

Web Chat Transcripts
PREA Implications for Juvenile Justice Agencies
March 21, 2008
NIC/WCL Project on Addressing Prison Rape and Smith Consulting

Leader: Good afternoon everyone, I am going to get started. Welcome.

Leader: I hope that all of you have had the opportunity to review the PowerPoint and to watch video. It should have provided the basic information for us to have a productive chat.

TEAM3: How does PREA impact culture and operational practices?

Leader: How do you see it impacting PREA?

Leader: When we talk about operational practices, we really mean the things that you do on a daily basis that have an impact on preventing sexual violence. What do you do or what do you think you should do?

TEAM5: How are other states addressing PREA in terms of policy? One broad policy or several that address different aspects.

Leader: There are a couple of things going on. First, developing a single policy; second, threading prevention, investigation, victim support and discipline throughout all policies; third, several are doing an overall policy review with the Moss Group. We are a part of the policy review team. The moss group sends out a policy review guide with questions that can jumpstart and target the policy review process

Leader: What are you all doing in terms of examining policies to address PREA?

TEAM3: Here we are going to have to develop a whole new policy. We have not addressed PREA in any of our current policies

Leader: I think it is important to also think about the kinds of policies that might be affected. Can folks pipe in with likely policies that would be affected?

TEAM1: We have developed a new PREA policy

TEAM3: Investigations

Leader: Yes, investigations, for sure. TEAM1 did you do a stand alone policy or make changes to a number of policies?

TEAM1: It is still in draft form. We will review other existing policies to ensure the PREA elements are included or modified to include PREA in existing policies

Leader: In addition to investigations, I think it is also important to look at supervision, classification, mandatory reporting, training and medical. Are there others that you all are looking at? I would also be interested in your supervision policies. Do you do cross gender supervision of youth and if so, in what circumstances?

TEAM3: We do, we are having difficulty recruiting male staff and currently we have female staff supervising male youth across our shifts

TEAM1: Yes we do cross gender supervision but never as the primary or sole person responsible for the supervision (support)

Leader: Is the same true with female youth? Do you make distinctions between transportation and other more sensitive areas like housing units, showers and other disrobing events? That is definitely an area where they will be standards.

TEAM3: We do not have female staff monitor showering of male staff. Transportation no, no female can be present if a male youth is to disrobe.

TEAM1: All disrobing events are supervised by same sex staff, when females are transported a female staff person accompanies

Leader: TEAM3, what is the skill you are missing by having primarily female staff?

TEAM3: We are not just getting enough male applicants-- if we do they usually do not pass our criminal background checks.

TEAM6: At our facility, we do have female staff supervising units. Showers are given on the unit but the residents have privacy curtains to disrobe while in the shower. As far as transports, at least one male staff accompanies the transport in case disrobing or required searches are conducted.

Leader: TEAM3, I hear you on the background checks which are essential. The same is true throughout the corrections system. I am going to continue this discussion, but I also want to raise another issue that was a tough issue during our training -- adolescent sexuality. What do you all do to teach kids and staff about age appropriate healthy sexual behavior and how to address that in institutional settings?

TEAM5: In our state, there has to be one staff member of the same gender providing supervision at all times

TEAM6: We have a HIV Awareness/Sex education class that the residents participate in.

TEAM3: We have a health masculinity class though we do not have any training or specific education regarding adolescent sexuality

Leader: TEAM6, does that program address sexual behavior internally? Do staff and youth receive training on staff/youth or youth/youth sexual behavior -- prohibitions, sanctions, etc?

Leader: TEAM3, what about girls?

TEAM4: We center our information around healthy boundaries, appropriate relationships and following basic program rules that encompass all of these.

TEAM7: We'd be interested to hear whether PREA applies to private programs

TEAM3: Yes we offer safe sex programming, HIV and sexually transmitted diseases

TEAM6: We provide pre-service and in-service training regarding PREA and sexual harassment. We are like TEAM3 in that specific education regarding adolescent sexuality....it is very limited. Our policies address staff/youth and youth/youth and the sanctions for such inappropriate behavior.

Leader: I know that sexual experimentation and boundary crossing are issues. How do you address them? Do you have a continuum of sanctions depending on whether behavior was forced or not. I understand that with regard to staff/youth stuff that doesn't apply but what about youth-on-youth stuff which is very hard.

