

**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.

*Note: Use of the enclosed curriculum, either in part or 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.*

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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 3: Vectors of Sexual Abuse in Custody: Gender, Sexuality and Victimization**

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

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# Objectives

Discuss and analyze the history of the juvenile justice system.

Identify the prevalence of sexual abuse among youth in custody.

Describe the staff and youth relationship in correctional facilities and identify the gender dynamic.



# History of Juveniles in Custody: Entry

## Early Punishment

- Punishment of children in homes and communities

## Late 1800s

- Rise of penal institutions
- Punishment of youth as adults
- Youth in adult institutions

## 1960s and 70s

- Greater protection for juveniles via the *parens patriae* doctrine
- *In re Gault*, 387 U.S. 1 (1967) (affording due process protections to juveniles)
- Juvenile Justice Delinquency Prevention Act

# History of Juveniles in Custody: Entry

1980s and 90s

- Rise of state statutes permitting youth to be prosecuted and transferred to adult court
- By 1999, nearly every state expanded legislation that allowed juveniles to be tried as adults.

2000s

- Landmark court decisions
- *Roper v. Simmons* (543 U.S. 551 (2005) (no capital punishment for those under 18))
- *Graham v. Florida*, 130 S.Ct. 2011 (2010) (no life imprisonment for juveniles who committed non-homicide offenses)
- *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (mandatory life without parole for those under the age of 18 at the time of their crimes is cruel and unusual)

Present

- Acknowledgment of importance of adolescent development
- States turning away from juvenile incarceration in adult facilities

# History of Juveniles in Custody: Supervision

Earliest supervision of youth was by male staff

After female correctional staff entry into adult male correctional facilities, male correctional workers appeared in female facilities

Modern era -- male and female staff in youth facilities, though most limit contact male staff have with female youth.



# History of Juveniles in Custody

Punishment, including institutional punishment, has always been gendered.

Correctional institutions have always struggled against sexual abuse.





# Prevalence of Sexual Abuse in Youth Facilities

Correctional Authorities reported more than 2,000 allegations of sexual violence reported each year in juvenile facilities totaling 4072 allegations for 2005 and 2006

- The estimated total number of allegations for the nation was
  - 2,047 in 2005 (16.7%)
  - 2,025 in 2006 (16.8%)

About **1 in 5 allegations** of sexual abuse of youth in custody were **substantiated**



# BJS, Sexual Victimization Reported by Youth, 2012

An estimated **9.5%** of adjudicated youth in state juvenile facilities and state contract facilities reported experiencing one or more incidents of sexual victimization by another youth or staff in the past 12 months or since admission, if less than 12 months.

- About **2.5%** of youth reported an incident involving another youth
- About **7.7%** reported an incident involving facility staff

Youth who identified their sexual orientation as gay, lesbian, bisexual, or other reported a substantially higher rate of youth-on-youth victimization (10.3%) than heterosexual youth (1.5%).

Among youth who reported victimization by staff:

- 89.1% were **males** reporting sexual activity with **female staff**
- 3.0% were **males** reporting sexual activity with both **male and female staff**.



# BJS, Sexual Victimization Reported by Youth, 2012

Sex of Youth Housed	Abuse reported by both staff and other youth (%)	Abuse reported by another youth (%)	Abuse Reported by Staff (%)
Males Only	9.7	2.0	8.2
Females Only	6.7	5.7	2.2
House both female and male youth	9.4	3.7	7.2



# BJS, Sexual Victimization Reported by Youth, 2012

Gender of Victim	Abuse reported by both staff and other youth (%)	Abuse reported by another youth (%)	Abuse Reported by Staff (%)
Male	9.7	2.2	8.2
Females	6.9	5.4	2.8



# BJS, Sexual Victimization Reported by Youth, 2012

Sexual Orientation	Abuse reported by both staff and other youth (%)	Abuse reported by another youth (%)	Abuse Reported by Staff (%)
Heterosexual	8.9	1.5	7.8
Non-Heterosexual	14.3	10.3	7.5



# Youth in Custody Statistics

Males make up 86% of the population in juvenile detention centers

Females make up 14% of the population in juvenile detention centers

175,000 youth prosecuted as adults

2,000,000 transferred for adult court prosecution from juvenile system.



# Title VII

“[i]t shall be an unlawful employment practice for an employer— (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a) (2012).



# Bona Fide Occupational Qualification

- Escape clause to Title VII: the “bona fide occupational qualification” (BFOQ)
- Permits employers to discriminate in hiring or firing decisions.
- Specifically permits an otherwise discriminatory hiring practice when it is “reasonably necessary to the normal operation of that particular business or enterprise.” 42 U.S.C. § 2000e-2(e)(1) (2012).





