Prosecuting Sexual Abuse in Confinement: A Case Study

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The National PREA Resource Center (PRC) was established through a cooperative agreement between the Bureau of Justice Assistance and the National Council on Crime & Delinquency (NCCD). The mission of the PRC is to assist adult prisons and jails, juvenile facilities, lockups, community corrections, and tribal facilities in their efforts to eliminate sexual abuse by increasing their capacity for prevention, detection, monitoring, responses to incidents, and services to victims and their families.
AEquitas: The Prosecutors’ Resource on Violence Against Women

AEquitas’ mission is to improve the quality of justice in sexual violence, intimate partner violence, stalking, and human trafficking cases by developing, evaluating, and refining prosecution practices that increase victim safety and offender accountability.
**PREA and the Standards**

2003: PREA legislation passed into law

June 2009: Report and draft standards published by the National Prison Rape Elimination Commission (NPREC)

May 2012: Final Department of Justice standards released

June 20, 2012: Final standards published in the Federal Register

August 20, 2012: Standards applicable to Bureau of Prisons

2013-2014: First audit cycle for corrections facilities

Presenters

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Adult Statistics

- 9.6% of former state prisoners reported one or more incidents of sexual victimization during their most recent period of incarceration
- More than 75% of all reported staff sexual misconduct in state prisons involved male inmate with female staff
- For former state prisoners the rate of inmate-on-inmate sexual abuse was 3 times higher for females (13.7%) than males (4.2%)
- 13.7% of male (17.2% of female) former prison and jail inmates reported a violent sexual inmate-on-inmate incident

Bureau of Justice Statistics, Prison Rape Elimination Act of 2003: Data Collection Activities, 2012 (June 2012)
http://bjs.usdoj.gov/content/pub/pdf/pdca12.pdf
Prevalence of Sexual Abuse of Prison and Jail Inmates

1 in 5 male inmates reporting sexual abuse by another inmate were abused within the first 24 hours.

1 in 3 male inmates reporting sexual abuse by staff were abused within the first 24 hours.

Source: Bureau of Justice Statistics, Sexual Victimization In Prisons And Jails Reported By Inmates, 2008-09 (August 2010).
At the conclusion of this webinar, participants will be better able to:

1. Identify the dynamics of sexual abuse in confinement and their impact on the reporting, investigation, and prosecution of cases
2. Collaborate and communicate with advocates, medical professionals, corrections staff, and law enforcement to ensure the victim is supported throughout the investigation, trial, and sentencing processes
3. Thoroughly investigate cases by uncovering and corroborating as much evidence as possible
4. Prosecute cases by utilizing trial strategies that focus on the offender’s predatory tactics and provide an understanding of the confinement setting in which the abuse occurred
On 7/15/10, between 5:00/5:30 am, Walter Green, DOB 5/25/87 (24), 5’10”, 150 lbs, was in the jail inmate restroom washing his face, as other inmates were leaving to begin the day’s work assignment

David Essex, DOB 8/3/79 (32), 5’6”, 175 lbs, approached Green from behind and grabbed ahold of Green’s neck with one hand
State v. Essex

- Holding Green’s neck, Essex forced Green into the nearby shower, injuring Green’s shoulder in the process.

- As Essex closed the curtain to the shower, he stated: “I’ve been in prison before and I’m probably going back, so you don’t say anything. You just take it.”

- Essex stood behind Green and pulled down Green’s pants, cutting the side of Green’s penis in the process with his fingernail.
State v. Essex

- Essex penetrated Green’s anus with his penis several times
- Green felt severe pain, but did not say anything due to fear that something worse would happen to him
- Essex then said, “You don’t say anything. Or I’ll find you when I get out.”
- Essex left and went to his job in the laundry room
- After Essex left, Green pulled up his pants and went to his job, which also was in the laundry room
- Essex had no further contact with Green in the laundry room
Later that same day, just prior to dinner, Essex approached Green and told him to relinquish his job in the laundry facility (which would also mean a transfer to another housing unit).

Inmates in the laundry facility are given credit of three days for everyday actually served, where inmates on other units are not.

