

Addressing Sexual Abuse of Youth in Custody

Investigating Sexual Abuse of Youth in Custody

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Objectives

- Identify the foundations of successful investigations
- Understand why investigations fail
- Identify the considerations for an effective investigation

Objectives

- Understand the implications of Garrity
- Identifying useful investigative techniques (including interviewing staff & youth, evidence collection, etc.)

KY Office of Investigations

- 1995 Federal Consent Decree
- Dept. Juvenile Justice/Investigative Unit/14 Special Incidents created
- 2001 the Consent Decree expired
- In July of 2004 the Office was reorganized and staffed with personnel with a law enforcement background & training

KY Office of Investigations

- Utilize the full capabilities of the Justice Cabinet in investigations i.e. Forensic Exams (Living Autopsy), Polygraph, Forensic Lab, Reenactments
- Investigators currently are non-sworn & do not have the power of arrest

KY Office of Investigations

- Investigations are conducted for administrative purposes in conjunction with criminal
- Office is part of the Justice Cabinet and not under the authority of Department of Juvenile Justice (DJJ)

Foundations of Successful Investigations

- Strong & clear zero tolerance policy for staff sexual misconduct
- Strong investigative policy
- Training staff & youth about investigative process & policy

Foundations of Successful Investigations

- Explain & demystify the investigative process
- Keep youth involved in process
- Defined as public safety/security issue for individuals, institution, and community partners

Foundations of Successful Investigations (cont.)

- Reasonable assurances of retaliation control against youth, witnesses, and community partners
- Knowing the channels of reporting (including your mandatory reporting guidelines)
 - Time is the enemy
 - Reporting should be immediate

Foundations of Successful Investigations

- Staff, youth, & community partners view process as credible
- Legal/Judicial partners view processes in compliance with applicable laws & criminal procedures

Foundations of Successful Investigations

- Even if the youth recants from their original statement that something happened, or they denied something happened and you have some evidence to contrary, work the allegation as if it took place and you will be moving forward

Why Investigations Fail

- Attitude toward the victim
- Actions-Reactions-Lack of Action by 1st responders
- Complainants with limited mental capacity & murky past

Why Investigations Fail

- Lack of communications with investigative partners both internal & external
 - Law Enforcement
 - Mental Health
 - Medical
 - Prosecutors
 - GAL
 - Social Workers
 - Lawyers/ Public Defenders

Why Investigations Fail

- Lack of support for the victim's safety
- Timing & pace of the investigation
- Distrust of investigators
- Poorly trained investigators

Why Investigations Fail

■ Administrative Reasons

- Weak or non-existing policy
- Lack of support from the administration
- Poor teamwork
- Poor Recordkeeping **

Why Investigations Fail

- Not properly utilizing all of the available investigative tools
- Evidence that is
 - Limited
 - Weak
 - Poorly collected and preserved

Why Investigations Fail

■ Process

- Leaks
- Uncooperative victims
- Uncooperative staff- code of silence

Considerations for Effective Investigations

- Who will conduct the investigation
 - Agency Personnel
 - Outside law enforcement
 - Other outside agency

Investigative Considerations

■ Investigative Team

- Gender
- Ethnicity
- Expertise
- Qualifications
- Language ability



Investigative Considerations

- Criminal versus Administrative
- Garrity Issues

Considerations: Garrity

- What you learn independent of the interview of the suspect can be turned over to law enforcement
- Garrity does not prohibit law enforcement from turning over information to you
- Due to the “fruits” of the Garrity interview, you may want to save your interview of the suspect to one of the last things you complete in the investigation

Considerations: Garrity

- The administrative investigation can be conducted simultaneously with the criminal investigation
- The criminal investigation should have the higher priority and due to this, the administrative investigation may be put on hold so as not to interfere with the criminal

Garrity Administrative Warning

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

Garrity Administrative Warning

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

Garrity Administrative Warning

- ... I am not questioning you for the purpose of instituting any criminal proceeding against you. During the course of the questioning, even if you do disclose information which indicates that you may be guilty of criminal conduct, neither your statements nor the fruits (products, results, etc.) of any statement you make will be used against you in any criminal proceedings...

