



# Unit 2: Inmates' Rights to be Free from Sexual Abuse and Sexual Harassment and Staff and Inmates' Rights to be Free from Retaliation for Reporting

**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.

# Introductions

## Faculty

- Name, Title
- Work Location
- Experience with PREA and/or training

## Participants

- Name, Position



# Employee Training Series Outline

This training is part of series of trainings to assist agencies with PREA Standards 115.31, 115.131, 115.231, and 115.331

|                 |  |
|-----------------|--|
| Unit 1:         | The Prison Rape Elimination Act: Overview of the Law and Your Role   |
| Unit 2:         | Inmates' Rights to be Free from Sexual Abuse and Sexual Harassment and Staff and Inmate Rights to be Free from Retaliation for Reporting |
| Unit 3 Part I:  | Prevention and Detection   |
| Unit 3 Part II: | Response and Reporting   |
| Unit 4:         | Professional Boundaries  |
| Unit 5:         | Effective and Professional Communication with Inmates  |

# Unit 2 Objectives

1. Understand agency policy and PREA requirements related to inmates' right to be free from sexual abuse and sexual harassment
2. Understand agency policy and PREA requirements related to staff and inmates' right to be free from retaliation for reporting
3. Discuss the role of retaliation in contributing to a code of silence

# Objective 1: Understand agency policy and PREA requirements related to inmates' right to be free from sexual abuse and sexual harassment

## **To meet this objective we will discuss:**

- Key terms and definitions
- Inmates' rights under PREA
- Facility/agency policy related to inmates' rights to be free from sexual abuse

# Key Terms

- Sexual Abuse
- Sexual Harassment
- Reporting
- Retaliation
- Code of Silence



# Sexual Abuse – Inability to Consent

- By law inmates cannot consent while in a confinement setting, to staff, volunteers, or contractors
- Any sexual activity between staff and inmates is considered a violation of PREA and zero-tolerance policy
- This is a violation because of the imbalance of power that exists in confinement settings

United State Department of Justice, PREA Final Rule, 2012; [http://ojp.gov/programs/pdfs/prea\\_final\\_rule.pdf](http://ojp.gov/programs/pdfs/prea_final_rule.pdf)

# Inmate-on-Inmate Sexual Abuse

## Occurs when there is:

- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight
- Contact between the mouth and the penis, vulva, or anus
- Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument
- Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation



United State Department of Justice, PREA Final Rule, 2012; [http://ojp.gov/programs/pdfs/prea\\_final\\_rule.pdf](http://ojp.gov/programs/pdfs/prea_final_rule.pdf)



# Staff Member/Contractor/Volunteer on Inmate Sexual Abuse

## **Occurs when there is actual, attempted, threatened or requested:**



- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight
- Contact between the mouth and the penis, vulva or anus
- Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire

United State Department of Justice, PREA Final Rule, 2012; [http://ojp.gov/programs/pdfs/prea\\_final\\_rule.pdf](http://ojp.gov/programs/pdfs/prea_final_rule.pdf)

# Staff Member/Contractor/Volunteer on Inmate Sexual Abuse, Continued

## **Occurs when there is actual, attempted, threatened or requested:**

- Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire
- Any other intentional contact, either directly through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor or volunteer has the intent to abuse, arouse, or gratify sexual desire



United State Department of Justice, PREA Final Rule, 2012; [http://ojp.gov/programs/pdfs/prea\\_final\\_rule.pdf](http://ojp.gov/programs/pdfs/prea_final_rule.pdf)

# Sexual Harassment



## **Includes:**

- Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate directed toward another
- Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures

United State Department of Justice, PREA Final Rule, 2012; [http://ojp.gov/programs/pdfs/prea\\_final\\_rule.pdf](http://ojp.gov/programs/pdfs/prea_final_rule.pdf)

# Inmate Rights

## **Rights Established by PREA Standards**

- Inmates have the right to be free from sexual abuse and sexual harassment [115.11 (a); 115.33 (b)]
- Inmates and staff have the right to be free from retaliation for reporting [115.67 (a)]

# Sexual Abuse in Confinement

## **Can be perpetrated by a/an:**

- Inmate
- Staff Member/Employee
- Contractor
- Volunteer
- Others?

