

# **Preventing and Addressing Staff Sexual Misconduct In Community Corrections: A Training Program for Agency Administrators**

## **Instructor's Guide**

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Preventing and Addressing Staff Sexual  
Misconduct in Community Corrections

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## Conducting this Training

### Using the Materials

This curriculum is provided for the use of trainers in community corrections organizations. The materials are intended as background information and resources for both trainers and participants. Trainers are encouraged to carefully review the materials. The curriculum is highly interactive. It is strongly recommended that trainers use these interactive exercises. An Activity Guide accompanies the curriculum. Trainers are encouraged to develop and use additional activities that support the objectives.

The training program is designed to encourage agencies to think about how they do business and make appropriate changes. The training is not intended to provide “the” answer or the only way to approach the issue.

Each of the six modules includes objectives and module highlights. Considerable resource material, articles, and a bibliography are provided as the Resource section.

### Participant Manual

The training will be enhanced if the participants are each provided with the Participant Handbook. A copy of the Power Point presentation should be distributed as a hand-out.

### Before the Program Begins

Preparation time is important. Before you begin training, you may wish to consider the following:

- Research current materials, news articles, etc. relevant to the program. Do Internet research to learn about any specific allegations or issues that have faced the agencies who will be participating in the training?
- The lead instructor should talk with the agency’s contact person about specific learning needs, recent events, and other issues that might emerge during the training.
- Review the curriculum and Power Point. Revise it as necessary to match your instructional style.
- Strategize with your co-trainer about management of the program and group activities.
- Confirm with the host agency’s contact person the availability of audiovisual and other training aids (flip charts, easels, overhead screens, markers, tape, etc.)
- Confirm with the host agency’s contact person that the “logistics” are arranged (i.e., food or information about nearby restaurants for lunches, breaks, special needs, parking, printing of materials, name tents, or name tags).

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- Check with the host agency's contact person if a staff attorney from the state in which the training is being held can be available when the state's statute is discussed. If so, coordinate with the attorney. If not, review the state's statute available via the Internet so you are familiar with the scope of the statute.
- Confirm the layout of the training room with the host agency's contact person. The room can be configured to the specifications of the training team. Be sure to let the agency know if you need a work table for the trainers, a resource table, and/or tables for audiovisual equipment, extension cords, etc.

### **Audiovisual Equipment and Know-How**

A LCD projector is needed for the Power Point program. Most agencies have this equipment. If you have not worked with computer-generated software such as Presentation or Power Point and a LCD projector, it is recommended that you familiarize yourself with these resources prior to your first training program.

### **Group Activities**

An essential element of this training is group activities. This training is designed to actively engage the participants every hour. Use not only the group activities included in the curriculum, but other

activities you develop to achieve the program's goals.

#### Successful group activities:

- Clearly define the activity;
- Define the expected outcome – e.g. oral report, flip chart, etc.;
- Provide written materials for clarification, as needed;
- Identify individuals to be assigned to specific groups;
- Establish the time limitations;
- Allow sufficient time to prepare, report out, and process;
- Have trainer's be available to answer questions as the groups begin work;
- Have trainer's listen-in to be sure all groups are on track; and
- Provide the supplies needed – markers, paper, etc.
- Use time keeping techniques, if necessary, to conclude reporting.

Allow sufficient time for groups to report back on their activities, but be sure to stay within the schedule.

Be sure that all members of the group are participating. Look for those who have left the room. Invite their return. Change group membership for different activities.

When each group finishes their report, it is important to allow participants to give their comments, observations, critiques. Only after the participants have concluded their feedback should the trainers' add their comments or wrap-up the discussion.

### **Optimal Number of Training Participants**

The optimal number of participants for these programs is 25 - 30. Groups that are too large present a challenge to the trainer and can inhibit participation from the group.

### **Trainers**

It is recommended that this program be team taught, with at least two qualified and knowledgeable trainers. Instructors from this topic should be highly regarded, and should be able to cover this sensitive material in a way that is effective.

### **On the First Day of Training . . .**

- Be sure to arrive at the training site at least one-hour before the program is to begin to set-up and arrange the furniture, and solve any problems with the equipment.
- Double-check the participant manuals, name tents, flip charts, etc. Be sure that each participant has an unobstructed view of the front of the room, the speaker, easels and pads, audio-visual screen, and other training aids.
- Locate the rest rooms, coffee locations, and learn about arrangement for smokers.

- Check the ventilation, and learn how you can adjust the heating or cooling, if necessary.
- Be sure that the lighting will dim for showing computer-generated overheads. However, avoid turning out too many lights when using the equipment.
- Be sure all participants can hear you. Listen for outside noise disruptions and make arrangements to try to overcome them.
- Ask participants to turn off pagers and cellular phones.

### **Supplies**

For this training, you will need the following supplies:

- LCD projector and screen;
- Flip chart paper and easels, at least two;
- Markers;
- Tape;
- 3 x 5 cards;
- Envelopes (business size)

### **Starting the Program/Introductions**

Instructors should use their experience and discretion when introducing the program, themselves, and having the participants introduce one another.

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Review the “About this Training . . .” section:

- Delineating training objectives;
- Identifying program’s primary audience;
- Reviewing definitions;
- Acknowledging the different organizational structures represented among the participants;
- Recognizing the different missions of participants’ agencies;
- Discussing why addressing staff sexual misconduct in community corrections organizations differ from prisons and jails; and
- Emphasizing the interactive nature of the training and expectations of participants.

### **Breaks/Lunch Hours**

The trainer’s agenda (page 12-14) includes specific times for breaks or lunch. Instructors should use their discretion and the input of those in the class to alter these times. Provide adequate breaks for the class. Provide a lunch break based on the proximity of places to eat.

### **During the Training**

Sign-In Sheet – Be sure that all participants sign in using either a host agency provided sign-in sheet or one you provide. Double check with participants

during the training to be sure that everyone has signed-in.

