abuse is not an inevitable feature of incarceration -- leadership matters.

Certain individuals are more at risk of sexual abuse than others.



FINDINGS: NPREC

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.

Many victims cannot safely and easily report sexual abuse, and those who speak out often do so to no avail.

Victims are unlikely to receive the treatment and support known to minimize the trauma of abuse.



FINDINGS: NPREC

Juveniles in confinement are much more likely than incarcerated adults to be sexually abused, and they are particularly at risk when confined with adults.

Individuals under correctional supervision in the community are at risk for sexual abuse.

A large and growing number of detained immigrants are in danger of sexual abuse.



Adoption and Effect of National Standards

One year after National Prison Rape Elimination Commission issues report – Attorney General published a final rule with standards

- Specific Standards for:
 - Prisons and Jails
 - Community Corrections
 - Lockups
 - Juvenile Facilities
- 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



Draft Standards

Attorney General Working Group

- Composition: NIC, OJJDP, HHS, BJA, NIJ, BOP, OJP, ICE, HS, CRT, OFDT, OLP, USMS, OVW
- Tasks
 - Reviewed standards one by one
 - Commissioned a cost study (OJP)
 - Established a framework for public comments on the standards

AG's proposed final rule was released in Feb 2011

Public Comment Period was open until April 2011

Review of comments by workgroup completed by end of 2011 and standards were sent for review

Final standards released **May 17, 2012**



Differences between NPREC and Final Standards

Coverage of immigration detention facilities

Protections for gender non-conforming individuals

Required staffing levels for residents in custody

Sight and sound separation for youthful inmates

Limitations on cross gender viewing and searches

Acknowledgment that non-coercive sexual contact between inmates, detainees and residents are not necessarily sexual abuse



What Agencies Have Done-- General

- Self assessments of current practices
- Training for staff (including volunteers and contractors)
- Requests for technical assistance
- Culture surveys and assessments
- Early adoption of NPREC draft standards
- Amending state criminal laws



Hiring and Promotion Decisions (115.17, 115.117, 115.217 and 115.317)

(a) The agency shall **not** hire or promote anyone who may have contact with inmates, and shall not enlist the services of any contractor who may have contact with inmates, who—

- (1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);
- (2) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or
- (3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.

(b) The agency shall consider **any incidents of sexual harassment** in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with inmates.



Hiring and Promotion Decisions (115.17, 115.117, 115.217 and 115.317)

(c) Before hiring new employees who may have contact with inmates, the agency shall:

- (1) Perform a criminal background records check; and
- (2) Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.

(d) The agency shall also perform a criminal background records check **before** enlisting the services of any contractor who may have contact with inmates.

(e) The agency shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates or have in place a system for otherwise capturing such information for current employees.



Hiring and Promotion Decisions (115.17, 115.117, 115.217 and 115.317)

(f) The agency shall **ask** all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.

(g) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.

(h) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.



Referrals of Allegations for Investigation (115.22, 115.122, 115.222 and 115.322)

- (a) The agency shall ensure that an administrative or criminal investigation is completed **for all allegations** of sexual abuse and sexual harassment.
- (b) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The agency shall publish such policy on its website or, if it does not have one, make the policy available through other means. The agency shall document all such referrals.
- (c) If a separate entity is responsible for conducting criminal investigations, such publication shall describe the responsibilities of both the agency and the investigating entity.



Referrals of Allegations for Investigation (115.22, 115.122, 115.222 and 115.322)

(d) Any State entity responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.

(e) Any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.



Specialized Training: Investigations (115.34, 115.134, 115.234 and 115.334)

- (a) In addition to the general training provided to all employees pursuant to § 115.31, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.
- (b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.
- (c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.
- (d) Any State entity or Department of Justice component that investigates sexual abuse in confinement settings shall provide such training to its agents and investigators who conduct such investigations.



Criminal and Administrative Agency Investigations

(115.71, 115.171, 115.271 and 115.371)

(a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.

(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to § 115.34.