# PREA or Rule Violation?

- Willing (consensual) sexual relationships among inmates is not a PREA violation but rather a RULE violation
- Whether a relationship is consensual or non-consensual can sometimes be difficult to determine
- What may appear willing behavior may in fact involve sexual pressuring
- Refer to your facility's policy for guidance
- Regardless, all allegations or suspicions of sexual abuse should be reported



# Consequences of NOT Respecting Rights

There are significant consequences if staff do not respect the rights of inmates to be free from sexual abuse/harassment, as well as staff and inmates' rights to be free from retaliation for reporting

- Generally unsafe environment
- Physical/psychological damage to inmates/staff
- Distrust of authority
- Re-traumatization

# Consequences of NOT Respecting Rights, Continued

## Consequences (continued):

- Physical health
- Increased vulnerability to future abuse
- Constitutional violations (8th and 14th Amendments)
- Violations of state law
- Violations of agency policy
- Diminished credibility of the corrections profession





# Policy Review

- What does policy state regarding inmates' rights to be free from sexual abuse and sexual harassment?
- How does staff fulfill this requirement?
  - Prevention
  - Detection
  - Response
  - Reporting



## Objective 2: Understand agency policy and PREA requirements related to staff and inmates' right to be free from retaliation for reporting

### **To meet this objective we will discuss:**

- Different types of retaliation
- Inmate and staff rights under PREA from retaliation for reporting
- Applicable policy

# Retaliation

Retaliation occurs when an inmate or staff injures, harms, or intimidates a person who has reported sexual abuse and/or sexual harassment — or attempts to do so — in response to the report



United State Department of Justice, PREA Final Rule, 2012; [http://ojp.gov/programs/pdfs/prea\\_final\\_rule.pdf](http://ojp.gov/programs/pdfs/prea_final_rule.pdf)

# Retaliation, Continued

## Overt Retaliation

- Slashing car tires
- Verbal or emotional abuse
- Physical assault

## Indirect Retaliation

- Veiled threats
- Shunning from a group
- Sudden change in demeanor without explanation
- Invisible retaliation

# Agency Protection Against Retaliation (115.67)

- The facility/agency shall protect inmates and staff who report sexual abuse/harassment or cooperate with an investigation from retaliation
- A staff member should be designated to monitor retaliation
- Protection measures should be used to include:
  - Housing or transfers for inmate victims or abusers
  - Removal of alleged staff or inmate abuser from contact with victims
  - Emotional support services for inmate or staff who fear retaliation

# Agency Protection Against Retaliation (115.67), Continued

- For at least 90 days following a report, the agency should monitor the conduct/treatment of staff
- Items to monitor include:
  - Disciplinary reports (inmates)
  - Housing or program changes (inmates)
  - Negative performance reviews (staff)
  - Reassignments of staff
- For inmates, monitoring should include status checks
- Obligation to monitor shall terminate if the agency determines the allegation unfounded

# What Does Policy Say?

- Does policy designate a staff person to monitor retaliation?
- Based on your policy, what rights as staff do you have to be free from retaliation?
- Who might you go to if you feel that you are being retaliated against?
- Who can the inmates go to if they feel they are being retaliated against?

# Objective 3: Discuss the role of retaliation in contributing to a code of silence

## **To meet this objective we will discuss:**

- The definition of code of silence
- Implications of retaliation on reporting culture
- Strategies for staff to support a reporting culture



# Impact of Retaliation on Reporting

- Contributes to the code of silence by creating barriers to reporting through threats and intimidation
- When people perceive their safety to be at risk, they are less likely to report



# Code of Silence

An informal institutional or organizational culture that says members of the group will not inform on or give evidence or testimony against other members of the group, even though actions of the other members may involve breaches of policy or even the criminal law. Also referred to as the "Code of Blue."



# Code of Silence, Continued

## **In one study, 46% of police officers witnessed misconduct, but did not report it. Why?**

- I would be ostracized
- Officer who committed misconduct would be fired
- I would be fired
- I would be “blackballed”
- Administration wouldn’t do anything

Neil Trautman, National Institute of Ethics, Study of Code of Silence, 2001

# Indicators of a Reporting Culture

- Staff and inmates are willing to report suspected sexual abuse/harassment
- Staff and inmates have a high degree of trust in the investigative process and in administrative follow-up
- Communication and interactions are generally respectful and professional, both between staff and from staff to inmates

# Indicators of a Reporting Culture, Continued

- Staff and inmates know how to report and know the steps in the investigative process
- Staff and inmates are confident there will be no retaliation for reporting
- Data from grievances, incident reports, and disciplinaries is collected and reviewed by administrators and supervisors, and trends in reporting are identified

# Group Discussion: What Does This Mean for My Agency?

- What happens to those who report misconduct in my agency?
- What happens to those who do not report and should?
- What characteristics at my facility support reporting?
- What characteristics at my facility may be a barrier to reporting?



# Review: Unit 2 Objectives

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# End of Unit 2

