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Addressing Sexual Violence Against Youth in Custody: Youth Workers' Handbook on Identifying and Addressing Sexual Violence in Juvenile Justice Settings

Brenda V. Smith

Jaime M. Yarussi

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ADDRESSING Sexual Violence Against **Youth in Custody**

Youth Workers' Handbook on Identifying and Addressing
Sexual Violence in Juvenile Justice Settings

**U.S. Department of Justice
National Institute of Corrections
320 First Street, NW
Washington, DC 20534**

Morris L. Thigpen
Director

Thomas J. Beauclair
Deputy Director

Christopher Innes, Ph.D.
Division Chief, Research and Evaluation

Dee Halley
Correctional Program Specialist

National Institute of Corrections
www.nicic.gov



ADDRESSING **Sexual Violence Against Youth in Custody**

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Brenda V. Smith, J.D.

Jaime M. Yarussi, M.S.

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Foreword

For more than a decade, the National Institute of Corrections (NIC) has addressed sexual abuse of adults under custodial supervision through its staff sexual misconduct initiative. Through national training efforts and field-initiated technical assistance, NIC has been at the forefront of responding to the needs of correctional leadership in this area. In 2003, with the passage of the Prison Rape Elimination Act, NIC refocused its efforts to address sexual abuse in custody to include youth in both detention and community supervision settings.

NIC has collaborated with the Project on Addressing Prison Rape since 2000 to train high-level correctional decisionmakers on key issues in addressing and investigating sexual abuse in custody. In 2006, Smith Consulting began to work with the Project on Addressing Prison Rape and NIC to focus efforts on addressing sexual abuse of youth in custody.

With all of the complex demands and responsibilities placed on correctional agencies today, keeping adults and youth under custodial supervision safe and secure is essential to the integrity of the profession of corrections. NIC hopes that you will find the information in this publication valuable and useful as we strive toward achieving safety for all offenders and staff in our nation's custodial settings.

Morris L. Thigpen

Director

National Institute of Corrections



Preface

From 1999 to 2012, The Project on Addressing Prison Rape (the Project) at American University's Washington College of Law had a cooperative agreement with the National Institute of Corrections (NIC) to provide training to high-level correctional decisionmakers on key issues in addressing and investigating staff sexual misconduct. In 2003, with the enactment of the Prison Rape Elimination Act (PREA), the Project's focus shifted to addressing prison rape—both staff sexual misconduct and offender-on-offender sexual abuse. In 2006, Smith Consulting began a collaborative effort with the Project and NIC to focus efforts on addressing sexual abuse of youth in custody. This handbook is based on a training curriculum that the Project produced to address sexual abuse of youth in custody.

Since the passage of PREA in 2003, the sexual abuse of individuals in custody, including youth, received increased national and international attention. The National Prison Rape Elimination Commission proposed comprehensive standards for eliminating sexual abuse of youth in custodial settings. Those proposed standards were largely kept intact or strengthened by the Department of Justice's (DOJ's) final standards, which were released on May 17, 2012. In particular, DOJ strengthened PREA's protections for youth in custody, especially youth in adult facilities, and states have strengthened criminal laws prohibiting the sexual abuse of both adults and juveniles in custody. Reports on sexual abuse of youth in custody have increased. Non-governmental organizations such as Human Rights Watch and Amnesty International have all documented the issue. In addition, both print and visual media have covered sexual abuse in juvenile justice settings on numerous occasions.

However, this fundamental question remains unanswered: Have conditions that permit sexual abuse of and between youth in custodial settings changed? Although several state and local juvenile justice systems have made strides in addressing sexual abuse of youth in their care, much work remains. With standards as benchmarks, stronger laws protecting youth from sexual abuse, and mandatory reporting requirements that are already in place, progress can be swift and sexual abuse can be significantly reduced in juvenile justice settings.

Work to improve the situations of youth in custody needs to continue to ensure the safety and security of juvenile justice agencies as well as their staff and youth. Law and policy development, consistent enforcement, prosecution and punishment, and training of staff and youth can prevent and reduce sexual abuse.

This publication is a first step in reaching out to staff in juvenile justice settings to help them identify, address, and appropriately respond to incidents of sexual abuse by staff or between youth. We hope that it will deepen the dialogue between staff and administrators of juvenile justice agencies as well as community leaders and criminal justice advocates about strategies to eliminate sexual abuse of youth in custody.



Acknowledgments

Addressing Sexual Violence Against Youth in Custody: Youth Workers' Handbook on Identifying and Addressing Sexual Violence in Juvenile Justice Settings is the product of work by many organizations and individuals concerned about preventing and addressing the sexual abuse of youth in custody.

We would like to thank the many contributors who have given us insightful and honest commentary about the situations that youth workers and youth face and how this abuse affects both agencies and staff. In particular, we thank Maisley Paxton, Andrea Morbitzer, Peter Kuhn, Kevin DuBose, Lisa Capers, Barney Kinman, Susan Carle, and Deborah Connor for their development of materials and research that allowed us to gain insight into the needs of youth and staff in juvenile justice settings to identify and respond to sexual abuse of youth in custody. In 2007, 8 teams composed of 24 juvenile justice professionals attended a 5-day training program, *Addressing Sexual Violence of Youth in Custody*. The training was sponsored by The Project on Addressing Prison Rape with funding from the National Institute of Corrections. We extend thanks to everyone who participated in that program for helping us to define the issues that youth and staff face in their efforts to prevent, reduce, and punish sexual abuse of youth in custody.

Additionally, we thank the following individuals from the National Institute of Corrections for supporting this important work: Morris Thigpen, Director; Thomas Beauclair, Deputy Director; Christopher Innes, Division Director; and Dee Halley, Correctional Program Specialist.

Brenda V. Smith, J.D.
Project Director
The Project on Addressing Prison Rape

Professor of Law
American University
Washington College of Law

Jaime M. Yarussi, M.S.
Assistant Director
The Project on Addressing Prison Rape

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Introduction

Sexual abuse in custody can and often does have lifelong effects on youth. Youth who are sexually abused or experience sexual violence can suffer higher rates of drug use, have disproportionate contact with the criminal justice system into adulthood, become victimizers, and/or have higher rates of mental illness than youth who do not suffer sexual abuse.¹ In addition, sexual abuse by staff or other youth in custody compromises safety and security as well as the overall mission of juvenile justice systems—to protect and rehabilitate youth.

One in four girls and one in six boys will experience sexual abuse before the age of 18.

—National Center for Victims of Crime

According to the American Medical Association, youth who are the victims of sexual abuse may experience chronic depression, low self-esteem, sexual dysfunction, and multiple personalities.² One-fifth of all victims develop serious long-term psychological effects, including dissociative responses, posttraumatic stress disorder, nightmares, flashbacks, disease, and anxiety.³ This may be magnified for youth abused in custodial settings.

Preventing sexual abuse of youth in custody should be an ongoing effort involving partners from all juvenile sectors—advocates, staff, judges, prosecutors, social service providers, and families. Sexual abuse of youth in custody is a problem that occurs in community facilities and detention centers.

Sexual abuse in custody affects youth, administration and staff at all levels, as well as outside stakeholders such as youth advocates, law enforcement, the legislature, families, and the community at large. It has legal consequences as well as long-lasting emotional, mental and physical health, and economic effects.

This handbook aims to educate juvenile justice professionals about the following:

- Why juvenile justice professionals should be concerned about sexual abuse of youth in custody.
- How culture and environment contribute to sexual abuse of youth in custody.
- Tools that will help identify, address, and respond to sexual abuse of youth in custody.
- How to investigate allegations of sexual abuse of youth in custody.
- Useful legal tools for prosecuting sexual abuse of youth in custody.
- Preventive measures for juvenile justice agencies.



The Landscape of Juvenile Justice Agencies

Defining Setting

Defining setting is important to addressing sexual abuse of youth in custody because procedures to address allegations of sexual abuse, reporting schemes, and/or responsibility for investigations may differ based on the supervision setting.


There is a wider variety of custodial settings for youth than for adults. Nearly half of the more than 1 million youth who received juvenile court sanctions in 2005 were placed in community settings.⁴ Youth in custody can be housed or supervised in any of the following settings:

- Detention.
- Probation.
- Day supervision programming.
- Alternative schools.
- Boot camps.
- Aftercare.
- Group homes.
- Diversion programs.
- Conditional release.
- Pretrial supervision.
- Transitional services.
- Juvenile parole.
- House arrest.
- Electronic home monitoring.
- Reentry centers.
- Agency-based foster care.
- Reporting centers.
- Work camps.
- Youth development centers.
- Foster care settings.

Four Charged with Misconduct at Pendleton Juvenile Center

Four female workers at a central Indiana juvenile detention center have been charged with exchanging explicit photos or engaging in sex acts with an 18-year-old male inmate. . . . One woman worked in the laundry, another was a contract food services worker, and two were correctional officers. . . . All four face official misconduct charges. Two also are charged with sexual misconduct with a detainee for performing a sex act on the teen.

—Associated Press,
January 29, 2010



It is challenging to design policies and procedures when there are many placement and supervision options within agencies, especially if community supervision is ultimately governed by a different agency than the one responsible for the youth's confinement.

Defining Staff

Because “staff” includes more than administrators or resident supervisors, it is important to include others who have contact with youth in training and are involved in other efforts to prevent and respond to sexual abuse of youth.

Staff in juvenile agencies include:

- Juvenile justice employees (sworn or civilian, managers, administrators, supervisors, line staff, and community corrections supervisors).
- Contractors.
- Food service employees.
- Maintenance workers.
- Volunteers.
- Medical or mental health staff members (clinical staff and counselors).
- Clergy.
- Vendors.
- Teachers.

It is also important to include all staff in efforts to prevent and respond to sexual assault of youth because all staff in a setting who have contact with or access to youth can either be accused of staff sexual misconduct or receive a report of sexual abuse by another staff member or a youth. Staff at all levels and job descriptions need to know appropriate boundaries, responsibilities, and responses when faced with allegations of sexual abuse.

Staff with Dual Roles

Juvenile justice agencies are charged with safety, security, rehabilitation, and the guidance of youth under their supervision. These multiple roles often make it difficult to set appropriate boundaries between youth and staff. When staff provide safety and security, their roles as mentors can lead to closer relationships with youth than they would have otherwise, especially as compared to staff supervising adults. It is imperative that staff become invested in youth under their care so that a rehabilitative environment exists; however, this dual role can cause difficulties in setting boundaries and can create opportunities for abuse.

To remedy this problem, staff training should reinforce staff's legal and ethical obligations and the importance of setting appropriate

Detention Officer Arrested: Accused of Smoking Crack and Having Sex with Young Offender

Magdalene Bombella is in the Travis County Jail charged with hindering apprehension. Investigators say she admits paying for hotel rooms for her 17-year-old son this summer so he could have sex with his probation officer/counselor.

—KVUE News,
December 17, 2008



§ 115.331 Employee training

(a) The agency shall train all employees who may have contact with residents 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) Residents' right to be free from sexual abuse and sexual harassment; (4) The right of residents and employees to be free from retaliation for reporting sexual abuse and sexual harassment; (5) The dynamics of sexual abuse and sexual harassment in juvenile facilities; (6) The common reactions of juvenile victims of sexual abuse and sexual harassment; (7) How to detect and respond to signs of threatened and actual sexual abuse and how to distinguish between consensual sexual contact and sexual abuse between residents; (8) How to avoid inappropriate relationships with residents; (9) How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming residents; and (10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities; (11) Relevant laws regarding the applicable age of consent.