(c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.



Criminal and Administrative Agency Investigations

(115.71, 115.171, 115.271 and 115.371)

(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 subsequent criminal prosecution.

(e) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff. No agency shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

(f) Administrative investigations:

(1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and

(2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.



Criminal and Administrative Agency Investigations (115.71, 115.171, 115.271 and 115.371)

(g) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.

(h) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.

(i) The agency shall retain all written reports referenced in paragraphs (f) and (g) of this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.



Criminal and Administrative Agency Investigations (115.71, 115.171, 115.271 and 115.371)

(j) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.

(k) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.

(l) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.



Evidentiary Standard for Administrative Investigations

(115.72, 115.172, 115.272 and 115.372)

The agency shall impose **no standard higher** than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.



Reporting to Inmates

(115.73, 115, 173, 115.273 and 115.373)

(a) Following an investigation into an inmate's allegation that he or she suffered sexual abuse in an agency facility, the agency shall inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.

(b) If the agency did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the inmate.

(c) Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, the agency shall subsequently inform the inmate (unless the agency has determined that the allegation is unfounded) whenever:

- (1) The staff member is no longer posted within the inmate's unit;
- (2) The staff member is no longer employed at the facility;
- (3) The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or
- (4) The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.



Reporting to Inmates (115.73, 115.173, 115.273 and 115.373)

(d) Following an inmate's allegation that he or she has been sexually abused by another inmate, the agency shall subsequently inform the alleged victim whenever:

- (1) The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility;
or
- (2) The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.

(e) All such notifications or attempted notifications shall be documented.

(f) An agency's obligation to report under this standard shall terminate if the inmate is released from the agency's custody.



Disciplinary Sanctions for Staff (115.76, 115.176, 115.276 and 115.376)

(a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.

(b) **Termination shall be the presumptive disciplinary sanction** for staff who have engaged in sexual abuse.

(c) Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

(d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.



Corrective Action for Contractors and Volunteers

(115.77, 115.177, 115.277 and 115.377)

(a) Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.

(b) The facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with inmates, in the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer.



Sexual Abuse Incident Reviews (115.86, 115.186, 115.286 and 115.386)

(a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.

(b) Such review shall ordinarily occur within 30 days of the conclusion of the investigation.

(c) The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.



Sexual Abuse Incident Reviews (115.86, 115.186, 115.286 and 115.386)

(d) The review team shall:

- (1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
- (2) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
- (3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
- (4) Assess the adequacy of staffing levels in that area during different shifts;
- (5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
- (6) Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1)-(d)(5) of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager.

(e) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.



What Does PREA Mean for My Agency?

- Increased scrutiny at state, federal and local level
- You must get started
 - Get the right people at the table as you would when any other big issue to address comes up
- Have an understanding of what PREA does and does not do and what your obligations are
- Get guidance from other experts in your agency and the field



What Does PREA Mean for My Agency?

- Enhanced focus on investigations, prosecution and administrative sanctions
- Services for victims
- Reentry services for victims and perpetrators and role of community corrections
- Set of national standards that establish minimum standards for addressing sexual violence in custody



Resources for Doing This Work

- Grants and cooperative agreements from BJA
- End Silence: Project Addressing Prison Rape resources
 - <http://www.wcl.american.edu/endsilence/>
- National PREA Resource Center
 - <http://www.prearesourcecenter.org/>
 - Training, technical assistance, regional meetings, webinars, general information, FAQs
- Work of other agencies in this area
 - NIC <http://nicic.gov/>
 - OJJDP <http://www.ojjdp.gov/>



Summary

1. PREA's Purpose
 - Zero tolerance
 - Increase ability to safely report
 - Outside trauma counseling
2. Prevalence of sexual victimization in correctional facilities;
 - Female staff inmates
 - Vulnerable groups
3. Responsibilities & obligations of the agency; and
 - Data collection
 - MOU's with outside organizations
 - Staff and Inmate training
4. Sexual abuse investigations

