

Lessons Learned, Miles to Go

Preventing Staff Sexual Misconduct with Offenders¹

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A sheriff of a 40-bed jail tries to determine how the department lost over \$1.5 million in a law suit stemming from a high ranking official's sexual involvement with a high profile female inmate.

A director insists that pre-service training for new corrections officers includes definitions of sexual misconduct; but it doesn't.

A deputy commissioner admits publicly that he was unaware that staff sexual misconduct with inmates was a felony under his state's criminal statutes.

An associate administrator tells consultants that the cause of sexual misconduct in his community corrections organization is that too many women are being hired.

A new class of recruits practicing searches in a maintenance facility inside the prison comes across used condoms.

A superintendent realizes, too late, that jail volunteers are not included in the state's statute on custodial misconduct.

Ten years ago, a facility bars cross gender supervision to prevent misconduct; but now faces the indictment of four senior officials who are charged with sexual misconduct.

A revised inmate handbook contains the jail's new policies and procedures on reporting sexual misconduct; and that's how the staff finds out.

An agency routinely allows employees under investigation for misconduct to resign; fails to complete investigations; thus allowing the ex-employees to be hired by other institutions in the same system.

These are all actual situations that have surfaced as agencies struggle with addressing staff sexual misconduct with offenders. There are more such events; one

only has to perform an Internet search to learn how sexual misconduct continues to surface in prisons, jails and community corrections.

Staff sexual misconduct with offenders, as with any issue tied closely to an organization's internal culture, has proved difficult for many agencies to effectively address. While sexual misconduct is, unfortunately, as old as the field of corrections, national, state and local efforts since 1994 have resulted in significant positive progress in identifying and implementing workable strategies. Some corrections organizations have had successes, while efforts in others seem to have stagnated, or moved backward. This article identifies the lessons learned by working with and observing organizations who have been involved in efforts to address, prevent and investigate allegations of staff sexual conduct with inmates. These observations come from trainers and consultants who have worked closely with local and state corrections organizations.ⁱⁱ

The lessons learned fall into six major categories:

- Leadership;
- Policies and procedures;
- Human resources;
- Training;
- Operations; and
- Investigations.

This article will briefly discuss each category as well as provide suggestions for improvement and identify resources. This discussion of "lessons learned" will, undoubtedly, remind readers of the efforts to address other entrenched operational dilemmas in corrections such as use of force, sexual harassment, and humane treatment of offenders. As noted above, when an issue is intertwined with internal agency culture, the efforts to address it present a myriad of challenges and a need for long term diligence.

Leadership – The role of the organization's leadership in providing continuing, steady, direction cannot be overstated. It appears that too often employees, including wardens and others in top management, perceive initiatives to address misconduct as the "agenda" of a particular director, sheriff or administrator, and when that person is

gone, so is the priority or the need to continue their efforts. Others believe that whatever action was taken when sexual misconduct was first addressed was effective, and no further attention is required.

In fact, these may be the least of the problems. Particularly disturbing is how often correctional administrators do not know their state statute regarding custodial misconduct; or have not kept up with amendments to their law.ⁱⁱⁱ Some administrators also are not familiar with the scope of their agency's efforts to address misconduct, or whether the initiatives were having the desired outcomes.

Other areas of concern when it comes to administrators have been identified as:

- Believing that this issue is a "women only" issue, affecting female prisons or jails, and/or only involving male staff and female inmates;
- Failing to appreciate how on and off-duty behavior of the agency's leadership, has, in many instances, eradicated the message that sexual misconduct must be avoided;
- Defining sexual misconduct only as sexual intercourse;
- Determining that if there are no reported incidents of sexual misconduct, that no misconduct is occurring;
- Opining that staff will apply "common sense" and thereby avoid misconduct;
- Asserting that inmates and offenders "consent" to their involvement with staff, and in fact, entrap staff into sex; and
- Lacking appreciation for how an institution's internal culture plays a substantial role in how well the agency responds – short and long term to the challenges of addressing sexual misconduct.

Finally, and most importantly, staff sexual misconduct is, ultimately, a facility security issue. If staff are inappropriately involved with inmates, not on their posts, not paying attention, engaging in favoritism, or bringing in contraband, the entire institution is at risk. Unless administrators understand this, and get this message to their subordinates, this issue will remain, "too personal", to address.

