

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

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Smith Consulting

in collaboration with

The National Institute of Corrections and

The Project on Addressing Prison Rape
American University, Washington College of Law

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Addressing Sexual Violence of Youth Against Custody: Youth Workers' Handbook on Identifying and Addressing Sexual Violence in Juvenile Justice Settings addresses rapidly developing areas of practice and law in the United States. The information in this publication is current as of December 2010. Both law and policies rapidly change; we will remain abreast of those changes and encourage you to contact us with new information as it becomes available.

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Foreword

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

Since the passage of the Prison Rape Elimination Act in 2003, there is an increased national and international attention to the issue of sexual abuse of individuals in custody, including youth. The National Prison Rape Elimination Commission has proposed comprehensive standards for eliminating sexual abuse of youth in custodial settings. Most of those were left intact by the United States Department of Justice's proposed standards released in February of 2011. States have strengthened criminal laws prohibiting the sexual abuse of both adults and juveniles in custody. Reports on sexual abuse of youth in custody have increased in number; non-governmental organizations such as Human Rights Watch, Amnesty International and Just Detention International have all documented the issue. In addition, both print and visual media have covered sexual abuse in juvenile justice settings on numerous occasions.

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

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

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

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INTRODUCTION

Sexual abuse in custody can have life-long effects on youth. Youth who are sexually abused or experience sexual violence can suffer higher rates of drug use; have disproportionate contact with the criminal justice system into adulthood; become victimizers; and/or have higher rates of mental illness.¹ In addition, sexual abuse by staff or other youth compromises safety and security as well as the overall mission of juvenile justice systems—the protection and rehabilitation of youth in custody.

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

Prevention of sexual abuse of youth in custody should be an ongoing discussion involving partners from all juvenile sectors—advocates, staff, judges, prosecutors, social service providers and families. Sexual abuse of youth in custody is a problem that involves community facilities and detention centers, youth, administration and staff at all levels, as well as outside stakeholders such as youth advocates, law enforcement, the legislature and the community at large. It has legal consequences as well as long-lasting emotional, mental and physical health and economic effects.

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

- why juvenile justice professionals should be concerned about sexual abuse of youth in custody;
- how culture and environment affects sexual abuse of youth in custody;
- tools that will help identify, address and respond to sexual abuse of youth in custody;
- investigating allegations of sexual abuse of youth in custody;

1 in 4 girls and 1 in 6 boys will experience sexual abuse before the age of 18.
(The National Center for Victims of Crime)

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

- useful legal tools for prosecuting sexual abuse of youth in custody; and
- preventative measures for juvenile agencies

THE LANDSCAPE OF JUVENILE JUSTICE AGENCIES

Defining Setting

There are a wider variety of custodial settings for youth than for adults. Youth in custody can be housed or supervised in any of the following settings:

- detention
- probation
- day supervision programming
- alternative schools
- boot camps
- aftercare
- group homes
- diversion programs
- conditional release
- pre-trial supervision
- transitional services
- juvenile parole
- house arrest
- electronic home monitoring
- reentry centers
- agency-based foster care
- reporting centers
- work camps
- youth development centers
- foster care settings

Nearly half of the more than one million youth who received juvenile court sanctions in 2005 were placed in community settings. *(The National Prison Rape Elimination Commission Executive Summary, 2009)*

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

Community v. Detention Settings

As identified above, juvenile justice supervision can occur in either a detention or community setting. Trying to design policies and procedures is a difficult task when there are a large variety of placement and supervision options within agencies, especially if

community supervision is ultimately governed by a different agency than the one that does detention.

Defining Staff

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

- juvenile justice employees (sworn or civilian, managers, administrators, supervisors, line staff, community corrections supervisors)
- contractors
- food service employees
- maintenance workers
- volunteers
- medical or mental health staff members (clinical staff and counselors)
- clergy
- vendors
- teachers

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

Staff with Dual Roles

Juvenile justice agencies are charged with safety, security, rehabilitation and guiding youth under their supervision. These multiple roles, often make drawing boundaries difficult for staff. While staff provide safety and security, their roles as mentors can create closer relationships with youth than they would otherwise have, especially as compared to adult settings. While it is imperative that staff become invested in youth in their care so that a rehabilitative environment exists. This dual role responsibility can lead to poor boundary setting.

4 Charged with Misconduct at Indiana Juvenile Center

*The Associated Press
January 29, 2010*

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

In order to remedy this, staff training should exist, reinforce the importance of the appropriate boundaries. Additionally, ongoing supervision and mentoring by administrators for staff can help identify and remediate potential problems.

Defining Jurisdiction—Overseeing Departments of Juvenile Justice

Juvenile justice agencies are sometimes stand alone agencies, like the Texas Youth Commission, The South Carolina Department of Juvenile Justice or the Oregon Youth Authority. However, more often than not they are part of other agencies such as:

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

Strategies for addressing sexual abuse of youth in custody will differ depending on where juvenile agencies are situated in the landscape of state agencies, It is important to understand the culture or process for an agency in order to determine the best way to conduct interventions.

Detention Officer Arrested: Authorities say she smoked crack and had sex with young offender

KVUE News

Shelton Green

December 17, 2008

Magdalene Bombella is in the Travis County Jail charged with hindering apprehension.

Investigators say she admits paying for hotel rooms for her 17-year-old son this summer so he could have sex with his probation officer/ counselor.

SEXUAL ABUSE OF YOUTH IN CUSTODY

Definitions of Sexual Abuse of Youth in Custody

There are four sources of definitions of sexual abuse of youth in custody:

- the Prison Rape Elimination Act of 2003 (PREA)
- the Bureau of Justice Statistics (BJS)
- agency policies
- state criminal laws

Sexual abuse of youth in custody can include both physical and non-physical behaviors. In cases of staff sexual misconduct and youth-on-youth sexual abuse, non-physical actions can precede sexual abuse. Prohibiting non-physical behaviors such as exchanging letters and/ or pictures with staff and youth or between youth are generally matters of policy; however, with the passage of the Adam Walsh Act, there are now criminal implications for those actions when taken with a youth.⁴

We discuss PREA, BJS and policy definitions below. Discussions of state criminal laws and definitions can be found later in this handbook.

The Prison Rape Elimination Act and Juvenile Settings

In September 2003, the United States Congress unanimously passed the Prison Rape Elimination Act (PREA).⁵ PREA is the culmination of a collaborative effort between human rights, faith-based, and prison rape advocacy groups. PREA aims to create “zero tolerance” for prison rape by using a variety of tools:

- data collection;
- grants to the states for improvements;
- training and technical assistance to the states to improve their practices;
- research and guidance; and
- development of national standards

Non-physical sexual abuse includes, but is not limited to:

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

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

PREA defines sexual abuse of an individual in custody as:

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

However, while juveniles and juvenile justice agencies are clearly included in PREA, there are challenges to comprehensively addressing sexual abuse of youth in custody. Those challenges are the lack of

- research,
- training,
- funding and existing
- lack of standards on sex abuse of youth in custody.

In particular, while the National Institute of Corrections has focused significant efforts on sexual abuse in custodial settings since 1995, it was only in 2008 that the first training took place for eight juvenile agencies. The development of a curriculum for juvenile agencies on the issue did not occur until 2009.

While PREA provided an unprecedented amount of funding for technical assistance to states to begin to address sexual violence in custodial settings, little of money went to juvenile or community correctional agencies. To the extent that juvenile justice or community corrections agencies received money from these grants it was because they were part of a unified system such as Rhode Island, Vermont or California.

