

**Preventing & Addressing Sexual Abuse in Tribal Detention  
Facilities: The Impact of the Prison Rape Elimination Act  
(PREA)  
Notification of Curriculum Utilization  
December 2013**

The enclosed *Preventing & Addressing Sexual Abuse in Tribal Detention Facilities: The Impact of the Prison Rape Elimination Act (PREA)* curriculum was developed by the American Probation and Parole Association (APPA) 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 PREA standards served as the basis for the curriculum's content and development with the goal of the *Specialized Training: PREA Medical and Mental Care Standards* curriculum to satisfy specific PREA standard requirements.

It is recommended that the *Preventing & Addressing Sexual Abuse in Tribal Detention Facilities: The Impact of the Prison Rape Elimination Act (PREA)* curriculum be reviewed in its entirety before choosing which modules to use. Any alterations to the original materials must be acknowledged during their presentation or requires removal of the PRC and APPA 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: Utilization of the enclosed curriculum, either in part or whole, does not guarantee that an auditor will find a facility "meets standard". Rather, an auditor will take into consideration the curriculum used as part of their overall determination of compliance.*

*PREVENTING & ADDRESSING SEXUAL ABUSE  
IN TRIBAL DETENTION FACILITIES:*

**The IMPACT OF THE  
PRISON RAPE ELIMINATION ACT (PREA)**

**Participant Manual**

**By:**

**Elizabeth Layman, Project Consultant**



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## **MODULE ONE**

### **DEFINING THE ISSUE & UNDERSTANDING THE PRISON RAPE ELIMINATION ACT (PREA)**

**LEARNING OBJECTIVES:** *After completing this module, participants will:*

- Understand The Prison Rape Elimination Act (PREA) – content and purpose of the law;
- Define prohibited behaviors - for employees, inmates, and others;
- Understand the benefits of PREA - to the agency, employees, and public safety;
- Discuss the myths and realities of the issue.



## **Class Exercise: What Do You Know? QUIZ**

### ***What is PREA?***

The Prison Rape Elimination Act (PREA) was passed by Congress and signed into law by President George W. Bush in 2003.

### ***What is the purpose and intent of PREA?***

The main purposes of PREA are to:

1. Establish zero tolerance for sexual abuse, rape, and sexual harassment in correctional systems, including jails, prisons, juvenile facilities, community confinement, and lockups.
2. Develop national standards of accountability and compliance
3. Collect data on the incidence of inmate-on-inmate sexual violence, and staff-on-inmate sexual misconduct.
4. Increase accountability for officials who fail to detect, prevent, reduce and punish prison rape.

### ***To whom does the law apply?***

In the law, the term “prison” applies to all federal, state, local and private prisons, jails, police lockups, temporary holding cells, juvenile detention facilities, and community confinement facilities such as half-way houses and residential facilities.

### ***Why is there a new law now?***

As far back as 1980, with the passage of the Civil Rights Act of Institutionalized Persons, abusive conditions of confinement have become a major issue. National attention was raised even higher by a number of key court cases that brought to light the widespread abuse of prisoners, mainly women, in our prisons and jails. Professional corrections associations passed resolutions that expressed zero tolerance for sexual abuse of prisoners, while advocacy and independent research groups began to collect and publish statistics and details of the scope of this issue. In July 2002, Congress began holding hearings concerning an effort to reduce prisoner rape, and by September 4, 2003, Congress unanimously passed The Prison Rape Elimination Act.

Keep in mind that we have ALWAYS had the moral and ethical responsibility to protect those in our care, custody and control. This includes the protection against sexual abuse and harassment. PREA further emphasizes our responsibilities in this area.

### ***National Standards – why do we need them?***

As Congress reviewed more than 20 years of reports, court cases, and available information they discovered:

1. inconsistencies in how agencies responded to allegations;
2. lack of preventive measures; and
3. the need for strong policies, procedures and practices.

This led to a mandate in PREA to develop a set of national standards that would support the elimination, detection and prevention of these acts in all custodial facilities across the United States.

### ***How do the standards impact Tribal Detention Facilities?***

There are legal and jurisdictional questions that are still being considered by the U.S. Attorney General. However, the Indian Civil Rights Act does have an impact on the general application of rights for someone in custody in Tribal Detention. These include the right to be free from cruel and unusual punishment, which applies to the right to be free from unwanted sexual abuse and violence, even while in custody.

Tribal detention facilities will decide about the implementation of PREA standards.

### ***How do they impact my job?***

Agencies that work toward compliance with National Standards will most likely review and revise existing policies, practices and procedures, which could result in changes that impact daily operations.

Implementing PREA does not mean that we have to reinvent the wheel! By following good correctional practices, we have already been doing much of what is outlined in the PREA standards.

Tribal detention facilities may decide to report data annually as prescribed in the PREA standards.

**Definitions of behaviors**

**Class Exercise: “My Words, Your Words” – are we on the same page?**



Since data reporting is required for compliance with PREA, it is important that agencies are prepared. That means that we need to use the same definitions of prohibited and reportable behaviors. PREA contains clear definitions of prohibited behaviors. Each agency will decide for itself what definitions to use. There may be other considerations, such as:

- Tribal Law
- State Law

We have included the PREA definitions in an appendix.

**Class Discussion: How do YOU define sexual abuse, sexual harassment, and sexual misconduct?**

In your own words:

What is sexual abuse? Be specific.

Define sexual harassment. Be specific

Define staff sexual misconduct. Be specific.

Can you give examples of each?

**How does compliance benefit me, my agency and the public?**

**Class Exercise: Why do I care about this issue? What are the benefits?**



In summary, the benefits of creating a custodial environment free from sexual abuse, sexual harassment and sexual misconduct, include at least the following:

- ✓ Creates a safer environment for employees and inmates;
- ✓ Creates a high level of professionalism among employees;

- ✓ Protects the safety and security of the facility;
- ✓ Preserves integrity and respect of corrections professionals;
- ✓ Reduces embarrassment for families and friends;
- ✓ Reduces liability exposure to lawsuits;
- ✓ Preserves public safety (reducing the number of inmates who have been sexually abused reduces the incidence of PTSD and potential violence); and
- ✓ Preserves public health (reduces incidence of sexually transmitted diseases)

**Myths and realities**

There are many assumptions about sexual abuse and sexual harassment in prisons and jails. These inaccurate assumptions undermine an agency’s ability to protect inmates in their custody, to provide a safe and professional work environment for staff, and therefore increase their liability.

<b>Myth # 1</b>	<b>We have no reports of this kind of activity in our facility, so we don’t have this problem.</b>
Reality:	Virtually no public or private institution has escaped this problem – churches, schools, the military, Congress, even our families. If an agency has no reports of these types of allegations, it means one thing – that there are no reports. It does NOT mean that this behavior is not taking place. It only means that there are significant barriers for both employees and inmates when it comes to reporting.
<b>Myth # 2</b>	<b>It is not as much of a problem when inmates consent to these types of relationships with staff.</b>
Reality	The courts have made it clear – there is no such thing as “consensual sex” with staff in a custodial environment. All 50 states have laws making staff sexual misconduct with inmates a felony punishable by prison terms. No state has allowed consent as a defense to these acts with staff. The basic principles of the imbalance of power place the responsibility for refraining from this behavior squarely on the shoulders of those who have authority over the custody of inmates.
<b>Myth # 3</b>	<b>Employees are very clear about their professional boundaries.</b>
Reality:	Research has shown that one person’s definition of professional boundaries can be completely different than another’s. There is a clear gap between what employees understand about their professional boundaries, and what management expects. Many employees are unclear about the proper way to respond to situations involving inmates, even when it comes to simple every day conversations. It is imperative that training cover this area on an ongoing basis, so that employees develop the interpersonal skills necessary to handle the challenging inmate population.



<b>Myth # 4</b>	<b>It is the rookie employee who is most likely to get involved with misconduct.</b>
Reality:	Statistics have shown that is the experienced employee, who has many years on the job, who is most likely to be involved in misconduct. These employees have a false sense of confidence about handling situations with inmates, and have become comfortable in their jobs. The conduct is often unchallenged by peers and supervisors.
<b>Myth # 5</b>	<b>The real victims of incidents of staff sexual abuse are the employees who are manipulated by the inmates.</b>
Reality:	Inmate manipulation is a reality. In most cases, finding ways to manipulate their situation has become a routine for inmates. The fact is, it not the action of the inmate that carries consequences – it the response by the employee that determines whether the manipulation is successful or not. It is our professional responsibility to respond in such a way that we do not succumb to attempts at manipulation. If we follow policy and procedure, if we know the rules, if we understand and maintain our professional boundaries, we cannot be manipulated.
<b>Myth # 6</b>	<b>Activities between inmates, including some unwanted sexual behavior, are part of what happens normally in confinement. Inmates should expect this to happen.</b>
Reality	Being victims of abuse and unwanted sexual behavior is NOT part of the sentence of an inmate. It is unfortunate that this behavior does occur, but it is not ethically or morally right. Inmates have a right to expect to be free from abuse and to be housed in a safe and secure environment while in our custody. We have that moral and ethical responsibility to not only protect inmates in our custody, but to also inform them of their right to be free from abuse.

**SUMMARY of MODULE ONE**

- The Prison Rape Elimination Act (PREA) was passed by Congress and signed by the President in 2003.
- The law, which does not carry a criminal penalty, but may have an impact on Federal grant funding and civil liability, is intended to address the problem of sexual abuse in prisons, jails, and all other custodial facilities.
- PREA also created a set of national standards for prevention, detection and response that are meant to guide all those covered by the law as they work to eliminate sexual abuse in their facilities.
- PREA also has created a mechanism that requires annual reporting to the U.S. Department of Justice of details on all allegations of sexual abuse that occur.
- PREA benefits everyone – employees have a safer workplace; the agency enhances their professional reputation; the inmates are less hostile due to a safer environment; there is better mental health stability when victimization is not part of the

environment; the spread of sexually transmitted diseases is reduced; the community bears less expense for medical and mental health interventions for victims, and inmates have fewer sexually transmitted diseases when released.

