

Justice for Victims Behind Bars: Improving the Response to Cases of Sexual Abuse in Confinement

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I. INTRODUCTION

A. THE PREA STANDARDS AND THE NECESSITY OF A COORDINATED, MULTIDISCIPLINARY RESPONSE TO SEXUAL ABUSE IN CONFINEMENT

The passage of the Prison Rape Elimination Act (PREA)² in 2003 created not only a requirement that jurisdictions prevent and respond to incidents of sexual abuse in confinement, but firmly planted sexual abuse in confinement on the list of critical issues for criminal justice system officials across the country. No longer could corrections and juvenile delinquency institutions ignore the rapes that occurred behind their walls. In the years following PREA's passage, confinement institutions carefully reviewed the federal law, anticipating the issuance of new Standards that would govern their prevention and response protocols.

In 2012, the Department of Justice promulgated Standards applicable to all confinement facilities, including prisons and jails, lockups, juvenile detention facilities, and community confinement facilities.³ The Standards require these facilities to prioritize the issue of sexual abuse in confinement, appoint PREA Coordinators,⁴ train their employees, and work with other professionals, including advocates, medical professionals (specifically, sexual assault nurse examiners [SANEs]⁵), and law enforcement to implement PREA's goals. While most PREA Standards apply to internal institutional actions, requirements, training,⁶ and responses, many Standards mandate services that require institutional collaboration with advocates, SANEs, and law enforcement. In addition, the PREA Standards aim to increase offender accountability and community safety, neither of which can be achieved effectively without the prosecution of sexual abusers. The Standards call for an approach to sexual abuse in confinement that is multidisciplinary and collaborative at every level.

The Bureau of Justice Assistance (BJA) has recognized the significant efforts needed for jurisdictions to become PREA compliant. As a result, BJA has funded the National PREA Resource Center (PRC) under a cooperative agreement—which has funded, through sub-awards, other national technical assistance providers, as well as individual jurisdictions, to support those efforts. The PRC and its partners offer training to thousands of corrections officers and employees, as well as law enforcement professionals, advocates, SANEs, and prosecutors.⁷ Trainings provide support and strategies for confinement institutions seeking to become compliant or to improve their PREA compliance, and facilitate access to existing coordinated multidisciplinary responses to sexual abuse. Significantly, even in jurisdictions with established community-based sexual assault response teams (SARTs),⁸ gaps often remain in their ability to provide services to victims of sexual abuse *in confinement*. These gaps may be even wider in jurisdictions without official SARTs.⁹

Appropriate response to cases of sexual abuse in confinement requires that professionals have relevant information on the PREA Standards, an understanding of the dynamics of sexual abuse (particularly those dynamics specific to abuse in the confinement setting), and collaboration among the professionals in the jurisdiction. This collaboration with outside advocates, medical professionals (specifically SANEs), law enforcement, and prosecutors must occur at both the leadership and the ground levels of confinement facilities and corrections agencies to ensure that the response is victim-centered and offender-focused. A victim-centered approach incorporates an awareness of the central role that victims play in the criminal justice process. The approach considers victims' safety, privacy, and well-being throughout the process, while ensuring they have access to information and services. An offender-focused response acknowledges that abusers purposefully, knowingly, and intentionally target victims whom they believe

they can successfully exploit. Such a response keeps the focus on the actions, behaviors, characteristics, and intent of the abuser.

B. VICTIMS BEHIND BARS PROJECT

The Victims Behind Bars project has been driven by the above considerations as well as by information gathered from professionals and jurisdictions across the country. AEquitas and the PRC determined that a project assessing and providing strategies for improvement of one jurisdiction's attitudes, practices, and responses to sexual abuse in confinement along the allied criminal justice system continuum would not only benefit that jurisdiction, but could be used as a model for jurisdictions across the country. With funding and support from the PRC, AEquitas identified a suitable jurisdiction for development of this project.

This report is intended to describe the project, detail the analytical framework that guided the communications and meetings implementing the project, and discuss the identified barriers and solutions so these findings can be used and adapted in other jurisdictions.

Project Development and Host Jurisdiction Selection

The trainings delivered by the PRC and other national technical assistance providers have led to an increase in individual and institutional knowledge of the PREA Standards and an improved understanding of how best to implement them. Those who have received training have begun to reach out to other professionals in their jurisdictions to educate and collaborate with them, resulting in increased communication and coordination among those who respond to sexual abuse in confinement. Still, the responsibility to educate others – particularly those from other disciplines – has proven challenging for many reasons. One significant reason is that reliance on one or two disciplines to educate other professionals may result in limited information sharing, lack of an informed response, a deficiency in cohesiveness, and a breakdown in the overall response to these crimes across the allied criminal justice continuum. Leadership from each of the disciplines in a jurisdiction – corrections, advocacy, sexual assault nurse examiners (SANEs), law enforcement, and prosecutors – is necessary for effective training in each of those disciplines.¹⁰

AEquitas and PRC worked and communicated with professionals from jurisdictions across the country who are responsible for responding to cases of sexual abuse in confinement. As a result of this contact, it was clear that although there are many significant differences in professionals' attitudes and practices across the country (as with any allied criminal justice response), various jurisdictions share similar responses. AEquitas and the PRC determined that it would be beneficial to work with a targeted jurisdiction to assess its current response to cases of sexual abuse in confinement, to identify the barriers, and then to develop strategies for improvement, including the prosecution of abusers. Both organizations concluded that the assessment, identification of barriers, and development of strategies would not only benefit the assessed jurisdiction, but also could serve as a model for jurisdictions across the country that are implementing PREA Standards and responding to these cases.

Two neighboring counties were selected (one predominantly urban and one predominantly rural) within one state for the Victims Behind Bars project. These neighboring jurisdictions were identified by the state's Adult PREA Coordinator¹¹ as locations where some allied professionals were already proactive in learning about PREA, ensuring that the confinement facilities were becoming PREA compliant; were working with multidisciplinary professionals to ensure an appropriate response to cases; and were

prioritizing victim safety and support as well as abuser accountability (criminal and administrative) for incidents of sexual abuse in confinement. For purposes of clarity, those two jurisdictions, as well as the state (members of which also participated in this project), will be known collectively as *the jurisdiction* in this report.

The host jurisdiction has remained anonymous to ensure that participants could share information freely, identify the most helpful strategies, and continue to work with Æquitas and other agencies to develop concrete, long-term, victim-centered solutions designed ultimately to hold sexual abusers accountable – ideally, through increased prosecutions.

C. FOUR PROJECT STEPS

The Victims Behind Bars project, undertaken during a four-month period in the fall/winter of 2013, involved four steps: (1) identifying and interviewing jurisdictional participants, (2) conducting an on-site multi-disciplinary meeting, (3) following up with participants and field experts, and (4) analyzing current practices and barriers to responding to sexual abuse in confinement and developing strategies for promising practices for responding to sexual abuse in confinement across the criminal justice continuum.

Æquitas and the state’s Adult PREA Coordinator determined that the ideal participants would include professionals in decision-making positions together with those working on the ground with first-hand knowledge of protocol implementation. The following offices and agencies were contacted:

- State Department of Corrections;
- Jails and other confinement facilities in the two neighboring counties (including the PREA Coordinators);
- State Department of Juvenile Justice and the state’s Juvenile PREA Coordinator;
- Statewide and county-based sexual assault advocacy agencies;
- Statewide SANE coordinating agency and local SANEs or hospital representatives;
- Lead criminal investigators and captains from local, county, and state law enforcement agencies (particularly those who work on sex crimes);
- Major crimes and sex crimes prosecutors from the two jurisdictions and the State Attorney General’s Office; and
- Other relevant allied criminal justice professionals and leaders.

Over the course of one month, Æquitas contacted representatives from the above agencies in leadership and on-the-ground positions. Discussions with agency representatives focused on: agency missions, individual professional responsibilities, agency and individual responses to sexual abuse generally, and, specifically, to sexual abuse in confinement. Representatives discussed issues related to: corrections efforts to be PREA compliant, including informing inmates of relevant PREA Standards and implementing them; advocacy and counseling services; medical services, including sexual assault forensic examinations; reporting of sexual abuse crimes; investigations; prosecutions; and actual or perceived effects of PREA Standards on all aspects of the response to sexual abuse in confinement.¹² Discussions also included witness intimidation and its effects on the reporting, investigation, and prosecution of cases.¹³

A group of twenty-five representatives from the state and the two selected counties – six from state corrections, four from local jails, two from juvenile justice, three victim advocates, three SANEs or other medical professionals, three from law enforcement, and four prosecutors – convened at Department of Corrections headquarters for a one-day meeting. The group understood that the mission of the project was to assess the jurisdiction’s current practices and structure and to serve as the catalyst for bringing

together professionals in the jurisdiction to facilitate collaboration and refine responses to sexual abuse in confinement. The group also understood that the barriers that would be identified in their jurisdiction were likely present in other jurisdictions, and, thus, that proposed strategies and solutions could be helpful throughout the country.

The group's agenda (see [Appendix A](#)) was designed to facilitate interactive learning of PREA-related information, identification of barriers, and sharing of strategies, with the goal of positioning the jurisdiction to develop solutions designed to increase the reporting, investigation, and prosecution of cases of sexual abuse in confinement. The meeting included a case study, through which the meeting participants explored their own responses to cases of sexual abuse in confinement as well as those of their colleagues, and discussed ways in which collaboration could improve their responses. They learned about and discussed the PREA National Standards, identified barriers to responses to sexual abuse in confinement (see [Section III](#)), and created action plans for the future. The meeting led to follow-up calls (some of which AEQUITAS joined) and meetings in order to implement their action plans.

Following the meeting, AEQUITAS stayed in contact with individuals from the jurisdiction to continue to analyze certain barriers and to facilitate the development of solutions and strategies to overcome them. Several immediate instances of increased communication among participants occurred. For example, at the training, the state PREA Coordinator was invited to attend the next statewide forensic nurse examiners' meeting. That meeting's agenda was expanded to include a discussion of the PREA Standards and how professionals could better work together to respond to cases of sexual abuse in confinement. In addition, the statewide SART Coordinator and the Executive Director of the state's leading sexual assault advocacy agency have had several calls with each other and with AEQUITAS, as well as with other leading national agencies, to discuss legal and practical solutions to some ongoing challenges. These conversations, during which AEQUITAS and the participants collectively developed improved practices, will enable the entire state to comply with PREA Standards and to improve responses to *all* cases of sexual abuse. Other participants have shared with AEQUITAS that they have begun to work on certain issues, including anonymous reporting, development of SARTs in areas currently lacking them (including for cases that occur in confinement), and improved communications with law enforcement and prosecutors, and have indicated they will continue to work with AEQUITAS and others in their jurisdiction to develop solutions.

AEQUITAS wrote this report detailing the development of the Victims Behind Bars project with the goal of clearly identifying barriers and solutions that could be applied to this jurisdiction and others across the country. The barriers listed below were identified throughout the project and are discussed in detail in [Section III](#). For purposes of organization and clarity, barriers have been categorized according to the professional discipline to which the barrier is most relevant. Readers can continue to scroll through the report in full or click on the barrier to go directly to additional information, strategies, and recommendations for overcoming the barrier. This report is intended to provide an account of the project jurisdiction's response to sexual abuse in confinement and also to serve as a practical guide for developing solutions in *any* jurisdiction.

Corrections

- Some confinement staff and administrators do not believe that their facilities have a “problem” with sexual abuse.
- Few cases of sexual abuse in confinement are reported by victims or by third parties.
- Agencies are trying to determine how multiple internal private reporting options can be arranged.
- Facilities are trying to identify an independent agency to which victims can privately report sexual abuse and are trying to determine how that private reporting can be facilitated from inside the facility.
- PREA Standards require that all corrections staff be trained, but it can be challenging to find in-depth, comprehensive training on PREA-related issues; corrections also feels strongly that all of the professionals who respond to cases of sexual abuse in confinement need training on this subject in order to more effectively support victims in confinement and hold abusers accountable.
- The PREA Standards, along with statutes and guidelines in many jurisdictions in the United States, dictate that victims have a means to anonymously report sexual abuse while receiving medical and advocacy services. Because confinement facilities have a duty to follow up on all incidents of sexual abuse, the very idea of anonymous reporting presents a challenge.
- PREA Responders are unclear as to how to determine which cases fit into the PREA Standards’ investigative determinations and do not understand their significance: substantiated (an allegation that was investigated and determined to have occurred), unsubstantiated (an allegation was investigated, and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred), or unfounded (the allegation was investigated and determined not to have occurred).
- Facilities need guidance on whether and when to report an incident of sexual abuse to law enforcement.
- Intimidation of victims and witnesses impedes the reporting of sexual abuse in confinement and the ability to thoroughly investigate and prosecute cases.
- Facilities in the project jurisdiction expressed an interest in learning what steps they could take to support victims and provide necessary services while a case is being investigated, especially when the abuser is a staff member.

Medical Professionals

- SANEs and other medical providers have not received any training specific to treating patients who are currently in confinement.
- Absence of protocols for medical professionals who may treat a victim prior to him/her being examined by a SANE.
- Some SANEs expressed concerns for their personal safety during examinations, while others expressed outrage at treating patients for sexual abuse who are handcuffed or shackled during a medical examination. There were also concerns over law enforcement remaining in the room for the duration of the sexual assault forensic examination.
- Professionals are unclear about who pays for examinations and SAFE kits for cases of sexual abuse in confinement.

- In jurisdictions with an ambiguous, incomplete, or no anonymous reporting statute or policy, SANEs wondered how to “report” a case of sexual abuse that occurred in confinement if the victim had already been released from confinement.
- SANEs and law enforcement expressed concerns about who should transport and store the SAFE kit for cases of sexual abuse in confinement.
- Professionals working on a multi-disciplinary response to cases of sexual abuse in confinement would like to create a SART for victims of these crimes.

Advocacy

- Advocates in the project jurisdiction and in other areas throughout the country reported they had reservations about supporting inmate-victims, having had no special training to work with the inmate populations.
- The provision of confidential counseling and services is a cornerstone of the PREA Standards, and advocates and other counseling professionals who may potentially provide such services are concerned that they will be unable to communicate in private with inmate-victims.
- Advocates in this jurisdiction are prohibited from providing services to inmates under some current funding restrictions.
- Juvenile facilities face barriers similar to those faced by adult facilities, but have different resources aimed at their specific needs from which to draw.

Law Enforcement

- While all participants acknowledged that the Standards require that facilities accept anonymous reports, and that anonymous reporting is important for promoting victim support, facility safety, and potential abuser accountability, participants expressed their skepticism that a report of sexual abuse in confinement could ever actually be anonymous.
- Cases of staff-on-inmate abuse are very often characterized as “consensual.”
- Administrative hearings do not often reach a just outcome in cases of inmate-on-inmate sexual abuse that are allegedly consensual.
- Corrections staff are not typically trained on how to investigate reports of sexual abuse. They often are not familiar with the different types of sexual abuse crimes – particularly sexual harassment – and whether or not certain behaviors constitute a criminal offense.
- Witness intimidation is a chronic issue in confinement facilities and can have devastating consequences on victim safety and on the ability to prosecute abusers.
- Participants from confinement facilities, law enforcement, and prosecutor’s offices in the project jurisdiction spoke of a desire, and even a “need,” to polygraph victims who report sexual abuse in confinement, and asserted that polygraphing victims was an important investigation tool.
- Some members of law enforcement are resistant to change their investigative practices related to cases of sexual abuse in confinement, believing their existing methods are suitable or best.

Prosecution

- Prosecutors expressed concern over their ability to prepare for trial in cases of sexual abuse in confinement, identifying common challenges in these cases.
- Charging and prosecuting cases that include reports of “consensual” contact or

- penetration, and developing strategies to hold such abusers accountable.
- Anticipating and preparing for a lack of victim involvement in the case.
- Anticipating and preparing for victim recantation due to the criminal justice process and pressures.
- Few cases involving sexual abuse in confinement are prosecuted.
- Prosecutors struggle with appropriate *voir dire* questions in cases of sexual abuse in confinement.
- Prosecutors struggled to combat defenses in sexual abuse in confinement cases.

II. ASSESSMENT

A. RESPONSE TO SEXUAL ABUSE

The project state currently has eleven active county or regional SARTs, and is working to develop more.¹⁴ A statewide Forensic Nurse Examiner (FNE) Coordinator works with both SARTs and SANEs/FNEs to support their day-to-day work, to encourage collaboration and coordination among programs, to provide technical assistance, to coordinate training opportunities and community awareness, and to develop new SANE programs. The two counties involved in this project have county SARTs, which are comprised of law enforcement, rape crisis advocates, community-based advocates, health professionals, and FNEs. Prosecutors attend SART meetings but do not respond to incidents; SARTs in this state do not officially include prosecutors in their response protocols, although prosecutors are on-call for questions or for consultation with law enforcement responders. The teams meet monthly but also coordinate and collaborate an immediate response when crimes occur. No SARTs have been established specifically to respond to incidents of sexual abuse that occur in confinement, and none of the existing SARTs currently have a protocol to include such incidents.

