Ch.19 Complex Issues and Vulnerable Populations

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I. Dual-System (“Crossover”) Youth [2]

II. Facility Emergency Preparedness [2]

III. The Impact of PREA [2]

IV. Sexually Abusive Youth [2]

V. Placement of Youth in Adult Facilities [2]

VI. LGBTQI Youth [2]

I. Dual-System (“Crossover”) Youth

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The notion that the youth in the child welfare system are the same individuals as those in the juvenile justice system is echoed repeatedly by those familiar with both systems, including judges, probation officers, attorneys, caseworkers, residential and detention facility staff, and other child advocates. Historically, the juvenile justice system and the child welfare system have operated in “silos”—under separate agencies, with little communication or collaboration between them. Research shows that child maltreatment is associated with the earlier onset of juvenile delinquency, increasing the risk of being arrested as a juvenile by 55% and increasing the risk of arrest as a juvenile for a violent crime by 96%. Additionally, youth who have been involved in the child welfare system are more likely to penetrate further into the juvenile justice system than other youth. Research shows that such youth represent 1% of dismissed or informally diverted cases, 7% of formally supervised probation cases, and 42% of residentially placed youth.[2] This section covers what is known about “crossover” youth and introduces the emerging practices designed to improve outcomes for this uniquely vulnerable population.[3]

Crossover Youth

Who are crossover youth? Youth with involvement in both the child welfare system and the juvenile justice system are referred to as “crossover” youth. This term includes 1) youth currently involved with the child welfare system who also become involved with the juvenile justice system (either dually-involved youth—youth who are simultaneously receiving services, at any level, from both systems—or dually-adjudicated youth—those youth who are concurrently adjudicated in the courts of both systems; 2) youth with previous involvement with the child welfare system who become involved with the juvenile justice system; 3) youth who are victims of some form of abuse or neglect with no involvement with the child welfare system who become involved with the juvenile justice system; and 4) youth who exit the juvenile justice system and become involved with the child welfare system because they do not have a home to return to.[4]

Although research about crossover youth is still growing, there is already some significant information about this unique population. Crossover youth are often in the child welfare system for long periods of time, are placed out of the home, and have multiple placements in congregate care.[5] They are more likely to be female, when compared to the general delinquency population, and more are statistically likely to be African American.[6] They are behind educationally, as they are often truant or performing poorly in school.[7] Crossover youth also have high prevalence of a family history of criminal behavior, mental health, or substance abuse problems.[8] They themselves have high rates of mental health and substance abuse problems; over 75% of crossover youth exhibit symptoms of, or have diagnoses for, a mental health disorder or substance abuse.[9]

Critical Issues that Crossover Youth Face

Being involved in multiple systems creates complex needs and issues. The fact that a youth is involved in the child welfare system has been shown to impact the decisions about detention and charging. Research shows that youth in foster care are more likely to be detained pre-adjudication than other youth, even if the level of offense and offense history are similar. This is referred to as “foster care” or “detention” bias[10] and results in unnecessary detention and deeper penetration into the juvenile justice system. It exposes a population of youth who have already been victims of abuse and neglect to potential harm in the future and trauma associated with youth confinement environments.

Law enforcement, probation, and prosecutors have wide latitude in determining the direction of a delinquency case, whether it be diversion, informal adjustment, or formal delinquency proceedings. If all circumstances surrounding a youth (such as the youth’s involvement in the child welfare system) are not known or communicated, there may be an assumption that the youth is high risk, due to his or her involvement in the child welfare system.[11] Ultimately, the charging decision impacts the type and level of services a youth receives and directly affects outcomes for the youth and his or her family.

The growing body of research that identifies the negative impact of dual-system involvement has significant implications for both the juvenile justice and child welfare systems. It has become clear that increased communication and collaboration are essential to increase the efficiency and effectiveness of both systems.[12] For decision-makers to have all relevant facts and circumstances before them, crossover youth must be identified at the earliest opportunity. Also, communication must involve other systems, such as the education and behavioral health systems.[13]

Without new approaches and interventions, it is likely that current outcomes will continue for crossover youth. All youth require stable families, positive educational attainment, and community connections and support to transition successfully to the adult world.[14] However, crossover youth often lack these connections, resulting in many negative outcomes. Crossover youth are more likely to remain in out of home placements and “age out” of the system. Outcomes for youth aging out are discouraging; 49% experience homelessness; 43% are high school dropouts; and their median income is $598.33 per month.[15]

Emerging Practices

With support from Casey Family Programs, the Center for Juvenile Justice Reform at Georgetown University’s Public Policy Institute has developed the Crossover Youth Practice Model, which contains strategies and interventions in five practice areas.

Practice area 1: Arrest, identification, and detention requires that protocols are in place at the point of intake to ensure that the juvenile justice system determines at the earliest opportunity whether a youth is involved in the child welfare system.[16]
II. Facility Emergency Preparedness

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The events of September 11, 2001, hurricanes Katrina and Sandy, tornados in Oklahoma and Kansas, chemical spills in rivers, and wildfires in the western U.S. are among the most chilling evidence that, in spite of how well professionals believe they are prepared and trained, critical events—which can happen anywhere and with little or no warning—bring to light many of the flaws in preparedness plans. Further, events of a significant magnitude can overwhelm even the most highly-trained and well-equipped first responders.

Most adult jails and prisons have very detailed plans for emergencies, given the typical size of these facilities and the numbers and types of offenders they house. Youth confinement facilities, on the other hand, are not always as well prepared, thus, these facilities can be at considerable risk.

More often than not, youth confinement facility administrators and staff are prepared to evacuate a building in the event of a fire; fire drills are considered a basic practice. However, getting the youth outside to a safe area is often as far as the plan goes. Depending on where a facility is located, tornado or earthquake drills may also be part of an emergency plan. There are, however, other events that can require an evacuation. Youth confinement facilities are often located near interstates, railroad tracks, forest or wooded areas, dams, rivers, streams, airports, chemical and nuclear plants, and solid waste dumps. Each of these environments presents a potential hazard. Trains and trucks carrying hazardous materials have had accidents that have caused evacuations of the surrounding areas. Floods and fires frequently cause entire neighborhoods or towns to be evacuated. Over the past 20 years, schools and universities have been the scenes of shooting tragedies. Youth confinement facilities can become crime scenes, as well. Riots and disturbances can occur. Many security experts also believe that in the future, cyber-attacks will be a threat to the security of adult and youth confinement facilities. Lastly, a public health emergency, such as a serious contagious disease (pandemic flu), can result in the lockdown or quarantine of a facility.

The impact of an emergency can be significant, potentially resulting in such things as an inability to maintain essential functions, loss of public confidence and trust, tremendous costs, and legal action. The facility can take months or years to recover and return to normal. Elected officials and the public at-large expect that administrators of all correctional facilities are prepared for these events and that public safety and the welfare of staff and residents will be a top priority in the event of an emergency.

Facility administrators must ensure that there is, at a minimum, a written emergency preparedness plan for the facility that has been approved by the local emergency management agency, the fire service, and law enforcement. Without these plans, chaos, confusion, and an unforgiving media will likely confront the unprepared administrator.