Green initially made this request via a note to a corrections officer, and then signed the transfer form later that night.

He was transferred to another housing unit in the jail.

For the next two nights, Green was unable to sleep and vomited throughout the nights.
Report to law enforcement:

- On 7/17/10, Green reported the sexual abuse to staff officer Miller, who immediately called law enforcement

- Officers Spicer and Liciardello responded to the County Jail for a report of sexual abuse
Was Miller’s decision to call law enforcement appropriate?

Does your jurisdiction have anonymous reporting for cases of sexual abuse in confinement?

28 C.F.R. § 115.51. Inmate reporting; 28 C.F.R. § 115.61. Staff and agency reporting duties

Please indicate “YES” or “NO” using the Feedback option on your left
First Responder Duties Under PREA

§ 115.64 Staff first responder duties:

• Separate the alleged victim and abuser
• Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence
• If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim and alleged abuser not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating

Victim Interview

- Officers met Green in private room, conducted informal interview
- Green had been assigned top bunk across from defendant’s
- Green did not have his clothes from incident because inmates must change after completing their jobs and returning to their housing unit
- Green had showered at least twice since the incident
- Officers obtained copy of the note that Green had written and the job transfer request that had been made under duress
Victim Interview

• During the interview, officers observed and documented the following:
  • Nervous
  • Scared
  • “Hold back your emotions”
  • Physical pain; difficulty sitting down
• Green told officers he had had no prior contact with Essex. He recalls seeing him during work at the laundry, but they had never come into contact

Corroboration

- Staff noted Green had been unable to sleep and had been throwing up since incident occurred
- Housing inmate roster confirmed sleeping arrangements
- Assigned detective interviewed victim
- Detective took photographs of victim’s injuries and the shower
- No formal interviews of other inmates
Victim Support

- Confidential advocates who are independent from the facility, where possible
  - If not possible, facility required to select and train staff member
- Provide inmates with addresses, phone numbers, toll-free hotlines
- Enable reasonable communication
- Inform inmates about monitoring and mandatory reporting

28 CFR § 115.53, Inmate access to outside confidential support services; 28 CFR § 115.21, Evidence protocol and forensic medical examination; 28 CFR § 115.82, Access to emergency medical and mental health services; 28 CFR § 115.81, Ongoing medical and mental health care for sexual abuse victims and abusers
Victim-Witness Counselor

- Victim-Witness Counselor is certified and in plainclothes.
- Communications between counselor and victim are not confidential.
- Usually the counselor meets with victim prior to formal interview by detective.
- When Victim-Witness Counselor Colon asked Green how he was doing, he shrugged his shoulders and his eyes began to tear up.
- Green indicated he felt ashamed.
- Colon stressed the rape was not his fault, he had no control over the abuse, and he had nothing to be ashamed of.
- Colon commended Green for taking first steps toward recovery.
Victim-Witness Counselor

**Victim concerns shared with the counselor:**

- Concerned about disclosing incident to family
- Initially unsure he wanted to “press charges”
  - Counselor stressed that corrections and law enforcement would support any decision he made
- Fear of defendant due to defendant’s threat of future harm if victim told anyone about the sexual abuse
- Concern that others would be harmed by defendant if victim didn’t officially report the abuse
After the interview with Green, the Victim-Witness Counselor followed up with jail staff:

- Spoke to Sergeant in Charge
- Noted victim wanted to access follow-up victim advocacy and counseling services
- Explained what had happened with job transfer and explained victim wanted to return to his job
Medical Care

**Officers transported Green to the hospital, where he was examined by a SANE**

- Under PREA, victims are entitled to a sexual assault forensic examination:
  - Immediate
  - No cost
  - Sexual Assault Nurse Examiner (SANE) or Sexual Assault Forensic Examiner (SAFE) if available
  - Often, victim will receive immediate medical care at facility; then be transferred to outside location for examination

28 CFR § 115.21, Evidence protocol and forensic medical examination; 28 CFR § 115.81, Medical and mental health screenings; History of abuse; 28 CFR § 115.81, Access to emergency medical and mental health services; 28 CFR § 115.81, Ongoing medical and mental health care for sexual abuse victims and abusers
SANE Examination

