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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.

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*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 7:
TECHNIQUES FOR STRONG ADMINISTRATIVE
INVESTIGATIONS

The Project on Addressing Prison Rape
January 2014

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Objectives

- Discuss the National Prison Rape Elimination Commission findings and identify and describe the challenges for investigating sexual abuse
- Identify applicable PREA Standards for investigations
- Identify foundations for successful administrative investigations
- List the reasons why administrative investigations fail



Objectives

- Define considerations made in effective administrative investigations
- Identify useful techniques for administrative investigations
- Describe how administrative and criminal investigations are linked and outline the process for conducting coordinated investigations



Tafoya v. Salazar

516 F.3d 912 (10th Cir. 2008)

Female inmate in a county jail was sexually assaulted by a **male correctional officer**, Ruiz.

The court found the sheriff was aware of conditions that were **substantially likely to result in sexual assault**, as he knowingly continued to employ detention officers with criminal records.

The **background check** showed a DWAI conviction, a conviction for assault, and an arrest for resistance, destruction of city property, disturbance, and assault. After hiring, Ruiz was arrested for domestic violence and DWAI.

The court accepted the expert's explanation that "periodic evaluations including criminal background checks could have identified staff members that posed a particular threat to inmates."



Riley v. Olk-Long

282 F.3d. 592 (8th Cir. 2002)

The Facts:

- Officer made inappropriate comments to Riley about having sex with her roommate. He entered her room after lockdown, attempted to reach under her shirt, grabbed her from behind, and rubbed up against her.
- Inmate did not report because “she doubted that she would be believed and feared the resulting discipline.”
- Officer later entered her cell and raped her. She was forced to perform oral sex so she would not become pregnant.
- The officer was terminated and convicted under state law.



Riley v. Olk-Long

282 F.3d. 592 (8th Cir. 2002)

Court's Analysis:

- Prior to this incident **other female inmates had made complaints.**
- Officer had a **history of predatory behavior**; four prior investigations were closed as inconclusive. A collective bargaining unit precluded permanent reassignment.
- Director of security **suspected** the officer was abusive but did not take action and did not terminate the officer when he had the opportunity.
- Warden did not think officer posed a threat.



Riley v. Olk-Long

282 F.3d. 592 (8th Cir. 2002)

Court's Ruling:

- Warden and director of security were **deliberately indifferent** to the substantial risk of harm that correctional officer presented to female inmates.
- Held personally liable to inmate in amount of **\$20,000 from director** and **\$25,000 in punitive damages from the warden.**



Challenges for Investigating Sexual Abuse in Correctional Settings

- There is a culture of underreporting out of fear
 - Retaliation
 - Loss of privileges
 - Moving facilities
 - Will not be believed
- Poor quality of the evidence
- Lack of credibility of victims and witnesses
- Time elapsed between incident and report
- Who is involved in the investigation and what agency is taking the lead



Challenges for Investigating Sexual Abuse in Correctional Settings

- Lack of training for investigators on sexual abuse in custody
- Coordinating responders
- Prosecutors who turn down cases
- What to do with unsubstantiated cases that are not untrue
 - The frequent flier syndrome

Many of the investigative PREA Standards are in response to findings by the National Prison Rape Elimination Commission



Applicable PREA Standards

- Policies to ensure referrals of allegations for investigations (115.22; 115.122; 115.222; 115.322)
- Specialized training: investigations (115.34; 115.134; 115.234; 115.334)
- Staff and agency reporting duties (115.61; 115.161; 115.261; 115.361)
- Staff first responder duties (115.64; 115.164; 115.264; 115.364)



Applicable PREA Standards

- Coordinated response
(115.65; 115.165; 115.265; 115.365)
- Criminal and administrative agency investigations
(115.71; 115.1171; 115.271; 115.371)
- Evidentiary standard for administrative investigations
(115.72, 115.172; 115.272, 115.372)
- Sexual abuse incident reviews
(115.86; 115.186; 115.286; 115.386)



