

Specialized Training: Investigating Sexual Abuse in Correctional Settings Notification of Curriculum Utilization December 2013

The enclosed *Specialized Training: Investigating Sexual Abuse in Correctional Settings* curriculum was developed by The Moss Group, Inc. (TMG) 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 PREA standards served as the basis for the curriculum's content and development with the goal of the *Specialized Training: Investigating Sexual Abuse in Correctional Settings* curriculum to satisfy specific PREA standard requirements.

It is recommended that the *Specialized Training: Investigating Sexual Abuse in Correctional Settings* curriculum be reviewed in its entirety before choosing which modules to use. Any alterations to the original materials must be acknowledged during their presentation or requires removal of the PRC and TMG 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: Utilization of the enclosed curriculum, either in part or whole, does not guarantee that an auditor will find a facility "meets standard". Rather, an auditor will take into consideration the curriculum used as part of their overall determination of compliance.





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.





Module 9: Prosecutorial Collaboration

Time: 3:00 p.m. - 4:00 p.m. (1 hour)

Training Objectives:

- 1. Identify techniques for writing the final report to ensure accuracy and clarity.
- 2. Explain criteria required for administrative action and prosecutorial referral, per requirements of PREA standard 115. (3)34.
- 3. Apply your understanding to increase prosecutions of cases that are substantiated and criminal in nature.

Materials Needed:

- 1. Easel pad and markers
- 2. PowerPoint® player/machine (lap top computer and LCD projector)
- 3. Screen or monitor

Training Objectives:

- This module is designed to address the requirement of 115.(3)34: Specialized Training for Investigators, for training on the criteria and evidence required to substantiate a case for prosecution referral. However, it addresses issues that are relevant to administrators as well. Consider inviting key administrators to observe the training who may be able to influence policy and determine next steps in areas related to increasing prosecutions of substantiated criminal allegations.
- Consider bringing in a local prosecutor to present or co-present this module. The agency
 can make use of this opportunity to enhance this relationship. Invite the prosecutor to
 modify this module to include the specific requirements of your county and his/her
 experience with your agency.
- Make use of your participants' experiences to engage them in discussion and bring up additional points specific to your agency or geographic location.

This module was developed by Anthony Pierson, Esq., Chief Counsel for the Ohio Department of Youth Services in collaboration with The Moss Group, Inc.

Time	Lecture Notes	Teaching Tips
	Prosecutorial Collaboration	
		Prosecutorial
1 min	Module 9: Objectives	Collaboration
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	Module 9: Objectives	Objectives
	1. Understand what a prosecutor considers when deciding whether or not to prosecute a case. 2. Apply your understanding to increase prosecutions of your cases that are substantiated and criminal in nature.	
	This module will enhance your understanding of why a	
	prosecutor may or may not choose to prosecute a case,	
	and what you can do to potentially influence that choice.	
3 min	Begin with the End in Mind	
	Begin with the End in Mind	Begin with the End in Mind
	What is your end game?	
	 Filing a criminal charge 	
	Pass the buck to law enforcement	
	Carryout policy objectives	
	Comply with PREA	
	Help ensure justice is carried out, even	
	within the corrections facility NATIONAL PREA RESOURCE CENTER	
	Always approach your investigations with awareness of	
	your ultimate goal.	
	 Your goal is to enhance facility safety. How do you do that? 	
	 In cases of administrative allegations, you do that 	
	by filing administrative sanctions against the	
	perpetrator, assuming the allegation is determined to be substantiated with a preponderance of the	
	to be substantiated with a preponderance of the	

evidence. In cases of criminal allegations, your goal is the criminal prosecution of the perpetrator, assuming the allegation is substantiated. You can increase the likelihood of prosecution by following policy, procedure, and the PREA standards. 4 min What Is the Legal Process? What Is the Legal Process? What is the Legal Process? Incident o Possibly an arrest Investigation o Likely an arrest Grand Jury Indictment Arraignment Bond Hearing What is the process of a prosecution? First, there is an incident and, possibly, an immediate arrest. Following that, there is an investigation. If the investigation findings support prosecution, an arrest may be made at the conclusion of the investigation. Insert state-specific Next, the case is reviewed by a grand jury. A grand process re: grand jury, jury is a group of XX people, chosen from XX group etc. of people. A grand jury is convened by a XX. The • When is a grand grand jury has the power to subpoena witnesses jury required (if and documents. It also assesses the evidence and ever) • Who initiates a determines whether there is sufficient evidence to grand jury charge someone with a serious crime. If a grand jury determines that there is probable cause, it hands up an indictment. This is the formal accusation that the person has committed the crime. Next, an individual is officially informed of a

