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Addressing Staff Sexual Misconduct With Offenders Curriculum (Instructor's Guide: Staff Sexual Misconduct With Offenders)_2004

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ADDRESSING STAFF SEXUAL MISCONDUCT WITH OFFENDERS CURRICULUM

NATIONAL INSTITUTE OF CORRECTIONS



in partnership with

**AMERICAN UNIVERSITY
WASHINGTON COLLEGE OF LAW**



INSTRUCTOR'S GUIDE

2004

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This curriculum is available to all who request it. NICs intent, however, is that trainers who use these materials will be experienced in and knowledgeable about the field in order to maintain the integrity of NICs work in this area. If you need information on the “training the trainers” session or available speakers, please contact Allen Ault of the National Institute of Corrections.

Marcia Morgan
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Introduction

Addressing Staff Sexual Misconduct with Offenders is a 36-hour training program that focuses on the complex issues surrounding staff sexual misconduct with offenders in all correctional settings. This training is designed for correctional policy makers, agency managers and administrators, and community leaders who influence correctional policy.

In this guide you will find a suggested program agenda for this training which will provide the instructor with a snap-shot of the training program as a whole. You will also find an overview of each training module, resources you will need, and activities which you may find helpful in the execution of the training modules.

The “Teaching Tips” section will offer suggestions on how you, the instructor may:

1. Select trainers and guest speakers
2. Prepare for the upcoming training sessions
3. Set up for the training sessions
4. Get to know your audience
5. Use the curriculum
6. Teach as a team
7. Teach with maximum effectiveness for your specific audience
8. Handle challenging people
9. Respond to questions

The goals of the *Addressing Staff Sexual Misconduct with Offenders* training is to:

1. Define staff sexual misconduct with offenders
2. Increase the understanding of the scope of staff sexual misconduct issues
3. Familiarize training participants with state laws prohibiting staff sexual misconduct with offenders
4. Introduce training participants to the nature and role of their power within correctional settings
5. Review the components of a good policy about staff sexual misconduct with offenders would include
6. Develop a realistic plan of action for agency's activities to address staff sexual misconduct with offenders
7. Understand the significance of agency culture and its affects and impact on staff sexual misconduct with offenders
8. Examine agency's management and operational practices that affect staff sexual misconduct

9. Look at the training agendas of all agency staff
10. Understand the issues involved in investigations of staff sexual misconduct with offenders
11. Understand the human resources issues surrounding staff sexual misconduct from the perspective of the agency, the employee, and the offender
12. Understand the legal considerations involved in allegations of staff sexual misconduct with offenders
13. Identify elements of effective ways to interact with the media and community surrounding issues of staff sexual misconduct
14. Understand ways to prevent staff sexual misconduct with offenders

Agenda for 36-Hour Training

START	END	SUBJECT
Day 1		
8:30 a.m.	9:30 a.m.	Welcome and Introductions Training Objectives and Overview
9:30 a.m.	10:30 a.m.	Module 1: Defining Staff Sexual Misconduct Definitions NIC's Role in Addressing Sexual Misconduct Why Are We Talking About This Now?
10:30 a.m.	10:45 a.m.	<i>Break</i>
10:45 a.m.	11:15 a.m.	<i>Activity: Identification of Burning Issues</i>
11:15 a.m.	12:00 p.m.	Module 2: State Laws Status of State Laws
12:00 p.m.	1:00 p.m.	<i>Lunch</i>
1:00 p.m.	2:15 p.m.	State Laws, cont'd.
2:15 p.m.	3:15 p.m.	Module 3: Staff Sexual Misconduct: The Nature of Your Role and Power
3:15 p.m.	3:30 p.m.	<i>Break</i>
3:30 p.m.	4:45 p.m.	Module 4: Policy Elements of a Good Policy <i>Video: Missouri Department of Corrections</i>
4:45 p.m.	5:15 p.m.	Module 5: Action Planning Introduction to Action Planning <i>Activity: Small Group/ Team Action Planning</i>
Day 2		
8:30 a.m.	9:15 a.m.	<i>Activity: Action Planning</i>
9:15 a.m.	10:00 a.m.	Module 6: Agency Culture Imbalance of Power Code of Silence Sexualized Work Environments Changing Culture Offender Culture: Are the Staff Sexual Misconduct Dynamics the Same for Men and Women Offenders Gender Differences Offender Culture: Victimization Issues for

		Offenders Offender Profiles Staff Profiles
10:00 a.m.	10:15 a.m.	Break
10:15 a.m.	11:45 a.m.	Agency Culture, cont'd
11:45 a.m.	12:00 p.m.	Module 7: Management and Operational Practices Management and Operational Practices
12:00 p.m.	1:00 p.m.	Lunch
1:00 p.m.	3:00 p.m.	Management and Operational Practices cont'd Ethics Red Flags <i>Activity: "The Envelope, Please"</i>
3:00 p.m.	3:15 p.m.	Break
3:15 p.m.	4:30 p.m.	Module 8: Training Effective Training Components
3:45 p.m.	4:30 p.m.	<i>Activity: "Ideal Training Model"</i> What is the ideal training model for staff and offenders around the issues of staff sexual misconduct in a jail, prison, or community corrections setting?
4:30 p.m.	5:00 p.m.	<i>Activity: Training Model Report out</i>
Day 3		
8:30 a.m.	9:15 a.m.	<i>Activity: Action Planning</i>
9:15 a.m.	10:15 a.m.	Module 9: Investigating Allegations of Staff Sexual Misconduct with Offenders Foundations of Successful Investigations Investigative Considerations and Techniques Sample Interview Questions Managing the Offender, Staff
10:15 a.m.	10:30 a.m.	Break
10:30 a.m.	12:00 p.m.	Investigations, cont'd Issues that May be Uncovered During an Investigation Establishing Investigative Partners Responding to Allegations Employee Protections Criminal vs. Administrative Process/ <i>Miranda</i> and <i>Garrity</i>

12:00 p.m.	1:00 p.m.	Lunch
1:00 p.m.	2:30 p.m.	Investigations, cont'd
2:30 p.m.	2:45 p.m.	Break
2:45 p.m.	3:15 p.m.	<i>Activity: Investigative Mapping</i>
3:15 p.m.	4:00 p.m.	<i>Activity: Investigative Mapping Reports</i>
Day 4		
8:30 a.m.	9:00 a.m.	<i>Activity: Investigative Mapping Reports</i>
9:00 a.m.	10:00 a.m.	Module 10: Human Resources Employment Law and Staff Sexual Misconduct
10:00 a.m.	10:15 a.m.	Break
10:15 a.m.	10:45 a.m.	Employment Law and Staff Sexual Misconduct
11:15 a.m.	12:00 p.m.	Module 11: Legal Considerations Litigation and Case Law
12:00 p.m.	1:00 p.m.	Lunch
1:00 p.m.	1:45 p.m.	Legal cont'd
1:45 p.m.	2:30 p.m.	Module 12: Media
2:30 p.m.	2:45 p.m.	Break
2:45 p.m.	3:00 p.m.	Readdress Burning Issues
3:00 p.m.	4:00 p.m.	Module 13: Prevention
4:00 p.m.	4:45 p.m.	Action Planning- Report Out
4:45 p.m.	5:00 p.m.	Wrap-up; Evaluations
Day 5		
8:30 a.m.	10:15 a.m.	Action Planning--Report Out
10:15 a.m.	10:30 a.m.	Break
10:30 a.m.	12:00 p.m.	Action Planning – Report Out
12:00 p.m.	12:30 p.m.	Wrap-up and Certificates

Teaching Tips

Selecting Trainers

It is important, when selecting your training faculty, that you ensure consistency throughout the group. The following criteria should be used to select trainers:

1. **Content Expertise.** This is essential for the effectiveness of the training. You want to be sure that the information provided to the training participants is both accurate and credible.
2. **Effectiveness as a Speaker.** You want to be sure that the presenters are confident in the information they are providing your participants, that they speak clearly, and can get their point across to a diverse population.
3. **Diversity.** You will want to ensure that your presenters are diverse according to race, gender, ideas, and age. This will be an effective tool for crossing barriers that may be overlooked by like presenters
4. **Functional Area of Expertise.** Because this training will be open to people working in jails, prisons, and community corrections settings, it is essential that you speak to your audience by having presenters that run the spectrum of correctional agencies. It will be important to have experts speak about their area of expertise; for example someone who deals with Human Resources should present that module and not someone who does community supervision. Your presenters should come from jails, prisons, community corrections, legal agencies, human resources, the courts, and advocacy.
5. **Ability.** You will want your presenters to have credibility, availability and reliability, all of which are important to the success of your training.
6. **Local and National Presenters.** You will want to ensure that your presenters are both local and national in scope. People from the local site will also be beneficial to the logistical planning of your training.
7. **Commitment and Interest to the Topic.** To ensure that the ideas expressed in your training are presented in a fair and useful light, it is helpful that you not only choose presenters

who are knowledgeable about the subject matter, but who care a great deal for the work and recognize its importance.

It is important that after you choose your presenters that you also do the following:

1. Articulate your expectations of them
2. Explain your needs
3. Answer any of the questions they may have pertaining to the training
4. Describe the audience to them to ensure that their information is targeted appropriately.
5. Provide appropriate research and technical assistance

Preparing for the Training Sessions

After choosing your presenters, preparation for the session is primarily logistical.

1. Pre-conference communication with participants. There should be a training participant memo that goes out which describes their accommodations and what they will need to bring with them
2. A hotel needs to be arranged for
3. Food preparations need to be arranged (including special diets)
4. A location for the training needs to be chosen
5. Transportation needs to be arranged
6. Parking should be arranged
7. Training materials should be copied and placed into binders for all participants and presenters
8. Audio-visual and technology needs should be arranged for
9. Get the week's agenda together
10. Make sure all presenters and participants have name tags
11. Room set-up

Room Set-Up

It is essential that the room where you are holding your training sessions is pleasant for both participants and training facilitators.

You may use the following materials to set up your training room:

1. Easels
2. Newsprint
3. Video Capabilities
4. Projection ability for presentations
5. Laptop computers
6. Markers

Each Participant should receive the following:

1. A notebook with the following materials: a training agenda, a copy of each of the training modules, a participant contact list, faculty biographies, the Association of American Correctional Administrators Resolution, an appendix, and a bibliography
2. A note pad and pen
3. A few index cards for writing comments for the logistical team and/ or presenters
4. A packet which includes materials and research about staff sexual misconduct with offenders
5. A copy of the "Burning Issues" of the group

The following are some suggestions to make your training room a comfortable learning environment:

1. The room should accommodate class-room style seating to allow for free-flowing discussion.
2. All audio-visual equipment should be tested before hand to ensure that everything runs smoothly during training.
3. Each participant should have an unobstructed view of the front of the room, be able to see the speaker, and be able to see all training aids.
4. The room should be well ventilated and at a good temperature which is important for effective learning.
5. Have microphones available for presenters
6. The lighting in the room should be able to be dimmed in order to see presentations and videos.
7. Be sure that the training site meets with the Americans with Disabilities Act (ADA) requirements for any special needs individuals.

Knowing Your Audience

The suggested size for this training is 20-25 people.

Participants should be in teams of three that include key decision makers from the jurisdiction they are representing. The teams can include any of the following people: policy makers, human resource officials, administrators, attorneys, researchers, planners, and superintendents. The training, in short, should be open to any and all people who works with or influences policies affecting staff sexual misconduct with offenders in correctional settings.

The target audience for this training is high level decision makers and policy developers for the particular jurisdiction they represent. They should have an interest in addressing the staff sexual misconduct that will happen, is happening, or has happened within the agencies they represent.

It is essential that you understand and learn as much as you can about the people you will be training. You will want to learn about participants' issues, concerns, and profile data regarding staff sexual misconduct in their jurisdiction.

To get to know your audience it may be helpful to consider the following:

1. Who are they
2. What do they know
3. What do they want to learn
4. What is their level of experience
5. What are the politics involved in their jurisdictions
6. What are the group dynamics among the players

Using the Curriculum

This curriculum is made to be as simple to use as possible. In each module you will find the following:

1. The approximate time the module should take
2. The module objectives
3. The equipment you will need during the module
4. The power point presentation or videos that correspond to the module
5. The handouts and articles which correspond to the module
6. A short over-view of the module
7. A slide-by-slide discussion for the presentation of the module

Please keep in mind:

1. The lesson plan modules may be arranged in a variety of ways to meet the specific training needs of your participants. The suggested format of the training is teaching the numeric sequence recommended here, spread over five days (8:30 a.m. - 5:00 p.m. for a total of 36 hours and a one hour lunch period each day)
2. The lesson plans are written in lecture format and notes to the instructor are written in red.
3. Group activities and involvement are designed to be a big part of the training. Group interactions with the trainer involving mutual inquiry, shared experiences and personal observations help to keep the training relevant and interesting.
4. Adult learning models suggest that for maximum attention and retention, “non-lecture” activities be interjected throughout any given lesson. Therefore, this curriculum is designed to be interactive, with instructor generated questions for participants and small group activities. Use activities written in to the lesson plans when participant energy seems low or more interaction is required.
5. You are encouraged to enhance the learning experience by tailoring information and data to the conditions of the participants. Gathering background information about your participants, as previously mentioned will help with this process; it will help you to identify the burning issues of the group. Additionally, giving real examples of from your own experience, emphasizing interactive training methods that encourage participants to share their experiences and remain engaged, can make for a meaningful training.
6. It is essential to keep in mind that people learn in different ways and in order for your training to be effective, you should use diverse teaching methods. According to Howard Gardner (1983), a Harvard educator, people learn in the following ways:
 1. Linguistics: Highly verbal and enjoys discussion
 2. Logical/ Mathematical: Needs logic and is curious about how things work
 3. Spatial: Prefers diagrams over text
 4. Bodily-kinesthetic: Physically active
 5. Music: Hums, sings, or taps to learn

6. Interpersonal: Enjoys socializing

7. We have found that the best means of presenting this training is lecture and discussion with visual aids. If you choose to not use power point, you should make transparencies to project for the participants to see. The slides are used to clarify and enhance your presentation.
8. Do not read or talk to the slides. It is essential that you be prepared to present your lesson and present to your audience.
9. The curriculum includes a list of “examples” of typical responses from participants in past trainings about addressing staff sexual misconduct with offenders. This will give the instructor a sense of what to expect from the activity or questions being posed. The examples can also be useful in prompting discussions where needed.
10. The word “activity” will appear wherever an individual or small group exercise should occur. General discussion questions do not appear as an activity, those are meant to be posed by the instructor to the whole group.
11. Presenters should be fully prepared to teach their modules. It is suggested that six to eight hours before the presentation a review of the material being presented is done. The presenter should be able to present with the power point presentations as a guide. The presenter should not be reading notes or the slides themselves.

Team Teaching

Because you will more than likely be teaching this training as a team, it is essential for the success of the training and for the fluidity of what is being taught that all the presenters meet to talk about the training, their specific teaching styles, and what their expectations are not only of the participants, but of their co-trainers.

Things that you may wish to discuss include the following:

1. Whether everyone feels comfortable if other members of the team interject examples or ideas during another team member's presentation
2. How all team members will receive the same background information about participants

3. Goals and procedures for group activities
4. Who will lead all discussions and group activities
5. The teaching style of each member of the team
6. Back-up plans
7. Whether it is useful to designate a team leader who provides a common thread throughout the training
8. Who will introduce each section, who will summarize each section, and who will direct participant questions.

A team meeting is suggested the day before the training begins to finalize training details and logistics as well as roles and duties.

At the end of the training day, meet together as a team, debrief on the day's activities and presentations and review any participant suggestions and comments. You may find it useful to:

1. Discuss the level of information and delivery style
2. Discuss overall strengths and weaknesses
3. Review and discuss participants daily comments

Teaching to Maximize Effectiveness

Remember that your team is made up of different personalities and unique teaching styles. In order to maximize the effectiveness of your team's teaching the following is suggested:

1. Before beginning the actual training allow participants to come up with a set of rules that they believe would make the training effective for them. Put them someplace where they can be seen by all group participants throughout the week and refer to them when necessary. Some examples include: be respectful of everyone's opinions or turn off all cellular phones.
2. Have all presenters arrive at the training room at least 30-minutes before they are scheduled to give their presentation. This will allow them time to become comfortable in their surroundings and prepare for teaching.
3. Keep an ongoing list of "Burning Issues" in the room.

4. Move around the room as you talk. Convey your energy to your audience.
5. Include everyone and help quiet participants to speak up.
6. Be supportive, non-judgmental, and give encouragement where appropriate.
7. Keep language simple and avoid jargon. Be clear.
8. Encourage participants to share their own experiences with the group where appropriate but be sure to keep the pace moving in order to stay on schedule.
9. Help participants who have difficulty presenting information by asking, "Is this an accurate summary of what you are saying...?"
10. After you answer a participant's question ask them "Does that answer your question?"
11. Challenge participants to speak up and be engaged. Encourage participants to be succinct in their comments and concerns.
12. Continually remind participants that the information being presented during the training is a combination of specific strategies and examples as well as a philosophical change in the "way of doing business." The programs we present are not transferable from one agency to another, each agency is unique and part of this training is for them to seek out what they believe will best help their agency create preventative and investigative policies around the issue of staff sexual misconduct with offenders.
13. Do not take things personally or become defensive. Encourage participants to think critically and to challenge how policy affects programs, and how correctional programs do what they do. Participants may challenge and ask questions about what is contained in the curriculum or examples you use.
14. Continually seek honest feedback from the training participants and team members. Ask for their perception of the training including things like the room temperature, pace, quality of information, and presentation style. Keep up with the feedback and make adjustments as needed.
15. Be flexible. Remember issues will arise, food may be late and presenters may be late. Some of these things you can anticipate, however some simply cannot be avoided. It is important that you

just keep going and always have a back-up plan. Be prepared so that you can go with the flow and still successfully present all of the material.

Handling Challenging People

Before you begin remember to keep your values and emotions in check. You should anticipate emotionally-charged, challenging questions such as, “what about men?,” “this is too feminist,” “this is special treatment for women,” and develop a response that is compelling, clear and reasonable. Choose words that are not “hot buttons” for people, but rather help further communication and understanding.

Some useful tips to handling people who are challenging are:

1. Encourage participants to be creative and non-traditional in order to bring about better results. Help participants to use training as an opportunity to reflect on desired outcomes for their agency.
2. During the training, manage the discussion and do not let one or two people dominate. Start a session by saying “I would like to start this discussion by inviting people who have not spoken much to give us their thoughts”. It is important that different viewpoints get expressed. Possible responses to difficult, controlling or domineering people include:
 - Politely interrupting them with a statement such as, “May we put that on the back burner for the moment and return to it later?” or “If it is all right, I would like to ask if we can discuss that on the break. There’s another important point we still need to discuss and we are running a little short of time.”
 - You can also jump in at a pause with, “That’s a good point, let’s hear from some of the others” or redirect the conversation. “We have had several comments in support of this idea, are there different viewpoints in the room?” This gives the control of the training back to the instructor.
3. A good instructor allows everyone a chance to speak and facilitates opportunities for less vocal people in all parts of the room to be heard. If people do not participate in discussions or appear to have their minds elsewhere, call on them by name to give an answer, opinion, or recount an experience. However, do it in a way that does not put the person on the spot. Then praise the person for responding.
4. If a participant is belligerent or rude, walk closer to the person, even standing next to them.

5. If a discussion escalates and becomes highly emotional, divert the conversation away from the people participating before it gets out of hand. "I think we all know how John and Bob feel about this. Now, does anyone else have a comment?" or validate their feelings or emotional reactions by saying something such as, "clearly this is a very emotional and difficult issue with differing viewpoints." Intense emotions can also be a good indicator of major issues in the system (which is made up of people and values). You may want to give extra time for discussion to see if some clarity or understanding can come out of it.
6. Another option with heated discussions is to take a break, talk to the person in private, and be clear but polite with expectations
7. As you go along, register steps of agreement and disagreement with participants. "Am I correct in assuming we all agree (or disagree) on this point?" or "you may simply agree to disagree on certain issues since each jurisdiction is unique".
8. If you need to control the person who "knows it all," acknowledge the person's contribution and then ask others in the group for their opinion of the person's statement.
9. If you have a person who "knows their job and doesn't want to be told how to do it," explain that s/he is just the individual you are looking for, that the training is to exchange ideas and points of view that will benefit everyone and that their experience will be valuable to all. Make this person a resource and give them "responsibility" for others' learning while keeping it under control and accurate.
10. When a discussion gets off track say, "Your point is an interesting one, but it is a little different from the main issues here; perhaps we can address your issues during the break or after the session," or, "We will be talking about that later in Module X. Your points are very interesting, could you hold those thoughts until we get to that module?"
11. If a person speaks in broad generalizations ask, "Can you give us a specific example on that point?," or, "Your general idea is a good one, but I wonder if we can make it even more concrete. Does anyone know of a case where...?"
12. If a person in the group states something that is incorrect (yet no one addresses the misinformation due to the person's status), avoid direct or public criticism. You can graciously correct the information or use indirect methods to set the record straight such as analyzing a similar case or situation in another jurisdiction where the correct information is

given. You may also want to talk to the person at the break and share the correct information.