Generally, for sexual abuse incidents that occur *outside* of confinement, law enforcement responds either to the crime scene or to the hospital. An advocate is also immediately called in from the local rape crisis center to meet with, consult with, accompany, provide sexual trauma counseling, discuss reporting options, and assist in accessing other resources should the victim want to pursue services. At the hospital, a victim has the opportunity to *anonymously* report the abuse, meaning that the complete forensic exam will be conducted using a forensic examination kit and will be sealed and turned over to law enforcement without identifying the victim.^{15, 16} The victim then has one year to officially report the sexual assault to law enforcement, an option that should be explained by both the SANE and the advocate.¹⁷ Prior to the expiration of that year, a SANE or a victim advocate from the local rape crisis program will contact the victim to talk about the status of the sexual assault forensic examination (SAFE) kit and to determine whether the victim wants to engage law enforcement. The victim can contact the victim advocate or law enforcement on his or her own at any time during that year. Currently, in this state, there is no protocol for similar anonymous reporting of sexual abuse that occurs in confinement.

This state has neither legislation nor a guideline mandating that SANEs respond to all incidents of sexual abuse. In fact, some hospitals' policies prohibit nurses from conducting pelvic examinations; instead, physicians conduct those examinations. Only a few hospitals in the state have full-time SANEs on staff. Many hospitals must make do with on-call SANEs for coverage, requiring some of the SANEs to travel long distances. No confinement facilities in the state have on-call SANEs. When a sexual abuse is reported in a confinement facility, the victim is transported to a local hospital for treatment. Depending on the

nature of the incident, the availability of an on-site healthcare provider, and the confinement facility's protocols, the victim may or may not be examined by a medical professional at the facility before being transported to the hospital, where they are treated.

B. RESPONSE TO SEXUAL ABUSE IN CONFINEMENT

The challenges to be addressed in the jurisdiction were identified in the conversations before, during, and after the meeting. Primarily, those challenges are: victim access to medical care; availability of confidential advocates; thoroughness of investigations conducted by law enforcement; and effective charging and trying of cases by prosecutors. The jurisdiction's current infrastructure and response are in a good position to assess these current challenges and to work collaboratively to overcome them.

The state's Adult PREA Coordinator has worked in corrections for more than twenty years and volunteered to become the statewide Adult PREA Coordinator because of a commitment to the integrity of the corrections system and the development of a coordinated, multidisciplinary response to incidents of sexual abuse in confinement. The Adult PREA Coordinator's goal is to prevent sexual abuse in confinement by creating a zero-tolerance culture within the state institutions, by educating all staff and inmates on the dynamics of sexual abuse, and by providing the necessary protocols and systems response to support victims, to provide victims with needed services, and to hold abusers accountable.

The state's Juvenile PREA Coordinator is newly appointed, and is committed to continually enhancing her performance as Coordinator and improving her knowledge of sexual abuse in confinement. She is working closely with the head of the state's juvenile detention agency to ensure that PREA Standards are implemented in all juvenile detention facilities. Other facilities in the participating jurisdiction also have internally-appointed PREA coordinators, who have varying levels of experience. Some are completely new to the position and are at the beginning stages of learning about sexual abuse in confinement and PREA, while others have already established working groups and formulated internal responses to all incidents. In addition, some facilities in the state already have written response protocols, while others were in the process of developing them.

Confinement facilities in the state respond to incidents of sexual abuse in various ways. One of the main concerns is victim access to medical care. All confinement facilities that participated in the project are aware of PREA Standard § 115.21, which requires facilities to provide SAFE examinations conducted by a SANE, when one is available.¹⁸ Some confinement facilities are able to transport victims to hospitals with SANEs on staff. However, because some counties in the state have no hospitals with SANEs on staff, other medical professionals examine some victims. While these efforts meet PREA requirements, SANEs are recognized as specialized caregivers with "expertise in physical assessment and advanced clinical skills."¹⁹

Facilities in this jurisdiction have also encountered challenges in trying to comply with PREA Standards that require that victims be provided with confidential advocacy services – regardless of whether the sexual abuse is reported to law enforcement.²⁰ Specifically, PREA Standard § 115.21 requires confinement facilities to provide victims with *access* to a "victim advocate from a rape crisis center," when available.²¹ When such an advocate is not available, the facility can provide access to "a qualified staff member from a community-based organization, or a qualified agency staff member." Currently, no such advocacy services are provided to inmates in the project jurisdictions, because rape crisis centers in the area believe they are unable and untrained to meet these needs. For additional information on barriers to provision of advocacy services and possible solutions, see [Section III C](#), Advocacy.

PREA Standards require facilities to conduct internal investigations when sexual abuse is reported. Investigations must be prompt, thorough, and objective, and must be conducted by investigators who are specially trained.²² While the Standards specify that administrative investigations into sexual abuse shall be conducted pursuant to a standard of preponderance of evidence, *i.e.*, more likely than not,²³ the Standards do not identify a mandatory minimum burden for referral for criminal investigation or prosecution.²⁴ The Standards do require that certain types of evidence relevant to a criminal investigation should be collected, and also state that “[s]ubstantiated allegations of conduct that appears to be criminal shall be referred for prosecution.”²⁵ Staff and administrators from both adult prisons and jails, as well as from juvenile facilities, indicated that although there are not many incidents of sexual abuse that are reported, all such reports are investigated as required by PREA Standards.²⁶

In the participating jurisdiction, local facilities and state-run facilities rely on sheriffs’ departments or on county law enforcement to investigate incidents of sexual abuse in confinement. When the perpetrator of sexual abuse is a staff member, the investigation is immediately referred to a statewide law enforcement agency.²⁷ Currently, no facilities have protocols for a victim to anonymously report an act of sexual abuse to a staff member in the facility. While a victim can anonymously disclose to an advocate²⁸ or a third party can anonymously report an incident,²⁹ if the victim reports the abuse to staff or to a volunteer in the facility, that staff member or volunteer is obligated to report the abuse to the facility (including to the PREA coordinator). In the participating jurisdiction, the facility would then call law enforcement, whether or not the victim wanted to officially report to law enforcement. The responding law enforcement agencies in the jurisdictions indicated that they do not currently have the option to generate, for example, an “information only” report. Instead, law enforcement indicated that the victim is asked whether or not he or she wants to make an official report. The victim must decide this immediately. This practice is contrary to the rights and choices afforded to victims *outside* of confinement, who can receive medical services without having to make an official report to law enforcement.

While the PREA Standards do not directly address prosecution, they do contemplate actions and responses that would be relevant to “subsequent criminal prosecution.”³⁰ Prosecutors in the two participating jurisdictions, as well as those on the state level, indicated that few cases of sexual abuse in confinement are reported to their offices. To date, there have been very few cases of sexual abuse in confinement prosecuted in the participating jurisdictions.³¹

C. THE EVALUATION PHASE

During the first phase of the project – identifying participants – Æquitas engaged in very open and frank conversations with approximately twenty professionals from five professional groups: corrections, advocacy, medical, law enforcement, and prosecution. Those professionals were asked to talk about their agency’s or office’s historical and current PREA-related work; their own professional PREA-related work; their office’s/agency’s (as well as their own) general response to sexual abuse; and their work with and perception of others who respond to sexual abuse. The conversation included discussion of attitudes, responses, collaboration, treatment, investigation, prosecution, cases, challenges, issues, gaps, etc.

Overall, the five professional groups felt they had good internal communication within their offices, agencies, and with other professionals in their field within the same jurisdiction or in neighboring jurisdictions. They also initially expressed that each other’s professional office or agency was executing its professional duties and communicating with other multidisciplinary offices, agencies, and individuals in a positive way. Individuals in each professional group, however, individually expressed some concerns

or identified areas in which the jurisdictions could improve their response to all cases of sexual abuse, particularly those that occurred in confinement (see [Section III](#)).

The Importance of Improving Efforts to Prevent and Respond to Sexual Abuse in Confinement

The professionals from the jurisdiction were highly dedicated to their jobs and very interested in learning more about PREA, the PREA Standards, what their jurisdiction was collectively doing to respond to sexual abuse in confinement, and how they could improve their practices to make their local and state response to cases of sexual abuse in confinement among the best in the country.

At the commencement of this project, almost all of the professionals with whom Æquitas spoke agreed on the necessity of an effective collective response to these crimes. The professionals in the jurisdiction articulated why all people, particularly professionals charged with caring for incarcerated persons as well as those charged with responding to incidents of sexual abuse need to care about sexual abuse in *confinement*. Their comments included the following:³²

We cannot help create rapists; the idea that a facility would know that a rapist got away with one or multiple rapes emboldens and empowers the rapist.

We want to prevent [the spread of STIs both inside and outside of the facility].

Rape in facilities is dangerous for officers and other confinement staff.

Officers are in charge of caring for all inmates; they are not fulfilling their professional responsibilities if they know of sexual abuse and do nothing to stop it.

There is no such thing as an officer engaging in a “consensual” sexual relationship with an inmate. The relationship starts out with an uneven distribution of power, and of course that continues. An inmate would feel he/she doesn’t have a choice there.

Repeated victimization of an inmate will affect that inmate for the rest of his/her life. The inmate won’t be a “victim” when he/she is released. In other words, what we put into custody will come out much worse, with trauma that – added to and then left unaddressed over time – will manifest itself in a manner that will be harmful to the victim and potentially to others as well.

Failing to comply with PREA hurts the facilities’ budgets, and that will trickle down on all levels. There is a 5% noncompliance penalty.

As reflected by the examples above, overall, the participants had an appreciation for the importance of their individual professional responses. Prior to the phone calls with Æquitas, most individuals had not consciously contemplated the response to sexual abuse on a continuum, *i.e.*, the importance of each discipline’s professionals responding in a manner that upholds their responsibilities as well as supporting the efforts and work of others. They welcomed the opportunity to start framing the issue in a more inclusive manner. The professionals also wanted to identify any gaps or barriers in their jurisdiction in order to develop solutions that would put them on a path toward creating the best possible practices and responses to cases of sexual abuse in confinement. The following section includes the main barriers that the professionals identified as impeding their ability to respond to such cases, as well as strategies and resources for developing solutions.

III. IDENTIFIED BARRIERS AND STRATEGIES

The pre-meeting phone calls provided both Æquitas and the jurisdiction valuable insight and allowed for more meaningful preparation for the meeting and a deeper understanding of the jurisdiction’s existing barriers. The phone calls helped inform the meeting agenda and helped prioritize the issues to be addressed at the meeting. All disciplines expressed an interest in learning about the roles of other professionals, as well as analyzing how each discipline’s performance affects that of other disciplines when responding to sexual abuse in confinement. Therefore, the meeting focused on the response continuum: each individual’s response, how the disciplines could work together to improve their responses, gaps in the system, and ways to bridge the gaps and develop successful strategies.

The barriers and impediments that were identified during both the pre-meeting phone calls and during the meeting discussed below, along with their proposed solutions. For purposes of organization and clarity, barriers and solutions have been categorized according to the professional discipline to which the barrier is most relevant. Even though they have been categorized this way, it is important to recognize that these barriers and solutions are relevant to more than one discipline and often affect all professionals who respond to sexual abuse in confinement.

A. CORRECTIONS (ADMINISTRATIVE, FIRST RESPONSE, INTERNAL INVESTIGATIONS)

Pre-meeting phone calls and the meeting itself included input and participation from state, local, and private confinement facility administrators and staff members. Corrections officers and administrators from the project jurisdiction not only desired continued improvement of their internal responses to incidents involving sexual abuse and sexual harassment, but also enhancement of their relationships and collaborations with police, advocates, SANEs and medical professionals, and prosecutors. In spite of having reported cases to law enforcement and having referred and/or having transported sexual abuse victims to hospitals for treatment, corrections professionals had rarely participated in working groups with multidisciplinary professionals and had never been trained on sexual abuse dynamics in a manner that directly addressed methods designed to increase victim safety and offender accountability.

Barrier: Some confinement staff and administrators do not believe that their facilities have a “problem” with sexual abuse.

Many confinement facility staff members and administrators have not identified, or questioned whether they have, a problem with sexual abuse in their facility. Some corrections and juvenile justice administrators and staff state that the studies on incidence rates of sexual abuse in confinement must be wrong, and are definitely not representative of their facility. Specifically, during a pre-meeting conversation, a juvenile justice administrator in the project jurisdiction stated that sexual abuse has not existed “in any volume that has caused us any issues.”^{33, 34}

Strategies

Although BJA studies state the rate of sexual abuse among adult and juveniles in custody is approximately 1 in 10, staff and administrators should receive training and education so they understand that the occurrence of one incident is one incident too many.^{35,36} Learning about the lengths that staff and inmate perpetrators will go to in order to abuse and hide their crimes is a crucial component of training. The meeting in the project jurisdiction included videos that depicted actual confessionals from victims and perpetrators of sexual abuse in confinement so that participants could gain a greater understanding of dynamics involved, as well as perspective/context on extremely low reporting rates.³⁷

Barrier: Few cases of sexual abuse in confinement are reported by victims or by third parties.

If incidents are not reported, facilities cannot support inmates or hold abusers accountable. Further, sexual abuse that is not identified or that is allowed to continue unchecked creates an unsafe environment in the facility. Inmates may fear other inmates, and, if the abuse is perpetrated by a staff member, all inmates may feel that their ability to exist safely on a daily basis is compromised and in danger. During a pre-meeting phone call, one law enforcement investigator stated that the biggest issue in cases of sexual abuse in confinement is “getting the victim to [report] because they’re scared of the repercussions in the jail. Jail is a different place than on the street. If they rat on this person ... rats and child molesters are some of your most endangered people in the jail” (See barrier, *infra*, on intimidation of victims and witnesses). Confinement and juvenile justice professionals are interested in knowing what, if anything, they can do to increase the reporting of incidents of sexual abuse.³⁸

Strategies

There are several strategies to increase the likelihood that a victim will report sexual abuse, starting with changing institutional culture and policies. Systemic changes that staff and inmates can see and feel can go a long way in ensuring that a victim feels safe and secure enough to report. Agency leaders, facility directors, and all staff should create an environment with zero tolerance for harassment, which sends a message that all sexually demeaning, harassing, and of course abusive behavior, is never acceptable and will be punished.³⁹ Thoroughly inform inmates during orientation of: PREA and related safety policies, definitions of sexual harassment and sexual abuse, how to safely report any incident of harassment or abuse, and examples of behaviors that will not be tolerated in the facility.⁴⁰

Improve the assessment and intake form so that inmates feel that the facility is doing all it can to prevent sexual abuse and that the facility genuinely wants to know of any abuse and will not tolerate it.⁴¹ Supplement this information by clearly stating the goals of the facility. Continue this education and dialogue with inmates and staff periodically throughout the year. Stress that all administrators and staff must adopt these policies and zero-tolerance philosophy; reporting rates will increase only if the staff understand their commitment and follow-through are crucial to a safe and secure facility where inmates feel they can report abuse.⁴²

Beyond institutional culture, facilities can develop first-responder and all-responder training that supports the PREA Standards.⁴³ First responders (*i.e.*, all staff, as anyone could be a first responder) should be trained in language, tone, report writing, and other appropriate behaviors. Increase inmate and staff understanding of what kinds of behaviors constitute *coercion*, particularly as it concerns staff-abusers. Stress that these behaviors will not be tolerated in the facility and follow through by holding harassers and abusers administratively and criminally accountable.

Barrier: Agencies are trying to determine how multiple internal private reporting options can be arranged.

The PREA Standards require that a confinement agency provide “multiple internal ways for inmates to privately report sexual abuse” and other related incidents, and agencies are trying to determine how to arrange these multiple, private options.⁴⁴

Strategies

Suggestions for safe, internal ways to report sexual abuse includes a locked drop box that only designated individuals can access, mail slot, and an internal hotline. In addition, because the Standards require all employees to be trained, inmates can report to other staff or volunteers in the facility, including teachers, counselors, and medical professionals. Jurisdictions exploring options are encouraged to reach out to other state Adult and Juvenile PREA Coordinators.⁴⁵

Barrier: Facilities are trying to identify an independent agency to which victims can privately report sexual abuse and are trying to determine how that private reporting can be facilitated from inside the facility.

The PREA Standards require that a confinement agency provide “at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency ... allowing the inmate to remain anonymous upon request.”⁴⁶ In some jurisdictions, facilities initially considered having such reports fielded by a local or the state rape advocacy agency. However, many advocacy agencies are unable to receive calls from inmates at this time, and have concerns about receiving calls from inmates (see [Section III, C, Advocacy](#)). Confinement facilities are seeking other agencies that can receive reports from incarcerated persons.

