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INVESTIGATING SEXUAL ABUSE IN CONFINEMENT SETTINGS:

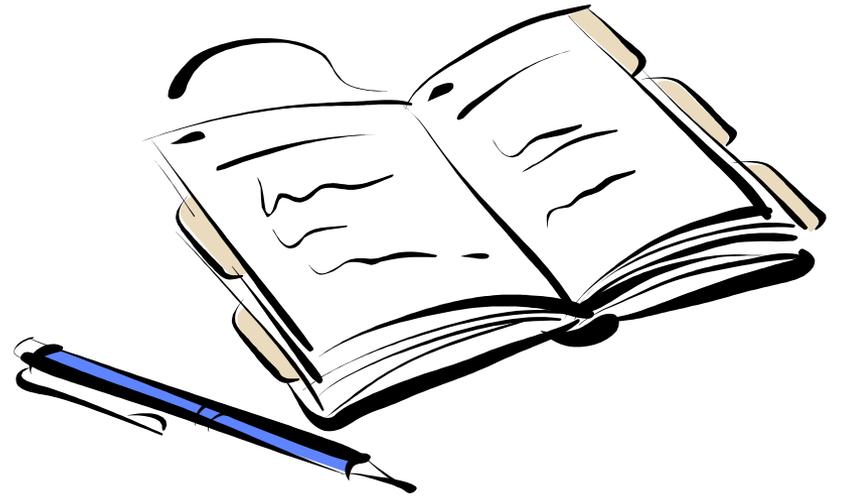
American Jail Association

Grand Rapids, MI

May 4, 2013

- August 20, 2012:** Standards applicable to state and local facilities effective date
- May 1, 2013:** Target date for DOJ to fully implement auditor certification process (estimated)
- August 20, 2013:** Three-year audit cycle begins
- October 1, 2013:** First date on which federal grant funds may be impacted (FY 2014)
- August 19, 2014:** One-third of facilities must be audited
- August 19, 2016:** First three-year audit cycle complete

- Victim and Perpetrator in close proximity
- Victim / witness credibility
- Potential for crime scene contamination
- Inmate Culture – multiple reasons for involvement
- Staff Culture – Code of Silence
- Mental and physical state of victim
- Sensitive and personal issue
- Victims respond differently (PTSD, mental health issues)
- Inmate population with high risk factors
- Fear of retaliation



“My words, your words”

IMPORTANT TO DEFINE PROHIBITED BEHAVIORS

- Clarifies prohibited behaviors
- Data reporting
- Consistency in policy

FOR INVESTIGATORS:

- Reported allegations may appear as minor infractions.
- Investigation may reveal that it is just the tip of the iceberg.
- Must dig deeper and not just stop at “he said, she said”.

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Review of Key PREA Standards Related to Investigations

- Follow uniform evidence protocol for physical evidence
- Offer all victims forensic medical exam (SANE, SAFE or other qualified medical personnel)
- If requested, victim advocate accompanies victim through exam
- Policies to ensure investigations

- **General training for all employees**
- **Conducting investigations in confinement setting**
- **Interview sexual abuse victims**
- **Miranda & Garrity – use and application**
- **Evidence collection – techniques, protocols**
- **Criteria & evidence required to substantiate administrative and/or criminal**

CRIMINAL ALLEGATIONS:

- Investigate ALL allegations
- Specialized training for investigators
- Credibility not determined by person's status
- Not require polygraph for victim as condition of investigation
- All substantiated criminal allegations referred for prosecution

- Criminal investigation proceeds first
- Suspend administrative, if criminal act involved
- Criminal conviction prima facie evidence to substantiate administrative case

Application of Miranda and Garrity

Key Points – Miranda

- Must be an interrogation (accusatory)
- Person must be in custodial situation
- Interrogation is by law enforcement

Application of Miranda and Garrity

Key Points – Garrity

- Applies to public employees
- Compelled statements taken only after consult with prosecutor (if criminal)
- Nothing in compelled statement may be used in criminal investigation or prosecution.

ADMINISTRATIVE ALLEGATIONS:

- Did staff actions or failure to act contribute to abuse?
- Maintain reports for as long as abuser employed, or in facility, PLUS 5 years
- Complete investigation regardless of resignation or departure

The evidentiary standard for administrative investigations shall be no higher than a **preponderance of the evidence**.