—*National Standards to Prevent, Detect, and Respond to Prison Rape, May 17, 2012*⁵

boundaries. Additionally, administrators should be involved in ongoing supervision and mentoring for staff to help identify and remediate potential problems.

Defining Jurisdiction—Overseeing Departments of Juvenile Justice

Juvenile justice agencies are sometimes stand-alone agencies (e.g., the Texas Department of Juvenile Justice, the South Carolina Department of Juvenile Justice, and the Oregon Youth Authority). However, usually they are part of other agencies such as:

- Department of Corrections.
- Department of Family Services.
- Department of Health and Human Services.
- Department of Children's Services.
- Department of Public Welfare.
- Department of Social Services.
- Department of Public Safety.

Strategies for addressing sexual abuse of youth in custody will differ depending on where juvenile agencies are situated within state agencies.

Sexual Abuse of Youth in Custody

Definitions of Sexual Abuse of Youth in Custody

There are at least five common sources that define sexual abuse of youth in custody:

- The Prison Rape Elimination Act (PREA) of 2003.
- The National Standards to Prevent, Detect, and Respond to Prison Rape.
- The Bureau of Justice Statistics (BJS).
- Agency policy.
- State law.

Sexual abuse of youth in custody can include both physical and non-physical behaviors. In cases of staff sexual misconduct and youth-on-youth sexual abuse, nonphysical actions can precede sexual abuse. Prohibiting nonphysical behaviors such as exchanging letters and/or pictures with staff or between youth is generally a matter of policy. With the passage of the Adam Walsh Act, however, there can be criminal implications for those actions when taken with a youth.⁶

PREA, BJS, and policy definitions are discussed below. State criminal laws and other definitions are discussed later in this handbook.

The Prison Rape Elimination Act and Juvenile Settings

In September 2003, the U.S. Congress unanimously passed the Prison Rape Elimination Act.⁷ PREA was the culmination of a collaborative effort between human rights, faith-based, and prison rape advocacy groups aimed at creating zero tolerance for prison rape by using the following tools:

- Data collection.
- Grants to the states.
- Training and technical assistance to the states to help them improve their practices.
- Research and guidance.
- Development of national standards.

Like other legislation, such as the Prison Litigation Reform Act of 1996, PREA refers to prisons but applies to juveniles in both adult and juvenile settings.

Nonphysical sexual abuse includes, but is not limited to:

- Undue familiarity (such as flirting, inappropriate compliments, making suggestive sexual remarks or obscenities, doing favors for an offender, letters or notes that are sexual in nature, and conversations with sexual undertones).
- Conduct of a sexual nature that implies sexual harassment or unreasonable invasion of privacy (such as inappropriate viewing or standing too close to the offender in an intimate space without touching).
- Sexually suggestive comments about appearance.

—*Legal Responses to Sexual Violence in Custody: State Criminal Laws Prohibiting the Sexual Abuse of Individuals under Custodial Supervision, 2009*



PREA defines sexual abuse of an individual in custody as:

“The rape of an inmate (defined as any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or *adjudicated delinquent* for violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary programs) in the actual or constructive control of prison officials.”⁸

Although juveniles and juvenile justice agencies are clearly included in PREA, inadequate research and the lack of training, funding, and standards regarding sexual abuse of youth in custody have delayed comprehensive efforts to address this issue. For example, although the National Institute of Corrections (NIC) has devoted significant efforts to addressing sexual abuse in adult custodial settings since 1995, the first national training for eight juvenile agencies took place in 2008; the development of a related curriculum for juvenile agencies occurred in 2010. This training and curriculum development was a collaboration between the Office of Juvenile Justice and Delinquency Prevention and NIC.

PREA provided an unprecedented amount of funding for technical assistance to states to begin to address sexual violence in custodial settings; however, only a small amount of funds went to juvenile or community correctional agencies. To the extent these agencies received money from PREA grants, they were part of unified correctional systems such as Rhode Island, Vermont, or California.

Even though the victimization of youth is well documented, scant research attention has been paid to the victimization of youth in custodial settings. Also, while the legal framework (which requires mandatory reports of abuse) provides some prevention and recourse for abuse of youth, most juvenile agencies do not have specific policies that prohibit sexual abuse of youth.

National Standards

In its final report, the National Prison Rape Elimination Commission (NPREC) made nine findings. Relevant to juvenile settings, NPREC found that “juveniles in confinement are much more likely than incarcerated adults to be sexually abused, and they are particularly at risk when confined with adults. To be effective, sexual abuse prevention, investigation, and treatment must be tailored to the developmental capacities and needs of youth.”⁹

According to PREA, “prison” means “any confinement facility of a federal, state or local government, whether administered by that government or by a private organization on behalf of such government and includes: any jail or police lock-up and any **juvenile facility used for the custody or care of juvenile inmates.**” [emphasis added]

—Prison Rape Elimination
Act of 2003

A full copy of the National Prison Rape Elimination Commission report, *Standards for the Prevention, Detection, Response and Monitoring of Sexual Abuse in Juvenile Facilities*, is available at <http://nicic.gov/Library/023812>. A full copy of the *National Standards to Prevent, Detect, and Respond to Prison Rape* is available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.






Because of this finding, NPREC drafted separate standards for juveniles. The final Department of Justice (DOJ) standards released on May 17, 2012, incorporated these separate standards, which include the following:

§ 115.311 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.

- (a) An agency shall have a written policy mandating 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.
- (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.
- (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 the PREA standards.

§ 115.313 Supervision and monitoring.

- (a) The agency shall ensure that each facility it operates shall develop, implement, and document a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect residents against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration:
 - (1) Generally accepted juvenile detention and correctional/secure residential practices;
 - (2) Any judicial findings of inadequacy;
 - (3) Any findings of inadequacy from Federal investigative agencies;
 - (4) Any findings of inadequacy from internal or external oversight bodies;
 - (5) All components of the facility's physical plant (including "blind spots" or areas where staff or residents may be isolated);
 - (6) The composition of the resident population;
 - (7) The number and placement of supervisory staff;
 - (8) Institution programs occurring on a particular shift;
 - (9) Any applicable State or local laws, regulations, or standards;
 - (10) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
 - (11) Any other relevant factors.
- (b) The agency shall comply with the staffing plan except during limited and discrete exigent circumstances, and shall fully document deviations from the plan during such circumstances.
- (c) Each secure juvenile facility shall maintain staff ratios of a minimum of 1:8 during resident waking hours and 1:16 during resident sleeping hours, except during limited and discrete exigent circumstances, which shall be fully documented. Only security staff shall be included in these ratios. Any facility that, as of the date of publication of this final rule, is not already obligated by law, regulation, or judicial consent decree to maintain the staffing ratios set forth in this paragraph shall have until October 1, 2017, to achieve compliance.
- (d) Whenever necessary, but no less frequently than once each year, for each facility the agency operates, in consultation with the PREA coordinator required by § 115.311, the agency shall assess, determine, and document whether adjustments are needed to:
 - (1) The staffing plan established pursuant to paragraph (a) of this section;
 - (2) Prevailing staffing patterns;

- 
- (3) The facility's deployment of video monitoring systems and other monitoring technologies; and
 - (4) The resources the facility has available to commit to ensure adherence to the staffing plan.
 - (e) Each secure facility shall implement a policy and practice of having intermediate-level or higher level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts. Each secure facility shall have a policy to prohibit staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

§ 115.387 Data collection.

- (a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.
- (b) The agency shall aggregate the incident-based sexual abuse data at least annually.
- (c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.
- (d) The agency shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.
- (e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its residents.
- (f) Upon request, the agency shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

DOJ included a full discussion of its reasoning for adopting certain juvenile standards. This discussion can be found in the Preamble to the final standards, available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.


The Significance of the Juvenile PREA Standards

The development of national standards for youth in custody under PREA means the following:

- A set of comprehensive national standards that address sexual abuse of youth in custody.
- Increased scrutiny of sexual abuse of youth in custody at the state, federal, and local levels.
- Increased accountability for states, officials, and employees.
- Enhanced focus on training, reporting, investigations, prosecution, and administrative sanctions.
- Services for victims.

Juvenile justice agencies have already begun to discuss the new standards. Some of the questions that juvenile agencies have asked about the final standards are:

1. Which agency/agencies will be responsible for monitoring compliance and when will monitoring begin?
2. Are preadjudication and postadjudication secure facilities considered separate facilities if they are co-located on the same campus?
3. Will female staff be allowed to supervise male residents?
4. Should support services only be provided by community service providers?

- 
5. What types of staff are included in the staff ratios of 1:8/1:16 required by the PREA standards?
 6. What are some examples of objective screening instruments that can be used to obtain PREA-related information?
 7. How are PREA expectations to be addressed in facilities housing youth that are state funded but are not contract facilities (e.g., substance abuse treatment centers)?
 8. Does the 5-year criminal background check extend to probation officers?
 9. Where can we find tools to guide us in the assessment process?
 10. Do PREA standards apply to a facility that houses 15–20 residents where only 2 or 3 youth from the department of juvenile services are housed (i.e., all other youth are not under the control of the department of juvenile services)?

The National PREA Resource Center, in collaboration with the Project on Addressing Prison Rape, is in the process of answering these important questions. Answers to these and other important questions about the standards can be found at <http://www.prearesourcecenter.org/faq>.

What We Know About Prevalence: Bureau of Justice Statistics and Data Collection

BJS defines youth-on-youth sexual abuse as:¹⁰

“Sexual contacts with any person without his or her consent, or with a person who is unable to consent or refuse. The most serious incidents, *nonconsensual sexual acts*, include:

- contact between the penis and the vagina or the penis and the anus including penetration, however slight; or
- contact between the mouth and the penis, vagina, or anus; or
- penetration of the anal or genital opening of another person by a hand, finger, or other object.”

BJS defines staff sexual misconduct as:¹¹

“Any behavior or act of a sexual nature, either consensual or nonconsensual, directed toward a youth by an employee, volunteer, official visitor, or agency representative. Such acts include:

- intentional touching of the genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to arouse or gratify sexual desire; or
- completed, attempted, threatened, or requested sexual acts; or

What is currently known about prevalence comes from BJS data. There are two kinds of data collection and reports—administrative data collections and victim self-reports. Both types of reports can be found at:

Administrative survey collections from juvenile correctional authorities in 2004 and 2005–06 are available at:

http://www.wcl.american.edu/endsilence/documents/BeckandHughes_BJSReport2004.pdf
<http://www.wcl.american.edu/endsilence/documents/sexviolencejuvenilecorrauth2005-6.pdf>

Victim self-reports from 2008–09 are available at:

<http://www.wcl.american.edu/endsilence/documents/SexualVictimizationinJuvenileFacilitiesReportedbyYouth2008-9.pdf>

- occurrences of indecent exposure, invasion of privacy, or staff voyeurism for sexual gratification.”

BJS collected data from juvenile correctional authorities in 2005–06 and found there were more than 2,000 reported allegations of sexual violence in juvenile facilities each year.¹² Fifty-seven percent of reported incidents were youth-on-youth sexual contact, and 43 percent were staff sexual misconduct.¹³

BJS found that the rate of sexual abuse in juvenile facilities, **based on these administrative records**, was more than five times greater than rates in adult facilities in 2006.¹⁴ This difference in rates may be due to state and local laws that require reports of any sexual acts involving persons under a certain age that are nonconsensual.