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	criminal charge in an arraignment. At the arraignment, the criminal charging document is read aloud in the presence of the defendant. The defendant is given the opportunity to respond by entering a plea, usually of guilty or not guilty. Once an individual is charged, a judge determines the appropriate bond (if any) at a bond hearing, and the individual either goes home or is sentenced to pre-trial detention.	
2 min	What Is the Legal Process? Cont.	
	What Is the Legal Process? Cont. • Trial • Sentencing • Appeal	What Is the Legal Process? Cont.
	 Typically, defendants wait for months or even years to go to trial. Depending on the complexity of the case, the trial itself can also take a number of months. Once the trial is complete, the defendant is found guilty or not guilty of the crimes he/she was charged with, and a sentence is determined. 	
	Sentencing typically includes supervision in the	
3 min	community, imprisonment, and/or fines. Why Does a Prosecutor Charge a Defendant?	Why Does a Prosecutor Charge a Defendant?

Why Does a Prosecutor Charge a Defendant?

- · Heinous Crime
- · Defendant is an evil person
- · Defendant committed an egregious act
- · The victim is sympathetic
- · The case can easily be proven
 - · Investigation is solid

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- Prosecutors are ultimately the most powerful players in this sequence of events because they are the people who determine what to charge defendants with, if they charge them with anything at all.
- A number of different factors play into whether the prosecutor decides to charge an individual with a crime.
- The type of crime can play a role, especially if the crime is particularly heinous. Many prosecutors may consider media attention in this decision.
- Similarly, if the defendant seems particularly evil, as demonstrated through his/her record or otherwise, this can increase the likelihood of them being charged.
- If the victim is particularly sympathetic, this may also play a role as a jury is more likely to empathize with him/her. This can be detrimental to the prosecution of cases where the victim is an inmate –juries may not easily empathize with a criminal.
- The actions of an investigator can also have a major influence on the decision to prosecute. If the investigator does a thorough job and provides enough solid evidence to give the prosecutor a good shot at winning the case, the chances of prosecution increase drastically.

Ask: In your professional experience, what influences the decision to charge defendants? What are the challenges with correctional cases?

3 min	Why Does a Prosecutor Not Charge an Inmate/Resident?	
	Why Does a Prosecutor <u>Not</u> Charge an Inmate/Resident?	Why Does a Prosecutor Not Charge an Inmate/Resident?
	 Bad investigation Little likelihood of obtaining a conviction Victim is not sympathetic Overworked 	
	Witness availability and cooperation Inmates/residents are already in custody NATIONAL PREA RESOURCE CENTER	
	 If the investigation is not solid, or the evidence is insufficient or corrupted, the prosecutor will not want to charge the defendant. 	
	 Additionally, the prosecutor will be hesitant to charge the defendant if the victim or the witnesses aren't available or won't cooperate. Investigators 	
	should consider this in their interactions with the victim and the witnesses during the investigation. • Prosecutors may also hesitate to charge a	
	defendant who is already in prison or jail because it is perceived as a waste of time. Many prosecutors are overworked and have only limited	
	time to take cases to trial. If they're not taking a criminal off the streets, why should they spend	
	 their time on the case when there are other cases that may impact public safety? Ultimately, every prosecutor wants to obtain a 	
	conviction. If they don't believe they'll be able to do that, they may not charge.	
5 min	Why Does a Prosecutor Not Charge an Offender?	Why Does a Prosecutor Not Charge an Offender?

