

# **Training Curriculum for Investigating Allegations of Staff Sexual Misconduct with Inmates**

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# **TRAINING FOR INVESTIGATORS OF STAFF SEXUAL MISCONDUCT**

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## **Preface and Acknowledgments**

Producing a curriculum to address the needs of investigators in the area of allegations of staff sexual misconduct is a serious undertaking. To reach all fifty state corrections systems is a challenge. In order to accomplish the creation of relevant curriculum, the advice, guidance, and insight of many corrections professionals was necessary.

The authors wish to acknowledge and thank the staff of the National Institute of Corrections for their leadership and assistance during the preparation of this training curriculum. Andie Moss' knowledge, guidance, personal commitment and insights were invaluable to producing a high quality training program to improve professionalism in corrections.

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## **Section I**

### **Definition and National Scope of Staff Sexual Misconduct**

#### **Section I Objectives**

- Define staff sexual misconduct.
- Recognize the negative effects of staff sexual misconduct.
- Identify how national reports and media attention have highlighted the issue of staff sexual misconduct in corrections.
- Determine how corrections has responded to this issue over the past several years.
- Recognize the personal and professional risks involved when staff engage in sexual misconduct.
- Distinguish between the pro-active and reactive missions of agency administrators and investigators.
- Identify the differences between sexual misconduct, assault, and abuse.
- Initiate action plan development.



**presentation**

## I. Introduction - Definition & National Scope of Staff Sexual Misconduct

The 1990's have created a new awareness of the problem of sexual misconduct wherever an imbalance of power exists - in the military, in religious institutions, in schools and colleges, and in prison and jail settings. In terms of the incarcerated population, the response to the problem has been mixed.



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Kathleen Hawk Sawyer, Director of the Federal

“..sexual misconduct has been the single most frustrating issue for me.”  
*Kathleen Hawk Sawyer, Director, Federal BOP*

Bureau of Prisons, has stated that “sexual misconduct has been the single most frustrating issue” during her directorship

in the federal prison system. Ms. Sawyer goes on to state, “[T]here are many pieces to dealing with the issue of sexual misconduct. There is the investigative piece, the personnel piece, training, and also the inmate management piece. It’s not only about the investigation and nailing someone to wall then getting rid of them. It is a whole system response that will produce positive outcomes. Otherwise, you’re missing the mark. Your strategy has to be very integrated and cross-system oriented to have any positive impact at all.”

**Activity # 1 - Go to Activity Book  
Critical Issues**



Activity

**Sexual Misconduct:**

Any behavior or act of a sexual nature directed toward an inmate by an employee, volunteer, visitor or agency representative. This includes acts or attempts to commit such acts including but not limited to sexual assault, sexual abuse, sexual harassment, sexual contact, conduct of a sexual nature or implication, obscenity and unreasonable invasion of privacy. Sexual misconduct also includes but is not limited to conversations or correspondence which suggest a romantic or sexual relationship between an inmate and any party mentioned above.

**Effects of Staff Sexual Misconduct:**

- Jeopardizes facility security;
- Creates stress and trauma for those involved;
- Undermines the public's support of correctional personnel;
- Exposes the agency and staff to liability;
- Creates a hostile work environment;
- Compromises professionals;
- Victimizes the already vulnerable;
- Violates the law;
- Diminishes legislative support for funding and reforms;
- Creates mistrust within the facility.



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**A. Summary of recent major national reports that have impacted the issue of staff sexual misconduct**

In the past 5 years, several national reports have addressed, explored, and investigated the issue of staff sexual misconduct. Even though the majority of these reports result from alleged abuse of women, staff sexual misconduct is by no means limited to a “women’s issue”. Staff/inmate relationships cross gender lines in all directions – female staff and female inmates; male staff and female inmates; male staff and male inmates; and female staff and male inmates. More importantly, staff sexual misconduct tremendously impacts an agency’s ability to achieve its mission, regardless of the genders involved.



These recent reports provide invaluable lessons about the issue of staff sexual misconduct, in addition to its impact on female inmates. The following are summaries of several of these reports:

- In December 1996, Human Rights Watch Organization published a document entitled “All Too Familiar: Sexual Abuse of Women in U.S. State Prisons”. This report revealed a number of incidents involving sexual harassment, sexual abuse, sexual contact, and violations of privacy issues for women in state correctional facilities in California, the District of Columbia, Georgia, Illinois, Michigan and New York. This report highlighted many issues which corrections agencies needed to address.<sup>1</sup>
- In 1997, the U.S. Department of Justice filed a civil rights lawsuit against the Departments of Corrections in the states of Michigan and Arizona. The actions were based on their

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findings that the departments failed to sufficiently protect female inmates from sexual misconduct by staff.

- “Nowhere to Hide: Retaliation against Women in Michigan State Prisons”, published by Human Rights Watch, examines acts of retaliation against inmates. The report detailed what happened to women inmates who filed a civil suit (Nunn v. Michigan Department of Corrections). The inmates claimed that they were being retaliated against by staff for the filing of this suit.
- The widespread abuse of female inmates was examined by Amnesty International USA, in their 1999 document “Not Part of My Sentence: Violations of Human Rights of Women in Custody”.
- A 1999 United Nations report, compiled by an independent fact-finder, indicated that sexual misconduct by prison officers is common in prisons in the U.S.; especially when compared to prison systems in other industrialized countries. This report offered many recommendations for the prisons in this country, including the criminalization of sexual misconduct between staff and inmates.<sup>3</sup>
- In June 1999, the United States GAO published a report requested by U.S. House of Representatives member, Eleanor Holmes Norton (D. – D.C.), “Women in Prison: Sexual Misconduct by Correctional Staff”. This report studied four major jurisdictions; California Department of Corrections, District of Columbia Department of Corrections, Texas Department of Criminal Justice, and the Federal Bureau of Prisons. These jurisdictions account for more than 1/3 of the total national prison population. The results indicated that the 1990’s created a

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new awareness of the problem of staff sexual misconduct, and that the response to the problem has been mixed. Most states have criminalized certain behaviors and implemented training and policies to address this issue. The report found that much more work is needed in training, methods of incident reporting, procedures for monitoring and responding to allegations, tracking the progress of investigations, and conducting competent investigations.<sup>4</sup>

- Some states have completed their own reports on staff sexual misconduct, including a report by the Florida Correctional Medical Authority, published in conjunction with the Florida Corrections Commission, and the House Corrections Committee, in December 1999. Recommendations include improvement in investigative and reporting procedures, and other reforms to meet basic needs of the female offender.<sup>5</sup>

### ***B. Headlines from various news media sources over past five years***

[See appendix of newspaper headlines]

### ***C. Facts and figures from national survey "Sexual Misconduct in Prisons: Law, Agency Response, and Prevention, U.S. Department of Justice, National Institute of Corrections, May 2000".<sup>6</sup>***

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- In this survey of 54 Department of Corrections in the U.S. (50 States, the District of Columbia, U.S. Bureau of Prisons, Guam, and Puerto Rico), 24 jurisdictions reported they had faced either class action or individual civil lawsuits relating to staff sexual misconduct with inmates in the years 1991 - 1996.
- Since 1996, 17 jurisdictions are currently facing civil litigation, with some jurisdictions facing multiple litigations.
- In three of the largest departments of corrections in the U. S., between 1995 and 1998, there were a minimum of 506 allegations of staff sexual misconduct; 92 of these were sustained, with the majority of those sustained resulting in employee termination or resignation. Only a small portion of the allegations involved rape or forced sexual contact. The majority of incidents involved inappropriate behaviors, such as verbal communication, harassment, touching, visual surveillance and/or sexual relationships.
- 16 departments have developed new policies on staff sexual misconduct with inmates, and at least 12 more departments are in the process of developing specific policies.
- Since the original 1996 survey, 23 departments have developed new staff training programs or have substantially revised existing training on staff sexual misconduct, and an additional 8 agencies are in the development stage for new training.
- Three departments (Oregon, Vermont and Virginia), now provide specialized training for staff who are assigned at facilities for women offenders.



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- 22 agencies have evaluated their investigative practices on responding to allegations of staff sexual misconduct, with at least 11 agencies reporting that they have developed specialized training for investigating staff sexual misconduct.
- As of November 1999, all but 7 states have enacted specific legislation prohibiting staff sexual misconduct with inmates, with 16 of those states passing legislation since 1996. [See: *Fifty State Survey*]

### ***D. Personal and Professional Risks – summary of outcomes of investigations of allegations across the country, highlighting the actions against staff.***

Most corrections agencies have been affected in some way by staff sexual misconduct. Being involved in, or ignoring staff sexual misconduct can have dire consequences, not only for the agency, but also for staff and the inmate victim.

The following are examples of outcomes in selected cases.

- A Federal jury awarded damages in excess of \$5.3 million to a former inmate of the D.C. jail. The inmate accused officers of forcing her to perform a striptease show for other officers. The D.C. Department of Corrections has filed an appeal of the award.
- Three women at a Federal Bureau of Prisons [BOP] facility in Dublin, California, filed a lawsuit. The women alleged that during August and September of 1995 they were beaten, sexually assaulted, forcibly prostituted by staff to male inmates who paid staff for access to the plaintiff's cells, and were being held in a



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segregated wing of the prison. After making official reports of these incidents, under oath, to prison administrators, at least one of the inmate plaintiffs suffered serious retaliation. Three weeks after making her report, her cell door was opened without explanation, and three men entered, handcuffed her, beat her, sexually assaulted her, and threatened to repeat the attack if she continued her complaints. The courts awarded a total of \$500,000 to the plaintiffs. [see *Lucas v. White* 63 Fsup. 2<sup>nd</sup> 1046(n.d.Cal) 1999]

- In April, 1997, a prison chaplain in Fort Worth, Texas, was charged with a misdemeanor, for fondling an inmate. [Assoc. Press]
- State legislators in 1997, reprimanded administrators of a California Youth Authority school for their failure to conduct competent and timely investigations into allegations of sexual abuses in their facility.
- In March of 1998, a Connecticut deputy warden and a correctional officer received sentences of six months in prison and one year in prison, respectively. The deputy warden was only 25 days short of receiving his \$50,000 per year pension. He was accused of having a consensual sexual relationship with an inmate working in his office, who was serving time for conspiracy to commit murder. The correctional officer was later sued by the female inmate, who gave birth to his child, and was awarded an undisclosed sum of money. [reported by the Associated Press, 4-1-98]
- In January 1998, a male officer at a Federal facility in Texas received a sentence of 1.5 years in prison for the sexual abuse of an inmate. The officer admitted to the rape of a male inmate.

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*[reported by the Associated Press, Jan.9, 1998, based on court records]*

- Two correctional officers at a Federal Bureau of Prisons facility in California, resigned in November 1997, in light of charges that they had sex with female inmates. *[reported by City News Service of Los Angeles, Inc., based on information provided by U.S. Attorney Jerome Friedberg]*
- Two female staff at a privately run youth facility in Colorado were fired in April of 1998, for having sex with juveniles under their charge. Two additional staff resigned voluntarily during the internal investigation. *[reported by the Denver Post, 4-11-98, based on information provided by Human Services Director Barbara McDonnell]*
- A prison sergeant at a North Carolina state correctional facility, pled guilty to lesser offenses of three counts of sexual activity with inmates, which occurred during May and June 1991, and was sentenced to twelve (12) years in prison.
- In August 1999, four correctional officers were fired from Suffolk County Corrections in Massachusetts, as a result of an investigation into allegations of staff sexual misconduct with inmates, and refusing to take DNA tests. A civil lawsuit filed by female inmates alleging that officers forced them into having unprotected sex, and exchanged drugs for sex, is currently pending. *[reported by The Boston Globe, August 28, 1999, from a statement given by Suffolk County Sheriff's Office.]*
- In the State of Florida, between 1997 and 1999, the Florida Department of Law Enforcement reported 233 cases filed for decertification, based on sex offenses, sex on duty or unprofessional relationship with inmates. Of

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these cases, 75% were in state prisons, 10% in private prisons and 15% in probation/parole. Of the 233 cases, 30% (71) resulted in decertification, denial of appeal on decertification, voluntary relinquishment of certification, letter of acknowledgment (agency discipline sufficient), or letter of guidance (admonishment added to discipline). *[figures provided by FDLE; Criminal Justice Professionalism Program, August 2000]*

- In the State of California, between 1997 and November 1999, there were 16 resignations, 3 terminations, 6 early retirements, 5 criminal prosecutions and 35 sustained findings as a result of investigations into staff sexual misconduct.
- In Michigan, between 1992 and 1995, there were 11 criminal prosecutions, which resulted in sentences from 3 to 15 years; 18 corrections officers were terminated, 1 was suspended, and 1 was transferred. In addition, Michigan was party to 8 separate inmate lawsuits during that period.

States which license corrections professionals may act to decertify staff with sustained allegations of sexual misconduct, regardless of whether

- the employee resigns prior to the completion of the investigation,
- criminal charges are not filed, or
- the employee is exonerated on criminal proceedings.

De-certification can prevent the employee from being hired in the field again, in that state.

**Activity # 2 - Go to Activity Book  
Personal and Professional Risks**

***E. Pro-active and Reactive Missions – Administrators’ and Investigators’ Role in Maintaining Personal and Agency Credibility and Integrity***

**An administrator’s two major objectives:**

**1. To establish consistent and clear policy and procedure that will guide and direct staff in the performance of their duties, preserve the competent and efficient operation of the agency, and support the agency’s goals and objectives through action and example;**

**2. To monitor the daily operations within the agency to assure that they support and enhance the agency’s mission, and to initiate change in policy and procedure or take immediate and appropriate action as necessary to achieve this goal.**



**Activity**

1. An administrator has the primary responsibility to proactively manage the agency. Relating to the issue of staff sexual misconduct, these responsibilities include but are not limited to the following:

assuring the creation, education and enforcement of clear and consistent policy and procedures for the prevention, identification and appropriate response to allegations of such misconduct.

monitoring investigations after allegations of staff sexual misconduct are received.

ensuring that discipline is imposed in an appropriate, consistent and fair manner.

assisting the investigative unit to establish investigative partners.

assuring that the agency policy of zero tolerance is fully enforced and explained to staff and inmates.

leading by example to encourage integrity and excellence among staff.

**An investigator's two major objectives:**

**1. To conduct a thorough and competent investigation that will clearly either support or refute allegations, with evidence, information gathered from witnesses, and documentation;**

**2. To safeguard the well being and security of the complainant, the subject, the respondent, the institution and the agency, and ensure the integrity and credibility of the process.**

[Source: [Investigation of Sex Crimes](#), curriculum of Souther Police Institute School of Justice Administration, University of Louisville]

2. The investigator's role is consistent with the goal to conduct objective and competent investigations. These tasks are both proactive and reactive in nature, and are shared with the role of administration. Some of these include:

- working with administration in establishing investigative partners
- gaining an understanding of the unique nature of investigating allegations of staff sexual misconduct
- observing the application of policy and procedure, and making appropriate recommendations to administration as necessary to ensure the integrity of the investigative process



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- treating all victims, respondents and witnesses of allegations of staff sexual misconduct with respect and fairness.
- preserving the integrity of the investigation by consistently seeking to complete objective, fair, competent and thorough investigations
- leading by example to encourage integrity and excellence among staff.

This training is designed to provide administrators and investigators with guidelines and information that will assist in meeting the goals described above.

### ***F. Definitions***

One of the first steps in establishing policy and procedure for handling allegations of staff sexual misconduct, is defining the terms.

The critical purpose in developing definitions is to assure clarity in the language used to describe staff sexual misconduct. Clear definitions help all staff understand agency expectations.

Definitions can differ from state to state so each agency must develop their own definitions, guided by state statutes. Some statutes may be limiting in their definitions. In these cases, departmental policy may need to be more explicit. Agencies do not have to be limited by statutes. Even if statutes limit the criminal implications of specific acts of staff sexual misconduct, agency policy may require a higher standard from staff which carries administrative sanctions.

The following definitions are sample definitions from several corrections agencies. Agencies

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may use and modify these according to their own state statutes and departmental guidelines.

In the appendix, there are additional samples of definitions of other items, including:

Parties within the institution; and  
Parties within the grievance/report.

*Terms – Defining the terms or actions of staff sexual misconduct can be different for each agency or jurisdiction. These definitions should be consistent and aligned with definitions in statute, and should at least include the following:*

**Sexual Misconduct** – Any behavior or act of a sexual nature directed toward an inmate by an employee, volunteer, visitor or agency representative. This includes acts or attempts to commit such acts including but not limited to sexual assault, sexual abuse, sexual harassment, sexual contact, conduct of a sexual nature or implication, obscenity and unreasonable invasion of privacy. Sexual misconduct also includes but is not limited to conversations or correspondence which suggests a romantic or sexual relationship between an inmate and any party mentioned above.

**Sexual Assault** – Any sexual touching or contact which is non-consensual, forced or coerced in any manner, including but not limited to rape, sodomy, or unlawful touching as defined by the ...[state]...Statutes.

**Sexual Contact** – includes, but is not limited to, all forms of sexual contact, intentional sexual touching or physical



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contact in a sexual manner, either directly or through clothing, of the genitalia, anus, groin, breasts, inner thighs, buttocks, with or without the consent of the person; or any unwanted touching with intent to arouse, humiliate, harass, degrade, or gratify the sexual desire of any person.

**Sexual Abuse** – includes, but is not limited to, subjecting another person to any sexual act or contact between an employee, volunteer or agency representative and an inmate by force, persuasion, inducement, or enticement; any sexual act or contact in which an employee, volunteer or agency representative participates or forces any inmate to engage; subjecting another person who is incapable of giving consent by reason of their custodial status, physical state or mental state; or rape, sexual molestation, prostitution or other form of sexual exploitation.



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**Sexual Harassment** – includes, but is not limited to, all of the following, whether by staff or inmates: unwelcome sexual advances; sexually offensive language, comments or gestures; influencing, promising or threatening an inmate's safety, custody, privacy, housing, privileges, work or program status, in exchange for personal gain or favor of a sexual nature; creating or encouraging an atmosphere of intimidation, hostility or offensiveness as perceived by any individual who observes the sexually offensive behavior or language.



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**Violation of Privacy Rights of Inmates** – includes, but is not limited to, the act or

the attempted act of observing or interfering with an inmate's personal affairs without a reasonable need to do so for the immediate safety and security of the inmate, employees, or others within the institution. Acts that are included consist of: failing to announce his/her presence when entering a housing unit; reading personal mail or written materials of an inmate when not required for the safety and security of the institution or persons therein.



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**Unauthorized Behavior** – includes, but is not limited to, any activity or contact with an inmate or inmate's family, that is unrelated or unnecessary to the employee's assigned duties and/or official Department business.

**Personal Gain** – any advantage which benefits a person, including by not limited to monetary value, property, commercial interest, and social, professional or political standing or advantage.



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*(Source: Definitions used in these examples and those in the appendix are taken from those provided by the States of Georgia & California, and Arlington County, Virginia)*

## **G. Action Planning (see Activity Booklet)**

A plan of action will be developed during this training by participant team. This plan will serve as an organized blueprint for activities when you return to your agency. The plan will provide a reference for priority activities.



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As you go through this training program, take time to make notes in each of the plans of action. You will also be asked to assign a

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priority to each of the activities in your plans of action.

Upon return to your agency, meet with administrators and policy-makers to review your action planning and affect change to policies and procedures.



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**Activity**

**Section I Summary:**

***This section defined staff sexual misconduct to provide focus and eliminate confusion surrounding this topic. Summaries of major national reports concerning staff sexual misconduct demonstrated that the issue is one that can have tremendous impact on corrections agencies and corrections staff. Newspaper headlines were reviewed, showing that staff sexual misconduct has gained nationwide attention. Information from a national survey of corrections agencies delineated the frequency of lawsuits that have resulted from misconduct by staff, and also listed just a few of the risks to staff and agencies as a result of such misconduct. The section included a discussion of the proactive and reactive responsibilities for administrators and investigators, along with definitions of various types of sexual misconduct. Finally, it concluded with a format for completing an action plan that participants will develop during the training program. This action plan will give focus to participants upon return to their agencies, and will include the team's proposals to improve the current administrative and investigative process to address allegations of staff sexual misconduct.***

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### Endnotes:

1. *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons*; Human Rights Watch, Women's Rights Project, 1996.
2. *Nowhere to Hide: Retaliation Against Women in Michigan State Prisons*; Human Rights Watch, September 1998.
3. *Integration of the Human Rights of Women and Gender Perspective: Violence Against Women; Report of the Special Rapporteur on violence against women, its causes and consequences*, by Ms. Radhika Coomaraswamy, in accordance with the Commission on Human Rights Resolution 1997/44: Addendum – Report of the mission to the USA on the issue of violence against women in state and federal prisons; E/CN.4/1999/68/Add.2 GE.99-10012 (E), United Nations Economic and Social Council, Commission on Human Rights 55<sup>th</sup> Session, January 4, 1999.
4. *WOMEN IN PRISON: Sexual Misconduct by Correctional Staff*; Report to the Honorable Eleanor Holmes Norton, House of Representatives; United States Government Accounting Office, GAO/GGD-99-104, June 1999.
5. *Special Report on Female Offenders in Florida Prisons*; Supplement to the State of Florida Correctional Medical Authority's Annual Report 1998 – 1999: Florida Corrections Commission Annual 1999 Report, published January 1, 2000; Section 5.0, Female Offenders, pp103-128.
6. *Sexual Misconduct in Prisons: Law, Agency Response, and Prevention*; LIS, Inc. for United States Department of Justice, National Institute of Corrections Information Center, Longmont Colorado, November 1996 and update of May 2000.

## **Section II**

### **Legal Considerations**

#### **Section II Objectives**

- Identify constitutional issues for both staff and inmates relating to staff sexual misconduct.
- Review cross gender cases involving male inmates.
- Review cross gender cases involving female inmates.
- Review “sex” cases.
- Discuss qualified immunity.
- Review “BFOQ”.
- Overview civil lawsuits and outcomes to recognize areas where administrators and investigators need to focus attention.
- Critique state laws and identify what makes a “good” state statute.
- Review employment law as it relates to investigation, sanctioning, and terminating employees.



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### III. Legal Considerations

#### A. Cross Gender Cases Involving Male Inmates

##### Cross-Gender Supervision (EEO protections)



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Federal law prohibits certain employment actions by employers based on race, gender, and other individual factors. Administrators and investigators must be aware of these mandates when conducting investigations and developing investigative policy, particularly in the areas of transferring and/or reassigning staff who are subjects of investigations, and in disciplining staff who are found guilty of allegations.

In determining work assignments based on gender, agencies are restricted by additional Federal protections under Title VII of the Civil Rights Act of 1964 which provides protection against gender discrimination in the workplace.

Canada and other western countries allow for only same gender supervision of inmates. The U.N. has set standards (see *Inmate Protections*, below) requiring female inmates to be supervised ONLY by female staff. The U.S. is non-compliant with this standard, based on employment protections against discrimination.

The Federal District Court, in *Gunther v. Iowa State Men's Reformatory* (462 F.Supp952 N.D. Iowa 1979), ...”held that privacy rights of inmates should not take precedence over a female correctional officer's right to promotion, and the administration of the prison should make arrangements to allow them in without compromising inmates' privacy.” This Gunther finding applied in Iowa's prisons, and does not necessarily apply in all judicial circuits. It can be used as a starting point to determine what applies within the respective circuits for each agency.

##### (Handouts)

- *Cookish v. Powell*, 945 F.2d 441 (1991)
- *Hudson v. Goodlander*, 494 F. Supp. 890 (1980)

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- Cornwell v. Dahlberg, 963 F.2d 912 (1992)
- Cannedy v. Boardman, 16 F.3d 183 (1994)
- Smith v. Fairman, 678 F.2d 52 (1982)
- Summers v. Thurman, 109 F.3rd 614 (1997)
- Canell v. Armenifkis, 840 F. Supp. 783 (1993)
- Michenfelder v. Sumner, 860 F. 2d 328 (1988)
- Grummett v. Rushen, 779 F. 2d 491 (1985)
- Bagley v. Watson, 579 F. Supp. 1099 (1983)
- Bowling v. Enomoto, 514 F. Supp. 201 (1981)
- Cumbey v. Meachum, F. 2d 712 (1982)
- Stirling v. Cupp, 290 Or. 611, 625 P.2d 123 (1981)

### **Inmate privacy protections vs. institution security**

Part of the response to staff sexual misconduct has been exploration of how to limit the contact between inmates and staff of different genders. Since staff sexual misconduct is not limited by gender, corrections agencies must still be aware that cross-gender supervision brings certain concerns. Cross-gender supervision also carries with it a requirement that certain constitutional protections for inmate privacy be met, except in extreme cases.

The courts have responded to a number of inmate privacy issues, and in the Turner case (see below), the courts established a four-part test to follow when determining the appropriateness of certain aspects of cross-gender supervision.