During the administrative records collection, BJS found that in cases of reported youth-on-youth sexual abuse:¹⁵

- Victims received physical injuries in 12 percent of substantiated incidents of youth-on-youth sexual violence.
- About half of all victims of youth-on-youth sexual violence received some form of medical followup.
- Nearly half of victims of youth-on-youth sexual violence had their housing changed in response.
- Legal action was taken for 41 percent of youth perpetrators, 37 percent were transferred, and 22 percent were given solitary/disciplinary segregation.

BJS also found that in cases of reported staff sexual misconduct with youth:¹⁶

- Few youth victims of staff misconduct received physical injuries.
- About half of all victims of staff sexual misconduct were provided counseling/mental health treatment.
- Nearly 40 percent of perpetrators of staff misconduct or harassment were arrested or referred for prosecution.
- Almost all staff perpetrators lost their jobs in local/private facilities (99 percent), compared to 75 percent of staff perpetrators in state systems.

In 2010, BJS released its first report on sexual victimization in juvenile facilities reported by youth.¹⁷ It showed that 12 percent of youth in juvenile facilities and large nonstate facilities reported sexual victimization while in detention,¹⁸ 2.6 percent reported sexual violence involving another youth, and 10.3 percent reported an incident involving a staff member.¹⁹

During the collection of data from youth in juvenile facilities, BJS found that in cases of reported youth-on-youth sexual abuse:²⁰

- Two percent of youth had nonconsensual sex with another youth.
- Eighty-one percent of youth had been victimized more than once.

When comparing juvenile and adult data from administrative records, the following findings apply:

- Overall, juvenile agencies have higher rates of substantiated incidents: adult – 14 percent, juvenile – 20 percent.
- Overall, juvenile agencies have higher prevalence rates of sexual abuse: adult – 2.9 percent, juvenile – 16.8 percent.
- Staff sexual misconduct is more prevalent in both adult and juvenile facilities: adult – 53 percent, juvenile – 46 percent.

- Forty-three percent of youth had been victimized by more than one perpetrator.
- Sixty-three percent of youth had been victimized at least once by youth known to be in a gang.

In the same data collection, BJS found that in cases of reported staff sexual misconduct:²¹

- Eighty-eight percent of youth reported being victimized more than once by a staff member; 27 percent had been victimized more than 10 times.
- Thirty-three percent of youth reported being victimized by more than one staff member.
- Fourteen percent of youth reported they had experienced force or threat of force, 11 percent had been offered favors or protection, and 18 percent had been given drugs or alcohol.

These data are important because they allow juvenile agencies to target their efforts and interventions to address sexual abuse of youth in custody. The data also highlight the fact that sexual abuse is often accompanied by overfamiliarity, physical abuse, and contraband. Additionally, these data demonstrate that sexual abuse decreases security and safety for staff and youth as a whole and increases mental health risks for victims.

Sexual Victimization Reported by Youth, 2008–09 BJS Findings

- Female-only facilities had the highest rates of youth-on-youth sexual victimization.
- Male-only facilities had the highest rates of staff sexual misconduct.
- Approximately 95 percent of all youth reporting staff sexual misconduct said they were victimized by female staff.
- Females were more likely than males to report forced sexual activity with other youth.
- Youth who are considered sexual minorities reported significantly higher rates of victimization.
- Youth with prior histories of victimization were twice as likely to report victimization.

PREA and Agency Policies

Agency policy provides another source of definitions for staff sexual misconduct as well as sexual behaviors between youth in custody. Policies vary from state to state, locality to locality, and among individual facilities within a state. Sound policies should do the following:

- Clearly define staff sexual misconduct and sexual abuse between youth.
- Clearly delineate responsibilities for staff.
- Outline procedures for reporting, responding to, and investigating abuse of youth in custody.
- Communicate sanctions for failing to follow policy.
- Designate multiple reporting points for employees and youth.
- Include strong investigative elements.
- Provide training for staff, volunteers, contractors, and youth.

State law prohibits staff from engaging in any sexual conduct with youth. Staff sexual misconduct and child exploitation laws allow agencies to prohibit any sexual contact, physical or nonphysical, between correctional staff members and youth under their supervision.



Agency policy, however, can fill in the gaps in state law and prohibit a wider range of contact. For example, many agencies have no-contact policies that prohibit social contact between staff and youth or a youth's family without notice to the agency. These policies can be useful in addressing relationships that may begin in custody and continue once a youth is released.

Agencies often have policies that prohibit touching or sexual contact between youth. Although these policies are important (especially considering the wide differences in ages and development among youth), agencies should ground these policies in knowledge about adolescent cognitive, emotional, and sexual development.

PREA-Guided Policies

Since PREA's enactment, many juvenile agencies have developed policies to comply with the national standards. It is important to have clear policies that reference PREA obligations because this is one of the ways to give notice to staff and youth about expectations regarding the agency's plans to address the sexual abuse of youth in custody.

Agencies should revisit the following policies to address the sexual abuse of youth in custody:

- Classification.
- Sexual assault.
- Medical and mental health.
- Sexual behavior.
- Sexual assault response teams.
- Investigations.
- Reporting—mandatory and otherwise.
- Grievance.


Although it is important to have different policies that include the issue of sexual abuse of youth in custody, many agencies decide to have a separate PREA policy. Examples of separate PREA policies are available at http://www.wcl.american.edu/endsilence/juvenile_policies.cfm.

Although a number of model policies are available on a number of these issues, no single policy works for every type of juvenile agency or setting. There are considerations and decisions that each agency must address regarding its own needs and situation.

Important questions to address when drafting or updating policies include:

- What actions should be included in your policy?
- Who is responsible for particular tasks?
- What is the reporting structure in your agency?
- How do you maintain safety and confidentiality for victims?
- What are the sanctions for failing to adhere to the policy?
- What data will you collect, and who will be responsible for the collection?
- How do you incorporate policies related to addressing sexual abuse?
- How often should you review and update policies?
- Are your policies compliant with state and federal law?
- Do your policies effectively implement PREA standards?
- How do you measure the effectiveness of your policies?





Agencies may experience the following challenges in formulating effective zero-tolerance policies for sexual abuse of youth:

- Committed leadership.
- Agency culture that resists change.
- Practices that do not mirror policy.
- Training for staff and youth.
- Competent investigations.

Agencies can overcome these challenges and create strong and clear policies that provide staff and youth with clear tools for protecting youth from sexual abuse. Overall, it is essential that policies addressing the sexual abuse of youth in custody exist and are:

- Comprehensive for your agency.
- Consistent with operational practices.
- Modeled by leadership.
- Evaluated and revised regularly.

§ 115.321 Evidence protocol and forensic medical examinations

(c) The agency shall offer all residents who experience sexual abuse access to forensic medical examinations whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs.

—*National Standards to Prevent, Detect, and Respond to Prison Rape, May 17, 2012*



Youth in Custody: The Role of Adolescent Development in Preventing Sexual Abuse

There are five types of adolescent development:

- Brain development.
- Cognitive development.
- Behavioral development.
- Emotional development.
- Sexual development.

Understanding development is important because youth who are abused during adolescence often have a significant change in overall development and functioning. These changes in development can place them at great(er) risk for sexual abuse.

The remainder of this section will discuss the five types of development.

Adolescent Development

Brain Development

Brain development begins before birth and continues throughout an individual's lifespan. Most people develop full brain capacity and functioning in their midtwenties. Brain capacity, however, changes with age. The brain has four main sections:

- Temporal lobe.
- Parietal lobe.
- Frontal lobe.
- Occipital lobe.

How the Brain Functions

- Frontal lobe: Higher level functioning, higher level thinking, order, motivation, planning.
- Temporal lobe: Associated with hearing, smell, and emotions; regulates the drive for pleasure.
- Parietal lobe: Sensory input such as touch and taste.
- Occipital lobe: Vision.

Most youth in custody are adolescents. A teenager's brain is not fully developed. The temporal lobe, which regulates emotion, is fully developed at age 18. The frontal lobe is fully developed at age 24; this is the section of the brain that controls judgment, reasoning, and rational decisionmaking. **This means that the areas of the brain that regulate the ability to make good decisions and understand consequences are largely underdeveloped for youth in custody.**



Cognitive Development

Cognitive development includes thinking, problem solving, understanding concepts and processing information, and overall intelligence.

Youth must develop three types of thinking: abstract, problem solving, and executive functioning.

Each cognitive ability builds on the other and allows youth to begin to solve complex problems. **Cognitive development enables youth to consider their actions and the consequences of those actions. It allows youth to better understand the connection between past and present actions, and between future opportunities and consequences.**

Behavioral Development

There is also a behavioral element to children's development. What a child does and enjoys at age 7 or 8 is very different from what he/she does and enjoys in early, middle, and late adolescence.

As children age and develop they:

- Desire independence from parents/caregivers and become concerned with the question of their individual identity.
- Feel insecure about themselves and become highly dependent on peers for support.

Behavioral development is the way in which adolescents become more autonomous. They do this by increasing independent functioning, self-reliance, and rule testing and breaking. This is particularly difficult for youth in custody because the nature of being in custody means that youth are not able to practice autonomy and rule testing; breaking rules can lead to severe consequences for youth in custody.

Emotional Development

There are six aspects of emotional development:

- Independence.
- Emotions and affect.
- Relationships.
- Physical appearance and body.
- School, work, and career.
- Sexuality and romantic attachments.

In early adolescence (ages 12–14) youth are:

- Using complex thinking and are focused on personal decision-making.
- Making choices about home, school, peers, and relationships.
- Questioning authority.
- Determining their personal appearance.

In middle adolescence (ages 14–17) youth are:

- Initiating an individual code of ethics.
- Increasing analysis of issues and concerns.
- Aware of different possibilities for the development of individual identity.
- Beginning to recognize future goals and plans.

In late adolescence (ages 17–19) youth are:

- Thinking more about global concepts.
- Developing idealistic views.
- Engaging in debate with peers and parents.
- Thinking about career decisions.
- Recognizing their role in adult society.



Each aspect manifests differently as youth age and develop:

- Peer groups begin to influence interests and clothing.
- Youth have a greater ability to work.
- Youth's ethics and self-direction are established.
- Girls enter puberty.

In middle adolescence (ages 14–17) youth:

- Reveal independence through self-improvement.
- Examine inner experiences and have periods of sadness.
- Protest parental involvement in their social lives, have lower opinions of their parents, and begin to make new friends.
- Focus on appearance.
- Have a greater capacity for setting goals.
- Begin to have concerns about sexuality and sexual attractiveness.

In late adolescence (ages 17–19) youth can:

- Be self-reliant and independent decisionmakers.
- Delay gratification.
- Have increased emotional stability.
- Self-regulate.
- Have greater concern for others and greater acceptance of family.
- Have more defined work habits, including stability of interests, pride in one's work, and the ability to set and follow through with goals.
- Be concerned about serious relationships and have a clear sexual identity.

Some youth will also develop a sense of invincibility during adolescence. Youth feel:


- Incapable of being conquered, overcome, or subdued. This is more pronounced in youth who engage in high-risk behaviors.
- Powerful due to enhanced physical and cognitive abilities combined with increased independence.
- Consequences will not apply to them (i.e., "that happens to someone else, not to me").

Sexual Development

During early adolescence, youth become more aware of their sexuality. During middle adolescence, many youth begin to experiment with sex and may have their first sexual encounter. By late adolescence, however, sexuality is becoming linked to thoughts of the future and a youth's personal identity.