# Bona Fide Occupational Qualification

*Dothard v. Rawlinson*, 433 U.S. 321 (1977) (eliminating height and weight restrictions for positions within all male institution, while upholding male gender as a BFOQ for the Alabama Maximum Security Prison).

*Gunther v. Iowa State Men's Reformatory*, 462 F. Supp. 952 (N.D. Iowa 1979), *aff'd*, 612 F.2d 1079 (8th Cir. 1980) (holding that male gender cannot be used as a BFOQ to keep women out of contact positions in male institutions).



# Women In Corrections

**2001:** women made up 24.5 % of the correctional workforce in male custodial facilities.

**2007:** female workers made-up 40% of all correctional staff in adult facilities.

**2008:** women comprised 42% of juvenile facility staff.



# Men in Corrections

According to the last correctional census in 2005, male employees outnumbered female employees by a ratio of 2 to 1, while men in direct contact positions outnumbered women by a ratio of 3 to 1.

## Breakdown

- Federal Facilities
  - 87% men/ 13% women
- Private Facilities
  - 52% men/ 48% women
- State operated facilities
  - 74% men/ 26% women

Males make-up 52% of staff in juvenile facilities



# Gender Non-Conforming Staff in Corrections

Difficult to quantify at this time due to **lack of data**

According to Supreme Court decisions, discrimination because of sexual orientation or gender identity may receive only intermediate scrutiny

Title VII does not offer protection for sexual orientation or gender identity, but state civil rights statutes may. *See e.g., Sexual Orientation Non-Discrimination Act, Ch. 2, 2002 N.Y. Laws 46*



# Institutions as Sexualized Living and Working Environments



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# Sexual Harassment

- Women working in male-dominated occupations like corrections are not necessarily received as equals
- Masculine atmosphere, where sexually explicit comments and derogatory language is the norm



# Sexual Harassment

*Neal v. Dir., D.C. Dep't of Corr.*, No. 93-2420, 1995 WL 517244, at \*1 (D.D.C. Aug. 9, 1995) (memorandum opinion) (claiming the District of Columbia Department of Corrections permitted sexual harassment of female correctional workers)

*Negron v. Ulster Cnty.*, No. 1:08-CV-692, 2010 WL 4609296, at \*8 (N.D.N.Y. Nov. 4, 2010) (denying defendants' motion for summary judgment of plaintiff's claim of sexual harassment and assault and retaliation)



# Sexual Discrimination

- Women may experience paternalistic protection from male co-workers
- Difficulty assimilating into the male culture
- Women who report sexual harassment may be terminated





# Sexual Assault

- Female staff may experience sexual assault from both co-workers and inmates/ youth
- Sexual behavior can include anything from light touching in an inappropriate way, to violent or aggressive behavior



# Sexual Assault

*United States v. Kutz*, 439 F. App'x 751, 753 (10th Cir. 2011) (affirming male inmate's assault conviction for inappropriately touching a female correctional officer)

*Jones-Bey v. Davis*, 80 F. App'x 472, 472 (7th Cir. 2003) (upholding a male inmate's conviction for assault of female officer, when inmate poked the officer in the buttocks with a piece of rolled-up newspaper).



# Female Staff Commit Sexual Misconduct Disproportionate to their Numbers

Women make up approximately 40% of all adult correctional staff, and approximately 42% of staff in juvenile facilities.

Correctional authorities reported that female staff commit 61 % of sexual staff misconduct and 21 % of staff harassment.

69% of jail and prison inmates reporting victimization by staff sexual misconduct reported that it was perpetrated by female staff.

A recent survey of former state prisoners found that female staff accounted for roughly 85 % of all incidents n of staff sexual misconduct.



# Female Staff Commit Sexual Misconduct Disproportionate to their Numbers

In a 2010 study, Janet Warren found that male inmates viewed themselves as being sexually predatory towards female correctional officers

Of the male inmates interviewed:

- 8.7% reported perpetrating noncontact coercive sexual conduct, while 2.8% reported contact sex acts.
- 9.7% reported engaging in noncontact bartered sexual activity, while 8% reported contact bartered sexual activity.
- 24.3% reported engaging in noncontact consensual encounters, and 17.4% reported contact consensual activity.



# Female Staff Commit Sexual Misconduct Disproportionate to their Numbers

Surveys of juvenile correctional authorities and youth in custody reflect the same disparity

Women account for 42 % of staff in juvenile facilities, yet youth implicate **female staff in 95%** of incidents of staff sexual abuse, where 92% of those abused youth are boys



# Summary

- Boys at greater risk of abuse from female staff
- Girls engage in girl on girl aggression – sexual and physical
- Girls are sexually abused by staff disproportionate to their numbers in the juvenile correctional population
- Gender non-conforming youth at high risk of victimization from both staff and other youth