### Parking Lot Issues

You may wish to create a flip chart page labeled “parking lot ” for use during the training. Use this to list participants’ concerns that arise during training and insure they are addressed before the session’s end.

- Begin each new training day with a review of the “parking lot” issues, and seek the permission of the participants to remove issues that have been addressed.
- Each day, begin with a review of the day’s schedule and topics. Invite comments about the previous day’s training. Gather any critiques.

### Evaluations

Get feedback as you train. It is highly recommended that you provide participants with 3 x 5 cards at their seats every day, and ask them to note information or questions that they wish to share and discuss with you. They can either talk with you in person about the items, or pass the cards to you at the end of the day.

At the end of each day, you are expected to review the feedback. Use your experience and participant feedback to make any changes to the training.

### Training Evaluation



If the host agency has a formal evaluation form, use that form. If no form exists, you may develop whatever form you need to get feedback on the impact of the program, training techniques, the skill and knowledge of the instructors, and suggestions for improving the program.

### **Overcoming Challenging Participants and Situations**

The issue of staff sexual misconduct can be controversial and emotional for some participants. Trainers need to be sensitive to this fact and keep a careful eye on the participants, anticipating any issues and addressing concerns as quickly as possible.

Often a participant will ask if there is a policy or procedure already existing that they can use as a model. While you are encouraged to share materials, participants need to be reminded that policy development must be agency-specific, recognizing agency culture and special issues. You should reinforce that there are many effective ways to solve issues.

Be mindful of chain-of-command and how this will impact participation and interaction. Create a safe environment with “amnesty” to assure the comments and points of view of those with different ranks to have the same value.

Some *refresher* tips to help insure effective training:

- Don't let one or two people dominate. It is important that different viewpoints are expressed. Possible responses to difficult, controlling or domineering people include:
  - “May we put that on the back burner for the moment and return to it later?”
  - "If it is all right, I would like to ask if we can discuss that on the break. There's another important point we still need to discuss and we are running a little short of time."
  - "That's a good point, let's hear from some of the others," or redirect the conversation.
  - "We have had several comments in support of this idea, are there different viewpoints in the room?"

This gives control back to the trainers.

- Be sure you understand the question before you jump to answering. Rephrase back the question to the participant.
- After you answer a question from a participant, ask them, "Does that answer your question?" "Do you agree?" or "Has that been your experience as well?"
- Keep everyone engaged in training. Look around the room. Ask people if they agree or don't agree with you. Wait for a response. If you don't have the attention of a participant, or group of participants, work to get it.

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Is it time for a break? Is it too hot or too cold? Are they bored? Do you need to move to a group activity?

- Questions from participants are a good indication of the level of their engagement. Questions have value in helping you to clarify, modify or fortify points or to test an idea for its potential. Ask questions of participants if you need to get them engaged.
- If a participant is belligerent or rude, walk closer to the person, even standing next to them.
- If a discussion escalates and becomes emotional, divert the conversation away from the people participating. "I think we all know how John and Bob feel about this. Now, does anyone else have a comment?" or validate their feelings or emotional reactions by saying something such as, "clearly this is a very emotional and difficult issue with differing viewpoints." Intense emotions can also be a good indicator of major issues in the agency. You may want to give extra time for discussion to achieve some clarity or understanding of a particular topic.
- If you need to manage the person who "knows it all" acknowledge the person's contribution and then ask others in the group for their opinions.
- Keep the group focused. When a discussion gets off track, say: "Your

point is an interesting one, but it is a little different from the main issues here, perhaps we can address your issues during the break or after the session," or, "We will be talking about that later in Module X. Your points are very interesting, could you hold those thoughts until we get to that module?" Use the "parking lot" for these issues.

- Be respectful and listen. Be open yet firm and manage the discussion keeping in mind what is best for the whole group.
- Be mindful of your language. Use gender-neutral language. Avoid comments such as "you guys" or other such phrases. Be aware of the diversity of training participants, including disabilities and sexual orientation.
- Avoid giving legal advice.
- If you don't know the answer to a question, just say so. Tell the participant that you will make a note and let them know how best to get an answer
- Avoid a one-on-one conversation/ argument with a participant.

### Ending the training session

At the end of each day review what has been discussed, review the "parking lot" issues to see what has been addressed and what remains to be addressed, and review what will come the next day.

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Collect any written feedback. Discuss security arrangements for equipment and classroom and participants materials.

At the conclusion of all training, allow plenty of time for participants to complete the formal evaluation. Insure that outstanding issues are resolved to the extent possible.

If you volunteer to send materials to participants, clarify what is to be sent and to whom. Please assure you keep your promises to send materials.

The host agency may provide participants with certificates acknowledging their attendance. Allow sufficient time for distribution.

End training on an “up” note. Participants may feel overwhelmed by what they have learned and what they need to do. Be encouraging and be sure to identify resources to help them accomplish their objectives.

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**Trainer's Agenda**  
**Misconduct in Community Corrections:**  
**A Training Program for Agency Administrators**  
**Day One**

<b>Begin</b>	<b>End</b>	<b>Module</b>
<b>9:00</b>	<b>9:45</b>	Course Overview, Training Objectives The Course Materials, Blueprinting Introduction of Training Participants and Trainers
<b>9:45</b>	<b>3:10</b>	<b>Module One - Staff Sexual Misconduct - An Overview</b>
[9:45	10:25]	Exercise: Test Your Knowledge
[10:25	10:40]	Break
[10:40	10:50]	Exercise: Burning Issues
[10:50	11:15]	Defining Staff Sexual Misconduct
[11:15	11:30]	The Faces of Community Corrections
[11:30	Noon]	Impact of Sexual Misconduct on the Profession
<b>Noon</b>	<b>1:00</b>	<b>Lunch</b>
[1:00	1:30]	Myths and Realities
[1:30	2:00]	Risks to Agency, Employees, and Public Safety
[2:00	2:10]	Role of Leadership
[2:10	2:30]	Exercise: Leadership Challenge
		Alternative Exercise: Critical Issues in Investigating Allegations of Staff Sexual Misconduct
[2:30	2:45]	Characteristics of Offenders
[2:45	2:55]	Exercise: Blueprint - Module
[2:55	3:10]	<b>BREAK</b>
<b>3:10</b>	<b>4:45</b>	<b>Module Two - Professional Boundaries, Ethics and Culture</b>
[3:15	3:45]	Exercise: The Ethics Test
[3:45	4:15]	Ethics
[4:15	4:45]	Defining Agency Culture
4:45	5:00	<b>End of Day Wrap Up Activities</b>