- Victim at hospital for approximately 3 hours
- Exam lasted 90 minutes
- Statements to SANE were consistent with those provided to officers
- Exam occurred 72 hours after the incident:
  - Bruising and swelling surrounding the abrasion on his shoulder
  - Small abrasion on top right side of penis
  - 3 anal tears that were visible without magnification; injuries tender to palpation
- Discharge:
  - Personal safety plan
  - STD prophylaxis
  - Need for medical follow-up
  - Counseling
  - Coping/fear reduction and interventions/services
After Green returned from the hospital, he was moved to a different housing unit in the jail.

28 CFR § 115.43, Protective custody
Detective spoke to victim, who indicated he wanted to participate in the investigation and prosecution

Detective took audio statement from victim (statement consistent with those Green had provided to the officers and to the SANE)
After completing the victim interview, Officer Spicer went to defendant’s unit. Asked defendant to follow him down the hall so they could talk. During the walk, defendant’s attitude became “very aggressive,” so officer immediately Mirandized him. Upon arrival in private conference room, officer advised Essex that he was a suspect in a sexual abuse; asked what happened during morning of incident. Defendant denied raping anyone, said he wanted to know who was accusing him of it, said he would never do anything like that.
Officer’s Interview of Defendant

- Defendant stated he was being falsely accused
- Said that was because he was always telling other inmates how to do their daily tasks in the unit
- Defendant repeatedly said he had been in prison before
- Said he was not the type of person who would “do something like that”
After Defendant’s Interview

- Officer walked defendant back to his unit
- Defendant became “loud and aggressive”
- Defendant repeatedly yelled to other inmates that someone had said he had sexually abused them
- Corrections officers handcuffed Essex and moved him to a more secure housing unit
Detective’s Interview of Defendant

- Defendant stated he didn’t do what he had been accused of; issued repeated denials
- Didn’t understand why “the guy” would say this because he didn’t do anything to him
- After detective showed defendant a photo of victim, defendant said he had bunked next to him and they had worked on opposite ends of the laundry
- Defendant signed consent form for saliva sample
Defendant’s Criminal History

25 arrests (24 convictions)

- Aggravated Assault Causing Serious Bodily Injury (2)
- Assault Causing Bodily Injury (3)
- Assault Causing Bodily Injury to a Family Member (4)
- Terroristic Threats, Burglary of Building, Burglary of Vehicle (3)
- Unauthorized Use of Vehicle, Criminal Mischief (2)
- Evading Arrest (6)
- Resisting Arrest, Unlawful Carrying of a Weapon, DWI, Reckless Driving (2)
- Criminal Trespass, Unlawful Restraint (3)

28 CFR § 115.41, Screening for risk of victimization and abusiveness, 28 CFR § 115.42, Use of screening information
What happened within the jail while the criminal investigation was ongoing?
Jail Disciplinary Hearing

• A few days after Green first reported the rape, Essex’s jail disciplinary hearing occurred.
• At the hearing, Essex was Mirandized, the reported facts were read to him, and he denied raping Green.
• Essex was found guilty by a preponderance of the evidence at his disciplinary hearing.
• Sentence: 30-days lock down with loss of privileges.
• The hearing was audio recorded and sent to the detective.

28 CFR § 115.71, Criminal and administrative agency investigations; 28 CFR § 115.72, Evidentiary standard for administrative investigations, 28 CFR § 115.73, Reporting to inmates.
Approximately ten days after the incident was first reported, Essex was arrested and charged with sexual assault.