- PREA provides an excellent guideline for agencies to achieve the goal of reduced sexual abuse and violence in facilities, and strengthens the mission to provide a safe and secure environment for employees and inmates.

## APPENDIX A

### HOW SEXUAL ABUSE IS DEFINED

The definition of “rape” under the Prison Rape Elimination Act of 2003 was composed by disaggregating sexual violence into two categories:

Sexual abuse of an inmate by another inmate.

Sexual abuse of an inmate by staff, contractor or volunteer.

**The following definitions are contained in the Definitions of Part 115 of the Prison Rape Elimination Act National (115.6).**

***Sexual abuse includes:***

- (1) Sexual abuse by another inmate, detainee, or resident, by another inmate, detainee, or resident; and
- (2) Sexual abuse of an inmate, detainee, or resident by a staff member, contractor or volunteer.

***Sexual abuse of an inmate, detainee, or resident by another inmate, detainee or resident includes*** any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument; and
- (4) 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 contacts incidental to a physical altercation.

***Sexual abuse of an inmate, detainee, or resident by a staff member, contractor or volunteer includes any of the following acts, with or without the consent of the inmate, detainee, or resident:***

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) 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;
- (4) 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;
- (5) Any other intentional touching, either directly or 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.

- (6) Any attempt, threat, or request by a staff member, contractor or volunteer to engage in the activities described in paragraphs (1) – (5) of this section;
- (7) Any display by a staff member, contractor or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident;
- (8) Voyeurism by a staff member, contractor or volunteer.

***Voyeurism by a staff member, contractor, or volunteer*** means an invasion of privacy of an inmate, detainee or resident, by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions, and distributing or publishing them.

***Sexual harassment includes***

- (1) 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, detainee, or resident directed toward another; and
- (2) 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.

## **MODULE TWO**

### **DYNAMICS OF SEXUAL ABUSE AND HARRASSMENT IN CUSTODIAL FACILITIES**

**LEARNING OBJECTIVES:** *After completing this module, participants will:*

- Understand why people get involved;
- Identify the risk factors for being a victim and/or a predator;
- Identify the impact of victimization on inmates and staff;
- Learn to identify red flags that indicate there might be a problem;
- Learn to protect themselves from being manipulated;
- Understand the impact of agency culture on behavior;
- Understand how ethics and professional boundaries protect staff.

***What do we know about inmates that helps explain the tendency to this behavior?***

In reality, most staff and inmates will never become involved in sexual abuse or harassment. However, there is a certain faction of those you work with and those in custody who will. So what is the difference between those who will and those who will not get involved? Certain characteristics tend to indicate risk factors for both predatory behavior and being a victim.

What does a victim look like?

They look like everyone else. But there are certain factors that create a higher risk for victimization. The major factors include:

#### **Mental Health Issues:**

- More than half of all inmates in prisons and jails have a mental health problem (64% for jails).<sup>1</sup>
- There are more mentally ill persons in prisons and jails than in hospitals.<sup>2</sup>

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<sup>1</sup> U. S. Department of Justice, Bureau of Justice Statistics, "Mental Health Problems of Prison and Jail Inmates". Doris James. September 2006. NCJ 213600

<sup>2</sup> Torrey, E. Fuller M.D. et al, "More Mentally Ill Persons in Jails and Prisons Than Hospitals: A Survey of States", National Sheriff's Association and the Treatment Advocacy Center. May 2010

### **History of Victimization (Abuse) Prior to Incarceration:**<sup>3</sup>

- Inmates who reported prior sexual victimization were nearly 6 times more likely to be victimized or display predatory behavior in custody.

### **Tribal Detention and Related Statistics:**

- While American Indians and Alaska Natives accounted for 1% of the total population of the United States, they account for 1.2% of the incarcerated population.<sup>4</sup>
- About 40% of inmates confined in Tribal Jails are incarcerated for violent offenses.<sup>5</sup>
- The chance of being a victim of violent crime in Indian Country is more than double the national average.<sup>6</sup>
- More than 1 in 3 American Indian and Alaska Native women will be raped during their lifetime.<sup>7</sup>

### **The Cycle of Violence – Victims and Abusers**

Inmates in custody come with a list of emotional and mental health issues that make some significantly more vulnerable to being victims of sexual abuse and violence, and it makes some more likely to display predatory behavior while in custody. By understanding the characteristics of those in custody, you have knowledge that will help you know how to manage and deal with them. You can better protect them and yourself from inappropriate, harmful and dangerous activity.

### **Those with a history of mental illness or traumatic events such as abuse:**<sup>8</sup>

- Are typically less equipped to handle stressful situations;
- Have a pessimistic and hopeless view of the world;
- Are more at risk for further victimization;
- Are less able to distinguish between healthy relationships and exploitation;
- Suffer from Post-Traumatic Stress Disorder (PTSD) which can create for them a false sense of reality and time:

“A very strong bond is created between victim and victimizer – so strong that...abused children and wives have lied about their injuries to protect their abusers.”  
*Dutton. D., and S.L.Painter. 1981. (see footnote)*

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<sup>3</sup> U.S. Department of Justice, Bureau of Justice Statistics, “Prior Abuse Reported by Inmates and Probationers”. By Caroline Wolf Harlow, Ph.D., April 1999, NCJ 172879.

<sup>4</sup> U.S. Department of Justice, Bureau of Justice Statistics Bulletin. “Jails in Indian Country 2008”. By Todd D. Minton. December 2009, NCJ 228271.

<sup>5</sup> Ibid.

<sup>6</sup> U.S. Department of Justice, Bureau of Justice Statistics. “American Indians and Crime” by Lawrence Greenfield. February 1999. NCJ 173386.

<sup>7</sup> Ibid.

<sup>8</sup> Dutton, D., and S.L. Painter, 1981. Traumatic Bonding: The development of emotional attachments in battered women and other relationships of intermittent abuse. *Victimology* 6:139-55.

- Tend to believe that being a victim is their 'lot' in life;
- Lie about their abusers to protect them;<sup>9</sup>
- Use the unhealthy methods they have learned to try to manage their situation – such as manipulating those around them, and using sexual favors, as a way to get what they want.

The psychological effects of violence can be demonstrated in ways that we may see as manipulation or hostility, depression and submission. It is critical for corrections staff to understand how these effects appear in the corrections setting.

### **Red Flags – Identifying Potential Problems**

So what do you do with all of this information about inmates, victims and predators? You observe and act. It is critical to become aware of what is going on around you.

Have you ever heard about someone who got in trouble for something at work, and said to yourself, "I knew something was going on", or "I had a feeling something wasn't right"?

At work, there may be a tendency to not trust your instincts. There are a lot of reasons for this: perhaps you don't want to get someone in trouble if you aren't certain about what you saw; perhaps you don't want to make waves; or perhaps you simply don't recognize the meaning of small observations.

Your sixth sense about things is often valid. This exercise is intended to help you be comfortable with observing what is going on around you, and recognizing when there might be a potential problem.

### **Class Exercise: Red Flags**



### **What do I do when I see or suspect inappropriate behaviors?**

You may not want to be considered a tattletale, and certainly do not want to accuse someone of something that may not be true. But, by responding appropriately to things you observe, you could actually be saving the career and reputation of a co-worker, or saving someone from serious physical harm. If you allow the small infractions or

<sup>9</sup> Dutton, D., and S.L. Painter, 1981. Traumatic Bonding: The development of emotional attachments in battered women and other relationships of intermittent abuse. *Victimology* 6:139-55.

suspicious to go unnoticed and unattended to, then you share the responsibility when things escalate to a dangerous and unsafe place.

The ultimate goal is to maintain a professional, secure workplace, where staff and inmates are safe from harm. To achieve this goal, you must be willing to act professionally. This means that you expect the same level of professional behavior and respect from others that you expect from yourself.

There are many reasons that staff and inmates do not report their suspicions and allegations. Let's examine some of these reasons.



### **Class Exercise: Code of Silence – Why Inmates and Staff Don't Report**

So, now that you understand what you observe and are aware of what to look for, what do you do when you see these 'red flags'? How would you respond? Do you know who to go to, who to talk to about this?



### **Class Exercise: Now what do I do with this information?**

*I know what I'm looking at now, so how do I protect myself from manipulative inmates?*

Manipulative inmates are a fact of life in our workplaces. There are stories about inmates who have successfully manipulated someone into doing something for them. With time on their hands, inmates can become keenly observant of staff and other inmates. Since they cannot control their situation as they would when they are not incarcerated, they can become very creative and determined to find a way to get something they want. Unfortunately, this is a relatively normal response to incarceration. It is part of the "fight or flight" response that is present in all of us. Since they cannot extricate themselves from the situation, they may choose to fight in the form of non-physical actions – or, manipulation.

As one prison warden said, "You can NOT be manipulated by an inmate...unless you LET them manipulate you." Our RESPONSE determines whether we can be manipulated. The more consistent and professional we are, the more inmates will recognize this.



Your best defense?

- Know the rules and follow them;
- Recognize attempts at manipulation;
- Understand why inmates attempt to manipulate; and
- Maintain a high level of professionalism and clear boundaries at all times.



**Class Exercise: Protecting myself against manipulation.  
How does my response control the outcome?**

***Agency Culture – How we do business and how it affects behaviors.***

What is agency culture? It is how agencies do business. It is the total of the attitudes, behaviors, beliefs, traditions and practices of present and past employees. It includes the ethics and professionalism of staff and leadership, both past and present. Agency culture determines what is acceptable and unacceptable in the workplace, regardless of what the written policies and procedures say.