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Day Two

<b>Begin</b>	<b>End</b>	<b>Module</b>
<b>9:00</b>	<b>9:05</b>	<b>Logistics, Burning Issues Revisited</b>
<b>9:05</b>	<b>11:20</b>	<b>Module Two - Continued</b>
[9:05 9:45]	[9:45 9:50]	Exercise: Identifying Your Agency's Culture Sexualized Work Environment
[9:50 10:05]	[10:05 10:20]	Exercise: Tug of War: Impact of Culture Professional and Personal Boundaries
[10:20 10:30]	[10:30 10:40]	Exercise: Red Flags Changing Agency Culture
[10:40 11:10]	[11:10 11:20]	Exercise: The Envelope, Please [ <b>Combine with Break</b> ] Alternative Exercise: Defining Ethics Exercise: Blueprint - Module Two
<b>11:20</b>	<b>2:30</b>	<b>Module Three - Policies and Procedures</b>
[11:20 Noon]	[Noon 2:30]	Exercise: Pen to Paper, Developing Specific Policies
<b>Noon</b>	<b>1:00</b>	<b>LUNCH</b>
[1:00]	1:45]	<b>Module Three - Policies and Procedures - Continued</b> Triage Agency Policy
[1:45 2:05]	[2:05 2:20]	Exercise: Why Should I Care? Getting Employee Buy-In Leadership & Implementation of Policies and Procedures
[2:20 2:30]	[2:30 2:45]	Exercise: Blueprint - Module Three <b>Break</b>
<b>2:45</b>	<b>4:45</b>	<b>Module Four - Investigations</b>
[2:45 3:15]	[3:15 3:30]	Exercise: You Are the Investigator Alternative Exercise: Mapping an Investigative Process Responsibilities of Agency Leadership in Investigations
[3:30 4:45]	[4:45 5:00]	Investigation Issues for Community Corrections The Checklist - Investigations
4:45	5:00	<b>End of Day Wrap Up Activities</b>

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**Day Three**

<b>Start</b>	<b>End</b>	<b>Module</b>
<b>9:00</b>	<b>9:05</b>	<b>Logistics, Burning Issues Revisited</b>
<b>9:05</b> [9:05 [9:30 [10:00 <b>[10:20</b>	<b>11:15</b> 9:30] 10:00] 10:20] <b>10:35]</b>	<b>Module Four - Continued</b> The Checklist - Investigations - Continued Exercise: Investigative Scenarios Aftermath Management <b>Break</b> Alternative Exercise: Value-Added from Investigations Demystifying the Investigative Process Alternative Exercise: Demystifying the Investigative Process Why Investigations Fail Exercise: Blueprint - Module Four
<b>11:15</b> [11:15 [11:30	<b>2:10</b> 11:30] Noon]	<b>Module Five - Legal Issues for Community Corrections</b> State Statue Exercise: Triage Your State Law
<b>Noon</b>	1:00	LUNCH
[1:00 [1:10	1:10 2:00]	<b>Module Five - Continued</b> Impact of Litigation The Legal Landscape • Offender Consideration • Lessons Learned Alternative Exercise: Prosecutors: Getting Buy-In and Support Exercise: Blueprint - Module Five
<b>2:10</b> [2:10 [2:40 [3:15 [3:45 [4:00 [4:30	<b>4:40</b> 2:40] 3:15] 3:45] 4:00] 4:30] 4:40]	<b>Module Six - Prevention</b> Exercise: Who Wants to be the Boss? Prevention Strategies Exercise: Training Design [ <b>Combine with Break</b> ] Investigations as a Prevention Tool Exercise: Top Ten Prevention Strategies Exercise: Blueprint Module Six
4:40	5:00	<b>Program Conclusion</b> Burning Issues Extinguished, Evaluation

## Administrator's Blueprints

Preparation of individual blueprints is an integral part of this training.

Please refer to the **Blueprints** section of the **Activity Guide** for how to most effectively use this action plan format.

Explain blueprinting as part of the program's kick-off. Review the form. Highlight how this activity will provide a post-training reference to begin working on the changes necessary to prevent and address staff sexual misconduct.

At the end of each module, BE SURE that you provide time for this activity. If you miss doing the blueprint for a module, stop and go back to the activity. Provide time at the end of each day for participants to make their notes.

At the end of the training program, encourage each participant to complete their blueprint.

## **Introducing this Training**

Review objectives of the overall training:

- ▶ Define sexual misconduct in a community corrections setting;
- ▶ Explore the importance of professional boundaries, ethics and agency culture;
- ▶ Delineate the role of effective policy, procedure and training;
- ▶ Discuss issues in investigation of allegations and how to develop protocols;
- ▶ Overview legal issues;
- ▶ Identify legal mandates and organizational structure of community corrections agencies that impact the ability to address sexual misconduct;
- ▶ Identify and promote prevention strategies; and
- ▶ Complete an individualized blueprint for action.

See the Introduction in the Participant Manual.

Review how this training was developed - with the input of practitioners;

Discuss the intended audience - community corrections administrators.

Addressing staff sexual misconduct in community corrections presents some challenges.