Strategies

Rape crisis centers may not be a good fit for this requirement, as many United States jurisdictions legislate that communications between victims and advocates are confidential, and having the center serve as a reporting line may complicate the role of the advocate and put some professional relationships in danger.⁴⁷ Even in jurisdictions that do not statutorily or otherwise protect those communications, allied criminal justice professionals feel it is important to uphold the sanctity of the advocate-client relationship and to take steps to keep those communications confidential, where possible. If an advocacy agency were to receive a report of sexual abuse in confinement that the victim wanted disclosed to law enforcement, the agency would then be put in the position of reporting the abuse, and the advocate or counselor could then become a witness at trial.⁴⁸ Suggestions for agencies that can receive reports include using an ombudsman office, a victim-witness hotline in another state agency office (*e.g.*, State Police or Attorney General’s Office), or a hotline and/or address set up through another state or nongovernmental agency office.

Barrier: PREA Standards require that all corrections staff be trained, but it can be challenging to find in-depth, comprehensive training on PREA-related issues; corrections also feels strongly that all of the professionals who respond to cases of sexual abuse in confinement need training on this subject in order to more effectively support victims in confinement and hold abusers accountable.⁴⁹

Some corrections administrators, particularly one from juvenile justice, expressed concern that fulfilling requirements is not meaningful if the training is not comprehensive and provided by true experts. Specifically, this administrator stressed the need for training that will enable staff to create a supportive environment, including training in the use of appropriate tone and language that will encourage inmates to report abuse. Inadequate training, and a lack of confidence in the training of other multidisciplinary responders, may create an environment in which professionals who should be collaborating are instead questioning their own as well as others' responses to these cases.

Strategies

While PREA Standard § 115.31 includes important information about employee training (including training on: zero tolerance for abuse, inmates' rights, dynamics of sexual abuse in confinement, how to detect and respond to threatened/actual sexual abuse, how to avoid inappropriate relationships with inmates, and how to comply with relevant laws), professionals must maximize the intent of that standard by ensuring the training is conducted in a meaningful way. In other words, training employees will actually make a difference if the training is delivered by true experts who understand the dynamics of sexual abuse in confinement and who have the expertise to employ effective adult education techniques geared to the needs of criminal justice professionals.⁵⁰ Training for corrections and juvenile justice staff will not be meaningful – and thus will be limited in its ability to positively effect change – unless the training is provided by educated professionals who teach the right information using appropriate techniques for the audience. Confinement officials can access these experts at no cost by reaching out to national providers, including the PREA Resource Center and ÆQUITAS, all of which employ such experts or can put confinement officials in touch with such experts. Training should be ongoing and supplemented on a regular basis. While corrections and juvenile justice staff need their own training, multidisciplinary training for mixed groups of responding professionals should also be arranged whenever possible.

Barrier: The PREA Standards, along with statutes and guidelines in many jurisdictions in the United States, dictate that victims have a means to anonymously report sexual abuse while receiving medical and advocacy services. Because confinement facilities have a duty to follow up on all incidents of sexual abuse, the very idea of anonymous reporting presents a challenge.

While all professionals acknowledged that anonymous reporting was required by the Standards and was important for victim support and facility safety, and potentially for abuser accountability, all professionals expressed their belief that a report of sexual abuse in confinement could never be completely anonymous because of the requirement that corrections officials investigate any report, which inevitably would result in some level of awareness on the part of other inmates and staff that an incident had been reported in some fashion. Professionals expressed concern over victim safety, wondering how facilities can protect and support victims during an investigation of an anonymous report.

Strategies

Facilities should adopt policies that limit the number of persons who need to know of a report.⁵¹ The fact of the report, and its details, should be limited to those staff whose job strictly requires such knowledge. By proactively planning, confinement facilities can devise internal solutions, or even work with other facilities in the area to keep inmate-victims safe without inadvertently inflicting punitive consequences on those inmates. While PREA Standards specify this precaution, the Standards recognize that some facilities have limited options for safe housing, *e.g.*, medical wings, different units with limited privileges, or segregated or protective custody.⁵² Facilities should consult with other facilities as well as with national experts in order to explore and maximize options. By clearly communicating these potential solutions to inmates, the facility can help to alleviate victim concerns that a report would result in negative consequences.⁵³

Barrier: PREA Responders are unclear as to how to determine which cases fit into the PREA Standards' investigative determinations and do not understand their significance: substantiated (an allegation that was investigated and determined to have occurred), unsubstantiated (an allegation was investigated, and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred), or unfounded (the allegation was investigated and determined not to have occurred).⁵⁴

Confinement staff as well as law enforcement expressed concern over “false reports.” They felt that a number of incidents, including sexual abuse, reported by inmates were “false.” Confinement staff either declined to report such incidents to law enforcement or they reported such incidents only with skepticism. When Æquitas further questioned confinement staff and law enforcement about such reports, it appeared the following barriers existed:

- a) Corrections and law enforcement did not appear to have a good grasp of the PREA categories of “substantiated,” “unsubstantiated,” and “unfounded,” leading some professionals to treat too many reports as unworthy of belief or investigation.
- b) Several members of corrections and law enforcement believed that a report of sexual abuse that could not be “corroborated” or “proven” had to be classified as a “false report” (a term that is essentially meaningless in the context of the PREA Standards) or as “unfounded” (to use the Standards’ terminology).
- c) Several members of corrections and law enforcement believed that there was “very little” or “nothing” that could be done regarding cases they referred to as “he said/she said.”
- d) Several members of corrections and law enforcement lacked a good understanding of victim-abuser dynamics and common victim behavior (including such behavior as recantation or minimization), possibly resulting in investigations stifled or incorrectly classified.

Strategies

Training for all members of corrections and law enforcement must include significant information, not only on the dynamics of sexual abuse, but also on victim behavior, disclosing/reporting abuse, as well as how to assess evidence.⁵⁵ Training should include a discussion and understanding of several points.

- a) The term “false report” should be avoided in the context of PREA compliance. It is misleading and, when used loosely by professionals, ignores important distinctions between good-faith reporting of incidents the reporting victim or witness honestly believes occurred, and those that are the result of intentional fabrication. Because that issue is not of concern for purposes of PREA, the term “false report” is meaningless here and only creates confusion and misunderstanding.
- b) PREA classification draws no distinction between an intentionally fabricated report and one that was honestly made in good faith but proven not to have occurred. For example, an inmate might report that his cellmate was raped by another inmate because he walked in on an altercation and because he had heard rumors leading him to believe that is what occurred. An investigation reveals that there was a fight over an alleged theft, but no sexual contact occurred. Such a report would be classified as “unfounded,” regardless of whether the original report was honestly mistaken or the result of malicious fabrication against the accused inmate.
- c) Sexual abuse is often committed in the presence of no direct witnesses other than the victim. It is a crime that is devastating to its victims, and common victim behaviors include delayed disclosure, self-blame, minimization of abuser behaviors (further compounded if the abuser was a trusted acquaintance or intimate partner whom the victim cares for or loves), piecemeal disclosure, and inconsistent statements.⁵⁶ Further, there is often a lack of physical evidence or visible injury, even when abuse is promptly reported. Corrections and law enforcement professionals, therefore, need better training in understanding these dynamics so they can apply their professional experience to determine the credibility of the report. Most jurisdictions have laws or jury instructions that the word of a victim, if deemed credible, is enough evidence by itself to convict a defendant of sexual abuse.⁵⁷ This same standard should be applied to investigations involving sexual abuse in confinement. The word of a victim or witness, if credible, should be enough to substantiate a report. A report that is believed by investigators should *not* be classified as “unsubstantiated” simply because investigators are unable to find additional evidence corroborating the victim’s report.
- d) The confinement setting itself brings additional pressures upon victims of and witnesses to sexual abuse in confinement. Witness intimidation is a significant factor that can and does frequently result in recantation, inconsistent statements, and refusal to cooperate with the investigation. Intimidation may come not only from the abuser and the abuser’s allies, but also from the inmate population at large, given the widespread and intense opprobrium with which “snitches” are regarded in the confinement setting.
- e) Training should include an awareness of sexual abusers’ manipulative behaviors and their exploitation of the only three available defenses to sexual abuse – it wasn’t me, it never happened, or the victim consented.⁵⁸ The latter appears to present the greatest difficulty to investigators; rather than viewing the assertion as the suspect’s defense, investigators may instead be viewing it as a presumption that the investigation must disprove. This reflects not only an apparent reluctance to thoroughly investigate a case and look for additional corroborative evidence, but it reflects a lack of understanding of abuser behavior and may lead to cases being mistakenly categorized as “unsubstantiated” or “unfounded.” Corrections and law enforcement should be better trained to understand abusers’ manipulative behaviors; they often groom their victims and effectuate their crimes in a manner designed to minimize the chance of any report or disclosure, and to diminish the credibility of the victim upon disclosure.⁵⁹

Barrier: Facilities need guidance on whether and when to report an incident of sexual abuse to law enforcement.

Whether an incident comes to the attention of the confinement facility through the direct report of the victim or through other channels, if the victim declines to participate in the investigation, confinement facilities are unsure whether they are supposed to report the incident to law enforcement.

Strategies

While jurisdictions struggle with whether and when to report incidents, as a matter of policy, the PREA Standards *require* that an administrative or criminal investigation be completed “for all allegations of sexual abuse and sexual harassment.”⁶⁰ The Standards further require that sexual abuse be referred for investigation to an agency with “legal authority to conduct criminal investigations,” and carves out an exception: “unless the allegation does not involve potentially criminal behavior.”⁶¹ The Standards thus imply that if the facility receives information that an incident involving potentially criminal behavior occurred, the facility must report the sexual abuse incident to a law enforcement agency. To ensure consistent expectation, facilities should provide inmates with information on reporting policies upon entrance or transfer.

Barrier: Intimidation of victims and witnesses impedes the reporting of sexual abuse in confinement and the ability to thoroughly investigate and prosecute cases.

Intimidation left unchecked creates environments in which sexual abusers and their allies feel they are in control. Abusers and others who intimidate not only evade accountability, but they are empowered to control aspects of other inmates’ lives within the facility.

Strategies

There are a number of PREA Standards that address intimidation and retaliation.⁶² Inmates and staff should receive education and information specific to witness intimidation: what it is (*i.e.*, it’s often subtle), how to report it safely, and what the facility will do to combat it.⁶³ Often, each unit or dorm within a facility may have a different level of security, and therefore staff may have a different relationship or understanding of what the relationship should be with the inmates they supervise. This change in security level should be discussed in-depth with staff and inmates to ensure that a respectful level of staff-inmate communication is maintained. Staff should use the information they have to anticipate others who may intimidate a victim and then protect the victim accordingly. As soon as an inmate is suspected of perpetrating sexual abuse, he/she should be segregated, and that inmate’s access to other inmates limited, so that the offending inmate does not have the ability to enlist allies to further endanger the victim. If necessary, the facility should put the victim in non-punitive protective custody. In addition, the facility should take measures to eliminate any means of contact or communication between the abuser and the victim or the victim’s family.

Barrier: Facilities in the project jurisdiction expressed an interest in learning what steps they could take to support victims and provide necessary services while a case is being investigated, especially when the abuser is a staff member.

Professionals expressed specific concerns about lengthy investigations. While the PREA Standards include information about communicating with a victim about case developments and about disciplining staff members who are determined to have engaged in sexual abuse or sexual harassment, the Standards provide little guidance about the facility’s other responsibilities to the victim between the time a staff-perpetrated incident is reported and the conclusion of the disciplinary action or prosecution.⁶⁴ When a case involves sexual abuse perpetrated by a staff member, PREA Standards specify that the agency inform the inmate-victim whenever: “(1) The staff member is no longer posted within the inmate’s unit; (2) The staff member is no longer employed at the facility; (3) The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or (4) The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.”⁶⁵

Strategies

The U.S. Department of Justice, Office on Violence Against Women, published Recommendations for Administrators of Prisons, Jails, and Community Confinement Facilities for Adapting the U.S. Department of Justice’s A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents.⁶⁶ The recommendations to maximize safety and support for victims of sexual abuse in confinement include:

- “Maximize victim safety.
 - In cases of sexual assault by perpetrators housed in the correctional facility, immediately separate victims and perpetrators.
 - If victims report staff sexual misconduct and name their perpetrators, those perpetrators should not be involved in any aspect of the facility’s response.
 - Following an examination, continue to keep victims separated from their perpetrators, whether the perpetrators are corrections staff or other individuals housed in the facility.
- Balance victims’ needs with the safety and security needs of the correctional facility.
 - Protect victims without taking measures that they may perceive as punitive, to the extent possible.
 - Consider ways for victims to seek protection and services as confidentially as possible.
 - Strictly limit who within the correctional facility needs to know about a report of sexual assault.
- Offer victims privacy at the correctional facility, to the extent possible, in the aftermath of a report of sexual assault.
 - Exercise discretion in ways appropriate to the confinement setting to avoid the victims’ embarrassment of being identified by others in the correctional facility as a victim, and to increase their safety and comfort in seeking help.
 - Consider the extent of victim information that each responder requires to appropriately intervene. Avoid sharing victim information unless it is critical to response.
 - Ensure that the area where community-based victim advocates talk to victims is as private as possible, and safe for both advocates and victims.”⁶⁷

Project participants felt strongly that, immediately upon a report of staff-perpetrated abuse, the staff member had to be relocated – at a minimum, moved to administrative desk duty or moved to another area of the facility where he/she did not have contact with inmates, or, depending on the nature of the report, administratively suspended or suspended pending termination. Project participants felt that administrative suspension was generally the most appropriate action pending investigation of a staff

member for suspected abuse. Further, to minimize the possibility of intimidation or retaliation on the part of other staff members allied with the abuser, relocate the victim to another area – possibly a different cellblock or even the infirmary – as a temporary measure.

B. MEDICAL PROFESSIONALS AND SEXUAL ASSAULT NURSE EXAMINERS

The project jurisdiction’s statewide SANE-SART coordinator, as well as other SANEs and medical professionals, participated in pre-meeting calls and attended the in-person meeting. Their participation was not only crucial in stressing the importance of the continuum of care necessary in order to fully support victims, but it also provided needed education for the other allied criminal justice professionals in attendance, many of whom did not understand, for example, that the lack of injury is not inconsistent with a report of sexual abuse.⁶⁸ Further, pre-meeting calls and participation during the meeting revealed some barriers to the provision and monitoring of medical care for survivors of sexual abuse. First, more than half of the state’s hospitals do not have access to a trained sexual assault nurse examiner. The state and its professionals are continuing to work toward increasing the number of trained SANEs who are affiliated with hospitals and thus can provide this important care. Second, there is no data collected from any hospital or medical facility regarding sexual assault forensic examination kits or examinations. Gathering data is crucial to the profession, and to being able to better assess health care professionals’ current treatment of patients and make future improvements for their care.

Barrier: SANEs and other medical providers have not received any training specific to treating patients who are currently in confinement.

Specifically, medical professionals have not received training on PREA, PREA Standards, or their professional role in the treatment and support of patients who are victimized as inmates. SANEs also raised concerns about treating patients who need medical treatment due to perpetrating abuse (*i.e.*, the perpetrator may have been injured during commission of the abuse). This lack of training has led to some confusion as to proper protocols and responses at the time that patients who are inmates seek treatment. This lack of training has also led to some inactivity, because the SANEs have not felt empowered to improve their practices or even ask questions because they do not know enough to even know what to ask.

Strategies

The state SANE coordinating agency provides training for conducting medical forensic examinations, and the International Association of Forensic Nurses (IAFN) provides training for SANEs on treating patients who are inmates. In addition to training, it is important to engage SANEs and medical professionals who treat inmates who present with a history of sexual abuse (or those who present as possible perpetrators of abuse but also need a forensic exam) by educating them about PREA and the Standards. For medical professionals and SANEs, the Standards have implications that require specific guidelines and protocols for the provision of treatment, safety of medical professionals, and privacy for patients, among other concerns.

Barrier: Absence of protocols for medical professionals who may treat a victim prior to that victim being examined by a SANE.

In many confinement facilities, a victim of sexual abuse is examined in some manner by medical professionals inside the facility prior to being transported to an outside facility for an examination conducted by a SANE or other trained medical professional (when a SANE is not available). SANEs have expressed concern that medical professionals employed within confinement facilities may inadvertently destroy or diminish the availability of evidence and that those medical professionals would not have the necessary expertise to treat – or even stabilize – victims of sexual abuse or to communicate effectively with such victims. Without guidelines and protocols in place, there may be unanswered questions about appropriate treatment and communication.

Strategies

The U.S. Department of Justice, Office on Violence Against Women, published A National Protocol for Sexual Assault Medical Forensic Examinations: Adults/Adolescents, Second Edition.⁶⁹ The protocol states: “Recognize that every minute patients spend waiting to be examined may cause loss of evidence and undue trauma. Individuals disclosing a recent sexual assault should be quickly transported to the exam site, promptly evaluated, treated for serious injuries, and offered a medical forensic exam.”⁷⁰ This protocol was adapted specifically for confinement facilities in Recommendations for Administrators of Prisons, Jails, and Community Confinement Facilities for Adapting the U.S. Department of Justice’s A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents.⁷¹ The document includes recommendations for “(1) the provision of victim-centered care (interventions provided in a timely manner that are systemically and deliberately focused on the physical, mental, and emotional needs of each victim) and (2) a coordinated team approach to response.”⁷² This protocol, as well as the recommendation of other experts, encourages health care professionals at confinement facilities to perform a minimal examination and provide emergency treatment for acute injuries, and then to quickly transport the victim to the hospital for a comprehensive sexual assault forensic examination. While the PREA Standards do not have a timeframe for evidence collection, most jurisdictions call for such collection within 72-120 hours post incident, with exceptions determined on a case-by-case basis. Correctional facilities should consult their local jurisdictions for allowed timeframes.