Aspects of sexual development include:

- Shyness, blushing, modesty, and crushes.
- Girls developing sooner than boys.
- Increased interest in sex.
- Concerns about physical appearance and sexual attractiveness.
- Masturbation.
- Sexual experimentation/feelings of love and passion.



It is important to understand sexual development because healthy sexual development includes many of the actions that are prohibited by agency policy or custodial settings. Actions such as masturbation, displaying feelings of love, and seeking out relationships are part of healthy adolescent development but are prohibited for safety and other reasons in custody.

Sexuality

Sexuality encompasses the interplay of an individual's physical, psychological, social, emotional, and spiritual makeup.

Often, policies against all sexual behavior are at odds with sexual development and sexuality. However, rules are necessary for safety. Agency rules should balance creating a safe, structured environment with an understanding that teenagers may engage in benign, age-appropriate behaviors such as holding hands or a quick hug. At the same time, agency practices and programs must account for the fact that the trauma that many youth have experienced disrupts normal or healthy sexual development.

To keep youth safe, agencies should:

- Have strong development-centered policies.
- Train all youth and staff on healthy adolescent sexual development and boundaries.
- Consistently enforce rules and reinforce values of healthy development.

Development and Youth in Custody

Because juveniles are not yet fully developed, they are often ill-equipped to respond to sexual advances and to protect themselves. Preteens and younger teenagers are especially unprepared to cope with sexual advances from older youth or staff.

Abuse, stress, and neglect can cause areas of the brain that are involved in fear and anxiety to become overly developed while other important functions remain underdeveloped. When a youth is focused on not being abused, he/she is less able to focus on learning social and cognitive skills. The extent to which youth are abused either before or while in custody significantly affects their ability to reason, handle emotions appropriately, and understand the consequences of their actions, all of which are major components of rehabilitation.

Healthy sexuality is a combination of sexual development and the ability to assert oneself. Youth should be able to:

- Recognize sexuality as a positive aspect of their personality.
- Take responsibility for their choices and behaviors related to sexuality.
- Understand sexual exploitation among adolescents.
- Avoid unwanted or inappropriate sexual experiences.
- Assert themselves when refusing to participate in sexual activities.
- Communicate clearly about sexual behavior.

Being in custody limits a youth's development in unique and specific ways, including:

- Limits on family interaction and being in a family environment.
- Asserting independence in a custodial setting is against the rules but is a main feature of each developmental stage.
- Sexual and gender-appropriate experimentation and development are severely limited by both policy and practice in custodial settings.
- Histories of victimization or previous trauma and lack of appropriate role models, both of which hamper normal development.



However, custodial settings can provide youth with some developmental supports that they may not have received previously:

- Highly structured environments that include healthy, prosocial adult role models.
- Opportunities to develop in ways that are free from high-risk behaviors that otherwise interfere with, endanger, or stunt their growth.
- Opportunities for cognitive development by providing a highly structured environment and a daily routine.
- Prevention of school absenteeism or high-risk behaviors that may interfere with cognitive development.

Special Concerns

Vulnerable Youth

Youth generally make up the population that is most vulnerable to abuse in custodial settings. The following categories of youth are more vulnerable than others:

- Young children.
- Previously victimized.
- Developmentally disabled or delayed.
- Mentally ill.
- Hearing impaired.
- Limited language ability.
- Sexual minorities.
- Substance dependent.

“When older, bigger and/or more sophisticated youths have access to younger and/or smaller youths, the risk of abuse and exploitation is particularly high.”

*—B.J. Scholzman, 2005,
in a letter to the Governor
of Indiana referring to an
investigation of youth sexual
abuse at the Plainfield
Juvenile Correctional Facility*

Following are some special considerations for working with these vulnerable populations.

Previously victimized youth often exhibit:

- Posttraumatic stress disorder.
- Low self-esteem.
- Trust issues.
- Lingering or ongoing emotional pain.
- A “victim pattern” when making choices.
- A distorted view of themselves.
- Past histories of institutional abuse.
- Personality disorders, including maladaptive patterns of interacting with others.



Developmentally disabled or delayed youth often:

- Want to please people in authority.
- Rely on authority figures for a solution.
- Have levels of understanding that vary widely.
- Have memory gaps.
- Have short attention spans.
- Are quick to take blame.
- May have behavioral outbursts.

Mentally ill youth:

- Are individuals with a DSM diagnosis.²²
- Have depression, anxiety, schizophrenia, and/or bipolar disorder.
- May require more time for staff to understand their needs.

Youth with hearing impairments:

- Often rely on other youth to communicate their needs.
- Need a certified sign language interpreter.
- Will need to establish rapport and trust with the interpreter.
- May or may not read lips.
- May also have educational deficits and conduct disorder.

Youth with limited language abilities may:

- Use vocabulary and sentences that do not match their age.
- Not understand lengthy, complex, two-part questions or directions.
- Need you to speak slowly and allow sufficient time for them to respond.

Youth who are sexual minorities will:

- Need special consideration with regard to safety.
- Use gender identifiers they feel are appropriate.

Youth who are substance dependent may:

- Have a heightened sense of general fear.
- Have emotional or behavioral reactions that do not match the particular interaction they are having.
- Lack trust.

This may look like the profile of 90 percent of youth in juvenile settings. Therefore, agencies should consider these issues when drafting policies or training staff or youth on sexual abuse prevention.

Disorders most commonly noted among confined youth include:

- Depression.
- Anxiety.
- Attention deficit disorder/attention deficit hyperactivity disorder.
- Learning disabilities.
- Posttraumatic stress disorder.
- Developmental disabilities.





Sexual Minority Youth

Because youth under custodial supervision can be at multiple stages of development, some may already identify as lesbian, gay, bisexual, transgender, intersex, queer, or questioning (LGBTIQQ). Youth classified as sexual minorities have particular concerns in custodial settings, including:

- Overuse of isolation for protection.
- Pairing for protection.
- Sexually transmitted diseases.
- Not reporting due to fear of retaliation.
- Being marked as a victim or sexually provocative.
- Suicide risk.
- Physical violence/partner violence.
- Belief that they are being abused.
- Transphobic attitudes of youth workers or other youth.
- Cross-sex supervision.
- Improper classification and housing when classification is based on biology and not gender identity.

R.G. v. Koller, 415 F. Supp. 2d 1129 (D. Haw. 2006)

The United States District Court for the District of Hawaii granted a preliminary injunction against the State of Hawaii for violating the due process rights of LGBT youth in detention by failing to protect them from verbal, physical, and sexual assault by other youth and staff and from excessive use of isolation. Ultimately, the Hawaii Youth Correctional Facility was ordered to pay \$625,000. The settlement is the first case in the nation to specifically address the treatment of lesbian, gay, bisexual, and transgender youth in juvenile facilities.

Transgender and intersex youth have the following specific concerns in custodial settings.

Special concerns for transgender youth in custody include:

- Hormone therapy.
- Classification by genitalia as opposed to youth's gender identity puts them at increased risk for abuse.
- Excessive use of isolation for safety.
- Self-mutilation.
- Mental health needs.

Special concerns for intersex youth in custody include:

- Indeterminate genitalia increases the risk for abuse because it is difficult to identify intersex youth as male or female for housing and classification purposes.
- An intersex youth's gender identity is often chosen for them at a young age, which could have serious health consequences—both medical and mental—requiring higher levels of care than are often given in custodial settings.

Juvenile justice agencies can address these issues by treating LGBTIQQ youth with respect. Agencies can:

- Institute policies against homophobic remarks and behavior.
- Enforce policies swiftly and consistently.



- Be sensitive and well-informed in responding to same-sex relationships between youth.
- Include respect for others and sexual orientation as part of sex education.



Culture of Youth Facilities

What Is Culture?

Agency culture is the sum of an organization's attitudes, values, norms, beliefs, prejudices, history, personalities, and ethics of its staff—both past and present. It is the agency's character and the way it does business.

Often there are two types of culture—the ideal culture and the real culture. The ideal culture consists of the values held in principle, such as the agency's mission statement, policies and procedures, formal incentives, and sanctions. The real culture is the way the agency actually works. It is the informal chain of command—how things get done, who has the power and is in leadership.

Influences on the agency culture include:

- History and critical events that happen within an agency and how they are interpreted.
- The hiring and promotion processes.
- The disciplinary process.
- The role played by middle management.
- The physical environment.
- Behavior of staff with youth.
- Management-to-staff relations.
- Tone and style of leadership.
- Staff-to-staff relations.
- Staff-to-youth relations.
- Youth-to-youth dynamics.
- Dress code.
- Language.

Examples of agency norms, both good and bad, include:

- Not volunteering for assignments.
- Not turning in fellow employees who violate rules.
- Not being late on third shift.
- Not using bad language.

List some other agency norms.

1. _____
2. _____
3. _____
4. _____

Impact of Culture on Staff: The Code of Silence

The code of silence occurs when individuals withhold vital or important information voluntarily or involuntarily. It is an agreement among staff to keep quiet. The code of silence operates because of threat of force, danger to oneself, or being branded as a traitor or an outcast within the facility or agency.



The employee code of silence is defined by:

- Protection of self and coworkers.
- Lack of cooperation with management and investigators.
- Risking discipline or termination rather than violate the code.
- Imposition of penalties on staff who break the code.

Agency culture presents many challenges for leadership. In order for leadership to understand culture and ultimately change a toxic culture, it must spend time to determine the root of the problem and acknowledge that leadership can be part of the problem. To change a code of silence in a culture, leadership should address the problem systematically and commit to change deeply held norms and attitudes within the agency.

In the Pennsylvania State University (Penn State) abuse scandal, an independent investigator found that “a culture of silence” was the main factor in the ongoing abuse of young boys by a former coach. The findings reviewing the role of Penn State in the case found that:

“One of the most challenging tasks confronting the Penn State community is transforming the culture that permitted Sandusky’s behavior.... and which directly contributed to the failure of Penn State’s most powerful leaders to adequately report and respond to the actions of a serial sexual predator. It is up to the entire University community—students, faculty, staff, alumni, the board and the administration—to undertake a thorough and honest review of its culture.”²³

Baron v. Hickey, 242 F. Supp. 2d 66 (D. Mass. 2003)

A correctional staff member claimed that he was being harassed by his coworkers after reporting an incident of misconduct as instructed by his supervisor. Coworkers referred to him as a “rat,” dropped cheese in front of him, and slashed his tires. The officer complained on 30 separate occasions and was eventually forced to resign. The court found in favor of the officer, stating that reporting matters of misconduct within prison walls is a matter of great importance to the public.

Youth Culture

Youth culture can be as unhealthy as staff culture in juvenile justice settings because of the combination of normal adolescent behavior—impulsiveness, invincibility, limit testing—with the characteristics that are typical of youth in custody—history of abuse and neglect, mental illness, and developmental delays.

Examples of a negative youth code (which can create a challenging environment) include:

- No reporting.
- Grooming younger youth.
- Lack of cooperation with investigations.
- Imposing punishment if the code is broken.

Understanding youth culture is as important as understanding staff and agency culture. In situations of sexual abuse of youth in custody, youth culture can and often does affect reporting, investigations, and sanctions.





Strategies for Changing Culture

If an unhealthy agency culture exists, sexual abuse of youth may be ignored or accepted and thus reinforced as part of the culture. Changing the way an agency responds to inappropriate youth-youth relationships and staff-youth relationships may require a change in the culture of the agency.

