

Addressing the challenge of inmate rape.

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With the passage of the Prison Rape Elimination Act (PREA) in 2003, the spotlight was turned on an issue that had been in the shadows for a long time. Inmate-on-inmate (1) sexual assault has captured media attention and generated considerable controversy. Advocates are monitoring the situation and some lawsuits have been filed. The allegations are embarrassing to the profession and emotionally devastating to those involved in actual incidents. The leadership of some agencies is indicating that the number of reported cases has started to climb as attention now is focused on the subject.

Has the corrections field not been in this position before? Indeed, when staff sexual misconduct emerged as an issue in the early 1990s, the surrounding dynamics felt very much the same. Staff sexual misconduct remains a significant concern for the field. In fact, PREA's provisions cover this subject as well as inmate-on-inmate sexual abuse. However, over the course of the past 15 years, the field has risen to the challenge of staff sexual misconduct, embarking on a process that has brought it from a floundering and defensive posture to the point where the field has a strong set of tools to deal with the problem.

How does the experience with staff sexual misconduct inform a response to the challenge of inmate-on-inmate sexual abuse? The following briefly reviews the history of the profession's work on addressing staff sexual misconduct. It draws on the experience of the past 15 years and considers the applicability of these ideas, strategies and techniques to the problem of victimization by other inmates. What approaches can be adapted to this priority in the corrections profession? What modifications must be made? What gaps in knowledge exist?

A Systemic Approach

When a rising tide of staff sexual misconduct cases occurred in the early 1990s, the National Institute of Corrections moved quickly to provide information, technical assistance and training to the field. NIC realized that a systemic approach was needed and began its technical assistance to the field in 1996 by initiating the training program "Addressing Staff Sexual Misconduct," during which a template of operational and policy considerations to address staff sexual misconduct was introduced. This approach was considered "systemic" rather than focused on any single aspect of an organizational response to staff sexual misconduct.

This early awareness was driven by the policy and practice emerging from several highly visible lawsuits in women's facilities. To respond effectively, a comprehensive strategy was needed that addressed more than the "sex." Staff sexual misconduct cases must be viewed in the context of an organization's culture and practice. In other words, these incidents can emerge as symptoms of other problems in the correctional setting where they arise. Experience reveals, however, that well-run facilities also can be vulnerable to events of sexual assault and misconduct.

The "systemic approach" focuses on effective correctional management and practice as opposed to an ad hoc response to a given crisis. It creates a multifaceted approach in which many units work together and all components of the system participate in an integrated response. Unlike some issues that place the focus on a specific piece of the overall operation, an effective approach to staff sexual misconduct involves units as diverse as custody, human resources, medical and mental health, policy, training, classification, program services and the legal office, combined with a response through public information strategies.

Prevention, Intervention And Punishment

As a first step, the issue must be clearly named. Although there was uncertainty about the prevalence of staff sexual misconduct, it was essential that the field acknowledge the problem and commit itself to dealing with it. Indeed, respected professional organizations, such as the American Correctional Association, the Association of State Correctional Administrators, the American Jail Association, the American Probation and Parole Association and the National Sheriffs' Association, have all adopted resolutions condemning staff sexual misconduct as an egregious violation of professional boundaries and one that compromises the field's core mission of public safety. Statutes that subject perpetrators to criminal prosecution have been enacted in almost every state. Many agencies have frankly and forthrightly identified this behavior as a serious problem and dedicated themselves to eliminating this misconduct. Similarly, the corrections field has acknowledged that inmate-on-inmate sexual assault occurs in institutions and are pledging resources to its prevention, intervention and punishment.

Policy. Once the issue has been "named," meaning acknowledged within an agency, the foundation for a vigorous response rests on policy. The policy must be strong and unambiguous, with clear definitions and descriptions of prohibited behavior. The emphasis is on zero tolerance--that all cases will be investigated and, if founded, will result in an emphatic response up to and including termination. Policy speaks to such considerations as mandatory reporting by staff, multiple channels for inmates to report, protection and prohibition on retaliation, and investigative protocols that include clear channels of authorization for action. The policy also prescribes training for staff and orientation of inmates, connections to medical and mental health services and relationships with outside authorities such as law enforcement personnel and community hospitals.