#### (1) *Turner v. Safley*, 482 U.S. 78 (1987)

If inmates possess a reasonable expectation of privacy of their person, then an incarcerating authority cannot ignore that right unless circumstances exist that relate to immediate facility security.

The four-part test:

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1. Is the connection between the institutional regulation and the governmental interest, reasonable and rational?
2. Is there an alternative means for the inmate to secure their particular privacy needs?
3. What is the impact on staff, other inmates, and prison resources, if accommodations are made?
4. If no alternative readily exists, then can it be assumed that the prison regulation is reasonable?



presentation

In *Grummet V. Rushen*, 779 F.2d491 (9<sup>th</sup> Cir. 1985), male inmates filed a class action lawsuit challenging a prison policy that permitted female correctional staff to view them in various stages of undress, claiming that this violated their right to privacy. However, in *Timm v. Gunter*, 917 F.2d1093 (8<sup>th</sup> Cir. 1990), the courts found that this policy violated no privacy interest, and that prison security needs must first be met. In this case, cross-gender pat searches of male inmates by female staff did not violate the male inmates' right to privacy since prohibiting these types of searches would have threatened facility Inmate privacy protections vs. institution security

(2) *Jordan V. Gardner*; 986 F.2d1521 (9<sup>th</sup> Cir. 1993)

The findings in the *Jordan* case acknowledge that the past history of sexual and physical abuse of female inmates, which is significantly higher than with male inmates, may justify different treatment. In *Jordan*, the courts found that a policy in Washington state allowing male staff to conduct pat searches of female inmates, violated their 8<sup>th</sup> amendment rights against cruel and unusual punishment. Since the Department knew of the inmates' past history, it was liable for failing to heed the increased risk for these females. violated by the same gender policy on searches.

### ***B. Cross Gender Cases Involving Female Inmates***

**(Handouts)**

## National Institute of Corrections - Training for Investigators of Staff Sexual Misconduct

- Carrigan v. Davis, 1999 U. S. Dist. LEXIS 16650 (Decided on 9/28/99)
- Newby v. The District of Columbia 59 F. Supp. 2d 35 (1999)
- Women Prisoners v. The District of Columbia, 93 F. 3d 910 (1996)
- Downey v. Denton County, 119 F.3d. 381 (1997)
- Scott v. Moore, 114 F.3d 51 (1997)
- Nunn v. Michigan Department of Corrections, 1997 U. S. Dist. LEXIS 22970
- Long v. McGinnis, 1996 U. S. App. LEXIS 25356
- Berry v. Oswald, 143 F. 3d 1127 (1998)
- Ware v. Jackson County, 150 F. 3d 873 (1998)
- Lucas v. White, 63 F. Supp. 2d 1046 (1999)
- Gijon v. Corrections Corporation of America, 191 F. 3d 1281 (1999)
- Barney v. Pulsipher, 143 F.3d 1299 (1998)
- Peddle v. Sawyer, 1999 WL 613312 (D. Conn.)
- Forts v. Ward, 621 F. 2d 1210 (1980)
- Madyun v. Franzen, 704 F. 2d 954 (1983)
- Timm v. Gunther, 917 F. 2d 1093 (1990)
- Carlin v. Manu, 1999 WL 814276 (D.Or.)
- Jordan v. Gardner, 986 F. 2d 1521 (1993)
- Sepulveda v. Ramirez, 967 F. 2d 1413 (1992)

*Lucas V. White 63 F.Supp. 2<sup>nd</sup> 1046 (N.D.Cal.) 1999*

Three female inmates at a facility in Dublin, California, filed a lawsuit against the Federal Bureau of Prisons [BOP]. This case contained allegations that during August and September 1995, the female inmates were sexually assaulted, forcibly prostituted, and beaten by officers. After making these allegations, at least one of the inmates suffered severe retaliation. The courts awarded \$500,000 to the inmates, and the BOP entered into a settlement with the courts, making significant changes to their operations. Some of those changes are:

- Begin system-wide personnel training on

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- sexual assault issues
- Change the way incidents are reported.
- Eliminate the housing of women in the male correctional facility
- Provide sensitivity classes for all current and future personnel
- Set strict guidelines for staff on proper response to assault complaints
- Provide medical care, psychological counseling and relocation, if necessary
- Develop a confidential method of reporting such incidents



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When agencies take appropriate investigative action, provide sufficient training, and act in a responsible and competent manner, they may protect themselves against allegations of operational incompetence. For example:

Delaware District Court in 1997 (*Carrigan v. State of Delaware et al.*, D.Del. No 96-8-JJF 2/18/97) ruled that prison officials responded appropriately to allegations that an officer had been having sex with an inmate. Staff had received training, the inmate was provided adequate medical care, the method of transfer of the inmate did not appear retaliatory, and action against the correctional officer who admitted to having sex with the inmate, (though he claimed that the sex was consensual and the inmate alleged rape) was appropriate.

### **C. “Sex Cases”**

**(Handouts)**

### **D. Qualified Immunity**

Qualified immunity is a defense against civil liability, protecting government officials from civil damages under certain circumstances. Qualified immunity does not

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protect from criminal *prosecution* when there is a violation of law, but is only a defense against *civil liability*.

Qualified immunity generally requires a two-part test or analysis:

- (1) Was the law governing conduct of the government official clearly established?
- (2) Could a reasonable official have believed that his/her conduct was unlawful?<sup>1</sup>

If the answer to this two-part test is "yes" to both, then the immunity does not exist. Government officials are only protected if their conduct does not violate established law or rights which a reasonable person would have known.

The application of qualified immunity for the administrator and investigator of staff sexual misconduct, would be limited only to those instances where they would not have known and could not have known that certain actions violated law or rights.

It is interesting to note that recent case law involving private vendors who contract to manage correctional facilities, does not support the doctrine of qualified immunity for those non-governmental employees. (see *Richardson v. McKnight*, *U.S. Supp. No. 95-318*, 1996.) In this case, the Court found that there was neither common law nor public policy to support qualified immunity for non-governmental employees of for-profit corporations.

The basis of qualified immunity is the public interest, in that the government receives some protection from being "consumed with defending against frivolous suits."

### ***E. Bona Fide Occupational Qualification***

#### **(Handouts)**

- *UAW v. Johnson Controls, Inc.*, 499 US 187, 111 S.Ct. 1196

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- E. C. Dothard et. al. Vs. Rawlinson, 433 US 321, 97 S.Ct. 2720
- Raymond J. Torres v. Wisconsin Dept. of Health and Social Services, 859 F. 2<sup>nd</sup> 1523
- Tharp v. Iowa Dept. of Corrections, 68 F. 3<sup>rd</sup> 223

### **F. Constitutional**

#### **1. Staff Protections**

a) Due process protections in administrative proceedings:

Court rulings consistently support the positions that public servants do not have absolute due process protections, and that maintaining employment as a public employee is not a “right”.



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Public employees in a probationary status generally have no right to a hearing prior to dismissal unless they claim their individual rights are violated. In most cases, a probationary employee does not have a property interest or “right” to maintain their employment.

Public employees in non-probationary or permanent status have a property interest in employment, and are entitled to certain due process protections. Each state has different procedures and entitlements in the area of employee grievances, and the investigator needs to be aware of this process. Some procedures are governed by collective bargaining agreements. These due process protections can affect the investigation by proscribing investigative procedures.

c) Collective bargaining agreements

When staff are covered by collective bargaining agreements, the details of these agreements are critical for administrators and investigators. Similar to EEO protections, collective bargaining agreements may have

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restrictions and/or requirements in the areas of transferring and/or reassigning staff, and other areas.

d) *Miranda v. Arizona*, 384 U.S. 436 (1966) and *Garrity v. New Jersey*, 385 U.S. 493 (1967)

These two important legal protections will be discussed in greater detail in Section IV. Briefly, *Miranda* is a constitutional protection for the accused that guarantees their right to counsel, and their right to be free from self-incriminating statements without proper legal advice. *Miranda* applies when an investigation involves allegations that could lead to criminal prosecution. In most states, that would mean most allegations of sexual misconduct. 44 states have laws that prohibit sexual misconduct between staff and inmates. In 3 states - Arizona, Nevada, and Delaware - *Miranda* protections would apply to inmates, since those states also have laws that allow prosecution of inmates for sexual misconduct.<sup>2</sup>

The U.S. Supreme Court recently upheld the *Miranda* decision with a 7-2 vote, in the case, *Dickerson v. United States*, 99-5525.

*Garrity* guarantees that an employee cannot be compelled to make an incriminating statement or action that will be used in a criminal proceeding at a later time, if that statement or action was compelled as a condition of continued employment.

## 2. Inmate Protections

The United Nations Congress on the Prevention of Crime and the Treatment of Prisoners, adopted international standards concerning the treatment of prisoners, entitled "Standard Minimum Rules for the Treatment of Prisoners".<sup>3</sup>

These rules are not binding on any United Nations member country, but set international standards based on consensus and practice.

These standards begin with the basic rule against discrimination. The rules continue with numerous provisions, including:



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- Men and women shall be detained in separate institutions.
- Women inmates shall be supervised only by women staff.
- One inmate per cell or room.
- Medical and psychiatric services shall be available.
- Prenatal and postnatal care shall be available for women.
- Restraints shall not be used for punishment.
- Inmates shall be informed of their rights and grievance process.
- Mentally ill inmates shall be housed in specialized facilities.
- Staff shall be carefully selected and properly trained.

### a) 4th Amendment

Protects against unreasonable search and seizure of their persons, houses, papers, and effects.

### b) 5<sup>th</sup> Amendment

Protects against self-incrimination in that no person shall be compelled to be a witness against himself/herself in a criminal case.

### c) 6<sup>th</sup> Amendment

Provides right to counsel in criminal proceedings.

### d) 8<sup>th</sup> Amendment

Freedom from cruel and unusual punishment.

“There can be no doubt that severe or repetitive sexual abuse of an inmate by a prison officer can be objectively, sufficiently serious to constitute an Eighth Amendment violation” (*Boddie v. Schnieder 105 F.3d 857 (2d Cir. 1997)*)

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In *Farmer v. Brennan* [114 S. Ct. 1970 (1994)], the U.S. Supreme Court ruled that “prison officials have a duty under the Eighth Amendment to protect prisoners from harm.” (from “*Farmer v. Brennan: Spotlight on an Obvious Risk of Rape in a Hidden World*”, Marjorie Rifkin, Columbia Human Rights Law Review, Vol.26:273, 1995). Supreme Court Justice Blackmun stated that the Farmer case “sends a clear message to prison officials that their affirmative duty under the Constitution to provide for the safety of inmates is not to be taken lightly.”



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In *City of Canton, Ohio v. Harris* [489 U.S. 378 (1989)], the Court defined deliberate indifference” under the Eighth Amendment, and held that “failure to train employees to recognize risks could be construed as against governmental policy and thus subject to a finding of liability if the municipality was found deliberately indifferent to constitutional rights.”

In *Women Prisoners of the District of Columbia Department of Corrections, et al., vs. District of Columbia No.95-7041* (8<sup>th</sup> Amendment relevancy), the court found that the most significant and “disturbing” aspect of the case was “the inadequacy of the Defendant’s response to these attacks.” (*Id.* At 639). While the D.C. Department of Corrections had policies and procedures to address staff sexual misconduct, these policies and procedures were of little value since the Department failed to address the problem properly. The court said that the Department had “no specific staff training, inconsistent reporting practices, cursory investigations and timid sanctions.” (*Id.* At 640).

### **G. Case Law - Briefs on numerous cases related to staff sexual misconduct, and their outcomes.**

a) *Cason vs. Seckinger*, U.S Middle District Court for the Middle District of Georgia, Macon Division; Civil Action 84-313-1-MAC(CWH):

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This case, originally filed in 1984, involved women in the State's prison system who alleged that treatment and conditions in certain institutions violated their civil rights. Some of the complaints included inadequate physical structures, overcrowding, inadequate health care (including mental health), insufficient appropriate programming, and inadequate grievance procedures. The suit was amended in 1992 to include allegations of sexual abuse of incarcerated females.

The Court issued a permanent injunction against any sexual contact between inmates and staff. Court documents state that the injunction was "necessary and appropriate to prevent future misconduct and to guarantee the Eighth and Fourteenth Amendment rights of all sentenced females, notwithstanding the many remedial actions which the Department of Corrections has undertaken to combat sexual abuse and sexual harassment of, and sexual contact with, those sentenced females in its custody."

### ***Outcome:***

As a result of *Cason*, Georgia Department of Corrections entered into a consent agreement requiring them to complete an audit and alter their operations. Georgia's response to this case has been comprehensive and thorough. While all of Georgia DOC's actions have been very extensive, the following represent a few of them:

- Require staff to timely report alleged or actual instances of sexual contact, sexual abuse, sexual harassment.
- Provide specific, detailed and comprehensive training to all staff and inmates.
- Provide adequate special investigative staff and resources.
- Publish, implement and enforce adequate policy for the investigation of said allegations.
- Provide all staff, employees, agents, and contractors in the Department with a copy of the consent order.

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b) *United States v. State of Michigan; Michigan Department of Corrections, et al, U.S. District Court for the Eastern District of Michigan, Southern Division: Complaint filed by the Attorney General of the U.S. pursuant to the Civil Rights of Institutionalized Persons Act [CRIPA] of 1980; Civil Action No. 97-CVB-71514-BDT:*

The U.S. Department of Justice entered the Michigan case based on allegations that Michigan failed to protect the defendants (inmates) from sexual misconduct by correctional officers and staff; that the inmates were subjected to sexual misconduct, sexual relationships, sexual assaults, sexual touching and fondling; and that some inmates were provided inadequate medical care, mental health care, and protection from harm to their health and safety.

### **Outcome:**

As a result, Michigan was required to:

- Institute a six month moratorium on cross-gender pat searches of female inmates, and review their policy on such searches.
- Prohibit male staff from being alone with female inmates when they are not visible to other staff or inmates.
- Require male officers to announce their presence in any area where female inmates may be in a state of undress.
- Strengthen its pre-employment screening of staff to include identification of any instances of domestic violence.
- Revise its pre-employment screening for non-correctional staff to include the same rigorous screening as correctional staff.
- Complete background checks on all employees every 5 years.
- Educate employees and staff about reporting and preventing sexual misconduct.
- Hire a Special Administrator, responsible for addressing specific female offender issues.
- Facilitate the reporting of allegations of misconduct.

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- Strengthen investigative techniques.
- Provide psychological services for inmates who are involved in sexual misconduct.
- Stringently discipline staff who are guilty of staff sexual misconduct.
- Institute policy on the handling of false allegations.
- Screen inmates for a history of past abuse.

c) *United States v. State of Arizona; Arizona Department of Corrections, et al, U.S. District Court for the District of Arizona: No. 97-476-PHX-ROS.*

The U.S. Department of Justice filed a case against Arizona, pursuant to the Civil Rights of Institutionalized Persons Act [CRIPA], based on allegations which included:

During a several year period, at least 14 female inmates alleged that they had been subject to sexual assaults and other non-consensual behavior from staff. Evidence was also found indicating that a number of female inmates had engaged in consensual sexual behavior with staff, at times in return for special favors or privileges.

### **Outcome:**

The requirements of the settlement agreement in Arizona are very similar to the Michigan case. Some additional requirements were:

- Applicant screening - U. S. Department of Justice (DOJ) recommended a minimum of ten years past references screening of applicants, rather than the previous time-frame of 5 years. DOJ also indicated that ADOC must screen for past sexual misconduct or domestic violence, finding that at least one applicant hired by ADOC had evidence of past psychological problems relating to sex.
- Contract employees - ADOC must begin the routine practice of screening contract employees.

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- Training - ADOC needed to provide training to staff and inmates that specifically and independently addressed the issue of staff sexual misconduct.
- Investigations – ADOC was instructed to discontinue the routine exclusive use of male investigators to interview female victims, as DOJ found that this is likely to hinder the thoroughness and accuracy of investigations.
- Sanctions – ADOC should provide for more consistent and specified sanctions for different types of sexual misconduct, and seek prosecution of all cases where credible evidence existed to support criminal charges.
- Rehiring – DOJ required that any employee who resigns in lieu of dismissal after allegations of sexual misconduct, be banned from future employment with ADOC.

**Activity # 1 : Go to Activity Booklet  
Fact Pattern**



**Activity**

## H. Vicarious Liability



presentation

Vicarious liability is created when:

- Someone else (such as the employee's supervisor) *knew or should have known* what was occurring or about to occur, but
- *Did nothing* to correct the situation, and
- That lack of action was the *proximate cause* (as opposed to the direct cause) of subsequent harm, injury or death.

Vicarious liability can result from such circumstances as:

- Failure to train
- Negligent supervision
- Negligent employment or retention

Under the doctrine of vicarious liability, agency administrators are responsible for all activities within their jurisdiction.

Some administrators seek protection from liability with insurance or bonding. But, the best protection against liability is a proactive rather than a reactive approach, and understanding their responsibilities to ensure protection for all.

Administrators, supervisors, and operational staff who avoid taking shortcuts, stay abreast of legal issues, and treat inmates with the same respect that they would desire if roles were reversed will achieve far more insulation from liability than any insurance policies could hope to provide.<sup>4</sup>

### I. **Legal Perspective - Class Action and Individual Lawsuits Related to Staff Sexual Misconduct**

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Lawsuits are filed to achieve a variety of potential outcomes. Individual lawsuits may be filed for recompense by punitive damages. Class action suits may be filed to bring attention to an issue that has previously been ignored or handled unsatisfactorily. It can be generally said, however, that the filing of lawsuits is a result of an agency's inability or failure to maintain and enforce clear, strong policy, and to instill confidence in its ability to handle instances of violations.<sup>5</sup>

In any case, lawsuits can have both positive and negative effects on a defendant agency.

Negative effects may include:

- detrimental public attention to an agency
- diminished ability of an agency to recruit and maintain competent staff
- diminished legislative and public support
- hampered ability to generate sufficient funding for staff and programs.

On the other hand, an agency's response to lawsuits can be channeled into positive actions, such as:

- revision and enhancement of policies and procedures
- education and training of staff and inmates or detainees
- improved working conditions for staff
- increased funding and improved living conditions for inmates or detainees
- improved management of all operations

Agencies should consider the following factors, and determine how they can improve their operations and policies to help avoid the filing of class action lawsuits.

- Class actions bring visibility to an issue. Whether the visibility is through the media or other forum, the intent is to educate the public to the problem, where the agency has failed to address the problem satisfactorily.



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- Class actions allow multiple inmates to testify about multiple similar incidents, increasing the credibility of inmate witnesses.
- With multiple inmates testifying to many incidents, the “deliberate indifference” element of the Eighth Amendment is easier to establish, since multiple accounts characterize the institution as a “sexualized environment”, as opposed to just a single incident.<sup>6</sup>

### Activity # 2 - Go to Activity Booklet Compare, Critique State Laws

#### J. Employment Related Issues

##### (Handouts)<sup>7</sup>

1. Documentation
2. Sex/Race Discrimination Claims
3. Consistency in Employment Actions
4. Defamation Issues
5. Proactive Steps
6. Union v. non-union; public v. private sector
7. Arbitration
8. Polygraph
9. Special Issues Related to Public Sector Employees
10. Balancing Test
11. Privacy Issues/Employee Surveillance



**Activity**

12. Psychological Testing

**Section II Summary**

***In this section on legal issues, participants reviewed constitutional issues related to staff and inmates, by exploring numerous cases of allegations of staff sexual misconduct that have resulted in lawsuits. The outcomes of these cases were examined, and participants determined what potential remedies could apply. This section also included a discussion of vicarious liability with regard to staff who are responsible for the supervision of others. This section concluded with a brief discussion about class action and individual lawsuits.***

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**Endnotes:**

1. *Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners*, Brenda V. Smith, Senior Counsel, Women in Prison Project, National Women's Law Center.
2. Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on Prevention of Crime and the Treatment of Offenders, reprinted in United Nations, *A Compilation of International Instruments: Volume 1 (part 1) Universal Instruments* (New York: United Nations, 1993), E.93.XIV. I, pp 243-62.
3. Stinchcomb, Jeanne B., and Vernon B. Fox, Introduction to Corrections, Fifth Edition, Prentice Hall, Upper Saddle River, New Jersey, 1999. pp.599-600.
4. Laderberg, Amy, *The "Dirty Little Secret": Why Class Actions Have Emerged as the Only Viable Option for Women Inmates Attempting to Satisfy the Subjective Prong of the Eighth Amendment in Suits for Custodial Sexual Abuse*: William and Mary Law Review, Vol. 40:323 1998.
5. Ibid.
6. *Tribble v. Gardner*, 860 F.2d 321, 324 (9th Cir.1998) cert. Denied, 490 U.S. 1075 (1989)
7. Professor Susan Carle, Washington School of Law, American University, Washington, D.C.

## **Section III**

### **Institutional Culture and Staff/Inmate Dynamics**

#### **Section III Objectives**

- Identify agency culture and how it impacts all aspects of staff sexual misconduct.
- Describe and identify a sexualized work environment.
- Examine the human factors influencing staff sexual misconduct, including statistical and demographic characteristics of staff and inmates.
- Determine how these factors, along with inmate management issues, influence staff and inmates.



**presentation**

## II. Institutional Culture & Staff/Inmate Dynamics

### **A. Introduction:**

In Section I, we examined definitions of staff sexual misconduct, contents of national reports and media attention, and how corrections agencies across the country have experienced and responded to incidents of staff sexual misconduct.

In this Section, we will examine human factors that influence staff sexual misconduct. Proactive efforts and procedures for responding to allegations of staff sexual misconduct require an understanding of what influences staff and inmates to be in a position of greater risk of involvement. With this knowledge and understanding of the unique human factors that play a role in potential involvement in staff sexual misconduct.

Administrators can:

- Create more effective policy against staff sexual misconduct;
- Establish more effective methods of preventing staff sexual misconduct;
- Assure that procedures for responding to allegations are fair and firm, but also compassionate;
- Demonstrate their commitment to improving operations and working conditions for staff;
- Create a work environment that encourages ethical behavior.



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Investigators can:

- Assure investigations are grounded in written policy and procedure;
- Enhance their investigative techniques;
- Enhance the interview process;
- Develop new skills to manage information; and
- Enhance the credibility of the investigative process.

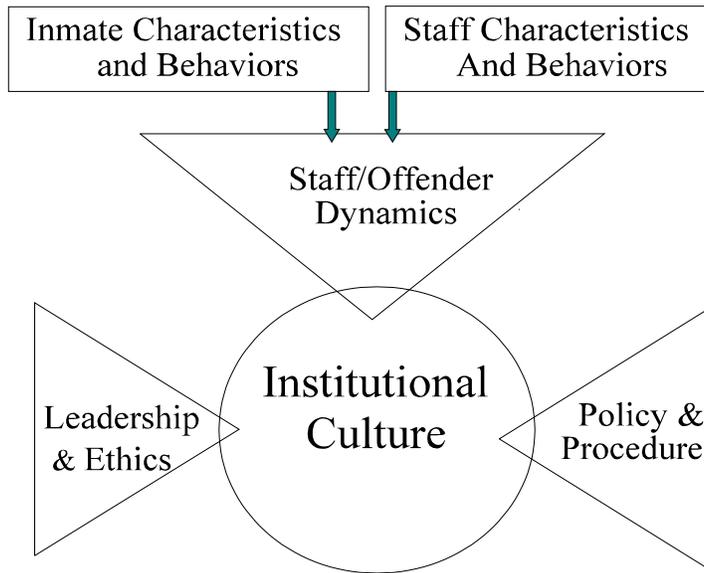


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The factors that influence the function and operations within a

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facility, make up the institutional culture. The chart below demonstrates the major influences.



In later sections of this training, we will discuss the importance of policy and procedures in preventing staff sexual misconduct. We will also provide more detail about investigative techniques that can assist the investigator in enhancing their skills when dealing with this special issue.

In this Section we will discuss the human factors influencing the culture of the institution, and thus the factors influencing staff sexual misconduct. It is critical for both administrators and investigators to be aware of these complex factors, which include:

- the unique nature of staff sexual misconduct investigations unique; and
- the elements that comprise the dynamics of staff/inmate relationships.

**B. Unique nature of staff sexual misconduct investigations.**

Because of the unique nature of staff sexual misconduct, the administrator can enhance policy and procedure, and the investigator can enhance investigative skills by understanding these special circumstances.



**presentation**

**1. Sexual and Personal Nature**

Investigations into these allegations of sexual relationships will involve personalities, human nature, interactive dynamics, and staff who are perhaps willing to compromise their integrity for these relationships. In addition, the imbalance of power that exists in the custodial setting, increases the risk of abuse of that power through inappropriate relationships between staff and inmates.