For example:

- ✓ If there is mutual respect between line employees and administration, employees feel appreciated and heard and will be more inclined to follow the rules and treat each other and inmates with respect.
- ✓ If leadership walks the walk, not just talks the talk, employees will be more committed to the mission of the agency.
- ✓ If employees are permitted to talk disrespectfully to each other with no consequences, then inmates will observe this and be disrespectful to staff and other inmates.
- ✓ If leadership does not expect employees to behave with dignity and integrity while off-duty, then behavior at work will also lack dignity and integrity.

Agency culture has a major impact on sexual abuse and harassment in the workplace.

- ✓ Where respect is lacking in how to talk to each other and treat other, inappropriate behavior becomes an acceptable aspect of everyday life;
- ✓ Where investigations into allegations of abuse are incompetent, then the lack of trust in the process creates a barrier to reporting;
- ✓ Where inmates are considered to be unworthy of human rights and protections, abuse will occur; and
- ✓ Where there is a lack of training and dialogue about the issue of sexual abuse, it will occur without consequences.

While changing the culture of an agency is a long and tough process, it can be achieved with proper leadership and employee expectations. Your handouts contain a checklist and scorecard to assess the culture of your own agency.

### **SUMMARY of MODULE TWO**

- There are certain characteristics of inmates that make them more vulnerable to victimization, such as mental health issues, a history of prior abuse, alcohol and drug abuse.
- Corrections professionals have the ethical and moral responsibility to protect those in their custody, care and control, from being sexually abused and harassed.
- There are a variety of reasons that inmates and staff do not report allegations, such as fear of retaliation, breaking the code of silence, and distrust of the investigative process.
- Red flags – things we observe – may indicate that there is some sort of inappropriate relationship or activity occurring. It is our responsibility to be aware of these and respond accordingly.
- Inmates will try to manipulate those around them. Corrections professionals cannot prevent inmates from trying, but the response to these attempts determines whether inmates are successful or not.
- Agency culture impacts the frequency and likelihood that sexual abuse – between inmates and between staff and inmates – occurs in our facilities.

## **MODULE THREE**

### **INVESTIGATIONS AND LEGAL CONCERNS**

**LEARNING OBJECTIVES: *After completing this module, participants will:***

- Understand the unique nature of investigations into sexual abuse and harassment;
- Learn the responsibilities of being a first responder to these situations;
- Understand the rights and responsibilities of those under investigation;
- Learn about the legal concerns and consequences of involvement in prohibited behaviors.

***Investigations are critical to prevention.***

Investigating allegations of all types of sexual abuse in prisons and jails is one of the most critical aspects of effectively addressing these incidents. Without competent, fair, timely, and consistent investigations by specially trained investigators, incidents of this nature will continue unchecked. Finding the truth to these allegations, with fair and consistent sanctions, has a major impact on the prevention of sexual abuse.

***The unique nature of investigations into allegations of sexual abuse in confinement settings.***

There is a big difference among the different types of investigations that may occur in a correctional setting. Dealing with a victim who has just been sexually abused is not the same as finding out who brought drugs into the facility.

Some of the biggest differences in investigating allegations of a sexually abusive nature include:

- Dealing with a sensitive and personal issue;
- The issues of safety for victims and suspects;
- Psychological influences on victims responses;
- Embarrassment of those involved;
- The danger and threat of retaliation to those who report allegations;
- The seriousness of charges against employees who are accused;
- The complicated process of collecting physical evidence;
- The amount of special training needed to conduct interviews and collect evidence;

**The same level of competence, special skills, training, and thoroughness of investigations into incidents of sexual abuse that we expect when our next door neighbor, or family member are victims in the free world, should be applied to those victimized while incarcerated.**

- The mental and physical state of the victim; and
- The need for medical and mental health intervention.

**Specialized Training for investigators:**

The issues mentioned above, which are just a short list of unique concerns about these investigations, require specific skills and competency from those conducting them. Assigning an employee without this special training to these types of investigations is unfair to that employee, to the person accused, to the victim, and the entire agency. Unless these investigations are completed in a competent manner by those who are trained to handle them, the only thing we will accomplish is to further any distrust of the process, and assure that these behaviors will continue unchecked.

PREA Standards (115.34) require that investigators of sexual abuse in confinement have specialized training in the following areas:

- Conducting sexual abuse investigations in confinement settings;
- Techniques for interviewing sexual abuse victims;
- Proper use of Miranda and Garrity warnings;
- Collection of evidence; and
- Criteria and evidence required to substantiate a case for criminal prosecution and/or administrative action.

***First Responders – What we need to do.***

Those working in a corrections setting will be the first responder to situations of this nature. So what should First Responders do?

1. **Render Aid.** First and foremost always is to render aid to the victim. Physical injuries after sexual abuse may not always be as evident as other kinds of assaults. It is critical that victims are provided with the best available medical and mental health intervention as soon as possible. Victims may be in a state of shock or trauma. Remember that this could affect the way that victims answer our questions, the type of information they give, and the way they respond to additional abuse.
2. **Separate the alleged victim and abuser.** If inmates or staff need to be moved to preserve the safety and security of staff, inmates and the facility, do so immediately.
3. **Preserve Evidence.** If there is any possibility that physical evidence might be present, either on the person of the victim or in the area of the crime, make sure that no one touches anything and that no one has access to the area unless it's an investigator or someone who SHOULD be there. The victim should be requested to not wash, brush their teeth, eat, drink, smoke, use the toilet, or change clothes if the abuse occurred within 120 hours, and ensure that the alleged perpetrator is not able to take any actions that would destroy physical

evidence.<sup>10</sup> Policies and protocols on the timeframe for collecting and preserving evidence may vary according to jurisdiction, so it is important to be aware of the appropriate standard in your own jurisdiction.

First Responders should only ask the questions necessary to render aid and preserve physical evidence, and assure the immediate safety of the victim, staff, and facility. Only the person assigned to the investigation should be questioning victims and witnesses in detail. The investigation can be compromised if interviews and evidence collection are not conducted properly.

4. **Make Appropriate Notifications.** Immediately notify a supervisor or the person designated by policy of what has occurred. Be sure that an investigator will be notified.
5. **Assist investigators and supervisors.** When supervisors and investigators arrive, be sure to pass along any kind of information that you have. Even things that might not seem significant at the time could turn out to be crucial. Try not to interfere or interrupt, but be sure it is known that you are there to help if needed.
6. **Document everything you have heard and seen.** No one can remember every single detail of an event. It is important to take notes and document everything you observed, heard or did as the first responder.
7. **Be observant.** Keep a watchful eye over everyone and everything immediately following an incident. You might observe something significant that could assist with the investigation; even if it is hours or days later.
8. **Be prepared.** Know policy and procedure. Stay informed about what is going on around you at all times. Do your own reading and research into what it means to be a first responder.



### **Class Exercise:**

### **What Do I Do Now? Real Events for First Responders**

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<sup>10</sup> The Office of Violence Against Women has published a second edition of the *National Protocol for Sexual Assault Medical Forensic Examinations* which provides detailed guidelines for criminal justice and health care practitioners in responding to the immediate needs of sexual assault victims. This report may be downloaded from <https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf> Another resource is the *Recommendations for Administrators of Prisons, Jails and community Confinement Facilities for Adapting the U.S. Department of Justice's A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents*. This guide accompanies the aforementioned resource and can be downloaded from <http://www.ovw.usdoj.gov/docs/confinement-safe-protocol.pdf>.

***PREA Standards related to investigations.***

There are 7 PREA standards that relate directly to investigations of sexual abuse in confinement. These are:

115.21 – Evidence protocol and forensic medical exams.

- This standard states that forensic medical examinations must be conducted by Sexual Assault Nurse Examiners (SANEs), Sexual Assault Forensic Examiners (SAFEs) or other qualified medical practitioners.
- Forensic medical examinations must be offered to all victims of sexual abuse without cost to the victim.
- The agency shall attempt to make available to the victim a victim advocate from a rape crisis center, or if not available, a qualified staff member.
- If requested by the victim, the advocate shall accompany the victim to the forensic medical examination process and investigatory interviews.

115.22 – Policies to ensure referrals of allegations for investigations.

Agencies must complete administrative and/or criminal investigations for ALL allegations of sexual abuse and sexual harassment. Allegations that involve potential criminal acts must be referred to the authority that conducts criminal investigations for the agency.

115.34 – Specialized training: Investigations.

In addition to all of the training required for employees (see standard 115.31), if the agency conducts its own sexual abuse investigations, investigators must receive additional specialized training to include:

- Conducting investigations in confinement settings;
- Techniques for interviewing victims;
- Proper use of Garrity and Miranda warnings;
- Evidence collection techniques; and
- Evidence required to sustain a case for administrative action or prosecution.

115.54 – Third-party reporting.

In addition to the reporting methods for staff and inmates, agencies must provide a method for third-parties to report sexual abuse and sexual harassment of inmates, and assure that the public is aware of how to report.

115.71 – Criminal and administrative agency investigations.

This standard provides more detailed guidelines for conducting both criminal and administrative investigations. It covers certain responsibilities for investigators concerning investigative protocols (evidence collection and interviews); assessing credibility of victims, suspects and witnesses; contents and use of reports; and records retention.

115.72 – Evidentiary standard for administrative investigations.

The standard of evidence required to sustain an administrative allegation is to be no higher than “a preponderance of the evidence”, which is a lesser standard than “beyond a reasonable doubt” required for a finding of criminal guilt.

115.73 – Reporting to inmates.

Following an investigation, an inmate victim should be notified of the outcome of the investigation (substantiated, unsubstantiated, or unfounded). Unless the investigation was unfounded, the inmate should be notified when the accused staff member is transferred, no longer employed at the facility, indicted or convicted. In cases in which the alleged abuser is an inmate at the facility, the inmate victim should be notified when the alleged inmate has been indicted and/or convicted on a charge related to sexual abuse in the facility. All notifications should be documented. An agency’s obligation under this standard is terminated upon the release of the inmate from the agency’s custody.