Barrier: Some SANEs expressed concerns for their personal safety during examinations, while others expressed outrage at treating patients who are handcuffed or shackled during a medical examination. There were also concerns over law enforcement remaining in the room for the duration of the sexual assault forensic examination.

Medical professionals do not know whether it is appropriate to handcuff or shackle an inmate during a sexual assault forensic examination (or any examination, particularly one that is lengthy and invasive). Disagreement between corrections staff, law enforcement, and SANEs over handcuffing and shackling may lead to delays in treatment as well as disagreements in front of a victim, which could cause the victim embarrassment and discomfort and leave him/her feeling unsupported during this process. Professionals are looking for guidance to address safety and security issues while being able to support a victim of sexual abuse. SANEs also felt that having law enforcement present during such a comprehensive and invasive exam would traumatize the victim. Another concern raised was that patients may share things with nurses and physicians in seeking treatment that patients would not share if law enforcement were present. SANEs expressed concern that if these statements, for purposes of medical diagnosis and treatment, would possibly not be shared, thus inhibiting their ability to effectively treat the patient.

Strategies

Professionals should come together to develop clear policies that are communicated to all responders so the examination process runs smoothly, with the safety and security of all parties – including victims and responders – given foremost consideration. Responders can start by touring the hospital examination site and determining what precautions should be in place to ensure the safety of the medical examiner and the privacy of the victim (e.g., having the law enforcement officer outside of the examination room with a window in to keep sight of the victim). On the issue of restraints, Recommendations for Administrators of Prisons, Jails, and Community Confinement Facilities for Adapting the U.S. Department of Justice’s A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents states: “If, for security purposes, victims from prisons and jails must be shackled or otherwise restrained, ensure the level of shackling/restraint correlates with their security status. However, shackle or restrain only if necessary for security.”⁷³

Barrier: Professionals are unclear about who pays for examinations and SAFE kits for cases of sexual abuse in confinement.

SANEs expressed concern that there had been no clear communication from confinement facilities or the state regarding who pays for exams for patients who are inmates. Concerns over payment could present unnecessary distractions and concerns for both SANEs and patients.

Strategies

The PREA Standards state that a victim of sexual abuse cannot be charged for emergency medical costs, the forensic examination, or the SAFE kit.⁷⁴ As a condition of receipt of certain federal grant funds, “all states and territories must certify that the state or another governmental entity bears the full out-of-pocket costs for sexual assault medical forensic examinations.”⁷⁵ Because states vary in their exam payment processes, multiple agencies, including the state victim compensation fund, the statewide SART-SANE organization, medical facilities, and the state Department of Corrections or county or local authority should communicate to establish policies concerning billing. In the project jurisdiction, the state’s victim compensation fund reimburses the costs associated with examinations for victims of sexual abuse outside of confinement, and confinement facilities are billed for cases of sexual abuse that occurred in their facilities. The project jurisdiction determined it would be helpful for them to develop a Memorandum of Understanding between each facility and the corresponding health care facility so there would be no ambiguity about services and billing.

Barrier: In jurisdictions with an ambiguous, incomplete, or no anonymous reporting statute or policy, SANEs wondered how to “report” a case of sexual abuse that occurred in confinement if the victim had already been released from confinement.

SANEs wondered whether they were supposed to contact the facility directly. They also wondered how their reporting sexual abuse could be consistent with their duty to receive information from patients anonymously.

Strategies:

Where the victim is outside of confinement at the time of the report, he/she should be able to receive services as any member of the community would. SARTs and PREA Coordinators should work together to determine a safe way for reports to be made to the facility in which the sexual abuse occurred so that the facility can protect other inmates from the abuser and maintain its security. This is one of the many examples of the importance of having confinement professionals – perhaps the PREA Coordinator – participate in SART meetings, when possible. The establishment of professional relationships can help resolve this confusion and answer similar questions. National experts can help as well.

Barrier: SANEs and law enforcement expressed concerns about who should transport and store the SAFE kit for cases of sexual abuse in confinement.⁷⁶

This was a particular concern for cases where the victim was not making an official report to law enforcement (*i.e.*, cases involving anonymous reports).

Strategies

The security and chain of custody of the SAFE kit must be prioritized in determining the best practice for holding SAFE kits. In some jurisdictions, law enforcement holds all kits. Kits involving assaults that have been anonymously reported, or where the victim is undecided about whether to participate in the investigation of the case, may be stored by law enforcement or by the SANE program or corresponding hospital or county facility. The best practices depend upon what can and does work in a jurisdiction; however, if possible, all kits not immediately being transported to the lab for testing should remain in one safe place.

Barrier: Professionals working on a multidisciplinary response to cases of sexual abuse in confinement would like to create a SART for victims of these crimes.

The barriers identified in this report suggest that responding to sexual abuse in confinement is a difficult and complex issue. Part of that stems from the fact that many of the key professionals who are crucial to an effective response work in their individual domains without seeing the larger continuum. This is particularly challenging in states where all counties or regions do not already have community-based SARTs off of which they can build confinement-based collaborative responses and SARTs.

Strategies

Jurisdictions should consider building onto their already-existing community-based responses in striving to develop a SART that responds to incidents of sexual abuse in confinement. There are several resources available that address this specific issue, and they can be accessed through the PREA Resource Center’s archived webinars and a library of resources, available at <http://www.prearesourcecenter.org/>. Two particularly helpful resources for SART development are: Developing Facility-Level SARTs webinar, available at <http://www.prearesourcecenter.org/training-and-technical-assistance/webinars/1867/developing-facility-level-sexual-assault-response-te>, and Sexual Assault Forensic Protocol Guide for Corrections: Working Together to Provide a Collaborative Victim-Centered Response, available at <http://www.prearesourcecenter.org/training-and-technical-assistance/webinars/1795/sexual-assault-forensic-protocol-guide-for-correctio>.

C. ADVOCACY

The state has a statewide sexual assault coalition and many, but not all, of its counties and regions have established SARTs. Advocates in counties with and without SARTs expressed an interest in learning more about the dynamics and response to sexual abuse in confinement, including the PREA standards. They had concerns about treating patients who are inmates, payment of exams, and working with law enforcement to support patients. They were interested in working more with other multidisciplinary professionals to improve the overall response to victims of sexual abuse in confinement.

Barrier: Advocates in the project jurisdiction and in other areas throughout the country reported they had reservations about supporting inmate-victims, having had no special training to work with the inmate population.⁷⁷

Advocates did not feel that they were trained on the specific dynamics of sexual abuse in confinement. They wanted information and education on the special services and response that these victims may require, as well as training on institutional culture and dynamics. In addition, although advocacy organizations want to support survivors of sexual abuse in confinement, as discussed above, there are concerns over the possibility of a rape crisis center serving as the recipient of inmate reports of sexual abuse.⁷⁸ Advocates felt they could not maintain *privacy* for victims or for their confidential communications, and that their role would be blurred, since the standard requires that the receiver of reports “immediately forward inmate reports of sexual abuse and sexual harassment to agency officials.”⁷⁹

Strategies

Advocates can become more acquainted with the confinement culture and facility by taking a tour of the facility. They can work to ensure privacy by making sure there is a safe, secure place for the rape crisis advocate and the inmate to meet, drawing up clear policies regarding the nature and scope of the professional relationship between the rape crisis advocate and the victim. Due to the confidential relationship between advocates and victims, advocacy organizations should not serve in the role of report recipients obligated to forward reports to agency officials. This role could put the organization and the responding advocate in the position of acting as an arm of law enforcement, thereby placing the advocate-victim confidential relationship in jeopardy (see [Section III, A Corrections](#)). Advocacy organizations can, however, support victims of abuse in confinement in other ways. They can provide advocates to serve in the SART, and can provide counseling to victims after the abuse has been reported. Many advocacy organizations already run individual or group counseling programs in confinement facilities across the nation.⁸⁰ As far as training, in the project jurisdiction, victim advocate certification requires 25 initial hours of training, plus an additional 8-16 hours of annual training. Training specific to sexual abuse in confinement should be included in the initial as well as the annual training. In addition, corrections officials noted that the vast majority of victims in confinement are males, so advocates who have not received specialized training in supporting male survivors should receive training in this area. Advocates should also help other responders. During the project meeting, one correctional facility mentioned that it did not know of any experts who could train its staff on trauma-informed care; representatives from two other facilities responded with suggestions of specific experts, thus solving a problem that had plagued the former facility for months. All agencies and individuals are encouraged to share information within their state, to connect with their state sexual assault coalition, and to reach out to national technical assistance providers for additional suggestions.

Barrier: The provision of confidential counseling and services is a cornerstone of the PREA Standards, and advocates and other counseling professionals who may potentially provide such services are concerned that they will be unable to communicate in private with a inmate-victims.⁸¹

Professionals are seeking guidance and communication from confinement facilities on how, when, and where counseling will be able to occur in a manner that upholds their professional duties and responsibilities.

Strategies

Implementation of this standard should begin with honest conversation, and will require education and training. Jurisdictions that have set up ways for victims to communicate confidentially with advocates/counselors should be cross-training others who have yet to set up a system. Professionals from those jurisdictions should share information about the benefits of having a confidential relationship between victims and advocates – that victims feel supported, receive needed services, and are more likely to participate in the criminal justice process, which means the abuser is more likely to be held accountable in a meaningful way.⁸² In states that already provide for confidentiality through statutes or other rules, advocates and corrections staff should meet to determine how inmate-victims can access advocates in a manner that will be private and safe for all concerned. Corrections officials should discuss in detail exactly where corrections officers will or will not be during these confidential communications so that the victim’s rights and the advocate’s professional responsibilities are supported and clear to everyone in the system.⁸³ In jurisdictions that do not legislatively or otherwise provide for confidential communications between a victim and an advocate, perhaps the PREA Standards can serve as the impetus for educating legislators and others in positions to develop law and policy on the importance of this confidential relationship.

Barrier: Advocates in this jurisdiction are prohibited from providing services to inmates under some current funding restrictions.

The PREA Standards require that inmates have access to outside confidential support services – specifically, “outside victim advocates for emotional support services related to sexual abuse.”⁸⁴ In the project jurisdictions, however, the advocacy organizations reported concerns that their receipt of Victims of Crime Act (VOCA) funding prohibited them from providing advocacy services to victims of sexual abuse in confinement.⁸⁵

Strategies

National expert organizations, including the PREA Resource Center, which support the implementation of PREA Standards have provided the following resources and strategies to address this funding issue:

- a. A funding tip sheet created by Just Detention International (JDI), the Office for Victims of Crime (OVC), and the Office on Violence Against Women (OVW) clarifies what is and is not allowed from various funding sources. The information is available at:
<http://www.prearesourcecenter.org/sites/default/files/library/communityfundingfactsheet050613.pdf>.
- b. The PREA Resource Center has provided clarification on use of VOCA funds:
 - i. VOCA funds cannot be used to assist incarcerated victims, but VOCA does not restrict the use of *other* funds used by victim services agencies to serve these individuals.
 - ii. OVC has hosted a public comment period in connection with its consideration of whether to change the current restriction on this use of funds. If the funding restriction is lifted, these funds may be available for use in the future.
 - iii. Centers that employ only one staff member, whose position is wholly VOCA-funded, may find themselves in a difficult position. Such centers should reach out to national experts, including JDI, to consider alternatives, including the use of experienced volunteers who have been appropriately trained.
- c. The PREA Resource Center provided information about the use of OVW funds:
 - i. If a hotline is funded in any part with Violence Against Women Act (VAWA) funds, the organization cannot use the hotline to accept reports pursuant to the external reporting standard. The standard requires the report to be forwarded to the correctional facility, allowing the person reporting to remain anonymous. VAWA funding, however, does not allow information collected via the hotline to be shared at all.
 - ii. If a hotline is funded through another source that permits this kind of information exchange, then that hotline can serve as the external reporting option.

In strategizing to develop alternative ways to develop or fund advocates, members of the project jurisdiction suggested training chaplains or former inmates to provide support services for victims.

Barrier: Juvenile facilities face barriers similar to those faced by adult facilities, but have different resources aimed at their specific needs from which to draw.

Juvenile facility administrators and staff raised particular concerns about parental or guardian notification when a minor victim has reported or is being medically treated for an incident of sexual abuse. In addition, juvenile victims often lack access to advocacy and counseling services as survivors of sexual abuse in confinement.⁸⁶

Strategies

Jurisdictions have various requirements about notification of parents or guardians when a juvenile has been victimized or receives medical treatment for an incident of sexual abuse. Juvenile facilities should contact their local child protective services agency, juvenile law center, law enforcement, and/or district attorney’s office for information related to parental notification. Juvenile justice departments and individual juvenile justice facilities and camps should look to the PREA Resource Center and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) for guidance on their specific issues and needs.⁸⁷ Suggestions raised by the project jurisdiction included communicating with child advocacy centers and universities in the state that could provide support and ideas specific to the juvenile population. The centers and universities may already have professionals trained to support the special needs of juvenile victims. If they do not, there are other ways to increase the number of professionals trained in these areas. These might include internships or fellowships focused on the needs of juvenile victims in custody, or specialized training on juvenile counseling for advocates and social workers. Participants suggested that funding for such specialized training might be secured from the state juvenile justice department or divided among the counties as part of the cost of housing and rehabilitating juvenile youth.

D. LAW ENFORCEMENT

Local law enforcement can become involved with sexual abuse in confinement at various stages and points in the case. They may respond to a case of inmate-perpetrated sexual abuse in confinement, and may refer cases involving staff-perpetrated sexual abuse to a statewide law enforcement agency. Law enforcement in the project jurisdiction become involved in cases at the discretion or assertion of the confinement facility, who are required to report all suspicions of abuse under the Standards. Local law enforcement expressed concerns about the veracity of reports, victim participation in the investigation, and working with allied criminal justice professionals to increase the number of cases that made it to trial.

Barrier: While all participants acknowledged that the Standards require that facilities accept anonymous reports, and that anonymous reporting is important for promoting victim support, facility safety, and potential abuser accountability, participants expressed their skepticism that a report of sexual abuse in confinement could ever actually be anonymous (see [Section, III A Corrections](#)).⁸⁸

No statute or guideline in the project jurisdiction provides a means for victims of sexual abuse to make an anonymous report, whether inside or outside of confinement. In current practice, all incidents of sexual abuse in confinement result in immediate notification to law enforcement so that an investigation can be conducted. According to one law enforcement representative at the meeting, a victim of sexual abuse was required to decide, at the time of the report, whether he or she wanted to proceed with a criminal investigation. The jurisdiction, therefore, expressed concern about achieving PREA compliance while still protecting their inmates.

Strategies

Departments and jurisdictions across the country have developed a variety of reporting options.⁸⁹ One option is for law enforcement to respond to incidents of sexual abuse in confinement by filing an “Information Only” report. Such a report allows law enforcement to acknowledge they have received a report, and thus can conduct an investigation as required by PREA, while protecting the victim’s rights by not compelling the victim’s participation in the investigative process.

Barrier: Cases of staff-on-inmate abuse are very often characterized as “consensual.”

Law enforcement reported that both the victim and the staff-abuser frequently provide statements that they were engaged in a “consensual relationship.” During the meeting in the project jurisdiction, one administrator even noted that there is an “us” (confinement staff) against “them” (inmates) culture in institutions that often inhibits staff from reporting that another staff member is sexually abusing (or engaged in a “sexual relationship” with) an inmate. In the project jurisdiction, as well as other jurisdictions across the country, a “consensual” act of penetration between a staff member and an inmate is charged as a lesser offense – either a lower level felony or a misdemeanor.⁹⁰ While such an act may lead to the termination of the staff member and possibly a misdemeanor conviction, the other repercussions were limited. Members of law enforcement, as well as professionals from other disciplines, indicated a desire to seek justice on behalf of the individual victim and the larger corrections and justice systems.

Strategies

All allied criminal justice professionals must keep in mind the inherent inequality that exists between confinement staff and inmate.