Personal relationships can be demanding. Making a healthy relationship work on a daily basis, takes attention and consideration. Relationships in the workplace are no exception. Professionalism and objectivity are compromised when relationships with supervisors, subordinates, co-workers, and inmates become inappropriate.

**2. Potential Criminal Charges**

The investigator of staff sexual misconduct may be responsible for initiating criminal prosecution of a fellow employee, co-worker, or friend. It may be easier for the investigator to personally rationalize criminal charges against a fellow employee if the allegations concern more traditional illegal activity. But when allegations involve personal relationships, particularly when there is the perception of consent (see below: *Consent: no such thing*) by both parties, the investigator's role becomes much more conflicted.

**3. Consent: No Such Thing**

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In the custodial setting the power and authority held by staff over inmates precludes consent. There is no such thing as 'consensual' sexual relationships between staff and inmates. Relationships between staff and inmates. In fact, in nearly every state, demonstrating the element of consent is irrelevant and does not mitigate the criminal implications of the sexual relationship

### 4. Constitutional Issues

Staff sexual misconduct has an added dimension - inmates' constitutional rights. These rights include the right to privacy, the right to reasonable protection from harm, and the freedom from cruel and unusual punishment. (See Section III, *Legal Considerations*, for a further discussion of these constitutional rights)

## C. Staff/Inmate Dynamics

### 1. Introduction

This section will provide demographic data and characteristics of both staff and inmates. Inmates and staff share many characteristics, even if some of these indicate different rates of prevalence when comparing the general inmate population and the general workplace. Each group, staff and inmates, have unique life experiences, responsibilities and roles, that also influence the dynamics of the relationships between the two.



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### 2. Inmate Management Issues

Gender differences do not cease to exist in the custodial setting. Understanding gender differences is vital to establishing programs that respond to the special custodial needs of inmates. It is also critical for the investigator when establishing lines of communication and information exchange.

#### a. Basic differences:

Women are not men. In some corrections systems there

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may be a belief that all inmates should be treated and managed the same. In fact, we do not and should not manage all inmates the same. Inmates with diagnosed mental illnesses are not managed the same as those deemed mentally healthy. Elderly or disabled inmates are not managed the same as youthful offenders. Likewise, gender differences also evoke special management needs, just as age and mental health.

How each distinct inmate group or classification is managed in a correctional setting is directly related to the need for facility security and order. Services to inmates with special needs are based on the goal to preserve the safety of staff and inmates.

In the continuing discussion of inmate characteristics and the female offender, those different management needs become clearer.

### *b. Communication*

Communication for males and females is significantly different. Men tend to guard their information, treating their information as a source of power. Women share their information, in an effort to make a connection, or to gain a sense of attachment or emotional contact.<sup>1</sup> Researcher and author Barbara Owen, in her book "In the Mix"<sup>2</sup> examines in detail the aspects and issues of women serving time in a California Prison. A senior administrator, interviewed by Ms. Owen, states the following about communication style of male and female inmates:

*"The men take answers at face value. When you tell them "no", they go away, but the women want to discuss their particular problem in great detail. When staff are trained at a male institution, they do not know how to deal with it. Women take more time and some staff are not prepared for that."*

Women are also more verbal, and more willing to share intimacies about themselves, their lives, their families. Women generally display more emotion in their

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verbalizations. Men, on the other hand, generally maintain a less emotional level of communication, and may not talk as freely about themselves and their personal lives. As mentioned by the prison administrator in Ms. Owens' book, staff may find it very different communicating with male inmates and female inmates.

Women inmates bring their way of dealing with life from the community to prison. Women inmates have often had to "barter" to get by – early on realizing that they have to "give something up to get something back". This approach to communication with prison staff sets a potentially dangerous tone.

Staff training will help achieve a better understanding of this gender difference, and enhance the ability of staff to manage their contacts with inmates.

### 3. The Sexualized Work Environment

Verbal and non-verbal communications, dress, demeanor, and relationships among staff establish the work environment and the **culture**. No staff interactions are overlooked by inmates. A **sexualized** work environment is created first by staff/staff interplay, and then migrates to inmates.

A work environment in which there is open discussion within hearing of inmates about, for example, a staff's off-duty activities, a tolerance for name-calling, use of nicknames, or disrespect between staff, and inappropriate jokes or pranks with sexual innuendos all contribute to a **sexualized work environment**. Harassment of staff by peers or supervisors, whether aimed at males or females, comments about physical appearance, sexual preference, or other non-work related issues add up to a hostile and sexualized work environment. Inmates learn the facility's culture and tolerance for racist, sexist, or other inappropriate language by listening and observing staff. Inmates easily learn about romantic relationships between staff, either through overheard conversations, or through watching how the staff talk to, touch, and even look at one

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another.

A sexualized work environment sets up an atmosphere of potentially permissive behavior for inmates. In this environment, staff/inmate dynamics evolve to the point where almost no subject is off-limits or considered professionally inappropriate. Professional boundaries between staff and inmates are blurred, or non-existent. Inmates who have knowledge about the intimacies of staff's life can use that information to get attention, cajole staff into talking about themselves or their family, and then use empathy to gain the trust of staff. The ultimate relationship developed in such a scenario can compromise the professionalism of staff and even jeopardize facility operations.

The sexualized work environment in a facility impacts the goal of the administrator to develop and implement a zero-tolerance policy for staff sexual misconduct with inmates. This environment also provides the investigator with multiple challenges.

Administrators can assess whether a facility's culture has evolved to a sexualized work environment by walking through the facility and observing, for example:

- how staff are dressed - clothing, jewelry, hair, nails;
- what materials and photos are posted on bulletin boards in staff areas;
- listening to how staff communicate with each other;
- watching the non-verbal interactions among staff; and
- watching and hearing the verbal and non-verbal staff/inmate communications.

Other issues for administrators in assessing the work environment are the number of complaints from staff about harassment and/or hostile work environment, and other employee grievances indicating potentially unhealthy relationships among peers or supervisors. Whether an

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administrator is receiving complaints about the off-duty behavior of staff can also help identify potential problem areas.

### 4. Undue Familiarity Between Inmates and Staff

While each state prison system may have a different name for the behavior – over-familiarity between staff and inmates, unprofessional relationships with inmates, conduct unbecoming an officer – such behavior is a symptom of a breakdown of the professional boundaries that must exist in a prison environment. While all instances of undue familiarity with inmates are not sexual *per se*, the pattern of these cases often leads to sexual misconduct if allowed to progress. The culture of an institution that permits professional boundaries to be crossed invites staff sexual misconduct.

The unprofessional behavior can be use of first names between a staff member or inmate, small “favors” between staff and inmates; and could possible lead to letter writing, telephone calling, and exchange of photos. In its most serious form, the breakdown of the professional barriers leads to introduction of contraband and staff sexual misconduct.

### 5. Inmate Characteristics

#### f. Introduction

There are many characteristics that can influence a person’s response to incarceration, including actual or perceived threats and intimidation. The custodial environment has modified the ability to flee from harm, thus altering the traditional methods to achieve the ‘fight or flight’ response. Added to this, are the characteristics that inmates bring with them when they enter the custodial setting.

These factors, the nature of the custodial environment and the response to that environment, and the life experiences and characteristics brought with an inmate, greatly

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influence the level of risk for involvement in staff sexual misconduct in prisons.

### b. Inmate Profiles

The Department of Justice's Bureau of Justice Statistics<sup>3</sup> most recent survey has found the following:

- approximately 1.3 million inmates were held in state and federal custody at the end of 1999;
- about 1 in every 11 black males in their late twenties was serving a sentence of a year or more in a state or federal prison;
- African-Americans constituted 46% of all inmates with sentences of a year or more, while white inmates accounted for 33%, and Hispanics 18%;
- an increase in the average time served in prison by released inmates from 22 months in 1990 to 28 months in 1998; and
- an increase in violent offenders, accounting for 51% of state growth, and drug offenders accounting for 19% of state growth.

According to the BJS, the 1999 growth in the number of inmates under state or federal jurisdiction (3.4%) was slightly smaller than the percentage increase recorded during 1998 (4.7%). The number of sentenced inmates per 100,000 residents has risen from 292 to 476. Louisiana has the highest incarceration rate, Minnesota the lowest.

BJS reports that relative to the number in the U.S. population, men were 15 times more likely than women to be incarcerated in a state or federal prison. At the end of 1999, there were 50 sentenced female inmates per 100,000 women in the U.S., compared to 913 sentenced male inmates per 100,000 men in the population.

The age distribution for state inmates has changed since 1991. The median age has risen from 30 in 1991 to 32 in 1997.<sup>4</sup>

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Age	1991	1997
17 or younger	0.6	0.5
18 - 24 years	21.3	19.3
25 - 34 years	45.7	38.1
35 - 44 years	22.7	29.4
45 - 54 years	6.5	9.8
55 - 64 years	2.4	2.2
Over 65	0.7	0.7

The education level of state inmates has changed little from 1991 to 1997. Approximately 17% of state inmates have less than a 9<sup>th</sup> grade education, almost 29% have some high school, 25% have a GED, 18.5% are high school graduates, 11% have some college, and 2.7% have a college degree or more. <sup>5</sup>

The types of offenses for state prison inmates have shown small changes. <sup>6</sup>

Offense Categories	1991	1997
Violent Offenses	46.6%	47.2%
Property Offenses	24.8%	22.0%
Drug Offenses	21.3%	20.7%
Public Order	6.9%	9.9%

The profile of past criminal history for state inmates has also changed during the period 1991-1997. 24% of offenders in 1997 had no previous sentence, compared to 19.3% in 1991. The violent recidivist rate dropped slightly from 1991 - 1997, from 48.8% to 46.8%. <sup>7</sup>

c. Prior physical and sexual abuse histories among inmate population

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Incidents of misconduct cross gender boundaries, but recent statistics indicate that the characteristics of female inmates may make them more at risk to unhealthy relationships with authority figures, particularly men.

In a Bureau of Justice Statistics report on prior abuse among inmates and probationers,<sup>8</sup> the following apply to ***those who have reported prior abuse***:

- The number of women inmates reporting prior sexual abuse increased from 43.2% in 1991 to 57.2% in 1997.
- More than half of incarcerated women reported prior abuse by spouses or boyfriends, and nearly a third by parents or guardians.
- More than half of incarcerated men had been abused by parents or guardians.
- Males indicated being mistreated mostly as children.
- Females state that the abuse continued through the childhood years into adulthood.
- 89% of all inmates reporting abuse had used illegal drugs, compared to 82% who had not been abused.

**National estimates indicate that about 19% of the general adult population suffers from mental illness, while state prison populations suffer from mental illness at a rate of about 24% for female inmates and 16% for males.**

*Source: Women Offenders, Bureau of Justice Statistics Special Report, Dec. 1999; and Mental Health: Report of the Surgeon General,*

**Of State prison inmates surveyed, more than 57% of all females and 16% of all males had experienced some form of sexual or physical abuse prior to their incarceration.**

*Source: Bureau of Justice Statistics, 1999*

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	Male Inmates	Female Inmates
Experienced some form of sexual or physical abuse prior to incarceration	16%	57.2%
Of those raised in foster care or home other than the parental home, percentage of risk for abuse	44%	88.7%
Experienced abuse prior to age of 18	14.4%	36.7%
Abuse involved rape	3.1%	37.3%

*Source: Prior Abuse Reported by Inmates and Probationers, Bureau of Justice Statistics Selected Finding, April 1999.*

Past histories of institutional abuse may also be associated with many inmates. This abuse may be connected with their stay in the foster care system, group homes, juvenile detention facilities, mental health facilities, or jail. The way an inmate responds to staff in prison is a result of the past abuse in an institutional setting.

### d. Substance abuse histories among inmates

Institutional culture creates a market for contraband and increases the possibilities and options to exchange favors for these items. Inmates who enter prison with untreated and current substance addictions will be more likely to offer favors to obtain drugs. Offering sexual favors can be a very effective method for inmates to obtain drugs from staff.

Inmates with a history of physical abuse, tend to abuse substances as a means to deal with the isolation and lack of control over their environment, and to escape the trauma of the event(s). Experts agree that substance abuse is a common method of disassociating oneself from a traumatic event, so the victim can function on a daily basis.<sup>9</sup>

Likewise, in the correctional setting, inmates may have an even greater need for control in the environment around

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them, since Incarceration by nature, removes almost all means of control from those incarcerated. One way that inmates may try gain control over their environment is unhealthy relationships which can lead to sexual misconduct.

<b>Of those reporting prior abuse:</b>	<b>Male Inmates</b>	<b>Female Inmates</b>
Had parents who abused one or more substances	29.4%	75.7%
Had family members or spouses with prior incarcerations	20%	64%

Source: *Prior Abuse Reported by Inmates and Probationers, Bureau of Justice Statistics Selected Findings, April 1999.*

### e. Mental Health

Statistically, inmates are more likely to be diagnosed with mental illnesses than the general population.<sup>10</sup> Ironically, the effects of substance abuse and the accompanying inability to deal with the emotional trauma of physical and sexual abuse, aggravate the psychological damage.

Those with mental illnesses may be:

- typically less equipped to handle the stresses and challenges of incarceration;
- more at risk for exploitation by other inmates, and by staff;
- generally unaware or unable to distinguish between healthy and exploitive relationships; and
- at higher risk to become involved with staff sexual misconduct.

### f. Symptoms of Post-traumatic Stress Disorder (PTSD)

There have been numerous studies correlating the history of past sexual assault and abuse with symptoms of Post-traumatic Stress Disorder [PTSD] in women, following them into adulthood.<sup>11</sup> Experts believe that PTSD symptoms can also be cumulative over a lifetime, so that each new trauma can cause symptoms to suddenly



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surface.

A basic understanding of PTSD, includes a definition of the term, and the general symptoms. PTSD, as defined in the American Psychiatric Association's Statistical Manual of Mental Disorders (4<sup>th</sup> edition, see endnotes), follows:

*PTSD can result when there has been "extreme traumatic stressors involving direct personal experience of an event that involves actual or threatened death or serious injury; or other threat to one's personal integrity. It can also occur when an individual witnesses an event that involved death, injury, or threat to the physical integrity of another person, or in learning about unexpected or violent death, serious harm, or threat of death or injury experienced by a family member or other close associate."*<sup>12</sup>

Symptoms of PTSD include at least the following:<sup>13</sup>

- Repeated, disturbing memories, thoughts or images of past trauma
- Sudden feeling or acting as if past trauma were happening in the present ('flashback')
- Feeling upset or disturbed when memory of past trauma is triggered
- Irritable mood or angry outbursts
- Being easily startled or feeling unusually jumpy
- Development of phobias
- Inability to control anger or rage

The statistics presented in the previous pages, indicate that an usually high percentage of the inmate population, particularly females, have a history of prior physical and sexual abuse, as well as substance abuse. These traumatic events may be likely to cause PTSD.

In her book, *Trauma and Recovery*,<sup>14</sup> Dr. Judith Herman indicates that the psychological effects of abuse often result in victims having a distorted social capacity, among

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other abnormal mental effects. According to Dr. Herman, there are three main groups who are at greater risk for continued victimization or involvement in abusive situations; those with a history of abuse, those with addictions, and those with mental illness. A discussion of the aspects of each of these groups, as well as others who are at higher risk, follows.

**History of abuse:** A large percentage of female inmates, and a smaller though significant number of male inmates, report a history of physical and sexual abuse. Victims of abuse may have a distorted sense of what is appropriate social interaction. They may believe that they deserve continued abuse, or that inappropriate sexual contact is a means to gain love and affection from the abuser. As a result, victims may consider an abusive, unequal relationship as normal.<sup>15</sup>

**Addictions:** Illegal, controlled, and addictive substances are somewhat more difficult to obtain in prison than on the street. For this reason, drugs, alcohol, and other contraband such as cigarettes, are highly valued. Many inmates lack support from the outside, with little means to obtain money to purchase these items. Women inmates in particular, may exchange favors for these valued items.<sup>16</sup>

**Mental Illness:** Some persons with diminished mental or emotional capacity, may not be fully aware of being abused or exploited. They may view life with an altered sense of reality, and may be unable to distinguish between healthy and unhealthy relationships. They may also be fearful of reporting such acts, as they feel that they will not be believed.<sup>17</sup>

**Those new to the system:** First time incarcerated offenders may be easily intimidated by those around them in power - both staff and inmates. Having little experience inside prison life, they may

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feel isolated and insecure. They may have little knowledge of how to report incidents, and may not know where to turn for help. All of these factors may lead these inmates to secure protection by aligning with staff.<sup>18</sup>

**Other groups:** There are other groups of inmates who may also be at greater risk of being involved in staff sexual misconduct. Some of these groups include, but are not limited to:

- ***Those experiencing devastating news or losses;***
- ***Those who genuinely believe that they have fallen in love; and***
- ***Women who have little hope of experiencing childbirth outside the institutional setting (such as 'lifers', and those with long sentences).***

### g. Unique characteristics of female offender

#### (1) Profile of the female offender

The average female offender is:

- Age 30
- Of a racial or ethnic minority
- A substance abuser
- Unmarried
- Experienced sexual or physical abuse since childhood
- A mother of at least two children
- Never completed high school
- Unemployed at time of offense of incarceration

We have examined statistical information concerning prior abuse histories and the mental health issues that comprise the inmate population. This information indicates that the life experiences of the average female inmate contain significantly more abuse and victimization than the average male

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inmate.

There are other factors that place the female offender at greater risk, with much different life experiences than males. All of these factors create a unique struggle for the female inmate, and affect the way that females manage the experience of incarceration compared to males.<sup>19</sup>

Women are at greater risk of victimization and criminalization when they become part of a “downward spiral” that begins with leaving home at an early age, early pregnancies, lack of education, and the resulting diminished work skills and increased child-rearing responsibilities.<sup>20</sup>

The average female offender has more familial responsibilities than the average male offender entering prison. More than 2/3 of all women incarcerated are single mothers, with at least one child under the age of 18.<sup>21</sup>

### (2) Growth of female inmate population

A report published in 1999 by the U.S. Government Accounting Office<sup>22</sup> indicates that since 1980 the female prison population has increased from 13,400 to 84,400 - an increase of over **500%**. The report indicates that although the total female inmate population remains lower in number than the male inmate population, the rate of growth is significantly higher.

Additional information presented in this recent report, includes the following:

- From 1990 to 1998, the number of female inmates in all state and federal corrections institution nearly doubled.
- Between 1990 and 1998, the rate of increase for females was 8.5% versus 6.6% for males.

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These increases in the female prison population are partially the result of the national policy to get tough on crime and change sentencing laws, in particular those laws against drug offenses.

In 1997, 71.7% of female offenders in federal prisons and 34.4% of female offenders in state prisons were serving sentences for drug offenses.<sup>23</sup>

Why are these numbers so significant? The statistics point to the need for specific management and programming needs for corrections, regarding the female inmate population. Yet, in a survey conducted by the National Institute of Justice on programming for female inmates, the results indicate the lack of specific programming to meet the unique needs of the female inmate.<sup>24</sup> The findings in brief, are as follows:

- 3 states had high levels of innovative programming.
- 13 states had considerable levels of innovative programming.
- 17 states had limited innovative programming.
- 17 states had NO innovative programming.

### 6. Staff Characteristics

#### a. Introduction:

The discussion so far has included mostly information about inmates. The other component to the dynamics of the relationships between staff and inmates, is the characteristics of the staff.

The Bureau of Justice Statistics reports in *The Sourcebook of Criminal Justice Statistics 1998*, that as of 1994, there were more than 620,000 persons [most current numbers] working in the field of corrections. Just as inmates bring with them the effects of the experiences



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and traumas of their lives, so also does the large number of corrections staff.

Staff and inmates both bring their life experiences into the prison, and these experiences influence staff/inmate interactions. These life experiences include age, race, sex, religion, education, culture, health, marital status, parents, death of family members, children, finances, job experience, and family history. Inmates who seek to establish a relationship with staff find many areas of common ground. How staff respond to the inmate's initiating dialogue, or when staff begin to share personal information with inmates, can cross professional boundaries.

The most recent statistical research discusses the prevalence of mental illnesses and extent of substance abuse in the general population. The research more thoroughly reports on the prevalence of substance abuse among the working population in this country.

The data discussed about the U.S. workforce, in general, is intended to prepare corrections administrators and investigators with a profile of those who are employed. In the unique and demanding field of corrections, the personal characteristics shared by staff and inmates help explain why inappropriate relationships may be formed.

### b. Workplace data

#### (1) Drug and alcohol abuse:

SAMSHA, the Substance Abuse and Mental Health Services Administration, of the U.S. Department of Health and Human Services, has compiled statistical information relating to the prevalence of illicit drug, and alcohol abuse among workers between 1994 and 1997. The respondents to this survey represented full-time workers in the general workplace in the U.S. between the ages of 18 and 49. Some of the figures include the following.<sup>25</sup>

- About 7.7% of workers reported current illicit drug use, with this figure remaining stable for the years

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1994-1997, and certain occupations showing a higher rate of illicit drug use than others.

- 8% of workers reported current heavy alcohol use, with certain occupations showing higher rates than others.
- Workers between 18-24 years old were more likely to report illicit drug use than those 25-49 years old.
- In 1997, statistics indicated that the higher the educational level of the worker, the less likely they were to report current illicit drug use.

***% of Full-time Workers, Age 18-49, Reporting Current Illicit Drug and Heavy Alcohol Use by Establishment Size***

<b><i>Establishment Size</i></b>	<b><i>Illicit Drug Use</i></b>	<b><i>Heavy Alcohol Use</i></b>
1-24 Employees	11.0	9.6
25-499 Employees	5.4	7.9
500+ Employees	5.4	7.3

***% of Full-time Workers 18-49, Reporting Current Illicit Drug and Heavy Alcohol Use by Occupation, 1997.***

<b><i>Occupation Category</i></b>	<b><i>Illicit Drug Use</i></b>	<b><i>Heavy Alcohol Use</i></b>
Exec., Admin. Mngrl.	7.7	7.5
Sales	9.1	4.1
Food Service	18.7	15.0
Protective Service (including Corrections)	3.0	7.8

Substance abuse is not just a problem within the inmate population. For administrators and investigators, these figures demonstrate that staff as well as inmates, share some common characteristics that may influence their ability to manage the challenges in their particular circumstances, and to become involved in inappropriate behavior and relationships.

(2) Mental health

As noted previously, the 1999 Surgeon General's Report on Mental Health in the United States<sup>26</sup>, indicated that there is an overall rate of about 19% of the general adult population have some sort of mental disorder, ranging from very mild to severe. While this rate is higher among inmates, those in the workforce share similar challenges due to mental health issues.

Recognizing the significance of this data is critical in developing both inmate programming and employee assistance programs. It also indicates that both inmates and staff may have a higher risk of involvement with misconduct as a result of any mental and emotional challenges in their everyday lives.

c. The Imbalance of Power and Authority

In the introduction to this training, we briefly discussed the various types of organizational structures (military, academia, organized churches, Judiciary etc), where there is an imbalance of power. In these settings where authority and power exist for one but not others, there is a risk of abuse of that power and authority. It is important for those working in these types of organizations to understand how power and authority affects not only those who have it, but those who don't, and how the entire organization can be affected when power and authority are abused.

Those with authority have a tremendous responsibility to protect those over whom they have such authority. This is also true in the correctional setting. The staff-inmate relationship is NOT an equal one. It must remain a superior/subordinate relationship, the integrity of which must be protected by the staff with respect and utmost ethical behavior. When overfamiliar and inappropriate relationships develop between staff and inmates, the delicate 'imbalance' becomes abusive and carries great risk for those involved. <sup>27</sup>

How do we determine who is in power?  
How do we measure it?

- We tend to equate power with what one can do for others.
- By doing favors for someone, we develop an alliance with them.
- By doing favors for someone, we also define our own sense of importance, and solidify how important we are in the eyes of others.

Doing favors for and accepting favors from those over whom we have authority is dangerous. Correctional staff must be constantly aware of their every action and word exchanged with inmates. Barry D. Smith, Ph.D., has studied and written about the role of correctional staff in



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**The staff/inmate relationship is NOT an equal one. It must remain a superior/subordinate relationship, the integrity of which must be protected by the staff with respect. and utmost ethical behavior.**

relation to this topic. He notes,

*“Generally what happens is that an inmate or inmates will accumulate favors until a point of no return is reached. At this point the correctional officer is so deeply involved that the inmates have control over the officer’s job”.<sup>28</sup>*

Staff can sometimes inadvertently create a situation that has the appearance of asking for “favors”. For example, staff may say to an inmate, “Would you do me a favor? Clean up the coffee spilled on the floor outside my office?”

While staff may merely be attempting to be courteous to the inmate, just the wording of that statement may suggest to the inmate that they are doing a ‘favor’. Daily and consistent attention to such details can help staff develop routine methods and habits of dealing with inmates, in such a way as to NOT suggest or invite inappropriate assumptions or appearances.