***Uh-oh – I’m under investigation!***

If you are in this profession long enough, there will only be two categories of employees: those who have been the subject of an internal investigation, and those who eventually WILL be the subject of an internal investigation. It is just the nature of this job that somewhere along the line, someone will file a complaint against us. However, statistics show that 90% of all allegations are found to be untrue.

So why is it that being the subject of an investigation is the most stressful and terrifying thing that will probably happen in our jobs?  
***Because most employees have no idea what the investigation entails!***

“The number one reason that people are disciplined if they are subject of an internal investigation is **NOT because they are guilty of the allegation.** It’s because they **LIED to investigators.** And generally, they lie because they have no idea how the investigative process works. Basically, they are just terrified of the unknown”

*Lt. Jim Layman, Broward Sheriff’s Office, Internal Affairs Investigator*

Being under investigation is like entering a world of the unknown. You may not know what to do, what your rights are, how long the investigation will take, what happens to you during the investigation, who has access to information, and so on. It is all a big mystery. But it should NOT be a mystery. Leadership has a responsibility to make sure that employees are informed about the investigative process. This does not mean sharing confidential information about specific investigations. It means simply knowing what the steps are in the process of an investigation, what your rights and protections are, what the agency expectations are, and what will happen at the end of the investigation.





## **Class Exercise: The Path of an Investigation – Do I Know What Happens?**

### ***What are my rights and protections if I am under investigation?***

#### **Administrative investigations:**

**Notification:** At a certain point, you must be notified that you are the subject of an investigation. There may be a period of time where allegations are ‘checked-out’ on a preliminary level to determine if there is enough to open an investigation. But once an investigation is formally opened, subjects have a right to know. Best practice is to notify subjects in writing.

**Questioning by investigators:** During questioning by investigators, you have certain rights guaranteed under the Indian Civil Rights Act. These include the right to due process of law, and the right to be free from making incriminating statements that can be used to convict you in a court of law.

Two significant U.S. Supreme Court Decisions interpreted the U.S. Constitution Bill of Rights, Fifth Amendment. The Indian Civil Rights Act extended the same protection to Native Americans.

- ***Miranda v. Arizona, 384 U.S. 436(1966).*** This case guarantees the right to counsel, and the right to NOT make incriminating statements without legal representation. Miranda applies when an investigation involves allegations that can lead to criminal prosecution.
- ***Garrity v. New Jersey, 385 U.S. 493(1967).*** This case established that an employee cannot be compelled to make an incriminating statement or action that will be used in a criminal prosecution. Employers are permitted to compel an employee to make a statement, and that the statement be truthful, during administrative investigations. If an employee knowingly lies or refuses to make a statement in this situation, employers have the right to immediately fire the employee.

However, if you make a compelled statement during an administrative investigation, nothing you say can be used during a criminal prosecution or investigation.

PREA Standards (115.71 Criminal and administrative agency investigations) require that when an agency conducts an investigation that may support a



criminal prosecution, compelled statements should only be conducted after consulting with the prosecutor.

**Time Frames:** Most agencies include time frames for completing internal investigations. If your agency has such a time frame, you have the right to know what that frame is, and request information about what occurs if that time frame passes without the investigation being complete. There are circumstances which give an agency the right to extend the time frames for completing investigations, and you have a right to know what those circumstances may be.

**Due Process:** You have the right to be heard in your own defense if you are the subject of an investigation. Agencies will differ on the issue of whether you can have legal representation during administrative hearings. If employees are under a collective bargaining agreement, this will also specify rights during investigations and administrative proceedings.

**Outcome:** You have the right to be notified in writing of the findings of the completed investigation. The right to appeal an outcome will vary depending on the agency.

### **Criminal Investigations:**

Criminal investigations involving allegations against employees in the workplace follow the same criminal procedure and administrative rules that apply for all criminal cases in the specific jurisdiction.

## ***What are my responsibilities during investigations?***

**Maintain Confidentiality.** At all times and for all employees and inmates, confidentiality is a top priority. This means that no one should be discussing the allegation under any circumstance, EXCEPT if and when being questioned by investigators. Most agencies have policy that requires employees to refrain from this kind of discussion.

**Stop Talking About It!** Yes, it is tempting to talk about what is going on. But it can be very detrimental to the morale of the agency, and damaging to the person(s) under investigation. If YOU were under investigation, would YOU want everybody talking about it?

**Cooperate.** We also have a responsibility to cooperate with investigators if we are questioned during the investigation. The ultimate goal is to get to the truth, and exonerate those who are not guilty. Cooperation is key to achieving this goal.

## ***Inmate Rights and Protections***

The U.S. Constitution provides certain protections for inmates in the Bill of Rights. These include:

- 8<sup>th</sup> Amendment against cruel and unusual punishment
- 4<sup>th</sup> Amendment guarantees certain privacy rights, although different in a custodial setting
- 14<sup>th</sup> Amendment provides a right to due process of law – meaning that action against a person cannot legally take place without a proper hearing

These do not apply to Indians in Indian Country, but the Indian Civil Rights Act of 1968 did create certain protections similar to the U.S. Constitution.

### ***Indian Civil Rights Act (ICRA) - Limitations***

The ICRA of 1968 prohibits Indian tribal governments from enacting or enforcing laws that violate certain individual rights. While it is similar to the U.S. Constitution Bill of Rights, there are some limitations to the ICRA. In the case of an inmate being sexually abused or harassed while in custody, there can be no monetary damages against the tribal government. Tribal courts may choose a defense of sovereign immunity which prevents a government from being sued without its consent. However, it is possible to name a specific tribal official as a defendant, in which case sovereign immunity would not apply.

## ***Legal Concerns and Consequences***

### ***PREA sets a national standard for how to do business.***

Non-compliance with PREA standards carries more than just a potential financial penalty for some agencies. No agency wants to be a defendant in a civil lawsuit, especially one involving sexual abuse or harassment. Perhaps the most significant consequence for failing to comply with standards, or at least working to comply with standards, is increased civil liability. National PREA standards set the bar for how an agency can best prevent and respond to sexual abuse in correctional facilities. The existence of National PREA standards may influence the standard that courts will apply in civil, legal and constitutional claims

### ***Criminal Prosecution for Employees and Inmates***

For Employees: All 50 states and the District of Columbia have laws that make it criminal for corrections, law enforcement, and many other type of employees to have a sexual relationship with inmates.

For Inmates: Laws that apply to sexual abuse in the free world, also apply to inmates.



## **Class Discussion: Real Cases, Real People!**

### **LESSONS LEARNED**

*What lessons can we learn from real cases?*

#### **THE BIG THREE**

There are three major areas where agencies fail in their response to sexual abuse.

<b><u>TRAINING:</u></b>	Poor or insufficient training for everyone – staff, inmates, volunteers, contractors, etc.
<b><u>INVESTIGATIONS:</u></b>	Incompetent, incomplete, or unfair investigations.
<b><u>POLICY &amp; PROCEDURE:</u></b>	Lack of specific and effective policy and procedure.

*How can we use these lessons to prevent sexual abuse in our facilities?*

#### **TRAINING – Who should be trained? EVERYONE!**

Staff, contractors, volunteers, and inmates!

#### **INVESTIGATIONS – What are the keys to competent investigations?**

- Specially trained investigators.
- Knowledge of the unique nature of sexual abuse investigations in confinement – they are DIFFERENT from other types of investigations.
- Diligent supervision of investigations
- Consistent and fair sanctions
- Confidentiality

#### **POLICY & PROCEDURE – What makes policy and procedure effective?**

- Practice must match policy
- Policy must be specific to the issue – not vague or ambiguous
- Prohibited behaviors must be defined
- Intended to protect and guide staff
- Providing training on policy and procedure
- Clear expectations
- Clear disciplinary process
- Update regularly

### **SUMMARY of MODULE THREE**

- Competent, fair, timely and consistent investigations are critical to prevent and effectively respond to allegations of sexual abuse and harassment.
- Investigations into these types of allegations are unique – they require specially trained investigators and special attention.
- First responders to these incidents have an extremely important role in effectively addressing sexual abuse.
- First responders need to know their duties and responsibilities.
- Most employees have no idea how investigations are completed, and thus distrust the process.
- Employees should know their rights and responsibilities if they are subject to investigation.
- The Indian Civil Rights Act provides certain protections for employees who are subject to investigation.
- Garrity ensures that employees compelled to make a statement to investigators at the risk of being fired, will not have their statements used against them in criminal proceedings.
- Miranda protects employees from making incriminating statements in criminal investigations without proper representation.
- PREA increases the level of civil liability for those who fail to protect those in custody from sexual abuse and harassment.
- We have learned some lessons over the years dealing with this issue. The “Big Three” areas where agencies fail in meeting the goal to prevent and respond to sexual abuse are: insufficient training; incompetent investigations; and the lack of effective policy and procedure.

## APPENDIX B

### EVIDENTIARY STANDARDS FOR ADMINISTRATIVE AND CRIMINAL INVESTIGATIONS

You need to know that there is a different standard to substantiate an administrative allegation compared to a criminal allegation. For a finding of guilt in a criminal case, the standard is “beyond a reasonable doubt.” The PREA standard for administrative allegations (115.72) is “a preponderance of the evidence.”

Beyond a reasonable doubt – There is evidence that, in the mind of a reasonable person, there is reasonable doubt that the person is guilty. There can be some doubt, but not enough that a reasonable person would doubt the guilt of the accused.

A preponderance of the evidence – The evidence makes it more likely than not that the allegation is true. Some use the standard of “more than 50%” likely. This does not mean 50% of the evidence. For example, one witness may be so credible, that even five other witnesses to the contrary are not as believable.

## **MODULE FOUR**

### **REVIEW OF PREA STANDARDS**

**LEARNING OBJECTIVES:** *After completing this module, participants will:*

- Be familiar with the PREA standards;
- Understand how the standards might affect current policies and procedures; and
- Be prepared for national data collection.