Operationalizing PREA Standards: This is Good Investigative Practice

- Have an investigative policy
(115.22, 115.122, 115.222, 115.322)
- Have a procedure for collecting evidence
(115.21, 115.121, 115.221, 115.321)
- Train investigators
(115.34, 115.134, 115.234, 115.334)
- Train medical and mental health staff
(115.35, 115.135, 115.235, 115.335)
- Have multiple reporting avenues for inmates/ residents, staff and third party reporters including a confidential means
(115.51-115.54, 115.151-154, 115.251-115.254, 115.351-115.354)



Operationalizing PREA Standards: This is Good Investigative Practice

- Give inmates/ residents adequate medical and mental health treatment matching community expectations
(115.82-115.83, 115.1182-183, 115.281-115.282, 115.381-115.382)
- Be clear about what the reporting structure is in and outside of your agency
(115.61, 115.161, 115.261, 115.361)
- Have clear instructions for first responders
(115.64, 115.164, 115.264, 115.364)



Operationalizing PREA Standards: This is Good Investigative Practice

- Have coordinated response
(115.65, 115.165, 115.265, 115.365)
- Be clear about access to and need for **both** criminal and administrative investigations
 - Involve law enforcement or other agencies such as the Department of Health and Human Services as needed
- Let inmates/ residents know what is happening with the allegation – provide updates
(115.73, 115.173 115.273, 115.373)
- Review (post-investigation) the allegation, the process you followed and be honest about what you could have done better
(115.86, 115.186, 115.286, 115.386)



Foundations of Successful Administrative Investigations

- Strong and clear **zero tolerance policy** for sexual misconduct and abuse
- Strong **investigative policy**
- **Training** staff and inmates/ residents about investigative process
- Knowing the **channels of reporting** (including your mandatory reporting guidelines)
- Keeping inmate victim **involved** in process



Foundations of Successful Administrative Investigations

- Including appropriate outside agencies to aid in the investigation
- Understanding evidence timelines
- Ensure the investigative process is viewed as credible
- Determine applicable criminal laws and administrative procedures and make certain investigative process is consistent
- Define the successful completion of an investigation as a security issue
- Protect victims from retaliation
- Ensure safety and security



Challenges to Successful Administrative Investigations

- Attitude toward victim/witnesses
- Reaction of first responders
- Lack of communication with investigative partners both internal and external
 - Law enforcement, Mental health, Medical, Prosecutors, HR office
- Lack of support for the victim's safety
- Administrative Reasons
 - Weak policy
 - Lack of support from administration
 - Poor teamwork
 - Poor recordkeeping



Why Administrative Investigations Fail

- Timing and pace of the investigation
- Distrust of investigators
- Poorly trained investigators
- Process
 - Leaks
 - Uncooperative victims
 - Vulnerable Victims
 - Uncooperative staff – code of silence



Why Administrative Investigations Fail

- Evidence that is
 - Limited
 - Weak
 - Poorly collected
 - Poorly preserved
- Not properly utilizing all of the available investigative tools
- Lack of commitment to task
- Poor coordination of agency partners



Considerations for Effective Administrative Investigations

WHO

- Department of Internal Affairs
- Local Law Enforcement
- Employee Assistance Program
- Union
- Division of Youth Services
- Advocacy and Protection Agencies
- Prosecutors
- Victim Services



Considerations for Effective Administrative Investigations

WHERE

- Probation or Parole Department
- Community
- County/Local Jail
- State or Federal Prison
- House Arrest
- Half-way House
- Work Release



Considerations for Effective Administrative Investigations

INVESTIGATIVE TEAM

- Gender
- Ethnicity
- Expertise
- Qualifications
- Language ability

WHAT

- Incident (crime) scene management
- Size of agency
- Financial and legal restrictions
- Policy



Considerations for Effective Administrative Investigations

NEEDS

- Medical
- Safety

HOW

- Evidence Collection
- Wiretaps
- Interviews
- Notifications



Involving Other Agencies

WHEN

- Embrace and develop mutual opportunities prior to need
- Immediately and in accordance with criminal law
- Immediately and in accordance with carefully developed protocols and MOU's
- Embrace and assess throughout investigative process

WHY

- Maximize resources
- Building relationships for the future
- Enhance effective public policy
- Enhancement of institutional and public safety



Techniques for Administrative Investigations

- Property and room search of victim/perpetrator
- Letters, notes, gifts
- Check account activity of victim
- Telephone activity
- Mail
- Records - logbooks, roll call, medical records
- Reports from other staff and/or inmates/ residents