If allowed to progress, exchanging favors or allowing inappropriate communication or contact may result in relationships of a sexual nature. Staff who display the qualities identified earlier, will generally be able to handle the daily stresses that occur.

**Activity #1: Go to Activity Booklet  
Agency Culture: How does agency culture impact  
investigators and investigations?**



**Activity**

**Activity # 2: Go to Activity Booklet  
Mapping the Investigative Process**



**Activity**

### **Section III Summary**

***This section discussed the human factors that influence the occurrence of staff sexual misconduct, and how these factors place staff and inmates at risk of involvement with inappropriate relationships and behavior. How a sexualized work environment evolves, and the part that staff play in setting this culture was discussed.***

***These factors include the elements that comprise staff/offender dynamics, i.e. inmate characteristics and staff characteristics.***

***The section discussed how knowledge of these factors can assist administrators in developing effective policy and procedures, and how they can assist investigators in conducting effective, fair, competent, thorough investigations into allegations of staff sexual misconduct.***

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## **Section IV**

### **Pro-active Investigative Framework**

#### **Section IV Objectives**

- Identify policies and strategies that promote an agency's ability to effectively prevent and investigate staff sexual misconduct with inmates.
- Develop an investigative framework before allegations occur so that response to allegations will be more effective and efficient.
- Determine how to involve the media, citizens, and advocacy groups in a supportive capacity.
- Recognize how investigators and administrators can earn and maintain a reputation for fairness and quality investigative procedures.



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**Introduction:**

**Pro-active Administrative and Investigative Policies**

Effective investigations require the framework of agency-wide written policies and procedures that support and enhance zero tolerance. This section will review the administrative and investigative procedures that support zero tolerance and effective investigations. Section A. outlines the administrative considerations, and Section B. addresses investigative protocols.

Operational and administrative procedures impact the opportunities for misconduct, opportunities for intervention, and, ultimately, opportunities for prevention. Strong administrative and management practices enhance the effectiveness of the investigator.

Administrative issues included in this review:

- human resource functions;
- fiscal operations;
- public and media involvement;
- training;
- audit and quality control functions.

Operational issues includes in this review:

- inmate grievance procedures;
- inmate disciplinary system;
- inmate rules;
- reporting of allegations, unusual behaviors and/or events;
- inmate orientation;
- inmate medical and mental health services;
- inmate classification and inmate programs;
- handling false allegations; and inmate *quid pro quo* demands.

While the investigator is rarely in charge of the agency, and in some instances has limited ability to influence policy, procedure and training, it is essential the investigator grasp what will, and will not, enhance the investigative function. The administrator

needs to understand and appreciate how solid written policies and procedures enhance investigations.

## **A. *Agency Tools for Investigations***

### **1. Source of Authority to Conduct an Investigation**

The source of the agency's authority to conduct investigations is provided by statute and/or administrative regulation. Each state team should identify the relevant parts of statute or administrative regulations that grant the authority. This review might identify change needed to support full investigations, including after employees have resigned.

### **2. Who are Your Investigators?**

The selection process for hiring investigators is critical to the investigative process. Who an agency selects, determines the quality and overall climate of how the investigations are conducted.

Consider how selecting from each of the following sources might affect the investigative process.

- From rank and file
- From law enforcement
- From other areas outside the agency
- From various fields of expertise

Once an investigative unit is established, other considerations may be:

- Are staff sexual misconduct cases handled by a separate unit?
- Will investigators be specialized in staff sexual misconduct or receive specialized training?
- What types of allegations will be handled by a special unit or certain investigators?
- Who supervises investigators?
- Where are investigators located?
- To whom do they report?



**presentation**

**Activity # 1 - Go to Activity Book**  
***Who are your investigators?***



**Activity**

### 3. Agency Policy of Zero Tolerance

It is essential that the agency have an explicit policy of zero tolerance for staff sexual misconduct. This policy clearly identifies prohibited behaviors, articulates the mechanisms for **mandatory** reporting of allegations, and includes a strong commitment to staff training.



**presentation**

The policy must apply to all employees, to contractors, to volunteers, and to any other individuals who have access to facilities and to inmates. For the purposes of this discussion, the term “employees” is intended to cover persons with any access to correctional facilities (on-site or remote), and/or who have the authority to supervise inmates.

Many agencies have general codes of employee conduct. These are general statements of expected ethical and professional behavior. Both the American Correctional Association and the American Jail Association offer these statements for their membership. While these guidelines provide a philosophical basis for the agency’s mission, they seldom define the specific permitted and prohibited behavior needed to guide the on-duty and off-duty behavior of staff.

The agency’s policy must clearly identify in explicit detail, acceptable and unacceptable behavior. Policies must clearly delineate:<sup>1</sup>

- A prohibition against any sexual contact, including, but not limited to intentional touching, either directly or through clothing, of the genitalia, anus, groin, breasts, inner thighs, or buttocks of any person with the intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of that person;

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- A prohibition against sexual abuse, including subjecting another person to sexual contact by persuasion, inducement, enticement or forcible compulsion; subjecting to sexual contact another person who is incapable of giving consent by reason of their custodial status; subjecting another person to sexual contact who is incapable of consenting by reason of being physically helpless, physically restrained, or mentally incapacitated; and raping, molesting, prostituting, or otherwise sexually exploiting another person; and
- A prohibition against sexual harassment, including unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, including name calling by inmates or staff.



Additionally, agency policy and procedures must address:

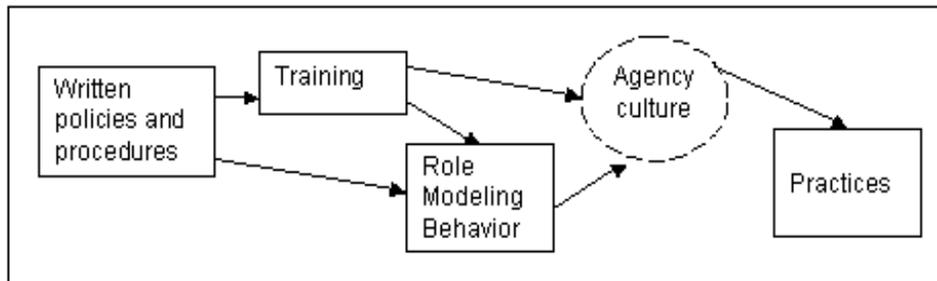
- The privacy of inmates;
- Guidelines regarding visual surveillance of inmates by staff of the opposite sex not related directly to security interests;
- Mandates regarding strip searches and “pat down” searches by staff of the opposite sex of the inmate;
- A requirement for immediate medical treatment and counseling for inmates who are suspected victims of staff sexual misconduct;
- A specific prohibition against retaliation by staff against inmates who grieve, or otherwise raise issues covered in the agency’s policy, including the use of administrative segregation, loss of gain time, or other actions negatively impacting the institutional life of the inmate;
- Confidentiality of inmates who report sexual misconduct;
- Policy options for dealing with reports by staff and inmates.

#### 4. Agency Culture

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Compliance with zero tolerance for staff sexual misconduct often requires changing the agency's **internal culture**. The agency's internal culture is the working environment inside the facility created by the informal power structure. The agency's culture is its people. The internal agency culture affects how staff do their jobs and whether staff and inmates adhere to written procedures. The agency culture is the filter through which all written procedures, training, and practices are shifted.

The agency's culture is both formal and informal. Formal elements of the culture include collective bargaining units, employee advisory committees, the chain-of-command, and/or other employee organizations. Informal leaders work throughout the system and are often identified by their length of service, a perception by their peers that they are able to get staff what is needed to do their jobs, and/or that they are "heard" by the agency's management.



The agency's culture and its people will resist any change, good or bad. In the case of allegations of staff sexual misconduct, the agency's culture might support the "code of silence", managing inmates through fear, retaliation and violence, ostracizing staff who are seen as "snitches" to the administration, or worse, refusing to aid a peer if they are seen as sympathetic to change.

There are positive aspects to an agency's culture such as pride, commitment, solidarity, and support of peers. But these same traits can work against change especially in such a volatile area as allegations of staff sexual abuse.

Role modeling the required behaviors as well as enforcing agency policy and procedures embodies this commitment. Carefully crafted training will mean little if all those who have the authority and responsibility to insure compliance do not model the required behavior.

In tackling a major initiative managers must acknowledge that the culture will resist or embrace the change. Failing to take the internal culture into consideration as policies are designed and implemented, as staff are trained, and inmates oriented, will jeopardize success.

## 5. Inmate Grievance Procedures

The inmate grievance process must provide a true means for inmates to raise issues above the level of the correctional officer. Staff retaliation against inmates who file grievances, denying grievance forms, or staff actions that otherwise undermine legitimate inmate communications short-circuit information vital to the agency's security as well as the ability to enforce a zero tolerance position.

How managers respond when problems arise with the administration of the inmate grievance system reinforces whether the system is taken seriously as a legitimate means of inmate problem-resolution. If the system is not perceived to be credible, inmates will go outside for problem-resolution.

Training and supervision will help staff understand and appreciate the relationship between an effective grievance process and facility safety. The investigator can determine the nature of inmate/staff relations by reviewing grievances, the quality of staffs' response, the timeliness of the response to inmates, and staffs' compliance with agency procedures.



presentation

**Activity # 2: Go to Activity Booklet**  
***Inmate Grievance forms - from where to where?***

## 6. Inmate Disciplinary Procedures

The nature of the inmate disciplinary system influences reporting of allegations of staff misconduct. How an inmate's discipline is managed before and during the investigation will enhance or jeopardize the investigation's outcome, as well as the likelihood of future reporting.

A review of data about the inmate discipline system will provide a picture of whether discipline is administered in accordance with agency policies, identifies patterns of misapplication of rules and procedures by staff, shift, or unit, and identifies the need for additional staff or inmate orientation and training.

Does the inmate disciplinary system enable or deter inmate reporting of misconduct? Among the data to review to determine if the disciplinary system is being used to silence, punish or deter reporting are:

- Consistency in the number of "write-ups" by individual, shift, or unit;
- The number of times pre-hearing segregation is used by officer, shift, or unit and the allegations;
- The "not guilty" rate for infractions;
- A comparison of the application of sanctions for similar offenses; and
- The timeliness of notice and holding of hearings.

The inmate discipline system is designed to conform the inmates' behavior to the facility's rules through a system of rewards and sanctions. If the system is being used to intimidate, silence, harass, or isolate inmates, the security of the facility and the ability to raise allegations is substantially altered.

## 7. Inmate Rules



### Activity

**If the system is being used to intimidate, silence, harass, or isolate inmates, the security of the facility and the ability to raise allegations is substantially altered.**

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### Consistent enforcement of inmate rules

- contributes to facility security and prevention of staff misconduct;
- assists the investigator by consistent enforcement of rules.

Inmates identify which staff or shift enforce or don't enforce rules, and then gain the ability to adapt those circumstances to their advantage.



**presentation**

While all rules are important, the following rules relate to the personal interaction between staff and inmates, the tolerance level of rule violations, including inmate violation of rules about sexual activity, and the level of respect and professionalism displayed by staff and inmates. The rules also relate to prevention of misconduct by avoiding factors that may create a sexualized environment.

- Inmate dress code requirements when inmates are out of their cells;
- Inmate sexual activity;
- Inmate influence over other inmates;
- Inmate name calling when addressing either inmates or correctional staff; and
- Contraband.

Facilities with staff who consistently and fairly enforce the rules, who engage in respectful communication with inmates, and who role model the agency's zero tolerance for sexual activity will be open to less manipulation by the inmate population.

## 8. Inmate Orientation

As the agency's zero tolerance policy and procedures are implemented, the inmate orientation and education process must also be put into place. Inmates need to be

educated, and re-educated about the agency's policies, reporting procedures, and the sanctions for false reports. This orientation should be in language appropriate for the population, can be in video, and must be part of an oral presentation for illiterate inmates. Reinforcement of the message must be scheduled at regular intervals.

If the inmate education process begins before the staff education process is concluded, there is the potential for staff hostility. Staff need to be comfortable about what will be happening and capable of appropriate responses to inmates who raise issues.

**Activity # 3: Go to Activity Booklet**  
*Inmate Orientation*

**9. Mandatory Reporting of Misconduct Allegations**

- a. Employees** - The agency's zero tolerance policy carries with it a mandate for staff (volunteers, contractors, etc.) to report all suspicions about inappropriate staff/inmate conduct. While the agency's internal culture may exert influences on staff to avoid reporting allegations, the agency's procedures must be clear and provide sanctions for those who fail in their reporting obligations.



**Activity**

As part of the staff training about the agency's zero tolerance policy, staff will recognize that the policy provides them with protection against retribution, harassment, and false allegations **if** the policy and procedures are adhered to by all employees.

The policy must clearly delineate the channels through which staff must report suspicions, including avenues for those who believe that their supervisor is ignoring their complaint, or whose supervisor may be involved.

Administrators' actions to reward staff who report allegations reinforces the agency's zero-tolerance policies and sets up future reporting.

**b. Inmate Reporting of Allegations** – Inmates will be required by the agency to report misconduct in a zero tolerance environment. In order for inmates to make reports they must have clear definition of what constitutes misconduct and must know:

- where to complain;
- how to complain;
- what to expect after a complaint is made;
- what their rights are;
- what consequences are for making false complaints;
- how they will be protected during the course of an investigation; and
- how to pursue complaints if they believe their allegations are being “covered-up”.

Some agencies have used “hot-lines” for inmates, or staff, to use to report allegations of sexual misconduct. Such reporting can be made to a source inside the agency, or to a third party who would be expected to handle the allegations objectively.

Inmates learn the culture of the facility: who are the “big bosses”, who can be trusted, who is weak and who is strong. They also know if the investigation process is credible. They know if previous investigations have been diligently pursued or ignored, or worse. While the culture of a facility can change, inmates will remain suspicious of this change until they have seen the agency’s new commitment demonstrated.

## **10. Inmate Medical and Mental Health Services**

Providers of inmate medical and mental health services are in key positions to identify staff sexual misconduct.

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Medical services are an integral part of the identification process, not only seeing an inmate's medical condition, but also observing the inmates' symptoms and behavior.

Inmate requests for medical information must go through a process that does not allow staff to censure, destroy, or otherwise deny medical care. Inmate grievances regarding medical services, when compiled and reviewed provide the investigator and administrator with valuable information about issues confronting the inmate population.

Medical staff need to have specific guidelines for mandatory reporting of the signs and symptoms of sexual misconduct, as well as providing medical and mental health services to the victims. Medical staff need to be trained to identify the overt and subtle signs of sexual abuse.

**Best practice:** In most instances, it is recommended that a third party skilled in the collection and preservation of evidence in cases involving potential sex crimes, be contracted to perform this service.

### 11. Inmate Classification and Inmate Programming

The inmate classification system can prevent as well as detect staff sexual misconduct. The classification process relies on all staff being aware of agency policies, and trained to look for signs (subtle and overt) of sexual misconduct in the facility. Staff review of inmate grievances for patterns, potential signs, and trends focuses on early identification. By reviewing inmate requests for patterns, signs and trends of potential abuse, staff are part of an early warning system.

Classification staff are in a position to assure that inmates are provided an orientation to the agency's zero-tolerance for sexual misconduct, as well as on-going re-education, including information included in inmate materials, handbooks, etc.

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The classification staff can also maintain and disseminate to staff information on inmates who have a documented history of initiating staff sexual contacts. Finally, the classification function can identify inmates who are potentially vulnerable to sexual behavior with other inmates and staff.

Programming for women inmates is an integral part of the agency's shifting of priorities to meet the special needs of this population. Programming for women inmates must focus on addictions, history of abuse (physical, sexual, emotional, etc.), mental health, families, and first time incarcerations.

### **12. Related Administrative Functions**

The prevention of staff sexual misconduct is influenced by agency support functions. Maintaining the zero tolerance policy will require the integration of policy and practices in more than just the operational functions of the organization.

#### **a. Human Resources**

Staff are the most significant and important asset of an agency. The human resource function can maximize that resource by helping to maintain personnel standards and by providing data to decision-makers and the investigator.



**presentation**

## (1) Hiring and Retention of Staff

Standards for hiring new staff and retaining existing staff need to protect inmates and staff from allegations of misconduct. The agency needs to review current hiring and retention standards as they relate to preventing staff sexual misconduct, including:

- Hiring standards that call for the rejection of individuals whose background indicates abusive or aggressive behavior, sexual harassment, domestic violence or other documented behavior not consistent with the agency's professional standards;
- Background investigations to identify past behaviors relating to on-the job misconduct, aggression, and use of force;
- A system for tracking and analyzing why staff are leaving the agency, for cause, as well as voluntary resignations;
- A promotional process that identifies, mentors, and promotes staff with the skill, knowledge and ability for supervisory job functions; and
- A data system that tracks the outcome of hiring decisions such as scores in basic training, ability to meet probationary standards, discipline issues, remedial training, and other factors that can validate the effectiveness of the hiring process and identify changes needed.

Decisions made about who is hired and who is retained effect not only the safety and security of the facility, but also impact morale.

## (2) Staff Assignments

How staff are assigned, including posts requiring cross gender supervision of inmates, is just one part of the agency's overall operational philosophy. Investigations of staff sexual misconduct reveal that same sex misconduct poses an equal risk as male-female relationships.

The agency should identify posts or job functions that potentially place staff and inmates at risk for misconduct or allegations of misconduct. For these functions and/or posts the following safeguards should be in place:

- Insuring close supervision of both staff and inmates in remote, secluded, or other non-housing areas of the facility, areas in which other inmates or staff are not regularly scheduled to be present;
- Routine rotation of staff holding high-risk assignments;
- Use of video surveillance of high risk areas;
- Vigilant supervision and assignment of employees and inmates in areas outside the security perimeter;
- Prohibitions on inmates in areas in which surveillance cannot be maintained; and
- Critiquing staffing plans for night operations and specialized housing units to reduce opportunities for misconduct or allegations of misconduct.

There are few bona fide occupational qualifications (BFOQ) for corrections facilities that allow gender-specific posts. [See *Dothard v. Rawlinson*, 433 U.S. 321 (1977)(USSC+); but also see *Jordan v. Gardner*, 986 F.2d. 1521 (9<sup>th</sup> Cir.) 1993] Prudent management

of staff in high-risk areas or assignments, along with strong supervision, and effective means for inmates to raise complaints are potentially effective in protecting both staff and inmates.

**Activity # 4: Go to Activity Booklet**  
***Staff Assignments***



**Activity**

- (3) Performance Appraisal** – The agency’s performance appraisal system should link relevant job duties to performance with an objective rating system. This system requires supervisors to formally note strengths and weaknesses, direct staff to remedial training, assure that supervisory staff are trained in the use of the system, and monitor the ratings and outcomes of performance appraisal agency wide for conformance with required practices.
- (4) Employee Rewards/Awards** – An often forgotten means of gaining staff support and improving staff morale is a system for identifying and rewarding outstanding behavior by staff through a system of rewards and recognition. Most staff appreciate such acknowledgments as long as they are perceived as sincere and that standards exist for differentiating excellent work.
- (5) Information Analysis** – Human resources operations generate data that can be used as a measure of how the agency is performing. Review of personnel records provide an early warning system for supervisory staff and managers, regarding both employees’ on and off duty behaviors, employees’ use of sick leave and overtime, staff discipline, and staff grievances.
- (6) Employee Assistance Program** – Each agency needs an employee assistance program providing a range of services for staff and their families either by self-referral or supervisory mandate. The agency’s procedures include guidelines for supervisors to use to help determine what behavior dictates supervisory referrals for assistance prior to a crisis.

**(7) Staff Discipline System** - The agency's system of staff discipline is integral to maintaining professional standards. Agency sanctions for non-conformance support the agency's standards. The staff's perception of the fairness of agency's system of discipline affects the effectiveness of sanctions at correcting behavior. How the agency disciplines staff is the ultimate record of how effectively allegations are investigated and how seriously the administration takes staff sexual misconduct.

Fairness in staff discipline, along with consistency, identify whether an agency is committed to professional standards.

**(8) Collective Bargaining Units and Agreements, Employee Unions, Employee Advisory Groups**

If the agency has collective bargaining units, the language of the ratified agreements often governs how staff are assigned to posts, the process for removal, notifications for those under investigation, and how and when staff are represented.

The involvement of unions and informal or formal employee groups in the development or refinement of the agency's zero-tolerance policies will provide staff buy-in. The more that employees appreciate the importance of pro-active management and aggressive, quality investigations, the more they will see the process as ultimately a benefit to staff. Unions and other employee groups have much to gain by supporting staff conduct that promotes professionalism and respect in the community.

**b. Fiscal operations**

**(1) Contract Management** - The agency's fiscal support operations are also a part of maintaining zero-tolerance. The fiscal operations function manages contract awards and assures compliance with contract provisions.



**presentation**

Agency contracts for services need to include specific requirements for behavior of the contractors, training for contract staff who have access to inmates, and penalties for non-compliance. Contractors providing health and mental health services play a particularly vital role in the agency's zero tolerance position. These contractors are in a position to identify and report suspicions of staff misconduct. Such requirements should be specifically included in contract language.

Many contractors hold **state licenses** (physicians, R.N., L.P.N., licensed social workers, attorneys, etc.). These state licenses almost always impose professional standards of conduct, and have a system for investigating allegations of misconduct and imposing sanctions for violating professional ethics. The agency should provide notice that any adverse findings from internal investigations will be reported the state regulatory agency that oversees the profession of the person involved in misconduct. This assures that the violator will be less likely to move to other facilities and engage in further misconduct.

**(2) Facility Maintenance** - An ongoing issue in most facilities is maintenance. In analyzing how staff sexual misconduct occurs, often these events take advantage of a lapse in maintenance.

When maintenance activities are significantly delinquent, staff may not report problems because they have little expectation of seeing repairs. The poor maintenance is further exacerbated. The agency's

response to maintenance is one factor in prevention. The maintenance of security equipment including locks, video surveillance equipment, lighting, motion-detectors, and other similar equipment helps promote staff and inmate safety and deter misconduct.

**13. Public Involvement – The Media, Citizens, Advocates**

The agency's relationship with the media, the public, and advocacy groups prior to any allegations about staff misconduct will guide and influence the relationship during times of crisis. The agency's perception of being "open" or "closed" to the public and the media as well as its history of responsiveness sets the tone during a crisis.

As with all other parts of the agency's protocol addressing allegations of staff sexual misconduct, these procedures and practices need to be in place before a crisis occurs.

**a. The Agency's Media Plan**

Whenever possible, the agency's zero tolerance position needs to be shared with the community – including the media. After orientation for staff and inmates, the public is the next to learn about zero tolerance.

This public awareness is essential to assuring there is reporting from the community of allegations of misconduct. An announcement of the agency's zero tolerance position after an allegation has been made public will have little credibility.

The agency's policies regarding public release of information are particularly relevant when high drama and bold headlines of allegations of staff sexual misconduct surface. The agency's public information policies should be well-known to the local media before events unfold. The policy has official sanction and follows state statutes concerning what information can be released.

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Among other issues needing to be addressed by the media plan are:

- A memorandum of understanding with other enforcement and prosecutorial entities regarding release of information, by whom, when and in consultation with whom;
- Staff training about who can speak for the agency;
- Procedures for notifying individuals and organizations about events at the facility, including emergency situations and crime scenes;
- Templates for news releases;
- Listing of data and information that can and cannot be released routinely and during an investigation;
- Contact names and numbers at local news agencies; and Procedures regarding routine contact with the local media and public about the facility.



**Activity**

### **b. The Media**

The local media's prior knowledge about the agency's operations will help during a crisis. The agency should consider inviting comments, periodically, on the media policy. Open meetings, tours, and assistance to the media to release appropriate information during routine business will impact crisis reporting. A trained member of the staff with experience and knowledge about working with the local media acting as a single point of contact during the crisis will assist both the media and the agency.

### **Activity # 5: Go to Activity Booklet**

***Media Relations***

**c. The Public**

Most facilities have a plan to involve the public – either as members of an advisory board, a community relations council, or as volunteers delivering inmate programs. Many agencies reach out to the community by providing speakers at community meetings, inmate labor in support of community activities, and staff to participate in school and other community programs.

The agency's credibility with the public determines whether allegations are reported by members of the public regarding off-duty behavior, or behavior inside the facility that filters out by way of family of staff and inmates, and from inmates who are released.

Ultimately, members of the community may sit in judgement of the facility as grand jurors or jurors. Involvement of the public in significant ways in appropriate facility operations, rather than just as “window dressing” has long term positive dividends for the facility and staff during times of crisis.

**14. Training**

Training about: (1) the agency's zero tolerance policy for all newly hired employees, volunteers, vendors, and contractors regarding agency policies and reporting requirements; and (2) the agency's investigative process are both essential.

Any individuals who will have unsupervised access to inmates must be trained, demonstrate their knowledge of the topic through testing, and acknowledge their receipt of the training in writing.