#### ***What are the National Standards developed under The Prison Rape Elimination Act?***

There are 44 PREA standards plus 2 standards that contain definitions, which became effective August 20, 2012.

These standards are intended to provide all agencies that hold persons in custody with a set of guidelines and best practices in their effort to eliminate and address sexual abuse and harassment, both between inmate-on-inmate, and staff-on-inmate. There is nothing new about our responsibility to protect those in our care, custody and control. We have always had this moral and ethical obligation. The standards are merely intended to help agencies across the country achieve a consistent level of competency and professionalism in dealing with this issue.

#### ***How were the standards developed?***

Upon passage, the PREA Act established the National Prison Rape Elimination Commission (NPREC), comprising members appointed by Congress and the President. The NPREC was charged with undertaking a comprehensive study of prison rape and its impacts on government institutions as well as on communities and social institutions. The NPREC was also tasked with the development of recommended national standards to enhance the detection, prevention, reduction, and punishment of prison rape. As part of this effort, the NPREC conducted a series of hearings throughout the country, with testimony provided from corrections, jails, law enforcement, tribal jurisdictions, professional organizations, researchers, subject matter experts, all levels of staff, victims, and victim advocates.

At the conclusion of the wealth of testimony and information gathered, the NPREC developed a set of draft standards, which were reviewed and revised by the U.S. Attorney General as required by PREA.

***How will these standards affect our current policies and procedures?***

Each agency can compare these standards to their current policies and procedures. If current policies and procedures address the issues specified in the standards, then the agency is in compliance. While this is NOT reinventing the wheel, there may need to be some tweaking of current policies and procedures. These standards are intended to assist agencies to achieve the goal of doing their best to address sexual abuse and harassment.

***What data collection will take place as a result of PREA standards?***

PREA also includes the collection of data on incidents of sexual abuse and harassment in covered agencies. Congress recognized the lack of any standardized data on these incidents. As part of the PREA standards, the U.S. Department of Justice, will collect and maintain data from all covered agencies concerning allegations of this nature. Similar to the Uniform Crime Reporting to the FBI from law enforcement agencies, data reporting for PREA will help create a national database concerning these particular types of incidents.

***What do the standards actually say?***

There are separate standards for adult prisons and jails, police lockups, community confinement facilities, and juvenile facilities. While many of the standards are the same for each of the above-named entities, each set has minor differences.

Included in your resource guide is a complete set of the full standards for adult prisons and jails. You may also download the “PREA Toolkit for Jails,” and obtain copies of all sets of standards on the PREA Resource Center website at [www.prearesourcecenter.org](http://www.prearesourcecenter.org)

A general word about the standards from the U.S. Department of Justice (*Statement by Marlene Beckman, J.D., Office of the Assistant Attorney General, Office of Justice Programs, U.S. Department of Justice, at the state PREA Coordinators’ conference on June 6, 2012*):

*The standards are about good correctional practice, and are based on research and input from practitioners and subject matter experts. The standards purposely indicate “what” you should do, and not necessarily “how” you should do it. The reason is that all agencies and all facilities are different and have unique challenges. This is clear from the hundreds of comments received from the field. The “how” must be determined by each individual agency and facility.*

*What works for one will not necessarily work exactly the same for another. For this reason, it is critical that agencies follow a process for policy review and development, and for implementation of practices to comply with standards. It is critical that you document your process, so that you can explain how you reached your decisions about what works for YOUR agency and/or facility.*

The Prison Rape Elimination Act (PREA) Standards are divided into the following categories.

- *Prevention Planning (8 standards)*
- *Responsive Planning (2 standards)*
- *Training and Education (5 standards)*
- *Screening for Risk of Sexual Victimization and Abusiveness (3 standards)*
- *Reporting (4 standards)*
- *Official Response Following an Inmate Report (8 standards)*
- *Discipline (3 standards)*
- *Medical and Mental Care (3 standards)*
- *Data Collection and Review (4 standards)*
- *Audits (1 standard)*
- *Auditing and Corrective Action (5 standards)*
- *State Compliance (1 standard)*

## SELECTED STANDARDS PRESENTED FOR CLASS DISCUSSION:

### Prevention Planning:

#### 115.11 – Zero Tolerance for Sexual Abuse and Sexual Harassment, PREA Coordinator.

(a) Agencies must have a written policy that mandates zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct.

*Discussion: This does not mean that an agency must write a long policy that contains all of this information. Agencies probably already have policies that address portions, if not all, of these requirements. For example, an agency may have a policy that already details the response to an allegation of sexual abuse. It is recommended that agencies use the "PREA Toolkit for Jails" that will guide you through a step-by-step policy assessment.*

(b) An agency shall employ or designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities.



*Discussion: A PREA Coordinator may be full-time or part-time. However, they must be able to dedicate sufficient time to PREA issues as described above. "Upper-level" means that the PREA Coordinator should be in a position that provides sufficient authority to carry out their duties. For example, a PREA Coordinator will need to require documentation from training coordinators and investigators to demonstrate compliance with certain standards. If the PREA Coordinator does not have the authority to require this, then they are not at a sufficient level.*

(c) Where an agency operates more than one facility, each facility shall designate a PREA compliance manager with sufficient time and authority to coordinate the facility's efforts to comply with PREA standards.

*Discussion: If an agency has only one facility, this does not apply. A PREA compliance manager should coordinate with the PREA Coordinator, and should assure that the facility meets PREA standards.*

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### **115.14 – Youthful Inmates**

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- (a) A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters.
- (b) In areas outside of housing units, agencies shall either:
- (1) maintain sight and sound separation between youthful inmates and adult inmates, or
  - (2) provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact.

*Discussion: For this standard, a youthful inmate is defined as any person under the age of 18 who is under adult court supervision and incarcerated in an adult prison or jail. While some jurisdictions and courts have certain titles or classifications of "Youthful Offenders" or "Juveniles", this standard applies to anyone under the age of 18 who is incarcerated in an adult prison or jail, regardless of a court distinction. There are no exceptions to this standard. It is recommended that you read the definitions contained in PREA regarding youthful inmates, youthful detainees, and juveniles.*

(c) Agencies shall make best efforts to avoid placing youthful inmates in isolation to comply with this provision. Absent exigent circumstances, agencies shall not deny youthful inmates daily large-muscle exercise and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible.

*Discussion: Unless you have NO alternative, you should not use isolation to comply with this standard. Youthful inmates should not be denied legally required education. This*

*means that your facility must make whatever accommodation necessary to meet this standard, unless you can demonstrate that you have made every effort to do so but still cannot comply with this section of the standard. Additionally, it is critical that you document any decision and why it was made, particularly if isolation is used.*

#### **115.15 Limits to cross-gender viewing and searches**

(a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches except exigent circumstances or when performed by medical practitioners.

(b) As of August 20, 2015, or August 20, 2017 for a facility whose rated capacity does not exceed 50 inmates, the facility shall not permit cross-gender pat-down searches of female inmates, absent exigent circumstances. Facilities shall not restrict female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision.

*Discussion: The extended date for compliance is intended to give agencies time to adjust hiring and post assignment processes to allow for staffing changes that include female staff to be on duty to meet this standard.*

(c) The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female inmates.

(d) The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in the case of emergency, by accident, or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit.

*Discussion: Make note that if such viewing is incidental to routine cell checks, it is understood that such viewing may occur. For example, if a female corrections officer is the only person assigned to a male pod/unit/dorm/area, it is likely that she will view a male inmate as described at some point. As long as the facility has no alternative, then this is routine.*

(e) The facility shall not search or physically examine a transgender or intersex inmate to determine the inmate's genital status. If the inmate's genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

*Discussion: It is not acceptable to search or physically examine a transgender or intersex inmates just to determine whether they have certain genitalia.*

(f) The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

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### **115.31 – Employee Training**

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- (a) The agency shall train all employees who may have contact with inmates on:
- (1) Its zero-tolerance policy for sexual abuse and sexual harassment;
  - (2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
  - (3) Inmates' right to be free from sexual abuse and sexual harassment;
  - (4) The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
  - (5) The dynamics of sexual abuse and sexual harassment in confinement;
  - (6) The common reactions of sexual abuse and sexual harassment victims;
  - (7) How to detect and respond to signs of threatened and actual sexual abuse;
  - (8) How to avoid inappropriate relationships with inmates;
  - (9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and
  - (10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.
- (b) Such training shall be tailored to the gender of the inmates at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male inmates to a facility that houses only female inmates, or vice versa.
- (c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide each employee with refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures. In years in which an employee does not receive refresher training, the agency shall provide refresher information on current sexual abuse and sexual harassment policies.
- (d) The agency shall document, through employee signature or electronic verification, that employees understand the training they have received.

*Discussion: This standard is self-explanatory. Agencies should visit the National PREA Resource Center website as there are many resources available for agencies to develop the training that will cover these topics.*

### **115.33 Inmate education**

- (a) During the intake process, inmates shall receive information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.
- (b) Within 30 days of intake, the agency shall provide comprehensive education to inmates either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.
- (c) Current inmates who have not received such education shall be educated within one year of the effective date of the PREA standards, and shall receive education upon transfer to a different facility to the extent that the policies and procedures of the new facility differ from those of the previous facility.
- (d) The agency shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled as well as to inmates who have limited reading skills.
- (e) The agency shall maintain documentation of inmate participation in these education sessions.
- (f) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats.

### **115.41 Screening for risk of victimization and abusiveness**

- (a) All inmates shall be screened during an intake screening and upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates.
- (b) Intake screening shall ordinarily take place within 72 hours of arrival at the facility.
- (c) Such assessments shall be conducted using an objective screening instrument.
- (d) The intake screening shall consider, at a minimum, the following criteria to screen to assess the risk of sexual victimization:

- (1) Whether the inmate has a mental, physical, or developmental disability.
- (2) The age of the inmate;
- (3) The physical build of the inmate;
- (4) Whether the inmate has been previously incarcerated;
- (5) Whether the inmate's criminal history is exclusively nonviolent;
- (6) Whether the inmate has prior convictions for sex offenses against an adult or child;
- (7) Whether the inmate is perceived to be gay, lesbian, bisexual, transgender, or intersex or gender nonconforming;
- (8) Whether the inmates has previously experienced sexual victimization;
- (9) The inmate's own perception of vulnerability; and
- (10) Whether the inmate is detained solely for civil immigration purposes.