“It is hard to conceive of any relationship between two adults in America being less equal than that of prisoner and prison guard. The formal relationship, enforced by the institution, is that one person’s word means everything and the other’s means almost nothing; one person can command the other to do just about anything, and refusal can result in total physical restraint [W]hen you step behind the walls of a prison as an inmate, you lose [the] right [to speak to power].”⁹¹

Even when a victim indicates that he or she “consented” to any sexual contact or penetration with a staff member, corrections investigators, law enforcement, and prosecutors must ask themselves if such a scenario is even possible.⁹² It is possible, if not probable, that inmates would think they could not refuse the contact or penetration, less they suffer severe consequences, including the possibility of being segregated, losing a desirable work assignment, punishment by extending their stay in confinement, or worse.⁹³ At a minimum, contact between a staff member and an inmate is coercive in nature. Professionals assigned to interview inmate-victims should take time to establish a rapport with the victim and work with other professionals, particularly advocates, to ensure they are taking their time to work with the victim to determine the extent of the staff member’s conduct. Investigators should also conduct thorough investigations into the staff member to determine if there are potential 404(b) witness or other witnesses who could corroborate coercion.⁹⁴ Prosecutors should work hand-in-hand with corrections and law enforcement to leave no stone unturned in exploring the extent of the staff-abuser’s criminal conduct. In addition, a review of national statutes and case law indicates that several jurisdictions strictly prohibit any sexual penetration between a staff member and an inmate; forty-two states criminalize “correctional” relationships including those in juvenile detention and other state or federal incarceration or rehabilitation programs, as well as with law enforcement.⁹⁵ Further, inmate-victims need support, counseling, and treatment regardless of whether the criminal charge is a felony or a misdemeanor. Classification of the criminal offense should not dictate how the incident is handled. In states with a lesser-included offense committed “without consent,” investigators should be careful to look for coercive factors that might be sufficient to bring the more serious criminal charges.

Barrier: Administrative hearings do not often reach a just outcome in cases of inmate-on-inmate sexual abuse that are allegedly consensual.

Unlike cases involving staff-abusers, that are per se criminally prohibited in some form in every jurisdiction, cases involving inmate-abusers that are ultimately classified as consensual may involve only an internal hearing or disciplinary infraction for both parties. Internal investigators are looking for tools to help them conduct an investigation that will lead to the truth and protection of all parties.

Strategies

Research and anecdotal evidence suggest that the conduct is often explained by both the abuser and the victim as “consensual” (for many reasons, including the victim’s fear of further victimization at the hands of this or another abuser, the victim’s fear of being labeled a snitch, and the victim’s desire to be left alone so he can successfully complete the term of incarceration without delay); internal and law enforcement investigators should carefully investigate to try to determine whether there was sexual abuse. In its discussion of nonconsensual sexual activity in confinement, the DOJ protocol has an insightful discussion of dynamics that is useful to all investigators in considering the issue of coercion:

“An individual housed in a correctional facility may engage in sexual activity with another through coercive means – for example, a person may agree to sexual contact as a result of being threatened, intimidated, or bribed, or to pay off debts for protection, items, or services.⁹⁶ Protective pairings are quite common in male prisons and jails, whereby a vulnerable inmate exchanges sex with a physically stronger inmate for protection from rival gangs or violent inmates. A dynamic more unique to females in prisons and jails is participation in facility-based ‘families’ (whereby females housed in the facility band together and even take on roles of parent, sister, aunt, etc.) and intimate relationships.⁹⁷ Females may report sexual assault occurring to someone in their ‘family’ as a protective measure. For example, they might report their concern that a fellow inmate is unable to extricate herself from a sexual ‘relationship’ with a corrections staff member who has a history of abusing women. In female facilities, there may also be domestic violence occurring between female ‘couples’ that includes sexual assault.”^{98, 99}

Other relevant dynamics, such as gang activity or ad hoc groups of inmates who seek to dominate and control other inmates, are important to consider in determining whether sexual activity was the result of coercion.¹⁰⁰ Investigators may want to interview other inmates about the abuser’s activities, behavior, and associates. A review of surveillance footage to see whom the abuser spends time with and how he or she interacts with other inmates may also be helpful.

Barrier: Corrections staff are not typically trained on how to investigate reports of sexual abuse. They often are not familiar with the different types of sexual abuse crimes – particularly sexual harassment – and whether or not certain behaviors constitute a criminal offense.

Cases involving sexual harassment, sexual bullying, and unlawful contact (i.e., touching without penetration) have presented challenges for corrections and law enforcement to investigate.¹⁰¹

Strategies

Often, these incidents – like other forms of sexual abuse – will occur when no witnesses are around. These behaviors are designed to intimidate and silence an inmate. Investigators should look for corroboration whenever possible. Determine whether there are witnesses who saw or heard anything, and speak to other inmates and staff to determine whether the abuser has a history of intimidating behavior. In addition, investigators should look into past prison/jail records, juvenile justice records, and even school or other records to determine whether the abuser has engaged in similar behavior in the past. If the abuser is a staff member, investigators should carefully interview other staff and inmates to attempt to corroborate the report. Sexual harassment, bullying, and unlawful contact should be approached in a manner consistent with all reports of sexual abuse – believe the victim and follow the evidence until there is a reason to do otherwise. These acts should be thoroughly investigated and appropriately charged whenever possible. It is important to note that the initial report may not tell the whole story. During a pre-meeting phone call, one investigator from the host jurisdiction noted that when a report of unlawful contact is made, with no allegation of penetration, the crime scene is routinely secured, in the event that additional abuse is later disclosed. This investigator noted that often such reports come from male inmates who report being victimized by another inmate; such victims generally decline to give statements to law enforcement, although they do ask for an immediate cell transfer.

Barrier: Witness intimidation is a chronic issue in confinement facilities and can have devastating consequences on victim safety and on the ability to prosecute abusers.

Intimidation frequently is a factor in the underreporting of incidents of sexual abuse in confinement. Even when incidents of sexual abuse are reported, however, intimidation and retaliation often result in recantation, hindering the ability of the victim to safely participate in the investigation or prosecution, and ultimately allowing abusers and intimidators to commit crimes unfettered. For more information on underreporting see, [Section III, A Corrections](#).

Strategies

As discussed above, there are several PREA Standards that are designed to protect inmates and staff from intimidation and retaliation and provide disciplinary sanctions for inmates or staff engaging in such conduct.¹⁰² Practically speaking, the first step in preventing witness intimidation is to thoroughly educate inmates and staff about the subject. Information about witness intimidation and retaliation should be included in all inmate orientation. Inmates should be told that the facility has zero tolerance for intimidation and retaliation. Inmates should be provided with examples of intimidating conduct, informed of multiple safe ways such conduct can be reported, and assured that the facility and law enforcement will investigate and hold intimidators accountable for their acts. Staff should be thoroughly trained on how to recognize intimidation, how to intervene in order to protect victims, and how to appropriately respond to and investigate it.¹⁰³

Barrier: Participants from confinement facilities, law enforcement, and prosecutor’s offices in the project jurisdiction spoke of a desire, and even a “need,” to polygraph victims who report sexual abuse in confinement, and asserted that polygraphing victims was an important investigative tool.¹⁰⁴

In support of polygraphing victims of sexual abuse, some participants argued that the Violence Against Women Act (VAWA) permits polygraphing as long as law enforcement doesn’t present the polygraph as a condition of the agency proceeding with an investigation or prosecution.¹⁰⁵

Strategies

Several states, as well as the PREA Standards, outright bar law enforcement from even requesting that a victim take a polygraph as a condition of or during an investigation for sexual abuse.¹⁰⁶ “The use of polygraph tests often undermines the recommended best-practice of using a victim-centered approach to a sexual assault investigation. If a victim refuses a polygraph test or fails it when she is in fact telling the truth and law enforcement decides to close the case, the effect is two-fold: assailants will not be held accountable and will thus be free to commit subsequent acts of sexual violence against other members of the community, and the recovery of the victim will be impeded and complicated.”¹⁰⁷ Further, “[t]he use of a polygraph test by investigators to determine the validity of a sexual assault complaint or the credibility of the victim is likely to be harmful to both the investigation and the victim. Resources are available to assist communities in conforming to VAWA requirements. In particular, the examples set by states such as California and Connecticut, in which law enforcement may not request a polygraph of a victim are helpful guides.¹⁰⁸ Victim advocates, law enforcement, and prosecutors are important collaborators in developing victim-centered policies and procedures. State and Territory Sexual Assault Coalitions can be an integral resource in this effort. Law enforcement representatives who are in compliance with the VAWA requirements may also provide trainings to advocates to help them better understand the nuances of the legal process. Collaboration between community organizations that facilitate the prosecution of sexual abuse cases may ultimately aid in the development of victim-centered protocols. Continued progress must be made to protect victims of sexual abuse from experiencing further trauma through polygraph testing.”¹⁰⁹

Other harms and negative implications associated with polygraphing victims include:

- Historically, the only investigations in which a victim has been asked to take a polygraph have been cases involving sexual abuse of a female.
- The mere suggestion that a victim take a polygraph is a clear indication that investigators do not believe him or her.
- The mere suggestion that a victim take a polygraph may be construed as a passive aggressive way to suggest he or she not proceed with the investigation.
- The mere suggestion that a victim take a polygraph will lead to him or her feeling – at a minimum – unsupported, and thus decrease his or her chances of participating in the investigation and prosecution of the sexual abuser.
- Investigators and prosecutors assigned to investigate sexual abuse often have received specialized training. In fact, PREA requires that investigators assigned to sexual abuse cases be specially trained.¹¹⁰ The skills acquired during training and over time as these professionals continue to work on these cases provide them with the ability to assess credibility and to ask questions during interviews that allow them to get to the truth. Just as these investigators rely on their old-fashioned investigative skills to aid them in other cases, they should do so here.
- Investigators need to thoroughly investigate cases in order to gather evidence to corroborate the sexual abuse. This evidence gathering should indicate to them whether they could proceed to charging and prosecution.
- Polygraphs are not admissible in a court of law. Thus, even a “passing” polygraph result provides no material assistance to the prosecutor, who must rely on traditional evidence to prove the case in court. Solid, old-fashioned police work is what the prosecutor needs so that witness testimony can be corroborated, and the case presented to a factfinder and proved beyond a reasonable doubt.

Barrier: Some members of law enforcement are resistant to change their investigative practices related to cases of sexual abuse in confinement, believing their existing methods are suitable or best.

Some law enforcement investigators believe that they always have thoroughly and effectively investigated cases of sexual abuse in confinement, and thus, they neither need to learn about the PREA Standards, nor do they need to make any adjustments to their manner of investigating these cases.

Strategies

Confinement facilities *must* comply with PREA, so it is important that law enforcement modify its practices in order to improve the coordinated response to sexual abuse in confinement. In contemplation of the Standards and other available information on responding to sexual abuse, confinement institutions and allied professionals are changing their response to incidents, and law enforcement should also determine whether modifications would improve investigative techniques and support PREA compliance. At the same time, law enforcement should take full advantage of the improvements in communication, coordination, and resources spurred by the PREA Standards and compliance efforts.

Criminals – particularly sexual abusers –are constantly refining their behaviors to evade our notice and escape accountability. Investigators must be trained to understand sexual abusers’ manipulative behaviors and tactics, or investigations will fail to uncover helpful evidence, victims will be unsupported, and abusers will remain unaccountable for their crimes. Knowledge of PREA and the Standards will help investigators understand policies and systems designed to support investigations. In addition, investigators must be trained on how to conduct investigations of sexual abuse that occur *in confinement*. The National Institute of Correction and the PRC website offer e-learning courses and resources specifically for these crimes.

E. PROSECUTION

Prosecuting sexual abuse in confinement, while a major focus and primary goal of the Victims Behind Bars project, was not heavily discussed during the meeting. The reality is that few of these cases are being brought to trial. This can be attributed to underreporting, law enforcement not investigating or bringing cases to prosecutors, prosecutors not charging or pleading cases down to lesser offenses, and a host of other possible reasons. The barriers below were primarily identified in pre-meeting conversations but also stem from anecdotal experiences of the PRC’s and Æquitas’ work on sexual abuse in confinement.

Barrier: Prosecutors expressed concern over their ability to prepare for trial in cases of sexual abuse in confinement, identifying common challenges in these cases.

Prosecutors cited particular challenges in obtaining corroborative evidence to introduce at trial. They felt strongly that this type of evidence was crucial to have in seeking to convict an abuser.

Strategies

Prosecutors should consider all potential sources of corroboration, including fresh complaint witnesses, first responders, any witnesses or video recordings that can place the victim and defendant in proximity to the sexual abuse location, any witnesses who may have come into contact or observed demeanors of the victim or defendant before or after the sexual abuse, medical professionals and SANEs, experts who can testify regarding victim behavior, and investigators. Prosecutors should carefully examine their statutes, case law, and jury instructions that indicate that a victim’s statement alone, if believed by the factfinder, is sufficient evidence to convict a defendant of sexual abuse.¹¹¹ This instruction should be emphasized to the finder of fact in closing arguments.

Barrier: Charging and prosecuting cases that include reports of “consensual” contact or penetration, and developing strategies to hold such abusers accountable.

Despite the statutory language specifically precluding any sexual contact between staff and inmates, participants noted that factfinders (*i.e.*, judges or juries) were unlikely to hold perpetrators accountable and more likely to blame victims because those factfinders failed to appreciate the power dynamic inherent in the corrections staff/inmate relationship or because they viewed the victim as unlikeable.

Strategies

Prosecutors must lay the foundation for abuser accountability in *voir dire*, during which they pose questions to jurors as to whether they understand their responsibility to follow and apply the law.¹¹² Through the course of the trial, prosecutors must establish the control that corrections staff have over inmates. They may also want to pose questions to the victim on direct that expose the victim’s reliance on the staff member for safety, as well as other indications of victim vulnerability. Prosecutors should introduce expert testimony to explain sexual violence victim dynamics.¹¹³ Through the victim’s testimony, as well as through other evidence, where possible, bring out examples of grooming/manipulation by the abuser. Ensure arguments lay out the impossibility of this relationship being consensual.¹¹⁴

Barrier: Anticipating and preparing for a lack of victim involvement in the case.

Prosecutors and allied criminal justice professionals expressed concerns about cases in which the victim does not want to testify (or refuses to testify) at trial.

Strategies

Providing support for the victim may enable the victim to testify. Prosecutors should check to see if an advocate did in fact respond to the sexual abuse incident; if not, they should attempt to put the victim in contact with an advocate. Recognize that these cases are heavily victim reliant; however, if there is independent evidence of penetration or contact, prosecutors should pursue cases, when possible, without the victim. Prosecutors should also work with law enforcement and confinement officials to have better investigations of intimidation and other attempts by the perpetrator (or others) to prevent the victim’s testimony; such attempts can lead to more charges and may even empower the victim to testify. In cases involving intimidation that intended to and did cause the victim’s unavailability at trial, prosecutors should explore the option of proceeding via forfeiture by wrongdoing.¹¹⁵

Barrier: Anticipating and preparing for the victim’s reaction due to the criminal justice process and pressures.

Prosecutors and allied criminal justice professionals expressed concerns about cases in which victims recant prior to trial or during their trial testimony.

Strategies

It may be difficult to proceed in a case where the victim recants. The prosecutor should consider whether the victim is currently willing to testify, and whether and how the victim and other potential witnesses can explain the recantation. If permissible, and after proper notice to the defense and court, prosecutors may want to consider calling the victim if he or she will establish the critical statutory elements and/or if there is independent evidence that can be introduced in addition to the testimony. In some cases, general expert testimony on victim behavior can be used to provide some reasons for recantation. As discussed above, a thorough investigation related to intimidation and retaliation may allow for additional charges and possibly introduction of hearsay statements pursuant to forfeiture by wrongdoing.

There are many possible explanations for recantations. In some cases, the victim simply wants the process – the investigation, the trial, and all of the complications that invade a victim’s life as a result of participating in a sexual abuse criminal prosecution – to stop, and may believe that recanting is the only way to stop the process from continuing. In other cases, the victim may believe that he/she is or was in a loving or protective relationship with the abuser and may not want to get him/her in trouble. In these instances, prosecutors may pose arguments that mirror statutory sexual assault crimes and other strict liability sexual assault cases. In cases involving recantation where intimidation is present, prosecutors should develop questions that flesh this out in a way that will not compromise the victim’s safety.

Barrier: Few cases involving sexual abuse in confinement are prosecuted.

During pre-meeting phone calls, Æquitas asked the corrections, law enforcement, medical professionals, and advocates: (a) how often they have testified at any stage of a criminal trial, (b) how often they heard of cases of sexual abuse in confinement getting charged and prosecuted, (c) how often they heard of *any* case of sexual abuse (*i.e.*, outside of confinement) being charged and prosecuted. Participants stated that cases they knew of that had proceeded to trial had occurred in the community and involved child victims and/or adult family member defendants. They believed that some cases resulted in guilty pleas rather than proceeding to trial.

Strategies

Prosecutors who are trained on the dynamics of sexual abuse in confinement will be in a better position to understand the evidence presented by law enforcement, look for corroborating evidence, and engage relevant witnesses and experts who can support a prosecution. Improved communication between corrections officials and staff, law enforcement, and prosecutors is crucial to developing informed strategies in these cases. All sexual harassment and abuse cases that are believed to be criminal should be referred to law enforcement and prosecutors so that a proper factual and legal analysis can occur. A multidisciplinary team, possibly a task force or case review board, can be convened to look at all of the cases that arise out of confinement and bring a collective wisdom to the investigations and prosecutions that arise as a result. That team may also serve to maximize the ability to gather evidence in cases, and better educate all of the professionals on what types of evidence to look for, which could lead to increased victim support and a greater potential for abuser accountability.