Even though the victimization of youth was well documented, there was scant research attention to the victimization of youth in custodial settings. Finally, while the legal framework which requires mandatory reports of abuse provides some prophylaxis and recourse for abuse of youth, most juvenile agencies do not have specific policies that prohibit sexual abuse of youth largely

According to PREA, “prison” means “any confinement facility of a federal, state or local government, whether administered by that government or by a private organization on behalf of such government and includes: any jail or police lock-up and any **juvenile facility used for the custody or care of juvenile inmates.**”
(The Prison Rape Elimination Act of 2003)

because juvenile justice practitioners identify as helpers.

National Standards

In its final report the National Prison Rape Elimination Commission (NPREC) made nine findings. Relevant to juvenile settings, NPREC found that “juveniles in confinement are much more likely than incarcerated adults to be sexually abused, and they are particularly at risk when confined with adults. To be effective, sexual abuse prevention, investigation, and treatment must be tailored to the developmental capacities and needs of youth.”⁶

Because of this finding, NPREC proposed separate juvenile standards. When the Attorney General released revised standards in 2011, there were also separate standards for youth. Some examples of the juvenile standards are:

A full copy of the National Prison Rape Elimination Commission *Standards for the Prevention, Detection, Response and Monitoring of Sexual Abuse in Juvenile Facilities* can be found at: http://www.wcl.american.edu/endsilence/documents/NPREC_JuvenileStandards.pdf?rd=1

115.311: Zero-tolerance of sexual abuse

- (a) An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency’s approach to preventing, detecting, and responding to such conduct.
- (b) An agency shall employ or designate an upper-level agency-wide PREA coordinator to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities.
- (c) The PREA coordinator shall be a full-time position in all agencies that operate facilities whose total rated capacity exceeds 1000 residents, but may be designated as a part-time position in agencies whose total rated capacity does not exceed 1000 residents.
- (d) An agency whose facilities have a total rated capacity exceeding 1000 residents shall also designate a PREA coordinator for each facility, who may be full-time or part-time.

115.313: Supervision and Monitoring

- (a) For each facility, the agency shall determine the adequate levels of staffing, and, where applicable, video monitoring, to protect residents against sexual abuse. In calculating such levels, agencies shall take into consideration the physical layout of each facility, the composition of the resident population, and any other relevant factors.

- (b) The facility shall also establish a plan for how to conduct staffing and, where applicable, video monitoring, in circumstances where the levels established in paragraph (a) of this section are not attained.
- (c) Each year, the facility shall assess, and determine whether adjustments are needed to:
 - (1) The staffing levels established pursuant to paragraph (a) of this section;
 - (2) Prevailing staffing patterns; and
 - (3) The agency's deployment of video monitoring systems and other technologies.
- (d) Each secure facility shall implement a policy and practice of having intermediate level or higherlevel supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts.

115.387: Data Collection

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

Each standards drafted by NPREC included a checklist so that agencies and monitors could easily determine compliance. Each NPREC standard also included a discussion as well to fully explain the Commission's reasoning. Those elements are absent in the DOJ revised standards.

What PREA Standards Mean and Unresolved Issues

What is the current status of the PREA Standards?

After convening a working group of federal partners to review the NPREC standards, the Attorney General released a revised version of the PREA standards in February of 2011. The PREA working group reviewed comments made to the DOJ standards. Currently OMB is working to make a recommendation for final standards to the Attorney General. Those final standards are expected in 2012. You can find a full comparison chart for the juvenile PREA standards at: http://www.wcl.american.edu/endsilence/documents/PREAStandardsComparisonChart_Juvenile.pdf?rd=1

The development of national standards under PREA means the following:

- Increased scrutiny at the state, federal and local level on sexual abuse of youth in custody
- Enhanced focus on investigations, prosecution and administrative sanctions
- Services for victims
- Reentry services for victims and perpetrators as well as a more defined role for community corrections
- Set of national standards that establish minimum standards for addressing sexual abuse of youth in custody

Even though juvenile agencies have made tremendous progress since the passage of PREA, there are still a number of unresolved issues such as:

- Who defines compliance with the standards?
- Who monitors compliance?
- The existence of a body to continue to refine the standards
- The availability of funding to assist in implementing the standards and developing best practices in juvenile settings

The Attorney General has issued his proposed standards which largely retain the Commission's proposed standards; however, there are notable omissions that will hopefully be resolved in the final standards due to be released in late 2011/ early 2012.

Omissions include:

- Juveniles in adult facilities
- Juveniles in immigration detention facilities
- Juveniles on community supervision—probation and/or parole

The Bureau of Justice Statistics and Data Collection

BJS defines youth-on-youth sexual abuse as:

What we currently know about prevalence comes from BJS data collection efforts. Reports include:

Administrative survey collections from 2004 and 2005-6 found at:

<http://www.ojp.usdoj.gov/bjs/abstract/svrca04.htm>

<http://www.ojp.usdoj.gov/bjs/pub/pdf/svrjca0506.pdf>

Victim self reports from 2008-9 found at:

<http://bjs.ojp.usdoj.gov/content/pub/pdf/svjfry09.pdf>

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

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

BJS defines staff sexual misconduct as:

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

- intentional touching of the genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to arouse or gratify sexual desire
- completed, attempted, threatened, or requested sexual acts
- occurrences of indecent exposure, invasion of privacy, or staff voyeurism for sexual gratification.”

The Bureau of Justice Statistics (BJS) collected data from juvenile correctional authorities in 2005-6 and found there were more than 2,000 reported allegations of sexual violence in juvenile facilities each year.⁷ 57% of reported incidents were youth-on-youth sexual contact and 43% of reported incidents were staff sexual misconduct.⁸

BJS found that the rate of sexual abuse in juvenile facilities, based on these administrative records, was more than five times greater than rates in adult facilities in 2006.⁹ This difference in rates may be due to state and local laws that require reports of any sexual acts involving persons under a certain age that are non-consensual.

During the administrative records collection, BJS found that in cases of reported youth-on-youth sexual abuse:¹⁰

- Victims received physical injuries in 12% of substantiated incidents of youth-on-youth sexual violence

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

Overall juvenile agencies have higher rates of substantiated incidents
Adult: 14%
Juvenile: 20%

Overall juvenile agencies have higher prevalence rates of sexual abuse.
Adult: 2.91%
Juvenile: 16.8%

Staff sexual misconduct is more prevalent in both adult and juvenile facilities
Adult: 53%
Juvenile: 46%

- About half of all victims of youth-on-youth violence received some form of medical follow-up
- Nearly half of victims of youth-on-youth sexual violence had their housing changed in response
- 41% of youth perpetrators had legal action taken; 37% transferred; 22% were given solitary/disciplinary segregation

They also found that in cases of reported staff sexual misconduct with youth:¹¹

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

In 2010, BJS released its first report on sexual victimization in juvenile facilities reported by youth.¹² They found that 12% of youth in juvenile facilities and large non-state facilities reported experiencing sexual victimization while in detention.¹³ 2.6% of youth reported sexual violence involving another youth and 10.3% reported an incident involving a staff member.¹⁴

During the collection of data from youth in juvenile facilities, BJS found that in cases of reported youth-on-youth sexual abuse:¹⁵

- 2% of youth said they had nonconsensual sex with another youth; .5% said they had experienced one or more other unwilling sexual contacts with other youth
- 81% of youth had been victimized more than once
- 43% of youth had been victimized by more than one perpetrator
- 63% of youth said they had been victimized at least once by youth known to be in a gang

BJS found that in that same data collection, in cases of reported staff sexual misconduct:¹⁶

Sexual Victimization Reported by Youth 2008-9 Findings:

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

- 88% of youth reported being victimized more than once by the staff; 27% had been victimized more than ten times
- 33% of youth reported being victimized by more than one staff member
- 14% of youth reported they had experienced force or threat of force; 11% had been offered favors or protection; 18% had been given drugs or alcohol

This data is important because it allows juvenile agencies to target its efforts and interventions to address sexual abuse of youth in its custody. It also highlights the fact that sexual abuse is not always singular and often comes along with over-familiarity, physical abuse and contraband. In turn, it decreases security and safety for staff and youth as a whole and increases mental health risks for victims.

