

Responding to Sexual Abuse of Youth in Custody: Addressing the Needs of Boys, Girls, and Gender Nonconforming Youth Notification of Curriculum Use
April 2014

The enclosed Responding to Sexual Abuse of Youth in Custody: Addressing the Needs of Boys, Girls, and Gender Nonconforming Youth 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 Youth in Custody: Addressing the Needs of Boys, Girls, and Gender Nonconforming Youth curriculum being to satisfy specific PREA standard requirements.

It is recommended that the Responding to Sexual Abuse of Youth in Custody: Addressing the Needs of Boys, Girls, and Gender Nonconforming Youth 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.

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**Training Curriculum:
Responding to Sexual Abuse of Youth in Custody:
Addressing the Needs of Boys, Girls and Gender Non-Conforming Youth**

Module 12: Gender Implications for Investigations

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

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Objectives

- Describe the foundations of successful investigations
- Identify why investigations fail
- Identify the considerations for an effective investigation
- Discuss the implications of *Garrity*
- Describe the implications of gender and why it matters during investigations
- Identify useful investigative techniques (including interviewing staff and youth, evidence collection, etc.)



Foundations of Successful Investigations

- Strong and clear zero tolerance policy for staff sexual misconduct and youth-on-youth sexual abuse (115.311)
- Strong investigative policies (115.322 and 115.71-115.72)
- Explain and demystify the investigative process
- Keep youth 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 youth, 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, youth, 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 youth recants from 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 v. New Jersey

385 U.S. 493 (1967)

Holding: The government **cannot use information** in a subsequent criminal proceeding that has been **obtained from an employee who was threatened with negative job consequences** for failure to cooperate in an investigation.

Under *Garrity*:

- Corrections staff **can** be required to answer questions **in an administrative investigation**
- And can be fired for refusing to answer or based on the answers they give
- But the government **cannot subsequently use these answers in a criminal proceeding.**

Therefore, the agency must initially decide between criminal OR administrative investigations, and stage properly



PREA Observes the *Garrity* Rule

28 CFR § 115.71: Criminal and administrative agency investigations

(c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence; 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.

(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 criminal prosecution.**



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 a youth's response to sexual victimization?

- Boys
- Girls
- Gender non-conforming youth

What is gender's impact on investigations?



How does Gender Impact Investigations?

Specialized training for Investigators (115.334)

Staff training that is gender specific to the gender the facility houses (115.331(b))

Need to be open in ways to obtain information from youth

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

Use language the youth uses– do not paraphrase

Be developmentally and culturally appropriate



How Does Gender Impact Investigations?

Questioning (All Youth)

- Explain who you are
- Why you are there
- What you are trying to do
- Ask open ended questions first, then narrow
- Ask kids to explain in their own words what happened
- If you don't understand a term ask the youth
- If the child requires it, use paper, pencil or dolls
- 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 Boys

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

Questioning for Girls

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

Questioning for Gender non-conforming youth

- May need to question differently/ adjust questions based on youth's gender identity
- Try asking both thinking and feeling questions initially to see what the youth responds to best



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 (115.321 and 115.382)
- Prior to an incident, determine if you have a S.A.N.E. 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 youth 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 resident/youth's cell)
- Reports from other staff and youth
- 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
- Gifts exchanged between participants



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 [REDACTED] 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] KVA 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 immediately after it was conducted



Interviewing the Victim in Cases of Youth on Youth 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 youth on the POD with the victim

Any youth who may have been on the POD and recently moved or released

Family of the victim

Fellow staff members

- Floats
- Supervisors
- Control Operators
- Counselors



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: Youth

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

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

Most are represented by legal counsel on the charges for which they are detained or committed.



Special Considerations: Youth

“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?

Involved youths should be held accountable administratively for their behavior (Treatment Team)

- Loss of privileges
- Loss of phase



Special Considerations: Youth

Youths should be separated from each other

Youths should be examined medically i.e. STDs

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



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