Training. It is essential that staff, volunteers and contractors at all levels of the organization be trained on the contents of the policy. In addition to imparting information, training serves as an opportunity for obtaining buy-in. The issue is not one of sex, nor is it a "women's issue." Staff sexual misconduct cases arise in all four quadrants: male staff-female offenders, female staff-female offenders, female staff-male offenders and male staff-male offenders. Personnel at all levels and in all categories of the organization are at risk. Line staff and supervisors appreciate the seriousness of the issue when they see that it is a matter of sound corrections; security is

compromised whenever professional boundaries break down and relationships become personal or intimate. In addition, victims incur damage from the violation of trust inherent in staff sexual misconduct. Administrators should be reminded that they are vulnerable to lawsuits and liability if they fail to have effective strategies in place to deal with staff sexual misconduct. Some executive-level administrators have even lost their jobs.

Orientation of Inmates. Orientation of inmates is also necessary. They should be made aware of their right to be free from such exploitation, informed about reporting mechanisms and what to expect in the way of follow-up by investigators and health services staff. Inmates need to have some confidence that a credible allegation will be believed and that they will be protected. It is important to explain that no sanctions will be imposed if the allegations cannot be proved. However, inmates who are found to be lying are subject to discipline just as they would be in any case where they provide false information to staff.

Medical and Mental Health. Specialized training for medical and mental health staff emphasizes that they are part of the response team in ways that they may not be if the issue were a more traditional security breach such as conveyance of contraband or the existence of a gambling ring. They must have the appropriate treatment and reporting protocols in place and be prepared to share information with all key professionals essential to the process. This approach calls for each agency to engage in a critical policy discussion, including consideration of resources.

Investigative Process. The investigative process is absolutely critical to an effective program for combating staff sexual misconduct. Specific training must encompass a wide variety of considerations such as the gender of the investigators, their office location and placement in the organization, the physical evidence and circumstances available, techniques for interviewing problematic victims, and the feasibility and legality of such techniques as conducting polygraphs, monitoring mail and phone calls, and secret tape recording of phone conversations. A staff sexual misconduct investigation requires a skilled interviewer who can ask very explicit questions without alienating or traumatizing a complainant.

Management and Operational Issues. A program to address staff sexual abuse must also include an assessment of underlying management and operational practices. These considerations encompass topics ranging from facility design and the placement of cameras to the way in which overtime is allocated and inmate jobs are assigned.

Media. Management of the media is critical. Provided policy, training and protocols have been put into place, the agency is in a position to respond effectively to the event by emphasizing its zero-tolerance approach and the fact that an aggressive investigation with consequences is occurring.

After-Action Review. An incident of staff sexual misconduct provides an opportunity to cement an effective set of practices. These cases serve as "wake-up calls" and learning opportunities. An after-action review answers the questions of how the incident happened and such specifics as who, when and where. By collecting data and developing a matrix of incidents, the affected organization can identify patterns and take preventive measures.

Leadership. Finally, never lose sight of the fact that leadership counts. Support from the top is essential to success, and the agency's leaders must demonstrate their personal commitment to

addressing the problem. Subordinates will quickly detect insincerity or hypocrisy of those above them and the resulting lack of confidence will undermine any effort no matter how well planned. A program for addressing staff sexual misconduct will only be credible in action when staff and offenders alike perceive that the policies will be followed and appropriate, proportional steps will be taken.

The Implications for Inmate-on-Inmate Sexual Abuse

The profession's history of dealing with staff sexual misconduct provides a body of knowledge for consideration in developing a systemic approach to inmate-on-inmate sexual abuse. Most of the building blocks are identical--policy, staff training, inmate orientation and effective programming, medical and mental health involvement, carefully crafted investigative protocols, operational issues, data collection and analysis, relationships with outside health care providers, law enforcement and prosecutorial authorities, and strong leadership. While many of the elements of these strategies remain substantially the same whether the issue is staff sexual misconduct or inmate rape, it would be unwise to assume that no modifications are needed. For example, in both instances policy incorporates such factors as channels of reporting and protection of the complainant. However, the definitions of prohibited behaviors will differ between the two. A policy pertaining to inmate-on-inmate custodial rape must include careful language about protective pairing and "consensual" relationships that are really the product of coercive "hooking up"--concepts that have special meaning in the context of sexual abuse perpetrated by inmates. Staff training on staff sexual misconduct and inmate-on-inmate rape alike might emphasize the security breaches involved. However, the red flags that staff should look for will shift from observations about the conduct of other personnel to the meaning of cell fights, the transfer of property or an inmate's sudden desire to change cellmates.