Bail was set at $35,000.
One Month Later

- One month after the disclosure of the abuse, Colon received a letter of appreciation from Green.
- Green wrote that he has utilized the individual counseling services and had disclosed the abuse to his mother, who is being supportive.
- Green also decided that he wanted to proceed with the filing of charges.
Trial Preparation

- Stay in touch with victim
- Ensure he has access to counseling inside and outside of confinement
- Order and review defendant’s jail/prison records
- Work with family and professionals to provide support to victim
The Crime Scene

- Go to the crime scene
- Ensure photographs taken
- Get measurements
- Determine and photograph lack of good staff vantage point
- Note lack of surveillance cameras
**Witness Preparation**

- Meeting the victim:
  - Victim had been released from jail
  - Evaded contact; prosecutor contacted him through the victim’s mother, who already knew about the abuse
  - Prosecutor drove 3 hours to meet with the victim in his jurisdiction
  - Over the weekend, prosecutor repeatedly met with victim and answered all of his questions

- Preparing other witnesses
  - Prepare in manner consistent with all other trials
  - Embrace “bad” facts
  - Consider any potential motive or bias
Pretrial Motions

- Expert notifications
  - DNA
  - SANE
  - Fingerprint technician

- Introduce victim behavior

- Other potential motions
  - Prior bad acts 404(b)
  - Protective orders
  - Shields
  - Relevance
  - Character
  - Hearsay
  - Privilege
  - Rape shield
In Texas, prosecutors can conduct voir dire:

- Who are potential sexual abuse victims?

- What if someone puts himself in a situation that society might be judgmental about? A prostitute, a drug addict passed out on the street, etc. Can that person – who society thinks has put himself in a vulnerable position, still be a victim of crime? Still be deserving of protection of laws?

Witness Order

- Corrections Officer
- Law Enforcement/First Responders
- Classifications Supervisors
- Victim
- Victim-Witness Counselor
- SANE
- DNA
- Detective
Opening

- Linear explanation of facts
  - Highlight victim behavior
- Incorporate theme
- Share any “bad” facts
- Prepare in contemplation of closing
Direct Examination of the Victim

- Circumstances of his arrest
- How he ended up in jail
- Directed testimony to facts and elements
- Details, sensory information
Exhibits

- Photographs of jail and unit
- Photographs of the shower
- Photographs of victim’s injuries
- Blown up SANE diagram
Criminalistics Evidence

- SANE Kit
- Blood and urine
- Buccal swab
Expert Testimony on Victim Behavior

- **Why**: Jurors buy in to myths and misperceptions about how victims should react in during and after a sexual abuse
- **Who**: Significant experience working with survivors
- **Where**: From outside of the crime jurisdiction, if possible
- **What**: Submit expert report on general victim behavior, with an emphasis on some relevant common behaviors
- **When**: Identify as soon as possible, and submit report in advance of trial
- **How**: Identify through statewide coalition, other prosecutors, other agencies; prepare prior to trial
Closing

- Delivered evidence that matched voir dire expectations
- Physical evidence corroborated victim’s testimony
- Victim is to be believed
- Request for transfer important corroboration
Verdict

• Jury deliberated for 2 hours
• Verdict: Guilty
Sentencing

- Victim was not present for sentencing
- Defendant testified at sentencing and said jury got it wrong
- Prosecutor introduced defendant’s 24 prior convictions
- Prosecutor also called the fingerprint officer as a witness: Defendant had threatened him, and continued to do so after his conviction, so prosecutor argued defendant was still a threat

**Sentence**: 99 years; parole eligible after 30 years
After the Trial

- Prosecutor called victim and never received return phone call
- Defendant transported to prison week after conviction
- Defendant still in prison
- Texas prosecutors may speak to jurors after trial:
  - Jurors were not influenced either way by fact that victim was inmate
  - Jurors focused on the facts
Summary

- Prosecutor’s job is to seek justice for all victims
- The trying of these cases is an opportunity to educate other criminal justice professionals who may not understand the importance of these cases
- Do not fear these cases
Resources

Special Initiative Page
http://aequitasresource.org/Prosecuting%20Sexual%20Abuse%20in%20Confinement.cfm

AEquitas Resources available at
http://www.aequitasresource.org/library.cfm
  • Witness Intimidation: Meeting the Challenge
  • The Prosecutor’s Resource: Crawford and Its Progeny
  • The Prosecutor’s Resource: Forfeiture by Wrongdoing

For additional information on safety planning, contact the National Sexual Violence Resource Center,
http://www.nsvrc.org

U.S. Department of Justice National PREA Standards
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