PREA and Agency Policies

Agency policy provides a source of definitions for staff sexual misconduct as well as sexual behaviors between youth in custody. Policies can vary from state to state, locality to locality, and even among individual facilities within a state.

Sound policies should:

- clearly define staff sexual misconduct and sexual abuse between youth
- clearly delineate responsibilities for staff
- outline procedures
- communicate sanctions for not following policy
- designate multiple reporting points for employees and youth
- have strong investigative elements
- provide training for staff, volunteers, contractors and youth

As a matter of law, any sexual conduct by staff is prohibited. Staff sexual misconduct and child exploitation laws allow agencies to prohibit any sexual contact, physical or non-physical, between a correctional staff member and a youth under their supervision.

Agency policy can fill in the gap and prohibit other types of

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www.wcl.american.edu/endsilence

*Ohio Department of Youth Services
Sexual Abuse and Assault
Policy No. 304.04*
“It is the policy of the Ohio Department of Youth Services to ensure that sexual activity between staff and juveniles, volunteers, or contract personnel and juveniles, regardless of consensual status, is prohibited and subject to administrative and criminal disciplinary sanctions.”

- April 2005

contact. For example, many agencies have no-contact policies that prohibit contact between staff and youth or the youth's family without notice to the agency. These can be useful in addressing relationships that may begin in custody and continue once a youth is released.

Agencies often have policies which prohibit touching or sexual contact between youth. While these policies are important especially given the wide differences in ages and development between youth, agencies should root these policies in knowledge about adolescent cognitive, emotional and sexual development.

PREA Guided Policies

Since the enactment of PREA, many juvenile agencies have developed policies to comply with PREA. Having clear policies that reference PREA obligations is important because it is one of the ways of giving notice to staff and youth about expectations about the agency's plans to address abuse of youth in custody.

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

- Classification
- Sexual Assault
- Medical and Mental Health
- Sexual Behavior
- Sexual Assault Response Teams (SART)
- Investigations
- Reporting—mandatory and otherwise
- Grievance

While having different policies is important and threading the issue of sexual abuse of youth in custody through out those policies is important, many agencies opt to have a separate PREA policy. Examples of separate PREA policies can be found at:

http://www.wcl.american.edu/endsilence/juvenile_policies.cfm

Although a number of model policies are available on a number of these issues, no single policy works for all types of juvenile agencies or settings. There are considerations and decisions that each agency must make regarding its own needs and situation.

When drafting or updating policies, important policy questions include:

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

Formulating effective zero-tolerance policies for sexual abuse of youth can be challenging. Challenges include:

- Committed leadership
- Agency culture and history that is resistant to change
- Practices that don't mirror policy
- Training for staff and youth
- Competent investigations

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

- comprehensive for your agency;
- followed by operational practices;
- role modeled by leadership; and
- evaluated and revised regularly.

YOUTH IN CUSTODY: THE ROLE OF ADOLESCENT DEVELOPMENT IN PREVENTING SEXUAL ABUSE

There are five types of adolescent development:

- Brain Development
- Cognitive Development
- Behavioral Development
- Emotional Development
- Sexual Development

Understanding development at all levels is important because youth who are abused during adolescence have a significant change in overall development and functioning. These changes in development can place them at greater risk for sexual abuse

The remainder of this section will discuss each of these in detail.

Adolescent Development

Brain Development

Brain development begins before birth and continues throughout an individual's person's lifespan. Most people develop full brain capacity and functioning in their mid-twenties, however, brain capacity changes with age.

The brain has four main sections, they are:

- Temporal lobe – fully developed at 24
- Parietal lobe
- Frontal lobe – fully developed at 18
- Occipital lobe

Most youth in custody are adolescents. A teenager's brain is not fully developed. The temporal lobe, which regulates emotion, is not developed until the age of eighteen. The frontal lobe is not fully developed until 24, but is the section of the brain that controls judgment, reasoning and rational decision-making. This means that areas of the brain that regulate the ability to make good decisions

How the Brain Functions:

- *Frontal Lobe:* higher level functioning, high level thinking, order, motivation, planning
- *Temporal Lobe:* associated with hearing and smell but also emotional, regulates the drive for pleasure
- *Parietal Lobe:* sensory input such as touch and taste
- *Occipital Lobe:* Vision

and understand consequences are largely underdeveloped for youth in custody.

Cognitive Development

Cognitive development is thinking, problem solving, concept understanding and information processing, and overall intelligence.

There are three types of thinking youth must develop: (1) abstract thinking; (2) problem-solving; and (3) executive functioning.

In middle adolescence (14-17) youth are:

- initiating an individual code of ethics;
- increasing analysis of issues and concerns;
- aware of different possibilities for the development of individual identity; and
- beginning to recognize future goals and plans

In late adolescence (17-19) youth are:

- increasing thoughts on more global concepts;
- developing idealistic views;
- engaging in debate with peers and parents;
- thinking about career decisions; and
- recognizing their role in adult society

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

Behavioral Development

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

As children age and develop "normally" they:

In early adolescence (12–14) youth are:

- using complex thinking and focused on decision-making that is personal;
- making choices about home, school, peers and relationships;
- questioning authority; and
- determining their personal appearance

- Desire for independence from parents/caregivers
Become concerned with the question of their individual identify
- Feel insecure about themselves and becoming highly dependent upon peers for support

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

Emotional Development

There are six aspects of emotional development

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

Each aspect manifests differently as youth age and develop:

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

In middle adolescence youth:

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

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

Youth feel:

- incapable of being conquered, overcome, or subdued. This is more pronounced in high-risk youth.
- powerfulness due to enhanced physical and cognitive abilities, combined with increased independence
- consequences will not apply to them. i.e. "that happens to someone else not me."

In late adolescence youth can:

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

Sexual Development

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

Aspects of sexual development include:

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

Understanding sexual development is important because healthy sexual development includes many of the actions that agency policy or custodial setting prohibits. Actions like masturbation, displaying feelings of love, seeking out relationships are part of healthy adolescent development but are prohibited for safety and other reasons.

Sexuality

Healthy sexuality is a combination of sexual development and the ability to assert one's self. Youth should be able to:

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

Sexuality is interplay of the physical, psychological, social, emotional and spiritual make-up of an individual.

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

In order to keep youth safe, agencies should:

- have strong development centered policies;
- train all youth and staff on healthy sexual development and boundaries; and
- consistently enforce rules and reinforce values of healthy development.

Development and Youth in Custody

Being a youth in custody limits development in unique and specific ways. First there are limits on family interaction and being in a family environment. Second, asserting independence in a custodial setting is against the rules but is a main feature of each developmental stage. Lastly, sexual and gender appropriate experimentation and development is severely limited by both policy and practice in custodial settings. In addition, many youth in custody have histories of victimization or previous trauma and lack appropriate role models both of which hamper development.

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

Abuse, stress, and neglect can cause areas of the brain that are involved in fear and anxiety to become overly developed while the other important functions remain under developed. When a youth is focused on not being abused, there is not as much ability to focus on learning social and cognitive skills.

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

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

To the extent that youth are abused either before or while in custody significantly impacts their ability to reason, handle emotions appropriately and understand the consequences of their actions, all of which are major components of rehabilitation.

