

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**

**Module 12:
Gender Implications for Investigations**

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

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Objectives

Identify the foundations of successful investigations

Understand why investigations fail

Identify the considerations for an effective investigation

Understand the implications of *Garrity*

Understand implications of gender and why it matters during investigations

Identifying useful investigative techniques (including interviewing staff and inmates, evidence collection, etc.)

Foundations of Successful Investigations

Strong and clear zero tolerance policy for staff sexual misconduct and inmate-on-inmate sexual abuse (115.11)

Strong investigative policies (115.22 and 115.71-115.72)

Explain and demystify the investigative process

Keep inmates involved in process (115.73)

Define this as public safety/security issue for individuals, institution, and community partners

Foundations of Successful Investigations

Reasonable assurances of retaliation control against inmates, witnesses, and community partners (115.367)

Knowing the channels of reporting--including your mandatory reporting guidelines (115.351 – 115.354)

- Time is the enemy
- Reporting should be immediate

Staff, inmates, and community partners view process as credible

Legal/judicial partners view processes in compliance with applicable laws and criminal procedures

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 evidence to contrary, work the allegation as if it took place and you will be moving forward

Investigative Issues

Attitude toward the victim

Actions-Reactions-Lack of Action by first responders

Complainants with limited capacities [developmental, language, disabilities]

Lack of support for the victim's safety

Timing, pace and coordination of the investigation

Distrust of investigators

Poorly trained investigators

Investigative Issues

Process

- Leaks
- Uncooperative victims
- Uncooperative staff- code of silence

Lack of communications with investigative partners both internal and external

- Law enforcement, child protective services, medical and mental health, prosecutors, GALs, social workers, lawyers/ public defenders

Investigative Issues

Administrative

- Weak or non-existing policy
- Lack of support from the administration
- Poor teamwork
- Poor recordkeeping **

Not properly utilizing all of the available investigative tools

Evidence that is

- Limited
- Weak
- Poorly collected and preserved

Considerations for Effective Investigations

Who will conduct the investigation

- Agency personnel
- Outside law enforcement
- Other outside agency

Who is the investigative team

- Gender
- Ethnicity
- Expertise
- Qualifications
- Language ability
- Expertise in working with victims who have limitations
 - Language, developmental mental health, hearing impaired etc.

Other Important Considerations for Effective Investigations

Criminal versus Administrative

Garrity Issues

Garrity

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

Due to the “fruits” of the *Garrity* interview, you may want to save your interview of the suspect to one of the last things you complete in the investigation

Garrity

The administrative investigation can be conducted simultaneously with the criminal investigation as long as they are separate

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

The Gender Impact on Investigations

How do you think gender affects an inmate's response to sexual victimization?

- Men
- Women
- Gender non-conforming inmates

What is gender's impact on investigations?

How does Gender Impact Investigations?

Specialized training for Investigators (115.34)

Staff training that is gender specific to the gender the facility houses (115.31(b))

Need to be open in ways to obtain information from inmates

- Asking what happened instead of how were you abused
- Have conversations about what occurred without personal biases or judgments

Use language the inmate uses– do not paraphrase

Be developmentally and culturally appropriate

How does Gender Impact Investigations?

Questioning of any inmate

- Explain who you are
- Why you are there
- What you are trying to do
- Ask open ended questions first, then narrow
- Ask inmate 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
- As appropriate, ask if they are okay and if they need someone else with them

How does Gender Impact Investigations?

Questioning for Men

- 'Thinking' questions
- What do you think about how Mrs. Roberts touched you?

Questioning for Women

- 'Feeling' questions
- How do you feel about the letter Amy gave you?

Questioning for Gender non-conforming inmates

- 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

Interviewing Men

Typical: Logical and Direct

- Don't identify with the word "victim"
- Why do they report?

Interviewing Women

Typical: More comfortable with emotions

- Many have past experiences of victimization in custodial settings
- Why do they report?

Investigative Techniques

First and foremost consideration should be the health and safety of the victim

Unless there is overwhelming evidence to unfound an allegation, action should be taken to separate the victim and accuser, at least until the investigation concludes

Consider constructing a timeline to put people in a particular location at a particular time

Investigative Techniques

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)

Prior to an incident, determine if you have a SANE program in your area and what their policy is for examining juveniles

Consider using a forensic interviewer who is trained in using unique tools specifically for questioning youthful inmates or inmates who are developmentally delayed about sexual abuse

- dolls, pictures, story writing etc.

