

Addressing Sexual Abuse of Youth in Custody

Module 15: PROSECUTING SEXUAL ASSAULTS ON YOUTH IN CUSTODY

Developed by the NIC/WCL
Project under NIC CA
#06S20G.L11

TRAINING OBJECTIVES

- To understand the prosecutor's approach to investigations of sexual violence on juvenile inmates
- To understand what prosecutors want before they will accept a case on juvenile inmate sexual violence
- To understand what prosecutors need to successfully prosecute adults and juvenile inmates for sexual violence
- To understand the barriers to prosecution
- To understand recommendations to improve prosecutions

Prosecutorial Hurdles in Child Sexual Assault Cases Generally

- Credibility – He said/She said
- Lack of physical / biological evidence
- Problematic Victims
- Failure to Report Timely
- Delays, Half Truths, Recantations
- Bias, Motive, Fabrication
- Children Are Tougher Witnesses
- Mental Health Issues

Prosecutorial Hurdles in the Juvenile Corrections Setting

- Victims
 - o Delinquent Children
 - o Criminal Status
- Mental Health/Substance Abuse/Other Abuse
- Pool of Potential Witnesses Limited
 - o Equally Problematic
- Adult vs. Juvenile
 - o - Adult = Position of Authority/Law Enforcement
 - o - Child = Juvenile Delinquent

SEXUAL ASSAULT CASES IN THE CORRECTIONS SETTING

- Nature of sexual act itself
 - o Same gender assault
 - o Sexual behaviors that seem out of the ordinary, so difficult for people to talk about
- Gender issues
 - o Perception that cases involving male and/or female inmates are more attractive
 - o Race and class

SEXUAL ASSAULT CASES IN THE CORRECTIONS SETTING

- Exploiting Disabilities
 - o Mental health
 - o Drug addiction
 - o Previously Victim of Abuse
 - o Little Experience in the Criminal Justice System

BARRIERS TO PROSECUTION

- Inadequate reporting structures and safety assurances for victims
- Inadequate Investigations
- The Institution
- Conflicts between administrative and criminal cases
- Consent v. Rape
- Law
 - Misdemeanors
- Lack of experience
 - Sex Cases
 - Institutional Cases
- Witness Reliability
- Resources
- Sentencing

CASE STUDY:

California Division of Juvenile Justice

- Documented for 4000 serious infractions for youth-on-youth assaults and batteries at six DJJ institutions = 10 per day.
- Youth, especially those who openly identified as gay, bisexual, lesbian or transgender told of begin sexually assaulted in the barracks or dorms and reported that staff did not take these victimizations seriously.
- Most youths felt that “fighting back” was the only way to protect themselves.

Testimony Before the National Prison Rape Elimination Commission
Barry Krisberg, Ph.D.
June 1, 2006

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CASE STUDY:

California Division of Juvenile Justice

- To escape repeated victimization, some youths would assault staff or others to go to lockup units.
- Engage in abnormal behavior such as suicidal gestures, smearing feces on themselves or their beds claim psychotic episodes.

Testimony Before the National Prison Rage Elimination Commission

Barry Krisberg, Ph.D.

June 1, 2006

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INVESTIGATION:

Scioto Juvenile Correctional Facility

- Scioto is the reception center for all juvenile males entering Department of Youth Services and is Ohio's sole facility for girls adjudicated felony-level crimes in juvenile courts.
- Since 2003 14 Scioto staff have been indicted on charges relating to physical and sexual abuse of youth at Scioto
- One officer was convicted of attempted sexual battery as a result of allegations that he ordered a female youth to undress while he watched and engaged in inappropriate sexual touching.

INVESTIGATION:

Scioto Juvenile Correctional Facility

- A female officer pled guilty to dereliction of duty as a result of allegations that she ordered male youth to expose himself and engage in inappropriate touching.
- An officer was convicted of sexual battery and attempted sexual battery for forcing one youth to perform sex acts on him and for inappropriately sexually touching another female youth.

PROSECUTORIAL CONSIDERATIONS

- Nature of Offense
- Quality of Initial Report
- Quality of Initial Investigation
- Condition of Crime Scene, if any
- Available DNA
- Admissions by Target
- Any Witnesses
- Any Other Corroborative Evidence
- Target's History

QUALITY OF THE INITIAL REPORT

- Timing of Reported of Sexual Assault
- Details
- Victim's Demeanor
- Prior Reports of Rape
- Victim's Criminal Status
- Location
- Any Prior Contact/Relationship with Suspect
- Willingness to Go Forward

STRENGTH OF INITIAL INVESTIGATION

- The Rape Report
- Rape Kit/Medical Forensic Examination
- Document Visible Injuries with Photographs
- Photograph / Diagram Scene
- Determine All Sexual Contacts or Acts
- Uncover All Potential Witnesses (Eye or Ear)
- Determine Prior Contact with Target
- Obtain Inmate Locators
- Obtain Internal Investigative Reports
- Interviews with Other Staff Members
- Consider Defenses