An emergency preparedness plan cannot be created in a vacuum; it requires collaboration and partnerships. James Keck, Homeland Security Instructor at the Virginia Commonwealth University, L. Douglas Wilder School of Government and Public Affairs, said, “The time to exchange business cards is not in the middle of a crisis.” Reaching out to key stakeholders, including but not limited to, the emergency management director, first responders (e.g., police, fire, EMS), the local American Red Cross chapter, hospital administrators, elected officials, the prosecuting attorney, judges, the chief juvenile probation officer, the social service agency director, school administrators, the facility health care administrator, and public utility companies is essential. If employees are part of a collective bargaining unit, a representative from the union should also be invited to participate in the planning process, as some decisions could impact collective bargaining agreements, such as labor contracts.

In developing a plan, it is important that the facility administrator review, be familiar with, and incorporate a wide range of information, including the following:

- State and national standards.
- State statutes and licensing and accreditation requirements.
- Labor agreements.
- Contracts for services.
- The facility budget.
- Building use inventories.
- Alternate site agreements.
- Annual intake and release reports.
- Aerial photos.
- Insurance policies.
- City or county evacuation guidelines.
- Organizational charts.
- Health and safety policies.
- Safety manuals.
- Policies and procedures for the continuation of services.

Every emergency is different. One may require a temporary evacuation; another may render the building uninhabitable for months or years; another may require that all staff and youth shelter in place. Some emergencies may involve crime scenes inside the facility that need to be protected.

The preparedness plan should define the various levels or types of evacuations. For example, a Level I evacuation could be defined as an evacuation of one to three hours. This could be a small fire or hazardous materials situation. The initial evaluation is that staff and youth will be returning to the facility within a short period of time. A Level II Evacuation could be defined as an evacuation of 3 to 48 hours. A Level II evacuation could be a major chemical spill or a breakdown that causes the building to be nonfunctional for a few days. Authorities determine that youth will need to be moved to temporary quarters or an alternate site. A Level III Evacuation could be any evacuation that lasts more than 48 hours and would usually mean that the building has sustained significant damage and that it is not safe or functional. In these cases, longer-term arrangements will need to be made with other public and private youth confinement facilities.

Those writing the plan need to consider every point in the detention and correctional process related to an emergency. How will first responders enter the building if the building has been evacuated or staff could not get to the main entrance? A hostage or active shooter situation could mean the internal operations of the facility are on lock down and there is no one to let police officers or SWAT teams into the building. The exterior of the facility may be secure, so enabling the police and firefighters access to the building needs to be determined in the early stage of the plan. The local fire and police departments should have accurate and current floor plans or detailed drawings of the facility that include every building on the campus.
If an evacuation is necessary, who will be responsible for transporting the youth to another site? Will it be the local sheriff’s office, the department of juvenile justice, the department of corrections, the state police, or the facility administrators? Specific administrative or supervisory staff should be assigned the duty of coordinating all transportation.

In a major emergency that impacts an entire community, the local jail or other correctional facilities may need to evacuate their own inmates. In this case, administrators may need to consider other transportation arrangements (e.g., the school bus company or private transportation company), which may require a formal contract.

Where the youth are taken in an evacuation is one of the most critical decisions to make in the very early stages of developing the facility emergency preparedness plan. In many states, jails, prisons, and youth confinement facilities have created mutual aid agreements that enable facilities to move youth to other confinement facilities in the event of an emergency evacuation. It is very unlikely that one host facility will be able to meet all the residential needs of another facility being evacuated. Therefore, written agreements should be established with several comparable confinement facilities within a 90 to 100 mile radius. Some states use a database that identifies available beds by location that can facilitate an immediate evacuation.

Risk assessment instruments help administrators to facilitate the appropriate placement of youth in host facilities. Risk assessment helps to identify youth who require continued secure care and those who may be released to other less secure placements. The closest facility to the evacuated juvenile detention facility should be designated for intake or receiving for all new admissions from the impacted jurisdictions. This will minimize the additional miles police officers and Deputy Sheriffs have to travel during the time the facility is closed.

When an extended evacuation is ordered, some records will need to follow the youth and the employees. The facility emergency preparedness plan should specify which records need to be transported with the youth and which can follow at a later time. Medical records, for example, will be of critical importance to the nurse at the host facility and should be sent with the youth, if possible. Face sheet data that describe the youth’s family contact information, current suicide risk level, and special diet should also accompany the youth. If this information and the medical information cannot be provided at the time the youth is transferred, it should follow as soon as possible. It is critical that the movement of medical records comply with HIPAA confidentiality requirements to the greatest extent possible.

If employees from the evacuated facility will be working in a host facility, the host will want to have documentation that background checks on all the evacuated employees are current and that they have received the appropriate training required under state and national standards (e.g., American Correctional Association, PREA, Performance-based Standards). Without this information, the host facility could be in a position of noncompliance with standards, which can jeopardize its license.

Depending on the size of the facility being evacuated, the facility administrator or governing authority should identify public or private buildings that may be available for evacuations that last a few hours, (e.g., church halls, gyms, other meeting spaces with sight lines that will enhance supervision). Obviously, the larger the facility being evacuated, the larger the alternate shelter will need to be. When an alternate site is identified, facility administrators and supervisory personnel should tour and inspect the area for possible escape risks and self-harm hazards. The alternate site should have toilet and washing facilities and enough space that will allow for the separation of youth by gender. The facility must include in the emergency plan how youth and staff are going to be fed during an evacuation and a schedule of activities to keep youth engaged. Inspections of alternate sites should be reviewed annually, along with the entire facility emergency preparedness plan.

After identifying facilities that will take youth during an evacuation, chief administrative officers and superintendents should negotiate a written contract that specifies the number of staff that will be needed from the evacuated facility, their duties, the personnel requirements for background checks, staff training, and the costs per day.

**Evacuation**

The decision to evacuate may be made before the chief executive officer knows there is a crisis developing, such as in the event of a fire on a weekend evening. The first priority is to move residents and staff to a safe place away from the immediate danger and then notify the chief executive officer or superintendent. The most senior supervisor or administrator on duty at the time becomes the Incident Commander—the person in charge during the incident—until someone of higher authority is on the scene to take over. In the event of an earthquake or hazardous material situation, first responders may need to detonate the facility to shelter in place instead of evacuate. In the case of hazardous materials, it may be necessary to seal all areas with air handling equipment.

When an evacuation is ordered, the facility emergency plan may require all levels of staff to report for duty at a designated location. The plan should identify what equipment is issued to direct care staff who may be involved in transporting youth to another site (e.g., handcuffs, flex cuffs, flashlights, radios, cell phones). Although cell phones are frequently used by families, having radios as backup is the best way to ensure continuous communications. Having a number of designated backpacks with the necessary equipment already in them will save precious time in the event of an emergency. The planning committee should decide how many backpacks are needed, but one for every housing unit would be considered a minimum. The backpacks should be checked monthly to ensure the equipment in them is in working order and that nothing has been removed.

Knowing who is in the facility at the time of an evacuation is essential. In addition to having a copy of the daily population report and the employee shift roster or time cards, it should also be mandatory for every volunteer, contract employee, family member, and guest to sign-in at the main entrance to the facility. During an evacuation, youth and employees will go to a safe zone outside the facility usually a fenced recreation or evacuation area 50 feet from the building. All others would be directed to report to a safe zone outside the facility, often across the street or at a far end of a parking lot. A roll call of all youth, staff, and individuals who signed into the facility will need to be taken at these two locations, because emergency first responders will want to know who may still be in the building. This would also be needed in the event of a hostage situation.