TEAM3: We do the same regarding youth-on-youth, staff-on-youth inappropriate behavior. Regarding youth-on-youth, we do formal investigations, and upon the findings we will issue sanctions.

Leader: What are the sanctions? You criminally prosecute both youth and staff?

TEAM3: We only determine substantiated or unsubstantiated.

TEAM5: We have a zero tolerance for sexual behavior regardless of whether it is consensual or coerced

Leader: I did not forget the question about private residential facilities and PREA application -- will get to it.

TEAM3: Same here, though staff tends to minimize consensual youth on youth sex and it is under reported.

TEAM6: We would report any substantiated incidents to the Department of Children's Services. They would investigate and presumably prosecute the adult.

Leader: I understand zero tolerance, but what does that mean -- administrative, criminal, new juvenile charges?

TEAM3: For youth-on-youth cases will do administrative and criminal sanctions depending on the findings of investigative services with staff-on-youth-- termination and criminal charges are filed.

TEAM1: TEAM6, what constitutes substantiated?

Leader: Would you report substantiated incidents of consensual youth-on-youth to children's services or just that involving adults?

TEAM3: That the investigators determines that the allegation occurred.

TEAM1: Are these your internal investigators?

TEAM3: Yes

TEAM6: The allegation is confirmed. We do not allow "consensual" involvement...it would be reported just like staff.

TEAM1: We do simultaneous investigations (internal review and Institutional Abuse report). Law enforcement is also included according to the nature of the offense.

Leader: Okay, moving on to PREA and residential facilities. Yes, they are covered even if they are private. It is the responsibility of agency to make sure they are trained and comply to with PREA requirements. We have a long memo analyzing this we will email it to the group. Your situation may be a little different so you should check with your legal counsel to see how it applies.

Leader: PREA also specifically covers facilities run by private organizations.

TEAM5: Is the state agency that regulates private operators liable if they fail to comply with PREA?

TEAM1: Who is responsible for advising the private or for profit providers of the PREA requirements?

TEAM7: Would it then also include staff secure group homes for juveniles as well?

Leader: Liability is really not the issue since PREA doesn't create a private cause of action. No one is going to sue you and cite to PREA. It is really about compliance with the law. Failure to comply has consequences -- loss of funds, etc in the statute. Now as to state agency that regulates private operators, you would need to bring them to the table. They could certainly be named in a civil suit under 8th or 14th Amendment or state tort claims.

Leader: Yes, to including staff secure group homes -- I assume that you mean group homes with juvenile agency staff where kids live but go to school and the like.

TEAM3: What about State Agency Liability regarding contracted providers?

Leader: As to who informs private agencies, I would hope that if you contract with the state, the state includes the requirement to comply with PREA in the contract and that the contract monitor is monitoring it. However, private agencies also need to do their own in-house training and risk management.

Leader: There is state agency liability; whenever agency delegates duty to another, both the state and the other agency can be liable as state actors under section 1983.

TEAM4: That is how it works here. We have contract provider agencies staffing our programs and they must abide by our policies and procedures and participate in our trainings. We hold regular provider meetings where information/issues can be addressed.

Leader: Great TEAM4; you have to do that because when the rubber meets the road, you want it to be clear that they -- private facilities and staff -- knew and that this kind of behavior was not permitted or sanctioned by the agency.

Leader: I will also send you a case that we just pulled up involving a juvenile who was assaulted in custody. It was a 17 year old assaulted in the juvenile section of the jail. He was assaulted by another inmates and this is an order denying the agency's motion for summary judgment. The case is Merriweather v. Marion County Sheriff. 368 F.Supp. 2d 875 (2005).

Leader: Let's move on to talk about what's going on at federal level.

Leader: The commission is working on the juvenile standards. They should be out later in the summer. BJS is still doing data collection, both on administrative records and on youth self reports; the dates when the data will be out keep changing, but I hope sometime this summer.

TEAM8: How will the juvenile standards be made available to facilities?

Leader: Many juvenile agencies are participating in the standards process but they will be sent out to agencies for public comment. We will be sending them out on our list serve as well.

Leader: Though we started slow, we really sped up at the end. Thanks for all of your good questions and comments. Please feel free to email us with other questions.