However, custodial settings can provide certain developmental necessities to youth that they may not have received previously:

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

Vulnerable Youth

Youth are generally the population most vulnerable to abuse in custodial settings. However, some youth are more vulnerable than others.

These youth are:

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

Special considerations for working with these vulnerable populations are as follows:

Previously victimized youth often have:

- Post Traumatic Stress Disorder
- Low self-esteem
- Trust issues

Other characteristics that may make certain youth more vulnerable include:

- small size
- inexperience with the criminal justice system

Do you know other characteristics?

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

- Lingering or ongoing emotional pain
- “Victim” pattern in choices
- A distorted view of themselves
- Past histories of institutional abuse
- Personality disorders including maladaptive patterns of interacting with others

Developmentally disabled or delayed youth often:

- Want to please people in authority
- Rely on authority figures for the solution
- Have a level of understanding that varies widely
- Have memory gaps
- Have a short attention span
- Are quick to take blame
- May have behavioral outbursts

Mentally ill youth:

- Are individuals with DSM Diagnosis
- Have depression, anxiety, schizophrenia and/or bipolar disorder
- May require staff to take more time to understand their needs

Youth with hearing impairments:

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

Youth with limited language abilities may:

- Use vocabulary and sentences that do not match their age
- Not understand lengthy complex, 2-part questions or directions
- Need you to speak slowly and allow sufficient wait time

Youth who are sexual minorities will:

- Need special consideration given to safety
- Use gender identifiers they feel are appropriate

Disorders most commonly noted among confined youth include:

- depression
- anxiety
- ADD/ ADHD
- Learning disabilities
- Post-traumatic stress disorder
- Developmental disabilities

Youth who are substance dependent may:

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

This may look like the profile of ninety percent of youth in your settings. However, agencies should consider these issues in drafting policies or training staff or youth on sexual abuse prevention.

Sexual Minority Youth

Because youth under custodial supervision can be at multiple stages of development, some may already identify as gay, lesbian, bisexual, transgendered, queer or questioning (GLBTQQ).

Youth classified as sexual minorities have particular concerns in custodial settings. Those concerns include:

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

More specifically, transgender and intersex youth have particular concerns in custodial settings.

Special Concerns for Transgendered Youth in Custody

- Hormone Therapy
- Biological classification often puts them at risk
- Excessive use of isolation for safety
- Self-mutilation
- Mental health needs

Special Concerns for Intersex Youth in Custody

R.G. v. Koller, 415 F.Supp. 11129 (D.Hawaii 2006)
Granting preliminary injunction against State of Hawaii for violating the due process rights of LGBT youth by failing to protect them from verbal, physical and sexual assault by other youth and staff and excessive use of isolation. Ultimately The Hawai'i Youth Correctional Facility has been ordered to pay \$625,000 dollars. The settlement is the first case in the country to specifically address the treatment of lesbian, gay, bisexual, and transgender youth in juvenile facilities.

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

- No biological definition to sex- born with genitalia of male and female
- Parents often choose sex for child at a young age
- Sex chosen by parents often conflicts with gender
- Need for adequate mental health care
- Conditions known for serious health issues

However, juvenile justice agencies can address these issues by treating GLBTQQ youth with respect:

- Having policies against homophobic remarks
- Enforcing policies swiftly and consistently
- Being sensitive in responding to same-sex partnerships
- Including respect for others and sexual orientation as part of sex education.

CULTURE OF YOUTH FACILITIES

What is Culture?

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

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

Influences on the culture include:

- the history and critical events that happen within an agency and how they are interpreted
- the hiring process
- the promotional process
- the disciplinary process
- the role played by middle management
- the physical environment behavior of staff with youth and vice versa
- management _ staff relations
- the tone and style of leadership
- staff-to-staff relations
- staff-to-youth relations – youth-to-youth dynamics
- dress code
- language

Impact of Culture on Staff: The Code of Silence

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

Examples of agency “norms” can include:

- Don't volunteer for assignments.
- Don't be late on third shift.
- Don't use bad language.
- Don't turn in fellow employees that violate rules.

Do you know some other agency norms?

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

The employee Code of Silence is defined by:

- Protection of self and co-workers
- Non-cooperation with management and investigators
- Risking discipline and even termination rather than violate the code
- Imposition of penalties on staff who break the code

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

Youth Culture

Youth culture can be as toxic as staff culture in juvenile justice settings. The mix of normal teen behavior - - impulsiveness, invincibility, limit testing - - with typical youth in custody-history of abuse and neglect, mental illness and developmental delays.

The youth code mirrors the code in adult custody, a setting can create a challenging environment.

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

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

Strategies for Changing Culture

In an unhealthy agency, sexual abuse of youth—may be ignored or accepted and thus reinforced as part of the culture. Changing the way an agency responds to inappropriate relationships between

Baron V. Hickey, 242 F.Supp.2d 66 (D.Mass. 2003)
A correctional staff member claimed that he was being harassed by his co-workers after reporting an incident of misconduct as instructed by his supervisor. Co-workers referred to him as a “rat”, dropped cheese in front of him and slashed his tires. The officer complained on 30 separate occasions and was eventually forced to resign. The court found in favor of the officer stating that reporting matters of misconduct within prison walls is a matter of great importance to the public.

youth and between staff and youth may involve changing the culture of the agency.

Elements of culture change:

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

The following are successful strategies for changing staff culture:

- Conduct appropriate screening during hiring process
- Define boundaries for employees through policies that are clear, concise and definitive about what is acceptable and unacceptable
- Provide employees appropriate tools for self assessment
- Provide employees with access to advice and assistance when they have concerns and questions about boundaries
- Meet with local officials (juvenile board, law enforcement, prosecutors, DPS troopers, etc.) to inform them about culture change
- Reward and recognize desired behaviors
- Create a culture where staff place loyalty to INTEGRITY above loyalty to other staff.
- Model behavior at all levels of staff—from management to line staff
- Regular training on ethics
- Make it clear that you take the issue of sexual abuse of youth seriously
- Make sure staff knows expectations
- Train and support first line supervisors in their efforts to supervise employees, and recognize red flags

There are 3 Steps to Culture Change

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

What are some things staff can do to change the culture in your agency?

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

- Ensure that there are open dialogues specific to the issue

The following are successful strategies for changing youth culture:

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

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

TOOLS FOR IDENTIFYING INAPPROPRIATE RELATIONSHIPS WITH AND BETWEEN YOUTH

Staff and youth in custodial settings face many pressures. These pressures can make staff and youth vulnerable to engaging in inappropriate behaviors. The following section offers tools that staff and managers can identify staff and youth vulnerability to abuse.

Red Flags

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

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

Red Flags for identifying staff sexual misconduct include:

- Staff over-identifying with particular youth or their issues
- Youth know personal information about staff
- Youth has letters or photos of staff
- Staff grant special requests or show favoritism
- Youth in unauthorized areas or repeatedly out of assigned spaces
- Staff spending an unexplainable amount of time with youth
- Staff taking youth out of rooms at unusual times
- Staff in personal crisis (divorce, ill health, bankruptcy, death in family)
- Conversations between staff and youth that are sexualized in nature, or refer to the physical attributes of staff or resident

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

Do you know some other red flags for identifying staff sexual misconduct?

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

Do you know some other red flags for identifying youth on youth sexual abuse?