Policies and Procedures

A first step in understanding an agency's current circumstances is a review of existing policies and procedures. The work in the field has generally found the following requires significant attention:

- Incorporating the elements of the state statute in the written directive system;
- Establishing a "zero tolerance" for misconduct;
- Adopting policies/procedures that address all those who potentially have contact with inmates – volunteer, contractors, vendors, etc.;
- Providing clear definitions of what constitutes misconduct, including accommodation of any gaps in the legislation;
- Describing how allegations are reported, to whom and in what time frames;
- Developing investigative protocols; and
- Assimilating zero tolerance in all relevant procedures.

Paragraphs can be written on each one of these points, but the focus here is that agencies have not taken a holistic view when addressing this issue.^{iv} Perhaps they have written one policy prohibiting "conduct unbecoming", or have trained staff not to become "overly familiar" with inmates, but that, too often, has been the extent of the direction from the top. To test this hypothesis in your agency, ask any line staff the definition of "misconduct", or how to report it; then ask any inmate the same questions. You are likely to be unpleasantly surprised. Ask supervisors about the state law, or the "warning signs" of unprofessional misconduct, and the work to be done is further revealed.

Finally, agencies need to insist that contractors abide by definitions and rules governing sexual misconduct. These mandates can be included in contracts. Operating procedures need to require that reports of incidents are reported in a timely manner to correctional officials.

Human Resources

The human resources function is more than just "hiring and firing" when trying to address misconduct. Important gaps exist in many agencies between the "HR" functions and operations. Among the issues that need to be addressed are:

- Use of recruitment and new employee materials with particular emphasis on the agency's zero tolerance policy, definitions of misconduct, how to report, and consequences of not reporting;
- Background checks to assure that employees do not have a documented past of physical or emotional abuse, or violence;
- Maintenance of effective and valid exit interviewing process in which employees are asked about misconduct, and the information shared up the chain of command;
- Availability of an effective employee assistance program that is valued, trusted, confidential, and used by the agency's employees;
- Prevention of retaliation, or the perception of retaliation, against employees who report allegations of misconduct;
- Using information gathered from investigations to revise hiring, retention, staff recognition or employee disciplinary procedures, and
- "Aftermath" management to address the upheaval that results when allegations are made and an investigation concluded.

The crunch to hire staff has some corrections administrators saying that if an applicant can "fog a mirror", they are hired. While staff shortages are indisputably a real issue, agencies need to assure that those hired are clear about what the agency expects in terms of treatment of inmates, and it's zero tolerance regarding sexual misconduct.

When questioned, many administrators don't know much about their agency's employee assistance programs, or consider it to be of little use. Worse, the staff share their view, leaving employees without a way to get help, which in some instances, may have averted misconduct. In some organizations, staff believe that the inmates are as sympathetic, and more accessible, to talk to about personal problems than the employee's immediate supervisor or the employee assistance program.

Agencies need to prioritize efforts that support credible employee assistance programs. Administrators also need to acknowledge the negative impact of sexual misconduct allegations on morale and trust in the workplace. Staff see investigations into allegations as more than divisive; regardless of the outcome of the investigation,

staff are often left angry, confused, and as well as lacking in information. Failing to address the aftermath of misconduct allegations invites a downward spiral of morale.

Training

Resources are scarce in corrections, especially today. Training is viewed as a luxury in many agencies. This requires us to develop *effective* training to get the important messages across. Staff sexual misconduct training seems to have suffered even before the budget cuts. Because agencies often did not have written policies, definitions, and protocols, there was little left to train about – other than to tell staff to avoid becoming “overly familiar” with inmates.

Staff participating in focus groups about this issue say that they would report a peer bringing in dangerous contraband [guns, drugs, etc.]; but when it comes to sexual misconduct, they see this more as a personal issue, one that might even be none-of-their business. After an investigation has ended, it frequently came to light that peers and supervisors suspected something was amiss between a staff member and an inmate, but felt they didn't have enough information to take action, or didn't know how to take action. Supervisors didn't put together the warning signs – the red flags – and, even if they did, felt uncomfortable in intervening in highly personal, sexual, issues. If the agency views misconduct as a security issue rather than a “personal” issue, many of these barriers can be erased.

What needs improvement?