The health administrator of the facility should develop protocols for the safe and secure transportation of medications to an alternate facility. Some youth may be on a medication schedule that will need to be maintained during an evacuation. Continued documentation of the administration of medications is a requirement.

Keeping a record of where each resident is being sent in an evacuation is mandatory. Parents, family, the central office of the parent agency, the juvenile court, juvenile probation or parole officers, attorneys, and other professionals will need to know the whereabouts of youth, and the facility will be expected to maintain its population count.

**Level I Evacuation**

When a Level I evacuation is ordered, the agency responsible for transporting youth and facility staff to an alternate facility or location should be given notice of the evacuation level so the transportation provider can be prepared if the evacuation level changes. The alternate facility or location should also be notified so administrators there can begin to prepare for additional youth in the event that a higher-level evacuation is ordered. This planning ahead strategy gives the partners some advanced notice that their services may be needed.

Residents who suffer from emotional or mental disorders can be especially vulnerable in a crisis and will require close supervision from the most experienced staff. Only the chief or appropriate law enforcement commander can declare the emergency over and authorize the return of the youth and staff to the facility. The emergency plan should describe how youth should be returned to the facility.

**Level II Evacuation**

If a Level II evacuation is ordered, the alternate site should be immediately activated and the transportation provider immediately notified. The emergency plan should state that staff need to go to the alternate site to conduct a security inspection. When the site is deemed ready and safe, the Incident Commander should be notified. Additional support may be needed from the local law enforcement agencies at the alternate site to enhance security and supervision. High-risk and violent youth may need to be moved to a secure facility. Those facilities that have agreed to take evacuees from the jurisdiction should be notified that a Level II evacuation is in progress and that youth may need to be transported to those facilities, if the situation cannot be resolved.

The juvenile probation or parole department can play a very valuable role by agreeing to notify the families of youth that an evacuation is in process and keeping the families informed of what is being done to ensure the safety of the youth. This arrangement with the juvenile probation or parole department should be developed at the time the plan is written.

It is very likely a Level II evacuation will require that some meals be provided. How this will be accomplished may depend on the alternate site. The food service manager or cook should be a key role in planning how meals will be provided at the alternate shelter.

Hygiene will also require planning. Given the temporary nature of an alternate shelter, showers may be postponed until the youth are returned to the facility, but youth will still need hygiene supplies such as soap, toothpaste, and toilet paper. If the youth will be in the alternate shelter overnight, sleeping arrangements will have to be made. The American Red Cross or another agency may be able to provide cots and blankets for sleeping. If the evacuation affects both girls and boys, the plan should clearly state how sleeping arrangements are to be addressed. The planning committee may want to separate the male and female youth into two different facilities.
An education and activity schedule should be created that will prevent idleness and restore a sense of normalcy. Touring the facilities that are under consideration as alternate shelters will help the facility administrator, school personnel, and supervisors think about what they can offer there.

While evacuations are in progress, the work of the police and courts continues. Youth will be arrested and taken into custody, and court hearings will proceed. The plan should cover how to handle new admissions to youth confinement facilities. Will new admissions come to the alternate site or be sent to another youth confinement facility? The court schedule is of critical importance and should be respected. Attorneys may also need to meet with their clients. These activities need to be addressed by the planning committee.

Given the temporary nature of a Level II evacuation, it may be appropriate to postpone visitation.

**Level III Evacuation**

This is the most serious type of evacuation and usually means the facility will be out of service for longer than 48 hours and possibly several weeks or months. Level III will always mean that host facilities will be called upon to house evacuated youth. Administrators and managers from the host facilities should be involved in the planning process for this level of evacuation. For juvenile correctional facilities, the process may be easier to accomplish, as admissions are controlled by the parent agency. In the case of juvenile detention facilities and jails, however, admissions happen around the clock. Regardless, of the type of facility, one question that must be answered is how staff from the evacuated facility will participate.

In the case of juvenile detention facilities and jails, law enforcement agencies will want to know how newly arrested youth from the evacuated jurisdiction will be processed and where they will be taken. This could mean a police officer will be, in effect, out-of-service while he or she transports the youth to a detention facility several miles away. In smaller communities this could impact community protection.

The host facility will dictate the schedule and program the evacuees will follow while at that facility. Staff from the evacuated facility may work under the administration of the host facility to provide supervision or programming and continue to be paid by their employer.

While the evacuees are cared for at the host facility, the administration of the evacuated facility may be preparing it for the return of the youth.

To ensure that all critical areas are being addressed and monitored, the administrator of the evacuated facility should assign specific areas of responsibility to managers and supervisors. For example, one manager might have responsibility for confirming the actual childcare days at the various host facilities, another might focus on ensuring that youth arrive for court on time, and another on human resource issues. A weekly meeting of this administrative team will help to maintain open communication and create a shared vision for safely returning youth and staff to the evacuated facility. Weekly reports should go to the evacuated jurisdiction’s chief executive officer, who will notify elected officials, commission and board members, the media, and employees, as needed and appropriate.

A Level III evacuation will have a significant fiscal impact on the jurisdiction and the parent agency of the evacuated facility, which could create a drain on the jurisdiction’s general funds. The cost of room and board (e.g., per diems) at the host facility, transportation, overtime for staff who may be assigned to remote host sites, and repair and replacement of the evacuated facility will add up over many months.

These costs should be anticipated during the time the facility emergency preparedness plan is being developed so the jurisdiction will know what to anticipate. The jurisdiction’s chief executive officer will know if any insurance is available to offset some of the expenses. In the event of an emergency created by a natural disaster, Federal Emergency Management Agency (FEMA) funds may become available to help restore the facility.

**Preparing for Evacuation**

**Host Facility Planning**

The host facility should also have written plans that address being prepared for a large number of new admissions at one time and increases in the daily population. The facility will need to plan for such things as how the academic program will be conducted, how healthcare will be managed, how the daily schedule will be carried out, how the extra meals will impact the food inventory, where personal belongings will be kept, and how records will be maintained and stored. Host facilities will need to have sufficient bedding and linens, clothing, toiletries, personal supplies, and other personal supplies. The host facility and the evacuating facility should decide what supplies the evacuating facility can bring. In many cases, the host facility may only receive minimal notice, so planning needs to happen in advance.

When a Level III evacuation begins, the administrator of the evacuating facility should notify the host facility. The highest-ranking supervisor on duty should be responsible for the implementation of the plan. The host facility should know how many youth to expect, if there are any special needs youth, the route the transportation vehicle will take, the estimated time of arrival, and the number of staff coming. The host facility will also need time to call in its direct care and other staff (healthcare and mental health staff) who need to be on site to support the intake process.

Staff from both the host and the evacuation facilities should hold briefings at the start of each shift. Such briefings should include security updates, incident reports, emergency updates, healthcare issues, accommodations, and changes in the program or schedule.