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

- Refusal to shower, eat or be in unsupervised areas
- Self abuse or suicidal behaviors
- Withdrawing or isolating themselves
- Increased medical complaints and attention seeking behavior
- Uncharacteristic acting out in an effort to stay in segregation or facilitate transfer
- Letters between youth
- Bedwetting
- Favors
- Homicidal threats
- Giving away commissary items

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

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

The Daily Dozen

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

Sample questions include:

1. Do you look forward to seeing a particular youth when you come to work?
2. Have you done anything with a youth that you would not want your family or your supervisor to know about?
3. Would you be reluctant to have a co-worker observe your behavior for an entire day?
4. Do you talk about your personal matters with youth?
5. Do you believe you can ask a youth to do personal favors for you?

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

- adequately train and supervise staff
- minimize role ambiguity within the agency
- have adequate staffing so staff are not required to work overtime to fill gaps
- limit overcrowding as much as possible and limit case loads
- minimize the isolation of staff members from their peers
- minimize staff turn-over
- have a zero-tolerance policy regarding the code of silence
- offer safe avenues for staff who seek help

6. Have you ever asked for or received personal advice from a youth?
7. Have you said anything to a youth that you would not want tape recorded?
8. Do you have thoughts or fantasies of touching a particular youth? Does this extend to planning how you can be alone with that youth?
9. Do you think you have the right to touch a youth whenever and wherever you want to?
10. Do you have a feeling of not being able to wait to share good/ bad news with a particular youth?
11. Do you think youth are not allowed to say “no” to you, no matter what you ask?
12. Have you ever allowed a youth to talk to you or ever talked to a youth about sexual experiences or sexual fantasies, or to tell sexual jokes in your presence?

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

Ethics

Ethics are knowledge and guidelines used to make decisions based on a set of morals and values within a particular group. Staff face many challenges, that complicate day-to-day decision- making. Making ethical decisions are sometimes even harder.

In order to make an ethical decision it helps to:

- define the dilemma
- gather data and information about the dilemma
- list the “pros and cons” of potential decisions determine if choice’s are legal or authorized by agency policy
- determine yourself if the choices are consistent with staffs or own values and moral compass

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

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

- determine if your choice's consistent with agency mission
- list the consequences for staff, offenders, supervisors, administrators and the public

Staff faces ethical dilemmas daily. Examples of ethical decisions:

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

The answers to these questions are not always clear or easy to determine. Some people find applying the *Headline Test* a good way to determine whether a decision is ethical or not. Ask, "What would a headline in a newspaper look like if they were covering this story?" If the headline is one Staff would be ashamed to show friends or family, the decision or action is probably ill advised.

Some headlines involving sexual abuse of youth in custody have included:

Denver Youth Facility Staffer Charged with Sex Abuse

Allegation between Female Guard, Juvenile Investigated

Correctional Officer Charged with Having Sex with Juvenile Offenders

Former Juvenile Guard Pleads to Misconduct

Former Juvenile Detention Guard Gets Probation in Sexual Abuse Case

Escaped Juvenile had Sex with Counselor

Ex-Jailers Jailed in Young Inmate's Rape

Two Former Youth Officers Indicted

Inside Youth Prisons, Scores of Female Guards Violated Boys

MEDICAL AND MENTAL HEALTH CARE FOR VICTIMS

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

- 3 times more likely to suffer from depression
- 6 times more likely to suffer from post-traumatic stress disorder
- 13 times more likely to abuse alcohol
- 26 times more likely to abuse drugs
- 4 times more likely to contemplate suicide¹⁷

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

Medical Needs

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

- Confidentiality where warranted
- Reporting cases of sexual abuse
- Victim-centered services and care
- Act as a safe space for victims of sexual abuse

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

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

The DOJ proposed PREA Standards made clear statements about the responsibility of agencies to provide both emergency and ongoing medical health care. (*DOJ Standards 115.382 and 115.383*). The DOJ standards state, “The agency follows a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence....” (*115.321*)

- Vaginal or anal injuries
- Bruising

Long term medical concerns for youth are:

- HIV/AIDS
- Hepatitis B/C
- STD's
- Pregnancy
- Suicidal thoughts and/or actions
- Ongoing problems from physical injury

Youth who report sexual abuse within 96 hours of an assault should have a medical exam done for evidence collection. This exam is completed by a Sexual Assault Nurse Examiner (SANE). Pediatric SANEs will be knowledgeable about physical, intellectual, and emotional development of youth. Pediatric exams should be done in a setting that is comforting and calming to youth. This exam is extensive and is often traumatic for youth and the ability to make a youth feel as relaxed as possible will be beneficial.

SANE exams allow for:

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

It is essential that responsible staff know state law governing a minor's right to consent to medical treatment. In some states a minor can consent to a SANE exam, while in these states parental or guardian consent is necessary. In some situations, when time-sensitive evidence needs to be gathered a police officer, representative from child protective services or a court can consent to the exam.

Mental Health Care

Mental health is just as important as medical health care in incidents of sexual abuse of youth in custody, especially given the

Components of the Sexual Assault Nurse Exams include:

- General physical exam
- Examination of the oral and genital areas
- Collection of forensic evidence
- Screening for STDs
- Screening for pregnancy
- Prophylactic treatment
- Crisis Intervention
- Referral for follow-up

long-term emotional effects of sexual abuse. For those with a history of sexual abuse, victimization in confinement may replicate previous trauma and further exacerbate existing mental health issues.¹⁸

While each person who is sexually abused reacts in a unique way, there are some common indicators of trauma in youth. Trauma reactions in adolescents include:

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

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

Emotional and cognitive responses include:

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

Behavioral responses include:

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

All states have mandated reporting of suspected child abuse. Health care providers are mandated reporters when they suspect a child has been: a victim of abuse by a person responsible for their care; by a person in a position of authority; or by a person who has a significant relationship with them.

For a complete list of state mandatory reporting laws go to:

<http://www.wcl.american.edu/endsilence/documents/FiftyStateSurveyofMandatoryReportingStatutesFINALMay2009Update.pdf?rd=1>

These responses are important to identify and understand because they can be all red flags for youth who have been victimized. It may also change the way youth interact with both other youth and agency staff.

Being a survivor and being in detention is difficult because youth who are victims generally have little control over matters that survivors in community try to reclaim. They can feel disoriented and anxious which makes it difficult for them to follow rules - ultimately, sharing or talking about feelings related to sex may be a safety risk for a youth. Additionally, while isolation may be a relief, it can also cause further trauma. Emotionally, sexual abuse can also cause increased anger, acting out, and self-blame. Of course, multiple traumas will exacerbate these symptoms. To address the emotional dimension of sex abuse, some agencies choose to partner with community rape crisis centers or child advocacy centers to provide mental health interventions for youth who are sexually abused before and while in custody.

Sexual abuse of youth in custody affects both youth and staff. Abused youth in custody, may begin abusing drugs or alcohol, contract STDs, contemplate or act on suicidal feelings, have Rape Trauma Syndrome, or abuse others in order to gain control. Any of these are a concern for the safety and security of the institution, staff and other youth.

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

- Unmanageable anger from youth
- Secondary trauma
- Increased hostility or anger from youth
- Feelings of guilt for not protecting youth
- Youth acting out aggressively
- Feelings of powerless to help youth

Overall, it is important to understand both medical and mental health care needs of victims and common reactions to sexual abuse. Ultimately both will affect youth interactions with staff. Commitment to getting youth medical and mental health care for sexual abuse-- either immediately or in the long-term, can

Rape Crisis Centers can provide:

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

Child Advocacy Centers can provide:

- A physical exam center
- Forensic Interviewers specializing in working with youth
- Counseling
- Advocacy

contribute to the rehabilitative mission of juvenile justice lead to more safe custodial environments for youth, diminish mental health problems in the future, and reduce youth' exposure to the criminal justice system.