(e) The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency, in assessing inmates for risk of being sexually abusive.

(f) Within a set time period, not to exceed 30 days from the inmate's arrival at the facility, the facility will reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.

(g) An inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness.

(h) Inmates may not be disciplined for refusing to answer, or for not disclosing complete information in response to questions asked pursuant to (d)(1), (d)(7), (d)(8), or (d)(9) of this section.

(g) The agency shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates.

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#### **115.42 Use of Screening Information**

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(a) The agency shall use information from the risk screening required by § 115.41 to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.

(b) The agency shall make individualized determinations about how to ensure the safety of each inmate.

(c) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.

(d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.

(e) A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.

(f) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.

(g) The agency shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates.

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### **115.43 Protective Custody**

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(a) Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers. If a facility cannot conduct such an assessment immediately, the facility may hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment.

(b) Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document:

- (1) The opportunities that have been limited;
- (2) The duration of the limitation; and
- (3) The reasons for such limitations.



(c) The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.

(d) If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, the facility shall clearly document:

- (1) The basis for the facility's concern for the inmate's safety; and
- (2) The reason why no alternative means of separation can be arranged.

(e) Every 30 days, the facility shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population.

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### 115.51 Inmate Reporting

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(a) The agency shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

(b) The agency shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request. Inmates detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.

(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.

(d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of inmates.

*Discussion: Inmates must have multiple internal and private ways to report sexual abuse and sexual harassment, retaliation for reporting, and any staff neglect or violation that may have contributed to such incidents.*

*In addition, the agency must provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is external to the agency. This source must be able to receive and immediately forward reported abuse to agency officials. Inmates must be able to remain anonymous if requested.*

*Staff who receive reports verbally, must put them in writing. Staff must accept all reports, whether are in writing, verbal, from a third-party or reported anonymously.*

*Staff must have a method to report abuse of inmates privately.*

**115.81 – Medical and Mental Health Screenings; History of Prior Abuse.**

- (a) If the screening pursuant to § 115.41 indicates that a prison inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.
- (b) If the screening pursuant to § 115.41 indicates that a prison inmate has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening.
- (c) If the screening pursuant to § 115.41 indicates that a jail inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.
- (d) Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law.
- (e) Medical and mental health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18.

*Discussion: If during screening, it is determined that a jail inmate has a history of prior sexual victimization, whether in a facility or not, the inmate shall be offered a meeting with a medical or mental health practitioner within 14 days of the screening.*

*Medical and mental health practitioners must obtain informed consent from inmates before reporting prior sexual abuse that did not occur in confinement (unless inmate is under 18).*



## MODULE FIVE

### PUTTING INTO PRACTICE WHAT WE KNOW

**LEARNING OBJECTIVES:** *After completing this module, participants will:*

- Demonstrate their understanding of the information presented during the first 4 modules;
- Complete a useful tool for actual use in their workplace; and
- Gain confidence in discussing the information learned in this training program.

This module is all about YOU, the participants! You will all be working in groups to create usable products and tools that you can take with you back to your workplace. They can be used in training, for inmate orientation, at staff meetings and roll call.

You will have more confidence about what you learned during this training program, and have the chance to demonstrate that.

The instructor will provide additional guidance and helpful information when you have completed your presentations.

- **BE CREATIVE.**
- **DON'T BE AFRAID TO USE APPROPRIATE STORIES AND HUMOR TO GET YOUR POINTS ACROSS TO THE REST OF THE CLASS.**
- **HAVE FUN!**

On the following pages, you will find the specific task for each group. Good luck!



**Class Exercise: Let's Get to Work!**

### **Group One:**

What a lucky group, you are, group one! You have the toughest task of all – but perhaps the most important. We all know that without our leaders on board, it is very tough to make change.

You will be creating a 5 minute briefing for your tribal leadership concerning PREA and the responsibility to prevent and address sexual abuse in detention facilities. You have been asked the leadership to tell them about this issue.

Here's what you need to consider:

- **BENEFITS** – inform them how meeting PREA standards will benefit the employees, the leaders, the community and the tribe.
- **HOW THEY CAN ACHIEVE THE GOALS** – What is the role of leadership in this effort? What specifically can they do?
- **SUPPORTING THE EMPLOYEES** - Explain how important this is to employees, and WHY it is important.
- **WHAT CAN BE DONE NOW** - Briefly describe what actions need to be taken (such as, review of policies, training for staff, etc.)

### **KEEP IN MIND WHO YOUR AUDIENCE IS – TRIBAL LEADERSHIP.**

Your biggest task will be to present this in a respectful manner, to keep it brief and concise, but to clearly explain the role of leadership.

Make sure that EVERY PERSON IN YOUR GROUP participates, especially in the creative process. Your group will make the presentation to the class. Let everyone have a chance to take part in the presentation.

GOOD LUCK!

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**Group Two:**

You will be creating a poster to be displayed in the booking area for all inmates to see. This poster will contain all of the pertinent information about PREA and their right to be free from sexual abuse and harassment while in custody.

**BE CREATIVE!** Use images, color, anything that will get attention and make the point.

Use your flip chart paper to create the poster.

This list shows the very least that you should include in your poster:

- Who it is for
- Their rights
- How to report
- What to do if they are a victim

Keep in mind these concerns:

- Language and literacy difficulties
- How to get their attention
- The sensitive nature of this issue – don't be offensive or crude, but get the point across
- The inmates won't be standing there reading something that is too long or too boring

Make sure that EVERY PERSON IN YOUR GROUP participates, especially in the creative process. Your group will present your completed poster to the class, and will explain each of the aspects of the poster. Let everyone have a chance to take part in the presentation.

GOOD LUCK!

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**Group Three:**

You have been chosen by your leadership to provide an outline of what you think should be included in a written policy that requires employees to report their observations, knowledge and concern that inappropriate behavior is happening between an employee and an inmate.

List exactly what YOU would want in that policy directive.  
BE BRIEF, but BE SPECIFIC!

Consider:

- Our discussion about everyone knowing exactly what is prohibited behavior
- Our discussion about confidentiality for reporting
- How you would want the administration to respond to the report
- Protections for those who report and for victims

Make sure that EVERY PERSON IN YOUR GROUP participates, especially in the creative process. You will be asked to present your outline of the policy to the class, and to explain your process to develop the policy. Let everyone have a chance to take part in the presentation.

GOOD LUCK!

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**Group Four:**

You will be creating a five-minute presentation that is appropriate for staff meetings and roll call. You must keep their attention during this presentation! So keep it simple, keep it concise, and include the critical things they need to know as they go about their job day-to-day. Even use humor. Be creative. Think of it this way: if you had not been in the class, what do you think you would need to know about PREA, and how to prevent and address sexual abuse in the facility.

Use your flip chart paper as the model visual aid you would use during the presentation. As with power-point presentations, this means that your visual aid will only be the highlights of each point.

Make sure that EVERY PERSON IN YOUR GROUP participates, especially in the creative process. Your group will make the presentation to the class, and will explain each of the points. Let everyone have a chance to take part in the presentation.

GOOD LUCK!

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**Group Five:**

Your group will be creating a skit or role-play that will demonstrate to the class a particular 'red flag' concerning an officer's behavior. The red flag could indicate that the officer is doing favors for another inmate, and then another officer observes this and has to respond. It could be that an officer thinks that another officer might be having sex with one or more inmates. You choose the red flag what it might indicate. You should also include a demonstration of the best way to report the red flag.

Have each person in your group take on a specific role. One person will be the inmate, one person the officer, one person a supervisor, one person another inmate, and so on. It could even involve a volunteer or a food service worker, or a health worker.

First choose the situation; then select who will play what role; and then have fun! Make sure that your skit is easy for the class to follow, and that they will get your point.

Make sure that EVERY PERSON IN YOUR GROUP participates, especially in the creative process. Your group will make the presentation to the class. Let everyone have a chance to take part in the presentation.

GOOD LUCK!

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**Group Six:**

Your group will be creating a skit or role-play that will demonstrate to the class a particular 'red flag' concerning an inmate who is behaving 'badly'. They might be trying to get an officer to do something for them, or trying to get another inmate to do something for them, or actually be involved in a sexual relationship with another inmate. This will be something that is observed by officers.

Have each person in your group take on a specific role. One person will be the inmate, one person the officer, one person a supervisor, one person another inmate, and so on. It could even involve a volunteer or a food service worker, or a health worker.

First choose the situation; then select who will play what role; and then have fun! Make sure that your skit is easy for the class to follow, and that they will get your point.

Make sure that EVERY PERSON IN YOUR GROUP participates, especially in the creative process. Your group will make the presentation to the class. Let everyone have a chance to take part in the presentation.

GOOD LUCK!

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**MY ACTION PLAN – WHEN I GET BACK TO MY FACILITY, WHAT DO I WANT TO DO TO IMPROVE HOW WE ADDRESS PREA AND THE PREVENTION OF SEXUAL ABUSE IN OUR FACILITY?**

THE ACTION	HOW WILL I DO THIS?	WHEN WILL I DO THIS?	WHO DO I NEED TO TALK TO OR WORK WITH?