- Offenders are in the community with employees;
- Organizational structures of community corrections organizations vary widely across the U.S.;
- An organization's investigative mandate and authority vary differently in the U.S.;
- Many community corrections agencies are changing their mission to use effective intervention models rather than an emphasis solely on enforcement; and
- Employees have a considerable amount of discretion and autonomy, and are not directly supervised as they work.

These issues present challenges to administrators as they work



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address how to prevent and address misconduct.

Review blueprinting. Review the form and how the blueprinting will proceed after the completion of each module.

**Introductions**

Be sure to introduce the trainers and the members of the class.

**See Instructors's Guide for further direction.**

## Module One

### Introduction Staff Sexual Misconduct - An Overview

**Module One** is designed to help participants identify and name staff sexual misconduct as an issue in community correction and, perhaps in their own agency.

The objectives of Module One are:

- Define staff sexual misconduct and associated behaviors;
- Identify the issues associated with staff sexual misconduct in a community corrections setting;
- Overview the risks to the agency, employees, and public safety associated with staff sexual misconduct;
- Discuss the myths and realities of the issue; and
- Clarify the role of agency leadership in addressing staff sexual misconduct.

Start the session with “**Test Your Knowledge**”. See the [Activity Guide](#).

Note that the “**The Dirty Dozen**,” is at the end of the Module designed to help employees define if they may have a problem with professional boundaries. This also serves as an example for participants of how to create training tools and exercises to engage employees. Discuss how The Dirty Dozen can be used in agency training programs.

The exercise **BURNING ISSUES** is designed to let you know what is important to the class as well as for the class to understand their concerns are shared by their peers. Ask what topics or issues participants want to be sure are discussed in this three days. Be sure to use the information you gain about the participants’ concerns to customize the remaining of this training program.

Review the list of **BURNING ISSUES** often, and with the permission of participants to cross off items. New items can be added at any time.

### **Define Staff Sexual Misconduct:**

- **It is important to talk about the definitions of sexual misconduct.** The definition in the presentation is just ONE set, and not the ONLY ones, or the BEST. Focus on how sexual misconduct is MORE THAN JUST SEX. Ask participants how their agency defines misconduct. Are these definitions too broad, enforceable, understandable to the average employee? Discuss the impact of agency policies that tell employees to avoid “conduct unbecoming” or being “over-familiar” with offenders.
- Discuss how sexual misconduct is different from, but related to, sexual harassment and a hostile work environment.

### **Faces of Community Corrections**

Review how **types of supervision, organizational structure, identifying who is under supervision, working in the community, the ambiguous role of employees, and managing information** are important issues for administrators.

- It is important to acknowledge the different organizational structures of community corrections. Agencies may be under a state department of corrections, state court system, local government, sheriffs, or other format. Discuss how each organization represented in the class is structured and how this may have an impact on how they will respond to the issues of staff sexual misconduct.
- Discuss the changing role of community corrections – effective interventions, treatment and clinical orientation,

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etc. Discuss how this trend is evolving and what it means when addressing staff misconduct. What impact is there on employees that possess intimate and personal information about those under their supervision, as well as their families and collateral contacts?

- Some community corrections agencies may not have the authority to initiate and/or investigate allegations of misconduct. Allow participants to discuss this fact. Highlight that **Module 4** will focus on how agencies with, or without, investigative authority can use the investigative process to prevent and address misconduct.

**Impact of Sexual Misconduct on the Profession.** It is **not** essential for participants to understand the details of each of the national and international reports. It is important for participants to know of the national and international attention to the issue, how it resulted in reform, and where to access the materials. Refer to Resource Section of the Participant Manual.

**The Numbers** helps participants understand the scope of the issue from information that is known.

**Myths and Realities** is designed to reinforce the previous material in this section. This is an interactive discussion. Keep participants involved. Is the myth true? Why or why not?

**Risks to Agency, Employees and Public Safety** summarizes real-life situations in which community corrections professional have found themselves. Ask the participants to share other examples they know about. **Be sure to check for recent examples via the Internet when you are preparing for this training program.**

Summarize this section by reviewing **Impact of Employee Sexual Misconduct**. Ask how this information can be used to educate employees about this issue?

**The Role of Leadership** summarizes the responsibilities of the participants in managing their organization.

Exercise: **Leadership Challenge** helps identify what participants anticipate (or fear) will happen in their organization when they raise this issue. [See Activity Guide.]

**The Characteristics of Offenders** - Take a few minutes with the class to explore the nature of offenders. Often this information is not provided to line officers who need it to understand and better manage their case load. Explore why this information is important. Ask if this information is provided to new employees at time of hire? Or does the organization just “assume” they know? How are employees updated with this information in a formal way throughout their career?

Refer to **Attachment A** for more information about the statistics about offenders and employees. The question to pose: are offenders and employees really that dissimilar? What does that mean for administrators?

Summarize the objectives covered in Module One.

**Blueprinting** - It is important to reinforce the use of **Blueprints at this point in the training**. Ask a participant to volunteer what they identified as a concern. Ask for a volunteer to identify what is working. Ask for a volunteer to share what else they wrote on their blueprint.

An additional or alternative exercise for **Module One** is Critical Issues in Investigating Allegations of Staff Sexual Misconduct. See [Activity Guide](#) for further information.

## **Module Two**

### **Professional Boundaries, Ethics, and Culture**

Module Two is designed to focus participants on the need to clearly establish professional boundaries and ethics. This Module explores the important elements of agency leadership and role modeling as well as agency culture, and how culture impacts this issue.

This Module includes:

- Explore the issues of ethics in community corrections;
- Clarify the ethical standards of employees and the agency;
- Define and identify an agency's culture;
- Understand the impact of agency culture on staff sexual misconduct; and
- Identify the importance of establishing and maintaining professional boundaries in community corrections.

Begin the session with the **Ethics Test**. Ask how employees learn the agency's ethics? Are ethics shared? If yes, by whom, if not, why? What are the implications for the organization? [See Activity Guide.]