**News Media and Social Media**

Today’s technology allows virtually everything that happens to be immediately known to the world. News of an emergency in a youth confinement facility will spread within minutes as employees post information on social and other media. The news media closely monitor the communication of first responders. As has been documented in a number of crises over the last several years, while social and news media work to get stories out instantly, the stories are frequently filled with errors and misrepresentations. Facility administrators cannot change what is said via social media, but the public information officer for the jurisdiction in which the facility is located can have a strategy in place for responding with accurate and timely information. Most agencies, including adult and juvenile detention and correctional facilities have websites, and many use Facebook pages to provide information to employees, families of youth, and the public at large. As the technology for instant reporting evolves, jurisdictions will have to stay current with the latest communications tools. Jurisdictions should have communication procedures in place in the event of an emergency. These strategies should be incorporated into the overall facility emergency preparedness plan. Being proactive is always better than being reactive.

**Training and Drills**

Training is absolutely critical to the successful implementation of any evacuation plan. Training can take the form of classroom review of the plan, desktop drills, functional drills, and full drills. When conducting drills, a design team should create the narrative and insert unanticipated variables that could change how the parties respond. For example, just before a group of youth were moved from one facility to another, it is learned that one of the youth to be evacuated is a rival gang member of a youth at the host facility and the police have said not to mix the two youth. Such unexpected scenarios will happen in real emergencies and need to be addressed in training. Drills should also include outside observers who can help to evaluate the drill and the plan and recommend improvements. The purpose of the drill is to teach the plan. An evaluation of the drill should show what worked and did not work and why. Training and practice are as important for the host facility as for the facility to be evacuated.

**Impact on Youth and Families**

Emergencies and evacuations can have a significant impact on the youth of the evacuated facility. Youth in the facility may need reassurances that their families have been contacted and are informed about their child’s location and safety status.

During an evacuation and evacuation, youth may also experience anxiety, fear, and other powerful emotions. Even an orderly evacuation could destabilize certain youth and trigger behaviors that were under control in the routine setting and circumstances. Some youth may try to exploit the uncertainty in the situation and even try to escape. Extra personnel may be required to help calm youth emotions and stabilize their behavior and to maintain an orderly transition to the alternate setting.

**Impact on Staff**

Emergencies and evacuations can have a significant impact on employees at the evacuated facility. During events such as weather-related emergencies or wildfires, staff need to know that their own families will be safe. Every employee should be trained on how to create an emergency preparedness plan for his or her family. The FEMA website is an excellent resource for this.
If the facility is evacuated and closed, employees will need to know if they will continue to have a job and be paid. However, this needs to be discussed as the plan is being prepared. The chief executive officer and the elected officials of the jurisdiction will need to approve this in advance.

The better the jurisdiction is at taking care of staff, the better the staff will be at caring for the youth.

Continuity of Operations (COOP)

The federal government has defined COOP in the National Continuity Policy Implementation Plan as the means to ensure that the primary missions of executive branch departments and agencies continue to be performed during a wide range of emergencies, including localized acts of nature, accidents, technological breakdowns, or attacks. Although COOP planning is mandatory for executive branch departments and agencies, state and local governments are encouraged to create their own COOP plans. COOP plans differ from facility emergency preparedness plans in that COOP plans focus on how essential services will continue to be delivered, as opposed to emergency preparedness plans that focus on the specific event and how youth and staff of confinement facilities will be safely removed from the immediate danger. COOP planning is involved and detailed, but FEMA has training and technical assistance materials that are readily available on its website. Virtually every state and local government requires their respective departments and agencies to have a COOP plan in place and requires that these plans be reviewed annually with other appropriate agencies in that unit of government. The reader is encouraged to visit the FEMA website, learn more about COOP, and meet with their elected and appointed officials to understand what their local jurisdiction requires with regard to COOP Planning.

Conclusion

Confinement facilities are required by either state facility standards or state fire codes to practice fire drills on a regular basis to ensure that youth and staff know exactly what to do in case of fire. No one doubts the importance of fire drills. Most facilities are very efficient at conducting fire drills, but many facilities have not planned beyond getting the youth out of the building. Although fires in confinement facilities are fairly uncommon, other emergencies happen on a more frequent basis. Chemical spills, severe storms (e.g., tornadoes, floods, earthquakes) can happen anytime and without warning. These events need to be considered when developing a plan for how a facility will respond, continue to care for youth, and ensure public safety. When identifying evacuation sites, planners must consider that the evacuation site may itself have become a casualty of the storm or event. Identifying multiple sites extending out several miles may ensure there are alternative facilities in place that have agreed in writing to serve as a host facility.

Planning is the key to being prepared. Plans should be tested and reviewed annually, and staff should receive training accordingly. The agency funding source should be heavily involved in this process. To paraphrase an old saying “Failing to plan is planning to fail.”

Resources


III. The Impact of the Prison Rape Elimination Act (PREA)

Author: Steve Jett [4]

For some time, the mention of the Prison Rape Elimination Act has struck fear in the hearts of many practitioners who work in both juvenile and adult confinement facilities. Most of that fear was due to the unknown—first not knowing what the standards would be, and then not knowing what the audit process would be like.

After the PREA Standards were published in 2012, one of those fears was removed. The long-awaited Standards were available, and preparations could be made toward compliance.

Since PREA legislation was passed in 2003, the prevention, detection, and response to sexual abuse in our facilities has emerged as a priority. Many facilities and states began to move quickly toward adding language specific to PREA to policies, procedures, and state standards. No matter what the final PREA Standards would be, certain things were sure to be included, such as the need for increased training for staff, multiple means of reporting abuses, changes in cross-sector supervision and searches, and mandatory investigations of reports.

Of particular concern was the financial impact of implementing PREA on the shorter-term juvenile detention and jail facilities, many of which are small operations with limited budgets. Although compliance with the PREA Standards has associated costs, there are two significant developments that have helped alleviate some of the concern over fiscal impact.

The Rule Making Process

The National Prison Rape Elimination Commission’s rule-making process helped to bring the PREA Standards to a manageable level. The original draft standards were cumbersome and unwieldy and in many cases looked more like policies than standards. The rule making process allowed several different periods for public comment, and the final version of the Standards proved that those comments were heard. The early Standards, for example, mandated that all juvenile facilities, no matter how small or large, have a full-time upper-level PREA Coordinator. Final Standards allow for part-time PREA Coordinators, which is much more reasonable and attainable for many jurisdictions.

The National Center for Eliminating Prison Rape

The second development, and possibly the most significant for administrators and practitioners in the field, was the National Center for the Elimination of Prison Rape, known as the National PREA Resource Center (PRC). The PRC is funded through a cooperative effort— involving the National Council on Crime and Delinquency (NCCD) and the Bureau of Justice Assistance (BJA)—for the purpose of assisting agencies in meeting the requirements in the PREA Standards. The PRC has assembled hundreds of resources such as documents, articles, training materials, sample policies, forms, and informational guides. Of particular importance—especially to those agencies that might be relatively new to PREA—are the toolkits designed to guide staff at any facility, from start to finish, in the development of policies and procedures related to the PREA requirements.

The resources available on the PRC website help to reduce much of the cost of compliance. Many agencies have already developed training materials that are readily accessible for use by any agency. Informational items such as brochures and posters are also ready to download and use, some without any editing at all, and some that may require editing to meet the individual agency’s needs or circumstances.