A leader can make a positive change to the agency culture by doing the following:

- Start with leadership and management.
- Involve all staff.
- Create a culture and community of accountability.
- Model the behavior.
- Envision the big picture by defining the agency's/organization's mission, vision, and values.
- Review and make necessary changes to the organizational structure.
- Create value and belief statements.
- Communicate change effectively.
- Redesign the approach to rewards and recognition.
- Involve key stakeholders and community partners.

The following are successful strategies for changing staff culture:

- Conduct appropriate screening during the hiring process.
- Define boundaries for employees through policies that are clear, concise, and definitive about what is acceptable and unacceptable.
- Provide employees with appropriate tools for self-assessment.
- Use tools to do periodic assessments of agency culture, paying special attention to particular groups present in the workforce (women, people of color), particular shifts, and particular positions (administrators, line staff).
- Provide employees with access to advice and assistance when they have concerns and questions about boundaries.
- Meet with local officials (juvenile board, law enforcement, prosecutors, Department of Public Services troopers, etc.) to inform them about the culture change.
- Reward and recognize desired behaviors.
- Create a culture where staff value integrity above loyalty to other staff.
- Model behavior at all levels of staff—from management to line staff.
- Conduct regular training on ethics.
- Make it clear that you take the issue of sexual abuse of youth seriously.

Three Steps to Culture Change

- Understand the current culture (the way things are now).
- Decide what the organizational culture should look like to support success.
- The individuals in the organization must decide to change their behavior to create the desired culture.

List some things that staff can do to change the culture in your agency.

1. _____
2. _____
3. _____
4. _____



- Ensure that staff are aware of expectations.
- Train and support frontline supervisors in their efforts to supervise employees, and recognize red flags.
- Ensure that there are open dialogues specific to the issue.

The following are successful strategies for changing youth culture:

- Change the environment to make it a place where youth feel safe reporting sexual abuse and are confident their allegations will be investigated.
- Educate youth about boundaries, being safe, and reporting abuse.
- Use tools to assess youth's view of agency culture.
- Empower youth by allowing them to have responsibilities and to be peer mentors.

Initiatives to prevent and address sexual abuse of youth in custody through change in agency culture require long-term commitment. Changing culture is not a short-term project; it involves a substantial and organized effort with all staff as well as with youth.



Identifying Inappropriate Staff-on-Youth and Youth-on-Youth Relationships

Staff and youth in custodial settings face many pressures that can make them vulnerable to inappropriate behaviors. This chapter offers tools that staff and managers can use to help identify staff and youth vulnerability to abuse.

Red Flags

Addressing sexual abuse of youth requires paying attention to the actions of staff, youth, and managers to help them assess their own behaviors and those of others.

A longstanding agency practice is identifying “red flags” for youth. Red flags are warnings or demands for attention. They are actions, words, situations, or settings that warn of danger.

Red flags for identifying staff sexual misconduct include:

- Staff overidentify with particular youth or their issues.
- A youth knows personal information about staff.
- A youth has letters from or photos of staff.
- Staff grant special requests or show favoritism.
- A youth is present in unauthorized areas or is repeatedly away from assigned spaces.
- Staff spend an unexplained amount of time with youth.
- Staff take youth out of rooms at unusual times.
- Staff in personal crisis (e.g., divorce, ill health, bankruptcy, death in family).
- Conversations between staff and youth that are sexualized in nature or refer to the physical attributes of staff or a resident.

Red flags for identifying victims of youth-on-youth sexual abuse include:

- Refusal to shower, eat in, or be present in unsupervised areas.
- Self-abuse or suicidal behaviors.
- Withdrawing or isolating themselves.

List some other red flags for identifying staff sexual misconduct.

1. _____
2. _____
3. _____
4. _____

List some other red flags for identifying youth-on-youth sexual abuse.

1. _____
2. _____
3. _____
4. _____

- Increased medical complaints and attention-seeking behavior.
- Uncharacteristic acting out in an effort to stay in segregation or to facilitate transfer.
- Letters between youth.
- Bedwetting.
- Doing favors for other youth (generally for protection).
- Homicidal threats.
- Giving away commissary items in exchange for something.

Red flags for identifying perpetrators of youth-on-youth sexual abuse include:

- Verbal harassment.
- Grooming potential victims.
- Blatant sexual harassment.
- Prior history of sexual assault toward others.
- Past victimization by others.
- Difficulty controlling anger.
- Poor coping skills/strategies.
- Voyeuristic/exhibitionistic behavior.

The Daily Dozen

Another self-assessment tool is the “daily dozen.”²⁴ The purpose of these self-check questions is to give staff members insight about when they may be crossing ethical and professional boundaries.

Sample questions include:

1. Do you look forward to seeing a particular youth when you come to work?
2. Have you done anything with a youth that you would not want your family or your supervisor to know about?
3. Would you be reluctant to have a coworker observe your behavior for an entire day?
4. Do you talk about personal matters with youth?
5. Do you believe you can ask a youth to do personal favors for you?
6. Have you ever asked for or received personal advice from a youth?
7. Have you said anything to a youth that you would not want tape recorded?
8. Do you have thoughts or fantasies about touching a particular youth? Does this extend to planning how you can be alone with that youth?

Administrators have a responsibility to minimize the agency's liability for staff members who are susceptible to sexual misconduct. Administrators need to determine if their agency does the following to try to prevent staff sexual misconduct with youth:

- Adequately train and supervise staff.
- Minimize role ambiguity within the agency.
- Have adequate staffing so staff are not required to work overtime to fill gaps.
- Limit overcrowding as much as possible and limit caseloads.
- Minimize the isolation of staff members from their peers.
- Minimize staff turnover.
- Have a zero-tolerance policy regarding the code of silence.
- Offer safe avenues for staff who seek help.



9. Do you think you have the right to touch a youth whenever and wherever you want to?
10. Do you have a feeling of not being able to wait to share good/bad news with a particular youth?
11. Do you think youth are not allowed to say “no” to you, no matter what you ask?
12. Have you ever allowed or encouraged a youth to talk to you about sexual experiences or sexual fantasies, or to tell sexual jokes in your presence?

If a staff member answers “yes” to any of these questions, he/she is at risk—sexual misconduct often begins as overfamiliarity with a youth. Even offering a youth something that is not permitted but that staff may think is simple and harmless, such as candy or soda, can begin to break down professional boundaries. It is your responsibility to treat all youth the same and in accordance with your agency’s policy.

Ethics

Ethics include knowledge and guidelines used to make decisions based on a set of morals and values within a particular group. Staff face many challenges that complicate day-to-day decisionmaking. It can be very difficult to make ethical decisions.

When making an ethical decision it helps to:

- Define the dilemma.
- Gather data and information about the dilemma.
- List the pros and cons of potential decisions to determine if choices are legal or are authorized by agency policy.
- Determine if the choices are consistent with the staff’s or your personal values and moral compass.
- Determine if your choices are consistent with the agency’s mission.
- List the consequences for staff, offenders, supervisors, administrators, and the public.²⁵

The answers to ethical questions are not always clear or easy to determine. Some people find the “headline test” a good way to determine whether a decision is ethical or not (ask, “What would a headline in a newspaper look like if the newspaper was covering this story?”). If the headline is one that a staff member would be ashamed to show friends or family, the decision or action is probably ill advised.

To determine if the decision you have made is ethical, ask yourself:

- Was my decision based on anger, lust, peer pressure, or greed?
- Would I make the same decision if my family were standing beside me?
- Would I make the same decision if I was being videotaped or if my supervisor was watching?
- Would my loved ones be ashamed of my decision?
- Can I look at myself in the mirror after the decision I made?



Staff members face ethical dilemmas daily. Examples of ethical dilemmas include:

- Is it ethical to have dinner with the family of a youth?
- Is it ethical to cover for a colleague who is experiencing personal problems at home and behaving in a questionable manner?
- Is it ethical to accept a reduced-price meal from a local diner because you are an agency staff member?
- Is it ethical to overlook a close friend's violation of a minor department rule?
- Is it ethical to periodically take a mental health day?
- Is it ethical to have your car serviced at a garage where a former incarcerated youth works?
- Is it ethical to tell a "little white lie" to protect a peer or colleague?
- Is it ethical to tell a youth that he/she looks good or to flirt if no one "gets hurt"?
- Is it ethical to find ways around departmental policy and procedures that get in the way of staff members doing their jobs?
- Is it ethical to do favors for a supervisor?
- Is it ethical to do favors for a youth?

—Center for Innovative Public Policies, Addressing and Preventing Staff Sexual Misconduct with Offenders in Community Corrections



Medical and Mental Health Care for Victims

Youth who are sexually abused experience medical and mental health problems at higher rates than other youth. Victims of sexual abuse are:²⁶

- Three times more likely to suffer from depression.
- Six times more likely to suffer from posttraumatic stress disorder.
- Thirteen times more likely to abuse alcohol.
- Twenty-six times more likely to abuse drugs.
- Four times more likely to contemplate suicide.

Much more is known about the victimization history of adults in custodial settings than about youth's history. Evidence shows that there are strong ties between criminal history and victimization. In addition, there are strong links between a history of victimization and being victimized while in custody.

Medical Needs

When there is an allegation of sexual abuse, medical interventions may be necessary. In cases of sexual abuse of youth in custody, health-care providers can provide a number of services that other staff may not be able to provide, including:

- Confidentiality, where warranted or permitted.
- Reports about prior victimizations.
- Victim-centered services and care.

Health-care providers can also offer a safe space for victims of sexual abuse.

Health concerns of sexually abused youth are both immediate and long term. Immediate health concerns for youth who are sexually abused include:

- Bleeding.
- Head trauma.
- Choking injuries.
- Vomiting.
- Shock.


§ 115.382 Access to emergency medical and mental health services

(a) Resident victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.

§ 115.383 Ongoing medical and mental health care for sexual abuse victims and abusers

(a) The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all residents who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.

—*National Standards to Prevent, Detect, and Respond to Prison Rape, May 17, 2012*

- 
- Vaginal or anal injuries.
 - Bruising.

Long-term medical concerns for youth who are sexually abused include:

- HIV/AIDS.
- Hepatitis B and hepatitis C.
- Sexually transmitted infections.
- Pregnancy.
- Suicidal thoughts and/or actions.
- Ongoing problems resulting from a physical injury.

For the purposes of evidence collection, youth who report sexual abuse within 96 hours of an assault should be examined by a Sexual Assault Nurse Examiner (SANE) for forensic evidence. Pediatric SANEs will be familiar with youth's physical, intellectual, and emotional development. Pediatric exams should be done in a setting that is comforting and calming to youth. This exam is extensive and is often traumatic for youth; therefore, the ability to make a youth feel as relaxed as possible will be beneficial.

SANE exams allow for:

- Proper treatment and documentation of injuries for evidence.
- Treatment and evaluation of other medical issues.
- Crisis intervention.
- Collection of evidence.

Responsible staff must be familiar with state law governing a minor's right to consent to medical treatment. In some states a minor can consent to a SANE exam, while in other states parental or guardian consent is necessary. In some situations (when time-sensitive evidence needs to be gathered), a police officer, a representative from child protective services, or a court can consent to the exam.

If a sexual assault is reported after the 96-hour window for evidence collection, the youth should still be seen by a doctor to receive a physical exam along with treatment for injuries and long-term medical conditions resulting from the abuse.

Components of a Sexual Assault Nurse Exam

- General physical exam.
- Examination of the oral and genital areas.
- Collection of forensic evidence.
- Screening for sexually transmitted diseases.
- Screening for pregnancy.
- Prophylactic treatment.
- Crisis intervention.
- Referral for followup.