- Pre-service training that provides definitions of misconduct, how to report, and consequences for failing to report;
- In-service training that: reinforces the agency's zero tolerance policies, how and when to report, methods to report, consequences of not reporting, how the prior abuse histories of inmates “show up” in the custodial setting, and importantly, providing or enhancing skills for staff to manage and communicate with inmates;
- Training emphasis on misconduct as a substantial security issue;
- Supervisory training on recognizing warning signs and how to seek help for employees;

- De-mystifying the internal investigative process to increase the confidence of staff that the process is not a "witch-hunt", and is conducted with professional protocols, trained staff, protects confidentiality, and is appropriately supervised;
- Training of all volunteers regarding the agency's rules and expectations; and
- Training of all contractors (medical, mental health, food, programs) regarding zero tolerance, definitions and reporting requirements.

Curriculum is currently available to assist an agency's training component in customizing training to particular audiences and special needs. As with many other high liability issues in corrections, failing to train employees, volunteers, contractors, and others who work with inmates, will be more costly than the training.

Operations

As noted in the discussion of policies and procedures, there are many operational practices that require triage when reviewing how well an agency is doing to prevent and address sexual misconduct.^v Operational practices need to support zero tolerance. Among the operational practices that have emerged as crucial are:

- Rotation schedules for staff and inmate job or work assignments;
- Review of gender-specific posts;
- An inmate grievance procedure;
- Guidelines on inmate surveillance;
- A delineation of the privacy expectations of staff in the workplace, locker rooms, agency parking lots, and telephone, email and Internet use;
- Rules for conducting pat searches and other searches in routine and emergency situations;
- Review of isolated posts;
- Use of technology to increase staff safety and visibility of remote areas of the facility;
- Enforcement of rules governing signing-in and out of the facility;
- Effective key control;
- Review of guidelines for what staff may bring into the facility (gym bags, food, radios, etc.) as well delineation of the privacy expectations of employees in the workplace, parking lot, locker rooms, etc.; and

- Guideline on effective inmate management and communication.

In addition to these general operational areas, agencies with responsibilities for inmate transportation, off-site supervision of inmate work crews, or operation of programs in less secure locations (e.g., drug and alcohol programming) need also review policies with an eye toward prevention of misconduct.

A key operational priority is the orientation of offenders to the agency's policies and how to report misconduct. This is a controversial topic for some agencies and employees who may see that by giving inmates with this information is tantamount to inviting false and malicious allegations. In some extreme cases, information about the agency's zero tolerance policy has leaked to inmates before staff was informed, creating a huge credibility problem for the agency's leadership along with additional challenges to implementation.

The bottom line is: if offenders aren't educated, all available prevention strategies are not in place. Agencies who orient inmates find that there is an initial testing of the system – by both employees and inmates. Complaints are made to see if the agency is serious about accepting all allegations as well as investigating. Agencies have the ability to address malicious allegations made by either staff or inmates through policies and consequences for false reporting. If such actions are taken agencies needs to assure that procedures do not have a dampening impact on future reporting. When staff and inmates see that the agency's leadership is serious, complaints, which ultimately prove malicious, are very few. Another word of caution: allegations which cannot be proven true or false do not fall under the category of "maliciously false." There is a critical difference between allegations which are purposefully false and those where evidence can neither prove or disprove the allegation.

As with staff, protecting inmates who bring forth allegations is also a priority for administrators. Moving inmates to other locations, classifications, or housing may be seen by the inmates as punitive. Sometimes inmates retaliate against other inmates who report misconduct. Whatever the decisions made, the appearance of retaliation must be addressed, as well as assuring that the inmates are protected.

A review of the agency's response to preventing misconduct also involves a review of inmate programming. While we may all agree that sexual misconduct is not a "women-only" issue, we can at the same time acknowledge that programming and services for women inmates has lagged behind those offered for men in many prison and jail settings. NIC's research regarding gender-responsive programming can help administrators assess their programming, with positive benefits for both men and women inmates.^{vi} Implementing inmate programming that specifically address the medical and mental health needs of female offenders will create an environment in which their responses to their incarceration will be more effectively managed, and the challenges to staff lessened.

Investigations

An area that consistently requires attention is the agency's internal investigation process. One telling exercise is to have a team from the same agency map the path of a sexual misconduct allegation – from start to finish. Commonly, the team does not agree about how reports are made, where delivered, and to whom, who makes the decisions about initiating the investigation, collecting evidence, interviewing, etc., when the legal representative is involved, when human resources is involved, when a staff person can be suspended, when an inmate should be moved, and most other aspects of the process.