13. You may choose to allow fellow participants to respond to difficult people in the class
14. Generally, try not to interrupt participants. Be respectful and listen. Be open, yet firm, and manage the discussion keeping in mind what is best for the whole group.

Responding to Questions

It is essential that you anticipate the types of questions participants might ask and plan how to handle them. Before you begin the training, prepare a list of questions you are most likely to get and prepare your answers. You can also use these questions to stimulate group discussions throughout your presentation. Make sure your questions are designed to get thoughtful reactions to specific points. Do not ask questions that can be answered by a “yes” or “no” response. Open-ended questions generate better audience participation.

When thinking about the training team’s response to questions, keep the following things in mind:

1. Questions from participants are a good indication of the level of their awareness, attention and interest in your subject. Questions have value in helping you to clarify, modify or fortify points or to test an idea for its potential. Remember that answering a question is impromptu. Pause if you need to, relax, maintain your poise, keep your answers short and to the point, and give the short answer first (e.g., yes/no) then explain why.
2. Some correctional issues or questions involving sexual misconduct may border on giving legal advice. Be clear about when it is appropriate to refer a question to a lawyer in the group if he or she is willing to answer or suggest the questioner check with his or her own agency’s attorney.
3. If you do not know the answer to a question, acknowledge that fact and offer to find the information or check with the audience to see if anyone knows the answer. Not all questions have to be answered. Sometimes the most effective response is one that allows the audience to keep thinking about the issue or concern. Some instructors keep a running list of questions or issues on a displayed

easel pad (“Parking Lot” issues) and come back to the questions throughout the training.

4. When a person asks a question, restate the question for the entire group and direct your answer to the audience, not the individual questioner. Make sure everyone has heard the question. Rephrase questions that are unclear or rambling. Diffuse emotional questions by politely asking for clarification.
5. Avoid a one-on-one conversation/argument with a participant.

LESSON PLANS

8:30-9:30

Welcome and Introductions

- **Introductions.** Do a self-introduction. Introduce the Faculty. You should include things such as your position, past work you have done on the issue, and what makes you passionate about your work
- **Logistics.** Give the participants logistical information they will need for the week (bathroom location, break room location, stretching breaks, whom to contact if anything is needed etc.)
- **Feedback Cards.** Point out that 3x5 index cards are placed throughout the room and ask participants to write comments about the training or logistical accommodations, either positive or negative, and leave the cards on the front table during breaks, lunch, or at the end of the day.
- **Action Plan.** Inform participants that the product for the end of the week is for their team to develop a workable action plan for their agency that they will incorporate when they return to their home institutions. Make them aware that they will be responsible for presenting their action plan at the close of the week.
- **Participant Introductions.** Have participants introduce themselves. Have them state their name, where they are from (state they are representing), job role, and a brief description of their correctional system. The instructor may want to choose an “ice breaker” exercise (for example: have the participants share something unusual about themselves that people will remember)

Training Objectives and Overview

- **Training Objectives.** Explain to the participants the overall training objectives.
 - Participants will...
 - 1. Gain a national perspective on the issue of staff sexual misconduct with offenders
 - 2. Be familiarized with state laws prohibiting staff sexual misconduct and the legal

issues surrounding staff sexual misconduct

3. Learn why staff sexual misconduct is underreported
 4. Learn why it is important to have policies about staff sexual misconduct
 5. Understand key and critical issues regarding identifying, preventing, and addressing issues of staff sexual misconduct.
 6. Review management and operational practices and the relationship to staff sexual misconduct
 7. Learn about effective training as a preventative measure
 8. Learn the employment law and human resources issues surrounding staff sexual misconduct
 9. Learn to identify effective correctional policies and procedures to prevent and address staff sexual misconduct
 10. Learn to identify correctional culture that contributes to and allows staff sexual misconduct to occur
 11. Identify the strengths and weaknesses in their own system and develop an action plan that will work in their jurisdictions.
 12. How to effectively deal with the media
 13. How to make prevention of staff sexual misconduct a cause of action
- **Agenda.** Review the training agenda located in their participant notebook. Include topics, meals, and breaks. Highlight that the first part of the training will focus on preventative steps (laws and policies) and the second half of the training will move to the responses (litigation and investigation) to staff sexual misconduct with offenders.
 - **Participant Notebook.** Describe the participant notebook and the type of material it contains. Tell participants it is intended as a resource guide to use throughout the training and when they return to their offices.
 - **Audience Participation.** Encourage your participants to participate and acknowledge their expertise. This is an interactive program with opportunities for participants to

brainstorm ideas, air concerns, and work through sensitive issues in a safe environment.

- **Burning Issues.** Describe that there will be blank newsprint around the room for “parking lot” issues. This is a place where participants can voice their issues, questions and concerns throughout the week until they can be addressed.

MODULE 1: DEFINING STAFF SEXUAL MISCONDUCT WITH OFFENDERS

Time: 1 hour

Module Objectives:

1. Provide an introduction to staff sexual misconduct with offenders
2. Define staff sexual misconduct
3. Identify the role of prison/jail/community corrections leadership in preventing staff sexual misconduct
4. Identify and discuss the critical issues of jails, prisons and community corrections as they begin to consider and address staff sexual misconduct
5. Acquaint participants with national reports about staff sexual misconduct and the implications for prisons, jails, and community corrections

Equipment and Supplies: LCD Projector for PowerPoint® presentation

PowerPoint® Presentation: “Why Now?”

Handouts/Articles in Participant Notebook: “Why Now?” (slides); Uniform Definitions of Sexual Violence (handout); Introduction- Definition and National Scope of Staff Sexual Misconduct (handout)



PowerPoint®: “Why Now?”

This presentation is to tell participants why NIC is interested in this issue and why we are now talking about it.

Slide 1: Why Now?

- National Awareness
- Systemic Pressures

Ask participants why they think we are talking about this now. Sample responses may include:

- More women in corrections
- More in the media about it
- The lawsuits are big and that gets our attention
- Demoralized staff, more stressed
- Non-professional attitude of staff
- We don't “trust” institutions in general like we used to

Slide 2: What is Sexual Misconduct?

“Sexual Misconduct” has different definitions in different state statutes and policies. For this training, we will use this general definition:

Sexual Misconduct is any behavior or act of a sexual nature directed toward an offender by an employee, volunteer, visitor or agency representative. This includes acts or attempts to commit such acts including but not limited to sexual assault, sexual abuse, sexual harassment, sexual contact, conduct of a sexual nature or implication, obscenity and unreasonable invasion of privacy. Sexual misconduct also includes, but is not limited to, conversations or correspondence that suggests a romantic or sexual relationship between an offender and any party mentioned above.

Slide 3: What is Sexual Misconduct, cont'd

Staff sexual misconduct includes but is not limited to the following acts or attempts to commit such acts:

- sexual assault
- sexual harassment
- actions designed for the sexual gratification of any party
- conduct of a sexual nature or implication
- sexual contact with the person
- obscenity
- unreasonable invasion of privacy and inappropriate viewing
- conversations or correspondence which suggests a romantic or sexual relationship between parties

Slide 4: Consequences

Remember the reasons why we are talking about this issue. It is important that participants recognize that the consequences are much greater than what is included in the statutes. Lead a discussion and ask the following questions:

What are the implications of staff sexual misconduct?

1. For the staff?
2. For the offenders?
3. For operations?
4. For the administrators?
5. For the legislature?
6. For families?
7. For the public?

Highlight the following issues if they are not mentioned in the discussion.

1. Staff sexual misconduct with offenders is a *security risk* for the institution. The offenders involved get special favors or treatment and the roles between inmate and staff become blurred.
2. It affects everyone in *negative ways* - it pits staff against staff, staff against administrator, offender against offender, offenders against staff, community/media against the institution, etc. It creates *mistrust* within an agency.
3. It also creates *stress and trauma* or those involved.
4. It *undermines the public's support* of correctional personnel.
5. It exposes the agency and staff to *liability*.
6. It creates a *hostile work environment*.
7. It *compromises professionals*.
8. It *victimizes* the already vulnerable
9. It is an *abuse of authority*;
10. It *diminishes legislative support* for funding and reform.
11. It *violates* the law.

Slide 5: Definition of Secure Confinement and Community Measures

Secure Confinement: Any institution where offenders are supervised by correctional officers 24-hours a day with no community interaction. This includes jail and prisons.

Community Measures: Non-prison programs that allow offenders to reside in the community while serving a criminal sentence. This includes probation, parole, half-way houses, pre-release centers, and home detention.

Slide 6: National Awareness

- Increased incarceration of women
- Growth of offender population
- Escalation of numbers of staff hired
- Women generate more sympathy
 - media coverage focuses more on why women are in the criminal justice system (e.g., past physical and sexual abuse)
- Increased use and awareness of community corrections

Slide 7: Comparison to Coverage of Similar Abuses in Other Institutions

- Church- Chicago Sun Times
- Foster Care- U.S. Department of Health and Human Services report
- Military- San Diego Union Tribune
- Military- British Broadcasting Corporation

Slide 8: 4 W's and the H of Secure Confinement

You should use this as an opportunity to engage the audience. Ask them the following questions:

- Who are the inmates? Men and women who are under correctional supervision. **Be sure to give some demographic and population numbers that are useful to your participants.**
- Where do they live? Inside of jails and prisons.
- What is their world like? Their world is concerned with rules and culture of the institution in which they live.
- With whom do they interact? Prison or jail officials, other inmates, correctional staff, and their visitors.
- How do you interact with them? There are strict rules about what behavior is appropriate and the guidelines that govern those actions.

Slide 9: 4 W's and the H of Community Corrections

You should use this as an opportunity to engage the audience. Ask them the following questions:

- Who are the offenders? Men and women in the community who are under supervision of the judicial system. **Be sure to give some demographic and population numbers that are useful to your participants**
- Where do they live? Within the community.
- What is their world like? They live in communities such as our own, they may have jobs, go to church, and pick their children up from school.
- With whom do they interact? Everyone you and I do. Their family, friends, parole officers, bank tellers, grocery store employees, and members of the community at large.
- How do you interact with them? You can see them at the store, at church, in your office, at their homes, in their place of employment, or at your child's school.

Slide 10: Recent Litigation, Media Coverage, and Studies

Recent Litigation

- *Amador v. New York State Department of Correctional Services* (S.D.N.Y. 03 Civ. 0650). Suit was filed on behalf of individual current and released inmates for injunctive and declaratory relief and monetary damages for sexual abuse in New York state prison.
- *Lucas v. White* (F. Supp. 2d 1046 1999) In Dublin, California, three female inmates were awarded \$500,000 in damages after male staff from the men's security unit "sold them as slaves to male inmates."

- *Women Prisoners of the District of Columbia Department of Corrections v. District of Columbia* (D.D.C. 1994) The Court ordered that the District of Columbia adopt an order prohibiting sexual harassment involving employees and female inmates, to take appropriate steps to prevent and remedy sexual harassment, to provide diagnostic evaluations for women prisoners.

Slide 11: Litigation Continued

- *Smith v. Cochran* (216 F. Supp2d. 1286) Non-consensual sex between offenders and government employees with authority over the offender violates clearly established federal law
- *Belvin v. Georgia* (470 S.E.2d 497) The court held that the term probation officer includes a surveillance officer and is therefore prohibited from sexual contact with another person who is a probationer or a parolee under the supervision of said probation or parole officer.
- *Sepulveda v. Ramirez* (967 F. 2nd 1413) The court found that a male parole officer observing a female parolee urinate for urinalysis violates a parolee's Fourth Amendment rights.

Slide 12: Media Coverage and Studies

Media

- *Inmate Sex Scandal Roils South Carolina: Culture of Corruption Alleged; Investigations Launched* by Sue Anne Pressley (Washington Post, January 23, 2001).
Covering numerous allegations of sexual intercourse between inmates and prison staff.
- *Misconduct, Drugs Ignored at Halfway Houses suit says* by Zachery Kouwe (Denver Post, November 9, 2003).
Reporting on a court case brought by employees of two halfway houses claiming that the Colorado Department of Corrections, the Colorado Department of Public Safety, and the Adams Board of Commissioners knew about illegal sexual activity occurring in the halfway house involving staff and clients.

Studies

- *NO ESCAPE: Male Rape in U.S. Prisons* (Human Rights Watch, 2004) Report from the Human Rights Watch chronicling male-on-male prisoner rape in the United States. The report makes recommendations to the U.S Congress, the National Institute of Corrections, the Civil Rights Division of the Department of Justice, to state

agencies, and to state and local prosecutors on how to best identify, report, and prosecute those involved in male prisoner rape. Above all they argue that in order to do this, agencies need clear and informative legislation and policies on how to deal with male rape in prisons.

- U.S. Department of Justice National Institute of Corrections, *Sexual Misconduct in Prisons: Law, Remedies, and Incidence* (2000) Report found continued activity on the issue of staff/inmate sexual misconduct, increase in legislation, slight increase in litigation related to the issue and improvement in written and implementation of specific internal policies prohibiting staff sexual misconduct with inmates.

Slide 13: Studies Continued

- U.S. Government Accounting Office, *Women in Prison: Sexual Misconduct by Correctional Staff* (1999). After examining four correctional systems, Texas, the Federal Bureau of Prisons, California and the District of Columbia, the report concluded that misconduct in correctional facilities occurs and is underreported and also found participation in training programs that address sexual misconduct.
- U.S. Department of Justice National Institute of Corrections, *Sexual Misconduct in Prisons: Law, Agency Response, and Prevention* (1996) Report found “significant activity” among state departments of corrections on the issue of staff/inmate misconduct, significant litigation related to the issue, and poor policies addressing the issue.

Slide 14: Rise in Legislation: Comparison of State Statutes in 1990 and 2004

Discuss maps and states. Refer participants to their notebook for a copy of the map and the 50 state survey.

Slide 15: Systemic Pressures

- Premature promotions due to increased number of management/supervisory positions needed.
- Diminished staff training resources and ineffective training- hesitancy to be specific on sensitive issues.
- Public policy and attitude towards offenders.
- More “free world” abuse of power cases.

Slide 16: Themes

- Leadership must come from the top of the organization in addressing misconduct.
- Policies need to be in place to direct staff.
- Effective training is part of a strategic response.
- The external environment has a stake in the agency's handling of sexual misconduct.
- During crisis is not the time to build media relations.
- Legislation with clear penalties for sexual misconduct can be an important tool.
- Daily operations of the agency must create a zero tolerance atmosphere

Slide 17: Themes Continued

- Staff misconduct disrupts everything.
- An incident or lawsuit creates an environment that polarizes staff, population and leadership.
- Staff fear investigations and often have anger and misunderstanding regarding the process.
- It is myth that sexual misconduct is a result of cross-gender supervision
- It is a myth that only officers are vulnerable.

Slide 18: Summary

- Increase public awareness of abuse
 - Domestic Violence
 - Battering
 - Victim's assistance
- Litigation
- Growth of offender population
- Escalation of numbers of staff hired
- Premature promotions due to increased number of management/supervisor positions needed

Slide 19: Summary Continued

- Diminished staff training
- Ineffective training- hesitancy to be specific on sensitive issues
- More "free world" abuse of power cases
- Public policy and attitude towards offenders
- Unclear community boundaries

Additional Module 1 Information

You may highlight some of the information below for participants if you feel more information is necessary to convey the idea that staff sexual misconduct with offenders is a serious violation of offender's rights and agency policies.

These statistics are from a national survey, "Sexual Misconduct in Prison: Law, Agency Response, and Prevention, U.S. Department of Justice, National Institute of Corrections, May 2000."

- In this survey of 54 Department of Corrections in the U.S. (50 states, the District of Columbia, U.S. Bureau of Prisons, Guam, and Puerto Rico), 24 jurisdictions reported they had faced either class action or individual civil lawsuits relating to staff sexual misconduct with offenders in the years 1991 – 1996.
- Since 1996, 17 jurisdictions are currently facing civil litigation, with some jurisdictions facing multiple litigations.
- In three of the largest departments of corrections in the U.S., between 1995 and 1998, there were a minimum of 506 allegations of staff sexual misconduct; 92 of these were sustained, with the majority of those sustained resulting in employee termination or resignation. Only a small portion of the allegations involved rape or forced sexual contact. The majority of incidents involved inappropriate behaviors, such as verbal communication, harassment, touching, visual surveillance and/or sexual relationships.
- 16 departments have developed new policies on staff sexual misconduct with offenders, and at least 12 more departments are in the process of developing specific policies.
- Since the original 1996 survey, 23 departments have developed new staff training programs or have substantially revised existing training on staff sexual misconduct, and an additional 8 agencies are in the development stage for new training. Three departments (Oregon, Vermont and Virginia), now provide specialized training for staff who are assigned at facilities for women offenders.
- 22 agencies have evaluated their investigative practices on responding to allegations of staff sexual misconduct, with at least 11 agencies reporting that they have developed specialized training for investigating staff sexual misconduct.
- As of November 1999, all but 7 states have enacted specific legislation prohibiting staff sexual misconduct with inmates, with 16 of those states passing legislation since 1996.

Examples on the Impact of Staff Sexual Misconduct

Highlight a few of the cases below if you feel participants need more information regarding the seriousness of the staff sexual misconduct issue.

This information is an excerpt from "Training Curriculum for Investigating Allegations of Staff Sexual Misconduct with Inmates," McCampbell, Layman. (2000)

- A federal jury awarded damages in excess of \$5.3 million to a former inmate of the D.C. jail. The inmate accused officers of forcing her to perform a striptease show for other officers. The D.C. Department of Corrections has filed an appeal of the award.
- Three women at a Federal Bureau of Prisons (BOP) facility in Dublin, California, filed a lawsuit. The women alleged that during August and September of 1995 they were beaten, sexually assaulted, forcibly prostituted by staff to male inmates who paid staff for access to the plaintiff's cells, and were being held in a segregated wing of the prison. After making official reports of these incidents, under oath, to prison administrators, at least one of the inmate plaintiffs suffered serious retaliation. Three weeks after making her report, her cell door was opened without explanation, and three men entered, handcuffed her, beat her, sexually assaulted her, and threatened to repeat the attack if she continued her complaints. The courts awarded a total of \$500,000 to the plaintiffs. (see Lucas v. White 63 F. Supp. 2nd 1046 (N.D. Ca.) 1999.
- In April 1997, a prison chaplain in Fort Worth, Texas, was charged with a misdemeanor, for fondling an inmate. (Associated Press)
- State legislators in 1997, reprimanded administrators of a California Youth Authority school for their failure to conduct competent and timely investigations into allegations of sexual abuses in their facility.
- In March 1998, a Connecticut deputy warden and a correctional officer received sentences of six months in prison and one year in prison, respectively. The deputy warden was only 25 days short of receiving his \$50,000 per year pension. He was accused of having a consensual sexual relationship with an inmate working in his office, who was serving time for conspiracy to commit murder. The correctional officer was later sued by the female inmate, who gave birth to his child, and was awarded an undisclosed sum of money. [Associated Press 04/01/98]
- In January 1998, a male officer at a Federal facility in Texas received a sentence of 1.5 years in prison for the sexual abuse of an inmate. The

officer admitted to the rape of a male inmate. [Associated Press 01/09/98]

- Two correctional officers at a Federal Bureau of Prisons facility in California, resigned in November 1997, in light of charges that they had sex with female inmates. [City News Service of Los Angeles, Inc. Information provided by U.S. Attorney Jerome Friedberg]
- Two female staff at a privately run youth facility in Colorado were fired in April of 1998, for having sex with juveniles under their charge. Two additional staff resigned voluntarily during the internal investigation. [Denver Post 04/11/98]
- A prison sergeant at a North Carolina state correctional facility, pled guilty to lesser offenses of three counts of sexual activity with inmates, which occurred during May and June 1991, and was sentenced to 12 years in prison.
- In August 1999, four correctional officers were fired from Suffolk County Department of Corrections in Massachusetts, as a result of an investigation into allegations of staff sexual misconduct with inmates, and refusing to take DNA tests. A civil lawsuit filed by female inmates alleging that officers forced them into having unprotected sex, and exchanged drugs for sex, is currently pending. [The Boston Globe 08/28/99]
- In the State of Florida between 1997 and 1999, the Florida Department of Law Enforcement reported 233 cases filed for de-certification, based on sex offenses, sex on duty or unprofessional relationship with inmates. Of these cases, 75% were in state prisons, 10% in private prisons, and 15% in probation/parole. Of the 233 cases, 30% (71) resulted in de-certification, denial of appeal on de-certification, voluntary relinquishment of certification, letter of acknowledgment (agency discipline sufficient), or letter of guidance (admonishment added to discipline). [Florida Department of Law Enforcement, Criminal Justice Professionalism Program, 2000]
- In the State of California between 1997 and November 1999, there were 16 resignation, 3 terminations, 6 early retirements, 5 criminal prosecutions, and 35 sustained findings as a result of investigations into staff sexual misconduct.
- In Michigan, between 1992 and 1995, there were 11 criminal prosecutions, which resulted in sentences from three to 15 years; 18 correctional officers were terminated, one was suspended, and 1 was transferred. In addition, Michigan was party to eight separate inmate lawsuits during that period.