## RESOURCES

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### **Addressing Sexual Violence in Prisons: A National Snapshot of Approaches and Highlights of Innovative Strategies**

[http://www.urban.org/UploadedPDF/411367\\_psv\\_programs.pdf](http://www.urban.org/UploadedPDF/411367_psv_programs.pdf)

### **Data Collections for the Prison Rape Elimination Act of 2003**

<http://www.ojp.usdoj.gov/bjs/pub/pdf/dcprea03.pdf>

### **Prison Rape Elimination Act—Full Text of the Law**

<http://www.prearesourcecenter.org/sites/default/files/library/prea.pdf>

### **To order the 5-part DVD “Facing Prison Rape and Responding to Prison Rape”:**

Contact the National Institute of Corrections Information Center at [www.nicic.org](http://www.nicic.org), or by calling 1-800-877-1461

### **To download the final National PREA Standards, links to available resources including upcoming and archived webinars, regional trainings. Frequently Asked Questions, and the report of the National Prison Rape Elimination Commission:**

Go to [www.prearesourcecenter.org](http://www.prearesourcecenter.org)

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### **Reports/Articles:**

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Breaking the Code of Silence, website of the Washington College of Law, The American University <http://www.wcl.american.edu/nic/> (Search using “Brenda Smith” which will provide easier access to a number of resources and publications – look for the NIC project)

Commission on Accreditation for Law Enforcement Agencies, Inc., Standards for Law Enforcement Agencies: The Standards Manual of the Law Enforcement Agency Accreditation Program, Fourth Edition, November 2001, Fairfax, Virginia. [www.calea.org](http://www.calea.org) Chapter 71, Prisoner Transportation, Chapter 72, Holding Facility

Confronting Confinement: A Report of the Commission on Safety and Abuse in America's Prisons <http://www.prisoncommission.org/report.asp>

Deer, Sarah and Maureen L. White Eagle. “Tribal Legal Code Resource: Sexual Assault and Stalking Laws Guide for Drafting or Revising Victim-Centered Tribal Laws Against Sexual Assault and Stalking”. Tribal Law and Policy Institute. June 2008

Jails in Indian Country, 2008. [www.ojp.usdoj.gov/bjs](http://www.ojp.usdoj.gov/bjs). Document # NCJ 228271

Jordan, Andrew, Marcia Morgan and Michael McCampbell, “The Prison Rape Elimination Act: What Police Chiefs Need to Know”, *Police Chief Magazine*, International Association of Chiefs of Police, vol. 73, no. 4, April 2006, [http://policechiefmagazine.org/magazine/index.cfm?fuseaction=display\\_arch&article\\_id=864&issue\\_id=42006](http://policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=864&issue_id=42006)

McCampbell, Michael S., “Prison Rape Elimination Act: Impact on Police Chiefs of the Prison Rape Elimination Act,” *Subject to Debate*, Police Executive Research Forum, September 2005,

Vol. 19, No. 9, page 5, [http://www.policeforum.org/upload/V19-N09%20P%5B1%5D\\_715866088\\_12302005143917.pdf](http://www.policeforum.org/upload/V19-N09%20P%5B1%5D_715866088_12302005143917.pdf)

Susan W. McCampbell and Larry S. Fischer, Staff Sexual Misconduct with Inmates: Policy Development Guide for Sheriffs and Jail Administrators, National Institute of Corrections, August 2002. <http://www.cipp.org/SSMPolicy/index.html>

McCampbell, Susan W. and Elizabeth P. Layman, "Investigating Allegations of Staff Sexual Misconduct with Inmates: Myths and Realities." <http://www.cipp.org/old/article2.pdf>

Sexual Violence Reported by Correctional Authorities, 2004  
<http://www.ojp.usdoj.gov/bjs/pub/pdf/svrca04.pdf>

Sexual Violence Reported by Correctional Authorities, 2005  
[http://www.wcl.american.edu/nic/documents/BeckandHarrison\\_BJSReport2005\\_000.pdf?rd=1](http://www.wcl.american.edu/nic/documents/BeckandHarrison_BJSReport2005_000.pdf?rd=1)

Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09.  
[www.ojp.usdoj.gov/bjs](http://www.ojp.usdoj.gov/bjs). Document # NCJ 231169

Simonian, Nairi M. and Brenda V. Smith. "Integrity in Jail Operations: Addressing Employee/Offender Relationships." *American Jails*. July/August 2006: 9-19.  
[http://www.wcl.american.edu/nic/documents/AJA\\_Final.pdf?rd=1](http://www.wcl.american.edu/nic/documents/AJA_Final.pdf?rd=1)

Staff Perspectives: Sexual Violence in Adult Prisons and Jails: Trends from Focus Group Interviews  
<http://nicic.org/Downloads/PDF/Library/021619.pdf>

United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance. "Mental Health Problems of Prison and Jail Inmates" Revised December 14, 2006. NCJ 213600. <http://www.bjs.gov/content/pub/pdf/mhppji.pdf>

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#### **Web Sites:**

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National PREA Resource Center -- [www.prearesourcecenter.org](http://www.prearesourcecenter.org)

Tribal Law and Policy Institute – [www.tribal-institute.org](http://www.tribal-institute.org)

Tribal Law Journal – [www.tlj.unm.edu](http://www.tlj.unm.edu)

Bureau of Justice Assistance – <http://www.ojp.usdoj.gov/BJA>

Bureau of Justice Statistics -- <http://www.ojp.usdoj.gov/bjs/abstract/dcprea03.htm>

National Institute of Corrections -- [www.nicic.org](http://www.nicic.org)

Just Detention International – [www.jdi.org](http://www.jdi.org)

National Criminal Justice Resource Service – [www.ncjrs.gov](http://www.ncjrs.gov)

**Training Materials – More available on the following websites:**

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- [www.prearesourcecenter.org](http://www.prearesourcecenter.org)
- [www.wcl.american.edu/nic/training.cfm](http://www.wcl.american.edu/nic/training.cfm)
- [www.nicic.org](http://www.nicic.org)
- [www.cipp.org](http://www.cipp.org)
- [www.tribal-institute.org](http://www.tribal-institute.org)
- [www.appa-net.org](http://www.appa-net.org)

**ABOUT THE AUTHOR OF THIS TRAINING CURRICULUM:**

**Elizabeth Layman** is President of Price Layman, Inc., a criminal justice consulting firm. Ms. Layman was a police officer/detective for 9 years in Arlington, Virginia, where she worked in the patrol division, a crime scene specialist, and as a detective in Major Crimes (robbery, burglary and sexual assault). After moving to Florida, Ms. Layman spent 16 years with the Department of Corrections Probation and Parole, and the Parole Commission in the State of Florida, where she worked as an Administration Hearing Officer conducting parole eligibility hearings, revocation hearings, and evidentiary hearings in state prisons and county jails. For 9 years of those years, Ms. Layman was the Regional Director for the Florida Parole Commission, managing agency operations in the eight-county region of South Florida. Ms. Layman has also conducted clemency and death sentence investigations for the Office of the Governor of the State of Florida.

Since 1997, Ms. Layman has worked on numerous projects with the U.S. Department of Justice, National Institute of Corrections and Bureau of Justice Assistance including: providing on-site technical assistance and training to state and local corrections and law enforcement agencies throughout the country; curriculum development, including: Training for Investigators of Staff Sexual Misconduct; Managing a Multi-Generational Workforce; Future Force: Developing a 21<sup>st</sup> Century Workforce for Community Corrections and the Prison Rape Elimination Act for Law Enforcement and Jails; co-authorship of A Resource Guide for New Wardens, , and Staff Sexual Misconduct with Offenders Policy Development Guide for Community Corrections; The Prison Rape Elimination Act of 2003: What Executives, Supervisors and Staff Need to Know; and co-authorship of publications on the issue of Staff Sexual Misconduct in various periodicals, including *American Jails*, *Perspectives*, and *Sheriff* magazines.

Ms. Layman holds a Bachelor of Science in Sociology from Virginia Tech.

## **RELEVANT STATISTICS – SEXUAL ABUSE IN JAILS AND PRISONS**

### **Mental Health Issues:**

- More than half of all inmates in prisons and jails have a mental health problem (64% for jails).<sup>i</sup>
- There are more mentally ill persons in prisons and jails than in hospitals.<sup>ii</sup>
- At least 16% of inmates in jails and prisons have a serious mental illness requiring medication or hospitalization.<sup>iii</sup>
- Forty percent (40%) of all mentally ill persons in the United States will be in either jail or prison at some point in their lives.<sup>iv</sup>

### **Drug and Alcohol Addiction:**

- At least 49% of violent offenders in jails and prisons committed the offense(s) under the influence of drug and/or alcohol.<sup>v</sup>

### **History of Victimization (Abuse) Prior to Incarceration:**<sup>vi</sup>

- More than HALF of all female inmates in prisons and jails report a history of sexual and/or physical abuse prior to being incarcerated.
- For males, that figure exceeds 18%.
- One third (1/3) of women in state prison report being raped before their incarceration.
- On average, more than 90% of those who had been abused were abused by spouses, parents, friends, family members or guardians.
- A great percentage of those reporting prior abuse were likely to have abused drugs and alcohol compared to those not reporting prior abuse.

### **Tribal Detention and Related Statistics**

- While American Indians and Alaska Natives accounted for 1% of the total population of the U.S., they account for 1.2% of the incarcerated population.<sup>vii</sup>
- About 33% of inmates confined in Tribal Jails are incarcerated for violent offenses.<sup>viii</sup>
- The chance of being a victim of violent crime in Indian Country is more than double the national average.<sup>ix</sup>
- More than 1 in 3 American Indian and Alaska Native women will be raped during their lifetime.<sup>x</sup>
- In a report by the Bureau of Justice Statistics, data collected from more than 81,000 inmates in prisons and jails revealed a number of significantly relevant results about sexual victimization.<sup>xi</sup>
- 4.4% of prison inmates and 3.1% of jail inmates reported one or more incidents of sexual abuse by another inmate or facility staff in the past 12 months.
- Females in prison or jail were twice as likely as males to report experiencing inmate-on-inmate sexual abuse.
- Of those inmates reporting inmate-on-inmate sexual abuse, most incidents occurred between 6 p.m. and midnight (40%).