**Attachment B** includes more information on ethical decision-making.

**At the conclusion of this Module, participants should be able to define the concept of agency culture and understand how it relates to staff sexual misconduct.** Introduce **agency culture**. It is essential that participants grasp that each agency has a unique culture and that culture has both positive and negative elements. Failing to correctly identify this culture will hinder an agency administrator's ability to address staff sexual misconduct.

Participants should:

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- Define and identify an agency's culture;
- Clarify the ethical standards of employees and the agency;
- Understand the impact of agency culture on staff sexual misconduct; and
- Identify the importance of establishing and maintaining professional boundaries in community corrections

**Exercise: Defining Agency Culture** walks participants through what is agency culture. Ask participants what have they seen in their agency. This activity is key to participants grasping the issues of culture. [See Activity Guide.]

- What do they discover about their agency's culture?
- What are the negative and positive aspects of culture?
- How does culture impact the issue of sexual misconduct?
- Is there a code of silence in your organization?
- How do codes of silence begin? What sustains it?
- How do employees learn professional boundaries?
- Can participants describe what their employees see as their professional boundaries?

Define **Sexualized Work Environment**. Ask participants for examples.

**Tug of War: Impact of Culture** exercise is designed to focus participants about what elements of their agency's culture will help or hinder their efforts to address staff sexual misconduct. [See Activity Guide.]

**Professional and Personal Boundaries** focus on issues that have been identified by focus groups as critical if an agency is going to prevent staff sexual misconduct:

- Defining and discovering professional boundaries,
- Discretion and autonomy,
- Managing personal associations with offenders,
- Conflict of effective intervention,
- On-duty and off-duty behavior and employee/employee misconduct,

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- Freedom of association,
- Collateral contacts,
- Imbalance of power, and
- Issue of consent.

Review each of these components. Invite participation and shared experiences. The legal issues around freedom of association are reviewed further in **Module Five**.

The exercise, **Red Flags**, provides an eye-opening experience as participants list the things that *may* be indicators of a staff sexual misconduct. Keep track of responses on the flip charts. Ask participants to differentiate between what are “red flags” for individual officers and what are “red flags” for the organization. [See Activity Guide.]

**Changing Agency Culture** is designed to help participants begin to think about how to change the culture they have identified as needing changed. Review the points contained in this section, reminding participants that culture change is a long-term, not short-term process.

The exercise, **The Envelope, Please**, is designed to help administrators get ideas about how to begin to address agency culture. [See the Activity Guide.]

Summarize the objectives of Module Two.

**Blueprinting** ends this Module.

An additional or alternative exercise for **Module Two** is Defining Ethics. These are case studies that participants can review and make decisions about using Attachment B’s decision making model. If you choose to use this exercise, be sure to make copies of each of the scenarios ahead of time. [See Activity Guide]



### **Module Three** **Policies and Procedures**

Module Three is designed to focus on the operational, administrative and management practices of an organization that impact preventing, addressing and investigating staff sexual misconduct.

Objectives of this Module are:

- Review the essential elements of policies and procedures to prevent and address misconduct;
- Assess current policies and procedures; and
- Discuss gaining employee buy-in for new policies and procedures.

**Exercise: Putting Pen to Paper** is an opening exercise to prompt participants to begin thinking about the elements of the most critical policies and procedures to prevent and address misconduct. [See Activity Guide.]

**Developing Policies and Procedures** includes discussion of:

- Establishing zero tolerance,
- Offender orientation to agency policy,
- Mandatory reporting by employees, vendors, contractors and volunteers,
- Protection against retaliation,
- False allegations,
- Contract managements, and
- Licensing and professional standards.

Use the Power Point to help walk participants through each policy and procedure area. Stress that preventing and addressing staff sexual misconduct is more than just one policy - and that all policies and procedures need to be integrated. What is the danger of writing only one policy or procedure prohibiting misconduct? Gauge how much detail the class needs for this Module and adjust the program accordingly.

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**Why Should I Care? Getting Employee Buy-In** is designed to focus administrators on how best to get employees to buy-in to their zero tolerance initiatives. [See the Activity Guide.]

**Leadership and Implementation of Policies and Procedures** summarizes the **Module** by reminding participants of their responsibilities in establishing policies and training employees.

Summarize the objectives covered in Module Three.

**Blueprinting** ends this **Module**.

## Module Four Investigations

**Module Four** is intended as an overview of the critical aspects of investigations. It is not intended to provide a comprehensive discussion on investigative techniques, but an understanding of the responsibilities of agency administrators regarding investigations.

The objectives of this **Module** are:

- Clarify the agency's investigative process;
- Identify effective investigative protocols;
- Review personnel issues associated with investigations;
- Understand the post-investigation/allegation impact on agency operations and morale;
- Understand the importance of demystifying the investigative process for employees; and
- Learn why investigations fail.

**Exercise: You Are the Investigator** is an opening exercise that asks participants to think about investigations in their organization - what they know and what they don't. [See Activity Guide.]

An alternative exercise is **Mapping the Investigative Process** which can be used if the participants are unclear about their agency's procedures and protocols.

Investigations are an issue in community corrections as many organizations do not have the mandate and/or legal authority to initiate or conduct investigations. This includes both internal investigations into allegations of misconduct -- administrative/criminal or criminal investigations, if the state has a relevant statute. The umbrella organization of many community corrections agencies may not see sexual misconduct as a priority for investigative resources, nor understand or appreciate the impact of these allegations on all phases of agency operations.

Those assigned to investigate may be from a local police agency, a state law enforcement agency, or an inspector general's office.

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Often these investigators have no experience with employees/offender dynamics, or are unfamiliar with how to investigate allegations in a community environment.

If an agency is tasked with conducting administrative and/or criminal investigations, many will not have employees specifically trained in investigations. Such investigators may not have the resources, skills, or time to develop the information needed to conclude whether allegations are true or false.