Mental Health Care

Mental health care is just as important as medical health care in incidents of sexual abuse of youth in custody, especially given the long-term emotional effects of sexual abuse. For those youth with a history of sexual abuse, victimization in confinement may replicate previous trauma and further exacerbate existing mental health issues.²⁷



Although each person who is sexually abused reacts in a unique way, there are some common indicators of trauma in youth, including:

- More affected by stress.
- Antisocial behaviors.
- Higher risk for drug abuse.

Reactions to sexual abuse can be emotional, cognitive, and behavioral.

Emotional and cognitive responses include:

- Emotional shock and disbelief.
- Shame and a sense of stigma.
- Guilt.
- Powerlessness.
- Denial.
- Disturbance in thought process.
- Fear.
- Depression.
- Anxiety and hypervigilance.
- Helplessness and an altered world view.
- Anger.
- Loss of trust.

Behavioral responses include:

- Expressive or emotional.
- Calm.
- Withdrawn.
- Sleep disturbances.
- Eating disturbances.
- Lack of concentration or energy.
- Aggressive or self-injurious behavior.
- Substance abuse.
- Changes in appearance.
- Changes in sexual behavior.

Staff must be able to identify and understand these responses because they can be red flags for youth who have been victimized. Sexual abuse may also change the way youth interact with both other youth and agency staff.

All states require reporting of suspected child abuse. Health-care providers are mandated reporters when they suspect a child has been a victim of abuse by a person responsible for their care, by a person in a position of authority, or by a person who has a significant relationship with the child. A complete list of state mandatory reporting laws is available at <http://www.wcl.american.edu/endsilence/statesurveys.cfm>.



Being a survivor in detention is difficult. Victimized youth in custody generally have little control over daily matters, while survivors in the community can reclaim this control as a coping strategy. They can feel disoriented and anxious, which makes it difficult for them to follow rules. Sharing or talking about feelings related to sex may be a safety risk for a youth. Additionally, while isolation may be a relief, it can also cause further trauma.

Emotionally, sexual abuse can cause increased anger, acting out, and self-blame. Multiple traumas will exacerbate these symptoms. To address the emotional dimension of sexual abuse, some agencies choose to partner with community rape crisis centers or child advocacy centers to provide mental health interventions for youth who are sexually abused before and while in custody.

Sexual abuse of youth in custody affects both youth and staff. Abused youth in custody may begin abusing drugs or alcohol, contract a sexually transmitted infection, contemplate or act on suicidal feelings, exhibit rape trauma syndrome (RTS), or abuse others in order to gain control. Any one of these is a concern for the safety and security of the institution, staff, and other youth.

Staff bear the brunt of youth's mental health issues after sexual abuse whether the abuse was committed by another staff member or a youth. Issues include:

- Youth acting out aggressively.
- Increased or unmanageable anger and/or hostility from youth.
- Secondary trauma.
- Feelings of guilt for not protecting youth.
- Feelings of powerlessness to help youth.

Overall, it is important to understand both the medical and mental health care needs of victims and common reactions to sexual abuse. A commitment to providing youth with medical and mental health care services for sexual abuse (immediately and long term) can contribute to the rehabilitative mission of juvenile justice and lead to safer custodial environments for youth, diminish mental health problems in the future, and reduce youth's exposure to the criminal justice system.

Rape crisis centers can provide:

- Advocates to meet youth at the hospital and act on the youth's behalf during SANE exams.
- A full mental health evaluation.
- Ongoing specialized group or individual counseling.

Child advocacy centers can provide:

- A physical exam center.
- Forensic interviewers who specialize in working with youth.
- Counseling.
- Advocacy.





Investigating Sexual Abuse of Youth in Custody: Duties of a First Responder

Investigations of sexual abuse allegations can both respond to and prevent sexual abuse of youth in custody.

Investigations are responsive because:

- Youth may feel safer after reporting.
- Youth will receive the medical and mental health interventions necessary for recovery from abuse.
- Abusive staff and youth will be removed from the environment if allegations are substantiated.
- Criminal and/or administrative sanctions can shift the culture of an agency.

Investigations are preventive because:

- Staff and youth will know that leadership takes allegations seriously.
- Youth will feel confident in reporting sexual abuse by staff or other youth.
- They can help agencies create a culture where abuse of youth is not tolerated.

Although each investigating authority will have different protocols, first responders have some common obligations in responding to and investigating allegations of staff sexual misconduct with youth and youth-on-youth sexual abuse.

§ 115.364 Staff first responder duties

(a) Upon learning of an allegation that a resident was sexually abused, the first staff member to respond to the report shall be required to: (1) Separate the alleged victim and abuser; (2) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence; (3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and (4) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating. (b) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.

—National Standards to Prevent, Detect, and Respond to Prison Rape, May 17, 2012



At a minimum, first responders should:

- Make sure the victim is safe.
- Refer the victim for appropriate medical and/or mental health care.
- Secure the scene.
- Report to the appropriate authorities (both inside and outside the agency, as agency policy, local and state law, and federal law direct).
- Follow the agency's investigative protocol for questioning youth and staff.

First responders may also be asked to:

- Record the date and time that the incident reportedly occurred.
- Record the date and time that the report was made.
- Record who initially reported the allegation (e.g., alleged victim, peer, staff member, parent).
- Isolate witnesses before obtaining statements.
- Take photographs of injuries and the scene (if applicable).
- Secure the victim's clothing and bedding.
- Photograph contents of the room/scene of incident.
- Treat the area in question as a crime scene.
- Remain observant of any persons, events, potential evidence, and environmental conditions, and relay this information to the investigative team.

The duties of a first responder are often very different from those of an investigative agent within the agency or outside law enforcement. A typical investigative plan may include:


- Individual interviews with staff, the victim, youth, and all other potential witnesses.
- Searches of staff's and/or youth's property.
- Review of the youth's account activity.
- Review of staff's and youth's telephone activity.

§ 115.322 Policies to ensure referrals of allegations for investigations

(a) The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment. (b) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The agency shall publish such policy on its website or, if it does not have one, make the policy available through other means. The agency shall document all such referrals. (c) If a separate entity is responsible for conducting criminal investigations, such publication shall describe the responsibilities of both the agency and the investigating entity. (d) Any State entity responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in juvenile facilities shall have in place a policy governing the conduct of such investigations. (e) Any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in juvenile facilities shall have in place a policy governing the conduct of such investigations.

—*National Standards to Prevent, Detect, and Respond to Prison Rape, May 17, 2012*



- 
- Review of mail to the youth or between youth.
 - Collection of DNA evidence, including blood, semen, saliva, skin, and hair.
 - Electronic monitoring and recording where permitted by law and policy.

Not all allegations will be reported immediately after an incident occurs. Often, in cases of sexual abuse, allegations **will arise weeks or even months** after the incident. In this situation, for both allegations of staff sexual misconduct and youth-on-youth sexual abuse, first responder duties may be different.

If a report is delayed, first responders may be asked to:

- Refer the victim for appropriate medical and/or mental health care.
- Report to the appropriate authorities (both inside and outside the agency, as agency policy directs).
- Record the date and time that the incident reportedly occurred.
- Record the date and time that the report was made.

Whether the report is immediate or if it is delayed, staff and youth accused of sexual abuse can face a number of requirements or sanctions.

Staff members accused of sexual misconduct may face the following during an investigation:

- Reassignment.
- Placement on administrative leave with or without pay.
- Required participation in an employee assistance program.

Youth accused of sexually abusing another youth may face the following during an investigation:

- Administrative segregation.
- Diminished programming.
- Removal of privileges.
- Movement to another unit, supervision group/facility, or center.

Each agency has a unique investigative process; first responders should discuss with their agencies what their responsibilities are during an investigation of sexual misconduct.

Management should address the following considerations for an investigation:

- Who is responsible for investigating allegations of staff sexual misconduct?
- Who is responsible for investigations of youth-on-youth sexual abuse?
- What is the procedure for a youth or staff member to make a complaint?
- To whom is the complaint made?
- Does the agency have a victim advocate? If so, when is he/she called in?
- Does the agency have a sexual assault response team?
- Do procedures differ for cases of staff sexual misconduct and youth-on-youth sexual abuse?



Rights of Staff when an Allegation of Staff Sexual Misconduct Is Made

Rights of Staff Involved in Cases of Sexual Abuse of Youth in Custody

As public-sector employers, juvenile justice agencies must balance the constitutional rights of staff with the legitimate interests of the agency.²⁸ Constitutional rights of staff, as public employees, are guaranteed by the:

- First amendment (freedom of association).
- Fourth amendment (privacy and surveillance).
- Fifth and fourteenth amendments (due process and equal protection).

First Amendment

The first amendment to the U.S. Constitution protects the right to free speech and free association against interference by government officials. If you work for a government employer, you carry some of these first amendment protections to work. However, courts have recognized that staff rights to freedom of association may be limited by an agency's interests in upholding staff professionalism and preventing fraternization between staff and youth.

Using this reasoning, courts have said that no-contact policies are appropriate even when challenged under the first amendment. The courts have held that the policies are reasonable as long as they are justified by:

- Interests in on-the-job performance.
- Interests in off-the-job conduct that implicates fitness for duty.
- Interests in the agency's public reputation.

Fourth Amendment

The fourth amendment states that it is your right to be free from unreasonable searches and seizures. If you are a public employee, this means you have some privacy rights at work. However, the amount of privacy protection you are entitled to depends on the reasonable expectations of privacy that exist in your employment setting. Because correctional agencies are, by their very nature, work settings where employees can reasonably expect a high degree of surveillance, your reasonable privacy expectations as a staff member are limited. The courts have found the following in cases of surveillance and fourth amendment violations:

***Ross v. Clayton County*, 173 F. 3d 1305 (11th Cir. 1999)**

The court found that the demotion of a corrections officer who had allowed his brother (a probationer) to live with him did not violate the officer's free association rights under the first amendment.

- Employees who accept a job with a correctional agency have very limited expectations of privacy.
- The agency's security concerns weigh heavily in the balance between agency needs and employees' privacy rights.
- Random drug testing is permissible provided that it is not administered in a discriminatory manner.
- Employee vehicles parked where they are accessible to youth can be searched without cause provided that the searches are not administered in a discriminatory manner.
- Employee vehicles not accessible to youth can be searched only on the basis of reasonable suspicion that they may contain contraband.
- Searches of a staff member's home require probable cause, as would be the case for any citizen.

Fifth Amendment and Statutory Due Process Rights

If you are a public employee, the fifth amendment gives you the right to due process of law. Due process includes the right to avoid self-incrimination, to have legal representation, and to have due process proceedings before negative employment action is taken against you. The hearing procedures to which you are entitled will be spelled out under the state or federal civil service laws that apply to government employees.

Fourteenth Amendment

The Supreme Court has held that the 14th amendment prohibits coerced statements in an internal investigation from being used in a later criminal prosecution. These rights are based on the Supreme Court case *Garrity v. New Jersey*, 385 U.S. 493 (1967). These rights apply only in the context of investigations of public employees. In simple terms, this means that an investigator cannot force you to talk to him/her in connection with a criminal matter by threatening you with the loss of your job or other employment-related discipline. You are advised to assert your *Garrity* rights during an administrative hearing in which you could be disciplined.²⁹

The burden is on the employee to assert *Garrity* and make clear to the employer that you are answering under threat of losing your job. Once an employee has asserted *Garrity* rights, a supervisor or investigating authority must:

- Attempt to make the question specific and related to your employment.
- Advise you that the answers will not and cannot be used against you in a criminal proceeding.