- States that license correctional professionals may act to decertify staff with sustained allegations of sexual misconduct, regardless of whether:
 1. The employee resigns prior to the completion of the investigation
 2. Criminal charges are not filed (or)
 3. The employee is exonerated on criminal proceedings

Note: De-certification can prevent the employee from being hired in the field again, in that state.

ACTIVITY: IDENTIFICATION OF BURNING ISSUES

Lead a group discussion by asking the following questions:

1. What are your concerns about staff sexual misconduct with offenders?
2. What are the burning issues you and your institution are facing now?
3. What are some of the answers to questions that you need to take away from this training?

Write participant's responses on newsprint and tape it to the wall for reference throughout the week.

Some examples might include the following:

1. Staff needs to take this topic more seriously.
2. Getting people trained, including supervisors.
3. Getting exposure to best practices.
4. Garrity and Miranda issues.
5. Personnel systems that keep us from doing what we need to do.
6. Convincing leadership that we need to address this; getting their buy-in.
7. Retaliation- protecting employees.
8. Prevention.
9. How to confront employees when this occurs.
10. Investigative policies.
11. How do you compel people to come forward?
12. Red Flags- how to identify early signs.
13. Pre-employment psychiatric screening.
14. The cost of not doing anything- being in denial or is this overly increasing our awareness.
15. Working with unions.
16. False accusations.
17. Offender Responsibility.
18. Is there a difference between same sex and opposite sex sexual misconduct?
19. Harassment and Language- what is permissible.
20. Helping to protect staff who report an incident.
21. Staff Morale.
22. How do you change culture?
23. Public confidence.
24. Hiring considerations.
25. Discipline that is appropriate.

26. Families working at the institutions.
27. Handling staff-to-staff behavior.
28. Organized way to assess an agency.
29. Settlement agreements.
30. Criminal vs. administrative investigations.
31. Policy and procedure development.
32. Privatization.
33. Enforcement strategies.
34. Confidentiality.
35. Offender consequences.
36. Victim advocacy.
37. Unit management.
38. Professional distancing.
39. Off-duty relationships.
40. Relationships with ex-offenders.
41. Code of Ethics.
42. Management response.
43. Cross-gender supervision.
44. Duty to report.
45. Studies that show what works.
46. Surveillance equipment.
47. Education about what to do.

MODULE 2: STATE LAWS

Time: 2 hour

Module Objectives:

1. Acquaint participants with the different laws throughout the United States and lessons learned in those states
2. Describe the elements of a good law
3. Help participants learn about their own state statutes
4. Help participants critique their own statutes and what can be done to make the law better and more comprehensive
5. Acquaint the participants with the Prison Rape Elimination Act of 2003 and its components

Equipment and Supplies: LCD Projector for PowerPoint® presentation

PowerPoint®: Elements of Good State Laws

Handouts/Articles in Participant Notebook: Elements of Good State Laws (slides); 50 State Survey of United States Laws (handout); Map of State Laws (handout); The Prison Rape Elimination Act of 2003 (handout)

STATUS OF STATE LAWS

Forty-eight states have statutes that in some way address staff sexual misconduct with offenders. A law is an important tool for an agency. An agency may issue policies and procedures more restrictive and inclusive than state laws. Although many of you will not be involved in writing the laws in your state, you may be instrumental in identifying what amendments need to be made. It is also important to know where your laws may help or hinder you in a sexual misconduct case.



PowerPoint®: "Elements of Good State Laws"

Slide 1: Enacting a Law

- Context
- Climate
- Proponent(s)

Ask participants to look at their own state laws. Point out to the participants that many of their state laws were written in the 1990's.

Each state's statute is unique because of a particular issue that surfaced in their political climate. Future changes will also be based on that. Many states find that their laws are too narrowly defined and unusable.

1. Context:

What was the context in which the law was written?

Use the following example: South Carolina had very simple wording because they had not had big cases at the time the law was written. Georgia and Washington DC had already had several big, highly visible cases so their laws were complex and comprehensive.

2. Climate:

Are there major budget cutbacks?
What are the state or agency politics?
(Examples include: elections, scandals, leadership issues, history with personalities)

3. Proponents:

Who is pushing this? The prosecutor? The Department of Corrections?

Use this example: The Rape Crisis Center in Washington D.C. was a major proponent of enacting a law to put sexual assault in statutes.

Ask participants the following and discuss:

1. Do any of you have experience trying to change or write these laws in your own state?
2. Who has the power in your state to enact a law?

Slide 2: Important Policy Decisions

- What conduct does the law cover?
- Which staff does the law target?
- Will you penalize offenders?
- What agencies are covered by the law?
- What are the penalties?
- Will you make this a strict liability offense?
- Is this a separate statute?

Slide 3: What Conduct Does Your State Law Cover?

Staff sexual misconduct laws vary a great deal from state-to-state. We will be critically examining the state laws.

- Sexual assault

- Sexual contact
- Failure to report

Ask the participants to take their state laws out and study them. Many participants in these training sessions find that the state laws cover them in very few situations and the wording is not inclusive as first thought.

Please note for participants: The sexual misconduct laws need to address behaviors other than sexual intercourse. This can be challenging since some legislatures feel uncomfortable with discussions about oral sex, anal sex, phone sex, nude dancing, or “flashing”. Additionally, the political ramifications of discussing the possibility that these behaviors occur in correctional settings can be daunting. Remember that both laws and agency policies are tools to address staff sexual misconduct with offenders. It is important to have more than one tool in place.

Slide 4: Which Staff Does the Law Target?

- Correctional staff
 - Security
 - Pre-Trial
 - Probation
 - Parole
 - Work release
 - Other partners who supervise offenders
- Other corrections employees – doctor, counselor, chaplain, teachers, nurses
- Contract employees
- Volunteers

It is important that participants understand the following:

1. Laws differ in whom they cover
2. Some laws only cover employed staff working in correctional facilities. Example: New York law covers employees that work in correctional facilities but does not cover volunteers or maintenance staff.
3. Some states have laws that cover volunteers (teachers, clergy, outside contractors, laundry personnel, maintenance, bookkeepers etc.) Remind participants that some professional visitors do have time alone with offenders.

Ask participants if their laws are covering all the potential risks in their state

Slide 5: Will you Penalize the Conduct of Offenders?

- Message sent to offenders
- Message sent to staff
- Impact on reporting by offenders

- Impact on reporting by staff

Example: At the INS's Krome Detention Center in Dade County Florida, the offenders' attorneys sought and received a court order to remove some women detainees to other facilities alleging the Krome facility was unable to ensure that women would be safe from sexual misconduct by staff.

Slide 6: What Agencies are Covered?

- Prisons
- Jails
- Pre-Trial Services
- Probation
- Parole
- Police
- Community correctional facilities
- Juvenile detention facilities
- Juvenile group homes

Please note:

1. State may not cover parole and probation because the offender has greater degrees of freedom after release. The offender is viewed more as a free adult yet there is still an unequal power relationship because of the correctional officer's authority.
2. Some individuals or agencies may not have been considered when a state's original law was written. For instance some states cover defense lawyers, the Public Defender's Office personnel and some do not. Who is covered may have depended upon who proposed the law.

Slide 7: What are the penalties?

- Felony
- Misdemeanor
- Graduated sanctions depending on the severity of the offense and other factors
- Fines
- Sex offender registry
- Loss of licensing as peace officer or social worker

Discuss the implications of these penalties.

Slide 8: Where Will You Place the Statute?

- Vulnerable adult statute

- State's general rape statute
- Separate statute

Ask participants what the pluses and minuses are of each one of these locations in the laws

Note the following for participants:

1. Some laws cover offenders under vulnerable adult statutes which includes such populations as the mentally retarded or elderly (e.g., South Carolina)
2. The general rape statutes in most states provide that consent is a defense to sexual assault. It places it squarely as sexual violence.
3. Sex in a correctional facility does not always look like it does outside of the agency. It is sex for cigarettes, better work assignments, phone use, food, or privileges. That does not fall into a neat category of rape or assault.
4. Separate statutes provide visibility. It is easy to find. Separate statutes send a message that the legislature intended to deal specifically with this problem. It can provide specific solutions in dealing with corrections.

Slide 9: Is this a Strict Liability Defense?

Strict liability means that an offender is guilty regardless of the willingness of the offender.

- Consent. Consent is not a defense in staff/ offender sexual misconduct incidents. Even if both people are willing participants, it is important to go back to the root of the issue. Sexual behavior between staff and offender is against the law and agency policy. It is a security risk and jeopardizes multiple institutional regulations and practices. Willingness or initiation by an offender is no excuse. Correctional staff are professionals who are required to act responsibly and follow the law. This is a serious offense because public safety is a key concern in this line of work.
- Marriage. A few states provide that marriage is a defense in sexual misconduct incidences. The exception is conjugal visits only practiced in New Mexico, New York, and California (as of 2002). Civil unions, such as in Vermont, have not been tested in these situations (as of 2002).
- Ignorance of status. Ignorance of status is a defense in some states.

Slide 10: The Prison Rape Elimination Act of 2003- Public Law 108-79 (PREA)

Makes important findings about the impact of prison rape on inmates, the economy and state and federal governments.

Slide 11: PREA Purposes

- Establish zero tolerance for the conduct
- Make prevention a top priority
- Develop national standards for detection, prevention, reduction and punishment
- Increase available data and information on incidence in order to improve management and administration
- Standardize definitions used for collecting data on the incidence of rape
- Increase accountability of prison officials who fail to detect, prevent, reduce and punish prison rape
- Protect 8th Amendment rights of federal, state and local prisoners
- Establish grant programs
- Reduce costs of prison rape on interstate commerce

Slide 12: PREA Provisions

- Section 4: Collection of prison rape statistics, data and research (BJS)(\$15 MM for FY 2004-2010)
 - Surveys
 - Including prisons, jails, community corrections, boot camps, road camps, forestry programs, farms, youthful offender facilities, hospitals, drug treatment programs
 - Federal, state and local officials are required to participate
 - Review panel on prison rape with subpoena power
 - Public hearings for 3 highest incidence systems and 2 lowest
 - Report each year on 6/30

Slide 13: PREA Major Provisions Continued

- Section 5: Prison Rape Prevention and Prosecution (NIC) (\$5MM for FY 2004-2010)
 - Information and Assistance through National Clearinghouse
 - Training and Education
 - Report due on 9/30 annually

Slide 14: PREA Major Provisions Continued

- Section 6: Grants to Protect Inmates and Safeguard Communities (DOJ) (\$40MM)
 - Protection of the community
 - \$ to address overcrowding
 - Risk assessment tools
 - Mapping of concentration of inmates in communities

- Policy and program development
- Collaboration between corrections and community on reentry
- Protection of Inmates
 - Investigations
 - Prosecution
 - Prevention

Slide 15: PREA Major Provisions Continued

- Section 7: National Prison Rape Reduction Commission (with subpoena authority)
 - 9 members
 - Conduct legal and factual study of the effects of prison rape in the US
 - Report in 2 years of initial meeting
 - Recommended national standards
 - Consultation with accreditation organizations
 - Can't impose something that would mandate substantial increased costs to agency
 - Hold hearings

Slide 16: PREA Major Provisions Continued

- Section 8: Adoption and Effect of National Standards
 - A year after National Prison Rape Reduction Commission issues report, AG publishes a final rule with standards
 - 90 days after transmission to state departments of correction
 - Federal Bureau Of Prisons is immediately covered
 - Possible reduction of 5% each year for failure to meet the standard
 - Annual report on non-compliance

Slide 17: PREA Major Provisions Continued

- Section 9: Accreditation Organizations must adopt standards or lose federal funds
- Section 10: Definitions
 - Covers jails, police lockups, prisons
 - Covers both adult and juvenile facilities, government and private
 - Prison rape includes rape of inmate in actual or constructive custody

Slide 18: What Does This Mean?

- Increased scrutiny at state, federal and local level on staff sexual misconduct
- Broadened concern about inmate on inmate misconduct
- Data is your friend
- Get ahead of the curve
- You must take this seriously – it is not a backburner issue

Slide 19: Things to Remember

- You cannot control what passes in the legislature, only respond
- Absence of law doesn't mean that states don't or can't address the issue
- Enactment of law does not guarantee enforcement
- Do what you can do

Slide 20: Things to Remember Continued

- These cases are a subset of sexual assault cases in general – underreported and under-prosecuted
- Visible aggressive prosecutions are important – public education, prevention, sanctioning
- Relationship is everything – prosecutor, hospital, police, victim assistance

MODULE 3: STAFF SEXUAL MISCONDUCT: THE NATURE OF YOUR ROLE AND POWER

Time: 1 hour

Module Objectives:

1. Identify how agency representatives are seen by offenders
2. Define common offender characteristics
3. Discuss the power of the Criminal Justice Supervision Officer
4. Define and compare sexual harassment and abuse and how they can be identified
5. Allow participants to see that whether they be working for a secure confinement or community agency they are seen as the same people by offenders and the offenders that they deal with are identical.

Equipment and Supplies: LCD Projector for PowerPoint® presentation

PowerPoint®: Staff Sexual Misconduct: The Nature of Your Role and Power

Handouts/Articles in Participant Notebook: Staff Sexual Misconduct: The Nature of Your Role and Power (slides)



PowerPoint®: “Staff Sexual Misconduct: The Nature of Your Role and Power”

Slide 1: How You are Seen

How do people under supervision view the role of the correctional officer or community supervision officer?

Address this question to the participants and spend some time getting their responses. Write the participant's answers on newsprint. Then spend some time discussing what they have said. Some examples of what they might say are:

1. police
2. someone to force them to do things
3. people who do not understand them
4. people who will take advantage of their power
5. people who are dishonest
6. people who can be fooled or taken advantage of
7. people to fear
8. people who are unfair
9. people who makes rules but do not follow them
10. people who hold their freedom

Slide 2: Common Offender Characteristics

Ask participants to identify what they believe to be common offender characteristics.

- Young
- Minority
- Drug or alcohol abuse
- Low level of education
- Indigent, possible homeless
- Mental Illness
- Unemployed
- Prior sexual abuse
- Isolated
- Prior criminal record

Slide 3: The Power of the Criminal Justice Supervision Officer

- You are the most powerful person in the offenders life
 - Absence of family support
 - Absence of judge, prosecutor, or lawyer
 - You vs. an offender's freedom
 - Violations of the rules and their consequences
- Absolute Power
 - Few legal/ procedural safeguards
 - Legal safeguards absent
 - probable cause
 - low standard of proof
 - uncorroborated testimony
 - no rules of evidence
 - no attorney
 - no witnesses

Slide 4: Sexual Harassment and Abuse

- Awareness
- Realization
- Boundaries and safeguards

MODULE 4: POLICY DEVELOPMENT

Time: 1 hour and 15 minutes

Module Objectives:

1. Describe the importance of having a good policy in preventing staff sexual misconduct with offenders
2. Identify and discuss important elements of policies related to staff sexual misconduct

Equipment and Supplies: LCD Projector for PowerPoint® presentation; VHS Video player and monitor

PowerPoint®: Policy Development

Video: Missouri Department of Corrections

Handouts/Articles in Participant Notebook: Policy Development (slides)



PowerPoint®: Policy Development

Slide 1: Objectives

Begin by getting the participants to think about what the consequences are if their agency does not have good policies.

- What makes a good policy?
- Definitions.
- Challenges and dilemmas.
- Writing policy and procedure.
- Triage your agency's policies and procedures.
- When policy is effective.

Slide 2: A Definition

Any behavior or act of a sexual nature directed toward an offender by an employee, volunteer, visitor or agency representative (contractor). This includes acts or attempts to commit such acts as sexual assault, sexual abuse, sexual harassment, sexual contact, actions designed for the gratification of any party, conduct of a sexual nature or implication, obscenity and unreasonable invasion of privacy. Sexual misconduct also includes, but is not limited to, conversations or correspondence which suggests a romantic or sexual relationship between an offender and any party mentioned above.

Slide 3: Related Definitions

- Sexual assault
- “Consent”
- Sexual contact, sexual abuse, sexual harassment
- Sexualized work environment
- Hostile work environment
- Privacy of offenders
- Role of offenders' families
- Collateral contacts

Slide 4: What Makes a Good Policy?

- Zero tolerance
- Definitions
- Multiple reporting points for employees and offenders
- Operational procedures support zero tolerance
- Strong investigative protocols
- Employee training
- Offender orientation

Discuss with participants that a good policy applies to all employees, contractors, volunteers, and any other individual who has access to facilities or to the supervision of inmates.

Many agencies have general codes of employee conduct. These are general statements of expected ethical and professional behavior. The American Correctional Association offers guidelines that provide a philosophical basis for the agency's mission. Yet, they seldom define the specific permitted and prohibited behavior needed to guide the on-duty and off-duty behavior of staff. Policies are more than just codes of conduct.

An effective policy should do the following:

- Exist in writing
- Be definitive, explicit, concrete and organized
- Be inclusive and holistic
- Be able to be role modeled
- Be threaded in all procedures
- Revised and updated periodically including lessons learned from investigations
- Consistent with state statute
- Integrate offender programs
- Acknowledge institutional values and culture.

Policy should include three things:

1. zero tolerance

2. mandatory reporting
3. definition of prohibited behaviors

The agency's policy must clearly identify in explicit detail, acceptable and unacceptable behavior. Policies must clearly delineate:

1. A prohibition against any sexual contact, including, but not limited to, intentional touching, either directly or indirectly (i.e., through clothing), of the genitalia, anus, groin, breast, inner thighs or buttocks of any person with the intent to abuse, humiliate, harass, degrade, arouse or gratify sexual desire.
2. A prohibition against sexual abuse, including subjecting another person to sexual contact by persuasion, inducement, enticement or forcible compulsion; subjecting to sexual contact another person who is incapable of giving consent by reason of their custodial status; subjecting another person to sexual contact who is incapable of consenting by reason of being physically helpless, physically restrained or mentally incapacitated; and raping, molesting, prostituting or otherwise sexually exploiting another person; and
3. A prohibition against sexual harassment, including unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature, including name calling by offenders or staff.

Additionally, agency policy and procedures should address:

- The privacy of offenders
- Guidelines regarding visual surveillance of offenders by staff of the opposite sex not related directly to security interests
- Mandates regarding strip searches and "pat down" searches by staff of the opposite sex of the offender
- A requirement for immediate medical treatment and counseling for offender who are suspected victims of staff sexual misconduct
- A specific prohibition against retaliation by staff against offenders who grieve, or otherwise raise issues covered in the agency's policy, including the use of administrative segregation, loss of good time, or other actions negatively impacting the institutional life of the offender
- Confidentiality of offenders who report sexual misconduct

Slide 5: Other Considerations

- Remember – this is not just a "women's issue"
- Policy threaded
- Reviewed and updated (ACA model)
- Training is documented
- Agency culture is considered
- Consistent with state law

- Makes up for deficiencies in the law

Slide 6: Other Considerations Continued

- Decisions about:
 - Mandatory reporting by employee and sanctions for not reporting
 - Offender sanctions for “malicious” reports
 - Reporting methods/routes

The policy and procedures must clearly delineate the channels through which staff must report suspicions, including avenues for those who believe that their supervisor is ignoring their complaint, or whose supervisor may be involved in the sexual misconduct.

What do you do with “whistle-blowers”? Administrator’s actions to reward and/or protect staff or offenders who report allegations reinforce the agency’s zero-tolerance policies and sets up an environment open to future reporting.

Offenders required by agencies to report misconduct in a zero tolerance environment must have a clear definition of what constitutes misconduct and offenders must know:

- Where to complain
- How to complain
- What to expect after a complaint is made
- What their rights are
- What the consequences are for making false complaints
- How they will be protected during the course of an investigation and
- How to pursue complaints if they believe their allegations are being “covered-up”

Offenders know the culture of the facility: who the “big bosses” are, who can be trusted, who is weak and who is strong. They also know if the investigation process is credible. They know if previous investigations have been diligently pursued or ignored, or worse. While the culture of a facility can change, offenders will remain suspicious of this change until they have seen the agency’s new commitment demonstrated.

- Preventing Retaliation (staff/offenders by staff/offenders):
 - What do you do?
 - Move staff?
 - Move an offender?
 - How does that affect the investigation?
- Penalties for not Reporting

The agency's zero tolerance policy carries with it, a mandate for staff (volunteers, contractors, etc.) to report all suspicions about inappropriate staff/offender conduct. While the agency's internal culture may exert influences on staff to avoid reporting allegations, the agency's procedures must be clear and provide sanctions for those who fail in their reporting obligations.

- False or Malicious Reports (staff/offenders)

A "zero tolerance" policy and mandatory reporting brings concerns from staff about false allegations from offenders or malicious reports. Many agencies that have zero tolerance policies have found false reporting to be minimal once the offenders and staff see that their complaints are investigated and sanctions imposed for those who willfully make false reports.

Procedures for handling false allegations may have the unintended consequence of dampening reporting. Whatever procedures are put in place must consider this impact.

Agencies must also consider the difference between malicious or false reports and investigations that find that the charges cannot be proven one way or the other (unfounded).