Failing to investigate or conducting prejudicial or incompetent investigations has a serious impact on both employees and offenders. Employees often see investigators as out to “nail” employees regardless of the evidence. This will make them even less likely to cooperate. Offenders who see that their allegations are not taken seriously, or ineffectively investigated will suffer the same loss of confidence, and will be further victimized.

Review what parts of investigations are important for administrators even if the organization does not conduct its own investigations.

- Responsibilities of agency leadership in investigations,
- Investigative issues facing community corrections,
  - Organizational structure,
  - Who investigates?
  - Availability of witnesses and complainants,
  - Cooperation of witnesses and complainants, and
  - Administrative and Criminal Investigations (Miranda and Garrity).

**Attachment C** - provides an overview of Garrity and Miranda.

Use the **Checklist** to walk participants through the various issues administrators should consider for successful investigations.

It is important to emphasize that even if the agency has no investigative responsibility or authority - they still need to think about these issues in terms of policies, procedures and protocols.

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The exercise, **Investigative Scenarios**, is an opportunity for the participants, working in small groups, to deal with real life issues. What have they learned that will suggest different approaches? [See the Activity Guide.]

**Aftermath Management** helps participants focus on the impact of investigations and allegations on their organization. Is the investigation really over when the investigation is completed?

**De-Mystifying the Investigative Process** focuses on one strategy to improve investigations by gaining employees cooperation. In exploring these investigative issues, pose the following questions:

- What can be done to demystify the internal investigative process?
- Is there a code of silence? Why?
- How can an agency get the cooperation of local law enforcement and prosecutor?

**Addressing the Code of Silence** focuses participants on the extent that the code of silence exists in their organizations, the impact of this issue and how to begin to tackle it.

**Why Investigations Fail** should summarize this **Module** by reminding participants about the central investigative issues. Ask for shared experiences or insights.

Summarize the objectives of Module Four.

**Blueprinting** concludes the **Module**.

There are two additional or alternative exercises for **Module Four**: Value-Added from Investigations and Demystifying the Investigative Process. [See Activity Guide.]

## **Module Five** **Legal Issues for Community Corrections**

Module Five is designed to overview the legal implications of staff sexual misconduct and review state statutes. Participants explore how to develop an effective law, and how to address staff sexual misconduct in the absence of a state law. This section is designed only as an overview. Encourage participants to confer with their legal counsel for specific information about their agency's legal status.

The **Module** will:

- Identify elements of a “good” state law;
- Triage and critique your state's law;
- Understand cases relating to employees and offenders;
- Understand legal implications for administrators, managers and supervisors; and
- Review lessons for community corrections.

**State Statute** reviews the elements of a good law. **Refer to NIC 50 State Survey of Laws. Be sure to check the statute in the state in which the training program is being conducted.**

After reviewing the elements of a good state law, and the state statutes that are now on the books, use the exercise, Triage State Statute, to allow each participant to explore their law. Review the questions in the exercise. What if they don't have a law, what does that mean for policy and procedure development? The list of states with and without statutes helps participants know if they have work to do.

It is important for participants to understand that they do not need a state law to address staff sexual misconduct in their organization. While having a statute is, perhaps, preferable, the organization can establish policies and procedures that address appropriate and inappropriate employee/offender interactions and set administrative penalties.

**Impact of Litigation** overviews what happens if the agency is the

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subject of litigation. This section should reinforce that being **pro-active** is better than just **reacting**. When the agency is in the headlines, or litigation has begun, the agency's options become limited.

**The Legal Landscape** reviews the importance of:

- Policies, procedures and protocols
- Vicarious liability
- Qualified immunity
- Personal liability
- Human Resources
  - Prospective employee's background
  - Employee privacy in the workplace
  - Rights of employees under investigation
  - Questioning employees under investigation
  - Freedom of association, and
  - Reassigning employees during investigations.

**Offender Considerations** review issues associated with:

- 1<sup>st</sup> Amendment
- 4<sup>th</sup> Amendment
- 5<sup>th</sup> Amendment
- 6<sup>th</sup> Amendment
- 8<sup>th</sup> Amendment
- 14<sup>th</sup> Amendment
- 42 USC 1983

and how challenges may arise in a community corrections setting.

**Attachment D** overviews the relevant cases.

**Lessons Learned: Implications for Community Corrections** draws the connection between these cases and community corrections.

Summarize the learning objectives for Module Five.

## Blueprinting ends this Module.

An additional or alternative exercise for **Module Five** is Prosecutors: Getting Buy-In and Support. [See [Activity Guide](#).]

### ***Additional notes for trainers:***

The following is intended as background information only. This information is provided by Professors Brenda Smith and Susan Carle, Washington College of Law, American University. If you require more information, you can research these cases on the Internet, or direct training participants to do so. Additionally, cases related to community corrections are noted in the curriculum.

Bases for litigation:

- 42 U.S.C. 1983
- Doesn't create any constitutional rights
- Creates a federal cause of action for the vindication of rights found elsewhere

Key elements

Deprived of a right secured by the constitution or law of US  
Deprived by a person acting under color of state law

Eighth Amendment

- Prohibits cruel and unusual punishment
- Legal standard is deliberate indifference  
Established in a prison rape case, *Farmer v. Brennan*  
Two-part test:
  - i. The injury must be objectively and sufficiently serious
  - ii. The official must have a sufficiently culpable state-of-mind (this is where most cases fail)