Garrity protections do not apply if you voluntarily provide a statement. Unless you are compelled, you have no obligation to respond to the questions. If you decide to respond to questions without being

Sample Garrity Warning

...You are entitled to all the rights and privileges guaranteed by the laws and the constitution of this state and the United States, involving the right not to be compelled to incriminate yourself. I further wish to advise you that refusal to testify or to answer questions relating to the performance of your departmental duties could result in your dismissal from the department.

... If you do answer, neither your statements nor any information or evidence that is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent departmental charges. At this time I am going to question you regarding (type of investigation). This questioning concerns administrative matters relating to the official business of the department.



compelled, no immunity is given for the later use of your answers in a criminal prosecution. It is also important to remember that *Garrity* does not protect you from employment discipline.

Union Member Rights

Union members have a right to union representation at investigatory interviews. The Supreme Court first announced these rights in a 1975 case that has since become known as *Weingarten* rights.³⁰ *Weingarten* rights apply during investigatory interviews. Investigatory interviews occur when a supervisor questions an employee to obtain information that could be used as a basis for discipline, or asks an employee to defend his/her conduct.

If you have a reasonable belief that discipline or other adverse consequences may result from your answers to a supervisor's questions, you have the right to request union representation. Management is not required to inform you of your *Weingarten* rights; it is your responsibility to know and to make the request. When you request a union representative to be present, your supervisor or the investigating authority has three options:

- Stop questioning until the representative arrives.
- Call off the interview.
- Ask you to voluntarily give up your right to a union representative.

The union representative may not be disruptive, and an employer may be within its rights to request that the representative leave if he/she acts in this manner.

Your collective bargaining agreement will also provide for a grievance procedure ending in arbitration of any disciplinary action. If you engage in arbitration to contest discipline imposed based on an allegation of sexual misconduct with a youth, remember the following:

- Both sides have the right to representation.
- Both sides have the right to present evidence.
- Your employer may not interfere with your right or any employee's right to testify at an arbitration hearing.
- Your union owes you the duty of fair representation and may not refuse to take or defend your case vigorously.

Employee Rights against Discrimination

Federal laws, state laws, and the Constitution grant public employees protection against discrimination by an employer on the basis of race, sex, national origin, or religion. In order to make a case of discriminatory treatment based on your employer's investigation of alleged sexual misconduct or disciplinary action, you must be able to prove that you were treated differently from other employees in the same situation who have different social identity characteristics (i.e., race or gender).

§ 115.317 Hiring and promotion decisions

(e) The agency shall either conduct criminal background record checks at least every five years of current employees and contractors who may have contact with residents or have in place a system for otherwise capturing such information for current employees.

—*National Standards to Prevent, Detect, and Respond to Prison Rape, May 17, 2012*



Former Employee Reference Checks

If you are terminated based on allegations of sexual misconduct, your employer will have “qualified privilege”³¹ to provide information about your termination to future employers who are conducting reference checks. Your employer can ask you to sign a waiver before agreeing to provide information about your employment to prospective employers. If you are investigated for alleged staff sexual misconduct and the investigation does not conclude that the allegations are true, be sure that your employee record states clearly that the allegations were unfounded. You should also save copies of any reports or other written materials you receive in the course of any such investigation in your personal files at home.

For sample waiver forms for employee reference checks, contact The Project on Addressing Prison Rape at endsilence@wcl.american.edu.



Legal Liability and Sanctions for Sexual Abuse of Youth in Custody

Agencies, staff, and youth are subject to legal liability in cases of staff sexual misconduct with youth and youth-on-youth sexual abuse in custody. That liability can manifest in a number of ways, including:

- Criminal.
- Civil.
- Administrative.

When discussing legal consequences for staff sexual misconduct, it is important to know the following:

- A sexual encounter between a staff member and a youth violates state and federal criminal laws.
- A sexual encounter between a staff member and a youth could violate the U.S. Constitution.
- As a matter of law, youth cannot consent to a sexual encounter with a staff member.
- Juvenile justice agencies have a responsibility to protect staff and youth who report sexual abuse.
- In most states, staff members are mandatory reporters of sexual abuse of youth.

When discussing legal consequences for youth-on-youth sexual abuse, it is important to know the following:

- A sexual encounter between youth may not always be a criminal matter but more often than not can result in administrative sanctions.
- Agencies can be liable for failure to train staff and youth, failure to supervise, and/or failure to classify youth correctly.
- Agencies have a responsibility to protect youth who report sexual abuse.
- Even though sexual contact between youth is a policy violation, legally some of these encounters can be consensual.
- In most states, staff members are mandatory reporters of sexual abuse of youth.

Because each state's law prohibiting the sexual abuse of individuals under custodial supervision is different, it is essential that you know the answers to the following questions about the laws regarding staff sexual misconduct in your state:

- Are employees of juvenile justice agencies covered under the law?
- What conduct is covered under the state's staff sexual misconduct law?
- Are staff members considered mandatory reporters?
- What are the legal sanctions and penalties for those who are found guilty?

The complete list of state laws is available at <http://www.wcl.american.edu/endsilence/statesurveys.cfm>.



Criminal Laws and Consequences

Legal tools for prosecuting sexual abuse of youth in custody are laws regarding:

- Staff sexual misconduct.
- Sexual assault.
- Child exploitation.
- Mandatory reporting.³²

Several legal tools provide for sentence enhancements, including:

- HIV statutes.
- Vulnerable person statutes.
- Sex offender registration schemas.

The most notable of these tools in cases of staff sexual misconduct are criminal laws prohibiting the sexual abuse of individuals in custody. Each state has a law that makes staff sexual misconduct with youth a crime. Seven states, however, do not include juvenile justice agencies under that law.³³

It is important to remember that in cases of staff sexual misconduct with youth, especially in states where staff sexual misconduct laws may not apply to juvenile justice agencies, prosecutors can seek a conviction under sexual abuse, child exploitation, abuse of a vulnerable person, and sodomy laws. In addition, prosecutors can charge staff with official misconduct, failure to report, or assisting another staff member in facilitating the conduct. In these cases staff can also be charged with:

- Obstruction of justice.
- Conspiracy.
- Making a false statement to a government official.
- Neglect/failure to protect/child endangerment.

Staff who are accused of sexual abuse can be prosecuted under child exploitation or sexual abuse laws. It is essential that you know the answers to the following questions about the child exploitation laws in your state:


- What is the specific conduct covered by child exploitation laws?
- What is the age of consent in your state?
- What are the penalties for child exploitation in your state?
- How does this apply to juveniles who are serving sentences as adults?

Sex Offender Registration

Both staff and youth who are convicted of sexual abuse can be required to register as sex offenders. Generally, sex offender registration includes community notification, restrictions on employment, and/or restrictions on residency.

The complete list of state laws is available at:

- www.wcl.american.edu/endsilence/documents/FiftyStateSurveyofAdultSexOffenderRegistrationStatutes_November2010Update.df?rd=1 (for adults).
- www.wcl.american.edu/endsilence/documents/FiftyStateSurveyonJuvenileSexOffenderRegistrationStatutes_FINALSept2009.pdf?rd=1 (for juveniles).



Youth who are accused of sexual abuse while in custody can be prosecuted under sexual abuse or child exploitation laws. Considerations that may affect a criminal case of youth-on-youth sexual abuse are:

- What is the age of consent in your state?
- Is the alleged action considered criminal activity?
- Can there be consent between youth?

The age of youth in allegations of sexual abuse of youth in custody can affect prosecution of sexual abuse cases. First, there may not be a large gap between the age of staff members and detained youth. Second, there may be a wide age range of youth in custody—as young as 10 and as old as 21.

Problems with proper boundaries can result when staff and youth are approximately the same age. Staff may relate to the youth, know them from the community, or have similar interests, backgrounds, and acquaintances; this can create a situation in which there is undue familiarity or a boundary violation that may lead to sexual abuse. If this is the situation in your agency, it may be helpful to provide ongoing training and instruction about appropriate boundaries for younger staff members.

Similarly, when youth of markedly different ages are housed together, there can be the potential for sexual abuse. Younger juveniles are more vulnerable to sexual abuse by staff or other youth. To combat this, proper classification and age identification for housing can be helpful, along with proper training for staff about red flags and the use of frequent rounds to check on youth.

Civil Liabilities

The U.S. Constitution, state constitutions, and state and federal laws protect youth from the actions of juvenile justice officials and other individuals whom correctional authorities have given authority over youth. The most common legal issues include:

- Prison Litigation Reform Act (PLRA).
- 42 U.S.C. § 1983.
- Civil Rights of Institutionalized Persons Act (CRIPA).
- The fourth amendment.
- The eighth amendment.
- The 14th amendment.

Second Sexual Assault Reported at YDDC

A teen told police he was sexually assaulted by two boys age 15 and 17 in a shower room at the Albuquerque juvenile center where another boy was allegedly raped days earlier, authorities said. YDDC [New Mexico Youth Diagnostic Development Center] is designed to house the state's most violent juvenile offenders. But all convicted juveniles are sent to the center for screening to determine their placement in the juvenile justice system.

—*Albuquerque Tribune*,
October 2, 2006



Under PLRA, youth must exhaust administrative remedies³⁴ even when the claim is sexual abuse in custody. There must be a reliable process for youth to report sexual abuse; agencies cannot erect barriers to reporting, especially given what we know about reporting and fear of retaliation.

Juvenile justice staff are “persons acting under color of state law” under 42 U.S.C. § 1983 and therefore can be liable for violating youth’s rights. Persons acting under color of state law can include:

- Volunteers.
- Contractors.
- Food service workers.
- Clergy.
- Staff in other agencies where youth work or attend programming.
- Teachers.
- Nurses.

CRIPA investigations and cases are initiated by the Special Litigation Unit of the Department of Justice. However, this unit will intervene only when there is a widespread pattern of abuse.

In staff sexual misconduct cases, youth typically claim that staff or agents violated their rights under:

- The fourth amendment.
- The eighth amendment.
- The 14th amendment.
- State law.

The fourth amendment prohibits unreasonable searches and seizures. Typical actions challenged under the fourth amendment are:

- Inappropriate or intrusive searches.
- Cross-gender supervision.
- Inappropriate viewing of offenders.

Generally, the eighth amendment is used to challenge staff sexual misconduct and claims that include “cruel and unusual punishment.” Typical actions challenged under the eighth amendment are:

- Sexual abuse by staff or other youth.
- Retaliation.
- Inadequate medical treatment.
- Conditions of confinement that contribute to an unsafe environment.
- Malfunctioning of unmonitored cameras.
- Poorly trained staff.

***S.H. v. Stickrath*, 251 F.R.D. 293
(S.D. Ohio 2008)**

This was a class action on behalf of all youth at the Ohio Department of Youth Services. It came to light because of violent sexual abuse at Scioto Juvenile Detention Facility. Fourteen staff members (male and female) were indicted, and six of them were convicted of offenses from sexual battery to dereliction of duty. The CRIPA complaint began in March 2005 and the settlement was finalized in 2008.



- Poorly conducted investigations.
- Failure to terminate staff members who harm youth.
- Failure to supervise or train staff properly.

Courts also use the 14th amendment in cases of staff sexual misconduct against youth in custody because of the lower standards of proof and the extra protections afforded to youth. This amendment prohibits states from depriving “any person of life, liberty or property without due process of law.” Typical actions challenged under the 14th amendment are:

- Sexual abuse by staff or other youth.
- Discipline or retaliation for reporting misconduct.
- Any action that puts the offender at risk.