The training program must include:

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- Written lesson plans, documented attendance, and staff demonstration of the knowledge gained, plus required remedial training for staff who do not demonstrate the required proficiency;
- Provision of regular in-service training for all staff, volunteers, vendors and contractors documenting participation and demonstration of knowledge;
- Use of information acquired in investigation to identify training needs for improving staff/inmate communications;
- Topics for inclusion in training for newly hired staff and in-service include;
  - ▶ Needs of special inmates (women, mentally ill, and other vulnerable or manipulative inmate populations);
  - ▶ Cultural diversity;
  - ▶ Cross gender supervision;
  - ▶ Searches;
  - ▶ Privacy;
  - ▶ Internal investigations;
  - ▶ Agency policies and procedures;
  - ▶ Responsibilities of first line supervisors, and managers in work habits and performance, etc.; and
  - ▶ Specific standards of both on-duty and off-duty conduct required of all agency personnel.

An overlooked part of staff training is the agency's internal investigative practices, employee rights, and mandated reporting. In many agencies, the internal investigative process is perceived as secretive, biased, and unfair. Often these perceptions arise because the agency cannot release results of findings publicly. Orienting the staff and demystifying the internal investigation process will remove one more barrier to staff's willingness to fully cooperate in reporting allegations.

### 15. Audit and Review

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The agency's audit, quality control, and review function is essential to preventing, identifying, investigating and managing allegations of staff sexual misconduct. Periodic collection, analysis and reporting of data is vital to the agency's understanding of what is happening in the facility.

Reporting data about facility operations helps determine how well the agency is doing at maintaining its zero tolerance for staff misconduct. The process is on-going, with feedback to the warden describing factors and indicators which are part of proactive management and an early warning system.

Among the types of information that can be collected, analyzed and reviewed are:

- Facility architecture for places-of-opportunities for staff/inmate misconduct (bathrooms, showers, gyms, storage areas, staff offices, library, medical, etc. and development of plans to reduce risk see NIC list]);
- Effectiveness of inmate programming;
- Operational readiness and effectiveness of electronic surveillance;
- Security audits including the effectiveness of procedures to prevent inmate violence, results of shakedowns, what contraband is found, etc.
- Process of assigning inmate workers;
- Inmate grievances;
- Inmate discipline;
- Inmate/inmate violence;
- Inmate/staff assaults;

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- Maintenance logs;
- Contractor compliance with terms of the contract;
- Training information;
- Internal investigations opened and closed;
- Inmate medical emergencies;
- Facility incidents and safety and security alerts;  
and
- Personnel data

Most facilities have some type of reporting procedures or format. This process needs to be expanded to assess what the data demonstrates about prevention and investigation of staff sexual misconduct.

### 16. Triage/Evaluate Your Agency's Administrative Practices

Turn to your activity booklet for charts to triage your agency's administrative practices, current policies, and procedures.



**presentation**

**Activity # 6 - Go to Activity Booklet  
Triage Your Agency's Administrative Practices**

### 17. Handling False Allegations

A zero tolerance policy and mandatory reporting brings concerns for staff and administrators about false allegations. Agencies with zero tolerance policies have not found false reporting to be a problem once the inmates see that their complaints are investigated and when



**Activity**

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sanctions are imposed for those who willfully file false reports.

Effective investigations can arrive at the following investigative conclusions:

- False allegation, and the complainant willfully filed a false report;
- Unfounded complaint, where the complainant was complying with the agency's mandatory reporting requirement but the investigation did not find a violation of policy; or
- Inconclusive, in which the allegations can neither be proven nor dis-proven.



### Activity

In cases where inmates, or staff, have filed complaints and the investigator finds the person, who is mentally capable, knowingly made a false report, the following sanctions are available:

- Initiate the inmate disciplinary process linked to a rule about knowingly filing false reports;
- In states with statutes regarding filing false reports, initiate criminal charges; and/or
- If staff is involved in such a false allegation, initiate the staff disciplinary process.

The education of inmates as to the potential penalties for filing false reports is essential.

<p style="text-align: center;"><b>Activity # 7: Go to Activity Booklet <i>False Allegations</i></b></p>
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### 18. Quid Pro Quo

Inmates may gain protections from other inmates and staff, and secure money, drugs, contraband, and status. Some

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inmates who have become involved in relationships have indicated that they did so out of pure loneliness and/or a desire for sex.

An investigator may find that an inmate wants to “bargain” in exchange for information and/or cooperation. In a recent Florida case, an inmate indicated that she had a significant amount of information concerning a staff member who was having multiple sexual relationships with inmates. The inmate would not give up any information unless the Department of Corrections found a way to bring her conviction back in front of the judge. Even the prosecutor became involved.

Inmate demands may include:

- Change in classification;
- Request for protection;
- Change in job or housing assignments;
- Relocation to a facility closer to home and family;
- Preference in program assignment;
- Special privileges, such as visits, phone calls, etc.

Investigative protocols should delineate the agency's boundaries. Great care should be exercised in these circumstances to avoid potential harm to facility operations. It will soon become common knowledge in the institution whether an “agreement” is reached with an inmate.

In general, inmates want to feel safe from retaliation and retribution for reporting allegations, and so most are seeking protection. A clear statement from the investigator at the initial contact with the inmate, emphasizing the agency's policies about zero tolerance for retaliation will help build a successful rapport.

**In general, inmates want to feel safe from retaliation and retribution for reporting allegations, and so most are seeking protection.**

### 19. Investigations Add Value to Agency Operations

Investigative findings, although potentially painful to an agency, can have tremendous value. This value can only be derived if the warden chooses to see the findings as a *de facto* critique of agency operational procedures, written directives, and leadership. The event(s) that precipitated the investigation may be viewed as a “one time only” issue and dismissed by the warden as irrelevant to total agency

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operations; or it can be viewed as a “wake-up” call for possible failures of policy, procedure, leadership or supervision.

Among the operational concerns which may be uncovered by investigations are:

- Inmate movement procedures;
- Enforcement of inmate rules;
- Effectiveness of search procedures;
- Working condition of locks, security cameras, etc.;
- Whether maintenance is keeping pace with the needs;
- Operational effectiveness of written procedures; and
- Whether written procedures are being followed.

Administrative issues identified by investigations may include:

- Effectiveness of staff training;
- Quality of background investigations;
- Use of the employee assistance program in meeting staff needs; and
- Effectiveness of monitoring staff overtime.

Leadership issues identified may include:

- Role modeling of the expected behavior by the warden and command staff;
- Clarity of the agency’s zero-tolerance policy to staff; and

- Awareness of facility culture issues by the command staff.

Finally, supervisory issues that may be identified are:

- Ability of supervisors to operationalize written procedures,
- Quality of record keeping (logs and reports);
- Ability of supervisors to recognize the signs of an inmate or an employees who is under stress; and
- Whether supervisors are using the employee assistance program to help staff.



**Activity**



**presentation**

At the conclusion of each investigation, the warden and command staff should consider how the findings translate to specific recommendations for change. These changes should not only be focused on avoiding the replication of the specific misconduct, but rather the larger issues of the effectiveness of the agency's mission and leadership. Such recommendations need to be translated to operational directives, included in staff training and discussed at staff meetings. Finally, the recommendations require follow-up to insure the changes are made and are effective in making the needed modifications to agency procedures.

Record keeping and auditing are methods for the warden and command staff to use to be able to track the value added to the agency through using investigative findings to improve operations.

**Activity #8: Go to Activity Booklet**  
***Value Added to Agency from Investigations***

***B. Investigative Framework***

**1. Establishing Investigative Partners**

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To conduct effective, efficient and timely investigations, it is critical to have investigative partners. Depending on each agency, different parts of an investigative process may be completed outside of the investigative unit, such as the processing of evidence by a separate certified evidence lab. In fact, in some jurisdictions, the actual investigations of internal complaints may be completed by local or state police agencies, rather than the corrections agency itself.

The key, regardless of the investigative partner, is that the partnership be established and maintained BEFORE the need for assistance arises. This could be established by Memoranda of Understanding [MOU], signed by each party.

The following list of potential investigative partners is intended to be illustrative. There may be many other partners who can assist with investigations.

### **a. Local prosecutors**

Establishing this relationship before a crisis is important so that the prosecutor can:

- have a clear understanding of the laws of staff sexual misconduct.
- assist the investigators by preserving the integrity of evidence so that cases are not lost based on lack of evidence, improper technique, and lack of credibility.

Agencies have experienced differing degrees of interest and cooperation from their local prosecutors. Building the relationships necessary to achieve mutual respect and support often fall to the facility administrator or investigator. Among the ways this relationship may be developed include:

- the facility administrator meeting periodically with the prosecutor to build the personal relationship necessary to joint agency efforts;

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- working with the central office to insure that corrections staff are represented at the state-wide meetings of local prosecutors in order to educate, respond to questions, and open dialogues;
- identifying if the state organization of local prosecutors has a sub-committee which might be focused on prosecutor of cases from state prisons, and offering to work with that group;
- reviewing if there is any statutory requirement for prosecutors to become involved with prison based cases;
- asking staff from the local prosecutor's office to participate as trainers in programs for investigators and managers; and
- working to involve the prosecutor as a stake-holder in the effort to address staff sexual misconduct.

Even if prosecutors have been historically unwilling to present cases to the grand jury, this does not relieve the agency of the responsibility of requesting such consideration in each case. The political and economic environment of each county or state is unique, and could change. Each case must be considered on its merits, and presented to the prosecutor when criminal violations are evident. If the prosecutor decides not to prosecute, the corrections agency is relieved of potential allegations of a "cover-up", favoritism, nepotism, etc.

### ***An MOU with the local prosecutor might include:***

- Case filing and/or indictment requirements – what the investigator will provide to the prosecutor's office when seeking criminal charges; and the format to be used.

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- Establish the standards for filing cases, including witness and victim statements, physical evidence, etc.
- Content of materials to be provided to the prosecutor, such as witness lists, evidence logs, transcription of interviews, etc.
- At what point in the investigation the investigator will make the initial contact with the prosecutor.
- The investigator's role once the case has been accepted for case filing or presentation to grand jury.
- Delineation of the specific laws/statutes that constitute criminal violation.

### **b. Hospitals and Mental Health providers**

Establish a partnership with a nearby hospital or medical center to collect medical/physical evidence of sexual assault, and to provide the victim with medical care that cannot or should not be provided in the institutional setting. The victim may be more comfortable receiving treatment outside the institutional setting, even though it may be available there.

A local mental health center may also be an excellent source of crisis intervention.

#### ***An MOU with a mental health or medical facility might include:***

- When initial notification of the request for service is to be made to the facility.
- What custodial supervision will be provided while the victim is at the facility.
- Checklist for what evidence will be collected, and who will collect it.

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- Who will provide the evidence kit and packaging (such as rape kits, bags for clothing, etc.).
- Who will receive the collected evidence from medical staff.
- What mental health services will be provided by the facility, and who will bear the cost, if any.
- Who will provide prescribed medications, if necessary.
- What follow-up will be provided by the facility.

### **c. Advocacy Groups**

Many jurisdictions have been successful in establishing ongoing partnerships with advocacy groups such as Human Rights Watch, Amnesty International, battered women's programs, and various other rape crisis organizations or victim or inmate rights groups. While involving advocacy groups may appear counterproductive, there are many benefits to developing this relationship. These include:

- Obtaining services which the corrections agency may not be able to provide.
- Providing unique and creative sources for inmate education, support, and even mediation.
- Avoiding damaging publicity.
- Dispelling inaccurate information that stems from rumor and speculation.

### **d. Other agencies**

These may include local law enforcement, county or municipal services, state law enforcement agencies,

etc. As already mentioned, it is recommended to establish written MOU's with each agency.

## 2. Demystify the Investigation Process



**Activity**

### a. Secrecy or Privacy?

Historically, internal affairs investigative units have been a “secret” group, due to the sensitive nature of the investigations. While the information obtained must be maintained in confidence, staff should be fully aware of the investigative process. If staff do not understand the steps of this process, they will distrust the process and even be unwilling to participate in the process.

Investigators and Administrators need to make the process less secret, while maintaining the privacy and confidentiality of the information contained in the investigation, particularly when handling sensitive issues, such as allegations of staff sexual misconduct. The following methods can help achieve this goal.

**Activity #9: Go to Activity Booklet**  
***Demystify the Investigative Process***

### b) Educating staff will ‘demystify’ the internal investigative process, and has several significant benefits:

- Helps staff appreciate that investigations into allegations actually protect staff.
- Helps dispel anger and hostility
- Helps change attitude of staff that the process is arbitrary, unfair, biased and heavy-handed.
- Helps staff anticipate what to expect if they become the subject or witness in an investigation.



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- Confirms employees rights and obligations during an investigation.
- Provides staff with time-frames for the conduct of the investigation and potential outcomes
- Allows staff to appreciate the potential value added to the agency in terms of security and operational improvement.
- Informs staff of the penalties for those employees or inmates who make false allegations.
- Reinforces the agency's policy of zero tolerance and mandatory reporting requirements.
- Clarifies the process for reporting suspicions, from both staff and inmates.
- Informs staff of the inmate education and orientation on the issue of staff sexual misconduct.

### **c) Be visible – even when not investigating**

Many investigators have experienced this: “As soon as I walk through the front door of the facility, my presence is known within two seconds – even as far as the rear gate and outside maintenance staff.” The appearance of an internal affairs investigator inside a facility can be completely disruptive to operations. Suddenly no one is talking about anything except the investigator and why he/she is there. Rumors fly, people speculate, phone calls are made, and everyone is on guard. Staff are concerned with just about anything but the normal operation of the facility.

There are a number of ways to help alleviate this reaction, but the fact is, people will talk and speculate. That in mind, one can hope to at least lessen the impact of the investigator's appearance.

- be visible at various times when NOT conducting an investigation

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- familiarize staff with the process
- assure that policy and procedures are clear and specific
- protect the confidentiality of the investigation - assure that staff know that you will NOT discuss investigations with others
- maintain a model of integrity and trust

### **d) Be proactive – identify problems before they are reported.**

Investigators and administrators who are alert to potential problems based on daily operations and activities within a facility may be able to influence those operations in such a way as to prevent opportunity for staff sexual misconduct.

- Watch for “red flags” (see appendix).
- Move staff or inmates when the situation has a potential for problems.
- Review policy and procedures on a regular basis – assure that they are designed to handle situations efficiently and effectively.
- Pay attention to rumors – sometimes ‘where there’s smoke, there’s fire’.
- Review the database of allegations to determine patterns – are certain names appearing frequently, or do certain facilities seem to be the source of complaints more frequently than others?

### **e. Maintain a Reputation for Quality and Fair Investigations**

Investigators and Administrators are the models for behavior within any organization, but perhaps no more critically than in corrections agencies. The nature of

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corrections divides those responsible for giving service from those they serve quite intensely. Though corrections serve the public, by preserving public safety, corrections also serves the inmate whom they are charged to protect and maintain. In such a setting, role models truly come from the ranks of staff, particularly supervisory staff.

If staff are to model excellent behavior, they must observe it in their administration. The investigators also must present the model of behavior, since they are in a position of power over staff due to the nature of internal investigations.

The following are a few recommendations for presenting a reputation for fairness and excellence:

- (1) Model professional behavior & lead by example. Administrators and Investigators are on constant view. They cannot expect from others what they do not demonstrate themselves.
- (2) Be consistent - in action, attitude, language, behavior, and treatment of others.
- (3) Avoid conflict of interest and perceptions of conflicts.

Be aware of perception created by your associates, and actions, both on and off duty. Integrity in off duty behavior is as important as on duty. Be aware of how friendships affect your position.

- (4) Know who you should and should NOT investigate.

Bow out of an investigation if there is even a potential for a conflict. Do not investigate friends, relatives, or anyone that would give the appearance of a conflict.

- (5) Seek improvement through training and education.

Training and education indicate a willingness to grow and improve, as opposed to remain stagnant

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and outdated. New methods of performing job functions can be developed, increasing the integrity and effectiveness of job performance.

**Activity # 10 - Got to Activity Booklet  
The Investigators: Job Description, Selection, Training  
and Optimal Chain-of-Command**



**Activity**

**Section IV Summary**

***Section IV covered administrative and investigative topics that are proactive, including policies and procedures that should be in place before allegations of staff sexual misconduct surface. Areas demanding administrative attention, included selection of investigators, personnel standards, fiscal management, handling false allegations, and 'quid pro quo' considerations. For the investigator, targets included establishing partnerships with other entities that will aid in the investigation, taking the 'mystery' out of the investigative process so that staff and inmates will be more cooperative and forthcoming, and maintaining a reputation for high quality and fair investigative processes that are fair and thorough.***

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**Endnotes:**

1. State of Georgia, Policy and Executive Procedures/Internal Affairs/ Investigations of Allegations of Sexual Contact, Sexual Abuse and Sexual Harassment, November, 1995.

## Section V

### Responding to Allegations

#### Section V Objectives

- Develop investigative and administrative protocols for responding to allegations of staff sexual misconduct.
- Recall the 2 primary investigative objectives.
- Distinguish between misconduct that would justify criminal charges and that which arise only to the level of administrative action.
- Determine how to initiate and manage investigations.
- Identify how and where to locate relevant information.
- Recognize how to:
  - conduct interviews,
  - maintain the chain of custody,
  - handle medical evidence,
  - investigate sexual assaults, and
  - bring the investigation to closure.



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## V. Responding to Allegations

### A. Administrative Considerations



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#### 1. Assign the Investigation

In deciding which investigator or team will complete an investigation, factors to consider include:

- Gender – There is no absolute when making a case assignment based on gender, but consideration is critical. Factors that may affect the establishment of a rapport may include: the aspects of PTSD; history of prior abuse; differences in communication styles of each gender; circumstances of the allegations.
- Conflict of interest – An assigned investigator should be required to inform the supervisor or administrator assigning investigations if there is any possible conflict for him/her in a particular assignment. However, the supervisor or administrator may recognize potential conflicts even before the assignment.
- Team approach – For many reasons, a team approach to conducting investigations into allegations of staff sexual misconduct is highly recommended. It can help protect the integrity of both investigator and investigation, avoid potential conflicts of interests, and provide additional expertise and combination of experience.

#### 2. The investigative outcome

In allegations where both potential criminal violations, and violations of agency policy and procedure are present, a decision must be made if the agency will proceed with the criminal or administrative violation, or both.

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While it is possible to pursue administrative violations after beginning an investigation according to criminal procedure, it is unlikely that it will be possible to do the opposite. Certain procedures and protections are required for criminal prosecution, and if an investigation is pursued only administratively, it is likely that criminal procedures and protections will have been compromised by that point.

For example, in most states sexual contact between inmates and staff is a criminal offense. If the agency proceeds according to administrative policy and not criminal prosecution, this will preclude pursuing criminal charges unless the agency can demonstrate it did not acquire evidence used in the criminal prosecution, while conducting the administrative investigation.

There can be other dangers in initially pursuing allegations administratively if there are clear criminal violations. For example, consider a case of staff bringing contraband into an institution, such as books, magazines, food, etc., and giving that to an inmate with whom staff is suspected of having a sexual relationship. If the agency pursues the introduction of contraband, an administrative violation, and decides not to pursue the criminal violation of the sexual relationship, a distinct message is sent to inmates and staff.

***What message would this send to inmates and staff? Is this the message that an agency wants to send?***

If the agency pursues criminal violations, but prosecution is either declined by the prosecutor, or guilt is not sustained by the courts, the agency may still discipline staff for sustained violations of agency policy. The investigator

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must be familiar with the time frames that apply in the respective jurisdiction, such as those set by law, collective bargaining agreements, etc.

### 3. Making the decision on how to proceed

This is a critical step in the investigative process.

Recommended practices include:

- Establishing a protocol on who makes the decision to proceed criminally or administratively. *[Best practice indicates that protocol development may include investigative unit supervisors, wardens, administration representatives, investigators, legal counsel, and mental health professionals.]*
- Maintaining confidentiality. Once the decision-making protocol is established, the actual decision should be made in a confidential manner, with only those persons prescribed by protocol.

### 4. Personnel issues

When staff is named in the allegations, administrative procedures need to respond whether the staff is a suspect, witness or even a victim.

Prompt actions should consider the following:

- State Law – Some state statutes mandate specific employee protections, establish internal investigative procedures, and guide the agency's operations during investigations into allegations of any staff misconduct.

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- Agency Administrative Procedures – Agency written practices should address the work status of staff who is subject of the investigation, or a witness. The procedures should address when staff are moved from assignments, when the staff should or can be placed on leave with or without pay, and how staff who are witnesses are protected, if necessary, from retaliation from their peers.
- Agency Practice – Ideally, the agency's practice matches the written policy. If this is not the case, the administrator needs to be concerned with unwritten precedent.
- Collective Bargaining Contracts – Many agencies operate within collective bargaining agreements that delineate many related issues including assignment of staff, removal from duty, pay status, and notifications to subject employees at the initiation of an investigation.

Failing to follow procedure or legal mandates will jeopardize not only the investigation but also the ability of the agency to terminate employees who are involved with misconduct.

Examples of possible administrative actions in response to allegations include:

- ***Suspend staff from duty - if this is done, the written notification must describe***
  - Whether the employee may enter a department facility;



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- Guidelines on communicating about the allegations or other matters with staff or inmates,
  - Whether the agency is proceeding with a criminal or an administrative investigation,
  - The employee's pay status,
  - The employee's rights as guaranteed by agency policy or a collective bargaining unit,
  - The employee's activities during the time of the suspension and availability to agency investigators.
- ***Reassign staff within the facility. If this option is selected, the written notification must describe:***
    - Guidelines on communicating about the allegations or other matters with staff or inmates,
    - Whether the agency is proceeding with a criminal or an administrative investigation,
    - The employee's pay status,
    - The employee's rights as guaranteed by agency policy or a collective bargaining unit,
    - The expected length of the investigation, if it is known and can be determined, and
    - Prohibitions against retaliation against inmates or staff.

- ***Notify staff that they are being investigated as part of an allegation, but not suspending or reassigning. Such notification should address:***
  - Guidelines on communicating about the allegations or other matters with staff or inmates,
  - Whether the agency is proceeding with a criminal or an administrative investigation,
  - The employee's pay status,
  - The employee's rights as guaranteed by agency policy or a collective bargaining unit,
  - The expected length of the investigation, if it is known and can be determined, and
  - Prohibitions against retaliation against inmates or staff.
- Polygraph – In states where polygraphs are permitted for investigative purposes, this notification will inform staff of their obligations, the time, date, and place of the examination, and whether legal representatives can be present. It is important that if polygraph examinations are permitted by an agency, the staff member must be notified of this at the time of employment.
- Production of physical evidence – In states permitting production of physical evidence such as DNA, blood for drug or alcohol screening, handwriting for analysis, personal telephone records, or other evidence allegedly held by the suspect-employee, this form would indicate how

such evidence will be acquired, time lines, and related procedures. Procedures for collection of DNA, blood and urine follow those adopted by OSHA and the FBI. As with polygraph examinations, the staff member must be notified at the time of employment that the collection of samples for this use is the prerogative of the agency.

## 5. Management of Investigations

### a. Investigative Structure

One factor that can greatly influence the entire process of managing the investigation is the investigative structure. In some agencies, all investigations begin with the investigator located at the institution, who reports directly to the warden or superintendent. In others, investigations are reported to a regional office outside the institution, and assigned to either the institutional investigator, or an investigator from outside the institution. There are many variations of investigative structure, each with its own weaknesses and strengths.

Regardless of what structure exists in any particular agency, the effectiveness of the investigation depends on how the investigative structure is managed.

### b. Supervisory Monitoring

The most effective investigators are in close touch with their supervisors, relaying developments, brain storming difficult cases, and acting on the suggestions of their supervisors.

A team approach is important for investigators of allegations of staff sexual misconduct. Working alone on a sensitive investigation may lead the investigator into a danger zone, where



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the investigator may become accused of mishandling the investigation, misinterpreting or misusing information. At least three valuable reasons for working in teams, include:

- a fresh and objective look at facts and details;
- support, encouragement and protection for the investigators;
- avoiding the appearance and danger of conflict of interest.

### c. Tracking Allegations and Investigations

#### (1) Maintain a database of information

Each complaint, grievance, allegation, or report of possible violations should be recorded in a central location, whether it is on a computerized database, or simply a written logbook. A computerized database:

- enhances the ability to research
- helps track complaints by names, facilities, type of allegations, names of witnesses, etc.
- must be kept confidential !
- helps maintain an accurate log of allegations by date of receipt, length of investigation, date closed, etc.