Kentucky's attempt to close the Legal Loopholes

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KY 510.020 Lack of consent

- (1) Whether or not specifically stated, it is an element of every offense defined in this chapter that the sexual act was committed without consent of the victim.**

- (2) Lack of consent results from:**
 - (a) Forcible compulsion;**
 - (b) Incapacity to consent; or**
 - (c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.**

KY 510.020 Lack of consent

(3) A person is deemed incapable of consent when he or she is:

(a) Less than sixteen (16) years old;

(b) Mentally retarded or suffers from a mental illness;

(c) Mentally incapacitated;

(d) Physically helpless; or

(e) Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency.

(4) The provisions of subsection (3)(e) of this section shall not apply to persons who are lawfully married to each other and no court order is in effect prohibiting contact between the parties.

Definitions

- **“Position of Authority” means, but is not limited to, the position occupied by a biological parent, adoptive parent, step-parent, foster parent, relative, household member, adult youth leader, recreational staff or volunteer who is an adult, adult athletic manager, adult coach, teacher, classified school employee, certified school employee, counselor, staff, or volunteer for either a residential treatment facility, a holding facility as defined in KRS 600.020, or a detention facility as defined in KRS 520.010 (4), staff or volunteer with a youth services organization, religious leader, health care provider, or employer;**
- **(b) “Position of Special Trust” means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor**

KY 510.060 Rape in the third degree

- (1) A person is guilty of rape in the third degree when:**
 - (a) He engages in sexual intercourse with another person who is incapable of consent because he or she is mentally retarded;**
 - (b) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than sixteen (16) years old;**
 - (c) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020; or**
 - (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in sexual intercourse with a minor under sixteen (16) years old with whom he or she comes into contact as a result of that position.**
- (2) Rape in the third degree is a Class D felony.**

KY 510.090 Sodomy in the third degree

- (1) A person is guilty of sodomy in the third degree when:
 - (a) He engages in deviate sexual intercourse with another person who is incapable of consent because he or she is mentally retarded;
 - (b) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than sixteen (16) years old; or
 - (c) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020; or
 - (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in deviate sexual intercourse with a minor less than sixteen (16) years old with whom he or she comes into contact as a result of that position.
- (2) Sodomy in the third degree is a Class D felony.

KY 510.120

Sexual abuse in the second degree

(1) A person is guilty of sexual abuse in the second degree when:

(a) He or she subjects another person to sexual contact who is incapable of consent because he or she is mentally retarded;

(b) He or she subjects another person who is less than fourteen (14) years old to sexual contact;

(c) Being an employee, contractor, vendor, or volunteer of the Department of Corrections, or a detention facility as defined in KRS 520.010, or of an entity under contract with either the department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects an offender who is incarcerated, supervised, evaluated, or treated by the Department of Corrections, the detention facility, or the contracting entity, to sexual contact. In any prosecution under this paragraph, the defendant may prove in exculpation that, at the time he or she engaged in the conduct constituting the offense, he or she and the offender were married to each other;

KY 510.120

Sexual abuse in the second degree

(d) Being twenty-one (21) years old or more, he or she subjects another person to sexual contact who is less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020; or

(e) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she subjects a minor who is under sixteen (16) years old, with whom he or she comes into contact as a result of that position, to sexual contact.

(2) Sexual abuse in the second degree is a Class A misdemeanor.

Investigative Techniques

- First and foremost consideration should be the health & safety of the victim
- Unless there is overwhelming evidence to unfound an allegation, action should be taken to separate the victim and accuser, at least until the investigation concludes

Investigative Techniques

- Consider constructing a timeline to put people in a particular location at a particular time
- If the allegation is of a sexual assault and it is fresh, the victim should be examined by a trained professional
- Prior to an incident, determine if you have a S.A.N.E. program in your area and what their policy is for examining juveniles

S.A.N.E. Program

- Sexual Assault Nurse Examination
- Provides a much more comprehensive rape exam and documentation and preservation evidence
- Will do the exam for administrative purposes (KY)
- Will examine juveniles over the age of 14 (KY)

Investigative Techniques

- Second most important consideration is the preserving and collection of evidence
- Area where the incident took place should be processed for physical evidence
 - Clothing of both victim and suspect
 - Bodies of both victim and suspect

Investigative Techniques

Potential DNA evidence

- Blood
- Semen
- Saliva
- Skin
- Hair

Other Potential Evidence

- Letters/notes written back & forth between the participates (search of resident/youth's cell)
- Gifts exchanged between participates