**Certain inmate characteristics increased the likelihood of sexual victimization, including:**

- Those inmates who were white or multi-racial, compared to black inmates;
- Those inmates with a college degree or higher, compared to those with high school or less;
- Those inmates who reported gender preference other than heterosexual;
- Those inmates with a history of prior sexual abuse.

**In cases of staff sexual misconduct with inmates:**

- Incidents were lower among white inmates compared to black inmates;
- Incidents were lower among inmates age 25 or older, compared to age 24 or less;
- Incidents were higher among inmates with college degrees;
- Incidents were higher among inmates with a history or prior sexual abuse;
- Most victims were male, and most perpetrators were female.

## The Daily Dozen<sup>11</sup>

A former warden developed a list of questions for her correctional staff to ask themselves on a daily basis. Asking yourself these questions is an excellent way to maintain awareness of professional boundaries, and to check that you are not becoming complacent about dealing with inmates. If you answer yes to any of these questions, consider how you might manage feelings and responses. If your agency has an Employee Assistance Program through which you can seek professional help, that might be one avenue to find help. If you respect and trust an experienced co-worker, if you trust your supervisor, or if you know another person in the profession who is not part of your agency, consider discussing this with them. In most instances, the dialogue about these situations is very effective in helping you handle these issues. Remember...it is about being aware of your professional boundaries and knowing how to manage the challenges at work that will help keep you safe and professional at work.

- Do you look forward to seeing a particular offender when you come to work?
- Have you done anything with an offender that you would not want your family or your supervisor to know about?
- Would you be reluctant to have a co-worker observe your behavior for an entire day?
- Do you talk about your personal matters with offenders?
- Do you believe you can ask an offender to do personal favors for you?
- Have you ever received personal advice from an offender?
- Have you said anything to an offender that you would not want tape recorded?
- Do you have thoughts or fantasies of touching a particular offender? Does this extend to planning how you can be alone with that offender?
- Do you think you have the right to touch an offender whenever and wherever you want to?


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<sup>11</sup> Teena Farmon, a former warden and a national expert on staff sexual misconduct initially developed this questionnaire for correctional staff to use as a daily self-test.



## Identify Your Agency Culture


The following checklists will help you evaluate your agency culture. While it is up to leadership to guide an agency through changes that will improve culture, line staff can help by being aware of the deficiencies and problem areas. Remember – by acting professionally, we can individually impact the culture around us.


Instructions: Review each of the following items on the list and give a check  if the statement is true. Count the number of checkmarks at the end of each category and enter in the area for the “Score for this block.” When you have gone through all of the blocks, enter the score for each category in the place noted, and total them up. Check the total rating results. *(Note: This basic evaluation was developed by The Center for Innovative Public Policies, Inc. through cooperative agreement with #01P18GIR4 from the National Institute of Corrections, U.S. Department of Justice, for use with curriculum package “Preventing and Addressing Staff Sexual Misconduct in Community Corrections: A Training Program for Agency Administrators.” March 2004. It is used here with permission.)*


### YOU CAN MAKE A DIFFERENCE!

After discovering your results about your agency culture assessment, keep in mind that individual employees may not be able to change the culture by themselves. It takes leadership commitment, and commitment from all those within the agency. However, as an individual employee, you can impact the agency culture. Your actions and attitude certainly contribute to the agency culture. *Negative attitudes, lack of professionalism, lack of respect for self and others, all contribute to an overall negative culture of an organization. Likewise, positive and helpful attitudes, high professional standards, respect for self, respect for co-workers, and respect for inmates all have a positive impact on agency culture.*




	<b>HIRING</b>
	There is a plan in place for hiring new staff.
	Hiring goals are reached.
	Good quality employees are being hired.
	Our hiring message is reaching our community.
	New employees represent the diversity in our community and among inmates.
	Our employees are our #1 recruiters – they bring in excellent new staff.
	<i>Total the checkmarks for the HIRING block &amp; enter total here _____</i>


	<b>PROMOTIONS</b>
	The promotional process is objective.
	Employees know the criteria for getting promoted.
	Most employees think the promotional decisions are fair.
	The promotional process results in qualified and motivated managers.
	The promotional process is a positive incentive for employees.
	<i>Total the checkmarks for the PROMOTIONS block &amp; enter total here _____</i>

	<b>OPERATIONS</b>
	What we do in reality, matches policy and procedure.
	Employees are generally hard-working and committed to doing the right thing.
	Employees are professional in interactions with inmates.
	Employees understand their job responsibilities.
	Supervisors are supportive of their subordinates.
	Employees feel safe on the job.
	There are few instances of sexual misconduct.
	<i>Total the checkmarks for the OPERATIONS block &amp; enter total here _____</i>

	<b>MANAGERS</b>
	Managers are trained to do their job.


	Managers support the agency mission and its leadership.
	Managers are pro-active, and work to prevent crises.
	Managers are visible.
	Managers are generally respected by subordinates and their bosses.
	Managers are considered competent by subordinates and their bosses.
	Managers are generally approachable by their subordinates.
	<i>Total the checkmarks for the managers block &amp; enter total here _____</i>

	<b>PROFESSIONALISM</b>
	The agency has a good reputation in the community.
	Employees are respected in the community.
	Off-duty behavior is consistent with the level of integrity and professionalism expected on-duty.
	Employees are respectful in the way they treat each other.
	Incidents of sexual joking and sexual harassment are rare.
	Employees are proud to be associated with the agency.
	Employees avoid using street slang, foul language, and derogatory remarks to both other employees and inmates.
	Other agencies visit to learn from your organization.
	The agency is considered a valued partner with other criminal justice agencies, such as police, courts, probation, etc.
	<i>Total the Checkmarks for the PROFESSIONALISM block &amp; enter total here _____</i>

	<b>COMMUNICATION</b>
	There is a regular employee newsletter, and employees like to read it.
	Information flows well both up and down the chain of command.
	Supervisors facilitate communication in the organization.
	Employees believe their grievances will be heard in a timely manner and settled fairly.
	Employees believe their feedback and suggestions are valued.
	Supervisors hold regularly schedule staff meetings to share information.
	Supervisors use opportunities to provide training and guidance.
	<i>Total the Checkmarks for the COMMUNICATION block &amp; enter total here _____</i>

	<b>LEADERSHIP</b>
	The agency mission is clear to everyone.

	The organization’s values are known and embraced by employees.
	Leadership is accessible to employees.
	Leadership demonstrates professionalism.
	Leadership engages in “management by walking around” – being seen.
	Leadership values employees and it shows.
	Employees generally trust the agency leadership.
	<i>Total the checkmarks for the LEADERSHIP block &amp; enter total here _____</i>

	<b>QUALITY OF WORK LIFE</b>
	Employees can get time off without a lot of hassle.
	Employees don’t abuse sick leave.
	Employees trust and use an Employee Assistance Program.
	Employees are formally recognized for milestones in their careers.
	Employees are officially acknowledged for a job well done.
	Employees do not divide themselves into cliques along age, gender, or tribal lines.
	There is very little, if any, racism or sexism in the workplace.
	Employees consistently receive training to do their jobs effectively.
	<i>Total the checkmarks for the QUALITY block and enter total here _____</i>

Consider the following scores for each individual block.

- 1 = We need help!
- 2 = We are doing “ok”, but could use improvement.
- 3 = We are doing great – no need to improve at this time.

Now put each block total in the appropriate space and add them all together.

Hiring = \_\_\_\_\_  
 Promotions = \_\_\_\_\_  
 Operations = \_\_\_\_\_  
 Managers = \_\_\_\_\_  
 Professionalism = \_\_\_\_\_  
 Communication = \_\_\_\_\_

Leadership = \_\_\_\_\_

Quality of Work Life = \_\_\_\_\_

**TOTAL** = \_\_\_\_\_

Rating Results: *How do you believe your workplace rates? Here is what your score may mean in terms of your agency culture.*

0 – 88 Your workplace needs improvements in just about every area of agency culture. This relates to not only how business is conducted, but also how employees are treated. Without improvement, new initiatives, particularly in sensitive areas such as staff sexual abuse and harassment, are likely to encounter resistance from employees.

89-147 Your workplace is taking some steps to address the basic needs of employees, and seeks to create a positive culture. Some improvements may still be needed in the areas you noted with the lowest scores. Because of this more positive culture within the agency, new initiatives will work better and be more accepted.

148+ Congratulations. You are working in an environment that has a positive culture and is open to new initiatives to maintaining a healthy workplace.

## ENDNOTES

<sup>i</sup> U. S. Department of Justice, Bureau of Justice Statistics, "Mental Health Problems of Prison and Jail Inmates". Doris James. September 2006. NCJ 213600.

<sup>ii</sup> Torrey, E. Fuller M.D. et al, "More Mentally Ill Persons in Jails and Prisons Than Hospitals: A Survey of States", National Sheriff's Association and the Treatment Advocacy Center. May 2010.

<sup>iii</sup> Ibid.

<sup>iv</sup> U. S. Department of Justice, Bureau of Justice Statistics, see i above.

<sup>v</sup> Ibid.

<sup>vi</sup> U.S. Department of Justice, Bureau of Justice Statistics, "Prior Abuse Reported by Inmates and Probationers". By Caroline Wolf Harlow, Ph.D., April 1999, NCJ 172879.

<sup>vii</sup> U.S. Department of Justice, Bureau of Justice Statistics Bulletin. "Jails in Indian Country 2012". By Todd D. Minton. September 2012, NCJ 242187.

<sup>viii</sup> Ibid.

<sup>ix</sup> U.S. Department of Justice, Bureau of Justice Statistics. "American Indians and Crime" by Lawrence Greenfield. February 1999. NCJ 173386.

<sup>x</sup> Ibid.

<sup>xi</sup> U.S. Department of Justice, Bureau of Justice Statistics. "Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-2012. May 2013. NCJ 241399.