The information generated about a facility's history of complaints can be invaluable to agency operations. However, as important in maintaining a database of information from investigations, is how the agency manages that information. The following questions are just some of the issues that

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an agency must clarify by policy and practice:

- Where is the information kept?
- Who has access to the information?
- How is access controlled and protected?
- What level of complaint is entered into the database, and what is excluded?
- What information is entered from the file?
- How is the classification of an investigation reflected?
- How is a change in classification reflected?
- How is the status (pending, closed, etc.) reflected?
- How is the information used in agency operations?
- What are the laws that affect confidentiality?
- Is the information used when staff apply for employment elsewhere?

Another caution in using this data is recognizing that the volume of complaints does not imply guilt or innocence, but rather the possible need for a pro-active investigation.

### (2) Classify the allegation

When a report is received, it is recommended to classify the alleged event according to the most serious or highest possible violation. If the

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preliminary inquiry does not support this violation, the classification can be changed accordingly. For example, an allegation may initially suggest a sexual relationship between staff and inmate, but later be determined to be over-familiarity based on favors or inappropriate language.

Investigators, conversely, must also be alert to the possibility that a seemingly minor infraction may be a sign of a more intense relationship.

Agency policy should reflect who has the authority to formally establish the initial classification and change the classification once the investigation is underway. Most agencies will require the submission of an initial report to a supervisor within 24 to 48 hours, and any change in classification could be considered at that time.

Many agencies assign investigations based on the classification. For example, more serious allegations that could imply criminal actions may be assigned to investigators in a unit outside of the institution. Less serious allegations may be handled by institutional investigators or administrative supervisors, rather than the outside investigative team.

### (3) Crime Reporting

Each state corrections agency needs to determine whether crimes (occurrence and subsequent clearances) in prisons are reported to their state agency that has reporting authority under the Federal Bureau of Investigations' Uniform Crime Reporting Program (UCR). In some states, the corrections agency has a UCR reporting agreement, which gives them the proper procedures for self-reporting to the state agency who will send the state's total reports to the FBI. In other states, another agency such

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as the state police, bureau of investigation, highway patrol, etc. will have reporting authority and responsibility. In other states, the local police agency might have the authority and responsibility to report all crimes in that jurisdiction, including crimes reported in the local prison.



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Practices are not uniform throughout the United States. In some states, the local law enforcement agency may not want to report prison-based crime because these additional reported crimes have the potential to drive up the crime rate in that jurisdiction – often a hot political issue.

Without a central repository for this data nationwide, researching and documenting prison-based crime is difficult. Corrections agencies not currently reporting offenses to their state's central repository may wish to explore this issue as a means of standardizing reporting.

### ***An investigator's two main objectives:***

***To conduct a thorough and competent investigation that will, where possible, clearly either support or refute allegations, by evidence, information gathered from witnesses, and documentation; and***

***To safeguard the well being and security of the complainant, the subject, the respondent, the institution and the agency, and ensure the integrity and credibility of the process.***

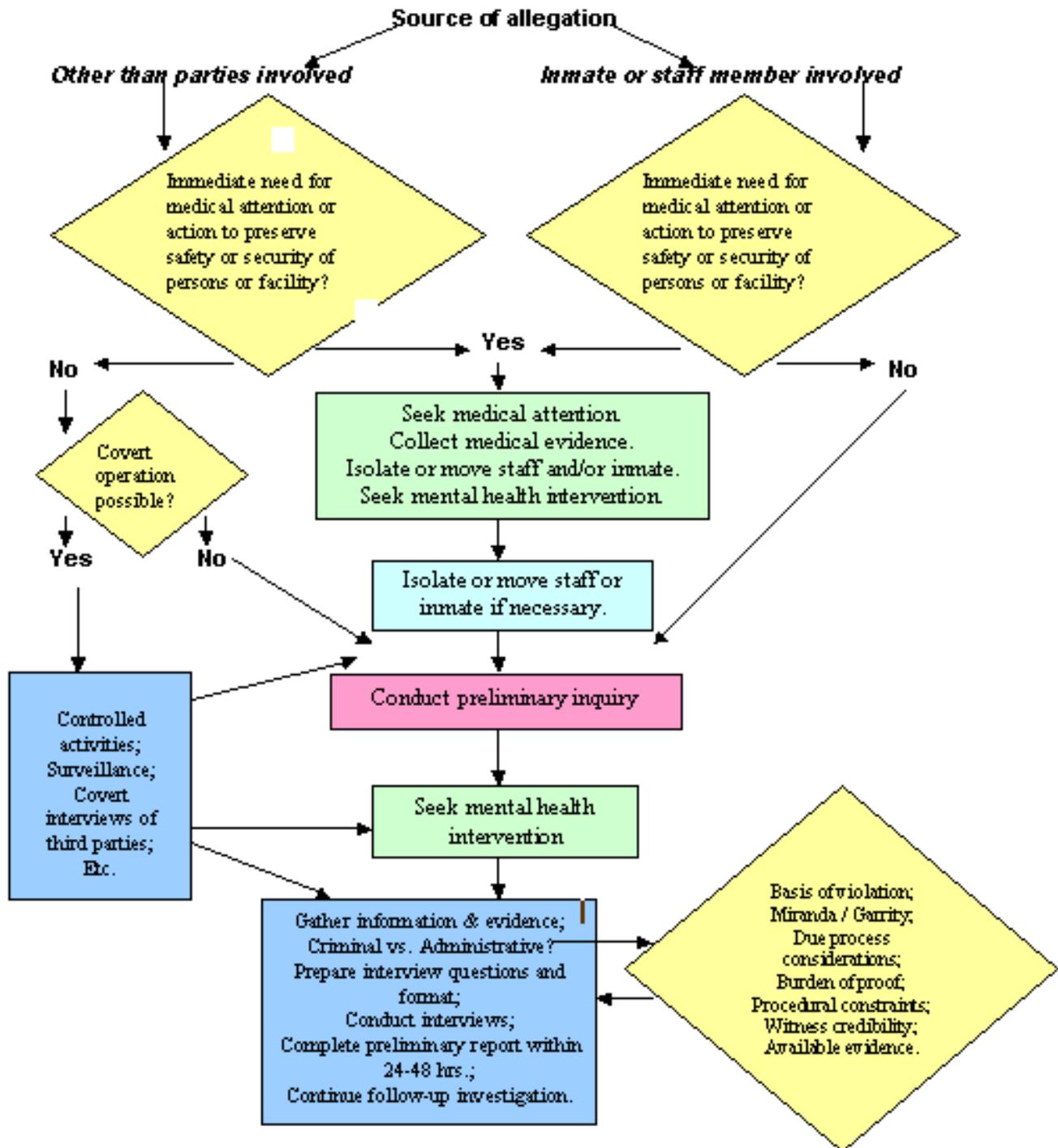
[Source: Investigations of Crimes in Jails, American Jail Association, Jail Operations Bulletin, Vol. IV, #11, by Wayne T. Rodgers, 1993]

### ***B. Investigative Response to Allegations***

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The following page contains a model flow chart of the investigative process, based on the recommended procedures that are explained in detail in this section.

**Investigation Flow Chart**



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1. Criminal vs. Administrative Process

When allegations of staff sexual misconduct have been received, the investigator or investigative team will have decided whether there are potential criminal violations, or only administrative violations. The chart below demonstrates the different aspects of each path.



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	<b><i>Criminal</i></b>	<b><i>Administrative</i></b>
<b><i>Considerations</i></b>		
Basis of Violation	Rule of Law	Policy and Procedure
Standards	Know elements of criminal act	Know elements of violation
Evidence	Determine evidence needed to prove criminal act	Determine evidence needed to prove allegations
Testimonial Evidence	Hearsay inadmissible	Hearsay accepted if supported
Testimonial Evidence	Polygraph results inadmissible	Polygraph results useful investigative tool
Testimonial Evidence	Witness credibility to a jury or judge	Witness credibility in interviews and panel presentations
Procedural	Prosecutor support	Prosecution refused
Procedural	Discovery rules and how they apply to reports, evidence	How will your reports be used and maintained
Due Process	Miranda Protections	Garrity Protections
Burden of Proof	Beyond reasonable doubt	Preponderance of evidence

2. Initiate the Investigation

a. Preliminary Inquiry

(1) Conduct a preliminary review BEFORE interviewing the subject(s) of the complaint and other witnesses. Do NOT interview the complainant or respondent before completing the initial review. Interviews will become contaminated without sufficient preparation, information, and/or with multiple interviews

(2) Assume that the information in the allegation is true and proceed with that presumption.

(3) Gather information from documentary sources, such as logbooks, files, computer entries, etc. before interviewing witnesses.

(4) Complete preliminary inquiry as quickly as possible. The timing of this part of the process will depend upon the nature of the allegation(s). Do not spend an excess amount of time in this part of the process, as information may lose its freshness or validity with too much delay. Also, it is critical to begin collecting evidence immediately to protect its integrity. Evidence can become contaminated and/or diminished with the passage of time.

b. if possible - take a covert approach

The possibility of taking this approach will be determined by the method that the complaint/allegation was received. If the complaint came from a third party,

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the investigation should be kept low key and as covert as possible. The objective is to quickly assess the validity of all or part of the allegations, alerting as few non-investigative persons as possible. If the investigator can obtain evidence of the suspected allegation in a controlled situation, the investigation will reach an objective outcome more quickly and with stronger evidence.

The following are possible methods to use to assess verify, confirm, or refute all or portions of the allegations. The availability of these methods will differ from jurisdiction to jurisdiction based on statutory restrictions, agency policy, and equipment / staff availability:

- Phone check – either by a wiretap, list of phone numbers called;
- Controlled phone call – have the alleged victim make a call which the investigator can monitor;
- Monitor and review mail, log books, sign in sheets, inmate movement records etc to determine if the parties had opportunity;
- Video monitoring – set up cameras in area where suspected activity is taking place, or review tapes of areas routinely under video surveillance

c. Conduct interviews without the knowledge of any other parties (staff, inmates).

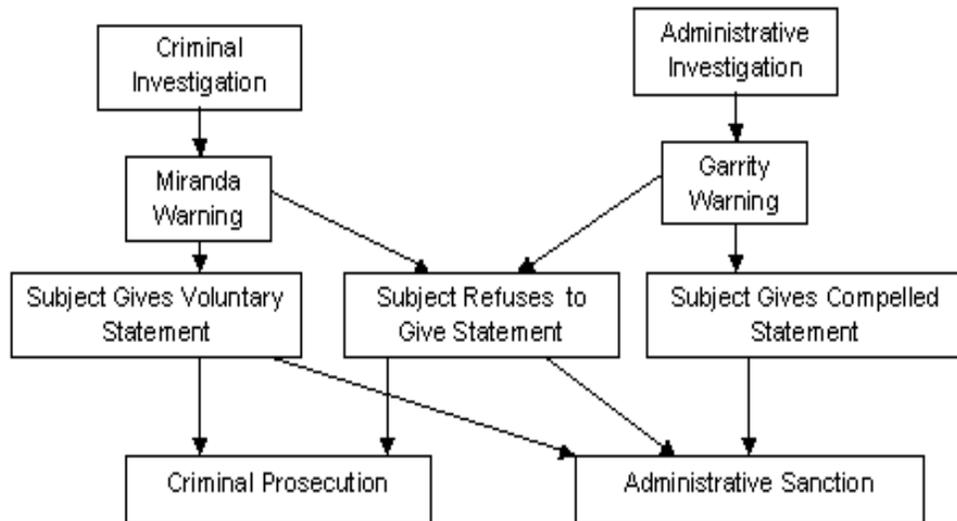
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In some cases, it may be possible to conduct interviews with peripheral witnesses. If possible, arrange for the staff person or inmate to be moved to another location for some stated reason OTHER than your interview.

d. If complaint comes from one of the parties involved –

Under this circumstance, conduct the investigation as discretely as possible, as one party will be aware that the investigation is proceeding.

e. Applications of Garrity and Miranda



**(1) *Miranda v. Arizona*, 384 U.S. 436 (1966):**

If a prison investigation involves the possible pursuit of criminal allegations,

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and becomes accusatory, then Miranda rights apply to both parties. If an agency may pursue criminal violations against a respondent, that respondent is protected from making self-incriminating statements under coerced conditions, and without proper legal advice and representation.

Therefore, an investigator who conducts an investigation and who reaches the point where the respondent may be making self-incriminating statements, must advise the respondent of their rights under the Constitution as determined by Miranda.

It is highly recommended to include a written form, delineating the Miranda warning, signed by the respondent and witnessed by at least one investigator.

### **(2) *Garrity: v. New Jersey, 385 U.S. 493 (1967)***

In *Garrity*, the Supreme Court decided a case where police officers were ordered and compelled by internal investigators, with authority of a N.J. statute, to give a statement about alleged conduct. The officers were told that if they did not make the statement, they would lose their jobs. The officers gave the statements, which were later used to incriminate them in a criminal prosecution. The court found that **states have the right to compel such statements as a condition of employment, but such statements cannot be used against officers in criminal prosecutions.** What does



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this mean for law enforcement and corrections personnel?

- If the respondent staff member is not provided immunity from criminal prosecution, any statement given under threat of adverse personnel action is unconstitutionally coerced. Such statements can only be compelled as a condition of continued employment if there is immunity from using the statements to self-incriminate in criminal court.
- If the respondent staff member is granted immunity, but refuses to answer specific questions as part of an administrative inquiry, directly related to official duties, the respondent may be dismissed or suffer disciplinary consequences.
- If the respondent staff member is granted immunity, and the answers to the questions as part of an administrative inquiry specifically related to official duties provide cause, the respondent may be dismissed or suffer disciplinary consequence.

It is highly recommended that Garrity warnings be given in writing and signed by the respondent staff member with at least one witness.

### (f) Collective Bargaining Agreements

When taking statements and interviewing staff who are covered by a collective bargaining agreement,

investigators must proceed according to the requirements of that agreement.

### 3. Finding Information

a. records, documents, logs, etc.

The investigator should be familiar with all sources of available information that can help determine who was where and at what time. These may include, but are not limited to:

- log books
- computer records and data entries
- inmate movement sheets
- key logs
- electronic access cards
- work assignment sheets or logs
- mail room data
- telephone records and logs
- dormitory activity logs
- medical, dental and mental health unit logs
- count information
- video surveillance cameras and tapes
- educational paperwork, such as submission of homework or tests
- telephone tapes (many institutions record inmate telephone conversations)
- wiretaps

**Conducting an investigation is more than collecting evidence and interviews. Evaluation and corroboration of events and facts is the critical step for the investigator.**

b. witnesses

Search for the obvious and the not-so-obvious potential witnesses. If the list of witnesses appears all-inclusive, it probably isn't.

### 4. Interviewing and Taking Statements – Testimonial Evidence

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Testimonial evidence includes everything that people say about the allegation, including but not limited to:

- Eyewitness statements
- Suspect statements
- Victim statements
- Admissions or confessions

Testimonial evidence can be gathered at any point during the investigation – whether at the scene of the incident or later.

### a. Prepare for the interview

(1) Be completely familiar with all information available BEFORE the interview.

(2) Prepare a complete list of those persons who will be interviewed, and complete those interviews within as close a time-frame as possible for several reasons.

- After an interview is completed, the person interviewed is now better informed about the scope and subject of the investigation. This opens the door to collaboration with other involved persons and potential witnesses. The investigator must be aware that the person interviewed can share their information with others, which could diminish the validity and credibility of the investigation.
- An excellent method is to have all persons to be interviewed held separately while the interviews are taking place. If a team of investigators can complete interviews simultaneously within a short period of time, the

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information gathered will be more accurate.

- (3) Follow appropriate criminal or administrative procedures.

Some jurisdictions have certain requirements concerning legal or union representation at interviews. Each agency policy should be established to be compliant with such restrictions.

- (4) Know law and/or agency policy on video/audio taping

b. Making “the connection”

- (1) Building trust with the subject of the interview

***“You – We – I” Theory: 1***

**“You”** - Show concern and interest for the person being interviewed. By placing the person’s interest and well-being as priority at the beginning of the interview, the investigator will more easily establish a rapport.

**“We”** attitude – next establish that the investigator and person being interviewed have the same objective - to find the truth and take appropriate action.

**“I”** phase – after establishing a rapport and a common goal, the person being interviewed will generally provide information more willingly.

**Why is it important to be sensitive to the complainant AND the respondent? The result will be increased cooperation and better credibility of investigative technique and results, and professional integrity.**

(2) Eye contact, behavior, and body language

Interview techniques may differ with each investigator. Some general guidelines that may make an interview more successful for the investigator include:

- Be patient and non-judgmental. Don't display shock or other reactions when the person shares information. Keep emotions in check, and the interview calm.
- Be gentle. Put the person at ease. The investigator might even share their own embarrassment or discomfort with the subject matter. "This subject makes me uncomfortable, too. I know how you feel."
- Be aware of the range of different reactions and behaviors that may occur during an interview. Some persons may remain completely calm and in control of emotions, while others may seem distraught. NEVER assume that composure or lack of emotion means that the event could not have happened. It can be just as common to see composure as emotion when dealing with this issue. This is when a mental health professional's presence during the interview can provide the investigator with better insight.
- Maintain eye contact when possible. It can demonstrate your concern and sincerity.
- Offer empathy, but avoid patronization.

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- NEVER share personal information with the person being interviewed.
- Be alert to the comfort level of personal space of the person being interviewed. A change in the proximity of the investigator to the person may affect their willingness to respond.
- Be alert to other body language. If the person being interviewed folds their arms, or makes little eye contact, this could signal negative rapport. Change the approach.
- Do not take comments or statements personally. Be aware that the investigator can as easily be affected by the situation as anyone.
- If the interview becomes filled with anger or fear, the possibility of obtaining useful and valid information is greatly diminished. Take a break and continue later.

### (3) Risk of contamination by multiple interviews

- It is critical when conducting interviews with complainants, respondents, witnesses and alleged victims, that interviews be kept to a minimum. Be prepared before beginning the interview so that the need for re-interviewing is diminished.
- Investigators might contaminate information by having a person to repeat their story until they make a conflicting statement.

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- Conflicting statements taken from a person through multiple interviews only diminishes the strength of the investigation.

(4) Know when you can't make the connection, and bow out. If the person being interviewed is not responsive, and the investigator cannot establish a sense of trust or openness, it is time to leave the interview and bring in a different investigator.

### c. Mental Health Professionals in the Interview

Based on an agency's investigative protocol, the presence of a mental health professional may be helpful during an interview with a victim of alleged staff sexual misconduct. The presence of the mental health professional may depend on the seriousness of the allegation and the history of the alleged victim. The investigator should ask the victim if they would prefer to have someone present to make them more comfortable.

### d. Asking the best questions

- Promote open exchange
- Avoid questions that will have "yes" or "no" answers. Keep questions open and probing.
- Avoid leading questions and statements that suggest any element of the allegation. Allow the person to talk freely.
- If the person hesitates, the investigator may reiterate what was just said. They will generally pick up where they left off and continue from the paraphrased words.

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- Don't feel the need to fill the pauses. Allow the person to collect themselves and continue.
- Guide the interview after pauses with open questions, such as "What else happened?", "And then what?", "Tell me a bit more about that."
- If the person is hesitant to talk, the investigator may explain why the requested information is necessary. "The more clear you are, the better we can both get to the bottom of this, and be sure that we can take appropriate action."

### e. Polygraph examinations

If an agency does not have qualified polygraph examiners on staff, a protocol should be established for the investigator to obtain services as needed.

Use of polygraph examinations can be a useful investigative tool, though the results are not admissible in criminal court. Generally, polygraph results alone are insufficient to establish cause for disciplinary action. In most cases, unless there is other corroborating information or evidence, polygraph examination results should not be used as the sole basis for disciplinary action or conclusive results to an investigation.

### f. The Silent Rape Reaction <sup>2</sup>

Some victims of sexual assault will not report an attack for a number of reasons. For the investigator, this can be significant. If the investigator does have an opportunity to interview the alleged victim based on

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information received from another party, certain signs during such an interview are significant.

These signs may include:

- long periods of silence
- stuttering
- obvious physical distress
- sudden irritability
- reluctance to be in the presence of an investigator of a certain gender.

Outside of the interview, a victim may suddenly demonstrate:

- a loss of self-esteem and self-confidence
- new hopelessness about their situation
- failure to return to work or vocational assignment
- cessation of activities that had been previously enjoyable



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### 5. Collecting and Preserving Physical Evidence

- a. Physical evidence can include, but is not limited to:

Clothing worn during the assault or event; external materials such as fibers, hair, etc.; medical evidence; DNA or body fluids; fingerprints.

Once the investigator determines what possible violations of either law, policy or both may have occurred, he/she

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should make a list of evidence that may be necessary to prove or refute these allegations. That evidence should be sought as quickly as possible, keeping in mind that additional sources of evidence may arise during the process.

- b. Establish a procedure for who collects physical evidence.

The investigative unit within the agency should establish policy on who collects what evidence. Being consistent will assure that when and if a case goes to any court, it will be well-prepared and informed.

- c. Use clear and specific documentation of evidence collected.

The investigator should maintain notes as to where and how evidence was found, how it was collected, who collected it, what it looked like, etc.

The practice of photographing all evidence before it is moved will preserve the integrity of the evidence. Photographs in conjunction with thorough notations will be more reliable than either method alone. An excellent compliment to photographs and notes is the crime-scene sketch. Investigators do not have to be artists for this – merely a rough sketch noting the location of items in the area or room, and noting the location of evidence or significant items is sufficient.

- d. Preserve the chain of custody.

A general rule for maintaining chain of custody is that as few people as possible

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should handle any one piece of evidence, and when it is handled, there is clear and precise documentation of who, what, how, when, where and why it was handled.

Cases are lost because evidence cannot be used due to a break in the chain of custody (who handled it, when, where, and how). With each piece of evidence, handling should be consistent with protocol, and a detailed log should be maintained to indicate that there is a continuous chain of custody. This can help to eliminate the possibility and appearance that evidence was either tampered with or damaged.

[see appendix for sample evidence log]

### e. Marking, packaging and storage of evidence.

The investigator needs to be familiar with the current methods of proper packaging and storing of certain forms of evidence.

Improper packaging and storage can cause evidence to become useless. Blood or body fluid evidence must be packaged so as to avoid rotting and mold. Evidence should be marked for later identification in a manner that does not alter or destroy it. At any later time, the person who collected the evidence can identify it by the markings, verifying that it is the specific piece of evidence they collected, when and where they collected it.

### f. Preserving collected documents, logs, etc. for future use.

When using logs, documents, papers, and any other such item, always make

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copies for back-up. However, in court proceedings, original documents are necessary, to prove that there was no alteration or tampering. Do NOT mark on original documents. They can be stored and preserved in appropriate packing which is sealed and marked.

### 6. Medical Evidence

#### a. Time frames for viability

In most cases, if more than 72 hours have passed since sexual contact, too much time has passed for fluid evidence within the victim's body to be viable. However, items other than bodily fluids, and fluids outside of the body may still be viable.

For example, if semen is found on a blanket in an inmate's cell, the blanket should be collected and preserved. In this case, the investigator should take measures to determine who had access to the blanket since the time of the alleged incident. The evidentiary value of the blanket may be lost or compromised if access was not controlled during that period of time.

#### b. Who collects medical evidence

Institution medical staff should NEVER collect this evidence from an inmate for staff. Only outside medical personnel at the hospital, clinic, or rape treatment center should collect this evidence to avoid any possibility of conflict of interest on the part of an agency's medical staff. The agency MOU should establish how this is to be done.



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Each institution should maintain its own supply of rape evidence kits, and the correctional person who transports the inmate to the hospital for the exam should carry this kit and personally deliver it to the doctor, making a note of the doctor's name, time, and date that it was delivered.

The corrections employee should NEVER handle an open kit under any circumstance. Be certain that the doctor collecting the evidence sealed the envelope before handing it over.

- c. Contents of a rape kit – be aware of contents
- d. DNA evidence

### (1) who collects it

Like any other bodily fluid evidence, DNA must be collected in a manner that preserves the chain of custody. The agency's investigative protocol should address this.

The investigative file should also contain the names of witnesses present during its collection, how it was transported to the lab for evaluation, and how the chain of custody was preserved.

### (2) who evaluates it

Few correctional agencies have their own labs to conduct DNA analysis. Each agency's investigative protocol establishes what lab will complete this part of the process, before the need

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arises. In many cases, a state law enforcement agency will have certified laboratory facilities, and will probably provide such a service if an MOU is established and set forth in policy.

### (3) legal requirements for compelling this evidence

If an investigation requires DNA evidence to prove or disprove allegations, the investigator must use proper procedure. Miranda requires that the suspect be fully informed of constitutional protections, which include not only making statements, but also providing any physical evidence that could be used to incriminate.

If a suspect refuses to provide the evidence under Miranda, then the investigator should consult the local prosecutor for direction on court orders to compel such evidence. If a suspect agrees to provide this evidence AFTER receiving their Miranda warnings, the investigator can protect the evidence and their own liability by carefully documenting the suspect's waiver of Miranda, in writing, with witnesses, and possibly on tape.