Other Potential Evidence

- Records-Logbooks, Telephone logs, Outgoing mail log, Victim's account activity Victim's Mail, Key check-out logs, duty rosters/timesheets, journals, etc
- Video/Live-streaming
- Cell phone records of staff member

Sample Letter

log,

4.25.07

It's coming time to say farewell. I guess we both have to look at the positives. We're not saying good bye, but see you later. Goodbyes are for relationships that never last. See you later's are for people like us who have a future. You say you love me, you say you gone off me, I just pray you don't eat your words and end up with [REDACTED]. If I see you on the streets with her, I'll kill you. real talk. But anyways, this letter is for you to sit back and do the time, and think about bashin me hard, from the back. Think about me deep throatin the whole thing. They don't call me ~~see~~ Hudini for nuthin. Make sure you write and call. my off days are. Mon, tues, fri. I don't go to work till 2:00 and I don't get off till 12:00. keep ya head up.

Always, [REDACTED]

Brittany Flowers
FKV Hudini ☺
[REDACTED]

Interviewing the Victim

- If other agencies are involved in the investigation, coordinate with them so that the victim is not subjected to multiple interviews
- Interview as early in the investigation as possible
- The person who talked with the victim first, initiating the investigation, should be interviewed and if they are staff, required to prepare a detailed memo of that interview

Questions for the Victim

- Did the suspect ejaculate?
- Where did he ejaculate?
- Suspect physical characteristics
 - Hair pattern of body
 - Bellybutton
 - Scars/Moles
 - Tattoos/piercing
 - Circumcised/Uncircumcised
 - Hygiene
 - Skin Pigmentation
- Did you know the staff member prior to custody?
- When did the relationship begin?
- What occurred?
- When/Frequency?
- Where did act take place?
 - Details
 - Locks
 - Keys
 - Announcements
 - Radio transmissions

Questions for the Victim

- 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? Whom? When?
- Do you know how to contact the staff outside of the facility? Home/Cell phone #?
- What are the names of the staff's family members, wife, kids, friends, pets?
- What type of music does the staff member like?
- 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?
- Has the staff member ever given you cards, tokens, notes, photos?

Additional Potential Witnesses

- All youth on the pod with the victim
- Any youth who may have been on the pod and recently moved or released
- Family of the victim
- Fellow staff members
 - Floats
 - Supervisors
 - Control Operators
 - Counselors

Aggressive Investigative Techniques

- Body Wire
- Controlled Calls
- Computer
 - Examine Staff's Office Computer
- Polygraphs
 - Victim
 - Suspect

SPECIAL CONSIDERATIONS

YOUTH ON YOUTH
SEXUAL ABUSE

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Staff

- In addition to investigating the assault, staff should be investigated for a lack of supervision
- If you have sexual offenders in your program, staff should receive additional specialized training in dealing with this population

Additional Considerations

- Forcible acts are crimes and should be investigated in much the same way as staff on youth
- The alleged offender is entitled to his/her constitutional rights and should be so advised.
- Most are represented by DPA on the charges that got them detained or committed.

Additional Considerations

- “Consensual” sex acts should be investigated to determine if a crime has been committed and for a supervision issue with staff
- Law enforcement in KY is reluctant to investigate misdemeanor crimes
- Involved youths should be held accountable administratively for their behavior (Treatment Team)
 - Loss of privileges
 - Loss of phase

Additional Considerations

- In KY, DPA has attempted to intercede in administrative matters with youths and it has been ruled, they are treatment issues and they are not appealable
- Youths should be separated from each other
- Youths should be examined medically i.e. STDs
- Staff should be held accountable for supervision if act occurred on their watch, if it was preventable

Investigators Should

- Document completely everything they do in the investigation
- Adapt the investigation to the facility
- Know their investigative resources
- Know how to use technology effectively
- Understand evidence collection & chain of custody
- Include other agencies
- Prepare before you get an allegation

Remember

- Be tenacious
- Be creative. Think outside of the box
- Keep good records Document-Document-Document
- Know your agency's policy and procedures & state & federal criminal laws
- Bring in other skill sets
 - Lawyers
 - Physicians
 - Forensics
 - Treatment Partners
 - Available community resources

Questions

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