The PRC is also a clearinghouse for information about opportunities for grant support to help agencies achieve compliance with PREA Standards. Several rounds of grants have been made available through the PRC, some targeted for state agencies and others for local jurisdictions that have voiced their need for financial assistance. If a particular resource cannot be found on the PRC website, an agency or group can fill out the Technical Assistance Form for help in finding additional assistance. The PRC recognizes that if one agency has a gap that needs to be filled, there are probably others with the same need. The PRC wants to use funding in the best and most efficient ways possible. As a result of Field-Initiated Technical Assistance requests, newly developed or released material is continually being added to the PRC website.

Policy Development and Enhancement

Practitioners at all levels who work with youth in confinement can at times be resistant to change, especially when that change is imposed from outside the facility. PREA is a legislatively mandated change, and therefore has met with some resistance.

PREA requires agencies to examine their existing policies and procedures related to sexual abuse prevention, detection, and response. As case law changes, as new laws are codified, and as internal practices within a facility are periodically reviewed, written policies and procedures may need to be created, edited, or replaced. PREA is a force that will help practitioners make the changes necessary to bring policies in line with the law, with new standards, and with best practices.
The PREA Standards provide administrators with a foundation for keeping youth safe. Many of the concepts outlined in the Standards—such as the use of incident review teams (in the case of PREA are sexual incidents)—could be used in response to other situations such as fights, allegations of harassment, other forms of victimization, and the use of restraints.

Training

One of the most important things any organization can do to reduce liability is to conduct sufficient high-quality and relevant training. The increased training requirements contained in the PREA Standards can justify training budgets, serve as a means for improving the capacity of staff, and reduce liability for the facility. PREA Standard 115.331(a) lists 11 topics on which all staff must be trained. Administrators and trainers have a rough outline furnished for them in this Standard. The PRC resources offer readily available presentations to allow facilities to put this training into place with very little cost.[24]

Far too often, training sessions are held, and participants leave without being tested on their level of comprehension of the topic. PREA Standard 115.331(d) requires the employee to document that they not only participated in the training, but that he or she understood the training content.[25] This verification is another example of a concept required by PREA that could be used with other training.

Resident Education

Many staff feel that educating youth about their rights under PREA will result in an increase in reports of sexual victimization. This may in fact be the case, and there may be several contributing factors. One of these factors may be a resident’s desire to “get back” at staff by filing false reports. This false reporting is likely to diminish over time and may be addressed by using the facility’s disciplinary process.

Another factor that may cause an increase in the number of reports filed is that, with more awareness of the facility’s zero-tolerance policies and reporting mechanisms, youth may be more apt to report actual incidences of abuse. This should be viewed as an intended and positive outcome. When administrators are made aware of incidents, they can address the situation and improve the level of safety and the quality of treatment in the facility.

Audits

Many questions still surround the PREA audit process. Relatively few audits have been completed so far. However, the concept of the PREA audit has been well thought out and is being refined as more audits are conducted.

One of the most important things to realize about the PREA audit is that it is not a policy-based audit. Although facility policies related to PREA will be reviewed, the auditor will also look at training curricula and records, daily logs, incident reports, and other documentation. The PREA auditor will conduct interviews with staff and youth to confirm that the policies are actually being followed on a day-to-day basis. A PREA audit is actually an audit of the facility’s culture.

Cost of Audits

The costs of a PREA audit are borne by the facility being audited. This has created uncertainty and concern among confinement facility administrators. In addition, it was the decision of the Department of Justice not to set audit fees. As a result, auditor costs may vary widely, so it may be beneficial for a facility to solicit proposals from more than one auditor to determine the best auditor for the facility. The facility administrator should have prospective auditors provide a listing of all estimated costs prior to signing a contract for the audit.

There are many factors to consider when discussing the cost of a PREA audit. Estimates may vary depending on the size of the facility and a number of other factors. Some auditors propose doing the audits for a flat fee. Others have set hourly or daily rates. The facility must also pay for travel and lodging expenses, as well as travel time, if the auditor includes those costs.

Another variable is the number of days that an audit will take. Estimates of time are based on information that the auditor receives in training sessions. These estimates have proven to be fairly accurate thus far.

The Audit Process

The Pre-Audit process should take between two to three days of the auditor’s time; this part of the process involves document review. The amount of time required may be reduced if the facility fills out the Pre-Audit Questionnaire fully and accurately.

The actual Audit Visit should take approximately three days. The size of the facility will impact the length of the visit, due to the number of interviews that the auditor will need to conduct.

The Post-Audit work leading up to the Summary Report should take an auditor an average of three days.

The time needed to complete the Audit up to and including the issuance of the Summary Report can be estimated fairly well. It should involve approximately eight to ten days of the auditor’s time. Actual time for specific audits may vary. However, the work that must be done by the facility during the Corrective Action Period, and the resulting work performed by the auditor cannot be estimated until the Summary Report is finished. A flat fee proposal may include this work. Other proposals may simply charge the facility an hourly rate.

Conclusion

Having someone from the outside scrutinize a facility’s operations can be very uncomfortable for staff and administrators. However, the object of a PREA audit is to make sure that the best possible practices are in place and to ensure youth safety.

The impact of PREA on youth confinement facilities can be very positive. To facilitate a positive process, administrators must lead the way by fully embracing the PREA Standards and everything they require.

IV. Sexually Abusive Youth

Author: Hugh Hanlin[2]

Youth who sexually abuse present a unique and evolving challenge to youth confinement facilities. For many years, programs provided a rigid set of interventions that applied to all youth entering programs. These programs often reflected similar concepts from programs for adult sexual offenders. Over the last five years, however, the professional literature indicated a need for an increasingly dynamic and individualized approach to the treatment of sexually abusive adolescents. Successful programs recognize the clear difference in the clinical and developmental needs between adult sex offenders and sexually abusive youth. The challenge is to shift from the previous rigid programing to programs sensitive to the wide variety of unique treatment needs, developmental needs, and complicated life histories of sexually abusive youth. These programs implement and perform in a manner compatible with the developmental needs of youth; they integrate services to provide individual interventions that factor in risk levels, criminogenic needs, and other social and mental health problems.[26] The key elements for successful programs are:

1. Making decisions based on validated and reliable risk instruments.
2. Identifying and targeting the individual criminogenic needs of each youth.
3. Attending to additional needs that might affect treatment (e.g., responsivity factors).
4. Creating a structured program that can integrate many therapeutic interventions.
5. Training, coaching, and supervising staff members to address the unique challenges of these youth.

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These five elements are consistent with the components of proven successful programs for treating delinquent youth. The elements create a structured program that facilitates youth rehabilitation and public safety.

Sexually Abusive Youth

Several characteristics are common among sexually abusive youth. Most have abused one or more children. Of those victims, a significant number were family members. The abusive youth typically are ages 15–16, and a significant majority is male. The referral entities are juvenile courts or child welfare departments. However, youth who sexually abuse are a heterogeneous group; it is critical to respond to the unique characteristics of each youth. The first step is to conduct an assessment that identifies their individual characteristics. Risk, needs, and responsivity provide the conceptual tools to individualize a program for each youth.