The process is different when collecting DNA evidence from a victim. If a victim refuses, in most states the investigator cannot compel the victim to comply with the request. However, the investigator may

decide to seek the assistance of advocacy groups or crisis intervention specialists who can explain to the victim the value of this evidence. If handled with compassion and concern, this method may provide favorable results.

While there may be some legal method of obtaining evidence from a reluctant victim, this is probably an insensitive and unwise course of action. Re-victimizing a victim will seriously harm the integrity of the investigative process and create hostility and mistrust within the entire agency.



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## 7. Investigating Sexual Assaults

### a. Unique considerations

Although forced sexual assaults comprise relatively few cases of staff sexual misconduct, the investigator needs to be prepared to handle these investigations. *[for one example of policy on sexual assault investigations, contact the State of California, Office of Internal Affairs, Sacramento, (916) 323-5769]*

There are some unique considerations when responding to immediate complaints of sexual assaults. Some of these considerations are:

- Note the victim's mental and physical state.
- If medical attention or assistance is required, get it.

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- Advise the victim not to wash or bathe so that any physical evidence can be collected by the doctor, and preserved for the investigation.
- Do what it takes to make the victim less anxious – move them to another area, if necessary, without destroying or compromising physical evidence.
- If the attack was within 72 hours, arrange for the victim to be transported to the hospital or clinic for examination and collection of evidence.
- Call in a mental health professional for support, if needed and agreed to by the victim.
- Eliminate the confused atmosphere – take charge and get organized, and remove those persons who are not necessary to this part of the investigative process.
- Take photos of any visible injuries to the victim.

### b. Rape trauma syndrome <sup>3</sup>

After a rape or attempted rape, a victim will almost always experience a number of emotional, physical and psychological reactions.

This rape trauma syndrome is generally in two phases; the acute phase and the long-term reorganization stage.

*[See appendix for more details of the characteristics of these phases]*

## 8. Close the investigation

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### a. Definitions.

Each state and agency will have its own terms and definitions for the closing of internal and criminal investigations. In many states, this is established by a state law enforcement agency, or in conjunction with a criminal justice standards and training commission.

The key is to establish specific protocols and definitions to follow consistently with all investigations.

The following definitions are examples from other agencies.

### **Criminal Cases**

*Closed by arrest* – the perpetrator is either arrested, prosecuted or indicted for the violation.

*Exceptionally closed* – the perpetrator is known, but for various reasons, there is no prosecution or indictment (e.g., death of respondent, prosecutor declines prosecution for various reasons although evidence sufficient, etc.)

### **Administrative Cases**

*Sustained/Probable Cause/Adverse Action* – the investigation determines the allegations to be true, either by evidence or admission of guilt.

*Not Sustained/Inconclusive/Insufficient evidence* – allegations cannot be either proven or refuted.

*Unfounded/No Probable Cause* – the investigation determines that the allegations

are false.

b. Time-frames for closing the investigation

The agency should establish a written protocol for when an investigation is considered closed, based on the evidence available and the possibility of obtaining additional evidence or information. Scheduled progress reports for each investigation are an important method to assure that the investigation is proceeding in an appropriate direction, that information is gathered in a timely manner, and that all avenues available to the investigator are followed.

There is no standard recommended time-frame for completing an investigation into allegations of staff sexual misconduct. The investigative team should make a joint determination when all sources and investigative actions have been exhausted. Most investigations will have reached a significant milestone within 30 to 60 days. But some types of allegations may take longer to investigate, depending on the complexity of the situation. For example, if a staff member is accused of being the father of an inmate's child and DNA testing is done, this can take weeks, even months. Unless there is an admission of guilt, the case could probably not be closed in 30 days.

With other types of investigations that may require surveillance and subpoenas for records, 30 days may also be too restrictive. In every case, it is recommended that a progress report be submitted at least every 30 days to the

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investigative supervisor or whoever monitors the progress of investigations.

The final decision to close an investigation is best determined by a joint decision with the investigative team and the investigative unit supervisor or other administrative supervisor.

c. Resignation of the respondent

The resignation of the accused staff member during an investigation should not be the sole determining factor for when to close the investigation. Most states now have procedures established by state standards that require the completion of the investigation. If the investigation establishes the guilt of the accused staff, criminal prosecution can still take place, and certain disciplinary measures are still possible, such as unpaid suspensions imposed by reducing a final paycheck. In many states, de-certification will still take place, even if the respondent is no longer employed by the agency. This can prevent the staff member from being rehired by another corrections agency.

Agency policy or state standards will dictate what is to remain in a guilty staff member's personnel file, but it should reflect the findings and disposition, regardless of their employment status.



**Activity**

**Activity # 1 - Go to Activity Booklet  
Practical Problem - Solving**

**Section V Summary:**

***Section V detailed procedures for conducting investigation and responding to allegations of staff sexual misconduct, including flow charts of the process for quick reference. Also discussed were differences between proceeding with criminal charges and administrative violations, and how these distinctions affect the investigative process. A brief overview of the unique nature of investigating sexual assaults was included, with greater details given in a subsequent appendix.***

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**Endnotes:**

1. Southern Police Institute School of Justice Administration, College of Urban Affairs, University of Louisville; *Investigation of Sex Crimes: Curriculum*
2. Ibid.
3. Ibid.

# **Training Curriculum for Investigating Allegations of Staff Sexual Misconduct with Inmates**

**Activities Booklet**

**Action Planning**

**October 2000**

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## Section I - Activity #1

### **Critical Issues in Investigation of Allegations of Staff Sexual Misconduct**

Activity Description: Open discussion.

Time: 10 minutes

Question/Topic: Identify the critical issues surrounding the issue of investigating allegations of staff sexual misconduct.

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**[Note to facilitators:** Following the introduction of the national scope and impact of staff sexual misconduct, allow time for participants to identify their personal, and/or their agency's critical issues. Record all concerns on flip charts. Check back with participants at the end of lunch the first day, or break the first day to see if any participants wish to identify and include other critical issues. Post the charts throughout the week; refer back often to the lists to assure that the training is addressing critical issues. Prior to the close of the week's training, review the list and seek concurrence of participants that issues have been addressed to their satisfaction.]

## **Section I - Activity # 2**

### **Personal and Professional Risks**

Activity Description: Open discussion.

Time: 10 minutes

Question: Based on the information about staff sexual misconduct, what do you think are the personal and professional risks to both administrators and investigators for not properly addressing staff sexual misconduct with inmates?

---

**[Note to Facilitators:** This group exercise is designed to give participants a more in-depth understanding of the risks for ignoring allegations of staff sexual misconduct, ignoring the facility's culture, or ignoring the facility's sexualized work environment. Record responses from the total group on a flip chart; debrief at the end.]

Administrators:

Investigators:

## Section II - Activity # 1

### **Fact Pattern - Review of A Case History**

Activity Description: Class reading of facts of a case; identifying what things should be the triggers for administrators and investigators. Using the chart page following the case summary, note potential remedies. For administrators, note those possible remedies that would be the responsibility of the administrator. For investigators, note those possible remedies that would be the responsibility of the investigator.

Time: 20 minutes.

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**[Note to Facilitators:** Allow the class to read the case; lead the discussion of relevant facts uncovered; lead discussion of remedies and related issues. The expected outcome is a greater awareness of the nuances of cases and the duty of an administrator and an investigator to take decisive action. Use the accompanying chart to further discussion.]

## **FACT PATTERN - SEXUAL MISCONDUCT**

Inmate Jane, 24 years old, is serving a 6 year prison sentence at a medium security facility for women. Inmate Jane met Sgt. Thomas when he and another corrections officer escorted her to a medical appointment outside of the institution. Inmate Jane commented on Sgt. Thomas' high school ring, and they realized they had both attended the same high school.

Sgt. Thomas has worked for the Department of Corrections for 15 years. He has been married and divorced twice, and has two children who live with their mother. Sgt. Thomas is the FOP (Fraternal Order of Police) representative at the institution, and frequently acts as mediator between staff and management (ranks of Lt. and higher) when a union issue arises. Hence, Sgt. Thomas cannot be moved from the institution without the approval of the board members of the FOP. Any such reassignment must include at least a 30-day notice of reassignment.

Inmate Jane is housed in a dorm containing 60 female inmates, with two-person cells which are left unlocked at night to comply with fire safety regulations.

Sgt. Thomas works the day shift, with Sundays and Mondays off. He is responsible for the supervision of dormitory staff and transportation staff, which numbered approximately 25 - 30 on any given day.

After their initial meeting, Sgt. Thomas began to talk with Inmate Jane every time he saw her on the compound or in the dormitory. They would mention teachers each knew in high school, even though they were 10 years apart in age, laughing about some of the funny memories they had about things that happened in high school.

Eventually, Jane began to discuss how she managed to get involved in using drugs and eventually dealing drugs. Jane told Thomas that self-help books had been a great source of information and assistance to her in her personal life, since she couldn't afford to get counseling. She often said that she wished she had some of those books in prison. Jane also talked about her dislike of the food in prison, and how she was losing weight because the food was so starchy and tasteless that she could not eat it. Jane told Thomas one day that she wanted to be left alone by the other inmates because all they did was 'talk trash' and complain about different officers and vocational instructors. There was a long waiting list to get into some of the vocational programs, and Jane was afraid that she would never get into any of them, leaving prison with no training whatsoever.

Sgt. Thomas began bringing Jane some of the self-help books she had mentioned. He brought her food, tennis shoes, and small inexpensive pieces of jewelry. All inmates were permitted to have portable radio/cassette players with headphones, but Jane's family had long ago cut off contact with her due to her involvement with drugs. So Sgt. Thomas gave her his Walkman.

Sgt. Thomas called in some favors to get Jane's name moved to the top of the list for the horticulture vocational program. This enabled Sgt. Thomas to meet and talk with Jane away from the dorm and cafeteria setting, or on chance encounters on the prison compound. He could walk to the back of the compound and enter the large outdoor

garden area, where Jane often worked alone tending to the vegetables. On days that Jane was working in the greenhouse, Sgt. Thomas met her. Sgt. Thomas could enter the outdoor garden from another locked gate leading from the medical area, and not been seen by the horticulture instructor as he entered the area. Eventually, when Jane was alone in the greenhouse, they would find a spot behind some large plants, and kiss and touch each other. They were seen kissing and laughing in the outdoor garden by the horticulture instructor, John (who was a contract employee from the local community college). Thomas and Jane agreed that they should avoid seeing each other in the area for a while, in case they were reported. But when Sgt. Thomas checked the reports which were logged into a book in the Major's office, he realized that there had been no report, so he resumed his visits.

Among the dormitory and transportation staff supervised by Sgt. Thomas, there was a general consensus that he was the "phantom". Sgt. Thomas made it clear to his staff that as long as they did their jobs and showed up on time, he would not bother them. He became less and less visible to the staff. Sgt. Thomas shared a small office with the other Sergeants. and they noticed that over a period of about two months, he had been collecting little plants and putting them on the windowsill in the office. The other Sergeants. were sure that these had come from horticulture, but they did not say anything about it, since the horticulture department supplied the institution's visitors lobby and the visiting park with their home-raised decorative plants.

The relationship between Jane and Thomas become more intense. Sgt. Thomas began regularly volunteering for overtime, arriving for work at 3 a.m., instead of 7:00 a.m., working a 12 hour-day, filling in for a vacant sergeant slot. Jane became a very good student in her classes, and the horticulture instructor gave Jane added responsibilities of taking care of the plants and garden on weekends when he was not there. Jane was released from the dorm on weekends to give the plants their early morning watering so she could return in time for breakfast and count. Jane and Thomas began having sexual relations in the instructor's office on Sunday mornings around 5 a.m.

Eventually, the sexual relationship between Jane and Thomas came to the attention of the Warden when an officer filed a complaint against Sgt. Thomas, alleging a sexual relationship with Inmate Jane. An inmate, Cindy, also had reported to the Warden a day earlier that she had seen Sgt. Thomas coming out of the greenhouse at about 6 a.m., with his equipment belt tossed over his shoulder. Jane came out of the same door about 10 minutes later, heading to her dorm for count.

Because of the union issue and the problem of staff shortages, Sgt. Thomas could not be moved immediately, so the Warden chose to move Inmate Jane to another women's facility approximately 75 miles away. Jane continued to communicate with Sgt. Thomas by telephone. Sgt. Thomas had a friend place money into Jane's inmate account at the new facility, since he was unable to bring her food.

The Warden initiated an investigation by filing a formal report with the Internal Investigation Unit at the Regional Office. Four days after the Warden faxed the report to the Regional Office, the investigators arrived at Jane's new facility- a team of two males. They interviewed Jane in the hallway of the of the visiting area; nearby an attorney was interviewing his client. The investigators were not able to make eye contact

with Jane when they asked questions about her having sex. Jane denied having sex with Sgt. Thomas. Within five minutes, the interview was over.

The investigators attempted to interview the horticulture instructor, but were told that the instructor working now was new and had just started working that Monday. The investigators interviewed the officer who had filed the complaint with the Warden. The officer stated that he had not seen Jane and Thomas having sex, but he had observed them talking frequently on the prison compound. He added that Sgt. Thomas was not his supervisor, but he had heard a number of rumors that Jane and Thomas were having sex, and he felt it his duty to report this to the warden. Another officer, whose name was provided by the complaining officer, stated that he saw Sgt. Thomas holding Jane's hand one day, as they sat on a bench on the prison compound. Jane was crying, and Sgt. Thomas appeared at first to be comforting her. Because Jane denied having sex with Sgt. Thomas, the investigators closed their case as unsubstantiated.

Sgt. Thomas was notified that an investigation was underway concerning allegations of an improper relationship with Inmate Jane. Sgt. Thomas was told that an inmate had reported the allegations. Based on that information Sgt. Thomas determined that the only inmate who could have reported seeing him at the greenhouse was Inmate Cindy, as she had the task of retrieving cleaning supplies from the storage area directly across from the greenhouse. The following day, Sgt. Thomas filed a disciplinary action against Inmate Cindy for using disrespectful language to an officer. Two days later, Sgt. Thomas met Inmate Cindy at the storage area, took her inside the office, and told her that he knew she didn't want any trouble, so she'd better change her story.

Inmate Cindy was terrified, and was too afraid to say anything to anyone, so she contacted a representative of the Human Rights Watch at a local telephone number. She had received a pamphlet from another inmate. Human Rights Watch immediately went to the Warden's office and demanded an investigation be opened against Sgt. Thomas for retaliation against an inmate.

The Department opened an investigation, and sent the same investigators to talk to Inmate Cindy. Inmate Cindy refuses to sign any statement against Sgt. Thomas.

<p><b>RESPONDING TO ALLEGATIONS - what methods used work well; what would you do differently?</b></p>	<p><b>EFFECTIVENESS OF INVESTIGATION - what methods used work well; what would you do differently?</b></p>	<p><b>PREVENTION METHODS- what types of actions would prevent these types of events in the future?</b></p>	<p><b>ADDED VALUE TO AGENCY - what can the agency learn from this investigation?</b></p>



## **Section II - Activity #2**

### **Compare, Contrast, and Review the Participant's State Law(s)**

Activity Description: Group exercise by state teams. Each team reports out using flip chart.

Time: 30 minutes group work; 45 minutes for reporting

Question/Topic: How does the state law address the critical issues identified in the training; how does the state law(s) compare to other state laws? What action does this suggest for the team/agency? What is included in the law, what is not included?

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**[Note to Facilitators:** Using the survey of 50 state laws, ask participant(s) from each state to identify areas not addressed by their law (i.e., volunteers, offenses outside the facility walls, etc.). Ask each state team to compare their state law with three laws selected by the facilitator. Ask each team spokesperson to identify the issues and gaps in their state law. Ask participants to provide any updated statutes since the publication of the survey.]

### Section III - Activity # 1

#### **Agency Culture: What are the strengths and weakness of an agency's culture that enhance or impede an investigation?**

Activity Description: Divide participants into four groups, mixing state teams

Time: 10 minutes deliberation; 10 minutes reporting.

Question: Based on what you have heard about an agency's culture, how does an agency's culture enhance or impede an investigator, or an investigation? Make a list of how it helps, and a list of how it hinders.

---

**[Note to facilitators:** Ask each group to consider the agency cultural issues that have been discussed in Section III - including the sexualized work environment, the demographics of inmates, and the demographics of staff. How do these factors help or hinder the investigation and the investigator? Track the comments and help the participants draw conclusions about what the results mean to an investigator who must face the culture issue to do their job.]

## **Section III - Activity # 2**

### **Mapping the State's Investigative Process**

Activity Description: Working as a state team, participants are asked to “map” their state investigative process, from the time a complaint is received, the conclusion of the investigation. The state teams are asked to identify issues or “gaps” in the process. Each team will report on their process and the gaps or issues they have identified.

A roll of brown paper and markers are available for each team to use in detailing their process

Time: 30 minutes deliberation; 90 + minutes reporting.

Question: Based on the training and discussions, how can your state's investigative process be improved? Are there gaps that allow incidents to go unreported to, or unidentified by a central or regional office? Are there places where the process can be sabotaged?

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**[Note to facilitators:** Manage the reporting out time to insure that each state has a chance to speak, but that the session keeps flowing. Help track the gaps and issues by state. Refer participants to the Action Planning Process to address any issues revealed in the exercise. Encourage all participants to ask questions about the process as it is being described.]

## **Section IV - Activity # 1**

### **Who are Your Investigators?**

Activity Description: Participants list and discuss the most desirable qualities, behaviors, habits, etc. of an internal affairs investigator.

Time: 15 minutes

Topic: Think of an internal affairs investigator whom you consider to be the best you know. What qualities, habits, methods and behaviors does this person demonstrate?

Use the space below to make notes. Instructor will create a general list on a flip chart.

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Notes:

## **Section IV - Activity # 2**

### **Inmate Grievance Forms - From where to where?**

Activity Description: Participants identify the path of inmate grievances in their agency.

Time: 15 minutes

Questions: The important of how inmate grievances are handled, and by whom, has been identified in Sections III and IV.

- (1) How do inmates get grievance forms in your agency?
  - (2) To whom do they submit them?
  - (3) What conflicts or problems do you see arising from this process?
- 

Notes:

## **Section IV - Activity # 3**

### **Inmate Orientation**

Activity Description: Participants note their responses to the questions.  
Open discussion follows.

Time: 20 minutes

- Questions:
- (1) How do inmates in your facility really learn the facility rules?
  - (2) What are the consequences for the investigator when written rules do not match actual practice?
  - (3) What is appropriate for inmates to know about the definitions of staff sexual misconduct and the investigative process?
  - (4) How can you overcome staffs' potential fear and hostility to inmate orientation regarding sexual misconduct?
- 

Notes:

## **Section IV - Activity # 4**

### **Staff Assignments - Evaluation of High Risk Assignments**

Activity Description: Participants note their responses to the questions.  
Open discussion follows.

Time: 20 minutes

- Questions:
- (1) Are staff assignments made with recognition of the risks for that post/position?
  - (2) Are there some staff assignments where little or no supervision takes place – inside the facility or in the community – where cross gender supervision takes place?
  - (3) Who makes staff assignment decisions? Does staff have recourse?
  - (4) What are the specific cross-gender issues your agency faces in light of what you have learned in this training?
- 

Notes:

## Section IV - Activity # 5

### **Media - Impact on the Agency Before, During and After Crisis**

Activity Description: Divide participants into 4-6 groups, mixed by states. Provide flip chart paper; asking the group to respond to the following chart.

Time: 15 minutes for group work; 20 minutes for reporting.

Questions: Think about the TV and newspaper coverage your agency received in response to a crisis. How about coverage when there is not an “event”? What can be gained, and what can be lost by communicating with the media before a major event – such as allegations of staff sexual misconduct occurs?

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<b>What can be gained?</b>	<b>What can be lost?</b>

Net effect or impact? What are the implications for your agency?

## **Section IV - Activity # 6**

### **Triage Your Agency's Policies, Procedures and Operations**

Activity Description: As a homework assignment, ask participants to complete the attached matrix. The triage process may help identify areas for Action Planning. Ask the participants to identify the value of having others in their agency perform this triage, keeping as a focus prevention of staff sexual misconduct.

Time: Evening Homework

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**Prevention and Investigation of Staff Sexual Misconduct with Inmates:  
Triage Your Agency's Policies, Procedures and Practices**

	Your agency's policies, procedures, and practices are:			
	Adequate	Needs Revision	Missing or Need to Check	Notes
Added Value: a process for using investigative findings to improve agency operations				
Auditing: agency audit reports and procedures insure compliance with zero tolerance (inmate discipline, inmate grievances, etc.)				
Classification: an inmate classification system that includes processes for identifying inmates with special needs or circumstances				
Crisis Debriefing: crisis debriefing is available to staff who are victims, witnesses, etc. on issues of staff sexual misconduct				
Cross Gender Supervision: written policies and procedures for staff assignment and inmate supervision				
Culture: a process for identifying the culture and the impact of agency culture on the agency's zero tolerance for staff sexual misconduct				
Employee Assistance: an employee assistance program is available to all staff for self-referral, and for supervisors to seek advice or to refer staff				
Employee Awards: a system to formally acknowledge and reward staff excellence				
Employees: identification of effective means to appropriately involve collective bargaining units in addressing staff sexual misconduct, staff training, inmate orientation and internal investigations.				
Employees: procedures for moving or removing staff during an investigation.				

	Your agency's policies, procedures, and practices are:			
	Adequate	Needs Revision	Missing or Need to Check	Notes
Employees: applicants are screened for prior histories of committing abuse, sex crimes, domestic violence, etc.				
False Allegations: an agency philosophy for how to handle false allegations arising from either staff or inmates.				
Inmates: medical and mental health services designed to handle inmate victims of sexual misconduct.				
Inmates: orientation and education that informs inmates of the agency's policies, reporting requirements and procedures, as well as services available to assist inmate victims.				
Investigations: written protocols governing: <ul style="list-style-type: none"> <li>• when investigations are initiated;</li> <li>• who investigates;</li> <li>• criminal (Miranda) vs. administrative (Garrity) investigation management of investigators and investigations;</li> <li>• interviewing victims and witnesses;</li> <li>• collecting and preserving evidence;</li> <li>• closing the investigation.</li> </ul>				
Investigations: role of the agency defined by statute or state administrative regulation				
Investigations: written procedures for selecting investigators				
Investigations: written job description for investigators				
Investigations: mandated training for investigators				
Maintenance: preventative maintenance program to insure prompt repairs				
Media/Public Information: written procedures for responding to the media during investigations; procedures for the media to gain knowledge of the agency prior to an "event" or emergency.				

	Your agency's policies, procedures, and practices are:			
	Adequate	Needs Revision	Missing or Need to Check	Notes
Rape Crisis Center: written agreement, procedures and cross training prior to the need to use the local rape crisis center.				
Reporting allegations: mandatory reporting for inmates and staff				
Reporting allegations: procedures for processing allegations and assigning investigators; procedures for notification of centra office				
Searches: guidelines for pat down and strip searches referencing the gender of inmates and staff				
Security procedures: management and supervision supporting compliance with facility procedures				
State Statute: process to incorporate law changes into procedures				
Training: in-service training for all employees, volunteers, contractors, interns, etc. regarding agency's policies on zero tolerance of staff sexual misconduct.				
Training: new employees, volunteers, contractors, etc. are informed about zero tolerance and all related procedures				
Visual surveillance: policies and procedures for surveillance by staff of inmates of the opposite sex.				
Women inmates: specific programming designed to meet specific needs				
Zero tolerance: policy in writing with definitions clearly understandable by all staff, volunteers, contractors, etc.				

## **Section IV - Activity #7**

### **False Allegations**

Activity Description: Open discussion.

Time: 10 minutes

Question/Topic:

- (1) How does your agency respond to false allegations?
- (2) How should an agency respond to false allegations - from either staff or inmates?
- (3) What are the implications for the agency depending upon the approach the agency takes to responding to false allegations?

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Notes:

## **Section IV - Activity #8**

### **Value Added to Agency from Investigations**

Activity Description: Participants divide into four groups, mixed.

Time: 10 minutes in groups, 10 minutes open discussion.

- Question/Topic:
- (1) What can be learned about your agency operations from the findings of staff sexual misconduct investigations?
  - (2) How could operations be modified based on the results?
  - (3) What administrative changes might come from investigative findings?
  - (4) What leadership issues may be uncovered?
  - (5) What could investigative findings reveal about supervisory roles?
  - (6) Does your agency' administration use investigative results to improve policies, procedures, operations?
- 

Notes:

## **Section IV - Activity #9**

### **Demystify the Investigative Process - What are the benefits to the agency in demystifying the investigative process?**

Activity Description: Open discussion.