Slide 7: Challenges and Dilemmas

- Leadership
 - Role modeling behaviors and commitment
- Culture and history
 - Unions
 - Past attempts to address sensitive issues
- Procedures are in "synch" with policy
- Training

The leadership in an agency should model the behavior they wish to see. It will be challenging to your agency to reprimand or prosecute behavior that is accepted as agency culture because leadership is conducting themselves in ways that are not in accordance to policies and procedures.

The culture and history of an agency can play a large role in the challenges faced in creating or revising policy. One example is the relationship an agency has with the union. If a good relationship is present, then it is likely that cooperation will be more forthcoming, however bad relationships with unions may make it hard to pass or revise a policy. Likewise, if you are trying to create a policy on a sensitive issue such as staff sexual misconduct, the other attempts and initiatives you have made in this endeavor will play a role in your policy's ability to be challenged.

Your agency will face many challenges if your policy and procedures are not in sync. What is written and what is acted upon should mirror each other in practice. As well, if your training is inadequate, you will face challenges in trying to apply your policies and procedures.

Slide 8: Challenges and Dilemmas Continued

- Offender programming should be:
 - Gender responsive
 - Inclusive
 - Have equality and parity
- Investigative protocols/practices:
 - Should demystify the internal affairs process
 - Outline the ability to conduct investigations

With the agency's zero tolerance policy and procedures implemented, then staff can be effectively trained. Staff involvement, buy-in and education, must take place before offenders become oriented. Staff need to feel comfortable about what will be happening and capable of appropriate responses to offenders. The next step is to have the offender orientation and education. Offenders need to be oriented about the agency's policies, reporting procedures, and the sanctions for false reports. The orientation should be language and developmentally appropriate for the population, and be presented orally (e.g., video, classroom presentation) for illiterate offenders. Reinforcement of the message must be scheduled at regular intervals.

Slide 9: Triage Your Policies and Procedures

- Your policies and procedures should cover the essential issues
- Address if there are there cultural or historical roadblocks that exist
- Have the inclusion of and commitment from your stakeholders for your policies and procedures
- Hold people accountable for breaking policies

Slide 10: Triage Continued

- Keep good records of policies and procedures as well as policy violations and procedures followed
- Policies and procedures need to be effective
 - Job descriptions, post orders
 - Philosophical basis for p/p
- Investigations can add values to your policies and procedures.

Slide 11: How Do Your Employees Know Your Policies?

- Informal (practices of agency employees) vs. formal (agency training) “education” of new employees and offenders
- Employees learn policies through your actions not what you tell them is the right way of conduct. (Example: “I know you learned to do it this way at the academy, but this is the way we do things around here.”)
- What exactly is “sex”?
- What happens if your policies and procedures do not mirror each other?
- Corruption
 - Subcultures, cliques, code of silence

Slide 12: What Makes Policy Effective

Policy is effective if it is:

- Understood by employees, volunteers, offenders (can tell you policy)
- Role modeled by supervisors, managers
- Can be understood, is realistic, guides employees to make good decisions
- Integrated into operations
- Aligns with state law
- Reporting occurs

Slide 13: What Makes a Policy Effective Continued

- Investigations are timely and professional
 - Conclusions reached
 - Employees cooperate
 - Disciplinary sanctions are consistent
- Medical and mental health support
 - Employees and offenders
 - Employee assistance programs

Slide 14: What Makes a Policy Effective Continued

- Messenger isn’t killed
- Prepare for the inevitable
- Leadership understands and acknowledges the aftermath of allegations and investigations

Slide 15: What Have We Learned?

- Leadership “essential”
- Policy and procedure lacking or useless

- HR issues need work (hiring, exit interviews, EAP programs, aftermath management)
- Training (Employee, volunteers, contractors, etc.)
- Operations don't match policy/procedure

Slide 16: Summary

- Written policy exists w/definitions
- Operational practices follows policy
- Behavior and philosophy is role modeled
- Training is effective for employees and offenders
- Leadership audits and reviews

Slide 17: Resources

- Policy Development Guide for Sheriffs and Jail Administrators
- Policy Development Guide for Community Corrections Administrators
- Developing/Revising Detention Facility Policies and Procedures (NIC)



VIDEO: MISSOURI DEPARTMENT OF CORRECTIONS

Tell the participants they will be watching a video made by the Commissioner of the Missouri Department of Corrections.

This video is used in all training classes as a tool to let staff members know that the leadership in the department is serious about their policies against staff sexual misconduct with offenders and violations of that policy will be taken just as seriously.

After video is completed lead a discussion about the video. Get reactions and thoughts from participants about their feelings regarding the video and its ability as a training tool.

MODULE 5: ACTION PLANNING

Time: 30 minutes

Module Objectives:

1. Describe the procedures to develop and present an action plan specifically for the participant's agency
2. Facilitate participant's receiving feedback and comments from other participants in order to fine tune the action plan

Equipment and Supplies: LCD Projector for PowerPoint® presentation; Action Planning Disk

PowerPoint®: Action Planning

Handouts/Articles in Participant Notebook: Action Planning (slides); Daily Action Planning (handout)



PowerPoint®: Action Planning

Slide 1: Action Planning

- Introduce the Action Plan activity that participants will be working on all week using the PowerPoint®.
- Refer participants to the Module 5 in their notebook.

Slide 2: Addressing Sexual Misconduct

- Objective: The action planning process is to help participants think more systematically and strategically about what they want to accomplish when they return to their agencies and to identify all the issues that can be emotional and political road blocks and assets.

Slide 3: Components for Team Review and Action Plan

- Leadership
- State law and policy
- Management practices
- Operational practices
- Offender programs and services
- Training
- Investigative policy and procedure
- Media relations
- Community relations and the external environment

- Institutional or office culture

Slide 4: Your Team's Assignment: Prepare an Action Plan

- Use action plan format on disk. You may be creative.
- Be specific; objectives must be measurable.
- Set your priorities.
- Be realistic in time lines.
- Delineate person(s) responsible – by name!
- Name the stakeholders
- Identify any fiscal impact and options – how you are going to address any fiscal issues

Slide 5: Action Plan Format

- Be specific and be measurable
- Establish deadlines
- Identify the person(s) who will be responsible
- Identify stakeholders who will be involved (to help or hinder)
- Prioritize the activities
- Identify fiscal impacts

Slide 6: Presentations

- You will have time throughout the week to work on the Action Plan and your 20 minute presentation.
- Sign-up sheet will be posted.
- Share the work with your team members
- Questions will be asked after your presentation.
- Help is available from the consultants as you develop your plan.
- You are representing your organization.

Slide 7: Your Team's Presentations

1. Summarize the discussions your team has had this week.
2. Identify YOUR organization's major challenge(s) and strengths
3. Describe the biggest "AH HA" for your Team as you considered all the issues discussed during this week
4. Present your Action Plan.
5. Be ready for questions

Reporting Out

Do your plan on the form on the disk provided. You will be given time during the week to work on the action planning but you may need to devote some

time in the evenings as well. On the afternoon of the fourth day, three groups will be presenting their action plans and the remaining groups will present on the last day of class. We want you to have measurable objectives and to prioritize your issues.

Answer these questions:

1. What are the key issues your team wants to address in your jurisdiction regarding staff sexual misconduct with offenders?
2. What are the challenges/barriers to addressing these issues?
3. What are the strengths/resources available to address these challenges?

Break participants into their teams and have them go to their designated meeting areas. Have the team select two people: scribe (recorder) and a spokesperson (to do the report-out). The Action Planning instructions are listed in the Participant Notebook under Module 5. Have participants place their action plan on the disk provided to them so that it can be shown on the big screen when participants give their presentations. The individual teams will be critiqued and reviewed by the full group, who will be asking questions.

MODULE 6: AGENCY CULTURE

Time: 2 hours and 15 minutes

Module Objectives:

1. Define agency culture and sexualized work environment
2. Describe how agency culture and a sexualized work environment contributes to sexual misconduct
3. Describe the "code of silence" and how it contributes to staff sexual misconduct
4. Describe gender differences in the work place and implications on staff sexual misconduct

Equipment and Supplies: LCD Projector for PowerPoint® presentation

PowerPoint®: Agency and Institutional Culture; Gender Differences

Handouts/Articles in Participant Notebook: Agency and Institutional Culture (slides); Gender Differences (slides)



PowerPoint®: Agency and Institutional Culture

Slide 1: Introduction

- Sexual misconduct doesn't arise out of nowhere.
- It is embedded in culture.
- Addressing sexual misconduct is about cultural change.

Slide 2: What Is Culture?

- It is an organization's way of life
- It is not inherent
- It is learned
- It is the sum of attitudes, prejudices, history, personalities and ethics of leaders and key staff, past and present.

Culture is not inherent, it is learned. It embraces attitudes, history, beliefs, values (what the culture beliefs is right), norms (shared rules on how to behave - often not recognized until somebody breaks the rules/norms), and decisions of past administrations,

Culture has a substantial impact on all phases of operations including staff sexual misconduct. An agency's culture is the sum of the attitudes, beliefs and prejudices of staff, the character of the surrounding community, the history of the operations and events in the institution, and the personality and ethics of past leaders. The culture can be positive or negative. Culture can differ among

agencies in the same state and in the same region. Culture can resist change or embrace it. In order to change culture, the agency administration must first recognize, understand and appreciate the existing culture. Observing relationships within the institution – staff-to-staff, offender-to-offender, and staff-to-offender will provide insight.

Slide 3: Some Components of Culture

- Beliefs: Shared explanations of experience
 - Example: You can't be promoted unless you attend the Boss' Christmas party and tell a dirty limerick.
- Values: What is considered right and good.
 - Example: If it's offenders vs. staff, the decision supports the staff member.

Slide 4: Some Components of Culture Continued

- Norms: Shared rules, "the way things are done"
 - Example: Don't volunteer for assignments
- So deeply held that they aren't even noticed unless they are violated.
- Norms are often more powerful than formal sanctions

Some of the things that help make up a culture in an agency include:

- Hiring process (qualities sought, selection process, staff backgrounds)
- Promotional process (How are promotions determined? Is it fair?)
- Daily operations (Do staff members take job seriously and professionally?)
- Role of middle-managers (seen as part of administration/ part of team)
- Accepted behavior (How does staff interact? Are they helpful to one-another?)
- Dress (offenders and staff)
- Physical structure (Does it affect safe movement of offenders? Are there unsupervised areas?)
- Offender/staff dynamics (How do offenders treat staff? How do staff treat offenders? Offender hierarchy)
- Diversity (Is there disparity between staffs' ethnic and racial make-up and offenders'? Is cultural sensitivity demonstrated?)

Participants need to make the connection between culture and staff sexual misconduct. Lead a discussion asking these questions:

1. What does culture mean?
2. How does culture develop?
3. What are the positive and negative elements of culture?

Slide 5: Idea vs. Real Culture

- Ideal : The values held in principle
 - Table of organizations
 - Policy and procedure
 - Formal incentives and sanctions
- Real: The way the culture really works
 - Hidden hierarchy
 - How things get done
 - Who people listen to

Slide 6: Some Influences on Culture

- History: critical events
- Hiring process: qualities sought, backgrounds considered, questions asked.
- Promotional process
- Role of middle manager
- Tone and style of the leader
- Staff-staff interactions
- Staff-offender dynamics

Slide 7: Some Influences on Culture Continued

- Dress
- Language
- Disciplinary process

Slide 8: Imbalance of Power

- Hallmark of correctional settings
 - Both institutional and community
- Affects those who have it and those who don't
- Distorts communication and interactions
- Those without power will seek to gain control, to equalize the imbalance
- Sexual misconduct shifts the balance of power (Offender has a secret on staff)

Staff sexual misconduct is often less about sex and more about “power”. An imbalance of power between staff and offenders, after all, is part of the correctional culture. In settings where authority and power exist for some but not others, there is a risk of abuse of that power and authority. It is important for those people working in these types of organizations to understand how power and authority affects not only those who have it, but those who do not, and how the entire organization can be affected when power and authority are

abused. The offender-staff relationship is **NOT** an equal one.

When inappropriate behaviors occur between staff and offenders, it often creates risk for the offender, staff and institution and the power balance shifts. A staff member may be involved too deeply in a situation that comes to a point of no return. Then the offender has control of the staff's job, his/her authority, and puts employees, offenders and the public at risk.

Lead a short discussion about consent.

Slide 9: The Code of Silence

- Another feature of correctional settings
- Involves:
 - Non-cooperation with management in critical events
 - Protection of self and co-workers
- Staff will risk discipline rather than violate this powerful norm.

An element of an agency's culture may include a "code of silence" or "blue wall of silence." A human instinct is to protect ourselves and to protect our co-workers. This can be a major impediment to identifying and investigating allegations of staff sexual misconduct. The code of silence manifests itself in non-cooperation with the agency's leadership or management during critical incidents and their aftermath, self-protection and protection of co-workers. The code of silence evolves when there is an absence of trust between the staff, managers, leaders and even the community. Distrust of the agency's internal investigation process can be another cause.

According to Neal Trautman, Ph.D. of the National Institute of Ethics:

- 46% of correctional staff responding to a survey indicated they had witnessed misconduct but concealed it
- *Officers reported that they went along with the code of silence because they feared they would be ostracized (16%), the offending officer would be fired or disciplined (8%), the officer him or herself would be fired (6.5%), they would be blackballed (5.3%) or the administration would not act (4.8%)*
- 8% of those admitting they withheld information were "upper administration"

Suggestions for controlling the code of silence include:

- Good ethics training
- More consistent accountability
- More open communication
- Anonymous reporting systems
- Protection for whistle blowers

Dr. Trautman concluded that the code of silence will develop in almost every agency in which:

- Employee bonds are strong

- Where corruption is the most pervasive
- Executives have turned their backs on whistle blowers

What does this mean for staff sexual misconduct? If an agency determines that mandatory reporting will be part of their zero tolerance policy for both staff and offenders, there may be imbedded resistance on the part of staff.

Slide 10: Another Factor: The Context of Supervision

- May differ in community vs. institutional settings
 - Degree of Isolation
 - Amount of Flexibility and Independence
 - Policy and Practice

Slide 11: Sexualized Work Environment

- Lack of appropriate boundaries
- Examples:
 - E-mail
 - Jokes
 - Favoritism
- Can be identified on walk through
 - Non-verbal interactions (how close people stand, whether they touch etc.)

Slide 12: Sexualized Work Environment Continued

- Begins with staff-staff interplay
- Offenders learn it by observing and listening to staff.

Ask participants: What are characteristics of a sexualized work environment?

Responses might include:

- Favoritism
- Lack of accountability
- Disrespect
- Sexualized jokes and behaviors are tolerated
- Loose policies (lack of appropriate boundaries)
- Pressure/expectations/certain social mores (off duty hours)
- “Locker room” talk – What are jokes like?
- Selling sex toys in the parking lot
- Bulletin board, what jokes, notes, people drawing things

- Inappropriate e-mails
- Provocative clothing
- A sexualized environment is not just “sex”
- The boundaries between staff and offenders become blurred
- Touching
- Stand too close when talking

A Rhode Island newspaper had a headline “Scantly-Clad Inmate Pops Out of Cake”. The story talked about a correctional officer’s birthday party while on duty.

Who is the one who takes inappropriate things off the bulletin board? Who talks to the staff member whose pants are too tight or tops are too sexual? The standards (e.g., policies) for a non-sexualized work environment need to be developed.

Is this sounding familiar? Does this seem like something we have been discussing the past several years regarding *sexual harassment* in the workplace? What are the similarities and differences between sexual harassment, sexual misconduct, and hostile work environments?

A sexualized work environment contributes to the risk of staff-offender sexual misconduct. There are two levels of a sexualized work environment in a correctional program:

1. Sexualized work environment among staff
2. What this environment means to offenders

It is not about sex, it is about security. It is about professionalism.

Verbal and non-verbal communications, dress, demeanor, and relationships among staff establish the work environment and the culture. Offenders observe staff interactions. Offenders learn the facility’s culture and tolerance for racist, sexist or other inappropriate language by listening to and observing staff. Offenders easily learn about romantic relationships between staff, either through overheard conversations, or through watching how staff talk, touch or look at each other. A sexualized work environment is often created first by staff-staff interplay.

Discussions about personal matters such as a staff’s off-duty activities, nicknames, sexual teasing, disrespect between staff, pranks or inappropriate jokes with sexual innuendos, are inappropriate and create a sexualized environment for offenders and staff. Harassment of staff by peers or supervisors, whether males or females, comments about physical appearance,

sexual preference, or other non-work related issues create a hostile and sexualized work environment. In sexualized work environments, professional boundaries between staff and offenders are blurred, or nonexistent.

Administrators can assess whether a facility's culture has evolved to a sexualized work environment by walking through the facility to:

- Observe how staff are dressed – clothing, jewelry, hair, nails, perfume
- Monitor the materials and photos posted on bulletin boards and common areas
- Listen to how staff communicate with each other
- Watch the non-verbal interactions among staff
- Watch and hear the verbal and non-verbal staff/offender communications

Now that we have talked about sexualized work environments:

- Do you agree with what we have talked about?
- Do you disagree? Why?
- What about off-duty conduct?
- How does a sexualized work environment impact staff sexual misconduct?
- How can you address a sexualized work environment?

Slide 13: The Key Question

- To what extent is informal culture aligned with and supportive of formal culture?
 - Task is to get it aligned and keep it aligned

Slide 14: How to Address an Unhealthy Work Environment: Change the Culture

- Establish a vision: make it a priority
- Redefine the issue:
 - It's not about sex, it's about public safety and security.
 - Public safety and security are compromised whenever boundaries breakdown and become personal/intimate.
 - Sexual misconduct is the most extreme form of violation of boundaries

Slide 15: How to Address an Unhealthy Work Environment: Change the Culture

- Educate staff

- For managers: there is liability
- For supervisors and line staff: it's a security/ public safety issue
- It is part of professionalism.
 - No more acceptable than for dentist/patient, priest/parishioners, law enforcement/motorist

Slide 16: How to Address Such an Environment: Change the Culture

- Make it clear that you take it seriously
 - Zero tolerance must mean zero tolerance
 - Consequence: Something has to happen to someone.
- Model the behavior
 - The culture will not tolerate hypocrisy.

Changing a culture in a correctional program takes time but can be done with the following steps:

1. **Make plan.** Establish a plan and vision with input from management and staff
2. **Educate.** Have management listen and then talk to staff, offenders, volunteers, contractors, unions and the community. Tell everyone the plan. Educate about dynamics and red flags.
3. **Get buy-in.** Find ways to get staff invested in the plan and vision. Help staff see how the changes and plan will benefit them.
4. **Accountability.** Hold everyone accountable. Strive for consistency. Set zero tolerance for violating ethical standards. Require staff to follow the rules and managers to enforce the rules
5. **Set up safe places to go to talk about problems.** We have all had thoughts or urges but what do you do if you need help before it develops.
6. **Role model.** Have management (and staff) role model appropriate behavior

There are three levels of responses:

1. Management – sets policy
2. Supervisor –watches for “red flags”
3. Line Staff – watches co-workers, has knowledge and skills to take someone aside and say, “what's wrong?”

There may not be a foolproof, pre-employment psychological test to weed out predatory people. Most often these issues are dynamic and the problems often surface around times of vulnerability. Staffs' lives change (e.g., her husband leaves for a younger woman and she feels lonely, insecure, unattractive) and an agency must be alert and responsive.



PowerPoint®: Gender Differences

Are there differences between men and women (male and female offenders and male and female staff) when it comes to sexual misconduct? The answer is yes. How the two genders “experience” it and “cope” are often very different. To understand these differences helps correctional administrators make key decisions about policy, procedures, training, investigation and reporting.

Lead a discussion with the group by asking the following questions:

1. What are the differences you have observed with male and female staff who have been involved in sexual misconduct?”
2. What are the differences you have observed with male and female offenders who have been involved in sexual misconduct?”

Ask participants to keep their responses in mind as you go through the presentation.

Slide 1: Behavior and Communication

- Men generally...
 - Guard information
 - Not inclined to share innermost thoughts and feelings
 - Reluctant to ask for help
 - Less verbal
 - Aggressive, competitive, less emotional
 - Conceal vulnerability
- Women generally...
 - Relating and sharing are important
 - rapport building, bonding, intimacy, closeness
 - Talk about their problems
 - Caretakers, Empathizers
 - Feelings, senses, emotion
 - Inclined to ask for help
 - Willing to expose vulnerability

Slide 2: Gender Differences

- Unique characteristics of female offender
- The average female offender is:
 - Age 30
 - Of a racial or ethnic minority
 - A substance abuser
 - Unmarried

- Experienced sexual or physical abuse since childhood
- A mother of at least two children
- Never completed high school
- Unemployed at the time of offense

Slide 3: The Female Offender

- Significantly more abuse and victimization than the average male offender
- Leave home at an early age, early pregnancies, lack of education resulting in diminished work skills and increased child-rearing responsibilities
- More familial responsibilities than the average male offender entering prison
- Two-thirds are single mothers
- Rapid growth of female offender population

Slide 4: Female Survivors of Abuse

- The majority of female offenders report prior sexual abuse
- More than half of female offenders reported prior abuse by spouses or boyfriend and nearly a third by parents or guardians
- Abuse continues through the childhood years into adulthood.
- Women are more at risk for unhealthy relationships with authority figures, particularly men.

