

NATIONAL
PREA
RESOURCE
CENTER

**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.

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





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

**MODULE 6:
OPERATIONAL PRACTICES**

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

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

NATIONAL
PREA
RESOURCE
CENTER

Copyright © 2014 American University Washington College of Law

All rights reserved. The Bureau of Justice Assistance retains a license to reproduce, publish, or otherwise use, and to allow others to use, this material for federal purposes. Otherwise, no part of this publication may be produced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage or retrieval system, without permission in writing from the Project on Addressing Prison Rape.

Requests for permission to make copies of any part of this publication can be made to:

*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*

Objectives

- Describe how to operationalize administrative investigations consistent with PREA standards
- Describe how to operationalize human resources consistent with PREA Standards
- Describe key operational issues and their impact on administrative investigations and human resources
- Outline the elements of critical operational practices



Take a Comprehensive Approach

- Everyone needs to be involved in this process -- everyone has a role in compliance
- Consider departmental and staff roles and responsibilities as it relates to PREA compliance
- Look at **all** policies and procedures that affect compliance with the standards



Administrative Investigations: Who Should be at the Table?

Leadership

HR
Representatives
IA
Investigators
Mental Health
Care
Union Reps
Prosecutors
Classification
/ Case work
staff



General Counsel
Security
Staff
Policy Staff
Law
Enforcement
Medical Health
Care
Training
PREA Manager/
Coordinator

NATIONAL
PREA
RESOURCE
CENTER



Key Operational Practices: Administrative Investigations

- Identify how administrative investigators are receiving reports [115.51, 115.54, 115.61 and 115.71; 115.151, 115.154, 115.161, 115.171; 115.251, 115.254, 115.261 and 115.271; 115.351, 115.354, 115.361 and 115.371]
 - inmates/ residents, staff, third-party, anonymous, community
 - written, oral, 800 lines, grievances
- Define the timing of beginning the investigation [115.71; 115.171; 115.271; 115.371]



Key Operational Practices: Administrative Investigations

- Identify who is charged with investigating
[115.71; 115.171; 115.271; 115.371]
 - provide specialized training for this group of investigators
[115.34; 115.134; 115.234; 115.334]
- Define investigative protocol in policy and procedures
[115.22, 115.64, 115.65, 115.71; 115.122, 115.164, 115.165,
115.171; 115.222, 115.264, 115.265, 115.271; 115.322,
115.364, 115.365, 115.371]
 - ✓ duties of first responders
 - ✓ when do staff call investigators
 - ✓ what evidence is collected and by whom
 - ✓ who is interviewed and by whom



Key Operational Practices: Administrative Investigations

- Review employee files of alleged perpetrator
[115.71; 115.171; 115.271; 115.371]
- Determine if evidence points to the need for a criminal investigation
[115.22, 115.65, 115.71; 115.122, 115.165, 115.171;
115.222, 115.265, 115.271; 115.322, 115.365, 115.371]
 - Establish MOUs with local law enforcement regarding investigative procedures, timing and information sharing
- Determine if other staff's actions or inactions contributed to abuse and proceed with actions related to those staff
[115.71; 115.171; 115.271; 115.371]
- Define responsibilities and procedures to continue investigations even if staff resign
[115.71; 115.171; 115.271; 115.371]



Key Operational Practices: Administrative Investigations

- Determine responsibility and process for notification to the inmate/ resident during and after the investigation
[115.73; 115.173; 115.273; 115.373]
- Have full written reports and documentation regarding decisions and conclusions from the investigation
[115.71; 115.171; 115.271; 115.371]
- Define the evidentiary standard for substantiating an allegation as preponderance of the evidence
[115.72; 115.172; 115.272; 115.372]



Key Operational Practices: Administrative Investigations

- Review incidents following the conclusion of investigations [115.86; 115.186; 115.286; 115.386]
 - Reporting procedures, training efforts, physical plant issues
- Discipline [115.76 and 115.77; 115.176 and 115.177; 115.276 and 115.277; 115.376 and 115.377]
 - Consistent,
 - establish a table of penalties
 - track discipline
 - track key indicators
 - ✓ (gender, race, age, ethnicity, time in service, nature of offense)



Human Resources: Who Should be at the Table?