Techniques for Administrative Investigations

- Construct a timeline to put people in a particular location at a particular time
- Aggressive Techniques:
 - Body Wire
 - Electronic Monitoring
 - Controlled Calls
 - Polygraph



Sample Interview Questions for Successful Administrative Investigations

- Describe the staff member's physical characteristics?
 - Hair pattern on body
 - Type of underwear
 - Bellybutton
 - Scars/ Moles
 - Tattoos / piercing
 - Circumcised / uncircumcised
 - Hygiene
 - Skin pigmentation
 - Perfume or cologne
- Do you know the staff member's financial status?
- To whom does the staff member owe money?
- What do you know about the staff member?
- What type of vehicle does s/he drive?
- What are the staff member's hobbies? Days off?
- Where did the staff member go on vacation?
- What type of home does the staff member have?
- Has the staff member ever given you cards, tokens, notes, photos?



Sample Interview Questions for Successful Administrative Investigations

- When did the sex begin?
- What occurred?
- When / frequency?
- Where did act take place?
- Did ejaculation occur?
- Who was the last person you saw before the act took place?
- Who was the first person you saw after the act took place?
- Does the staff member own his/her home or rent?
- What type of music does the staff member like?
- What are the names of the staff's family members, wife, kids, friends, pets?
- Where does the officer live?
- What is the staff member's telephone number?
- Have you told anyone about this? Whom? When?
- Description of area where act took place?
 - Detail
 - Locks
 - Keys
 - Announcements
 - Radio transmission



Union Member Right's During Administrative Investigations

- Staff may request a union steward to be present in an interview if they are the "target" of the allegation
- They must make the request
- Steward may participate, ask questions, speak to the employee, and act as their advisor
- Steward may not hinder the investigation
- All administrative requirements, regulations and statutes remain in full force and effect



Know Your Law, Policy and Procedure

- Evidence collection and analysis
- When to include other agencies
- Calling in victim services
- Aggressive investigative techniques
 - Using inmates
 - Wiretaps
 - Polygraphs
- Use of *Garrity vs. Miranda* warnings
- Interviews of both victim and staff



Victims and Administrative Investigations

- Consider the victim's perspective: fear, terror, the inmate/resident code, the effect of prior victimization
- Complex motives of the victims
- Ability to relate to the victim
- Pace of the investigative process
- Victim safety pending investigation
- Use victim services to advocate for the victim
- Victim's history of trauma



Staff Members and Administrative Investigations

- Written reports
- Confidentiality
- Interview with detailed notes
- What to do with accused staff member
 - Reassign
 - Administrative leave without pay
 - Allow to resign
 - E.A.P. referral
 - Go to licensing agencies
 - Determining *Garrity* or *Miranda*
 - Refer to D.A. for investigation and potential prosecution



Linking Administrative and Criminal Investigations for Success

- What you learn *independent of the interview* of the suspect can be turned over to law enforcement
- *Garrity* does not prohibit law enforcement from turning over information to you
- The administrative investigation can be conducted simultaneously with the criminal investigation



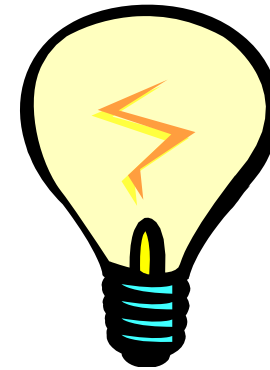
Linking Administrative and Criminal Investigations for Success

- The criminal investigation should have the higher priority and due to this, the administrative investigation may be put on hold so as **not to interfere** with the criminal investigation
- Have MOUs regarding information sharing with administrative and criminal investigators



Remember!

- Be tenacious.
- Be creative.
- Be intelligent.
- Keep good records.
- Know your agency's policy and procedure and the state and federal criminal law.
- Bring in other skill sets – lawyers, physicians, forensics, treatment partners, and available community resources.



Summary

- (1) Challenges for Investigating Sexual Abuse
- (2) Applicable PREA Standards
- (3) Foundations & Techniques for Successful Administrative Investigations
- (4) Reasons Administrative Investigations Fail