Risk. Sexually abusive youth represent a full continuum of risk levels for further sexually abusive and delinquent behaviors. Currently, available risk instruments include ERASOR; J-SOAP; and J-SFAMAT. Assessment of youth should consider risk of both sexually abusive behavior and delinquency. The sexual recidivism rates for sexually abusive youth who complete treatment range from 7% to 13%, which indicates that few youth are high risk for sexual recidivism if they complete treatment. Assessment for risk of general delinquent recidivism is also important, as this rate exceeds the sexual recidivism rate (20%–28%). Assessment should evaluate risk for both sexual and delinquent recidivism.

Risk level provides the first segment of youth and determines 1) the intensity of services needed, 2) the level of restrictiveness required for community protection, and 3) the classification necessary to ensure safety within the facility. Highly intense programs may include extended stays with multiple treatment interventions per day. Programs for lower-risk youth may include multiple interventions per week. The level of restrictiveness includes the degree of containment and the length of stay. A 12-month stay for high-risk youth followed by high-intensity community programming is appropriate, while low-risk youth may need only 2–3 months of facility-based treatment followed by intense community-based programs. Separation of different classification levels protects lower-risk youth and allows higher-risk youth to receive intensive services in more restrictive environments.

Criminogenic needs. Sexually abusive youth present a variety of criminogenic needs or treatment targets. Quality programs assess these needs in a systematic manner and in collaboration with youth and their families. This collaboration builds engagement and helps youth develop ownership of their program. Specialized needs assessment instruments such as the Treatment Progress Inventory for Adolescents Who Sexually Abuse (TPI-ASA) provide information concerning youth needs. Some risk assessment instruments, such as the ERASOR, also provide information concerning needs. Although the needs vary significantly, a few occur frequently. The frequently occurring criminogenic needs within this population include:

- Delinquent criminogenic needs, such as antisocial values, antisocial peers, and anger management.
- Deviant sexual interest.
- Sexual preoccupation.
- Cognitions supportive of sexual abuse.
- Family dynamics, including those resulting from victimization of immediate or extended family members.
- Trauma.
- Executive skills, such as impulsivity and poor interpersonal problems solving.

Each youth may have none, one, or many of these frequent criminogenic needs. Interventions for these needs are the priority for programming.

Responsivity. Sexually abusive youth present a range of mental health and social issues other than criminogenic needs. Treatment of these issues reduces barriers to successful treatment of criminogenic needs, identifies strengths, and provides stability for the youth. These responsivity issues are often unique to the youth, but several are common, and some require special sensitivity. These responsivity issues are:

1. Youth trauma. Trauma may be either a criminogenic or responsivity issue. Trauma includes physical, sexual, and emotional abuse; exposure to street violence; domestic violence; and substance abuse. Shameful feelings related to trauma are especially critical to address, as the shame of sexual victimization and the shame of sexually abusing someone may create a significant barrier to engaging in treatment. Staff members may misperceive a shame-based response for resistance and create an additional barrier to treatment.
2. Parental trauma. The trauma history of parents may create barriers to successful family therapy and reunification with the family. Addressing the family history of trauma provides the youth and the family an opportunity to resolve long-standing issues and develop an alternative narrative of the family history based on resiliency to trauma.
3. Spirituality and religion. Sexual abuse is a behavior with significant ramifications related to spirituality and religious beliefs. When staff members demonstrate sensitivity to a youth and their family’s religious and spiritual life, often the strengths and informal community resources of the family become evident.
4. Sexual orientation and gender identity. These issues occur with a small percentage of youth but may be confused with the sexually abusive behavior issues within the milieu. Separating issues of sexual orientation and gender identity from sexually abusive behaviors is a critical step in helping the youth and staff members address sexual orientation and gender issues with sensitivity and understanding. (See section on LGBTI/Q Youth)
5. Executive skills. Identifying executive skills deficits provides critical information for matching youth to appropriate programs. A youth with significant executive skills problems may struggle in a relapse prevention program but succeed in a program grounded in social skill training.

An established program to assess risk, criminogenic needs, and responsivity leads to the total treatment program. Several factors are critical to an effective program—hope, a positive milieu, clinical services, and fidelity.

Hope. Each program must create an atmosphere of hope for the youth and family. Hope means instilling a belief that the youth and family can change. This factor is hard to measure. But, it is critical, because the youth and family are often discouraged, shamed, or rejected by their community and are experiencing significant feelings of personal loss. The family and the youth may respond to this combination of feelings with reluctance to engage in treatment, overwhelming shame, and avoidance of each other. The research, however, clearly states in multiple empirical reports that treatment works. Additionally, clinical experience indicates that many youth heal their relationships with their family members, resulting ultimately in stronger and more satisfying relationships.

Program providers may foster hope through the following means:

1. Using the principles and spirit of motivational interviewing.
2. Avoiding shaming and fear-based motivators.
3. Encouraging the youth and family to work on their relationships, including the victim or victims of the youth, when appropriate.
4. Treating the youth as a unique individual and not as a “sex offender.”
5. Voicing optimism about change and focusing on the youth and family’s incremental progress in treatment.

Milieu. These youth need a milieu that 1) is safe, 2) supports the learning of new skills and achieving milestones of adolescent development, and 3) provides an opportunity to develop trust, respectful relationships. These three components create a context where the youth perceive an opportunity to change, learn through successes and failures, and look to others for help. Achieving this milieu is a difficult balancing act. Safety and developmental needs may seem to conflict at times. The task is to encourage normal adolescent peer relationships and prohibit sexual incidents within the facility. Critical issues for safety include the following:

1. Safety must include the youth’s actual and perceived physical, emotional, and sexual safety. Many traumatized youth cannot accurately assess personal safety, so staff must attend to their perception of safety.
2. Safety results from positive relationships among staff members and youth.
3. Sexually maladaptive behavior is secretive, and safety requires honesty and openness among youth and the staff concerning sexuality.
4. Staff members should be alert and carefully monitor youth behavior, but not exhibit overt suspiciousness.
5. Staff members should not lecture youth concerning their offenses, refer to them as “sex offenders,” or verbally threaten them about the possible legal consequences of their sexual behaviors.
6. Sexual behaviors occur on a continuum, from minor sexual behaviors (sexual talk) to significant sexual incidents (penetration). The goal for staff members is to help the youth develop appropriate peer relationships.

These youth struggle to control sexual behaviors, and staff members need to avoid judging the impulses and help youth learn to control their impulses. (See section on PREA.)

Developmental needs. Although a variety of developmental needs are important, relationship development is critical for these youth. Providing opportunities to develop appropriate peer relationships requires the following:

1. Encouraging healthy youth relationships that are realistic and developmentally appropriate.
2. Providing opportunities for healthy relationships with family.
3. Identifying replacement behaviors for sexual preoccupation and deviant sexual interest that involves healthy relationship with others.
4. Developing program guidelines for staff members to encourage age-appropriate interactions among peers.

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5. Clearly defining the goal of the program as the development of healthy expression of sexual feelings and appropriate sexual behaviors [36]
6. Carefully evaluating the role of touch within the facility. Casual observations of adolescents suggest that touching is critical and normal to adolescent development. Banning even appropriate touching among staff members and youth creates an artificial atmosphere, which is not conducive to relationship development [37]
7. Consciousness of how the program meets the needs of adolescent development.