Some important themes that resulted from cases brought by youth include:

- Juvenile justice agencies and staff have a special responsibility for protecting youth in their custody.
- Courts look to the practice of the agency in determining liability.
- Juvenile justice agencies must protect employees and youth who report sexual abuse and misconduct.
- Juvenile justice officials can and are held personally liable for staff sexual misconduct with youth.
- Juvenile justice agencies and officials can be held liable for failure to train, supervise, investigate, and discipline staff.

Sexual abuse of youth in custody can result in criminal and civil liability for staff, administrators, and agencies. Civil liability means that the state will be required to pay monetary damages to the harmed youth and/or take actions to remedy the sexual abuse.

While it is inevitable that an agency will face civil liability if it has a pattern or practice of allowing sexual abuse of youth, agencies can limit their liability by doing the following:

- Have clear policies concerning inappropriate conduct.
- Conduct training for both staff and youth about sexual abuse in custody.
- Do not ignore the difficult issues.
- Conduct investigations with integrity.
- Protect staff and youth from retaliation.
- Develop clear and fair sanctions.
- Develop remedies.
- Conduct a youth and staff grievance system with integrity.

K.M. v. Alabama Department of Youth Services, 360 F. Supp. 2d 1253 (M.D. Ala. 2005)

Four juvenile girls sued the Alabama Department of Youth Services (DYS), alleging they were physically and sexually assaulted and harassed. There were widespread public allegations of employee sexual abuse and harassment against detainees at the DYS Chalkville campus. The court found that juveniles are entitled to more than protection from wanton and unnecessary pain. The case was allowed to move forward on 14th amendment claims.

Prevention Strategies

Although preventing the sexual abuse of youth in custody may seem like a difficult and daunting task, internal policies and training³⁵ for both staff and youth can help.

To prevent and address sexual abuse of youth, staff can:

1. Maintain zero tolerance for sexual abuse of youth.
2. Report all sexual abuse in your agency.
3. Take all allegations of abuse reported by staff or youth seriously and investigate.
4. Implement and follow the Prison Rape Elimination Act (PREA) juvenile standards.
5. Provide appropriate supervision of youth in your care.
6. Take advantage of resources available for assistance—the National Institute of Corrections, the Bureau of Justice Assistance, and the Office of Juvenile Justice and Delinquency Prevention.
7. Review and revise PREA-related policies regularly.
8. Train staff and youth.

Prevention strategies include:

- Follow agency policies and procedures.
- Review policies and procedures.
- Conduct training sessions.
- Know the duties of a first responder.
- Maintain zero tolerance for sexual abuse of youth.
- Report abuse.

List other prevention strategies that you use or are aware of.

1. _____
2. _____
3. _____
4. _____



Conclusion

Sexual abuse of youth in custody can be prevented. Agencies have the tools to prevent this harmful conduct.

This handbook addresses and explains:

- Why staff need to be concerned about sexual abuse of youth in custody.
- How culture and environment affect sexual abuse of youth in custody.
- Tools that will help identify, address, and respond to sexual abuse of youth in custody.
- Useful interventions for youth.
- The duties of first responders.
- Legal tools available for prosecuting sexual abuse of youth.
- Preventive measures that can be taken by all juvenile agencies and staff.

For more information about any of the subjects discussed in this handbook or to give us your comments, please send an e-mail to endsilence@wcl.american.edu. We are interested in hearing from you.

We hope that we have provided information that assists you in understanding and addressing this problem. Agencies and staff cannot ignore this issue—it concerns rehabilitation, safe adolescent development, and public safety and security. We hope that you commit to eliminating sexual abuse of youth in your care and custody.

This handbook addresses rapidly developing areas of practice and law in the United States. The information in this publication is current as of May 2012. Both law and policies change rapidly; we will remain abreast of those changes, and we encourage you to contact us with new information as it becomes available.



Endnotes

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2. National Center for Victims of Crime, “Child Sexual Abuse” (Washington, DC: National Center for Victims of Crime), www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=32315.
3. Ibid.
4. National Prison Rape Elimination Commission, *National Prison Rape Elimination Commission Report* (Washington, DC: National Prison Rape Elimination Commission, 2009).
5. National Standards to Prevent, Detect, and Respond to Prison Rape; Final Rule, 77 Fed. Reg. 37,106, 37,225 (June 20, 2012) (to be codified at 28 C.F.R. § 115.331, available at <http://www.gpo.gov/fdsys/pkg/FR-2012-06-20/pdf/2012-12427.pdf>).
6. Adam Walsh Child Protection and Safety Act of 2006 [Public Law 109–248].
7. The Prison Rape Elimination Act of 2003, 42 U.S.C. §§ 15601–15609 (2003).
8. The Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. § 15609 (2003).
9. National Prison Rape Elimination Commission, *When Children are Involved* (Washington, DC: National Prison Rape Elimination Commission, 2009), pp. 140–58.
10. A. Beck, D. Adams, and P. Guerino, *The Prison Rape Elimination Act of 2003: Sexual Violence Reported by Juvenile Correctional Authorities, 2005–06* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2008), p. 10.
11. Ibid.
12. A. Beck, D. Adams, and P. Guerino, *The Prison Rape Elimination Act of 2003: Sexual Violence Reported by Juvenile Correctional Authorities, 2005–06* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2008), p. 2.
13. A. Beck, D. Adams, and P. Guerino, *The Prison Rape Elimination Act of 2003: Sexual Violence Reported by Juvenile Correctional Authorities, 2005–06* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2008).
14. Ibid.
15. Ibid.



16. Ibid.

17. A. Beck, P. Harrison, and P. Guerino, *Sexual Victimization in Juvenile Facilities Reported by Youth, 2008–09* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2010).

18. Ibid.

19. Ibid.

20. A. Beck, P. Harrison, and P. Guerino, *Sexual Victimization in Juvenile Facilities Reported by Youth, 2008–09* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2010), p. 1.

21. Ibid.

22. The *Diagnostic and Statistical Manual of Mental Disorders* (DSM), published by the American Psychiatric Association, provides a common language and standard criteria for the classification of mental disorders. It is used in the United States and in varying degrees around the world by clinicians, researchers, psychiatric drug regulation agencies, health insurance companies, pharmaceutical companies, and policymakers.

23. Freeh Sporkin & Sullivan, LLP, *Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky*, July 12, 2012, p. 18.

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

25. Center for Innovative Public Policies, *Addressing and Preventing Staff Sexual Misconduct with Offenders in Community Corrections*.

26. Rape, Abuse & Incest National Network (RAINN), www.rainn.org.

27. National Prison Rape Elimination Commission, *National Prison Rape Elimination Commission Report* (Washington, DC: National Prison Rape Elimination Commission, 2009).

28. Your rights as a staff member depend on your employment status. Consider the following: (1) Are you a public or government employee? Public or government employees are those employed by a federal, state, or local government. They have significant protections under federal and state law and also under federal and state constitutions. (2) Are you a union member? Many staff members belong to unions. If you are a union member, you have certain protections during investigations and/or disciplinary procedures that are governed by the collective bargaining agreement (the agreement between the union, the workers represented, and the agency).

29. It is important to understand that *Garrity* rights apply only under certain circumstances. The following considerations are important to the *Garrity* rule: (1) whether the employer actually ordered or required you to respond to questions and (2) whether you were compelled by the threat of discipline to answer the question.





30. *NLRB v. Weingarten, Inc.*, 420 U.S. 251, 88 LRRM 2689.

31. Qualified privilege is applied to material that is of public concern and for the public benefit.

32. Staff can be held criminally or civilly liable for failure to report or appropriately supervise youth. Mandatory reporting laws require certain individuals to report cases of physical or sexual abuse committed against children and vulnerable persons; in juvenile settings, all staff are mandatory reporters. Reporting procedures differ from state to state, and often there is a criminal penalty for the failure to report.

33. States that do not cover juvenile justice agencies or their staff under staff sexual misconduct laws are Oregon, Nevada, Missouri, Mississippi, Vermont, Rhode Island, and South Carolina. *Fifty-State Survey of State Criminal Laws Prohibiting Sexual Abuse of Individuals under Custodial Supervision* (The Project on Addressing Prison Rape, 2010), <http://www.wcl.american.edu/endsilence/documents/50StateSurveyofSSMLawsFINAL2009Update.pdf>.

34. Exhausting your remedies for the PLRA requires filing a grievance and pursuing all available administrative appeals. In addition, every claim you raise in your lawsuit must be exhausted. However, if a prisoner does not file a grievance because he/she is unable to obtain grievance forms, no administrative remedy is “available” and the prisoner may file in court. In a multistep grievance system, if staff fail to respond within the time limits established in the grievance system’s rules, the prisoner must appeal to the next stage. If the prisoner does not receive a response at the final appeal level and the time for response has passed, the prisoner has exhausted his/her remedies.

35. The National Institute of Corrections (www.nicic.gov) is a useful resource for training on staff sexual misconduct with youth. In addition, a training curriculum, *Addressing Sexual Violence Against Youth in Custody*, is available from the Washington College of Law Project on Addressing Prison Rape, http://www.wcl.american.edu/endsilence/juvenile_training.cfm.



Resources

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A Teen's Guide to Reporting Abuse, Neglect and Exploitation in Juvenile Justice Facilities: Female Youth (Texas Juvenile Probation Commission).

<http://www.tjpd.texas.gov/publications/forms/2008/TJPCANE0108%20Female%20English.pdf>

A Teen's Guide to Reporting Abuse, Neglect and Exploitation in Juvenile Justice Facilities: Male Youth (Texas Juvenile Probation Commission).

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Your Right to be Safe from Sexual Assault and Abuse (Kentucky Department of Juvenile Justice).
[on file with author]





Video Conferences

Youthful Offenders in Adult Corrections: Effective Interventions (September 15–19, 2003), available at <http://nicic.gov/library/019212>.

Websites

American Civil Liberties Union
www.aclu.org

American Correctional Health Services Association
www.achsa.org

Amnesty International
www.amnesty.org

Bureau of Justice Statistics
www.bjs.gov

Campaign for Youth Justice
www.campaignforyouthjustice.org

Center for Children & Youth Justice
www.ccyj.org

Centers for Disease Control and Prevention
www.cdc.gov

GAINS Center for Behavioral Health and Justice Transformation
<http://gains.prainc.com>

Human Rights Watch
www.hrw.org

Justice Policy Institute
www.justicepolicy.org

Justice Research and Statistics Association
www.jrsa.org

National Association of Youth Courts
www.youthcourt.net

National Council on Crime and Delinquency
www.nccd-crc.org



National Council on Crime and Delinquency, Center for Girls and Young Women
www.justiceforallgirls.org

National Criminal Justice Reference Service
www.ncjrs.gov

National Institute of Corrections
www.nicic.gov

National Juvenile Defender Center
<http://njdc.info>

National Resource Center for the Elimination of Prison Rape
<http://nccd-crc.org/nccd/initiatives/prea.html>

Office of Juvenile Justice and Delinquency Prevention
www.ojjdp.gov

The Project on Addressing Prison Rape
www.wcl.american.edu/endsilence

RAINN (Rape, Abuse & Incest National Network)
www.rainn.org

The Sentencing Project
www.sentencingproject.org

U.S. Department of Health and Human Services
www.hhs.gov

U.S. Department of Justice
www.usdoj.gov

Urban Institute
www.urban.org

Vera Institute of Justice
www.vera.org

Washington College of Law
<http://wcl.american.edu>



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