Investigations into staff sexual misconduct need not concern themselves with consent. The mere fact of sexual contact is sufficient for a case to be deemed founded. On the other hand, the complicated and troubling issue of consent in all its various shades of meaning is at the heart of the investigative task when one inmate alleges rape by another. Some of the techniques available to investigators when allegations have been leveled against staff are not as relevant when two inmates are involved with one another. Physical characteristics of an alleged perpetrator are far less useful as evidence when the complainant and the accused live together in the close proximity of a cell or housing module.

Medical and mental health staff are expected to know that provisions pertaining to confidentiality are overridden by the duty to report evidence or allegations that a staff member had sexual contact with an inmate. Experience suggests that health services professionals may be less clear about their obligations when an inmate reports that he or she became sexually involved with another inmate to avoid greater harm on the part of other sexual predators.

Although the focus may differ, the matter of prison rape also implicates management and operational questions. In the case of inmate-on-inmate sexual assault, the relevant considerations would include classification, housing, crowding concerns, showering protocols and deployment of staff as well as some of the items--for example, facility design and camera positioning--that are useful in addressing staff sexual misconduct.

Data collection to identify patterns is essential in both cases. Here, however, the data may be put

to different uses. Experience indicates that staff sexual misconduct is largely situational; it is the product of circumstances that lead to greater risks of boundary violations. If so, the opportunities for developing a staff profile with predictive value may be limited. On the other hand, research on inmate characteristics indicates the possibility of constructing assessment instruments that may help identify potential inmate sexual predators and victims in correctional settings.

Wherever the possibility of criminal sexual contact occurs, it behooves the profession to collaborate with community resources such as local hospitals and district attorneys. It can already be difficult to persuade prosecutors to take on a case of staff sexual misconduct. The murky questions of coercion versus consent in inmate-on-inmate sexual assault cases provide an even greater challenge in convincing law enforcement officials to prosecute a case.

Gaps in Knowledge

Clearly, there are gaps in the existing body of knowledge that will require further study as efforts continue to move forward to reduce the incidence of inmate-on-inmate sexual assault. While continuing to learn and focus on staff sexual misconduct, below are examples of gaps in the knowledge of inmate-on-inmate sexual abuse:

- * The role of race and gangs and the implications for inmate management;
- * What to do with identified perpetrators over the long term;
- * Strategies for managing the victim;
- * How to determine consent versus coercion;
- * Determination of actions that call for administrative or disciplinary remedy as opposed to criminal sanctions;
- * Considerations for special populations (e.g., juveniles in adult systems, mentally ill offenders, gay and transgender inmates);
- * The effect of interventions on the existing inmate culture;
- * Differences in dynamics according to gender;
- * The role played by different security levels and custody settings;
- * The implications for risk to the community posed by perpetrators and victims of prison rape;
- * The implementation of mechanisms that require reporting by institutional personnel; and
- * Similarly, the implementation of reporting mechanisms for probationers and parolees bringing forward victimization while incarcerated.

Addressing This Challenge

Although everything that must be done in order to address this new challenge is not known, the work that has been done in developing a systemic approach to staff sexual misconduct provides a solid foundation for a course of action. As was learned from the past 15 years, the creation of an effective program cannot be accomplished instantaneously. The course is not a sprint, but a marathon. By drawing on the knowledge developed to date and adapting it where needed to the context of inmate-on-inmate sexual abuse, the purposes of PREA can be fulfilled. Through these efforts, the ability to run safe and secure correctional systems will be enhanced—a goal that has always been at the core of the corrections profession's mission.

ENDNOTES

(1) The scope of this article addresses sexual assault in prison and jail settings; hence, the use of the term "inmate-on-inmate." PREA, however, is inclusive of community corrections and "offender-on-offender" better describes the full inclusiveness of the act. The many definitions that are critical to describe the components of sexual assault addressed within PREA have been advanced through the work of the Bureau of Justice Statistics.

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