Clinical Services

The last 15 years have seen an evolution from rigid, one-size-fits-all programs to increasingly individualized programs that are based on a youth’s unique combination of needs. Most programs provide a combination of psycho-educational groups, process groups, individual therapy, and family therapy. The combination depends on the risk level, criminogenic needs, and responsivity issues of the youth in the program. The content of the psycho-educational group is a critical choice in matching youth to an appropriate program. Examples of possible psycho-educational group content are social skills, healthy sexuality, relapse prevention, mindfulness, grief, and interpersonal problem-solving. Commercially prepared manuals exist for many of these different needs, though none addresses all possible needs. Most programs provide interventions for the seven criminogenic needs noted above based on the individual assessment. Most youth require clinical interventions that address the following:

1. Changing cognitions that are supportive of sexually abusive behavior.
2. Trauma of all types.
3. Changing antisocial values and resisting antisocial peers.

Providers should use evidence-based programs to the extent possible, though currently there is no readily available evidence-based program for sexually abusive youth. Most programs combine evidence-based and best practice principles from community-based programs for sexually abusive youth, programs that address delinquency, and programs for treatment of trauma. The following are examples of these programs:

- Multi-systemic Therapy [38]
- Functional Family Therapy [39]
- Aggression Replacement Training [40]
- Trauma Focused-Cognitive Behavior Therapy [41]
- Motivational Interviewing [42]
- Other relevant cognitive behavioral therapy programs [43]

Best practice guidelines may be found through the Association for the Treatment of Sexual Abusers (http://www.atsa.com/).

Once the program is developed, strategies for organizing the program and ensuring fidelity are critical for successful implementation. Important strategies for individualized programming include the following:

1. Providing a structured process to use in the initial assessments of risk, criminogenic needs for sexual and delinquent issues, and responsivity.
2. Assessing and changing program content based on the criminogenic needs and responsivity issues.
3. Responding to the unique narrative of each youth, instead of using the same approach with all youth in the program.
4. Assisting therapists who are struggling to cope with secondary victimization and burnout after hearing the tragic and painful offenses and life narratives of these youth.
5. Program directors and clinical supervisors should provide a wide variety of tools and strategies, monitor for secondary victimization, and provide a positive supervision atmosphere to create a culture that encourages the therapist to succeed with sexually abusive youth [44].
6. Creating safety plans that contain not only external strategies (e.g., supervision rules, prohibited activities, schedules), but also internal safety strategies (e.g., plans to respond to internal triggers, self-soothing strategies, changed relationship patterns in the family).
7. Supporting clinical service providers to reach out to families and communities, so that services connect and prepare youth and families for aftercare services.
8. When necessary, using the polygraph (which remains controversial among experts in the field) according to thoughtfully constructed policies and procedures that are based on research [45].

Improving Programs

Programs for sexually abusive youth require clinically sophisticated programs that staff members build through constant and incremental improvements. Additionally, the current evolution of research and programs for sexually abusive youth requires constant improvements to respond to new research and program developments. Programs for sexually abusive youth employ evidence-based practices [46]. The program staff should have the following:

1. A thorough knowledge of the current program.
2. An understanding of and an ability to continually incorporate new research—knowing how the program should change.

Fidelity

Knowing the current program and knowing if the program is changing in a positive manner are results of fidelity measures. Research indicates that fidelity measures make dramatic differences in outcomes for delinquent youth [47]. Fidelity measures allow incremental improvements in the program in a structured and organized manner. Fidelity measures demonstrate that program changes are effective and reliable. Unique strategies for creating fidelity in programs for sexual abusive youth include the following:

1. Evaluating the connection of assessment to clinical services and then clinical services to program effectiveness and outcomes.
2. Creating monitoring programs that drill down to the individual interactions of youth and staff members.
3. Collecting data about how criminogenic needs and responsivity characteristics change among program youth over time, especially sexual preoccupation, antisocial values, and deviant sexual interest.
4. Identifying and developing strategies to hire, train, and supervise staff that are qualified to handle the unique needs of sexually abusive youth.

Conclusion

The treatment of sexually abusive youth is a difficult challenge. The evolving practice of providing sexually abusive youth an opportunity to change involve a sophisticated program structure that uses evidence-based programs and best practices. Program staff use fidelity measures to ensure the reliability and quality of services. Successfully meeting this challenge supports sexually abusive youth to choose pro-social lifestyles that will enrich themselves, their families, and their communities.

V. Placement of Youth in Adult Facilities [48]

Author: Elissa Rumsey [42]

The age of 18 has great significance in the U.S. and around the world. It is the age at which one is typically considered an adult for contractual purposes, the age when one is allowed to vote, and—in most jurisdictions—the age when school is no longer compulsory. It is also the age at which 40 states begin automatically prosecuting individuals in adult court. Eight states have determined that 17 is the appropriate age at which to prosecute individuals as adults, and two states automatically prosecute youth in adult court at age 16. Every state has provisions to transfer youth under age 18 to the adult court system, with multiple states having no lowest age for prosecuting an individual youth in either court. [48]

The consequences of prosecuting youth in adult court can be dire. A youth may be sentenced and immediately assigned to an incarceration facility designed and operated for adults. A youth may be forever branded a felon, preventing access to educational grants, public housing, and employment. A youth may be subjected to criminal prosecution for all future arrests. And, just as it occurs in juvenile facilities, sexual abuse is a reality for youth who are confined in adult facilities. Finally, the use of solitary confinement—sometimes used allegedly to protect younger inmates from older predators—as well as any of the results of prosecuting youth in adult court, may lead to the most tragic of consequences: suicide.
It is important to adequately focus on the first outcome—specifically, that which results when youth are prosecuted in adult court, convicted, and sentenced to a stay in an adult jail or prison. There are too many youth—especially youth of color—prosecuted in adult courts and sentenced to time in adult prisons who could be served effectively in the juvenile justice system. Study after study shows that more youth of color are prosecuted in adult court than White youth, and for the same alleged crimes.[50]

In the U.S., over 200,000 youth under age 18 are tried as adults each year, and an estimated 6,000 are incarcerated in adult facilities while they are still juveniles. Data tell us that, when youth are prosecuted in adult court and sentenced to adult facilities, their prison stays average two years.[51] This reality defies the general notion that youth are prosecuted in adult court only for serious and violent crimes and that a lengthy prison sentence is the result. Given that almost every state’s justice system allows youth to remain in a youth confinement facility until age 21 (and in some states age 25), youth transferred to adult court and serving short sentences in adult prisons could be more effectively served in the juvenile justice system.

Federal and state laws, coupled with the common law, demonstrate call for a closer look at this issue. The Juvenile Justice and Delinquency Prevention Act (JJDPA) is one such law. It requires that no youth shall be detained or confined in an adult jail or lockup. Youth charged in adult court are exempt from JJDPA protections. Many states have enacted legislative changes that comport with the JJDPA and have used annual federal formula grant funds to ensure compliance with state and federal requirements.

The Prison Rape Elimination Act (PREA) similarly protects confined youth and, importantly, youth charged in adult court. In fact PREA’s language—“youthful inmates”—includes anyone under age 18 who is convicted in adult court and housed in an adult jail or prison.[52] These youth must be separated by sight and sound from inmates who are age 18 and older. The youthful inmate standard includes three requirements applicable at the time youth are placed in prisons or jails.