- If alleged staff abuser reassigned, suspended, no longer employed
- If staff indicted
- If staff convicted
- If inmate abuser indicted
- If inmate abuser convicted

Termination is presumed for any sexual touching

All **criminal charges reported** to law enforcement and licensing agencies

Agency may discipline per policy if consensual

Inmate-on-inmate sexual activity – if consensual – not sexual abuse

If non-consensual, criminal action considered

Review every incident at conclusion.

Form review team TO EVALUATE:

- Need for policy change
- Motivation for incident
- Physical area of occurrence
- Adequacy of staffing levels
- Need for monitoring technology
- Report to include recommendations

- Intervention within 14 days, if screening finds prior history of abuse or abusiveness.

Relevance to investigators:

- Need to know results of screening if prior abuse or abusiveness identified.
- Impacts
 - Interviews, interrogations
 - Motives and intentions

- Timely, unimpeded access for inmate victims
- If medical/mental health not on duty, first responders must protect victim, and assure notification to medical/mental health practitioners.
- Information and access to emergency contraception and STD prophylaxis.

Relevance to investigators:

- Assure that first responders have met requirements of this standard.

- Accompany victim during forensic medical exam.
- Be present upon victim request during investigatory interviews.
- During interviews, advocate may only provide emotional support.
- May not speak for victim, ask questions, or answer questions for victim.
- Investigator should consider how advocate may help establish rapport with victim, make victim comfortable and less fearful.

Relevance to investigators

- Critical that first responders know what to do and not to do.
- Recommended that investigators provide training to staff at pre-service and in-service.
 - Builds trust and credibility
 - Creates clarity
 - Protects integrity of investigation

Don't investigate in a vacuum or isolation.

Use team approach, if possible.

- Prevents conflict of interest
- Prevents tunnel vision
- Increases accountability

Prosecutors want:

- Right defendant
- Evidence
- Thorough interviews
- Proper evidence collection
- Documentation
- Clear 'view' of crime scene – usable imagery
- Partnership with investigator

Have you been the subject of an internal/administrative investigation?

What was your reaction when you found out?

How well did you understand the investigative process?

HOW CAN WE DEMYSTIFY THE PROCESS?

- **Provide Training and Information** – during in-service, pre-service
- **Be visible** – even when not investigating
- **Be a model**
 - Professionalism at all times
 - Consistency in actions, behavior, attitude, language
 - Avoid conflicts of interest – even perceived
 - Integrity off-duty and on-duty
 - Seek self-improvement – training & education

substantiated, if they were determined to have occurred

unsubstantiated, if the evidence was insufficient to make a final determination that they occurred

unfounded, if they were determined not to have occurred

investigation ongoing, if a final determination had not been made at time of data collection

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The NATIONAL PREA RESOURCE CENTER

The mission of the PRC is to assist adult prisons and jails, juvenile facilities, lockups, community corrections and tribal facilities in their efforts to eliminate sexual abuse by increasing their capacity for prevention, detection, monitoring, responses to incidents and services to victims and their families.

Search the PREA Library for Articles and Resources:

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LEGAL



In this section of the library you will find information about the Prison Rape Elimination Act of 2003 and related laws and legal issues.

[See all Legal articles](#) >

NEWS COVERAGE



In this section of the library you will find all PREA-related news articles, including news about the law, implementation of standards, and federal and local initiatives.

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In this section of the library you will find federally funded and academic reports and articles on a range of PREA-related topics.

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In this section of the library you will find tools such as training materials, handbooks, policy development toolkits, and a list of resources for survivors.

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STANDARDS



In this section of the library you will find the federal PREA standards and information about the development, implementation, compliance with, and enforcement of the standards.

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Library Sections

- Recently Additions
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- Research
- Resources
- Standards

Methods of Delivery

- Webinars
- Publications
- Regional Trainings
- Field-initiated Training and Technical Assistance
- Regional Auditor Training
- BJA PREA Demonstration Sites
- Other technological platforms (such as e-Learning Courses)

To request training or technical assistance from the **National PREA Resource Center**, visit www.prearesourcecenter.org. For questions about training and technical assistance, contact:

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National Institute of Corrections Website Library

www.nicic.gov

For more information about the **National PREA Resource Center**, visit www.prearesourcecenter.org. Direct questions to info@prearesourcecenter.org

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