Slide 5: Male Survivors of Abuse

- More than half of male offenders had been abused by parents or guardians
- Males indicated being mistreated mostly as children
- Males more likely than women to be abused in childhood by someone outside of the family
- Males are less likely to report abuse or seek help
- Males may question sexual identity and sexual preference more than women as a result of the abuse

Slide 6: The Impact of Victimization

- What is normal?
- Altered development of attitude towards self, sexuality, relationships
- Poor boundaries
- Addiction
- Promiscuity
- Use or be used

- Low self-esteem
- Powerlessness
- Feelings of mistrust, betrayal, fear
- Guilt and shame
- More susceptible to victimization
- Mental Illness

One factor is to look at past sexual abuse victimization history of offenders. Abused females, even into adulthood, may stay in the victim role and display passive-aggressive or self-destructive behavior.

When males have been sexually abused, they are more likely than a female to become an abuser of others. There may be just as much pain for men as for women but it manifests itself differently. This affects how to investigate and approach the issues surrounding sexual misconduct.

It is important to look at the differences and past victimization history in order to understand human behavior. When women heal, they often want to feel close and intimate. As men heal, they often lash out and are angry. Since the offender population has a higher incidence of past sexual abuse than the population at large, the conditions may be ripe for sexual misconduct. If offenders are emotionally needy and staff have conditions in their life that make them vulnerable (i.e., divorce, money problems, stress, depression), misconduct could occur.

Slide 7: Professional Ethics

- "... render professional service ..."
- "... uphold the law with dignity, displaying an awareness of responsibility to offenders ..."
- "... conduct personal life with decorum, neither accepting nor granting favors ..."
- "... recognize my office as a symbol of public faith ..."
– American Probation & Parole Association
- "... expects of its members unflinching honesty, respect for the dignity and individuality of human beings and a commitment to professional and compassionate service."

Slide 8: Staff Issues

- Counseling and treatment responsibilities vs. surveillance and control
- Power & control
- Inadequate preparation for supervising offenders and understanding their complexity
- Inadequate supervision

- Familiarity with offender
- Problems in personal life

Slide 9: Staff Issues

- Institution
 - Role ambiguity
 - Overtime
 - Overcrowding
 - High staff turnover
 - Code of silence
 - Familiarity with offender population
 - Personal problems
- Community
 - Role ambiguity
 - Power and autonomy
 - Field work, flexibility
 - Large caseloads
 - Inadequate supervision
 - Prior relationship with offender of their family
 - Personal problems

Slide 10: Motivation of Offenders in Sexual Misconduct

1. PREDATOR. Narcissistic, self-centered exploiters, manipulative, gratify own needs, no remorse
2. SITUATIONAL. Good professional history, erratic course in life, situational breakdown in judgment or control
3. NEEDY. Emotionally dependent, overly involved, not originally driven by sexual needs
4. PSYCHOTIC. Impaired reality, delusions of grandiosity and love
5. NAÏVE. Difficulty understanding or operating within professional boundaries due to deficit in social judgment
6. THRILL-SEEKER. Risk-taker, desires adventure, enjoys living on the edge

Slide 11: Staff Issues

- MEN
 - Stress
 - Substance abuse
 - Challenges in personal life
 - Power and control
 - Aggression and domination
 - Thrill, risk, escape

- WOMEN
 - Stress
 - Substance abuse
 - Challenges in personal life
 - Power and control
 - Establish less aggressive relationships with offender
 - Flattery, attention and affirmation

Slide 12: Ethics and Professional Boundaries

- Boundaries – limits, which protect the space between the professional's power and the client's vulnerability
 - Role, time, place and space, financial, gifts and service, language boundaries
 - Boundary crossings/Boundary violation
- Dual Relationships – refers to a professional entering into a personal, political, business, romantic, social or otherwise alternative relationship with an offender; often a precursor to sexual misconduct

Slide 13: Zone Effectiveness

1. UNDER INVOLVED. Apathetic, Distant, Dispassionate, Uncaring, Detached, Cold, Indifferent
2. ZONE OF EFFECTIVENESS. Mutual respect and understanding, Clarification of roles, Professional distance
3. OVER INVOLVED. Boundary Crossings, Dual Relationships, Sharing personal information, Showing favoritism, Horseplay, Sexualized conversations

Slide 14: Sexualized Environment

1. Staff to Staff
2. Male Staff to Offender
3. Female Staff to Offender
4. Offender to Offender

Offender Profiles

- **Offender profiles.** The histories of offenders give a perspective of why they may become involved with staff in inappropriate sexual relationships. These victimization histories also help us understand inmate responses during investigations. Some important facts are:
 1. **Mental illness:** Offenders are more likely to have a diagnosis of mental illnesses than the general population. National estimates indicate that about 19% of the general adult population suffers from

mental illness, while correctional populations suffering from mental illness is 24% for female offenders and 16% for male offenders. Those with mental illnesses may be less equipped to handle the stresses and challenges of correctional supervision, more at risk for exploitation by other offenders, and by staff; generally unaware or unable to distinguish between healthy and exploitive relationships; and at higher risk to become involved with staff sexual misconduct.

2. **Substance abuse:** Experts agree that substance abuse is a common method some people use to cope with a traumatic event such as sexual abuse as a child or a violent home environment. In a correctional setting, offenders may have an even greater need to try to control their environment around them – since incarceration by its very nature takes away control. One way that offenders may try to gain control over their environment may be by developing relationships with staff that may become unhealthy and lead to sexual misconduct.

3. **Prior physical and sexual abuse histories:** As mentioned earlier, studies suggest that prior victimization puts people at risk to unhealthy relationships with authority figures.
 - In 1997, 57.2% of women offenders reported prior sexual abuse. More than half of women under correctional supervision reported prior abuse by spouses or boyfriends, and nearly a third by parents or guardians. Most females stated that the abuse continued through their childhood years into adulthood.
 - More than half of men under correctional supervision reported having been abused by parents or guardians. Males indicated being mistreated mostly as children.
 - 89% of all offenders (males and females) who reported having been abused had used illegal drugs, compared to 82% who had not been abused.

Abuse	Male Offenders	Female offenders
Experienced some form of sexual or physical abuse prior to correctional supervision	16%	57.2%
Of those raised in foster care or home other than the parental home, percentage of risk for abuse	44%	88.7%
Experienced abuse prior to age 18	14.4%	36.7%
Abuse involved rape	3.1%	37.3%

Lead a group discussion using the following questions:

1. What does the data help us understand?
2. What does this mean to us as corrections professionals?
3. What are the implications for security, programs, training?

Staff Profiles

- **Staff profiles.** In the mid-1990s, there were 620,000 people working in the corrections field in the United States. Just as offenders bring with them the effects of the experiences and traumas of their lives, so do corrections staff.
- 1. *Influencing factors.* Factors that influence a person's behaviors and decision making on the job include age/maturity, race, sex, religion, education, culture, health, addictions, marital status, parents, children, death of family members, finances, job experience and family history.
 2. *Sharing information.* Personal boundaries are put to the test when staff choose to share or not share personal information with offenders. This can be particularly challenging when staff share common background or life experiences with the offender.
 3. *Substance Abuse.* The Substance Abuse and Mental Health Services Administration (SAMSHA) has compiled statistics related to the prevalence of illicit drug and alcohol abuse among workers (not just in corrections), ages 18 – 49, between 1994-1997. About 7.7% of workers reported current illicit drug use. 8% reported heavy alcohol use. Workers between 18-24 years were more likely to report illicit drug use than those 25-49 years of age. In 1997, statistics indicated that the higher the educational level of the worker, the less likely they were to report current illicit drug use.
 4. *Mental Health.* The 1999 Surgeon General's Report on Mental Health in the US indicated that there is an overall rate of about 19% of the general adult population with some sort of mental disorder ranging from mild to severe.

Both offenders and staff may have a higher risk of involvement with sexual misconduct as a result of any mental and emotional challenges in their everyday lives.

MODULE 7: MANAGEMENT AND OPERATIONAL PRACTICES

Time: 2 hours and 15 minutes

Module Objectives:

1. Identify areas of correctional management and operational procedures that impact staff sexual misconduct
2. Identify elements of effective management and operational procedures
3. Discuss ethics

Equipment and Supplies: LCD Projector for PowerPoint® presentation, white envelopes, index cards.

PowerPoint®: Management and Operational Practices

Handouts/Articles in Participant Notebook: Management and Operational Practices (slides); The Daily Dozen (handout); Red Flag Activity (handout);



PowerPoint®: Management and Operational Practices

Slide 1: Learning Objectives

- Clarify the ethical standards of employees and the agency;
- Identify the importance of establishing and maintaining professional boundaries
- Identify the issues associated with staff sexual misconduct
- Identify Red Flags that signal there is a problem

Key management issues:

1. Accountability

One of the most under-utilized areas to address sexual misconduct is accountability. Engaging offenders systemically is important when developing strategies regarding sexual misconduct. This helps with “peer monitoring” and allows for more of a piece and control of their environment.

Do you have a “hope-based” or “fear-based” environment? You will have less discipline problems if it is hope-based.

2. Selection of staff

How do we select and supervise staff, and continually keep staff sharp and responsive? How do we manage it? There need to be multiple reporting mechanisms for reporting sexual misconduct (like with sexual harassment)

3. Know your staff and offender population

Would people feel differently if there were a same sex relationship? Different races? With same sex, there can be a “shame” piece (they do not want their families to learn about it). One large case (Georgia) had a racial component. All the women were put into one dorm. The African-American offenders who were involved with a staff member felt like the white women were being too “naïve” and not strong survivors, so resentment built up. Management needs to know the population and the dynamics. By and large, the issues are much more complicated than the media made them out to be.

Slide 2: What Are Some of the Assumptions Surrounding This Issue?

- Staff should know right from wrong and govern their own conduct.
- Misconduct is effectively addressed by reviewing the organizations management and operational practices.
- The agency's responsibility to ensure everyone knows the policies
- Most staff want to do the right thing.
- The Code of Silence is not a significant factor

Slide 3: The Ethics Test Activity

Each participant will have in their notebook a copy of the “Ethics Test” As a group go through each question and discuss if the action is ethical or unethical. You can also break them into smaller groups and assign them two or three questions to discuss and have them report back to the large group about their responses.

Slide 4: Ethics

- Why are ethics important?
- Can you identify your own ethics?
- How do your employees learn your agency's ethics?

Slide 5: Ethical Decision Making

- Define dilemma
- Gather data
- List pros and cons
- Is it legal?
- Is it consistent with the agency's mission?
- What are consequences?

Slide 6: Ethical Decision Making Continued

- Make a decision – ethical or not

- Act on decision
- Live the decision

For discussion use the Ethics test handouts.

Slide 7: Where Do We Begin?

- Myths
- What we know and don't know
- Institutional Realities/ Community Realities
- Management and Operational challenges

Slide 8: We Don't Have a Problem

Burying your head in the sand still leaves the rest of your body vulnerable....

Slide 9: Myths

- No reports = no problem
- Offenders "consent" to involvement
- Staff are clear about professional boundaries
- Cross gender supervision causes misconduct
- Employees will tell us when there are suspected problems
- Raising awareness only invites problems

Slide 10: Myths Continued

- Orienting offenders invites malicious and false allegations
- Rookie officers are the problem
- Investigations only lead to he said/she said
- Prosecutors won't take cases, so why bother to investigate
- Misconduct is a male staff/female offender issue
- Arrestees are not in jail long enough for misconduct to occur

Slide 11: Realities

- Legislation with clear penalties can be an effective tool. Policies that back it up are essential.
- Policies need to be in place to direct staff. Policies must be explicit.
- Effective training is a part of a strategic response.

Slide 12: Realities Continued

- Leadership must come from the top.

- Zero tolerance and mandatory reporting are important ingredients in prevention
- Required behaviors must be role modeled
- Sexual misconduct associated with earlier breaches of professional boundaries.

Slide 13: Realities Continued

- Training must include contractors, volunteers etc.
- Staff fear and distrust internal investigations
- Investigations must be professional, timely and conducted by trained and supervised investigators.

Slide 14: Realities Continued

- There needs to be multiple reporting points for staff and offenders.
- Daily operations must support a “zero tolerance” atmosphere.
- Staff misconduct disrupts everything.
- An incident of sexual misconduct polarizes staff, offenders and leadership.

Slide 15: Role of Leadership

- Establish policy and procedure
- Preserve competent and efficient operations
- Support agency goals through action
- Assure operations support agency mission
- Take immediate and appropriate actions
- Initiate change where needed

Slide 16: Key Management and Operational Issues: Overview

- Staff/staffing patterns
- Physical plant/geographically disperse assignments
- Key control
- Offender assignments
- Discretion and autonomy
- Managing personal association with offenders

Slide 17: Key Management and Operational Issues

- Conflict of effective intervention
- On-duty/Off-duty behavior and employee misconduct
- Freedom of Association and Collateral Contacts
- Imbalance of power

- The issue of consent
- Offender issues

Slide 18: Key Management and Operational Issues: Staff Hiring Process

- Interviews, questions, make laws/policies known to applicants.
- Define staff sexual misconduct for everyone
- Orientation for new staff must be detailed and employees should sign statement acknowledging laws and policies.

Slide 19: Key Management and Operational Issues: Staffing Patterns

- Review posts. Look at gender-specific post needs and determine the most effective deployment of male/female staff.
- Have at least one same sex supervisor available each shift to do unannounced “walk around” supervision.
- Review post orders. Make sure they are effective for cross-gender supervision.

Slide 20: Key Management and Operational Issues: Staff Continued

- Staff must be required to maintain current phone and home address information with facility.
- Annually, formal reminder of laws and policies.

Slide 21: Key Management and Operational Issues: Staff Continued

- Make supervisors aware of the need to be observant of staff demeanor and behavior.
- Examples:
 - Unusual “off” routine schedule activity at work.
 - Change in appearance
 - Significant life crisis
 - Defensive about certain offender(s)/ownership
 - Volunteering for extra offender activities

Slide 22: Key Management and Operational Issues: Staff Continued

Rotate posts on some sensible basis- pay specific attention to those posts with the most frequent offender contact. May be limited by contractual language. Field supervision is more difficult to monitor.

- Employ all available means to minimize staff isolation from other employees.
- In institutions scrutinize weekend, holiday and visiting coverage.

Slide 23: Key Operational Issues: Physical Plant Operations

- Windows in doors, walls, etc.
- Use of blinds/ curtains
- Isolation of storage areas
- Isolation of professional offices
- Make good use of signs, bulletin boards
- Posted hours for showers
- Specific modifications for minimal privacy

Slide 24: Key Operational Issues: Key Control

- Review annually
- Who has or needs authority to issue, possess.
- No duplicate keys for convenience (Solder key rings).
- Minimize use of master keys- Look at supervisors and maintenance.
- Minimize “need” to move around.
- Enforce policy. Hold staff accountable.

Slide 25: Key Operational Issues: Offender Assignments

- Who has authority?
- Avoid ownership of offenders.
- Monitor use of non-peak working hours.
- Policy to rotate assignments (periodically)
- Isolation

Slide 26: Key Operational Issues: Offender Issues

- Specific dress code-enforce
- Give thorough orientation about rules, laws and policies.
- Inform volunteers and the offender’s family of laws and rules.
- Contraband searches (Check personal property for cards, letters, phone numbers, address books, jewelry, pictures etc.)
- Watch for unusual patterns

Slide 27: Key Operational Issues: Matrix Information

Chart: Name, Event, Who, Where, When

- Floor Plans for each building
 - Use colored dots for drugs, assaults, sexual acts etc.
- Analyze Blind Spots
 - Use drug dogs, post assignments, physical plant design.

Slide 28: Management Issues

- Staff must understand their duties, responsibilities and agency expectations.
- Staff do not automatically know what their boundaries are and how to maintain them.
- Management provides this through training and ongoing dialogue and reinforcement.
- Training must be open, interactive and allow staff to completely explore their responses to situations in real-life examples.

Slide 29: Discretion and Autonomy

- What actions do supervisors and management take to assure that staff are able to handle the decisions facing them in the field?
- Do supervisors recognize when staff is waving a “red flag” indicating potential involvement in over-familiar or inappropriate relationships with offenders?

Slide 30: Managing Personal Associations with Offenders

- Potential conflicts with their professional responsibilities;
- Agency needs clear policy on how to handle these situations – when, how, and to whom staff must notify supervisor;
- Agency needs procedures for oversight of these situations

Slide 31: On-duty and Off-duty Behavior

- Human nature is not generally dichotomous – what we do off the job is what we will do on the job.
- Staff and offenders share the same community.
- Staff live in that community and are observed by everyone – they are a direct reflection of the agency and its ethics.
- Agency guidelines related to mission of organization

Slide 32: Conflict of Effective Intervention

- Trend to more clinical approach to supervision;
- Blending of roles as “helpers” and “enforcers”;
- More difficult to maintain boundaries when working as “helper”, gaining personal knowledge of the offender;
- Agency should provide a forum for staff to discuss and deal with these conflicting roles.

Slide 33: Collateral Contacts

- Same potential danger for blurring of boundaries when dealing with offenders' families, friends, employers, treatment providers, etc.
- Agency needs to provide guidance and direction concerning collateral contacts and what are acceptable and unacceptable interactions.

Slide 34: Red Flags: Management Questions

- Do departmental practices provide for a safe and healthy environment?
- Do policies or practices support or alienate staff?

Slide 35: Red Flags: Management Questions Continued

- Do policies and procedures clearly support zero tolerance for sexual misconduct?
- Is there open communication between staff and supervisors?

Slide 36: Red Flags: Management Questions Continued

- Are facilities designed to minimize the isolation of staff and provide for privacy of the offenders ?
- Does Field Supervision allow for periodic review of casework/ supervision practices?

Slide 37: Red Flags: Management Questions Continued

- Are the agencies ethical standards and expectations known to all employees?
- Does the chain of command allow for staff to report personal problems and concerns before incidents without fear of retaliation?

Slide 38: Red Flags: Management Questions Continued

- Is there an effective Employee Assistance Program?

Slide 39: Conclusion

Staff and offenders look to us for guidance. We can minimize the incidence of sexual misconduct if management provides leadership by example!

ACTIVITY: RED FLAGS

Ask participants the following questions. Write the participant's responses on newsprint.

1. What are possible signs or "red flags" you see with *staff* who are involved in sexual misconduct? (A "red flag" is a generic term to describe possible problems or danger, such as in nautical settings, traffic, bullfights, etc.)

Examples might include:

- Deviating from policy or training
 - Change in appearance (clothing, physical)
 - Divorce
 - Not enforcing rules, allowing offenders to slip
 - Too much time with certain offenders
 - Trying to manipulate duty assignments
 - Taking up offender causes
 - Insecurity or low self esteem
 - Doing favors for an offender
 - No balance in life – work is everything
 - Personal debt
 - Conflicts with co-workers
 - Withdrawal
 - Rumors
 - Consistently volunteering for one assignment
 - Attitude that women aren't valued
 - Too much overtime
 - Coming in early and staying late
2. What are possible signs or "red flags" you see with *offenders* who are involved in sexual misconduct?
 3. What are the signs of a sexualized work environment?
 4. What knowledge about red flags have you learned from investigations in your agency?
 5. How might this red flag activity be used in training in your agency?

Go over the "Red Flags" handout with the participants; this is a list of examples that experts in the field have come up with. These are indicators of

the danger a staff member is in before committing an act of staff sexual misconduct with an offender.

Go over the “Daily Dozen” handout with participants. This list has 12 questions long that a staff member should ask him or herself every day. It makes the staff member aware of feelings and thoughts that s/he is having so that if a situation of staff sexual misconduct can be recognized, the staff member can seek help.

ACTIVITY: PASS THE ENVELOPE PLEASE

For this activity you will need plain white envelopes and index cards.

DIRECTIONS

Write, on the front of each business-size envelope, a question, concern, or issue dealing with staff sexual misconduct with offenders (this will need to be done ahead of time). Divide participants into groups of 4-6 people. Participants are to brainstorm answers to questions, issues and concerns, placed on the envelopes and then identify the “best strategies” to address the situation in question.

Ask a representative from each group to select an envelope. Each group is given 5-7 minutes to consider their best strategy to address the issue. You will instruct the group to write their response to the situation on a 3 x 5 card and places it inside the envelope.

After 5-7 minutes, the trainer tells the groups to exchange envelopes (going clockwise may simplify the process). The groups should not look at the cards inside the envelopes. The process continues until each group has considered each question and put their written responses in the envelopes. When all groups have considered each question, each group opens the final envelope they have in their possession and selects what they think is the best response from all the cards.

A spokesperson from each group presents the question/issue to the large group and responds to the following questions, asked by the trainer:

1. How did your group arrive at this one “best strategy?”
2. Were the other strategies realistic?
3. Have you experienced this in your agency?

MODULE 8: TRAINING

Time: 1 hour

Module Objectives:

1. Identify the elements of effective staff training and who should be trained
2. Identify effective prevention strategies

Equipment and Supplies: LCD Projector for PowerPoint® presentation, markers, newsprint.