Barrier: Prosecutors struggle with appropriate *voir dire* questions in cases of sexual abuse in confinement.

Particularly in jurisdictions in which the prosecutor cannot or does not conduct *voir dire*, prosecutors are seeking ways in which they can determine which jurors have biases and misconceptions about sexual abuse and victims in confinement that should disqualify those jurors.

Strategies

Voir dire practice can differ, depending on what state, county, and judge has jurisdiction over the case. Regardless, prosecutors can make a persuasive argument that jurors with firmly held but mistaken beliefs about rape are unlikely to be able to follow the court’s instructions on the law and that specific questioning in this area is the only way to determine the prevalence of rape myths in the jury panel. The prevalence of rape myths – and the potential of bias against an inmate-victim – weighs in favor of judges creating exceptions to the general rule of strictly limiting juror *voir dire* in sexual abuse cases.

Questions that prosecutors may want to ask include:

- Who are potential sexual abuse victims?
- What if someone puts him/herself in a situation that society might be judgmental about (e.g., a person in prostitution, a drug addict passed out on the street, etc.)? Can that person – who society thinks has put himself in a vulnerable position – still be a victim of crime? Can that person still be deserving of protection of laws?

Point out that victims of sexual abuse are not limited to women walking down a dark street; a male can be a victim; a person in prostitution can be a victim. Ask what kind of evidence jurors would expect from the state in a sexual abuse case; this line of questioning can lay the foundation for the prosecutor’s closing argument. For additional information on *voir dire* in sexual abuse cases, AEquitas has resources that are helpful.¹¹⁶

Barrier: Prosecutors struggled to combat defenses in sexual abuse in confinement cases.

Although the three available defenses in these cases are consent, total fabrication, or wrong abuser, participating prosecutors specifically noted challenges with defenses of total fabrication attached to a motive of the victim’s desire to change cell assignments.

Strategies

Sexual abuse cases that occur outside of confinement also face defense strategies incorporating allegations that the sexual abuse report is false and motivated by the victim’s desire to achieve a specific outcome. This common defense strategy highlights the importance of thorough investigations in which corroborative evidence is collected and documented. Further, prosecutors should use trial strategies common in sexual abuse cases, focusing on the facts that support the victim’s credibility. Such supporting facts include the circumstances of the disclosure and the demeanor of the victim, if relevant, in which prosecutors contrast the benefits the victim allegedly “gained” by the report of abuse with the hardships that he/she faced and continues to face as a result of the report of abuse, e.g., safety issues, isolation, invasive medical examinations, and others.

V. CONCLUSION

The Victims Behind Bars project offered the jurisdiction as well as AEquitas and the PRC the opportunity to look critically at the barriers that state and local institutions are facing when implementing the PREA Standards. The barriers identified during this project are very similar to those being faced across the country. AEquitas and PRC are hopeful that their outside consultation and review of the strategies that have worked for this jurisdiction and those that have not, as well as the provisions of resources available

across the country, will help to move this and other jurisdictions to improve their practices and responses to sexual abuse in confinement.

In order to ensure that a jurisdiction is responding appropriately to incidents of sexual abuse in confinement, multidisciplinary professionals must become educated on the dynamics of sexual abuse in confinement, collaborate in their response, and provide comprehensive services that are victim-centered with a goal of abuser accountability. Agency and community leaders should support the establishment of PREA-related protocols and work with professionals on the ground to ensure that those professionals are able to provide the highest level of services.

Jurisdictions should develop strategies that incorporate:

- Learning more about the PREA Standards that directly affect the multidisciplinary response to incidents of sexual abuse in confinement.
- Determining the steps that each professional discipline should take in order to become PREA compliant; identifying barriers; and creating action plans to overcome barriers.
- Creating a support network for victims in confinement through multidisciplinary community partnerships.
- Developing effective strategies, including effective witness interview techniques, for the investigation of cases of sexual abuse in confinement.
- Training on the dynamics of sexual abuse in confinement, including tactics employed by the abusers (whether staff or inmate) and common victim behaviors, which will enhance the effectiveness of investigative and other responses.
- Collaborating with allied professionals to improve the response to the intimidation of victims inside and outside of confinement.
- Effectively communicating with victims and witnesses so they are able to recognize and report intimidation.
- Increasing the number of cases prosecuted against sexual abusers.
- Analyzing whether to incorporate intimidation into the underlying case or charge as an independent case.
- Developing offender-focused prosecution strategies.

APPENDICES

APPENDIX A. VICTIMS BEHIND BARS MEETING AGENDA

9:00 – 9:05	WELCOMING REMARKS
9:05 – 9:35	INTRODUCTIONS
9:35 – 9:45	REVIEW FACT PATTERN
9:45 – 10:45	PREA STANDARDS AND HOW THEY IMPACT YOUR JOB <i>This activity will assist participants in being better able to:</i> <ul style="list-style-type: none">• <i>Discuss the PREA Standards that impact their professional responsibilities</i>• <i>Perform their jobs in a manner consistent with the PREA Standards</i>• <i>Identify their role in the collaborative response to cases of sexual abuse in confinement</i>
10:45 – 11:00	BREAK
11:00 – 12:00	CASE STUDY: State v. Dan Douglas <i>This activity will assist participants in being better able to:</i> <ul style="list-style-type: none">• <i>Identify the roles that multidisciplinary professionals play in responding to cases of sexual abuse in confinement</i>• <i>Execute their professional responsibilities in a manner that is geared toward supporting victims and ultimately holding offenders accountable</i>• <i>Prevent and respond to witness intimidation so as to support a victim’s ability to participate in the criminal justice process</i>
12:00 – 12:15	BARRIERS TO THE REPORTING, INVESTIGATION, AND PROSECUTION OF SEXUAL ABUSE IN CONFINEMENT <i>This activity will assist participants in being better able to:</i> <ul style="list-style-type: none">• <i>Evaluate the response to cases of sexual abuse in confinement along a continuum</i>• <i>Identify barriers to the successful reporting, investigation, and prosecution of sexual abuse in confinement</i>• <i>Discuss/summarize potential challenges to overcoming those barriers</i>
12:15 – 1:45	LUNCH

- 1:45 – 2:15** **SMALL GROUP EXERCISE: Strategies for Improving the Response to Cases of Sexual Abuse in Confinement**
During this activity, each group will develop strategies to overcome the previously identified barriers assigned their group.
- 2:15 – 3:00** **LARGE GROUP EXERCISE: Strategies for Improving the Response to Cases of Sexual Abuse in Confinement**
During this activity, a designee from each group will identify the strategies to overcome the barriers assigned their group
- 3:00 – 3:15** **BREAK**
- 3:15 – 4:15** **ACTION PLAN**
During this activity, participants will identify goals, action steps, responsible parties, time frames, outside partners, tools needed, and target dates for completion
- 4:15 – 4:30** **WRAP-UP AND ADJOURN**

APPENDIX B. ÆQUITAS AND THE NATIONAL PREA RESOURCE CENTER

Æquitas Resources

SPECIAL INITIATIVE

Prosecuting Sexual Abuse In Confinement <http://aequitasresource.org/special-initiatives.cfm>

TECHNICAL ASSISTANCE

ÆEquitas staff are available 24/7 for case consultation and technical assistance requests related to the prosecution of violence against women. Individual staff members can be reached during regular business hours by phone, email, instant messenger, and online submission requests. After normal business hours, an on call Attorney Advisor can be reached at (202) 558-0040.

LIBRARY

ÆEquitas' publications and resources are available for download and viewing at www.aequitasresource.org/library.cfm or upon request. You may also register online to stay informed and be notified by email when additional publications and resources become available.

Monographs

- Witness Intimidation - Meeting the Challenge
- A Prosecutor's Reference - Medical Evidence and the Role of Sexual Assault Nurse Examiners in Cases Involving Adult Victims

The Prosecutors' Resource

- Crawford and Its Progeny
- Forfeiture by Wrongdoing
- Witness Intimidation

STRATEGIES Newsletter

- Prosecuting Cases of Sexual Abuse in Confinement, Issue #8
- Educating Juries in Sexual Assault Cases Part I: Using Voir Dire to Eliminate Jury Bias, Issue #2

STRATEGIES in Brief

- Absence of Anogenital Injury in the Adolescent Adult Female Sexual Assault Patient, Issue #13

WEBINAR RECORDINGS For a full list of and access to webinar recordings, please visit

<http://www.aequitasresource.org/webinar-recordings.cfm>

- *Investigating and Prosecuting the Intimidation of Victims of Sexual Abuse in Confinement* available at <http://www.aequitasresource.org/trainingDetail.cfm?id=98>
- *Overview of Sexual Abuse in Confinement - An Introduction for Prosecutors* available at <http://www.aequitasresource.org/trainingDetail.cfm?id=83>
- *Pretrial Motions: Admitting and Excluding Evidence in the Prosecution of Sexual Abuse in Confinement* available at <http://www.aequitasresource.org/trainingDetail.cfm?id=88>
- *Trial Strategies for the Prosecution of Sexual Abuse in Confinement* available at <http://www.aequitasresource.org/trainingDetail.cfm?id=93>

National PREA Resource Center

The mission of the PREA Resource Center (PRC) is to assist state, local, and tribal confinement facilities nationwide in their efforts to eliminate sexual abuse by increasing their capacity for prevention, detection, and responses to incidents of sexual abuse including services to victims and their families.

The PRC is managed through a cooperative agreement between the Bureau of Justice Assistance (BJA) within the Department of Justice and the National Council on Crime and Delinquency.

Website: www.prearesourcecenter.org

Contact Us

PREA-related questions can be sent to info@prearesourcecenter.org

Additional Resources

- Bureau of Justice Assistance, https://www.bja.gov/ProgramDetails.aspx?Program_ID=76.
- Just Detention International, http://www.justdetention.org/en/mission_statement.aspx
- Washington College of Law's End To Silence: The Project on Addressing Prison Rape, <http://www.wcl.american.edu/endsilence/>

APPENDIX C. ADDITIONAL LEGISLATIVE INFORMATION

Victims of Crime Act (VOCA), Victim Assistance Grant Program, 67 Fed. Reg. 56,444-01 (Sept. 3, 2002)

D. Nonallowable Subgrantee Costs and Activities. The following services, activities, and costs cannot be supported with VOCA victim assistance grant funds. This list is not exhaustive.

2. Perpetrator Rehabilitation and Counseling. Subgrantees cannot use VOCA funds to offer rehabilitative services to perpetrators or offenders. Likewise, VOCA funds cannot support services to incarcerated individuals, even when the service pertains to the victimization of that individual.

Polygraphing Policy

“22 states have statutes forbidding any request or requirement that a sexual assault victim undergo polygraph examination. 8 states have statutes forbidding state employees from requiring a polygraph examination as a condition of proceeding with the case but do not forbid the request of a polygraph exam. 4 of these 8 states have additional protocol and requirements listed in the statute in order to protect the victims’ right to refuse polygraph testing. 20 states do not have a statute addressing the polygraph testing of sexual assault victims. However, even without official statutes these states have made commitments to be compliant with the Violence Against Women Act.

Every U.S. state, the District of Columbia, and the U.S. territories of American Samoa, Guam, Northern Mariana Island, Puerto Rico, and the Virgin Islands have all accepted STOP grant funds in some manner which require their compliance with the Violence Against Women Act. Funding has been granted to a variety of state governmental bodies including but not limited to: departments of justice, departments of public safety, and attorney general’s offices. See <http://www.ovw.usdoj.gov/fy2009-grants-content.htm#10> for full list of specific governmental departments that have accepted STOP funds.”

ÆQUITAS, STATUTORY COMPILATION ON POLYGRAPH TESTING OF SEXUAL ASSAULT COMPILATIONS (Nov. 2011)
available upon request at <http://www.aequitasresource.org/taRegister.cfm>.

42 U.S.C.A. § 3796GG-8 (2013). POLYGRAPH TESTING PROHIBITION

(a) In general

In order to be eligible for grants under this subchapter, a State, Indian tribal government, territorial government, or unit of local government shall certify that, not later than 3 years after January 5, 2006, their laws, policies, or practices will ensure that no law enforcement officer, prosecuting officer or other government official shall ask or require an adult, youth, or child victim of an alleged sex offense as defined under Federal, tribal, State, territorial, or local law to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of such an offense.

(b) Prosecution

The refusal of a victim to submit to an examination described in subsection (a) of this section shall not prevent the investigation, charging, or prosecution of the offense.

28 C.F.R. § 115.71 (21012). CRIMINAL AND ADMINISTRATIVE AGENCY INVESTIGATIONS.

(a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.

(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to [§ 115.34](#).

(c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

(d) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

(e) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff. No agency shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

(f) Administrative investigations:

(1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and

(2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.

(g) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.

(h) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.

(i) The agency shall retain all written reports referenced in paragraphs (f) and (g) of this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.

(j) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.

(k) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.

(l) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

Medical-Forensic Examination

42 U.S.C. § 3796GG-4 (2011). RAPE EXAM PAYMENTS

(a) Restriction of funds

(1) In general: A State, Indian tribal government, or unit of local government, shall not be entitled to funds under this subchapter unless the State, Indian tribal government, unit of local government, or another governmental entity incurs the full out-of-pocket cost of forensic medical exams described in subsection (b) of this section for victims of sexual assault.

(2) Redistribution: Funds withheld from a State or unit of local government under paragraph (1) shall be distributed to other States or units of local government pro rata. Funds withheld from an Indian tribal government under paragraph (1) shall be distributed to other Indian tribal governments pro rata.

(b) Medical costs

A State, Indian tribal government, or unit of local government shall be deemed to incur the full out-of-pocket cost of forensic medical exams for victims of sexual assault if any government entity -

(1) provides such exams to victims free of charge to the victim;

(2) arranges for victims to obtain such exams free of charge to the victims; or

(3) reimburses victims for the cost of such exams if -

(A) the reimbursement covers the full cost of such exams, without any deductible requirement or limit on the amount of a reimbursement;

(B) the reimbursing governmental entity permits victims to apply for reimbursement for not less than one year from the date of the exam;

(C) the reimbursing governmental entity provides reimbursement not later than 90 days after written notification of the victim's expense; and

(D) the State, Indian tribal government, unit of local government, or reimbursing governmental entity provides information at the time of the exam to all victims, including victims with limited or no English proficiency, regarding how to obtain reimbursement.

(c) Use of funds

A State or Indian tribal government may use Federal grant funds under this subchapter to pay for forensic medical exams performed by trained examiners for victims of sexual assault, except that such funds may not be used to pay for forensic medical exams by any State, Indian tribal government, or territorial government that requires victims of sexual assault to seek reimbursement for such exams from their insurance carriers.

(d) Rule of construction

Nothing in this section shall be construed to permit a State, Indian tribal government, or territorial government to require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursement for charges incurred on account of such an exam, or both.

(e) Judicial notification

(1) In general

A State or unit of local government shall not be entitled to funds under this subchapter unless the State or unit of local government –

(A) certifies that its judicial administrative policies and practices include notification to domestic violence offenders of the requirements delineated in section 922(g)(8) and (g)(9) of title 18 and any applicable related Federal, State, or local laws; or

(B) gives the Attorney General assurances that its judicial administrative policies and practices will be in compliance with the requirements of subparagraph (A) within the later of –

(i) the period ending on the date on which the next session of the State legislature ends; or

(ii) 2 years.

(2) Redistribution

Funds withheld from a State or unit of local government under subsection (a) of this section shall be distributed to other States and units of local government, pro rata.

42 U.S.C. § 14136A (2011). SEXUAL ASSAULT FORENSIC EXAM PROGRAM GRANTS

(a) In general

The Attorney General shall make grants to eligible entities to provide training, technical assistance, education, equipment, and information relating to the identification, collection, preservation, analysis, and use of DNA samples and DNA evidence by medical personnel and other personnel, including doctors, medical examiners, coroners, nurses, victim service providers, and other professionals involved in treating victims of sexual assault and sexual assault examination programs, including SANE (Sexual Assault Nurse Examiner), SAFE (Sexual Assault Forensic Examiner), and SART (Sexual Assault Response Team).

(b) Eligible entity

For purposes of this section, the term "eligible entity" includes -

(1) States;

(2) units of local government; and

(3) sexual assault examination programs, including -

(A) sexual assault nurse examiner (SANE) programs;

(B) sexual assault forensic examiner (SAFE) programs;

(C) sexual assault response team (SART) programs;

(D) State sexual assault coalitions;

(E) medical personnel, including doctors, medical examiners, coroners, and nurses, involved in treating victims of sexual assault; and

(F) victim service providers involved in treating victims of sexual assault.

(c) Authorization of appropriations

There are authorized to be appropriated \$30,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

For additional information, see *ÆQUITAS, SAFE PAYMENT MECHANISMS: SUMMARY OF LAWS AND CHARTS* (Aug. 2012), available upon request at <http://www.aequitasresource.org/taRegister.cfm>; see also *Æquit*as,

Payment of Sexual Assault Forensic Examinations (Feb. 2012), *available upon request at*
<http://www.aequitasresource.org/taRegister.cfm>.