Fourth Amendment

- Cross-gender supervision can violate the right to be free from unreasonable search and seizures.
- Random viewing of male inmates by female employees performing routine duties OK if observation is inadvertent, casual and restricted or emergency (1<sup>st</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>)
  - See *Canedy v. Boardman*, 16 F.3d 183 (7<sup>th</sup> Cir. 1994); *Smith v. Fairman*, 678 F.2d 1982 (7<sup>th</sup> Cir 1982); *Canell v. Armenifkis*, 840 F. Supp. 783 (9<sup>th</sup> Cir – OR 1993); *Grummett v. Rushen*, 779 F.2d 491 (9<sup>th</sup> Cir. 1985). (*Collin v. Vasquez* talk about the different degree of privacy expectations by men and women).
  - *Somers v. Thurman*, 109 F.3d 614 (9<sup>th</sup> Cir. 1997) Harassment by female employees
- *Sterling v. Cupp*, 290 Or. 611 P.2d 123 (1981) Equal employment opportunity does not create blanket necessity
- *Hudson v. Goodlander*, 494 F. Supp. 890 (D.C. MD. 1980)
  - *Wilson v. City of Kalamazoo*, 127 F. Supp. 2d 855 (W.E. Mich. 2000). Fourth amendment privacy rights violated where plaintiffs were denied all means of shielding their private body parts from viewing of others for at least six hours.



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### Fourteenth Amendment

#### Equal Protection

- ▶ You do not permit cross-gender searches and supervision of women but you do of men
- ▶ *Timm v. Gunter*, 917 F.2d 1093 (9<sup>th</sup> Cir 1990)
- ▶ Men and women not similarly situated with regard to differences in security concerns, number and age of prisoners, kinds of crimes committed, frequency of incidents involving violence and contraband
- ▶ State tort claims

#### What the Court Looks for:

- ▶ Deliberate indifference to offender vulnerability, safety or health
- ▶ Official knew of and disregarded an excessive risk to inmate safety or health
- ▶ Official must be aware of facts from which an inference could be drawn that a substantial risk of harm exists and he must draw inference (take a look at *Riley v. Ok-Long*, an Iowa Case)

#### Important Cases

- ▶ *Carrigan v. Delaware*, 957 F. Supp. 1376 (D. Del. 1997) (discussion of consent and qualified immunity)
- ▶ *Giron v. Corrections Corporation of America*, 14 F. Supp. 2d 1252 (D.N.M 1998) (the CCA was not ruled liable)
- ▶ *Women Prisoners v. DC*, 877 F. Supp. 634 (D.D.C. 1994) (discussion of pattern and practice of sexual misconduct) They did not ask for damages. Class action suit.
- ▶ *Daskalea v. DC*, 227 F. 3d 433 (D.C. Cir. 2000) (second generation litigation) \*Got 3.5 million dollars
- ▶ *Peddle v. Sawyer*, 1999 WL 613312 (D. Conn) (discussion of exhaustion requirement under PLRA) This involved Danbury – sex in prison is not a condition of confinement.

#### Cross-gender Supervision Claims

Challenges arise in a variety of ways

- ▶ Male inmates
- ▶ Female inmates
- ▶ Male employees to gender-specific posts
- ▶ Female employees to gender-specific posts
- ▶ Union challenges to management practice

#### Legal Bases

- ▶ 42 U.S.C. 1983
- ▶ First Amendment
- ▶ Fourth Amendment
- ▶ Fourteenth Amendment
- ▶ Eight Amendment
- ▶ Title VII (Does Title VII apply to inmates? No. Prisoners are not considered employees, even in prison labor situations)

#### Themes of the Cases

- ▶ Very fact specific (Are we talking about pat searches, viewing, strip search, body cavity searches?)
- ▶ Who is doing the search or supervision?

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- ▶ Who is being searched or supervised?
- ▶ What is the nature of the search?
- ▶ What is the nature of the supervision?

### First Amendment

- ▶ Cross-gender supervision does not violate religious beliefs
- ▶ *Madyun v. Franzen*, 704 F.2d 954 (7<sup>th</sup> Cir. 1983). This was a case where the inmate was Muslim and felt a pat search by a woman correctional officer was against his religious belief.

### Balancing Test

- ▶ *Turner v. Safley*, 482 U.S. 78 (1987)
- ▶ Is the prison policy related to some legitimate penological necessity?
- ▶ Is there a valid rational connection between prison policy and the legitimate government interest asserted to justify it?
- ▶ Existence of alternative means for inmates to exercise constitutional right
- ▶ Impact of accommodation of constitutional rights on other inmates and employees and on allocation of prison resources
- ▶ Absence of ready alternatives evidence reasonableness of regulation

Visual body cavity searches during non-emergency may not be OK.

- ▶ *Cookish v. Powell*, 945 F.2d 441 (1<sup>st</sup> Cir. 1991)
- ▶ *Cromwell v. Dalhberg*, 963 F.2d 912 (6<sup>th</sup> Cir. 1992)

Pat downs that do not include the genital area are OK.

- *Smith v. Fairman* (7<sup>th</sup> Cir. 1982)
- But see *Timm v. Gunter* 917 F.2d 1093 (9<sup>th</sup> Cir. 1990)

### Eighth Amendment

- Men generally lose

### Supervision Challenges by Women Inmates

Far more successful by and large than with men

- Societal norms
- Able and willing to articulate harm
- Documented past histories of physical and sexual abuse
- View of male correctional employees as predatory

### Legal Bases

- First Amendment
- Fourth Amendment
- Eighth Amendment
- Privacy

### Important Cases

*Forts v. Ward*, 621 F.2d 1210 (2<sup>nd</sup> Cir. 1980)

- Balanced employment rights of male employees and females inmates by allowing men on nighttime shifts but requiring prison to provide appropriate clothing for women
- Important consideration was impact on female employees members who would have been bumped from daytime shifts in order to accommodate policy
- Came via union challenge related to implementation of new policy

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Jordan v. Gardner, 986 F.2d 1521 (9<sup>th</sup> Cir. 1993)

- ▶ Change in policy occasioned by grievance filed by female employees who did not want to do routine suspicionless searches
- ▶ New tough warden who wanted random searches and more of them
- ▶ Scared that female employees would sue, went to gender-neutral policy
- ▶ Received warning from psychologists on employees prior to instituting policy
- ▶ Told that because of women's history of past physical and sexual abuse would cause harm
- ▶ Implemented policy 7/5/89
- ▶ Intrusive search involving kneading and squeezing of breasts

What Jordan Stands for...