This lack of consensus is due mostly to the fact that agencies do not have written investigative protocols that govern these important decision-making points. Because these matters are not in written form, the entire investigative process tends to be viewed by both employees and inmates as arbitrary, uncoordinated, unfair, untimely, and unprofessional. This confirms their belief that not reporting misconduct or not cooperating during investigations is the best path to survival; further facilitating the "code of silence."

The skill of investigators also is a pivotal part of the credibility and effectiveness of the investigative process. As most inmates have a history of physical, sexual and mental abuse, and many female offenders carry a diagnosis of Post Traumatic Stress Disorder (PTSD) because of their significant past histories, knowledgeable and skilled

investigators are required to work on peeling back the many layers that may uncover what happened.

In addition to skilled investigators, investigators with personal and professional integrity are essential. The agency should have both female and male investigators available to complement each other's work in this delicate field. While there is no "rule" about when women investigators may be more effective than men, and vice versa, the ability to use a team approach has been shown to have positive results.

Collection and preservation of evidence presents additional challenges in an institutional setting. While many reports of misconduct may not surface for weeks or months after they are alleged to have happened, there remain opportunities for evidence collection. Agencies that have trained staff on each work shift to recognize and preserve evidence at crime scenes help their investigations and, ultimately the agency's investigative effectiveness. Otherwise, memoranda of agreements need to be executed with the appropriate law enforcement organization that will provide this critical function.

Protocols that mandate logging and tracking of investigations and their outcomes are lacking in many organizations. An agency must record the nature of the allegation, the investigation's outcome, and all pertinent information about the investigation. It is important to track, or, be able to analyze pieces of information and data that emerge from each investigation, including the names of those who are perhaps involved, and whose name has appeared before. This is little information, allows the agency to determine the effectiveness of the efforts to prevent, address and investigate.

Conclusions

Addressing entrenched issues such as staff sexual misconduct give many commissioners, directors, wardens and sheriffs that feeling of "déjà vu". Most administrators know how to deal with difficult issues such as sexual misconduct, but other emergencies and priorities get in the way; or their subordinates do not know how to follow-up to insure that the desired outcomes are gained. An agency's culture doesn't emerge or change overnight and neither do the solutions to these tough problems.

The National Institute of Corrections has many resources available to the field including curriculum, training, and on-site assistance. For more information, please see the NIC web site at www.nicic.org. For additional information, contact NIC's project coordinator, Dee Halley, (800) 994-6423, dhalley@bop.gov.

ⁱ The information in this article is based on work done under four National Institute of Corrections' Cooperative Agreements by the Center for Innovative Public Policies, Inc. (99P13GIL3, 01P18GIR4, 01P18GIR4, Supplement #1, and 02P18GIR4). This article represents the views of the authors, and does not represent the position of the United States Department of Justice, National Institute of Corrections. Acknowledgement and thanks is expressed to the many professionals who have provided leadership in this area including: Andie Moss, Brenda V. Smith, Jennie L. Lancaster, Susan Poole, Cassandra Newkirk, M.D., Darrell Alley, Teena Farmon, Elizabeth Layman, A. T. Wall, Jeff Shorba, Paula Rubin, Larry Fischer, Cindy Odette, Don Wilbrecht, Mike Rulo, Maureen Buell, Mary Scully Whitaker, and those at the National Institute of Corrections who recognized the critical nature of staff sexual misconduct to the field of corrections: especially Morris Thigpen and Larry Solomon.

ⁱⁱ This article summarizes observations gathered at approximately seven national 36-hour training programs, fourteen regional or state level training of at least two days, seven national conference presentations, and seven on-site technical assistance visits of at least three-days. Literally hundreds of organizations – jails, prisons, and community corrections organizations have participated in these training and technical assistance events. These activities were funded by the National Institute of Corrections. Information shared here has also come from focus group work with inmates and staff in institutions across the United States.

ⁱⁱⁱ As of May 2003, four states do not have statues addressing custodial sexual misconduct – Alabama, Wisconsin, Vermont and Oregon. Efforts have been on-going in those states to enact legislation.

^{iv} For more information see Staff Sexual Misconduct with Inmates: A Policy Development Guide for Sheriffs and Jail Administrators, by Susan W. McCampbell and Larry S. Fischer. This work will soon be available on NIC's web site, but is now available at <http://www.cipp.org/SSMPolicy/index.html>

^v Op. cit. McCampbell, Fischer.

^{vi} Bloom, Owen, Covington, Gender-Responsive Strategies: Research, Practice and Guiding Principles for Women Offenders, Spring 2003, National Institute of Corrections.

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