For additional information on anonymous reporting across the United States, see *Forensic Compliance Resources: Anonymous Reporting*, END VIOLENCE AGAINST WOMEN INT'L,
<http://www.evawintl.org/PAGEID9/Forensic-Compliance/Resources/Anonymous-Reporting>.

ENDNOTES

¹ Viktoria Kristiansson is an Attorney Advisor for AEQUITAS: The Prosecutors' Resource on Violence Against Women. She would like to thank Charlene Whitman, Associate Attorney Advisor; Teresa Garvey, Attorney Advisor; and Jennifer G. Long, Executive Director at AEQUITAS for their significant contributions to this report.

² PRISON RAPE ELIMINATION ACT OF 2003, 42 U.S.C. §§ 15601-09 (2003).

³ PRISON RAPE ELIMINATION ACT NATIONAL STANDARDS, 28 C.F.R. §§ 115.5 – 115.501 (2012).

⁴ The PREA Standards require that each facility appoint a PREA Coordinator. 28 C.F.R. § 115.11 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator. (a) An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct. (b) An agency shall employ or designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA Standards in all of its facilities. (c) Where an agency operates more than one facility, each facility shall designate a PREA compliance manager with sufficient time and authority to coordinate the facility's efforts to comply with the PREA Standards.

⁵ SANEs "are registered nurses who have completed specialized education and clinical preparation in the medical forensic care of the patient who has experienced sexual assault or abuse." International Association of Forensic Nurses, Sexual Assault Nurse Examiners, <http://www.iafn.org/displaycommon.cfm?an=1&subarticlenbr=546>.

⁶ Jurisdictions can seek technical assistance and support when working to implement the Standards. The PREA Resource Center (PRC) (<http://www.prearesourcecenter.org>) provides such assistance on a national level to agencies implementing PREA Standards within their facilities. The PRC has partnered with AEQUITAS to train corrections staff, law enforcement, and other allied justice professionals so they understand those PREA Standards that are directly applicable to the reporting, investigation, and prosecution of sexual abuse in confinement. The training provided by the PRC and other agencies has been instrumental in educating corrections and law enforcement in implementing the Standards. The training has often included professionals from multiple jurisdictions, with those professionals then responsible for educating others in their jurisdiction, including professionals in other disciplines.

⁷ For additional information, see *Collaborating Organizations*, NATIONAL PREA RESOURCE CENTER, <http://www.prearesourcecenter.org/about/collaborating-organizations> (last visited Jan. 13, 2014).

⁸ "A Sexual Assault Response Team (SART) is a multidisciplinary interagency team of individuals working collaboratively to provide services for the community by offering specialized sexual assault intervention services." *Sexual Assault Response Team*, NATIONAL SEXUAL VIOLENCE RESOURCE CENTER, <http://www.nsvrc.org/projects/sexual-assault-response-teams-sart-0> (last visited Jan. 13, 2014).

⁹ Rebecca Campbell, Debra Patterson & Deborah Bybee, *Prosecution of Adult Sexual Assault Cases: A Longitudinal Analysis of the Impact of a Sexual Assault Nurse Examiner Program*, 18 VIOLENCE AGAINST WOMEN 223-244 (2012). See also, *Responses to Sexual Violence: Effectiveness of SANE/SART Programs*, NAT'L INSTITUTE OF JUSTICE, <http://www.nij.gov/topics/crime/rape-sexual-violence/Pages/response.aspx> (last visited Jan. 6, 2014).

¹⁰ This project focuses on the allied criminal justice responses to sexual abuse in confinement, but recognizes the important role the judiciary plays in holding offenders accountable and encourages jurisdictions to include judges in PREA-related training.

¹¹ Without the leadership of this PREA Coordinator, who is part of the State Department of Corrections, this project would not have occurred. At the outset of this project, the PREA Coordinator immediately recognized the value in coordinating the various professionals charged with responding to cases of sexual abuse in confinement. He felt strongly that a greater understanding of each others' general professional responsibilities, as well as those under PREA, would improve the overall response to sexual abuse in confinement and help increase the number of cases reported to law enforcement with a victim willing to participate in the investigation and prosecution of the offender. The PREA Coordinator fully appreciated the importance of holding abusers accountable for sexual abuse on an individual level, as well as the need to protect other inmates and society at large. Because of his communication and support, Æquitas was able to identify integral participants from the various disciplines – those in leadership positions as well as those who worked on the ground. His leadership led to the selection of his jurisdiction. Furthermore, his enthusiasm not only encouraged other professionals to participate in the project and attend the meeting, but also facilitated their sharing of information and opinions that allowed Æquitas and the jurisdiction itself to identify issues, barriers, and strategies necessary to improve and refine the jurisdiction's response to sexual abuse in confinement.

¹² These conversations revealed prevalent responses and attitudes relating to sexual abuse dynamics, abuser behavior, victim behavior, and the responsibilities of various multidisciplinary professionals charged with responding to sexual abuse, and sexual abuse in confinement. In addition, participants discussed the perceptions that some professionals had of other professionals in their same as well as in other disciplines. All of this information was crucial to identifying some of the gaps in services, as well as the barriers to developing improved responses and best practices related to sexual abuse in confinement. Significantly, many of the gaps and barriers identified affected all cases of sexual abuse in the jurisdiction, regardless of where they occur. The responses, attitudes, and concerns are reflected in the barriers identified in Section III of this report.

¹³ For more information on witness intimidation, see Æquitas Special Initiative on Improving the Justice System Response to Witness Intimidation, <http://aequitasresource.org/Improving-the-Justice-System-Response-to-Witness-Intimidation.cfm>.

¹⁴ The state has more than 30 but fewer than 60 counties.

¹⁵ In the host jurisdiction, one of the hospital groups stores anonymously reported kits. If a victim chooses to engage the criminal justice system, the kits are then turned over to law enforcement in order to maintain chain of custody.

¹⁶ Note that some jurisdictions have mandatory reporting policies, *e.g.*, California and Illinois, which prevents them from allowing anonymous reporting. Mandatory reporting requirements do not always exclude anonymous reporting. For example, where an adult victim of a sexual assault reports to a hospital but does not provide any identifying information, a medical professional can still report the patient visit without disclosing personal information that they do not possess. In some instances, anonymous reporting is just not possible; each jurisdiction must work out their individual protocol consistent with state law.

¹⁷ All of the SART-affiliated advocates in the state are trained to provide information to the victim regarding SAFE kit conversion and participation in the investigation and prosecution of the offender.

¹⁸ 28 C.F.R. § 115.21 Evidence protocol and forensic medical examination: (c) The agency shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs. *See also* 28 C.F.R. § 115.81 Medical and mental health screenings; history of sexual abuse; 28 C.F.R. § 115.82 Access to emergency medical and mental health services; and 28 C.F.R. §

115.83 Ongoing medical and mental health care for sexual abuse victims and abusers.

¹⁹ *Sexual Assault Nurse Examiners*, INT'L ASSOC'N OF FORENSIC NURSES, <http://www.iafn.org/displaycommon.cfm?an=1&subarticlenbr=546> (last visited Jan. 6, 2014). *See also* CAMPBELL ET AL., *supra* note 9. *See also* OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP'T OF JUSTICE, A NATIONAL PROTOCOL FOR SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATIONS, ADULTS/ADOLESCENTS, SECOND EDITION (Apr. 2013).

²⁰ 28 C.F.R. § 115.21 Evidence protocol and forensic medical examination: (d) The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services. (e) As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals. *See also* 28 C.F.R. § 115. 51 Inmate access to outside confidential support services; 28 C.F.R. § 115. 81 Medical and mental health screenings; history of sexual abuse, 28 C.F.R. § 115. 82 Access to emergency medical and mental health services; and 28 C.F.R. § 115. 83 Ongoing medical and mental health care for sexual abuse victims and abusers.

²¹ *Id.*, 28 C.F.R. § 115.21(d).

²² 28 C.F.R. § 115.71 Criminal and administrative agency investigations.

²³ 28 C.F.R. § 115.72 Evidentiary standard for administrative investigations.

²⁴ Special Responsibilities of a Prosecutor: MODEL RULES OF PROF'L CONDUCT R. 3.8(a). *See also, e.g.*, FLA. STAT. ANN., BAR RULE 4-3.8; MINN. STAT. ANN., RULES OF PROF. CONDUCT, RULE 3.8.

²⁵ 28 C.F.R. § 115.71(h).

²⁶ The Standards also require that all reported incidents of sexual abuse be followed up on with an inmate. 28 C.F.R. § 115.73 Reporting to inmates.

²⁷ The statewide law enforcement agency investigates all cases of staff-perpetrated sexual abuse that arise out of state facilities and juvenile justice facilities. Any other facility may request that the statewide law enforcement agency investigate staff-perpetrated sexual abuse.

²⁸ 28 C.F.R. § 115.53 Inmate access to outside confidential support services.

²⁹ 28 C.F.R. § 115.54 Third-party reporting: The agency shall establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of an inmate.

³⁰ 28 C.F.R. § 115.71(d), (h).

³¹ Notably, a police captain from one of the participating jurisdictions, in which one large adult confinement facility is located, indicated that, since 2010, only three incidents of sexual abuse had been reported to law enforcement. Only one other incident – a report of sexual abuse of an inmate by a deputy during transport – had been reported to law enforcement. These numbers are far lower than Bureau of Justice Assistance research indicating that approximately 9.6% of former state prisoners reported one or more incidents of sexual victimization during their most recent period of incarceration. BUREAU OF JUSTICE STATISTICS, PRISON RAPE ELIMINATION ACT OF 2003: DATA COLLECTION ACTIVITIES, 2012 (June 2012), <http://bjs.usdoj.gov/content/pub/pdf/pdca12.pdf>; ALLEN J. BECK & CANDACE JOHNSON, BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY INMATES, 2008 (May 2012).

³² The comments are paraphrased from conversations with multidisciplinary professionals from the project jurisdictions.

³³ This administrator did say that juvenile justice administrators and staff were willing to learn more about sexual abuse in confinement and the PREA Standards.

³⁴ The state in which this project occurred houses more than 100 juveniles long-term. In addition, approximately 400 juveniles are held in camps across the state; those camps are also covered under PREA.

³⁵ Bureau of Justice Statistics, *supra* note 31; BECK, *supra* note 31; BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH, 2012 (June 2013), *available at* <http://www.bjs.gov/content/pub/pdf/svifry12.pdf>.

³⁶ During the meeting in the host jurisdiction, a representative from the state violence against women coalition was able to meet the adult statewide PREA coordinator, and the two discussed options for the additional provision of training for corrections staff throughout the state. This was one of many positive results of the meeting, and one of several examples of the importance of bringing together multidisciplinary professionals so they could learn from each other and share resources.

³⁷ Corrections and juvenile justice professionals should also be directed to studies and resources, many of which can be found at National PREA Resource Center's website: <http://www.prearesourcecenter.org/library>.

³⁸ As an example, one member of law enforcement who responds to incidents that occur in confinement and had already received some PREA-related training questioned why efforts were being focused on sexual abuse in confinement. He stated that law enforcement receives more calls for “college rapes” and “date rapes.” We discussed the fact that low reporting rates might be more indicative of the need to improve collaboration and response than a reflection of the actual rate at which these crimes were occurring.

³⁹ In the project jurisdictions, one facility's PREA coordinator indicated that she has created a zero tolerance facility, consistent with PREA Standards, by holding inmates and staff accountable for using harassing and offensive language and gestures, as she believes this behavior is a precursor to sexual abuse. She felt strongly that zero tolerance of such language and gestures created an environment where inmates and staff would feel that everyone had to be treated with respect and that all types of negative behavior would be held accountable. Specifically, she emphasized there must be zero tolerance for anyone – staff, in particular – to make any comments related to LGBTI issues, as she felt that those comments were the equivalent of harassment. In this area in particular, she indicated that her older staff members had a more difficult time initially complying with this policy, but they were aided and educated by younger staff. Overall, this PREA coordinator stated that it took inmates and staff several weeks to get used to the new policies, but that she felt the entire institutional culture had dramatically improved since enforcing this policy. *See* 28 C.F.R. § 115.11 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator. *See also* 28 C.F.R. § 115.31 Employee training.

⁴⁰ 28 C.F.R. § 115.33 Inmate education.

⁴¹ 28 C.F.R. § 115.41 Screening for risk of victimization and abusiveness.

⁴² 28 C.F.R. § 115.31 Employee training. *See also* 28 C.F.R. § 115.32 Volunteer and contractor training.

⁴³ 28 C.F.R. § 115.64 Staff first responder duties.

⁴⁴ 28 C.F.R. § 115.51 Inmate reporting. Notably, some non-corrections professionals initially articulate a concern about an inmate's ability to report sexual abuse. They stated it was important for inmate-victims to be able to report sexual abuse directly to law enforcement who are independent from the corrections facility. They felt that there was a minimal likelihood that an inmate would report abuse by a staff member to another staff member. The opportunity to learn about this PREA standard allayed their concerns.

⁴⁵ Contact information for PREA Coordinators may be available by contacting staff at the PRC; additional resources for confinement agencies are available through the PREA Resource Center, <http://www.prearesourcecenter.org>.

⁴⁶ 28 C.F.R. § 115.51 Inmate reporting.

⁴⁷ *See, e.g.*, Conn. Gen. Stat. Ann. § 52-146k (West 2013); N.Y. [C.P.L.R.] Law § 4510 (McKinney 2010). For more information on states that provide a counselor-victim privilege, see AEQUITAS, Statutory Compilation on Victim Privilege by Practitioner. In addition, a hotline funded in any part by the Office on Violence Against Women cannot serve in the role of receiving reports that are then shared (even anonymously) with the confinement facility. *See* JUST DETENTION INTERNATIONAL, NAT'L PREA RESOURCE CENTER, COMMUNITY SERVICE PROVIDERS AND FEDERAL FUNDING (May 2013), available at http://www.ncdsv.org/images/NPREARC-JDI_Community-Service-Providers-and-Federal-Funding_5-2013.pdf.

⁴⁸ For additional information on confidential relationships between advocates and victims, as well as confidentiality and privilege law, see AEQUITAS: The Prosecutors' Resource on Violence Against Women, Victim Privilege Statutes: By Practitioner, available at www.aequitasresource.org/library.cfm. *See also* Viktoria Kristiansson, Walking a Tightrope: Balancing Victim Privacy and Offender Accountability in Domestic Violence and Sexual Assault Prosecutions, Part I, Issue #9, and Viktoria Kristiansson, Walking a Tightrope: Balancing Victim Privacy and Offender Accountability in Domestic Violence and Sexual Assault Prosecutions, Part II, Issue #10.

⁴⁹ 28 C.F.R. § 115.51 Inmate reporting; 28 C.F.R. § 115.31 Employee training.

⁵⁰ *See* 28 C.F.R. § 115.32 Volunteer and contractor training (indicating that those employees must be trained as well).

⁵¹ 28 C.F.R. § 115.61 Staff and agency reporting duties.

⁵² 28 C.F.R. § 115.43 Protective custody, stating that inmates who report sexual abuse shall not be segregated unless there is no available alternative; inmates who have been victimized should still have access to all programs, privileges, education, or work opportunities; and facilities should continue to reassess housing and other relevant options.

⁵³ *See* the PREA Resource Center's PREA Resource Center's archived webinars and a library of resources, available at <http://www.prearesourcecenter.org/>. Notably, the Standards have contemplated these negative consequences by requiring facilities to "establish a policy to protect all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates

or staff, and shall designate which staff members or departments are charged with monitoring retaliation.” 28 C.F.R. § 115.67 Protecting staff and inmates from retaliation.

⁵⁴ 28 C.F.R. § 115.73 Reporting to inmates. 28 C.F.R. § 115.5 General definitions.

⁵⁵ See, e.g., JENNIFER GENTILE LONG, NAT’L DISTRICT ATTORNEYS ASSOCIATION, INTRODUCING EXPERT TESTIMONY TO EXPLAIN BEHAVIOR IN SEXUAL AND DOMESTIC VIOLENCE PROSECUTIONS (2007), http://www.ndaa.org/pdf/pub_introducing_expert_testimony.pdf; Stephanie K. McWhorter et al., *Reports of Rape Reperpetration by Newly Enlisted Male Navy Personnel*, 24(2) VIOLENCE AGAINST WOMEN 204-18 (2009); Jenifer Markowitz & Teresa Scalzo, Understanding Anogenital Injury in Adult Sexual Assault Cases, 5 STRATEGIES IN BRIEF (Oct. 2011), http://www.aequitasresource.org/Understanding_Anogenital_Injury_in_Adult_Sexual_Assault_Cases_Issue_5.pdf.

⁵⁶ LONG, *supra* note 55.

⁵⁷ See, e.g., NEB. REV. STAT. § 29-2028; *State v. Berry*, 915 S.W.2d 389 (Mo. Ct. App. 2000).