PowerPoint®: Training

Handouts/Articles in Participant Notebook: Training (slides);



PowerPoint®: Training

Slide 1: Who wants to be the Boss?

Overcoming Objections to Orienting Offenders

Effective Training Components – Staff and Offenders

Ever so often an issue comes along that challenges us, and makes us pause to contemplate and question. It makes us look at how we are doing business. It makes us realize that training is needed. Sexual misconduct is a marquis issue similar to the “use of force” issue in the 1990’s.

Staff training should be structured to include:

- Written lesson plans (may need to be in different languages)
- Documented attendance
- Demonstration of knowledge gained
- Remedial training for staff who do not demonstrate the required knowledge
- Regular in-service training
- Specific training for contractors, vendors, volunteers or any other persons who have access to or supervise offenders at the facility or on community work details
- Specific training for newly hired staff and officers aimed at overcoming any negative culture

It is important to “be on record” that you are doing something regarding this

issue. Training can be a start. “Failure to train” and “failure to supervise” are liability issues for agencies.

Staff training should include information on:

- Cross-gender supervision
- Searches
- Offender privacy
- Staff rights to privacy
- Definitions of prohibited behavior
- Responsibilities of supervisors
- Obligations under mandatory reporting

Slide 2: Why Train?

- Prevention
 - Public backlash
 - Employee backlash
 - Litigation
- Protects employees
- Protects vulnerable offenders

Slide 3: Decisions

- Content of training
 - Complete policies/procedures
 - Identify goals of training – Impart information, provide or enhance skills, or both?
 - What kind of materials will be provided?
 - Employees, contractors, volunteers
 - Offenders, offenders’ families
- Length of training?
 - Pre-service
 - In-service

Slide 4: Decisions Continued

- Develop lessons plans
 - Measure knowledge gained
 - Document, document, document
 - Pilot train the material, revise
- Logistics:
 - How often will you hold the training?
 - Where will the training be held?
 - When will the training be held?
 - Who will receive training?

- Who trains?
 - Select trainers carefully
 - Train your trainers
- What about the information you receive via the training?

Slide 5: Training Commandments

- Train everyone:
 - Employees
 - Volunteers
 - Contractors, vendors
 - Personnel from other agencies
- Training is specific to the issue

Slide 6: Training Commandments Continued

- Train supervisors regarding:
 - Their responsibilities
 - Red flags
- Reinforce training:
 - Employee bulletins
 - E-mailed reminders
 - Leadership role models behaviors
 - Offender conditions of supervision
 - Offender handbook

Slide 7: Training Commandments Continued

- Training uses adult-learning, interactive
 - Training promotes dialogue
- Include skill development
 - Scenario-based training
 - Role plays

Slide 8: Include in Training

- Why are we doing this training? Now?
- Overview of issue
- Review agency policy on misconduct
- Provide local context
- Weave “culture” issues
 - Code of silence
- Review state laws
 - Discuss case law
 - Be specific about any court ordered requirements
- Demystify the investigative process

- What happens and when
- Retaliation

Slide 9: Include

- Review medical and mental health protocols
- Employee assistance program
 - Referrals before trouble starts
 - Where employees can turn for help
- Red flags
 - Employee
 - Offender
- Offender profiles

Slide 10: Include

- Human Resources' implications
- Reporting requirements
- Role during an investigation
- Retaliation
 - Protections
 - Prohibitions
 - Whistle blowers

Slide 11: For Offenders

- Implications – what does this mean for ME? My family?
 - In the institution
 - While on supervision
- Medical and mental health referrals
- False allegations
- Outcome of investigation

General Training Considerations

- It is important to understand the motivation behind why the training is being done in your jurisdiction. Is it incident-driven, mandatory, proactive/preventative, etc.? This can affect the tone of the training, the commitment level of trainers and participants and the reception by staff.
- You might be able to dovetail this training into existing training or conferences. Other related topic areas might include human resource/legal training on sexual harassment or staff security training. This can help legitimize the importance of the issue.

- Consider doing training in small groups (like sexual harassment issues or cultural diversity trainings). All of these issues deal with sensitive issues and are best done with small groups.
- Do scenarios in the trainings and have the group participate. What would they do? How should they respond? How could they have avoided the situation? Have the group you are training to create a scenario.

Discuss what we know other agencies have developed (e.g., Tompkins County, New York's volunteer orientation)

Discuss what resources participants have for training such as the National Institute of Corrections training and technical assistance.

Discuss NIC training opportunities that are currently available for the states.

Discuss NIC technical assistance opportunities that are currently available.

ACTIVITY: IDEAL TRAINING MODEL

Break participants into mixed small groups (not their team) of 4-5 people. Each group will have a particular topic and approximately 30 minutes to describe the following elements of an effective training program:

1. What should a program include?
2. What elements are the most critical?
3. How should the training be structured?
4. How often should the training be presented and to whom?
5. Who should present the training?
6. How do you overcome staff objectives or resistance?
7. How do you “sell” or justify training on staff sexual misconduct in correctional settings?

TRAINING ASSIGNMENTS

Group One – Newly hired employees

Group Two – In-service training

Group Three - Volunteers

Group Four - Contractors and vendors

Group Five – Stakeholders (prosecutor, criminal justice partners, community, advocates)

Group Six – Families of offenders

After 30 minutes of planning, have the small groups report to the large group on what they determined to be their ideal training model.

MODULE 9: INVESTIGATING STAFF SEXUAL MISCONDUCT

Time: 4 hours

Module Objectives:

1. Review the policies and procedures an agency must consider before beginning an investigation
2. Define the differences between criminal and administrative investigations
3. Review resources for investigators
4. Discuss personnel related issues during investigations
5. Document the agency's investigative process
6. Determine how to initiate and manage investigations
7. Identify how and where to locate relevant information
8. Recognize basic investigation issues such as how to conduct interviews, maintain the chain of custody, and handle medical evidence.

Equipment and Supplies: LCD Projector for PowerPoint® presentation, markers, butchers paper.

PowerPoint®: Investigation of Staff Sexual Misconduct

Handouts/Articles in Participant Notebook: Investigation of Staff Sexual Misconduct (slides)



PowerPoint®: Investigation of Staff Sexual Misconduct

Slide 1: Foundations of Successful Investigations

- Strong and clear policy on zero tolerance for misconduct
- Sexual misconduct policy
- Training of staff and offenders about policy
- Explain and demystify the investigative process
- Keep offender involved in process

Slide 2: Foundations of Successful Investigations Continued

- Staff, offenders, and community partners view process as credible
- Legal / Judicial partners view processes in compliance with applicable laws and criminal procedures
- Defined as public safety/ security issue for individuals, institution, and community partners

- Reasonable assurances of retaliation control against offender, witnesses, and community partners

Slide 3: Investigative Considerations

- Who conducts the investigations
 - In-house/ External Investigations
 - Agency Personnel
 - Outside Law Enforcement
 - Private
 - Onsite
 - Institution / Work Release Facility
 - Probation, Parole, Community Corrections Field Office
 - Off-site
 - Offender's residence / Work-site
 - Officer's residence / selected site
 - Remote locations

Slide 4: Investigative Considerations Continued

- Gender and ethnicity of investigative team members
- Expertise / qualifications of investigative team members
- Logistics of managing crime scene
- Community / partnership issues
- Size of your correctional system

Issues that may be uncovered from an investigation

Valuable information from investigations. Investigations can add value to agency operations, supervision, administration and leadership. Investigative findings, although potentially painful to an agency, can have help an agency in positive ways. This value can only be derived if the agency's administration chooses to see the findings as a *de facto* critique of agency operational procedures, written directives, and leadership. The event(s) that precipitated the investigation may be viewed as a "one time only" issue and dismissed by the agency's administration as irrelevant to total agency operations; or it can be viewed as a "wake-up" call for possible failures of policy, procedure, leadership or supervision.

Operational Issues uncovered by investigations may include:

1. Offender movement procedures;
2. Enforcement of offender rules;
3. Effectiveness of search procedures;
4. Working condition of locks, security cameras, etc.;
5. Whether maintenance is keeping pace with the needs;

6. Operational effectiveness of written procedures; and
7. Whether written procedures are being followed.

Administrative issues uncovered by investigations may include:

1. Effectiveness of staff training; quality of background investigations;
2. Use of the employee assistance program in meeting staff needs;
3. Effectiveness of monitoring staff overtime.

Leadership issues uncovered by investigations may include:

1. Role modeling of the expected behavior by the agency administration and staff;
2. Clarity of the agency's zero-tolerance policy to staff; and
3. Awareness of agency culture issues by the command staff.

Supervisory issues uncovered by investigations may include:

1. Ability of supervisors to operationalize written procedures
2. Quality of record keeping (logs and reports);
3. Ability of supervisors to recognize the signs of an offender or an employee who is under stress; and
4. Whether supervisors are using the employee assistance program to help staff.

At the conclusion of each investigation the agency administration and staff should consider how the findings translate to specific recommendations for change. These changes should not only be focused on avoiding the replication of the specific misconduct, but rather the larger issues of the effectiveness of the agency's mission and leadership. Such recommendations need to be translated to operational directives, included in staff training and discussed at staff meetings. Finally, the recommendations require follow-up to insure the changes are made and are effective in making the needed modifications to agency procedures.

Responding to Allegations

Administrative Considerations

1. Assign the Investigation

In deciding which investigator or team will complete an investigation, factors to consider include:

Gender – There is no absolute when making a case assignment based on gender, but consideration is critical. Factors that may affect the establishment of a rapport may include: the aspects of PTSD; history of prior abuse; differences in communication styles of each gender; circumstances of the allegations.

Conflict of interest – An assigned investigator should be required to inform the supervisor or administrator assigning investigations if there is any possible conflict for him/her in a particular assignment. Look for potential conflicts even before the assignment.

Team approach – For many reasons, a team approach to conducting investigations into allegations of staff sexual misconduct is highly recommended. It can help protect the integrity of both investigator and investigation, avoid potential conflicts of interests, and provide additional expertise and combination of experience.

Vulnerable or mentally challenged offenders – since some offenders have communication and comprehension issues, anatomical dolls may be used to help bridge communication, address barriers and get the detail that is necessary to make a case. Anatomical dolls help offenders “demonstrate” what happened when words or other communication is hindered.

2. The investigative outcome

In allegations where both potential *criminal violations* and *violations of agency policy and procedure* are present, a decision must be made if the agency will proceed with the criminal or administrative violation, or both.

While it is possible to pursue administrative violations after beginning an investigation according to criminal procedure, it is unlikely that it will be possible to do the opposite.

Certain procedures and protections are required for criminal prosecution, and if an investigation is pursued only administratively, it is likely that criminal procedures and protections will have been compromised by that point.

For example:

In most states sexual contact between offenders and staff is a criminal offense. If the agency proceeds according to administrative policy and not criminal prosecution, this will preclude pursuing criminal charges unless the agency can demonstrate it did not acquire evidence used in the criminal prosecution while conducting the administrative investigation.

There can be other dangers in initially pursuing allegations administratively if there are clear criminal violations.

For example:

Consider a case of staff having contraband such as books, magazines, food, etc., and giving that to an offender with whom staff is suspected of having a sexual relationship. If the agency pursues the introduction of contraband, an administrative violation, and decides not to pursue the criminal violation of the sexual relationship, a distinct message is sent to offenders and staff.

What message would this send to offenders and staff? Is this the message that an agency wants to send?

If the agency pursues criminal violations but the prosecutor declines prosecution or guilt is not sustained by the courts, the agency may still discipline staff for sustained violations of agency policy. The investigator must be familiar with the time frames that apply in the respective jurisdiction, such as those set by law, collective bargaining agreements, etc.

3. Making the decision on how to proceed

This is a critical step in the investigative process.

Recommended practices include:

- Establishing a protocol on who makes the decision to proceed criminally or administratively. [Best practice indicates that protocol development may include investigative unit supervisors, wardens, administration representatives, investigators, legal counsel and mental health professionals.]
- Maintaining confidentiality. Once the decision-making protocol is established, the actual decision should be made in a confidential manner, with only those persons prescribed by protocol.

Slide 5: Investigative Techniques

Initiating the Investigation

There are two approaches to starting an investigation:

1. Preliminary Inquiry

- Conduct a preliminary review before interviewing the subject(s) of the complaint and other witnesses. Do NOT interview the complainant or respondent before completing the initial review. Interviews will become contaminated without sufficient preparation, information and/or with multiple interviews

- Assume that the information in the allegation is true and proceed with that presumption.
- Gather information from documentary sources, such as logbooks, files, computer entries, etc. before interviewing witnesses
- Complete preliminary inquiry as quickly as possible. The timing of this part of the process will depend upon the nature of the allegation(s). Do not spend an excess amount of time in this part of the process, as information may lose its freshness or validity with too much delay. Also, it is critical to begin collecting evidence immediately to protect its integrity. Evidence can become contaminated and/or diminished with the passage of time.

2. Covert approach

- The possibility of taking this approach will be determined by the method that the complaint/allegation was received. If the complaint came from a third party, the investigation should be kept low key and as covert as possible. The objective is to quickly assess the validity of all or part of the allegations, alerting as few non-investigative persons as possible. If the investigator can obtain evidence of the suspected allegation in a controlled situation, the investigation will reach an objective outcome more quickly and with stronger evidence.
- The following are possible methods to use to assess verify, confirm or refute all or portions of the allegations. The availability of these methods will differ from jurisdiction to jurisdiction based on statutory restrictions, agency policy, and equipment / staff availability:
 - Phone check – either by a wiretap, list of phone numbers called;
 - Controlled phone call – have the alleged victim make a call which the investigator can monitor;
 - Monitor and review mail, logbooks, sign-in sheets, offender movement records, etc. to determine if the parties had opportunity;
 - Video monitoring – set up cameras in area where suspected activity is taking place, or review tapes of areas routinely under video surveillance

- Conduct interviews without the knowledge of any other parties (staff, offenders).

In some cases, it may be possible to conduct interviews with peripheral witnesses. If possible, arrange for the staff person or offender to be moved to another location for some stated reason other than your interview.

If complaint comes from one of the parties involved, conduct the investigation as discretely as possible, as one party will be aware that the investigation is proceeding.

- Move quickly but not hastily
- Provide direct access to investigative officer
 - “hot line” that accepts collect calls from offenders, co-habitants, families, and community partners
- Get detailed interviews and written statements
 - From complainant
 - From anyone in a position to corroborate
 - Offender, colleagues, employer, employees, treatment providers, family members, and staff colleagues

Slide 6: Sample Interview Questions

- What do you know about the staff member?
- What type of vehicle does s/he drive?
- What are the staff member's hobbies? Days off?
- Where did the staff member go on vacation?
- What type of home does the staff member have?
- Does the staff member own his/her home or rent?
- What type of music does the staff member like?
- What are the names of the staff member's family members, wife, kids, friends, pets?
- Where doe the staff member live?
- What is the staff member's telephone #?

Slide 7: Sample Interview Questions Continued

- Do you know the staff member's financial status?
- To whom does the officer owe \$?
- Has the staff member ever give you cards, tokens, notes, photos?
- Describe the staff member's physical characteristics?
 - Hair pattern on body
 - Type of underwear
 - Bellybutton
 - Scars

- Moles
- Tattoos / piercing
- Circumcised / uncircumcised
- Hygiene
- Skin pigmentation

Slide 8: Sample Interview Questions Continued

- When did your relationship begin?
- Did sex occur?
- When / Frequency?
- Where did sex take place?
- Did ejaculation occur?
- Who was the last person you saw before the act took place?
- Who was the first person you saw after the act took place?
- Have you told anyone about this?
- Description of area where event took place?
 - Detail
 - Locks
 - Keys
 - Announcements
 - Radio transmission

Slide 9: Investigative Techniques

- Use resources available in correctional and community settings
 - Property and room search of offender
 - Offender account activity
 - Telephone activity
 - Mail
 - Records –logbooks, roll calls, medical records if permitted
 - Potential Witnesses

Slide 10: Investigative Techniques Continued

- Remember possibility of physical evidence
 - Blood
 - Semen
 - Saliva
 - Skin
 - Hair

Slide 11: Investigative Techniques Continued

- Consider aggressive techniques

- Body wire
- Electronic monitoring and recording equipment
- Controlled calls
- Dialogue-approach-discussion
- Polygraph examinations of staff and offender to assess credibility

Slide 12: Investigative Techniques Continued

- Take it to the community
 - Release
 - Home confinement
 - Probation
 - Parole
 - Family members of offender
 - Former offenders

Slide 13: Managing the Offender

- Offenders' perspective
- Complex motives of complainants
- Ability to relate to the complainant
- Pace
- Offender management pending investigation

Slide 14: Managing Staff

- Written reports
- Confidentiality
- Interview with detailed notes
- What to do with accused staff member
 - Reassign
 - Administrative Leave without pay
 - Allow to resign
 - Employee Assistance Program referral

Employee Protections:

When staff is named in the allegations, administrative procedures need to respond whether the staff is a suspect, witness or even a victim.

Prompt actions should consider the following:

State Law – Some state statutes mandate specific employee protections, establish internal investigative procedures, and

guide the agency's operations during investigations into allegations of any staff sexual misconduct.

Agency Administrative Procedures – Agency written practices should address the work status of staff who is either the subject of the investigation or a witness. The procedures should address when staff are moved from assignments, when the staff should or can be placed on leave with or without pay, and how staff who are witnesses are protected, if necessary, from retaliation from their peers.

Agency Practice – Ideally, the agency's practice matches the written policy. If this is not the case, the administrator needs to be concerned with unwritten precedent.

Collective Bargaining Contracts – Many agencies operate within collective bargaining agreements that delineate many related issues including assignment of staff, removal from duty, pay status and notifications to subject employees at the initiation of an investigation.

Failing to follow procedure or legal mandates will jeopardize not only the investigation, but also the ability of the agency to terminate employees who are involved with misconduct.

Criminal vs. Administrative Process

When allegations of staff sexual misconduct have been received, the investigator or investigative team will have decided whether there are potential criminal violations, or only administrative violations.

Slide 15: Why Investigations Fail

- Administrative Reasons
 - Weak policy
 - Lack of support from the top
 - Poor teamwork
 - Poor recordkeeping

Slide 16: Why Investigations Fail

- Process
 - Leaks
 - Uncooperative complainants
 - Complainants with limited mental capacity
 - Uncooperative staff – code of silence

Slide 17: Why Investigations Fail Continued

- Poorly trained investigators
- Limited evidence
- Lack of commitment to task
- Poor linkages/ coordination
 - Law enforcement
 - Mental health
 - Medical
 - Prosecution

Slide 18: Remember

- Be tenacious.
- Be creative.
- Be intelligent.
- Keep good records.
- Know the law.
- Bring in other skill sets – lawyers, physicians, forensics, treatment partners, and available community resources

Applications of Garrity and Miranda

Miranda v. Arizona, 384 U.S. 436 (1966)

If a prison investigation involves the possible pursuit of criminal allegations, and becomes accusatory, then Miranda rights apply to both parties. If an agency pursues criminal violations against a respondent, that respondent is protected from making self-incriminating statements under coerced conditions, and without proper legal advice and representation.

Therefore, an investigator who conducts an investigation and who reaches the point where the respondent may be making self-incriminating statements, must advise the respondent of their rights under the Constitution as determined by Miranda.

It is highly recommended to include a written form, delineating the Miranda warning, signed by the respondent and witnessed by at least one investigator.

Garrity v. New Jersey, 385 U.S. 493 (1967)

In *Garrity*, the Supreme Court decided a case where police officers were ordered and compelled by internal investigators, with authority of a New

Jersey statute, to give a statement about alleged conduct. The officers were told that if they did not make the statement, they would lose their jobs. The officers gave the statements, which were later used to incriminate them in a criminal prosecution. The court found that states have the right to compel such statements as a condition of employment, but such statements cannot be used against officers in criminal prosecutions. What does this mean for law enforcement and corrections personnel?

If the respondent staff member is not provided immunity from criminal prosecution, any statement given under threat of adverse personnel action is unconstitutionally coerced. Such statements can only be compelled as a condition of continued employment if there is immunity from using the statements to self-incriminate in criminal court.

If the respondent staff member is granted immunity, but refuses to answer specific questions as part of an administrative inquiry, directly related to official duties, the respondent may be dismissed or suffer disciplinary consequences.

If the respondent staff member is granted immunity, and the answers to the questions as part of an administrative inquiry specifically related to official duties provide cause, the respondent may be dismissed or suffer disciplinary consequence.

It is highly recommended that Garrity warnings be given in writing and signed by the respondent staff member with at least one witness.

Collective Bargaining Agreements

When taking statements and interviewing staff who are covered by a collective bargaining agreement, investigators must proceed according to the requirements of that agreement.