Investigative Techniques

Second most important consideration is the preserving and collection of evidence

Area where the incident took place should be processed for physical evidence

- Clothing of both victim and suspect
- Bodies of both victim and suspect

Potential DNA evidence

- blood, semen, saliva, skin, hair

Other Potential Evidence

Letters/notes written back and forth between the participants and others (search of inmate's cell)

Gifts exchanged between participants

Reports from other staff and inmates

Records

- Logbooks, telephone logs, outgoing mail log, victim's account activity, victim's mail, key check-out logs, duty rosters/timesheets, journals, etc.

Other Potential Evidence

Video/live-streaming

Cell phone records of staff member

Social Media

Sample Letter

log,

4.25.07

It's coming time to say farewell. I guess we both have to look at the positives. We're not saying good bye, but see you later. Goodbyes are for relationships that never last. See you later's are for people like us who have a future. You say you love me, you say you gone off me, I just pray you don't eat your words and end up with [REDACTED]. If I see you on the streets with her, I'll kill you. real talk. But anyways, this letter is for you to sit back and do the time, and think about bashin me hard, from the back. Think about me deep throatin the whole thing. They don't call me ee-Hudini for nuthin. Make sure you write and call. my off days are Mon, tues, Fri. I don't go to work till 2:00 and I don't get off till 12:00. keep ya head up.

Always,

[REDACTED]
[REDACTED]
[REDACTED] aka Hudini :)
Brittany Flowers
[REDACTED]

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

Interview as early in the investigation as possible

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

Interviewing the Victim in Cases of Inmate on Inmate Sexual Abuse

Conduct and attitude by the first responders and investigators will have a major impact on the cooperation of the alleged victim

Treat all alleged victims with dignity and respect

Patient, supportive and reassuring

Consider having mental health professional present during interview

Additional Potential Witnesses to Consider

All inmates on the pod with the victim

Any inmates who may have been on the pod and recently moved or released

Family of the victim

Fellow staff members

- Floats
- Supervisors
- Control Operators
- Counselors

Beware of Stereotypes

“You can’t rape a gay man.” and/or “Don’t gay men want to be raped?”

“All gay men are drag queens.” or “All lesbians are dykes.”

“Aren’t gay men and lesbian women similar? Have similar experiences?”

“Transgender women want to have sex with other women.”

Beware of Stereotypes

“Isn’t a transgender person just someone who *wants* to be the opposite sex?”

“Having a transgender woman here sexualizes the environment”

“Gay men are pedophiles.”

“Being gay is a choice.”

Special Considerations: Staff

In addition to investigating the abuse, staff should be investigated for a lack of supervision

If you have sexual offenders in your program, staff should receive additional specialized training in dealing with this population

Special Considerations: Youthful Inmates

Forcible acts are crimes and should be investigated in much the same way as staff on inmate

The alleged offender is entitled to his/her constitutional rights and should be so advised.

Most are represented by DPA on the charges that got them detained or committed.

Special Considerations: Youthful Inmates

“Non-coercive” sex acts should be investigated to determine if a crime has been committed and for a supervision issue with staff

Law enforcement– are they reluctant to investigate misdemeanor crimes?

Special Considerations: Youthful Inmates

Youthful inmates should be separated from adults

Youthful inmates should be examined medically and by mental health

Staff should be held accountable for supervision if act occurred on their watch, if it was preventable

Investigators Should

Document completely everything they do in the investigation

Adapt the investigation to

- gender of victim
- gender of accused
- facility type
- age of victim
- cognition and/or mental disabilities of victim

Know investigative resources

Know how to use technology effectively

Understand evidence collection and chain of custody

Know when to include other agencies

Prepare before you get an allegation

General Guidance

Use language that is familiar to the subject but be as professional as possible

Maintain your professional demeanor

Remember

Be tenacious

Be creative-- think outside of the box

Keep good records

Know your agency's policy and procedures

Know your state and federal criminal laws

Bring in other skill sets

- Lawyers
- Physicians
- Forensics
- Treatment partners
- Available community resources