INVESTIGATING SEXUAL ABUSE OF YOUTH IN CUSTODY: DUTIES OF A FIRST RESPONDER

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

Investigations are preventative because:

- Staff and youth will know you take allegations seriously
- Youth will feel confident in reporting sexual abuse by staff or other youth
- It can help agencies can create a culture where abuse of youth is not tolerated

Investigations are responsive because:

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

While each investigating authority will have different protocols, there are some common duties that first responders have in allegations of staff sexual misconduct with youth and youth on youth sexual abuse.

At a minimum, first responders should:

- Make sure the victim is safe
- Refer the victim for appropriate medical and/or mental health care
- Secure the scene
- Report to the appropriate authorities (both inside and outside the agency as agency policy directs)
- Follow agency investigative protocol for questioning youth and staff

First responders may also be asked to:

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

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

- individual interviews with staff, the victim, youth and all other possible witnesses
- searches of staff and/or youth property
- review of account activity of the youth
- review of telephone activity of the youth and staff
- review of mail to the youth or between youths
- collection of DNA evidence (which includes blood, semen, saliva, skin and hair)
- electronic monitoring and recordings

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

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

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

Whether the report is immediate or after a time has lapsed, staff and youth accused of sexual abuse can face a number of requirements or sanctions.

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

- reassignment
- placement on administrative leave with or without pay
- required participation in an employee assistance program (E.A.P.)

Things for first responders to consider for an investigation:

- Who is responsible for investigating allegations of staff sexual misconduct?
- Who is responsible for investigations of youth on youth sexual abuse?
- How can a youth or staff member make a complaint?
- To who is the complaint made?
- Does your agency have a victim advocate? If so, when are they called in?
- Does your agency have a Sexual Assault Response Team?
- Are procedures different in cases of staff sexual misconduct than in youth on youth sexual abuse?

Youth accused of sexual abuse of another youth may face the following during an investigation:

- administrative segregation
- diminished programming
- removal of privileges
- movement to another unit, supervision group/ facility or center

Each agency has a unique investigative process. We suggest that you find out what your responsibilities are as a first responder.

RIGHTS OF STAFF WHEN AN ALLEGATION OF STAFF SEXUAL MISCONDUCT IS MADE

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

As public sector **employers**, juvenile justice agencies must balance the constitutional rights of staff with the legitimate interests of the agency.¹⁹ Constitutional rights of staff, as public employees, are guaranteed for by the:

- First Amendment - Freedom of Association
- Fourth Amendment - Privacy and Surveillance
- Fifth and Fourteenth Amendments - Due Process and Equal Protection

First Amendment

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

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

- interests in on-the-job performance
- interests in off-the-job conduct that implicates fitness for duty
- interests in the public reputation of the agency

Fourth Amendment

The Fourth Amendment states that it is your right to be free from unreasonable searches and seizures. If you are a public employee, this means you have some privacy rights at work. However, the

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 under the First Amendment.

amount of privacy protection you are entitled to depend on what reasonable expectations of privacy are in your employment setting. Because correctional agencies are, by their very nature, work settings where employees can reasonably expect a high degree of surveillance, your reasonable privacy expectations as a staff member is limited. The courts have found the following in cases of surveillance and Fourth Amendment violations:

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

Fifth Amendment and Statutory Due Process Rights

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

Fourteenth Amendment

The Supreme Court has held that the Fourteenth Amendment to the U.S. Constitution prohibits coerced statements in an internal investigation from being used in a later criminal prosecution. These rights are based on a U.S. Supreme Court case known as *Garrity v. New Jersey*, 385 U.S. 493 (1967). These rights apply

Sample Garrity Warning

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

... If you do answer, neither your statements nor any information or evidence 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.

only in the context of investigations of public employees. In simple terms, this means that an investigator cannot force you to talk to them in connection with a criminal matter by threatening you with the loss of your job or other employment-related discipline. Asserting your *Garrity* rights during an administrative hearing where you can be disciplined is advised.²⁰

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

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

Garrity protections do not apply if you voluntarily give a statement. Unless you are compelled, you have no obligation to respond to the questions. If you do decide to respond to questions without being compelled, there is no immunity given for the later use of your answers in a criminal prosecution. It is also important to remember that *Garrity* does not protect you from employment discipline.

Union Member Rights

If you are a union member, you also have a right to union representation at investigatory interviews. These rights were first announced by the U.S. Supreme Court in a 1975 case and have become known as *Weingarten* rights.²¹ *Weingarten* rights apply during investigatory interviews. Investigatory interviews happen any time a supervisor questions an employee to obtain information that could be used as a basis for discipline, or asks an employee to defend his or her conduct.

If you have a reasonable belief that discipline or other adverse consequences may result from what you say in answering a supervisor's questions, you have the right to request union representation. Management is not required to inform you of your *Weingarten* rights; it is your responsibility to know and make the request. When you make the request for a union representative to

Sample Waiver of Union/Association Representation

I have been offered the opportunity to have a Union/Association representative present prior to my being asked any questions during this investigation that may lead to my being disciplined in accordance with the collective bargaining agreement between _____ and the State/ local jurisdiction of _____.

be present, your supervisor or the investigating authority has three options:

- stop questioning until the representative arrives
- call off the interview
- ask you to voluntarily give up your right to a union representative (it is generally not a good idea to waive your rights)

The union representative may not be disruptive or obstructionist, and an employer may be within its rights to request that the representative leave if he or she acts this way. Your collective bargaining agreement will also provide for a grievance procedure ending in arbitration of any disciplinary action. If you engage in arbitration to contest discipline imposed based on an allegation of sexual misconduct with a youth, remember the following:

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

Employee Rights against Discrimination

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

Former Employee Reference Checks

If you are terminated based on allegations of sexual misconduct, your former employer will have "qualified privilege"²² to provide information about your termination to future employers who are conducting reference checks. Your employer can ask you to sign a waiver before agreeing to provide information about your employment to prospective employers. If you are investigated for

Employers often claim that the only role of a union representative in an investigatory interview is to observe the discussion.

However, according to the Supreme Court, your union representative may do any of the following:

- assist and counsel you during the interview
- seek information on the subject of the interrogation
- speak privately with you before the interview
- interrupt to clarify a question or to object to confusing or intimidating tactics
- advise you on how to answer a question, provided that this advice does not extend to telling you what to say
- add information to support your case at the end of the interview

alleged staff sexual misconduct and the investigation does not conclude that the allegations are true, be sure that it is clear in your employee record that the allegations were unfounded. You should also save copies of any reports or other written materials you receive in the course of any such investigation in your personal files at home.

LEGAL LIABILITY AND SANCTIONS FOR SEXUAL ABUSE OF YOUTH IN CUSTODY

There is legal liability for agencies, staff and youth in cases of staff sexual misconduct with youth and youth on youth sexual abuse in custody. That liability can come in a number of ways including:

- Criminal;
- Civil; and
- Administrative

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

- sex between staff and youth violates state and federal criminal laws
- sex in juvenile justice settings between staff and youth can violate the U.S. Constitution
- juvenile justice staff have a special responsibility to youth; therefore as a matter of law, youth cannot consent to sex with staff
- juvenile justice agencies have a responsibility to protect staff and youth who report sexual abuse
- staff in most states are mandatory reporters

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

- sex between youth may not always be a criminal matter but more often than not can result in administrative sanctions
- staff in most states are mandatory reporters
- agencies can be liable for failure to train staff and youth, failure to supervise and/ or failure to correctly classify youth
- agencies have a responsibility to protect youth who report sexual abuse
- even though it's a policy violation, legally some youth sexual contact can be consensual

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

- Are employees of juvenile justice agencies covered under the law?
- What conduct is covered under the state's staff sexual misconduct law?
- Are staff are considered mandatory reporters?
- What are the legal sanctions and penalties defined for those found guilty?
- Is there a strict liability defense?