Time: 10 minutes for discussion

- Question/Topic:
- (1) What benefits can be gained from demystifying the investigative process?
  - (2) What is the “reputation” of the agency's internal investigation unit and/or investigators?
  - (3) What types of activities have been undertaken by the agency to demystify the investigative process in an attempt to break the “code of silence”?
  - (4) How can the union or bargaining unit be involved?
- 

Notes:

## **Section IV - Activity #10**

### **The Investigator: Job description, screening, training and optimal reporting structure**

Activity Description: Group exercise, mixed groups; followed by reporting out. Divide into four groups. Ask each group to report out using a flip charts to bullet their important findings/recommendations.

Time: 15 minutes for group work; 30 minutes for reporting

Question/Topic: The following assignments are given:

Group 1 - Outline the job description for an investigator. What are the minimum qualifications - experience, formal education, investigative experience? What are essential skills, knowledge and abilities?

Group 2 - Identify and outline a selection process for the investigator. Written tests? Oral interview? Background check? How can the agency assess integrity, honesty, etc? Should there be job rotation? How many years should an investigator be assigned to internal investigations?

Group 3 - What specific training should an investigator have before, during and after their assignment?

Group 4 - Having heard how each state's investigative process is structured, what is the optimal reporting structure and chain-of-command for an investigator?

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**[Note to Facilitators:** Ask participants to join the reporting from other groups. Track the recommendations; reproduce responses for participants before the end of training, if possible.]

Notes:

## Section V - Activity # 1

### Practical Problem Solving

Activity Description: Using only volunteers, allow states to describe a current investigation for which they would like input from the participants. Ask for volunteers the day before this is to occur. Limit to three cases.

Time: 15 minutes per case presentation; 10 minutes for responses

Questions: In describing this case, how can my fellow participants help me see what I might have missed?

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**[Note to Facilitators:** By the end of the first day, some participants may wish to share a current case, or a recently closed case, which punctuates the lessons learned in this training. Seek volunteers on the second day, allowing them one day to prepare. Restrict time to 15 minutes for a presentation; and no more than 10 minutes for responses. Help participants draw conclusions from the information and examples presented.]

Notes:

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## **Action Planning**

An action plan will be developed during this training to provide participants with organized blueprints for activities when they return to their agency. The plan will be designed as ready references for priority activities.

The plan should focus on what the participants see as priorities in the areas of:

### **The Investigator The Investigative Process Agency Administrative Practices**

#### **The Investigator**

Such activities include an assessment of the investigator's training needs, developing or updating investigative protocols, acquiring technology, and other actions that ultimately enhance the individual investigator's ability to perform required functions in an efficient, effective and professional manner.

#### **The Investigative Process**

This plan may address, for example, how reporting is handled, the process of initiating investigations, management of suspects, witnesses, and victims, evidence collection and preservation, crime scene preservation, taking of statements, protection of rights, and management of investigations.

#### **Agency Administrative Practices**

Among the issues to be addressed here include the agency's policies and procedures for both prevention (pro-active) and responding to allegations. The plan can also address policies and procedures regarding required behavior, hiring standards, staff disciplinary procedures, performance appraisals, contract management, inmate grievance and disciplinary systems, internal agency culture, inmate orientation, staff basic and in-service training programs, the agency's media plan, and audit functions.

## **Format**

As the training moves forward, issues will be identified each day. The action plans are dynamic documents that will evolve during the course of the training.

To be useful, each item included in the plans of action must:

- Be specific and measurable;
- Have deadlines;
- Identify the position or person who will be responsible for the activity;
- Note the stake-holders who can make the action happen, or who can defeat or delay the action if not properly involved in the change;
- Identify the stake-holders who can help, or hinder, achievement of the objective;
- Prioritize each of the activities included; and
- Identify any fiscal needs for implementation and options.

Through out this training program, you will be asked to take time to add notes to your plans of action.



## Action Plan

<b>Priority</b>	<b>Measurable Objective</b>	<b>Completion Date</b>	<b>Person Responsible</b>	<b>Stake Holders</b>	<b>Fiscal Impact/Options</b>

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Notes:

## **Training for Investigating Allegations of Staff Sexual Misconduct**

### **APPENDICES**

1. Headlines from media sources
2. Additional Definitions
3. Elements of a Good Law
4. Rape Trauma Syndrome
5. Red Flags (some examples)
6. Sample Evidence Log
7. Sample Evidence Receipt
8. Sample Case Studies (2)
9. Sample Policy and Procedures -  
Georgia Department of Corrections - Policy and Procedures for  
Internal Investigations; and, Mental Health Services (relating to  
Staff Sexual Misconduct with Inmates).

## Appendix 1 - Headlines from Media Sources

*In just the past five years, newspapers are full of reports of allegations within correctional institutions and jails. The following handout gives just a brief list of some of the incidents throughout the country that have appeared in newspapers and articles.*

- "In prison, sex abuse is prevalent" - Journal-Bulletin 4/13/95
- "The 'Dirty Little Secret'" - William and Mary Law Review Oct. 1988
- "Abuse of Female Prisoners in U.S. is Routine" - Washington Post 3/4/99
- "Officers Having Sex with Inmates" - Corrections Technology & Management Jan/Feb 1999
- "Sex Abuse of Women Found in Prison" - Washington Post 7/22/99
- "Inmate Forced to Striptease Wins Suit" - Washington Post 7/2/99
- "Grant Officials to do Time for Jail Sex Acts" - Charleston Gazette 10/16/97
- "Jailhouse Blues: State Prison Guard Investigated for Sexual Misconduct" - newtimes.com 1998
- "Guard is Dismissed After Sex Complaint" - St. Petersburg Times 11/19/98
- "Arlington to Pay Inmates Who Alleged Sex Abuse" - Washington Post 3/19/99
- "Maryland Juvenile Center's Superintendent Demoted" - Washington Post 7/18/99
- "Psychiatrist Investigate in Prison Break" - Washington Post 5/22/99
- "Guard Pleads Guilty: Prison Sgt. Admits to Sex w/ Inmates" - N.C. 1991
- "Sexual Abuse Rises as More Women Do Time" - Christian Science Monitor
- "More Cases Arise Alleging that Officers Sexually Abuse Inmates" - Corrections Law Reporter - Jun/Jul 1997
- "Sex Abuse in Prison Case Settled" - Contra Costa Times 3/4/98
- "Feds Will Probe Prisoners' Claim of Sexual Slavery" - Valley Times 10/2/96
- "Sex Slave Victims' Case Forces U.S. Prison Reform" - Reuters News 3/4/98
- "Corrections Officer Charged with Sexually Assaulting Inmate" - Assoc. Press, Mass. 3/25/98
- "Dade Prison Guard Admits to Having Sex with Four Inmates" - Miami Herald
- "Jail Guards Accused of Sex Plot" - Assoc. Press 4/28/98
- "Jailer Pleads Guilty to Sex with Inmate" - UPI, San Diego 4/14/98
- "Hardwick Sex Scandal Changed System" - Macon Telegraph 8/12/97
- "Ex-prison Chaplain Charged with Sexually Abusing Inmate" - Star-Telegram 4/27/97
- "Calif. Youth Authority Staff Accused of Cover-up: State Senators Question Officials' Investigation and Documentation of Alleged Rape of Ward at Camarillo Facility" - L.A. Times 11/25/97
- "Judge Sentences Deputy Warden, Guard to Jail for Inmate Sex" - Assoc. Press, Conn. 4/1/98
- "Guard Charged, Big Spring Prison, gets 1.5 years For Abusive Sexual Conduct" - Assoc. Press 1/9/98
- "INS Worker Charged in Sex Attack" - UPI 11/1/0/97
- "Two Guards Accuse Prison of Allowing Harassment" - Assoc. Press, Fl.
- "Woman Awarded \$5.3 Million for Forced D.C. Jail Striptease" - Washington Post
- "3 Guards Fired on Charges of Having Sex with Inmate" - Boston Globe 8/28/99
- "Inmates say they had sex with guards: Work Release Center plagued with problems" - Miami Herald 8/10/99
- "Guard is Dismissed after sex complaint" - St. Petersburg Times 11/19/98
- "Susan Smith alleged to have had sex in prison, guard suspended" - The State (S.C.) 8/30/00
- "INS Frees women amid allegations of rapes at Krome" - Miami Herald 8/26/00
- "Love Behind Bars" - New Times, Broward County Florida 6/8/00

## **Appendix 2 - Additional Definitions - examples**

*Parties within the institution* – These definitions should include all persons having access to an institution, its grounds, the persons within the institution, and its property. They should at least include:

**Employee** – any person compensated by the agency for working full-time, part-time, or by paid internship.

**Contractors** – any person, other than an employee, providing any service to the agency for an agreed upon form of compensation from the agency.

**Professional Visitors** – any person having access to the any of the agency's facilities, who provides a professional service to inmates or staff, including but not limited to, attorneys, para-legals, para-professionals, bail bondsmen, private medical professionals, investigators, polygraph examiners, clergy, unpaid interns, researchers, etc.

**Visitors** – any person having access to any of the agency's facilities for personal and/or official reasons.

**Volunteer** – any person who, by mutual agreement with the agency, provides the agency with any service without compensation, or who voluntarily assists inmates or the agency in the course of their official duties.

**Inmate** – any person committed to the care and custody of the ...[state]...Department of Corrections by any court or judicial sanction.

**Inmate's family** – a legal spouse, parent, step-parent, child, step-child, legally adopted child, siblings, grandparents, aunts, uncles or in-laws.

*Parties within a grievance, complaint or report* – These include staff and inmates who are part of the process that occurs when allegations of staff sexual misconduct are made. They should at least include the following:

**Respondent or Subject** – the person accused of a violation.

**Complainant** – the person alleged to be the victim of the violation.

### **APPENDIX 3 – Elements of a Good Law**

*What makes a good law concerning this issue?*

- First, there has to BE a law. There are still some jurisdictions that do not have laws against staff sexual misconduct.
- The law should address both the more serious offenses, such as sexual assault, and also the less serious but just as dangerous offenses of sexual contact and inappropriate violation of privacy and harassment issues.
- The law should cover not only the prison or jail setting, but also other related treatment settings, and limited incarceration or sanction settings, such as mental health facilities, halfway houses, probation and parole, etc.
- The law should specifically define who is covered, such as “entrusted to the defendant by authority of law” (AL), “under the care and supervision of the Department of Corrections” (AZ), etc.
- The law should set appropriate penalties and denote the classification of certain acts (misdemeanor, felony).



## **Appendix 4 - Rape Trauma Syndrome**

**The acute phase:** the period when the victim may experience a major change and sense of disorganization to their normal lifestyle. During this phase, the victim may display noticeable physical symptoms, and some prominent emotional symptoms such as fear and anxiety.

The physical symptoms may include the following:

- Muscle tension, headaches, fatigue, sleep disturbance, weeping, edginess and jumpiness over minor incidents;
- Gastrointestinal problems, including stomach aches and pains, excessive nausea, appetite changes, a distaste for certain foods not experienced before, changes in bowel habits;
- Gynecological problems – bleeding, infections, pain and discomfort.

Emotional symptoms may include the following:

- Fear, humiliation and embarrassment;
- Anger;
- Revenge;
- Self-blame, self-hatred, self-doubt, and in some extreme cases, self-mutilation and self-injury.

**The long-term reorganization phase:** this period is characterized by the victim's attempt to reorganize and alter their lifestyle. This will generally occur 2 to 3 weeks after the event, but will vary.

During this phase, some of the symptoms that may occur include, but are not limited to:

- Sudden change in friends
- Sudden change in family contacts
- Increased or decreased need to communicate with family
- A strong desire to be moved from one dormitory or housing unit to another
- Frequent nightmares
- Prolonged sleep problems
- Development of new phobias and neuroses, such as a fear of being alone, of being outdoors or indoors, fear of groups, fear of someone sneaking up behind

For victims who have previously experienced physical or sexual abuse, and statistics indicate that more than half of all female inmates have, symptoms in reaction to sexual assault can be extreme. They may include:

- Severe depression
- Suicide attempts
- Psychosomatic illnesses and complaints
- Increased sexual activity
- Increased drug, alcohol or other substance abuse, even in the form of overeating
- Psychotic behavior

## Appendix 5 - Red Flags – Are We Paying Attention to Staff?

The National Institute of Corrections has conducted training for several years entitled “Staff Sexual Misconduct with Inmates.” At the conclusion of that training, participants are asked to list those behaviors that they now see as **RED FLAGS** -- events, actions or activities that should have tipped them off sooner to the possibility of staff sexual misconduct. Here are a sample of participants’ comments.

- Over-identifying with the inmate (“my inmate”) or their issues (i.e. blind to inmate’s actions)
- Horse-play, sexual interaction between staff and inmates
- Inmates knowing personal information about staff
- Isolation from other staff
- Inmates has letters or photos of staff
- Staff granting special requests or showing favoritism
- Inmates in an unauthorized area, or repeatedly out of their assigned place
- Staff spending an unexplainable amount of time with an inmate
- Telephone calls to and from staff/inmates
- Inmate grape-vine, inmate snitches, inmate/staff rumors
- Staff in the facility during “off hours”
- Pregnancy or a diagnosis of STD
- Staff overly concerned about an inmate
- Drastic behavior change on the part of an inmate or staff
- Staff having sole involvement with a particular inmate
- Indispensable inmate: “Only one who can do this job.”
- High/low number of inmate grievances
- Inmate wanting to go to work early or volunteering to stay late
- Staff confronting staff over an inmate
- Staff intercepting inmate disciplinary infractions or editing infractions
- Staff tracking outside inmate calls (number and content of call)
- Inmate improving his/her appearance, dress, make-up, hair
- Isolated posts/positions/work assignments
- Staff can’t account for time
- Staff’s family being involved with inmate’s family
- Increase in contraband in an area
- Staff working in a secluded area with inmate(s)
- Staff taking inmates out of cell at unusual times
- Staff in personal crisis (divorce, ill health, bankruptcy, death in family)

- Staff who consistently work more overtime than peers and who volunteers to work overtime
- Unusual balance, or activity, in an inmate's commissary account
- Staff having excessive knowledge about an inmate and his/her family
- Staff intervening, or helping with the inmate's personal life, legal affairs
- Staff sharing food or snacks with inmates
- Staff testifying for an inmate, requesting special treatment for an inmate
- Staff delegating their duties to inmates (supervisor of cleaning, assignments)
- Staff bringing in large amounts of food, soda, snacks
- Overhead conversations between staff and inmates which is sexualized in nature, or refers to the physical attributes of staff or inmates
- Inmate sexual activity



**APPENDIX 7**

**Agency Name**

**Agency Address**

**Property/Evidence Receipt**

Investigating Unit/Agency:

Case #:	Date Received:	Time Received:
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Respondent Name: \_\_\_\_\_ Address or Assignment/Post: \_\_\_\_\_

Property/Evidence Found by: \_\_\_\_\_ Address or Assignment/Post: \_\_\_\_\_

Victim or Complainant Name: \_\_\_\_\_ Address or Assignment/Post/Location: \_\_\_\_\_

Item No.	No. of items	Description	Where found

I hereby acknowledge the above list to represent all of the evidence/property located and collected by me:

Signature: \_\_\_\_\_ Dept.: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_ Location items delivered to: \_\_\_\_\_

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**Association of State Correctional Administrators  
Resolution Adopted on January 17, 1999**

WHEREAS, correctional agencies have a responsibility to contribute to the public safety by exercising reasonable, safe, secure and humane control of offenders committed to their custody;

WHEREAS, the nature of custodial responsibility requires that correctional staff adhere to professional standards of conduct which clearly define the use and exercise of authority and which emphatically reject all behaviors exceeding those bounds;

WHEREAS, any sexual harassment, activity or abuse occurring between correctional staff and offenders is inappropriate and unacceptable conduct and a fundamental violation of security which should not be tolerated by correctional administrators or the public;

WHEREAS, correctional administrators should aggressively promote equal opportunity for all persons pursuing employment and advancement in the profession of corrections;

WHEREAS, on January 1, 1998, 35,793 female correctional officers were assigned to supervise male inmates and 4, 427 male correctional officers were assigned to supervise female inmates;

WHEREAS, correctional administrators have a responsibility to provide leadership, to pursue legislation, and to develop policies and procedures to ensure correctional staff perform their responsibilities within professionally accepted standards of behavior;

NOW, THEREFORE, BE IT RESOLVED, that the Association of State Correctional Administrators strongly encourages each of its member agencies to adopt and vigorously enforce explicit policies prohibiting all forms of sexual harassment, activity, or abuse between correctional employees and offenders. These policies should: be in writing; clearly define unacceptable behavior; provide for fair and timely investigative and grievance processes; provide for criminal prosecution; and be widely communicated and emphasized to all staff through training and other appropriate methods.

BE IT FURTHER RESOLVED, that the Association of Correctional Administrators supports enactment of state legislation establishing criminal penalties for sexual activity involving correctional staff and offenders and further, supports aggressive prosecution of correctional staff who violate these laws.

## **FACT PATTERN - SEXUAL MISCONDUCT**

Inmate Jane, 24 years old, is serving a 6 year prison sentence at a medium security facility for women. Inmate Jane met Sgt. Thomas when he and another corrections officer escorted her to a medical appointment outside of the institution. Inmate Jane commented on Sgt. Thomas' high school ring, and they realized they had both attended the same high school.

Sgt. Thomas has worked for the Department of Corrections for 15 years. He has been married and divorced twice, and has two children who live with their mother. Sgt. Thomas is the FOP (Fraternal Order of Police) representative at the institution, and frequently acts as mediator between staff and management (ranks of Lt. and higher) when a union issue arises. Hence, Sgt. Thomas cannot be removed from the institution without the approval of the board members of the FOP, which includes at least a 30-day notice of reassignment.

Inmate Jane is housed in a dorm containing 60 female inmates, with two-person cells which are left unlocked at night due to fire safety regulations.

Sgt. Thomas works the day shift, with Sunday and Mondays off. He is responsible for the supervision of dormitory staff and transportation staff, which number approximately 25 - 30 on any given day.

Sgt. Thomas began to talk with Inmate Jane every time he saw her on the compound or in the dormitory. They would mention teachers each knew in high school, even though they were 10 years apart in age, laughing about some of the funny memories they had about things that happened in high school.

Eventually, Jane began to discuss how she managed to get herself involved in using drugs and eventually dealing drugs. Jane told Thomas that self-help books had been a great source of information and assistance to her in her personal life, since she couldn't afford to get counseling. She often said that she wished she had some of those books in prison as they could continue to help her. Jane also talked about her dislike of the food in prison, and how she was losing weight because the food was so starchy and tasteless that she could not eat it. Jane told Thomas one day that she wanted to be left alone by the other inmates because all they would do was 'talk trash' and complain about different officers and vocational instructors. There was a long waiting list to get into some

of the vocational programs, and Jane was afraid that she would never get into any of them, leaving prison with no training whatsoever.

Sgt. Thomas started bringing Jane some of the self-help books she had mentioned. He brought her food, tennis shoes, and small inexpensive pieces of jewelry. All inmates were permitted to have portable radio/cassette players with headphones, but Jane's family had long ago cut off contact with her due to her involvement with drugs. So Sgt. Thomas gave her his walkman.

Sgt. Thomas managed to get Jane's name moved up to the top of the list for the horticulture vocational program. This enabled Sgt. Thomas to meet and talk with Jane away from the dorm and cafeteria setting, or on chance encounters on the prison compound. He could walk to the back of the compound and enter the large outdoor garden area, where Jane would often be working alone tending to the vegetables. On days that Jane was working in the greenhouse, Sgt. Thomas would join her. Eventually, when Jane was alone in the greenhouse, they would find a spot behind some large plants, and kiss and touch each other. Sgt. Thomas could enter the outdoor garden from another locked gate leading from the medical area, and not been seen by the horticulture instructor as he entered the area. They were spotted kissing and laughing in the outdoor garden by the horticulture instructor, John (who was a contract employee from the local community college). Thomas and Jane agreed that they should avoid seeing each other in the area for a while, in case they were reported. But when Sgt. Thomas checked the reports which were logged into a book and kept in the Major's office, he realized that there had been no report, so he resumed his visits.

Among the dormitory and transportation staff supervised by Sgt. Thomas, there was a general consensus that he was the "phantom". Sgt. Thomas made it clear to his staff that as long as they did their jobs and showed up on time, he would not bother them. So he became visible less and less to the staff. Sgt. Thomas shared a small office with the other Sgts. and they noticed that over a period of about two months, he had been collecting little plants and putting them on the windowsill in the office. The other Sgts. were sure that these had come from horticulture, but they did not say anything about it, since the horticulture department supplied the institution's visitors lobby and the visiting park with their home-raised decorative plants.

The relationship between Jane and Thomas become more intense. Sgt. Thomas began volunteering for overtime, arriving for work at 3 a.m., instead of 7:00 a.m., working a 12 hour-day, and filling in for the Sgt. vacancy. Jane had become a very good student in her classes, and the horticulture instructor eventually gave Jane added responsibilities of taking care of the plants and garden on weekends when he was not there. Jane and Thomas began having sexual relations in the instructor's office on Sunday mornings around 5 a.m., as Jane would be released from the dorm to give the plants their early morning watering so she could return in time for breakfast and count, and Sgt. Thomas began working 3 a.m. to 4 p.m. on Sundays on a regular basis.

Eventually, the sexual relationship between Jane and Thomas came to the attention of the warden. One officer filed a complaint against Sgt. Thomas, alleging a sexual relationship with Inmate Jane. An inmate, Cindy, also had reported to the warden a day earlier that she had seen Sgt. Thomas coming out of the greenhouse at about 6 a.m., with his equipment belt tossed over his shoulder. Jane came out of the same door about 10 minutes later, heading to her dorm for count. Because of the union issue and the problem of staff shortages, Sgt. Thomas could not be moved immediately, so Inmate Jane was moved to another women's facility approximately 75 miles away. Jane continued to communicate with Sgt. Thomas by telephone. Sgt. Thomas also had a friend place money into Jane's inmate account at the new facility, since he was unable to bring her food on a daily basis.

The warden initiated an investigation by filing a formal report to the Internal Investigation unit at the Regional Office. Four days after the warden faxed the report to the Regional Office, the investigators arrived - a team of two males. They interviewed Jane in the hallway of the of the visiting area, where an attorney was interviewing his client. The investigators could not make eye contact with Jane when they asked questions about her having sex. Jane denied having sex with Sgt. Thomas. Within five minutes, the interview was over.

The investigators attempted to interview the horticulture instructor, but were told that the instructor working now was a new one who had just started working that Monday. Because Jane denied having sex with Sgt. Thomas, the investigators closed their case as unsubstantiated. The investigators interviewed the officer who had filed the complaint

with the warden. The officer stated that he had not seen Jane and Thomas having sex, but he had observed them talking frequently on the prison compound. He added that Sgt. Thomas was not his supervisor, but he had heard a number of rumors that Jane and Thomas were having sex, and he felt it his duty to report this to the warden. The other officer stated that he saw Sgt. Thomas holding Jane's hand one day, as they sat on a bench on the prison compound. Jane was crying, and Sgt. Thomas appeared at first to be comforting her, but the officer later saw Sgt. Thomas lift Jane's hand to his mouth and kiss it.

Sgt. Thomas was notified that an investigation was underway concerning allegations of an improper relationship with Inmate Jane. Sgt. Thomas was told that an inmate had reported the allegations. Based on the information Sgt. Thomas received from the investigators, he determined that the only inmate who could have reported seeing him at the greenhouse on the specific day, was Inmate Cindy, as she had the task of retrieving cleaning supplies from the storage area directly across from the greenhouse. The following day, Sgt. Thomas filed a disciplinary action against Inmate Cindy for using disrespectful language to an officer. Two days later, Sgt. Thomas met Inmate Cindy at the storage area, took her inside the door, and told her that he knew she didn't want any trouble, so she'd better change her story.

Inmate Cindy was terrified, and was too afraid to say anything to anyone, so she contacted a representative of the Human Rights Watch in the local area, as she had received a pamphlet from another inmate. Human Rights Watch immediately went to the warden's office and wanted an investigation opened against Sgt. Thomas for retaliation against an inmate.

The Department opened an investigation, and sent the same two Regional Investigators to talk to Inmate Cindy. Inmate Cindy refuses to sign any statement against Sgt. Thomas.

## Websites of Related Agencies, Organizations

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<a href="http://www.ojp.usdoj.gov/bjs">www.ojp.usdoj.gov/bjs</a>	Bureau of Justice Statistics – 1-800-732-3277
<a href="http://www.nicic.org">www.nicic.org</a>	National Institute of Corrections - search for assistance materials, training and technical assistance
<a href="http://www.ncjrs.org">www.ncjrs.org</a>	National Criminal Justice Reference Service – statistics, research and reference information: Box 6000, Rockville, Maryland 20849-6000, 1-800-732-3277
<a href="http://www.fcc.state.fl.us">www.fcc.state.fl.us</a>	Florida Corrections Commission
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