- ▶ In certain circumstances, cross-gender supervision can violate Eighth Amendment
- ▶ Must lay sufficient factual predicate for finding of emotional harm
- ▶ Limited to situation in particular Washington state facility

Colman v. Vasquez, 142 F. Supp. 2d, 226 (2d. Cir. 2001)

Facts:

- ▶ Female inmate
- ▶ Incarcerated at FCI Danbury
- ▶ In special unit for victims of sexual abuse – the Bridge Program
- ▶ Random pat searches by male employees
- ▶ Sexual advances by employees member
- ▶ Complaint to psychiatrist who informed a Lt.
- ▶ No response by administration
- ▶ Sexual assault in 1997
- ▶

Procedural Posture

Motion to dismiss on basis of qualified immunity

- Standard of Review

Whether taking plaintiff's allegations to be true, plaintiff has stated a cause of action

- Legal Claims

1<sup>st</sup>, 4<sup>th</sup>, and 8<sup>th</sup>

Fourth Amendment

- Recognizes split in judicial opinions on privacy rights of male and female inmates

- Gives weight to factual situation – female inmate in sexual abuse trauma unit. Must look at nature of search, circumstances of inmate and penological justification for policy at issue

· Limits to motion to dismiss

Eighth Amendment

Analyze under 8<sup>th</sup> rather than 4<sup>th</sup> because of allegation of extreme emotional distress,

Jordan v. Gardner

· Sees case as like Jordan because of previous knowledge of instruction about trauma history of inmate

Prison Officials Attempts at Same-Gender Supervision

- ▶ Relevant Considerations
- ▶ Employee Rights

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- ▶ Inmate Privacy
- ▶ Institutional Security
- ▶ Inmate Rehabilitation
- ▶ Institutional Interests

### Other interesting cases

*Sepulveda v. Ramirez*, 967 F.2d 1413 (9<sup>th</sup> Cir. 1992). Male parole officer observing female parolee urinate for urinalysis violated parolee's fourth amendment rights, distinguishes *Grummett*.

### Two Different Lines of Analysis

- *Turner v. Safley*
  - *Dothard v. Rawlinson*, 433 U.S. 321 (1977)
- Gender is a bona fide occupational quality (BFOQ) in Alabama maximum security prison

### Standard

- Factual basis for believing that all or substantially all women or men would be unable to perform safely and efficiently the duties of the job involved

### Turner Cases

- *Tharp v. Iowa DOC*, 68 F.3d 223 (8<sup>th</sup> Cir. 1995). Male employees sued for their exclusion from posts in female housing units. No violation of Title VII.
- *Torres v. Wisconsin DOC*, 859 F.2d 1523 (7<sup>th</sup> Cir. 1986). Male correctional officers at maximum-security women's prison challenged their exclusion from posts in

the living units. It upheld the prison's decision.

### Dothard Cases

*Gunther v. Iowa State Men's Reformatory*, 462 F. Supp. 952 (8<sup>th</sup> Cir. 1979). Gender is not BFOQ for positions in men's reformatory beyond a certain position.

See also, *Harden v. Dayton Human Rehabilitation Center*, 520 F. Supp. 769 (S.D. Ohio 1981); *Griffin v. Michigan DOC*, 654 F. Supp. 690 (E.D. Mich. 1982) AI

cases recognizing women's right to work in male institutions.

### New Case

*Rucker v. City of Kettering, Ohio*, 84 F. Supp. 2d 917 (S.D. Ohio 2000)

- Gender was not BFOQ to work in male jail facility
- But Ohio law was bar to Ms. Rucker's employment (same gender supervision)
- City five-day holding facility
- "Civilian jailer"
- Small facility, five employees

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### Municipal Liability

Monell v. Department of Social Services, 436 U.S. 658 (1978)

- Municipality is a person who can be held liable under Section 1983
- Policy or custom must inflict the injury
  - Inaction
  - Failure to train or supervise

### Qualified Immunity

- No violation of federal law – constitutional or otherwise
- Rights and law not clearly established at the time of the incident
- Official's action was objectively, legally reasonable in light of clearly established legal rules at time of the action

### Official Liability

- Did it happen on your watch?
- Were you responsible for promulgating and enforcing policy?
- Did you fail to act or ignore information presented to you?

### Personal Liability

- Plaintiff must provide notice that the suit is against the official in her personal capacity
- Require pretty egregious behavior for official to be held liable in individual capacity

## Module Six Prevention

Module Six summarizes the training. The participants will “practice” designing training. The instructor is encouraged to use this section to send participants away from the training on a positive note.

The Module’s objectives are:

- Describe prevention strategies;
- Develop outlines for employee training;
- Complete the blueprint; and
- Extinguish burning issues.

Begin with “**Who Wants To Be The Boss?**”. See [Activity Guide](#).

Review prevention strategies.

- Administrative Actions
- Training

**Training Design** is designed to allow participants to put into practical use what they have learned in the other modules. See the [Activity Guide](#).

**Investigations as a Prevention Tool** help participants appreciate how investigations can strengthen the agency.

The final group exercise will be **Top Ten Prevention Strategies**, see [Activity Guide](#).

Summarize the objectives of Module Six.

Based on the particular needs of the class, focus on what other activities and discussion needs to occur to focus on Prevention.

## **Ending Activities**

- Complete blueprints and discuss with participants their top priorities on their blueprint.
- Review “burning issues” to assure that all issues have been addressed. addressed.
- Identify and address any final questions.
- Review of resource materials (NIC and others) available to administrators as they develop their plans.
- Ask participants to complete training evaluation forms.
- Provide certificates (if appropriate).
- Any other matters as noted by the facilitators.