Finding Information

The investigator should be familiar with all sources of available information (records, documents, logs, etc.) that can help determine who was where and at what time. These may include, but are not limited to:

- log books
- computer records and data entries
- offender movement sheets
- key logs
- electronic access cards
- work assignment sheets or logs
- mail room data

- telephone records and logs
- dormitory activity logs
- medical, dental and mental health unit logs
- count information
- video surveillance cameras and tapes
- educational paperwork, such as submission of homework or tests
- telephone tapes (many institutions record offender telephone conversations)
- wiretaps
- witnesses (search for the obvious and the not-so-obvious potential witnesses; if the list of witnesses appears all-inclusive, it probably is not).

ACTIVITY: INVESTIGATIVE MAPPING

For this activity you will need markers and butcher paper

Now that participants have examined the investigative process it is important to get a better understanding of how their agencies handle incidents of staff sexual misconduct.

Break the participants into their teams. Each team is given a large amount of butcher paper and some markers. Instruct each team may select a spokesperson (for the report-out session) and a recorder (to visually depict the decision “flow-chart” or map of how sexual misconduct incident is handled). Participants will have 30 minutes to address or “map out” how an offender complaint is received and what happens in their agency or jurisdiction. Additionally, participants should be instructed to map out what things de-rail the complaint along the way.

The following questions may help guide that discussion:

1. How are investigations handled from start to finish (from complaint to conclusion)?
2. Identify gaps in written policies and procedures
3. Identify where and how the system can be derailed
4. Identify ideas to be incorporate into their action plans

At the end of the 30 minutes, reconvene the full group. Have a representative from each state’s team tape the team’s chart to the wall. In the remaining time, have the representatives do the following:

1. Briefly describe the chart and what they learned from doing the exercise.
2. Were there gaps that became visually apparent?
3. Was everyone in agreement in what happened where, when, and by whom?

MODULE 10: HUMAN RESOURCES

Time: 1 Hour and 30 Minutes

Module Objectives:

1. Identify key employment issues that affect sexual misconduct cases
2. Identify ways employment practices can prevent staff sexual misconduct

Equipment and Supplies: LCD Projector for PowerPoint® presentation
PowerPoint®: Human Resource Issues: Employment Law and Staff Sexual Misconduct

Handouts/Articles in Participant Notebook: Human Resource Issues: Employment Law and Staff Sexual Misconduct (slides)

CASE LAW EXAMPLES

1. Garrity Issues

State v. Chavarria, 131 N.M. 172, 33 P.3d 922 (N.M. App. 2001). A corrections officer was placed on administrative leave pending investigation of alleged sexual misconduct with an inmate. The officer was informed, by his supervisor and an employee handbook, that if he did not cooperate with the police and take a polygraph test, he would be terminated. The officer filed a motion to suppress a self-incriminating statement and polygraph results because they were made under fear of losing his employment. The trial court granted his motion to suppress the evidence and the court of appeals affirmed, holding that the officer reasonably believed that he had no choice but to make statement to police as part of the internal investigation. The court noted that the State can either compel answers to job related questions as a part of an internal investigation, which then cannot be used in criminal investigation, or choose to prosecute, in which case it cannot terminate an employee for failure to answer job-related questions.

2. No Contact Policies

Keeney v. Heath, 57 F.3d 579 (7th Cir. 1995). Plaintiff guard at a county jail who had been forced to resign from her job when she married a former inmate sued, alleging that the county jail regulation forbidding employees to become socially involved with inmates in or out of jail violated her constitutionally protected right to marry. The court held that as long as the concerns

supporting the no contact policy were reasonable, the rule would withstand constitutional scrutiny.

Ross v. Clayton County, 173 F.3d 1305 (11th Cir. 1999). Demotion of a corrections officer who had allowed his probationer brother to live with him did not violate the officer's free association rights.

Via v. Taylor, 224 F. Supp.2d 753 (D.Del. 2002), appeal dismissed, 85 Fed. Appx. 874 (3d Cir. 2003). Plaintiff was a corrections officer who was responsible for supervising the work of inmates in the commissary on prison grounds. At one point, she supervised Mr. Via. Via was later released, and the plaintiff took him into her home as a boarder and later engaged in an intimate relationship with him. Her association with Via violated the correctional institution's code of conduct, which prohibited personal contact with a non-incarcerated offender. The court evaluated the intimate relationship and determined that it deserved protection from State intrusion. The court held that the regulation was unconstitutional, because, among other reasons, it did not relate to an important government interest. (Note: this trial court case is very much at odds with the two court of appeals cases cited above.)

3. Surveillance/Search Cases

Sacramento County Deputy Sheriff's Association v. County of Sacramento, 51 Cal. App.4th 1468 (1996), cert. denied, 520 U.S. 1124 (1997). County jail employees sued for 4th Amendment violations after discovering they had been subjected to video surveillance in the release office of the county jail, which was off limits to inmates. A concealed video camera without audio capacity had been installed in this office following almost a dozen incidents of inmates' money being reported missing. The court held that the employees had no objectively reasonable expectation of privacy while in the release office, especially given that they had accepted employment in a prison setting, and that the institution's security concerns were high on the other side of the balance.

Los Angeles Police Protective League v. Gates, 907 F.2d 879 (1990), further appeal on other grounds, 995 F.2d 1469 (9th Cir. 1993). A police department violated 4th Amendment rights of a police officer in attempting to engage in an administrative search of his garage and home and firing him when he refused to submit.

McDonell v. Hunter, 809 F.2d 1302 (8th Cir. 1987). The court held that a correctional institution must have reasonable individualized suspicion, based on specific objective facts, before subjecting correctional facility employees suspected of smuggling contraband to strip searches. The court further held that employees who have regular contact with prisoners could be subjected to urinalysis drug testing by uniform or systematic random selection, provided

that selection was not arbitrary or discriminatory. Individually targeted employee drug testing could only be conducted on the basis of reasonable suspicion of drug use within the past 24 hours. Employee vehicles parked where they were accessible to inmates could be searched without cause, provided such searches were done uniformly or by systematic random selection, but employee vehicles not accessible to inmates could only be searched on the basis of reasonable suspicion that they contained contraband.

4. Discrimination

English v. Colorado Department of Corrections, 248 F.3d 1002 (10th Circ. 2001). An African American correctional supervisor was fired following an investigation into allegations of sexual misconduct with an inmate. The investigation concluded that there was sufficient evidence for termination, based on DNA evidence, witness statements, and a polygraph test. The officer filed suit, alleging race discrimination. In support of his claim, he pointed to evidence including the replacement of an African American investigating officer with a white officer, the failure to reinstate the plaintiff after criminal charges were dropped, the fact that a white officer facing similar accusations was not terminated, and the existence of a general atmosphere of racial intolerance.

The trial court granted summary judgment to the employer and the court of appeals affirmed, holding that the replacement of the investigating officer was based on legitimate conflict of interest issues, the dismissal of criminal charges had no bearing on the evidentiary results of the internal investigation, the white officer who had not been terminated involved a factually dissimilar situation and two white officers facing analogous accusations had been terminated, and no nexus had been shown between the circumstantial evidence of racial hostility and the termination decision.

5. Defamation

O'Connell v. County of Northampton, 79 F. Supp. 2d 529 (E.D. Penn. 1999). A prison warden accused of sexually harassing a corrections officer was asked to resign by two county officials, which he did a few days later. Nine months after the warden resigned, an article detailing the sexual misconduct charge appeared in the paper. The warden filed suit, claiming a violation of his due process rights as a result of "effectively forcing him to resign, and a violation of his liberty interest in being free from imposed stigma as a result of the newspaper article." The court ruled for the employer on summary judgment, rejecting both claims.

6. Community Corrections

Campell v. Hamilton County, 78 F. Supp. 2d 713 (S.D. Ohio 1999), aff'd, 23 F. Appx. 318 (6th Cir. 2001). The court ruled on summary judgment for an

employer in a case in which a white male probation officer was fired for engaging in a sexual relationship with a probationer and making racist comments about the judge before which the probationer was to appear. The former probation officer charged that his employer had discriminated against him on the basis of race and had violated his due process and First Amendment free speech rights. The court found no evidence of discrimination where black officers had received the same discipline for similar offenses, and held that the probation department's interest in ensuring the loyalty of its officers to the court system outweighed plaintiff's free speech rights.

7. Due Process

Macklin v. Huffman, 976 F. Supp. 1090 (W.D. Mich. 1997). A prison food service employee was accused by a third party witness of sexual misconduct with an inmate. The employee was suspended without pay for two weeks pending investigation, and then reinstated with full back pay after the investigation concluded with the accusation left unsubstantiated. The employee then sued, alleging violation of his due process rights because no hearing was conducted prior to his suspension. The court held that the employee was not entitled to a hearing prior to his suspension where the suspension was temporary and lost wages were insubstantial, and the prison's interest in the investigation and in the safety of both the employee and the accuser warranted the suspension.



PowerPoint®: Human Resource Issues: Employment Law and Staff Sexual Misconduct

Slide 1: Difference between being an Employer vs. a Law Enforcement Officer

- Garrity
- This presentation focuses on employment law issues

Slide 2: What is your Context?

- Public employer
- Private employer
- Unionized employees
- Nonunion employees

Slide 3: What is Your Situation?

- Proactive: developing, instituting, enforcing policies
- Responding to allegations: investigation, discipline, termination

Slide 4: Public Employer

- Provisions of federal and state Constitution apply
 - 1st Amendment - freedom of association
 - 4th Amendment – privacy, surveillance
 - 5th, 14th Amendment – due process, equal protection
- Balancing test – weighing intrusion on employee's constitutional rights against weight of employer's interest

Slide 5: Freedom of Association

- No contact policies
 - Courts of appeals have upheld such policies in light of security interests involved
 - But there is one contrary trial court decision

Slide 6: Employer Interest that Can Support No Contact Policies

- Interests in on-the-job performance
- Interests in off-the-job conduct that implicates officer's fitness for duty
- Interests in public reputation of correctional institution

Slide 7: Privacy

- Reasonable expectation of privacy
- Correctional officers vs. community corrections

Slide 8: Surveillance

- Notice
- Methods
- Random vs. targeted
- Objective
- Balance between intrusiveness and employer need

Slide 9: Proactive Steps: Employee Surveillance

- Provide general notice about employee surveillance methods
- Restrict surveillance methods to those reasonably necessary
- Use even-handed procedures for selecting surveillance targets

Slide 10: Contractual Obligations

- Employment manuals
- Collective bargaining agreements

Slide 11: Investigations

- Union representation – Weingarten rights
- Criminal vs. employee discipline

Slide 12: Discipline

- Grievance and arbitration
- Due process rights under state law

Slide 13: Arbitration

- Both sides have right to legal representation and to present evidence
- Employer may not interfere with right of employees to testify at arbitration hearing
- Arbitrator is not required to follow finding of misconduct in another forum, even a criminal court

Slide 14: Proactive Steps in Union Context

- Run training sessions, which include clear statement of disciplinary rules
- Give union policy statement on disciplinary procedures for staff sexual misconduct
- Review collective bargaining agreement for inconsistent terms; request modifications if necessary

Slide 15: Termination and Resignation

- Employee references
- Defamation
- Allegations of discrimination

Slide 16: Law Suits

- Defamation
- Discrimination

Slide 17: Defamation

- “Qualified privilege” protects representatives of employers who give out allegedly defamatory information for legitimate business purpose
- Applies to former employee reference checks, provided that employer can show
 - Lack of malice
 - Good faith

- Belief in truth of statement made

Slide 18: Proactive Steps

- Establish and adhere to policy limiting dissemination of information about employee discipline
- Limit dissemination to “Need to Know” basis
- Implement policies protecting employee personnel files
- Implement consistent policy on reference checks

Slide 19: Discrimination

- Requires showing employee was treated differently than others similarly situated
- Pretext: is the employer’s reason the REAL reason?

Slide 20: Consistency Makes Good Policy

- Training supervisors
- Minimizing managerial discretion
- Treat like cases alike
- Consistently enforce disciplinary rules
- Maintain up-to-date personnel files
- Keep contemporaneous documentation of all infractions, even minor ones
- Protect employment information from general discussion

Slide 21: Miscellaneous Topics

- Psychological Testing
- Polygraph Testing

Slide 22: Psychological Testing

- No legal bar to using under federal law, EXCEPT as it may indicate discrimination
 - e.g., asking about religious views
 - Check with your legal counsel about state law bars
 - In public sector, privacy concerns re: intrusive questions may also be issue

Slide 23: Employee Polygraph Protection Act

- Many states have rules limiting or prohibiting polygraph testing; check with your legal counsel

- Federal law prohibits most polygraph testing in private sector but exempts public employees

MODULE 11: LEGAL CONSIDERATIONS

Time: 2 Hours

Module Objectives:

3. Identify the legal issues for both staff and offenders regarding cross gender supervision, Title VII, and Bona Fide Occupational Qualifications (BFOO)
4. Review how laws impact the scope, prevention, reporting and investigation of sexual misconduct

Equipment and Supplies: LCD Projector for PowerPoint® presentation

PowerPoint®: Legal Considerations; Cross Gender Supervision

Handouts/Articles in Participant Notebook: Legal Considerations (slides); Cross Gender Supervision (slides)



PowerPoint®: Legal Considerations

Slide 1: Thoughts about Litigation

- Litigation is last resort
- Locks people into positions
- Policy and practice developed in crisis
- Solutions are about vindicating winner
- Not necessarily what is best or practicable
- Hard to enforce

Slide 2: Your Role in Litigation

- Prevention – training and policy
- Insulate agency from liability – ensure procedures are in place to protect agency and officials
- Act – change policies and procedures even though litigation pending
- Restore confidence in agency
- Defend – if appropriate to do so
- Act – influence legislature
- Identify – areas of concern
- Improve culture and practice

Slide 3: Major Issues

- Staff Sexual Misconduct
- Cross Gender Supervision of Men
- Cross Gender Supervision of Women
- Gender specific assignments

Slide 4: Staff Sexual Misconduct

- Important Factors
 - Who raises the issue?
 - male offender
 - female offender
 - What has been your history?
 - complaints about misconduct
 - complaints about other institutional concerns
 - community standing
 - What is the context in which the issue is raised?
 - litigation
 - investigation
 - agency oversight

Slide 5: Most Common Legal Bases for Challenges

- 42 U.S. C. 1983
- 8th Amendment
- 4th Amendment
- 14th Amendment
- State tort claims

Slide 6: 42 U.S. C. 1983

- Creates a federal cause of action for the vindication of rights found elsewhere
- Key elements
 - deprived or a right secured by the constitution or law of U.S.
 - deprivation by a person acting under color of state law
 - don't forget volunteers and contractors

Slide 7: Smith v. Cochran, 339 F.3d 1205 (10th Cir. OK 2003)

- Smith was inmate at Tulsa Community Correctional Facility (TCCC)
- Required to work
- Worked with Department of Public Safety as part of sentence
- Assigned to janitorial duties at state drivers' license bureau
- Claims that supervisor sexually assaulted her from 11/97-8/98

Slide 8: Smith v. Cochran, 339 F.3d 1205 (10th Cir. OK 2003) Continued

- Sex was in exchange for favors
 - seeing brother at job
 - taking her to see her family (employee admits)
 - gifts from friends and family
- Reported after she left TCCC –claims she had reported before
- Cochran, the senior license examiner resigned

Slide 9: Smith v. Cochran, 339 F.3d 1205 (10th Cir. OK 2003) Continued

- Procedural posture – Motion for summary judgment
- Cochran says he is not acting under color of state law, just a fellow employee
 - Court says he was acting under color of state law. ODC had delegated responsibilities to K'or and so K'or stood in shoes of agency

Slide 10: Smith v. Cochran, 339 F.3d 1205 (10th Cir. OK 2003) Continued

- No 8th Amendment violation because he was not a prison guard or official
 - Court says 8th Amendment applies because he was delegated responsibilities of the agency

Slide 11: Smith v. Cochran, 339 F.3d 1205 (10th Cir. OK 2003) Continued

- No 8th Amendment right to be free from sexual abuse at time of incident
 - Court says law clearly established at time and state was on notice

Slide 12: Eighth Amendment

- Prohibits cruel and unusual punishment
- Legal standard is deliberate indifference
 - established in a prison rape case Farmer v. Brennan
 - two part test
 - the injury must be objectively serious and must have caused an objectively serious injury
 - the official must have a sufficiently culpable state of mind and have acted with deliberate indifference or reckless disregard for the offender's constitutional rights

Slide 13: What the Court Looks For

- Deliberate indifference to offender vulnerability -- safety or health
 - official knew of and disregarded an excessive risk to the offender's safety or health
 - official must be aware of facts from which an inference could be drawn that a substantial risk of harm exists and he must draw the inference

Slide 14: Important Cases

- Carrigan v. Davis, 70 F. Supp 2d 448 (D.Del. 1999)(sexual intercourse between an inmate and officer is per se 8th Amendment violation. Consent is not a defense), but see Phillips v. Bird, 2003 WL 22953175 (D.Del. 2003)
- Women Prisoners v. DC, 877 F. Supp. 634 (D.D.C. 1994)(sexual misconduct violates the 8th amendment of the Constitution)

Slide 15: Important Cases Continued

- Daskalea v. DC, 227 F.3d 433 (D.C. Cir. 2000)(plaintiff awarded \$350,000 in compensatory damages and \$5 million in punitive damages by jury)
 - abuse began when she entered jail
 - rumors that she was an FBI agent
 - two assaults
 - striptease

Slide 16: Daskalea v. DC, 227 F.3d 433 (D.C. Cir. 2000)

- Municipality's court ordered sexual misconduct policy could not insulate agency even though guard's acts were against policy
 - no training on policy
 - never gave policy to staff or inmates
 - policy not posted
 - municipality was indifferent to violations

Slide 17: Prison Litigation Reform Act

- Porter v. Nussle, 122 S. Ct. 983, 986 (2002) (exhaustion requirement of PLRA)
- Morris v. Eversley, 2002 WL 1313118 (S.D. N.Y. June 13, 2002) (woman challenging sexual assault during incarceration was not required meet PLRA exhaustion requirement once released)

Slide 18: Important Themes

- Sex in prison is a violation of the Eighth Amendment
- Special Responsibility for offenders – no consent
- Courts look to the practice of the institution in determining liability
- Protect employees and offenders who report misconduct

Slide 19: Code of Silence: Baron V. Hickey, 242 F.Supp.2d 66 (D.Mass. 2003)

- County corrections officer harassed by co-workers after he reported misconduct
- Reported co-workers playing cards with offenders
- Referred to as “rat”; people dropped cheese in front of him; tires slashed
- Complained on 30 separate occasions
- Claimed that he was forced to resign

Slide 20: Municipal Liability

- Monell v. Department of Social Services, 436 U.S. 658 (1978)
 - municipality is like a person who can be held liable under Section 1983
 - policy or custom must inflict the injury
 - inaction
 - failure to train or supervise
 - failure to investigate

Slide 21: Qualified Immunity

- No violation of federal law -- constitutional or otherwise
- Rights and law not clearly established at the time of the incident
- Official's action was objectively legally reasonable in light of clearly established legal rules at time of the action

Slide 22: Official Liability

- Did it happen on your watch?
- Were you responsible for promulgating and enforcing policy?
- Did you fail to act or ignore information presented to you?
- Failure to TRAIN, SUPERVISE, FIRE

Slide 23: Personal Liability

- Plaintiff must provide notice that the suit is against the official in her personal capacity
- Direct participation not required
 - actual or constructive notice of unconstitutional practices
 - demonstrated gross negligence or deliberate indifference by failing to act

Slide 24: Elements of Claim for Personal Involvement: Morris v. Eversley, 282 F. Supp.2d 196 (S.D. N.Y. 2002)

- Official participated directly in the alleged constitutional violation
- Failed to remedy the wrong after being informed through a report or an appeal
- Enforced a policy or custom under which unconstitutional practices occurred or allowed the continuation of such policy or custom
- Was grossly negligent in supervising subordinates who committed the wrongful acts
- Exhibited deliberate indifference to the rights of inmates by failing to act on information indicating that unconstitutional acts were occurring

Slide 25: Case Example: Riley v. Olk-Long, 282 F.3d. 592 (C.A. 8 (Iowa) 2002)

- Facts: Inmate brought Section 1983 action against prison warden and director of security under 8th amendment. Jury found in favor of inmate. Warden and director of security moved for judgment as matter of law or for a new trial.