⁵⁸ See DAVID LISAK, THE UNIVERSITY OF MASSACHUSETTS, THE UNDETECTED RAPIST (Mar. 2002), http://www.usfk.mil/usfk/Uploads/SAPR/SAPRMod17_UndetectedRapist.pdf.

⁵⁹ See Veronique N. Valliere, Understanding the Non-Stranger Rapist, 1 *The Voice* 4 (2007), available at http://www.ndaa.org/pdf/the_voice_vol_1_no_11_2007.pdf (“Another powerful tool [sex] offenders use to groom and manipulate their audience is to be nice. A ‘nice’ offender does not fit society’s image of a rapist...Most non-stranger rapists use their social skills to gain control of and cooperation from the victim with little effort.”). See also *Turned Out: Sexual Assault Behind Bars (Limestone Correctional, Alabama)*, YOUTUBE, <http://www.youtube.com/watch?v=gttdtTJdnfM> (last visited Dec. 23, 2013).

⁶⁰ 28 C.F.R. § 115.22 Policies to ensure referrals of allegations for investigations.

⁶¹ *Id.*

⁶² The PREA Standards are aimed at preventing intimidation and sanctioning those who commits acts of intimidation. See, e.g., 28 C.F.R. § 115.13 Supervision and monitoring; § 115.41 Screen for risk of victimization and abusiveness; § 115.43 Protective custody; § 115.51 Inmate reporting; § 115.54 Third-party reporting; § 115.61 Staff and agency reporting duties; § 115.66 Preservation of ability to protect inmates from contact with abuser; § 115.67 Protecting staff and inmates from retaliation; § 115.76 Disciplinary sanctions for staff; § 115.78 Disciplinary sanctions for inmates.

⁶³ For more information on witness intimidation please visit, *Improving the Justice System Response to Witness Intimidation*, ÆQUITAS: THE PROSECUTORS’ RESOURCE ON VIOLENCE AGAINST WOMEN, <http://www.aequitasresource.org/Improving-the-Justice-System-Response-to-Witness-Intimidation.cfm> (last visited Jan. 7, 2014). See also TERESA M. GARVEY, ÆQUITAS: THE PROSECUTORS’ RESOURCE ON VIOLENCE AGAINST WOMEN, WITNESS INTIMIDATION: MEETING THE CHALLENGE (2013), available at <http://www.aequitasresource.org/library.cfm>.

⁶⁴ 28 C.F.R. § 115.73 Reporting to inmates.; 28 C.F.R. § 115.76 Disciplinary sanctions for staff.

⁶⁵ 28 C.F.R. § 115.73 Reporting to inmates.

⁶⁶ U.S. DEPARTMENT OF JUSTICE, OFFICE OF VIOLENCE AGAINST WOMEN, RECOMMENDATIONS FOR ADMINISTRATORS OF PRISONS, JAILS, AND COMMUNITY CONFINEMENT FACILITIES FOR ADAPTING THE U.S. DEPARTMENT OF JUSTICE’S A NATIONAL PROTOCOL

FOR SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATIONS, ADULTS/ADOLESCENTS 7 (Aug. 2013), available at <http://www.ovw.usdoj.gov/docs/confinement-safe-protocol.pdf>.

⁶⁷ *Id.*

⁶⁸ *See* *Com. v. Miner*, 562 Pa. 46 (2000); *see also* MARKOWITZ & SCALZO, *supra* note 55.

⁶⁹ U.S. DEPARTMENT OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN, A NATIONAL PROTOCOL FOR SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATIONS: ADULTS/ADOLESCENTS, SECOND EDITION (Apr. 2013), available at <http://www.prearesourcecenter.org/sites/default/files/library/anationalprotocolforsexualassaultmedicalforensicexaminations-adultsadolescentsapril2013.pdf>.

⁷⁰ *Id.* at 29.

⁷¹ U.S. DEPARTMENT OF JUSTICE, OFFICE OF VIOLENCE AGAINST WOMEN, RECOMMENDATIONS FOR ADMINISTRATORS OF PRISONS, JAILS, AND COMMUNITY CONFINEMENT FACILITIES FOR ADAPTING THE U.S. DEPARTMENT OF JUSTICE'S A NATIONAL PROTOCOL FOR SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATIONS, ADULTS/ADOLESCENTS (Aug. 2013), available at <http://www.ovw.usdoj.gov/docs/confinement-safe-protocol.pdf> [*hereinafter* Recommendations for Adapting Protocol for Sexual Assault Medical Forensic Examinations].

⁷² *Id.* at 6.

⁷³ RECOMMENDATIONS FOR ADAPTING PROTOCOL FOR SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATIONS, *supra* note 71 at 8.

⁷⁴ 28 C.F.R. § 115.21 Evidence protocol and forensic medical examinations.

⁷⁵ RECOMMENDATIONS FOR ADAPTING PROTOCOL FOR SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATIONS, *supra* note 71.

⁷⁶ In this jurisdiction, evidence collected through a SAFE kit can be stored for a set period of time or until the victim initiates a police report. This option allows the victim time to decide if he/she wants to move forward with an investigation.

⁷⁷ Currently, advocates in the project jurisdiction provide the following: a 24/7 hotline for victims of sexual abuse, hospital accompaniment, crisis intervention sessions at the office, evidence-based therapeutic work with clients (therapies include cognitive and others), communicate with law enforcement in support of clients, communicate with landlords if housing challenges as a result of victimization, communicate with employers if there are work challenges as a result of victimization, prevention work in elementary/middle/high schools, work with adults to prevent child abuse, and provide referrals for other services.

⁷⁸ *See* 28 C.F.R. § 155.51(b) Inmate reporting: The agency shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request.

⁷⁹ *Id.*

⁸⁰ *See, e.g.*, WOMEN ORGANIZED AGAINST RAPE (WOAR), <http://www.woar.org> (last visited Jan. 7, 2014) (WOAR is sanctioned to provide psychoeducational group services to the women at Riverside Correctional Facility (RCF) through the Pennsylvania Prison Society's working group to enhance services for incarcerated women). *See also* *Riverside Correctional Facility*, PRISON SYSTEM: CITY OF PHILADELPHIA, <http://www.phila.gov/prisons/Facilities/Pages/RiversideCorrectionalFacility.aspx>. (last visited Jan. 7, 2014).

⁸¹ 28 C.F.R. § 115.53. Inmate access to outside confidential support services.

⁸² See, e.g., Amy E. Bonomi et al., *Meet Me at the Hill Where We Used to Park: Interpersonal Processes Associated with Victim Recantation*, 73 SOCIAL SCIENCE & MEDICINE 1054-1061 (2011).

⁸³ The Standards require that the communications between a counselor and victim be made in as confidential a manner as possible. The level and ability of privacy should be discussed between the advocate or rape crisis center and the facility beforehand.

⁸⁴ 28 C.F.R. § 115.53 Inmate access to outside confidential support services. “(a) The facility shall provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies. The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible. (b) The facility shall inform inmates, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws. (c) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse. The agency shall maintain copies of agreements or documentation showing attempts to enter into such agreements.” Notably, some individual agencies and state rape coalitions have responded to the PREA Standards by indicating that they provide services to all victims in a geographic area, regardless of where those victims reside or where they were victimized within that geographic area.

⁸⁵ Victims of Crime Act (VOCA) Victim Assistance Grant Program, 67 Fed. Reg. 56,444, 56,457 (Sept. 3, 2002) (“Subgrantees cannot use VOCA funds to offer rehabilitative services to perpetrators or offenders. Likewise, VOCA funds cannot support services to incarcerated individuals, even when the service pertains to the victimization of that individual.”).

⁸⁶ 28 C.F.R. § 115.353(a) Resident access to outside support services and legal representation: “The facility shall provide residents with access to outside victim advocates for emotional support services related to sexual abuse”

⁸⁷ See THE MOSS GROUP INC., NAT’L INSTITUTE OF CORRECTIONS, IMPLEMENTING THE PRISON RAPE ELIMINATION ACT: A TOOLKIT FOR JUVENILE AGENCIES AND FACILITIES (Jan. 2013), available at <http://www.prearesourcecenter.org/file/1078/implementing-the-prison-rape-elimination-act-a-toolkit-for-juvenile-agencies-and-facilitie>; Andie Moss, Susan McCampbell, & Caleb Asbridge, *The PREA Toolkits for Jails and Juvenile Facilities*, THE NAT’L PREA RESOURCE CENTER, <http://www.prearesourcecenter.org/training-and-technical-assistance/webinars/1114/the-prea-toolkits-for-jails-and-juvenile-facilities> (webinar).

⁸⁸ 28 C.F.R. § 115.51 Inmate reporting.

⁸⁹ See, e.g., *You Have Options Sexual Assault Reporting Program*, CITY OF ASHLAND, <http://www.ashland.or.us/Page.asp?NavID=15331> (last visited Jan. 14, 2014); Resources/Best Practices/Reporting Options, END VIOLENCE AGAINST WOMEN INTERNATIONAL, <http://www.evawintl.org/PAGEID11/Best-Practices/Resources/Reporting-Options> (last visited Jan. 16, 2014).

⁹⁰ See, e.g., IOWA CODE ANN. § 709.16 (2013) Sexual misconduct with offenders and juveniles.

⁹¹ PIPER KERMAN, *ORANGE IS THE NEW BLACK: MY YEAR IN A WOMEN’S PRISON* 129 (Random House 2010).

⁹² RECOMMENDATIONS FOR ADAPTING PROTOCOL FOR SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATIONS, *supra* note 71 at 22: “In addition to sex that is misinterpreted to be consensual, corrections staff in prisons and jails may coerce sex from inmates. For example, they may threaten loss of good time, privileges, or protection for other incarcerated individuals. Corrections staff in community confinement facilities may use residents’ conditional release status or other freedoms as tools for sexual coercion and/or to keep them silent about a sexual assault. For example, a corrections officer could threaten to falsely report that a resident is not complying with the conditions of their community supervision, which could result in that resident being returned to prison or jail. Of course, corrections staff may also perpetrate violent sexual assault against individuals housed in their facility.”

⁹³ See, e.g., *Voices for Justice*, JUST DETENTION INTERNATIONAL, <http://www.justdetention.org/en/prea-Standards.aspx> (last visited Jan. 16, 2014).

⁹⁴ FED. R. EVID. 404(b).

⁹⁵ ÆQUITAS: THE PROSECUTORS’ RESOURCE ON VIOLENCE AGAINST WOMEN, RAPE AND SEXUAL ASSAULT ANALYSES AND LAWS (2013), available at <http://www.aequitasresource.org/library.cfm>.

⁹⁶ RECOMMENDATIONS FOR ADAPTING PROTOCOL FOR SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATIONS, *supra* note 71 at 21 (Paragraph adapted from ABNER, BROWNING, & CLARK, PREVENTING AND RESPONDING TO CORRECTIONS-BASED SEXUAL ABUSE: A GUIDE FOR COMMUNITY CORRECTIONS OFFICIALS 9 (2009), <http://www.appa-net.org/eweb/docs/APPA/pubs/PRCBSA.pdf>).

⁹⁷ RECOMMENDATIONS FOR ADAPTING PROTOCOL FOR SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATIONS, *supra* note 71 at 21 (citing Participation in these “families” appears more common for women in prison than jail. VERA INSTITUTE OF JUSTICE, SUMMARY MEMOS FOR THE SEXUAL ASSAULT FORENSIC PROTOCOL IN JAIL WORK GROUP MEETINGS (Washington, D.C.: Unpublished, 2011).

⁹⁸ RECOMMENDATIONS FOR ADAPTING PROTOCOL FOR SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATIONS, *supra* note 71 at 21 For further explanation on the dynamics of inmate on inmate assault, see Viktoria Kristiansson, Prosecuting Cases of Sexual Abuse in Confinement, 8 STRATEGIES (Dec. 2012), available at www.aequitasresource.org/library.cfm.

⁹⁹ The National Protocol with specific recommendations for prisons, jails, and community confinement facilities also notes: “It is important to note that coercive sex may not be recognized as sexual assault either by victims or corrections staff, especially if it does not involve a threat of physical violence. Violent sexual assault, on the other hand, is characterized by the use of physical force and/or violence by one individual housed in the correctional facility against another. Administrators should have a general understanding of their state statutes related to sexual assault in general, as well as any specific laws that cover inmate-on-inmate or resident-on-resident sexual assault.” RECOMMENDATIONS FOR ADAPTING PROTOCOL FOR SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATIONS, *supra* note 71 at 21, (Paragraph adapted from ABNER, BROWNING, & CLARK, PREVENTING AND RESPONDING TO CORRECTIONS-BASED SEXUAL ABUSE: A GUIDE FOR COMMUNITY CORRECTIONS OFFICIALS 9 (2009), <http://www.appa-net.org/eweb/docs/APPA/pubs/PRCBSA.pdf>).

¹⁰⁰ See, e.g., TURNED OUT: SEXUAL ASSAULT BEHIND BARS, *supra* note 59.

¹⁰¹ One member of law enforcement from the host jurisdiction specifically mentioned that a lot of the calls they receive from the jail involves an inmate throwing urine or feces on another inmate.

¹⁰² See, e.g., 28 C.F.R. § 115.67 Agency protection against retaliation; 28 C.F.R. § 115.76 Disciplinary sanctions for staff; 28 C.F.R. § 115.78 Disciplinary sanctions for inmates.

¹⁰³ For additional information on witness intimidation in confinement, see Viktoria Kristiansson, *Identifying, Investigating, and Prosecuting Witness Intimidation in Cases of Sexual Abuse in Confinement*, XX STRATEGIES IN BRIEF, (publication forthcoming); see also TERESA M. GARVEY, *ÆQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN, WITNESS INTIMIDATION: MEETING THE CHALLENGE* (2013), available at www.aequitasresource.org/library.cfm.

¹⁰⁴ Specifically, when one investigator in the project jurisdiction was asked whether law enforcement would ask victims of other crimes for a polygraph, *e.g.*, robbery or burglary victims, the investigator responded that robberies/burglaries “are two different things totally – one is a crime with a home and the other is a he said/she said.” When asked if victims of any other crimes are asked to take a polygraph in the host jurisdiction, law enforcement and prosecutors stated that, in some rare cases, homicide witnesses are asked to take a polygraph.

¹⁰⁵ Notably, the host state has a statute that is consistent with current VAWA provisions regarding polygraphing. The statute allows law enforcement, prosecutors, or other government officials to ask a victim of sexual abuse to submit to a polygraph or other truth-telling examination as long as the victim isn't required to submit to such an exam as a condition for proceeding with the investigation, charging, or prosecution of the offense.

¹⁰⁶ See *ÆQUITAS, Statutory Compilation on Polygraph Testing of Sexual Assault Victims*. [available on request?] See also *Legislation Regulating Polygraph Use*, available at <http://www.nsvrc.org/legislation-regulating-polygraph-use>.

¹⁰⁷ KRISTEN HOUSER & EMILY DWORKIN, *THE USE OF TRUTH-TELLING DEVICES IN SEXUAL ASSAULT INVESTIGATIONS*, NATIONAL SEXUAL VIOLENCE RESOURCE CENTER (2009), available at http://www.nsvrc.org/sites/default/files/publications_Truth-telling-Devices-in-Sexual-Assault-Investigations.pdf.

¹⁰⁸ See, *e.g.*, CAL. PENAL CODE § 637.4, and CONN. GEN. STAT. ANN. § 54-86j; See also, *ÆQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN, POLYGRAPH TESTING OF SEXUAL ASSAULT VICTIMS* (2014)(available upon request).

¹⁰⁹ *Id.*

¹¹⁰ 28 C.F.R. § 115.34 Specialized training: investigations.

¹¹¹ See, *e.g.* Pa. SSJI (Crm), § 4.13B(2005), Conviction Based on Victim's Uncorroborated Testimony in Sexual Offenses – General.

¹¹² “A preliminary examination of a prospective juror by a judge or lawyer to decide whether the prospect is qualified and suitable to serve on a jury. Loosely, the term refers to the jury-selection phase of a trial.” BLACK'S LAW DICTIONARY (9th Ed. 2009).

¹¹³ LONG, *supra* note 55.

¹¹⁴ For more information on prosecution practices in cases of sexual abuse in confinement, see *ÆQUITAS, The Prosecutors' Resource on Sexual Abuse in Confinement* (Jan. 2014), available at www.aequitasresource.org/library.cfm. [I don't know why this is red...I don't remember editing this...]

¹¹⁵ FED. R. EVID. 804(b)(6). See also *ÆQUITAS, THE PROSECUTORS' RESOURCE ON FORFEITURE BY WRONGDOING*, available at www.aequitasresource.org/library.cfm.

¹¹⁶ Christopher Mallios & Toolsi Meisner, *Educating Juries in Sexual Assault Cases*, 2 STRATEGIES (2010), available at www.aequitasresource.org/library.cfm; Viktoria Kristiansson & Mona Shea, *Prosecuting Sexual Abuse in*

Confinement: A Case Study webinar (Nov. 22, 2013), *available at*
<http://www.aequitasresource.org/trainingDetail.cfm?id=102>.