CRIME SCENE

- Determine Location of Assault (the place/person)
 - o Dorm/Prison Cell
 - o Bathroom
 - o Library other Common Area
 - o Staff Room/Staff Area
- Immediately Photograph/Diagram
- Recover All Physical Evidence
 - o From the Person of the Victim
 - o Bedding
 - o Defendant's/Victim's Clothing
 - o Potential DNA Evidence
 - o Letters/Paperwork/Contraband

POWER OF DNA

- Fabrication Defense - Gone
- Misidentification – Gone
- No Defenses Available
- Powerful Corroboration
- May Force Defendant To Testify
- Look For Nuclear DNA
 - o Swabbings from Victim
 - o Bedding or Sheets
- Look For Mitochondrial DNA
 - o Hair Samples
- Helpful Serological Results
 - o Semen vs. Blood/Saliva

QUALITY/ QUANTITY OF WITNESSES

- Taking Witness Statements
- Witness Relationship to Victim
 - o Other Inmate
 - o Correctional Employees
- Criminal History of Witnesses
- Keeping Track of Witnesses
- Using Witnesses at Trial
- Witness Security Issues
- What's in it for the Witnesses?
- Lock out Future Contradictory Witnesses

Additional Corroboration

- Medical Findings
- Other Reports (404B Evidence)
- Eye or Ear Witnesses
- Physical Evidence
- Staff Evidence
- Prior Reports

Power of Admissions

- Admissions are as important as Confessions
- Interview of Suspect
 - Let Suspect Provide Explanation
 - Lock Suspect Into Statements Re Any Contact with Victim During Time Frame of Assault
 - Fully Flesh Out the Alibi with All Details
 - Confront the Suspect with Details and Evidence Recovered in Your Case
- Written Statements
- Statements to other inmates
- Statements to correctional staff
- Miranda Waiver
- Impeaching Statements
- Disciplinary Files

ANTICIPATE DEFENSES

- Fabrication
- Bias
- Motive
- Consent (Inmate on Inmate)
- Insufficient Proof (i.e. poor investigation)
- Identity
- Beyond a Reasonable Doubt

TRIAL PREPARATION

- Victim Trial Preparation
- Locating and Securing Inmate Witnesses
- Witness Safety
- Securing Employee Witnesses
- Witness Trial Preparation
- Obtaining Custodians for Records
- Updating Criminal History
- *Brady/Giglio/Lewis*
- Preparing Your Arguments

THEMES

- Vulnerability
- Power Structure
 - o Inherently unequal positions
 - o Compromise staff and security
 - o Exploitation
- Duty to Follow the Law
- No One Is Beneath The Law
- Child Sexual Abuse

WHAT PROSECUTORS WANT

- Juvenile Offender Cases Hardest to Prove
- Show Me the Evidence!
- Strong Case Out of the Box
- Be Thorough

WHAT PROSECUTORS WANT

➤ Be the Expert

- o Evidence – physical / biological
- o Interview every potential offender witness
- o Interview every potential staff witness
- o Medical records – psychological / physical
- o Photographs / Diagrams of the scene
- o Offender records (disciplinary / program)
- o Internal policies

WHAT PROSECUTORS ADD

- Independent Investigation
- Cover (Internal and External)
- Experts
 - o Medical
 - o Psychological
 - o Scientific (DNA)
- Grand Jury Process
- Pretrial Disposition
- Sentencing Options

Committing the Reticent Prosecutor

- Show the Prosecutor Your Commitment
- Get Him/Her Involved Early
- Complete A Comprehensive Report
- Be Responsive and Available
- Personally Present Your Full Report
- Follow-up Regularly with the Assigned Prosecutor
- Stay on Top of Your Witnesses and Your Case
- Document All Conversations
- Supervisor to Supervisor

PRE-TRIAL DISPOSITION

A Conviction = A Conviction

- Guilty Pleas Are Good
- Saves Victims From Testifying
- Ensures Conviction in Weaker Cases
- Avoid Issues of Recantation
- Avoid Issues of Witness Relocation
- Useful In Cases w/ No DNA or Weak Corroboration
- Registered Sex Offender
- Potential for Jail Time
- Deterrent Effects
- Encourages Reporting

OUR IMPACT

- Just Result
- Sends the Right Message to Correctional Staff
- Deterrence – Stop and Think
- Safer environments – Rules are Rules

RECOMENDATIONS

- Train prosecutors
- Clarify and improve reporting structures
- Improve the quality of investigations
- Build relationships with other actors
 - o Victim Services
 - o Law Enforcement
 - o Protection and Advocacy
- Amend state and federal law
- Specialized prosecution units