	Why Does a Prosecutor Not Charge an Inmate/Resident? • Victim and witnesses may lack credibility • Sex between inmates/residents and staff may be considered consensual Especially in cases of staff-inmate/resident sexual abuse, a prosecutor may struggle with the fact that an offender may not have as much credibility in the eyes of a jury as a staff member. • Members of the jury or the prosecutors themselves may not see staff-on-inmate/resident sexual misconduct as truly criminal if the case	Ask: What challenges do cases of sexual abuse in corrections face with regard to perceptions of the jury?
2	appears to be "consensual."	
3 min	Video	http://www.youtube.com/watch?v=1c8XLJ9 MEhk This clip from the movie Chicago. It is meant to introduce the concept of defense techniques in a humorous manner.
4 min	Defense Techniques	Defense Techniques

Defense Techniques

- · The victim is no saint
- · Witnesses are biased and evil people
- Poor investigative work
- Beyond a reasonable doubt standard not met

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Prosecutors will anticipate that the defense will bring up all of these issues if it is brought to trial.

- They will make the argument that the victim is an inmate/resident and therefore he/she is not credible or deserving of a trial.
- Similarly, any witnesses who are inmates/residents will be seen as lacking in credibility.
- Ultimately, though, a lot of the defense will rest on an attack of the investigative process and the evidence presented.

Ask: Has anyone testified at a trial of a case for which they conducted the investigation? What was your experience with the defense attorney?

3 min

It All Begins With an Investigation

It All Begins With an Investigation



EVERYTHING

- Investigation Report must be complete and accurate
 - o NO bias
- Crime Scene Preservation
- Do not forget that sometimes a person's body is the crime scene (DNA)
- Evidence Preservation
- Photograph EVERYTHING

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How can you, as an investigator, present a case to the prosecutor that they would consider prosecuting?

 First, your investigation report must be accurate, clear, and unbiased. Remember that every report you write on a criminal case may be used in a trial, and a prosecutor will be thinking about what a Ask: What other recommendations do participants have?

It All Begins With an

Investigation

	defense attorney can do with the report you	
	submit. If they believe that the report can be used	
	to the defense's advantage, they will be hesitant to	
	move forward.	
	 Make sure your report comes with appropriate 	
	evidence supporting the findings. Photograph	
	everything. Make sure you and your team	
	members know how to collect and preserve	
	evidence from both the crime scene and the victim	
	and suspect's bodies. Stay up-to-date on the best	
	practice in the field.	
3 min	We Have a Solid Investigation, Now What?	
	We Have a Solid Investigation, Now What?	We Have a Solid Investigation, Now
		What?
	Know your criminalsCreate, train, and implement	
	Respond to subpoenas	
	Cure witness problems	
	Train employees on how to be a trial witness	
	Collaborate with the local law enforcement and	Ask: What can an
	prosecutors	investigator do once
	NATIONAL PREA RESOURCE	the investigation is
	CENTER	complete to enhance the possibility of
	Your job isn't finished once you've completed an	prosecution?
	investigation.	
3 min	Know Your Criminals	
	Know Your Criminals	Know Your Criminals
	Tallow Your Criminals	
	Put together a Pending Charges list	
	When seeking prosecution present full	
	disciplinary history of inmate/resident	
	Provide information regarding reason for	
	original incarceration	
	ongma modrosi ation	
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	When interacting with the process to a be processed to be	Ask: What has been
	When interacting with the prosecutor, be prepared to be	participants'
	as helpful as possible.	experience with this?
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	 Keep track of all of your cases in a pending charges list. Provide the prosecutor with as much information as possible on the person you want to charge. For example, if the suspect is an inmate/resident, provide the prosecutor with the suspect's full disciplinary history and the reason for his/her original incarceration. Be pre-emptive – anticipate what you think the prosecutor might need, and provide it. 	
3 min	Create-Train-Implement	
	Create-Train-Implement Create, train, and implement investigations crime scene preservation evidence preservation video retention policy	Create-Train- Implement
	Ensure your internal processes are designed to maximize	
	prosecutions.	
	 Develop and train staff on investigation 	
	techniques; crime scene preservation; evidence	
	collection and preservation; video retention policy;and report writing.Be intentional.	Ask: How is this being done in your agency? What could be improved?
3 min	Subpoenas	
		Subpoenas

Subpoenas

- Prosecutors often use the subpoena process to evaluate whether anyone cares about the case. A subpoena that does not receive a response conveys that no one cares about the outcome.
 - · Subpoenas may not actually require attendance
 - Subpoena compliance should be mandated via policy
 - · If necessary, witnesses and victims must appear

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You also have to stay abreast of the case you submitted to the prosecutor. Your role is still not finished.

