

Responding to Sexual Abuse of Inmates in Custody: Addressing the Needs of Men, Women, and Gender Nonconforming Populations
Notification of Curriculum Use
April 2014

The enclosed Responding to Sexual Abuse of Inmates in Custody: Addressing the Needs of Men, Women, and Gender Nonconforming Populations curriculum was developed by the Project on Addressing Prison Rape at American University, Washington College of Law as part of contract deliverables for the National PREA Resource Center (PRC), a cooperative agreement between the National Council on Crime and Delinquency (NCCD) and the Bureau of Justice Assistance (BJA). The Prison Rape Elimination Act (PREA) standards served as the basis for the curriculum's content and development with the goal of the Responding to Sexual Abuse of Inmates in Custody: Addressing the Needs of Men, Women, and Gender Nonconforming Populations curriculum being to satisfy specific PREA standards requirements.

It is recommended that the Responding to Sexual Abuse of Inmates in Custody: Addressing the Needs of Men, Women, and Gender Nonconforming Populations curriculum be reviewed in its entirety before choosing which modules to use. Any alterations to the original materials require either acknowledgement during their presentation or removal of the PRC and Project on Addressing Prison Rape logos.

BJA is currently undergoing a comprehensive review of the enclosed curriculum for official approval, at which point the BJA logo may be added.

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**Training Curriculum:
Responding to Sexual Abuse of Inmates in Custody:
Addressing the Needs of Men, Women and Gender Non-Conforming
Populations**

Module 3: Vectors of Sexual Abuse in Custody

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

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History of Female Inmates in Custody

History of Female Inmates in Custody

Punishment, including institutional punishment, has always been gendered

Correctional institutions have always struggled against sexualization

History of Female Inmates in Custody

Early female inmates were poor women who had deviated from societal expectations of gender norms

Female inmates subjected to abuse at the hands of male correctional staff

Female staff introduced to ameliorate poor treatment, putting emphasis on reforming female inmates

History of Female Inmates in Custody

After female correctional staff entry into male correctional facilities, male correctional workers reappeared in female facilities

Male correctional staff are responsible for most of the staff-perpetrated sexual abuse against female inmates

BJS, National Inmate Survey, 2008-09

Female inmates reporting sexual abuse in prison

Number of inmates: 2,123

- Male staff: 71.8%
- Female staff: 9.3%
- Both male and female: 18.9%

Female inmates reporting sexual abuse in jail:

Number of inmates: 1,485

- Male Staff: 62.6%
- Female Staff: 27.7%
- Both male and female staff: 9.8%



Title VII and the Entrance of Women into Corrections

Title VII

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

Bona Fide Occupational Qualification

Escape clause to Title VII: the “bona fide occupational qualification” (BFOQ)

Permits employers to discriminate in hiring or firing decisions.

Specifically permits an otherwise discriminatory hiring practice when it is “reasonably necessary to the normal operation of that particular business or enterprise.” 42 U.S.C. § 2000e-2(e)(1) (2012).

Bona Fide Occupational Qualification

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

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

Women In Corrections

- 2001: women made up 24.5 % of the correctional workforce in male custodial facilities.
- 2007: female workers made-up 40% of all correctional staff in adult facilities.
- 2008: women comprised 42% of juvenile facility staff.

Men in Corrections

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

Breakdown

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

Gender Non-Conforming in Corrections

Difficult to quantify at this time due to lack of data

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

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

Institutions as sexualized living and working environments

Sexual Harassment

Women working in male-dominated occupations are not necessarily received as equals

Masculine atmosphere, where sexually explicit comments and derogatory language is the norm

Sexual Harassment

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

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

Sexual Discrimination

Women may experience paternalistic protection from male co-workers

Difficulty assimilating into the male culture

Women who report sexual harassment may be terminated

Sexual Assault

Female staff may experience sexual assault from both co-workers and inmates

Encompasses anything from light touching in an inappropriate way, to violent or aggressive behavior

Sexual Assault

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

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

Gender and staff involvement in sexual abuse of inmates

Female Staff Commit Sexual Misconduct Disproportionate to their Numbers

As noted above, women make up approximately 40% of all adult correctional staff, and approximately 42% of staff in juvenile facilities.

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

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

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

Female Staff Commit Sexual Misconduct Disproportionate to their Numbers

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

Of the male inmates interviewed:

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

Female Staff Commit Sexual Misconduct Disproportionate to their Numbers

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

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

What We Currently Know: BJS Data

Sexual Victimization Reported by Adult Correctional Authorities, 2007-8
Substantiated Incidents of Sexual Abuse

| Gender | Inmate on Inmate Abuse | | Staff on Inmate Abuse | |
|---------------------|-------------------------------|-------------------------|-------------------------|-------------------------|
| | Non-Consensual Sexual Conduct | Abusive Sexual Contacts | Staff Sexual Misconduct | Staff Sexual Harassment |
| Victims | | | | |
| Male | 92% | 62% | 65% | 50% |
| Female | 8% | 38% | 35% | 50% |
| Perpetrators | | | | |
| Male | 93% | 70% | 39% | 79% |
| Female | 7% | 30% | 61% | 21% |

What We Currently Know: BJS Data

Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-9

Sex of perpetrator of staff sexual misconduct

| Gender | Prison | | Jail | |
|--|--------------|----------------|--------------|----------------|
| | Male Victims | Female Victims | Male Victims | Female Victims |
| Male Perpetrator | 14.9% | 71.8% | 18.2% | 62.6% |
| Female Perpetrator | 68.8% | 9.3% | 64.3% | 27.7% |
| Both Male and Female Perpetrators | 16.3% | 18.9% | 17.5% | 9.8% |

What We Currently Know: BJS Data

Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-9

National prevalence data for sexual victimization by gender

| Gender | Prisons | | Jails | |
|--------|------------------|-------------------------|------------------|-------------------------|
| | Inmate on Inmate | Staff Sexual Misconduct | Inmate on Inmate | Staff Sexual Misconduct |
| Male | 1.9% | 2.9% | 1.3% | 2.1% |
| Female | 4.7% | 2.1% | 3.1% | 1.5% |

What We Currently Know: BJS Data

Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-9

Prevalence of sexual victimization by sexual orientation

| Orientation | Prisons | | Jails | |
|--------------------------------|------------------|-------------------------|------------------|-------------------------|
| | Inmate on Inmate | Staff Sexual Misconduct | Inmate on Inmate | Staff Sexual Misconduct |
| Heterosexual | 1.3% | 2.5% | 1.1% | 1.9% |
| Bi-sexual, Homosexual or Other | 11.2% | 6.6% | 7.2% | 3.5% |

Summary

Women inmates have a history of victimization while in custody

While female corrections officers are relatively new in the field, they are often the perpetrators of staff sexual misconduct against both male and female inmates

Male inmates and youth may not feel that they are victims in their sexual interactions with female