Key Operational Practices: Pre-Employment Human Resources [115.17; 115.117; 115.217; 115.317]

- Define information gathered during reference checks
 - has engaged in sexual abuse; convicted of engaging or attempting to engage in sexual activity; civilly or administrative adjudications for sexual activity; incidents of sexual harassment; substantiated allegations of sexual abuse; resignations during investigations
- Identify if the agency will require potential employees to sign waivers for reference information
- Identify psychological screening tools for pre-employment checks
- Identify who is responsible for pre-employment checks for contractors
 - Consider adding volunteers to “pre-employment” checks – not a PREA standard but will increase prevention and reduce potential liability



Key Operational Practices: Pre-Employment Human Resources [115.17; 115.117; 115.217; 115.317]

- Identify where **information can/ should be gathered** from
 - State criminal databases, child abuse registries, closed registries held by state police, civil litigation records check, sex offender registry, licensing bureaus, Westlaw, Lexis
- Define responsibility for **criminal background checks**
 - Who will conduct checks? Will all employees have a check every five years or will a group of employees be checked each year?
- Determine at when in the application/ interview process to ask/raise **PREA related questions**
- Determine what you say (if anything) to applicants who are **not eligible for employment** because of PREA-related issues



Key Operational Practices: Pre-Employment Human Resources [115.17; 115.117; 115.217; 115.317]

- Define information gathered during **promotion eligibility checks**
 - Has engaged in sexual abuse; convicted of engaging or attempting to engage in sexual activity; civil or administrative adjudications for sexual activity; incidents of sexual harassment; substantiated allegations of sexual abuse; resignations during investigations
- Define employees' **affirmative duty** to report misconduct
- Define discipline should **material omissions** occur



Key Operational Practices: Pre-Employment Human Resources [115.17; 115.117; 115.217; 115.317]

- Define **employees' rights** during investigations
 - Rights of contractors and volunteers
- Clearly define **expectations** for staff, obligations to report misconduct and discipline for off-duty conduct and anti-fraternization in the employee code of conduct/ ethics
- Define **union members rights** during investigations as well as during arbitration and terminations



The Impact of Operational Practices on Administrative Investigations and Human Resources

- Operational practices can affect investigations by impeding or facilitating the flow of information
- **Failure to be attentive to operational issues places the organization at risk**
- Knowing where to look for information will be key to operationalizing PREA standards on administrative investigations and human resources
- Clearly established practices set the benchmark



The Impact of Operational Practices on Administrative Investigations and Human Resources

- Leadership should facilitate identification of deviations from established rules
- Leadership should participate in PREA initiatives to illustrate its importance
- Investigators and HR representatives should be visible and available to employees at times other than crisis (e.g. EAP and training efforts)
- First contact between staff and investigators or HR professionals should be positive



The Impact of Operational Practices on Administrative Investigations and Human Resources

- Quick identification of **red flags and ethical issues** are essential for investigations and human resources– staff, contractors and volunteers
- Supervisors need to **supervise** at all times on all shifts
 - Unannounced rounds, visits to third shift
- **Collection and analysis of data** is key in responding to sexual abuse
 - Grievance procedures; timing, place of incidents; physical plant issues; review of adequacy of multiple internal and external reporting avenues
- Clarity in **roles and expectations** for investigations will allow for quick response times when an allegation is reported



Activity

- Each group is assigned PREA standard.
- As jurisdictions work to implement PREA standards and to address human resources and administrative investigations, they will need to revisit and develop operating practices that support the intent of the standards.
- Each group will:
 1. Discuss the PREA standard and review a key relevant operating practice and critical components that must be put in place.
 2. Develop a preliminary implementation plan for this practice.
 3. Describe how the agency will put in place what is on paper...how will you implement (operationalize) this practice?



Assignments

Group 1: Limits to cross-gender viewing and searches [115.15, 115.115, 115.215, 115.315]

Group 2: Hiring and promotion decisions [115.17, 115.117, 115.217, 115.317]

Group 3: Policies to ensure referrals of allegations for investigations [115.22, 115.122, 115.222, 115.322]

Group 4: Specialized training: Investigations [115.34, 115.134, 115.234, 115.334]

Group 5: Inmate Reporting [115.51, 115.151, 115.251, 115.351]

Group 6: Criminal and administrative agency investigations [115.71, 115.171, 115.271, 115.371]



Summary

- (1) How to Operationalize Administrative Investigations & Human Resources Consistent with PREA Standards
- (2) The Impact of Key Operational Issues and their Impact on Administrative Investigations and Human Resources