- One way a prosecutor determines whether a case is important to anyone is through subpoenas. If you are subpoenaed and don't respond, the prosecutor is less likely to charge. Therefore, make sure you promptly respond to all subpoenas.
- Work with victims and witnesses to ensure they will be present, if necessary.
- Talk with administrators and ask them to consider mandating subpoena compliance in policy.

Ask: What has been participants' experience with this?

4 min

Cure Witness Problems

Cure Witness Problems

- Evidence of a crime becomes evidence in court through use of witnesses. No witnesses usually mean no evidence.
 - Ensure witnesses remain available. Keep records of new addresses and changes of employment.
 - Take steps to protect personal information from being turned over to inmate through discovery.
 - · Must appear in court when necessary.

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Witnesses are extremely important to a trial — they provide much of the evidence.

 Without evidence, a case will go nowhere. If a prosecutor believes that witnesses will not be available for the trial, they will not prosecute.



Ask: What has been participants' experience with this?

• Keep track of your witnesses. If they are former staff, keep track of their address and employment. Take steps to protect personal information. • Many defense attorneys are willing to work with prosecutors to protect employee personal information. Although names of employees are usually released, defense attorneys are likely to allow redaction of home addresses and personal telephone numbers. The rules of evidence and discovery (depending on your jurisdiction) generally allow this information to be withheld from discovery. These protections are often overlooked and will most likely not be invoked unless the agency urges the prosecutor or in house counsel take steps to protect the information. The investigator needs to be available to appear in court when necessary. Additionally, if the prosecutor is struggling with finding the witnesses or getting them to cooperate, the investigator can assist. • Ensure that your agency is not inhibiting the process. • Go talk to the witnesses if they are housed within one of your facilities. See if there is anything you or the agency can do to make them feel more comfortable testifying. Require employees to appear if subpoenaed. 2 min **Witness Training** Witness Training

Witness Training

 Agencies should train employees on how to be a good witness. They will feel much more confident throughout the court process as well as provide better outcomes at trial.

Ask: What has been participants' experience with this?

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Train staff who will be testifying on how to be trial witnesses.

- Staff members who are concerned about the process will not be cooperative witnesses and may decrease chances of prosecution.
- Staff members who are trained will be more beneficial to the prosecution during the trial.

3 min

Collaborate with Local Law Enforcement and Prosecutors

Collaborate with Local Law Enforcement and Prosecutors

- Use the team approach to get "buy-in" from all aspects of law enforcement.
 - Hook and Haul
 - Pending Charges List
- Regular calls and follow up provides solidarity and dispels the feeling that someone is being "thrown under the bus."
- Thank your law enforcement officers and prosecutors for doing a good job.

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Most importantly, collaborate with both your local law enforcement and your prosecutor. Build relationships.

 If necessary, organize and facilitate a meeting with prosecutors, judges, your agency director, investigators, and wardens to hash out all roadblocks. You may be surprised to hear what others feel are the problems. You may find a simple solution to fix another agency's hesitancy to prosecute a case.



Collaborate with Local Law Enforcement and Prosecutors

As mentioned earlier, compile a pending charges list. This list should track every major crime in your facility and delineate the defendant; the date of crime; court dates, if any; names of victims; and other helpful information. In order to fix the problem, you must first be able to identify the problem. Regularly follow-up with the law enforcement and prosecutors with whom you work to ensure good relationships are maintained. • Expressed gratitude will be appreciated. • Reach out to your prosecutor if they are not prosecuting cases to find out why and what you can do differently. If they continue to resist prosecuting, work with your supervisors internally to determine the best strategy to increase prosecutions. 3 min **Questions?**