See a full list of state laws at: <http://www.wcl.american.edu/endsilence/documents/50StateSurveyofSSMLawsFINAL2009Update.pdf?rd=1>

Criminal Law and Consequences

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

- Staff sexual misconduct laws
- Sexual assault laws
- Child exploitation laws
- Mandatory reporting laws²³

There are several legal tools that provide for sentencing enhancements including:

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

The most notable of these in cases of staff sexual misconduct are criminal laws prohibiting the sexual abuse of individuals in custody. Each state has a law making staff sexual misconduct with youth a crime. However, seven states do not include juvenile justice agencies under that law.²⁴

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

- obstruction of justice
- conspiracy
- making a false statement to a government official
- neglect/ failure to protect/ child endangerment

In juvenile justice settings, child exploitation laws are specific tools for prosecution for staff-on-youth or youth-on-youth sexual abuse. It is essential that you know the following about the child exploitation laws in your state:

- What is the specific conduct covered by child exploitation laws?
- What is the age of consent in your state?

Sex Offender Registration:

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

See a full list of state laws at:

http://www.wcl.american.edu/endsilence/documents/FiftyStateSurveyofAdultSexOffenderRegistrationStatutes_November2010Update.pdf?rd=1 for adults
http://www.wcl.american.edu/endsilence/documents/FiftyStateSurveyonJuvenileSexOffenderRegistrationStatutes_FINALSept2009.pdf?rd=1 for juveniles

- What are the penalties for child exploitation in your state?
- How does this apply to juveniles serving sentences as adults?

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

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

Age in allegations of sexual abuse of youth in custody, is a difficult legal issue for two reasons: first the ages of staff and detained youth may not present a large gap. Second, the ages of youth housed or supervised together may represent a large range.

When the age of staff and youth are variably the same, it can create problems with proper boundaries. Staff may relate to the youth, know them from the community or have similar interests, backgrounds and acquaintances as the youth they are supervising; this can create a situation where there is undue familiarity or a boundary violation that may lead to sexual abuse. If this is the situation in your agency ongoing training for younger staff as well as mentoring by administrators about appropriate boundaries may be helpful.

Similarly, when you house youth of markedly different ages together sexual abuse can become a problem. The younger a youth is, the more vulnerable he or she may be to sexual abuse by staff or other youth. To combat this, proper classification and age identification for housing can be helpful as well as proper training for staff on red flags and frequent rounds to check on youth is recommended.

Civil Liabilities

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

Second Sexual Assault Reported at YDDC

Albuquerque Tribune

Michael Gisick

October 2, 2006

A teen told police he was sexually assaulted by two boys age 15 and 17 in a shower room at the Albuquerque juvenile center where another boy was allegedly raped days earlier, authorities said.

YDDC is designed to house the state's most violent juvenile offenders. But all convicted juveniles are sent to the center for screening to determine their placement in the juvenile justice system.

- The Prison Litigation Reform Act (PLRA)
- 42 U.S.C. §1983
- Civil Rights Of Institutionalized Persons (CRIPA)
- The Fourth Amendment
- The Eighth Amendment
- The Fourteenth Amendment

Under the Prison Litigation Reform Act, youth must meet the exhaustion requirement even when the claim is sexual abuse in custody. However, there must be a credible process for them to report sexual abuse and agencies cannot erect barriers to reporting especially given what we know about reporting and fear of retaliation.

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

- volunteers
- contractors
- food service workers
- clergy
- staff in other agencies where youth work or attend programming
- teachers
- nurses

Civil Rights of Institutionalized Persons (CRIPA) investigations and cases are initiated by the Special Litigation Unit of the Department of Justice. However, they will only intervene when there is a widespread pattern of abuse.

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

- The Fourth Amendment
- The Eighth Amendment
- The Fourteenth Amendment
- State law

The Fourth Amendment prohibits unreasonable search and seizures. Typical actions challenged under the Fourth Amendment are:

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

This was a class action on behalf of all youth at the Ohio Department of Youth Services. It came to light because of violent sexual abuse at Scioto Juvenile Detention Facility. 14 staff (male and female) were indicted-- 6 convicted of offenses from sexual battery to dereliction of duty. CRIPA complaint began in March 2005. Settlement finalized in 2008.

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

- inappropriate or intrusive searches
- cross-gender supervision
- inappropriate viewing of offenders

Generally, the Eighth Amendment is used to challenge staff sexual misconduct and claims include “cruel and unusual punishment.”

Typical actions challenged under the Eighth Amendment are:

- sexual abuse by staff or other youth
- retaliation
- inadequate medical treatment
- conditions of confinement that contribute to an unsafe environment
- malfunctioning of unmonitored cameras
- poorly trained staff
- poor investigations
- failure to fire staff who harm youth
- failure to supervise or train staff properly

Courts also use of the Fourteenth Amendment in cases of staff sexual misconduct against youth in custody because of the lower standards of proof and the extra protections afforded to youth. The Fourteenth Amendment prohibits states from depriving “any person of life, liberty or property without due process of law.”

Typical actions challenged under the Fourteenth Amendment are:

- sexual abuse by staff or other youth
- discipline or retaliation for reporting misconduct
- any action that puts the offender at risk

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

- Juvenile agencies and staff have a special responsibility for protection for youth in their custody
- Courts look to the practice of the agency in determining liability
- Juvenile agencies must protect employees and youth who report sexual abuse and misconduct
- Juvenile justice officials can and are held personally liable for staff sexual misconduct with youth

Jane Doe 1 v. Swannanoa Youth Development Center, NCDJJ, 592 S.E. 2d 715 (2004)

A female youth used North Carolina Torts Claims Act claiming emotional distress, sexual assault by staff and youth, failure to protect and investigate and destruction of evidence. The Agency challenged request for name, address and custodian for kids in Frye cottage claiming confidentiality and that the Industrial Commission can't order it to turn over records. The court ruled in favor of Industrial Commission's authority

- Juvenile justice agencies and officials can be held liable for failure to train, supervise, investigate and discipline staff

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

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

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

K.M. v. Alabama Department of Youth Services, 360 F. Supp. 2d 1253 (M.D. Al. 2005)
Four juvenile girls sued AL DYS alleging they were physically and sexually assaulted and harassed. There was widespread public allegations of sexual abuse and harassment by employees at Chalkville against detainees. Court found that juveniles are entitled to more than protection from wanton and unnecessary pain. Case is allowed to move forward on 14th Amendment claims.

PREVENTION STRATEGIES

Although preventing sexual abuse of youth in custody may seem like a difficult and daunting task, internal policies and training²⁵ for both staff and youth can help.

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

- review, revise and update written policies and procedures to include updated definitions of illegal and unethical actions and PREA considerations
- ask for training about policies and procedures as well as state laws governing staff sexual misconduct with youth and youth-on-youth sexual abuse
- ask for training to improve skills in youth management and boundaries
- ask for training on red flags as well as youth abuse histories and how it impacts them while under custodial supervision
- research and learn more about the resources available through employee assistance programs (E.A.P.) and resources available to your agency through the National Institute of Corrections
- report all sexual abuse in your agency

Prevention strategies include:

1. Follow agency policies and procedures
2. Review of policies and procedures
3. Training
4. Knowing the duties of a first responder
5. Zero tolerance for sex abuse of youth
6. Reporting abuse

Are there other prevention strategies that you use or are aware of?