Slide 26: Case Example: Riley v. Olk-Long, 282 F.3d 592 (8th Cir. Iowa 2002)

- Result: Prison warden and director of security were deliberately indifferent to the substantial risk of harm that guard presented to female inmates. Held personally liable to inmate in amount of \$20,000 against Sebek and \$25,000 in punitive damages from Olk-Long the warden

**Slide 27: Case Example: Riley v. Olk-Long, 282 F.3d 592 (8th Cir. Iowa 2002)
Continued**

- What happened?
 - officer made inappropriate comments to inmate Riley about whether she was having sex with her roommate
 - he came into her room after lockdown and attempted to reach under her shirt
 - grabbed her from behind and rubbed up against her
 - inmate didn't report above because "she doubted that she would be believed and feared the resulting discipline"
 - officer entered cell and raped her. She performed oral sex so she wouldn't become pregnant
 - another inmate witnessed incident and reported it
 - inmate placed in administrative segregation during investigation
 - officer terminated

- convicted under state law

**Slide 28: Case Example: Riley v. Olk-Long, 282 F.3d 592 (8th Cir. Iowa 2002)
Continued**

- Why?
 - prior to this incident other female inmates had complained
 - link had a history of predatory behavior
 - four prior investigations closed as inconclusive
 - collective bargaining unit precluded permanent reassignment
 - Sebek suspected but didn't take leadership
 - Sebek had opportunity to terminate but didn't

**Slide 29: Case Example: Riley v. Olk-Long, 282 F.3d 592 (8th Cir. Iowa 2002)
Continued**

- Why?
 - Olk-Long didn't think that officer posed a threat
 - collective bargaining agreement was no defense to failure to protect inmate safety

Slide 30: Lessons Learned

- Examine patterns in your institution
- Same officer accused many times
- Immaculate conception – inmate pregnancy
- Compromised grievance procedures
- Fear of Evilene “Don't bring me no bad news”
- History of inconclusive findings

Slide 31: Elements of Failure to Protect

- Prison official knew that the inmate faced a substantial risk of serious harm
- Disregarded risk by failing to take reasonable steps to abate the risk

Slide 32: Colman v. Vasquez, 142 F. Supp.2d 226, (2d. Cir. 2001)

- Facts
 - female inmate
 - incarcerated at FCI Danbury
 - in special unit for victims of sexual abuse -- the Bridge Program
 - random pat searches by male staff

- sexual advances by staff member
- complaint to psychiatrist who informed a Lt.
- no response by administration
- sexual assault in 1997

Slide 33: Colman Continued

- Procedural posture
 - motion to dismiss on basis of qualified immunity
- Standard of review
 - whether taking plaintiff's allegations to be true, plaintiff has stated a cause of action
- Legal claims
 - 1st, 4th, and , 8th Amendment

Slide 34: Colman Continued

- Fourth Amendment
 - recognizes split in judicial opinions on privacy rights of male and female inmates
 - gives weight to factual situation – female inmate in sexual abuse trauma unit
 - must look at nature of search, circumstances of inmate and penological justification for policy at issue
 - left open that cross gender supervision could violate 4th amendment
 - limits to motion to dismiss

Slide 35: Colman Continued

- 8th Amendment
 - Analyzed cross-gender supervision under 8th rather than 4th because of allegation of extreme emotional distress, Jordan v. Gardner
 - Sees case like *Jordan* because of previous knowledge of institution about trauma history of inmate

Slide 36: Colman Continued

- Failure to protect and train
 - warden and Lt. failed to investigate her complaints about the defendant
 - warden and Lt. Failed to discipline officer
 - warden Harden failed to properly train Lt. Meredith to investigate allegations of sexual misconduct and harassment

Slide 37: Colman Result

- Motion to dismiss on basis of qualified immunity denied
 - inmate informed a staff psychiatrist that officer had forcibly kissed her
 - informed warden
 - sham investigation with phony Office of Investigator General investigator

Slide 38: Corona v. Lunn, 2002 WL 550963 (S.D.N.Y April 11, 2002)

- Facts
 - Lunn assigned to investigate allegations of sexual misconduct
 - receives information that Ross had sex with Corona
 - Ross initially denies
 - Ross admits later to sex
 - Ross has history of mental illness

Slide 39: Corona v. Lunn, 2002 WL 550963 (S.D.N.Y April 11, 2002)

Continued

- Facts (cont'd)
 - Lunn takes statement
 - Lunn corroborates detail with records and review of facility
 - files a felony complaint against Corona
 - he is placed on administrative leave without pay
 - correctional officer Corona charged with sexual assault of inmate
 - acquitted after jury trial
 - reinstated with back pay
 - Corona files suit for false arrest and malicious prosecution

Slide 40: Claims

- False arrest
 - defendant intended to confine plaintiff
 - plaintiff was aware of confinement
 - plaintiff did not consent to confinement
 - the confinement was not otherwise privileged

Slide 41: Claims Continued

- No false arrest because Lunn had probable cause.
 - could rely on informant testimony notwithstanding her psychiatric history
 - corroborated her testimony
 - was objectively reasonable to believe that probable cause existed

- reasonable officers could have disagreed over whether probable cause existed

Slide 42: Claims Continued

- Malicious prosecution
 - defendant maliciously commenced or continued prosecution against plaintiff in a criminal proceeding that ended in plaintiff's favor
 - no probable cause

Result: In this case there was probable cause to arrest. Nothing happened post arrest to negate earlier probable cause.

Slide 43: Moreland v. Miami Dade County, 255 F. Supp.2d 1304 (S.D. Fla. 2002)

- Sherry Moreland, African American woman was a CO 1 in Miami Dade County Correction Department
- Began dating an inmate at jail and allowed him to move in with her when he came home on parole
- 4 months into cohabitation found out he was still hustling and reported him to PO

Slide 44: Moreland v. Miami Dade County, 255 F. Supp.2d 1304 (S.D. Fla. 2002) Continued

- P.O. put her in contact with detective
- She went undercover and got Strickland sentenced to another 20 years
- Promoted to sworn corporal officer a year later
- Someone dined on Moreland and internal affairs got involved

Slide 45: Moreland v. Miami Dade County, 255 F. Supp.2d 1304 (S.D. Fla. 2002) Continued

- Investigated her and charged her with
 - cooperation with other agencies
 - revealing official department documents
 - employee association with inmates, ex-inmates or a criminal element

Slide 46: Moreland v. Miami Dade County, 255 F. Supp.2d 1304 (S.D. Fla. 2002) Continued

- She was fired and appealed

- Hearing examiner found a violation for failing to cooperate with other agencies and involvement with an inmate
- Hearing officer recommended time served – she had been fired for 2 years
- County manager offered to demote her to a CO 1 rather than let her come back as sworn peace officer – she appealed again claiming race bias

Slide 47: Moreland v. Miami Dade County, 255 F. Supp.2d 1304 (S.D. Fla. 2002) Continued

- Court found that
 - Moreland had failed to make case for disparate treatment
 - that the county offered a legitimate, non-discriminatory reason for the demotion which Moreland couldn't rebut
 - no due process violation
 - no policy, custom, or practice

Slide 48: Conclusions

- Corrections officials can be held personally liable for poor investigations
- Corrections agencies can be held liable for failure to train or supervise
- Proactive policies can protect the agency and staff from liability.
- Corrections officials must know the culture of the agency
- Officials' actions and policies must have credibility



Power Point®: Cross-Gender Supervision

Slide 1: Cross-Gender Supervision Claims

- Challenges arise in a variety of ways
 - male offenders
 - female offenders
 - male staff to gender-specific posts
 - female staff to gender-specific posts
 - union challenges to management practice

Slide 2: Legal Bases

- 42 U.S. C. 1983
- 1st Amendment
- 4th Amendment
- 14th Amendment

- 8th Amendment
- Title VII

Slide 3: Themes of the Cases

- Very fact specific
- Who is doing the search or supervision?
- Who is being searched or supervised?
- What is the nature of the search?
- What is the nature of the supervision?

Slide 4: 1st Amendment

- Cross-gender supervision does not violate religious beliefs
 - Madyun v. Franzen 704 F.2d 954 (7th Cir. 1983)
 - Thompson v. Stansberry, 2002 WL 1362453 (Tex. App. 2002) (finding that cross-gender strip search did not violate male inmate's First Amendment rights)

Slide 5: 4th Amendment Standard

- Bell v. Wolfish, 441 U.S. 520 (1979) [visual body cavity searches of pretrial detainees by staff of the same gender permissible]
 - the scope of the intrusion
 - the manner in which it was conducted
 - the justification for the intrusion
 - the place in which it is conducted

Slide 6: 4th Amendment Standard Continued

- Inmates have no expectation of privacy in their cells. Hudson v. Palmer, 468 U.S. 517 (1984)

Slide 7: 4th Amendment/ Privacy

- Cross-gender supervision violates right to be free from unreasonable search and seizures
 - random viewing of male inmates by female staff performing routine duties okay if observation is inadvertent, casual and restricted or emergency (1st, 4th, 6th, 7th, 9th)
 - See Canedy v. Boardman, 16 F.3d 183 (7th Cir. 1994); Smith v. Fairman, 678 F.2d 1982 (7th Cir. 1982); Canell v. Armenifkis, 840 F. Supp. 783 (9th Cir. -OR 1993); Grummett v. Rushen, 779 F.2d 491 (9th Cir. 1985)

Slide 8: But...

- Visual body cavity searches during non-emergency may not be okay
 - Cookish v. Powell, 945 F.2d 441 (1st Cir. 1991)
 - Cromwell v. Dalhberg, 963 F.2d 912 (6th Cir. 1992)

Slide 9: But See...

- Wilson v. City of Kalamazoo, 127 F.Supp.2d 855 (W.D. Mich. 2000)
(Fourth amendment privacy rights violated where plaintiffs where denied all means of shielding their private body parts from viewing of others for at least six hours)
- Somers v. Thurman, 109 F.3d 614 (9th Cir. 1997) (harassment by female staff)
- Sterling v. Cupp, 290 Or. 611 P.2d 123 (1981) (equal employment opportunity does not create blanket necessity)
- Hudson v. Goodlander, 494 F.Supp.890 (D.C. MD. 1980)

Slide 10: And...

- Pat downs that do not include the genital area are okay
 - Smith v. Fairman (7th Cir. 1982)
 - but see Timm v. Gunter 917 F.2d 1093 (9th Cir. 1990)

Slide 11: Balancing Test

- Turner v. Safley, 482 U.S. 78 (1987)
 - Is the prison policy related to some legitimate penological necessity?
 - is there a valid rational connection between prison policy and the legitimate governmental interest asserted to justify it?
 - existence of alternative means for inmates to exercise constitutional right
 - impact of accommodation of constitutional rights on other inmates and staff and on allocation of prison resources
 - absence of ready alternatives evidence reasonableness of regulation

Slide 12: 8th Amendment

Men generally lose

Slide 13: Equal Protection

- You don't permit cross-gender searches and supervision of women but you do of men

- Oliver v. Scott, 276 F.3d 736 (5th Cir. 2002); Timm v. Gunter 917 F.2d 1093 (9th Cir. 1990)
 - men and women not similarly situated with regard to differences in security concerns, number and age or prisoners, kinds of crimes committed, frequency of incidents involving violence and contraband

Slide 14: Cross-Gender Supervision: Challenges by Female Offenders

- Far more successful by and large than with men
 - societal norms
 - able to articulate harm
 - documented past histories of physical and sexual abuse
 - view of male correctional staff

Slide 15: Legal Bases

- 1st Amendment
- 4th Amendment
- 8th Amendment
- Privacy

Slide 16: Important Cases

- Forts v. Ward, 621 F.2d 1210 (2nd Cir. 1980)
 - balanced employment rights of male staff and female inmates by allowing men on nighttime shifts but required prison to provide appropriate clothing for women
 - important consideration was impact on female staff members who would have been bumped from daytime shifts in order to accommodate policy
 - came via union challenge related to implementation of new policy

Slide 17: Important Cases Continued

- Jordan v. Gardner, 986 F.2d 1521 (9th Cir. 1993)
 - change in policy caused by grievance filed by female staff who did not want to do routine suspicionless searches
 - new tough warden who wanted random searches and more of them
 - scared that female staff would sue, went to gender-neutral policy

Slide 18: Jordan Continued

- Received warning from psychologists on staff prior to instituting policy

- Told that because of women's history of past physical and sexual abuse would cause harm
- Implemented policy 7/5/89
- Intrusive search involving kneading and squeezing

Slide 19: Jordan Continued

- Legal challenges
 - 1st Amendment
 - 4th Amendment
 - 8th Amendment

Slide 20: What the Court Did

- Ignored 1st Amendment
- Ignored 4th Amendment
- Based decision on 8th Amendment

Slide 21: What Jordan Stands For

- In certain circumstances cross-gender supervision can violate Eighth Amendment
- Must lay sufficient factual predicate for finding of emotional harm
- Limited to situation in particular Washington state facility

Slide 22: But See...

- Rice v. King County, 234 F.3d 549 (9th Cir. 2000)
- Male inmate
- Female staff did rough search of genital area
- Alleged past history of sexual trauma
- No 8th Amendment violation
- Prison had no reason to know of history

Slide 23: Colman v. Vasquez, 142 F. Supp.2d 226 (2d. Cir. 2001)

- Facts
 - female inmate
 - incarcerated at FCI Danbury
 - in special unit for victims of sexual abuse -- the Bridge Program
 - random pat searches by male staff
 - sexual advances by staff member
 - complaint to psychiatrist who informed a Lt.
 - no response by administration
 - sexual assault in 1997

Slide 24: Colman Continued

- Procedural Posture
 - motion to dismiss on basis of qualified immunity
- Standard of Review
 - whether taking plaintiff's allegations to be true, plaintiff has stated a cause of action
- Legal Claims
 - 1st, 4th, and , 8th Amendments

Slide 25: Colman Continued

- 8th Amendment
 - analyze under 8th rather than 4th because of allegation of extreme emotional distress, *Jordan v. Gardner*
 - sees case as like *Jordan* because of previous knowledge of institution about trauma history of inmate

Slide 26: Colman Continued

- 4th Amendment
 - recognizes split in judicial opinions on privacy rights of male and female inmates
 - gives weight to factual situation – female inmate in sexual abuse trauma unit
 - must look at nature of search, circumstances of inmate and penological justification for policy at issue
 - left open that supervision could violate 4th Amendment
 - limits to motion to dismiss

Slide 27: Community Corrections Case

- *Sepulveda v. Ramirez*, 967 F.2d 1413 (9th Cir. 1992) (male parole officer observing female parolee urinate for urinalysis violates parolee's fourth amendment rights, distinguishes *Grummett*)

Slide 28: Prison Officials Attempts at Same Gender Supervision

- Relevant Considerations
 - employee rights
 - inmate privacy
 - institutional security
 - inmate rehabilitation
 - institutional interests

Slide 29: Two Different Lines of Analysis

- Turner v. Safley
- Dothard v. Rawlinson, 433 U.S. 321 (1977) (gender found to be Bona Fide Occupational Qualification (BFOQ) for direct supervision positions in Alabama maximum security prison, but struck down height, weight and strength requirements)

Slide 30: Standard

Factual basis for believing that all or substantially all women or men would be unable to perform safely and efficiently the duties of the job involved

Slide 31: Turner Case

- Tharp v. Iowa DOC, 68 F.3d 223 (8th Cir. 1995) (male employees sued for their exclusion from posts in female housing unit. No violation of Title VII)
- Torres v. Wisconsin DOC, 859 F.2d 1523 (7th Cir. 1986) (male correctional officers at maximum security women's prison challenged their exclusion from posts in the living units. Upheld prison's decision)

Slide 32: Dothard Cases

- Gunther v. Iowa State Men's Reformatory, 462 F.Supp. 952 (8th Cir. 1979) (gender is not BFOQ for positions in men's reformatory beyond a certain position)
- See also, Harden v. Dayton Human Rehabilitation Center, 520 F. Supp. 769 (S.D. Ohio 1981); Griffin v. Michigan DOC, 654 F.Supp.690 (E.D. Mich. 1982) (all cases recognizing women's right to work in male institutions)

Slide 33: Other Important Cases

- Johnson v. Phelan, 69 F.3d 144 (7th Cir. 1995)
- Peckham v. Wisconsin Dept. of Corrections, 141 F.3d 694 (7th Cir. 1998)
- Everson v. State of Michigan Department of Corrections, Case No. 00-73133 (E.D. Michigan)

Slide 34: Jail Case

- Rucker v. City of Kettering, Ohio, 84 F.Supp.2d 917 (S.D. Ohio 2000)
 - gender was not BFOQ to work in male jail facility
 - but Ohio law was bar to Ms. Rucker's employment [same gender supervision]
 - city five-day holding facility
 - "civilian jailer"
 - small facility, five employees

MODULE 12: MEDIA

Time: 45 Minutes

Module Objectives:

1. Identify potential challenges in working with the community and the media
2. Identify the strengths and key strategies to work effectively with the community and the media

Equipment and Supplies: LCD Projector for PowerPoint® presentation

PowerPoint®: Developing a Community and Media Response

Handouts/Articles in Participant Notebook: Developing a Community and Media Response (slides)



PowerPoint®: Developing a Community and Media Response

It may be helpful to bring video clips from actual TV news stories regarding staff sexual misconduct with offenders or clippings from newspapers. Grab the participants' attention with the reality of this topic and the importance of having a good working relationship with the media.

Slide 1: Sources of Conflict

- Competing interests of your organization and the media;
- “Sensational” aspects of sex-related cases; and
- Appearance of secrecy or lack of being forthcoming by the agency.
 - past history

Slide 2: You Are Not in Control

Participants should be reminded that they are not in control of the media, the information it finds out, or the way the information given to them is reported.

The media does not always highlight the best of a situation and may not get all of the facts of a case or situation. Reporting is about sound-bites and sound-bites do not usually reflect a whole story.

Slide 3: The New Century

- Information age;

- sources of information everywhere
- 24/7 news media;
- You may be “today’s” news – it is a slow news day; and
- Deadlines for the media are NOW.

Slide 4: What Affects Your Relationship with the Media?

- Location in the US
 - quality of media
- Your agency’s reputation
 - past cases
 - what the community thinks of you
 - responsiveness to the media
 - quality of Public Information Officer (PIO)
 - openness or perceived openness of the “boss”
- Other sources of information
 - unions, prosecutor, investigating organization

Slide 5: Policies and Procedures

- Media policy exists
- Staff are trained
- PIO is:
 - Qualified
 - In the loop
 - Responsive
- Up-to-date media guide, materials

Slide 6: Establishing or Fixing Your Relationship

- The middle of a crisis is NOT the time to build a relationship with the media
- Communicate routinely with the media about what’s happening
- Build relationships with the reporters who routinely cover you
- Other ways?

Slide 7: Sexual Misconduct Allegation

- Decide who speaks
- Now or later?
- Opportunity to get out your message:
 - zero tolerance
 - conduct not tolerated
 - majority of staff are good
 - we take this seriously
- Tell staff something

A key element when developing a “reactive approach” is to set up a procedure that everyone follows in an event.

Discuss how an agency would handle unanticipated events/community responses?

A corrections department public information officer training is held twice a year at the NIC training center in Longmont, Colorado. This can be helpful in learning how to control your message and developing helpful responses to these emotionally charged and highly political situations.

Whenever possible, the agency's zero tolerance position needs to be communicated to the community – including the media. After orientation for staff and offenders, the public should be the next to learn about your zero tolerance policy. An announcement of the agency' zero tolerance position *after* an allegation has been made public will have little credibility.

Slide 8: Proactive

- The media may/will find out that you have a new initiative or policy regarding:
 - staff
 - offenders
- Motives
- Responses
- Involvement of the community leadership in initiative
- Involve your PIO staff in what you are doing

The agency's policies regarding public release of information are particularly relevant when allegations of staff sexual misconduct surface. The agency's public information policies should be well-known to the local media before events unfold. The policy has official sanction and follows state statutes concerning what information can be released.

Among other issues needing to be addressed by the media plan are:

- A Memorandum of Understanding (MOU) with law enforcement and prosecutorial entities regarding release of information, by whom, when and in consultation with whom;
- Staff training about who can speak for the agency
- Procedures for notifying individuals and organizations about events at the facility, including emergency situations and crime scenes;
- Templates for news releases;
- Listing of data and information that can and cannot be released routinely and during an investigation;

- Contact names and numbers at local agencies; and
- Procedures regarding routine contact with the local media and the community

Slide 9: Conclusions

- Media is always there
- Understand that you have limited control
- Find your circle of influence and work in it
- Use opportunities to get your message out

MODULE 13: PREVENTION

Time: 1 Hour

Module Objectives:

1. Identify preventative measures surrounding the issue of staff sexual misconduct with offenders
2. Identify what the top 10 preventative measures are

Equipment and Supplies: LCD Projector for PowerPoint® presentation

PowerPoint®: Prevention

Handouts/Articles in Participant Notebook: Prevention (slides)



Power Point: Prevention

Slide 1: Prevention Strategies

- Be pro-active
- Triage organization
- Review policies/procedures
 - Define behaviors
- Train staff, offenders, etc.
 - Policies and procedures
 - Skills
- Develop and know investigative protocols

Slide 2: Prevention Strategies Continued

- Memoranda of agreements with partners
- Involve stakeholders and advocates
- Demonstrate commitment to zero tolerance and ethical standards
- Hold everyone responsible

Slide 3: Investigations as a Prevention Tool

- Maintain data base
- Use information to identify patterns, names, etc.
- Assure confidentiality of information
- Plow information gained into revising policies, procedures and training

Slide 4: Top Ten Prevention Strategies

Ask participants to consider what they have learned throughout the week, and o brainstorm what they feel to be the top ten prevention strategies. Write the ideas on newsprint.

WRAP UP

- Review “Burning Issues” from Day 1. Be sure that all concerns and issues were addressed throughout the week.
- Encourage participants to complete their evaluation forms located in their Participant Notebooks, if they have not done so already
- Remind participants that technical assistance is available and where to go for resources
- Distribute updated participant lists
- Hand out certificates of completion for training
- Closure