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

CONCLUSION

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

This handbook addresses and explains:

- why staff need to be concerned about sexual abuse of youth in custody
- how culture and environment affects sexual abuse of youth in custody
- tools that will help identify, address and respond to sexual abuse of youth in custody
- useful interventions for youth
- what the duties of first responders generally include
- legal tools available for prosecuting sexual abuse of youth
- preventative measures that can be taken by all juvenile agencies and staff

We hope that we have provided information that assists you in understanding and addressing this problem. This issue cannot be ignored. It is an issue of rehabilitation, safe adolescent development of youth and public safety and security. We hope that you commit to eliminating sexual abuse of youth in custody.

For further information on anything discussed in this handbook or to give us your comments please email us at endsilence@wcl.american.edu.

We are interested in hearing from you.

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Materials for Youth

1. A Teen's Guide to Reporting Abuse, Neglect and Exploitation in Juvenile Justice Facilities: Female Youth (Texas Juvenile Probation Commission).
2. A Teen's Guide to Reporting Abuse, Neglect and Exploitation in Juvenile Justice Facilities: Male Youth (Texas Juvenile Probation Commission).
3. What You Should Know About Sexual Abuse and Assault (Ohio Department of Youth Services).
4. Your Right to be Safe from Sexual Assault and Abuse (Kentucky Department of Juvenile Justice).

Video Conferences

1. Youthful Offenders in Adult Corrections: A System-wide Approach Using Effective Interventions (May 14-15, 2003) found at: www.nicic.org/library/018892
2. Youthful Offenders in Adult Corrections: Effective Interventions (September 15-19, 2003) found at: www.nicic.org/library/019212

Websites

1. American Civil Liberties Union
www.aclu.org
2. American Correctional Health Services Association
<http://www.achsa.org>
3. Amnesty International
<http://www.amnesty.org>
4. Bureau of Justice Statistics
www.bjs.ojp.usdoj.gov
5. Campaign for Youth Justice
www.campaignforyouthjustice.org
6. Center for Disease Control
<http://www.cdc.gov>
7. Center for Mental Health Services: GAINS Center
<http://gainscenter.samhsa.gov/html>

8. The Center for Youth Justice
www.ccyj.org
9. Human Rights Watch
<http://www.hrw.org>
10. Justice Policy Institute
<http://www.justicepolicy.org>
11. Justice Research and Statistics Association
<http://www.jrsa.org>
12. National Council on Crime and Delinquency
<http://www.nccd-crc.org>
13. National Council on Crime and Delinquency- Center for Girls and Young Women
<http://www.justiceforallgirls.org>
14. National Criminal Justice Reference Service
<http://www.ncjrs.gov>
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<http://www.nicic.gov>
16. National Juvenile Defender Center
<http://njdc.info>
17. National Association of Youth Courts
<http://www.youthcourt.net>
18. Office of Juvenile Justice and Delinquency Prevention
<http://ojjdp.gov>
19. The PREA Resource Center
<http://nccd-crc.org/nccd/initiatives/prea.html>
20. The Project on Addressing Prison Rape
www.wcl.american.edu/endsilence
21. RAINN (Rape Abuse and Incest National Network)
www.rainn.org
22. Sentencing Project
<http://www.sentencingproject.org>

23. United States Department of Health & Human Services

<http://www.hhs.gov>

24. United States Department of Justice

<http://www.usdoj.gov>

25. Urban Institute

<http://www.urban.org>

26. Vera Institute of Justice

<http://www.vera.org>

27. Washington College of Law

<http://wcl.american.edu>

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

¹ National Prison Rape Elimination Commission. June 2009. *REPORT*. Washington, DC: U.S. Department of Justice.

² National Center for Victims of Crime. No date listed. "Consequences of Child Sex Abuse, Child Sex Abuse," <http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=32315>, accessed April 3, 2012.

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⁴ Adam Walsh Child Protection and Safety Act of 2006 [PUBLIC LAW 109–248].

⁵ The Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§ 15601-15609 (2003).

⁶ National Prison Rape Elimination Commission. June 2009. *REPORT: When Children are Involved*. Washington, DC: U.S. Department of Justice, pp. 140-158.

⁷ Beck, Allen, Devon Adams, and Paul Guerino. July 2008. *The Prison Rape Elimination Act of 2003: Sexual Violence Reported by Juvenile Correctional Authorities, 2005-06*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, p. 2.

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⁹ Beck, Allen, Devon Adams, and Paul Guerino. July 2008. *The Prison Rape Elimination Act of 2003: Sexual Violence Reported by Juvenile Correctional Authorities, 2005-06*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

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¹¹ Beck, Allen, Devon Adams, and Paul Guerino. July 2008. *The Prison Rape Elimination Act of 2003: Sexual Violence Reported by Juvenile Correctional Authorities, 2005-06*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

¹² Beck, Allen, Paige Harrison, and Paul Guerino. January 2010. *SPECIAL REPORT: Sexual Victimization in Juvenile Facilities Reported by Youth, 2008-09*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

¹³ Beck, Allen, Paige Harrison, and Paul Guerino. January 2010. *SPECIAL REPORT: Sexual Victimization in Juvenile Facilities Reported by Youth, 2008-09*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics..

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Statistics. p 1.

¹⁶ Beck, Allen, Paige Harrison, and Paul Guerino. January 2010. *SPECIAL REPORT: Sexual Victimization in Juvenile Facilities Reported by Youth, 2008-09*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics. p 1.

¹⁷ Rape Abuse Incest National Network (RAINN). <http://www.rainn.org>, accessed April 19, 2012.

¹⁸ National Prison Rape Elimination Commission. June 2009. *REPORT*. Washington, DC: U.S. Department of Justice.

¹⁹ Your rights as a staff member depend on your employment status. Consider the following: (1) Are you a public or government employee? Public or government employees are those employed by a federal, state or local government. They have significant protections under federal or state law and also under federal and state constitutions; and (2) Are you a union member? Many staff members belong to unions. If you are a union member, you have certain protections during investigations and/or disciplinary procedures that are governed by the collective bargaining agreement (the agreement between the union, the workers represented and the agency).

²⁰ It is important to understand that Garrity rights apply only under certain circumstances. Important to the Garrity rule is the following: (1) whether the employer actually ordered or required you to respond to questions and (2) whether you were compelled by the threat of discipline to answer the question.

²¹ *NLRB vs. Weingarten, Inc.* 420 U.S. 251, 88 LRRM 2689.

²² Qualified Privilege is applied to material that is of public concern and for the public benefit.

²³ Staff can be held criminally or civilly liable for failure to report or failure to appropriately supervise youth. Mandatory reporting laws require certain individuals to report cases of physical or sexual abuse committed against children and vulnerable persons; in juvenile settings all staff are mandatory reporters. Reporting procedures differ from state to state and often, there is a criminal penalty for the failure to report.

²⁴ States that do not cover juvenile justice agencies or their staff under staff sexual misconduct laws are: Oregon, Nevada, Missouri, Mississippi, Vermont, Rhode Island and South Carolina. The Project on Addressing Prison Rape. 2010. *Fifty-State Survey of State Criminal Laws Prohibiting Sexual Abuse of Individuals under Custodial Supervision*, <http://www.wcl.american.edu/endsilence/documents/50StateSurveyofSSMLawsFINAL2009Update.pdf?rd=1>, accessed April 19, 2012.

²⁵ The National Institute of Corrections (NIC) is a useful resource for training on staff sexual misconduct with youth. To view these opportunities please go the NIC website at www.nicic.org. In addition a training curriculum, *Addressing Sexual Violence Against Youth in Custody* is available from the NIC/WCL Project on Addressing Prison Rape, <http://www.wcl.american.edu/nic/training.cfm>, accessed April 19, 2012.