• First, no inmate under age 18 may be placed in a housing unit where contact will occur with adult inmates in a common space, shower area, or sleeping quarters.
• Second, outside of housing units, agencies must either maintain “sight and sound separation” (e.g., preventing adult inmates from seeing or communicating with youth) or provide direct staff supervision when the two are together.
• Third, agencies must make their best efforts to avoid placing youthful inmates in isolation to comply with this provision. Absent exigent circumstances, facilities must afford youth daily large-muscle exercise and any legally required special education services and must provide other programs and work opportunities to the extent possible.[53]

Prior to the passage of PREA in 2003, case law provided insight about the results of a juvenile placement in an adult correctional setting. In D.B. v. Tewksbury, a court determined that 1) under certain circumstances, detaining a child pretrial in a jail constituted “punishment,” and, thus, violated due process clause; 2) confining a runaway child or a child out of parental control in a jail constituted punishment and violated due process rights; and 3) lodging a child in a modern adult jail, pending adjudication of criminal charges, would be fundamentally unfair and a violation of due process rights. Moreover, the court found that children were placed in isolation cells, without adequate supervision, to prevent harm, which constituted punishment, and thus violated the U.S. Constitution.[54]

A federal district court in Maine also ruled in favor of ensuring the constitutional rights of youth in custody—Grenier v. Kennebec County.[55] In that case, a youth was held for four days in a county jail for alleged unauthorized use of a motor vehicle. After his arrest for a violation that would have been treated as a misdemeanor if it had been committed by an adult, the youth (aged 15) was strip-searched, during which time he heard prison staff talking about an imminent sexual assault by adult prisoners. The youth was confined to a cell within sight and sound of adult prisoners, deprived of outdoor exercise, and denied the chance to speak to an attorney or to family members. The court held that the facility where the youth was confined and the circumstances surrounding that confinement constituted a clear violation of the requirements of the JJDPA.

More recent U.S. Supreme Court decisions demonstrate that the Court has moved towards establishing the age of 18 as its own bright line. In Roper v. Simmons, the Court ruled that the death penalty is unconstitutional for individuals convicted before age 18.[56] Shortly thereafter, the Supreme Court ruled in Graham v. Florida that life without parole for non-homicide crimes was similarly unconstitutional for those who committed the crime before age 18.[57] Finally, in 2012, the Supreme Court again addressed a juvenile case in which a youth under age 18 was sentenced to mandatory life without parole. In Miller v. Alabama, the court ruled that imposing such a mandatory sentence was unconstitutional.[58]

From a policy perspective, recent efforts of the U.S. Department of Justice clarify that youth deserve due process as much as adults. They deserve special processes in terms of rehabilitation, which in most cases is more likely to occur in a youth confinement facility. For example, the Attorney General Eric Holder’s National Taskforce on Children Exposed to Violence has mandated the abandonment of traumatic correctional practices, stating strongly that “no juvenile offender should be viewed or treated as an adult. Laws and regulations prosecuting them as adults in adult courts, incarcerating them as adults, and sentencing them to harsh punishments that ignore and diminish their capacity to grow must be replaced or abandoned.”[59]

Effectively serving youth in an adult custody setting is extremely challenging. Numerous federal and state laws have been enacted to address this reality in an effort to provide youth with as much protection as constitutionally required. The case law also reveals a body of cases in which the courts have continuously ruled for youth, especially relative to the constitutionality of detaining and confining youth with adults. With a reauthorization of the JJDPA, combined with future changes in case law and state statute, perhaps the time will arrive when no individual under age 18 will set foot in an adult facility.

VI. LGBTQI Youth

Author: Mykyl Seidh [60]

Youth who identify as lesbian, gay, bisexual, transgender, questioning, or intersex (LGBTQI) has been an important topic in juvenile justice for the last few years. The spotlight on this issue is in part due to media attention on youth bullying and the suicides that have at times occurred as a result of this bullying, legislative controversy about the right of LGBTQI people to marry, and requirements under the Prison Rape Elimination Act (PREA) Standards. As societal awareness of the issues and concerns of the LGBTQI community has evolved, so has the response from the field of juvenile justice.

The juvenile justice field has generally struggled with the issues of LGBTQI youth because policies and practices that address the specific needs of LGBTQI youth in confinement are lacking. This is not necessarily because juvenile justice professionals are insensitive or intolerant of this vulnerable population, but rather may be due to the anxiety provoked by the unknown. Although LGBTQI youth have been represented in confinement facilities, historically their needs have not been considered, because they have not been understood. For many the notion that LGBTQI individuals may have different needs conflicts with maintaining uniform structure and avoiding special treatment for particular youth. In reality, they challenges and requirements, and culture that focus on understanding and attending to the LGBTQI population is in alignment with the overarching correctional mission of public and individual safety. It is the responsibility of correctional professionals to develop the competency and skills required to create a culture of emotional, physical, and sexual safety for youth. It is through the development of policies, training curricula and cultural sensitivity that addressing the needs of LGBTQI youth will no longer be thought of as special treatment, but as part of good correctional practice.

Although the issues impacting justice involved LGBTQI youth are complex, there are a few topics that are overarching and that impact these youth at all points in the system. Gender expression and gender identity, the use of names and pronouns, and grooming and hygiene impact youth at pretrial services, in court, during confinement and upon reentry. It is critical that the adults and peers act in response to LGBTQI youth that creates the potential for increased safety risks and harassment rather than the actual sexual behavior of these youth. Further training and discussion is critical to understanding this difference.

Providing resources and current research findings to facility staff about LGBTQI youth, specifically in regard to patterns and the impact of confinement is the foundation of any training and understanding in this area.

Gender Expression and Gender Identity

Gender expression “refers to all of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns and social interactions.”[61] An individual’s self-identification as lesbian, gay, or bisexual is not necessarily evident unless it is disclosed. Even a transgender youth’s identity may not be readily perceived. However, during intake, if a youth presents with long hair and nails, make-up, and traditional female mannerisms but court documents indicate the person is male, the questions and decisions that arise can increase or decrease the risk of victimization and safety for that youth. In facilities segregated by sex, it is difficult for professionals to manage biology versus gender identity and expression.

Gender identity is “a person’s innate, deeply felt psychological identification as male or female.”[62] Therefore if a person thinks of him or herself as a female, then they are female and vice versa. Facilities must find appropriate ways to house LGBTQI youth, for example those who identify as one gender when they are biologically the opposite, those who identify as both male and female or neither, and those who are intersex (a person that is born with a reproductive anatomy that does not fit the typical gender definition). The solutions to such problems will stem from the culture, practices, and policies, and resources of each agency.
A good place to begin is to seek the assistance of local LGBTQI advocates who understand the regional LGBTQI culture and concerns of local LGTQI youth. Consider the research about the impact of automatically housing transgender and gender-nonconforming youth according to their birth sex.[62] Another excellent practice is to directly address affected youth about their feelings of safety with respect to issues like housing, searches, names and pronouns, grooming, and programming. Facility staff may cringe at the idea of asking a youth’s preference, but by asking, staff can show basic compassion and respect and demonstrate a willingness to learn. These behaviors can have a huge impact on the emotional, physical, and sexual safety youth may feel in the facility. There are recommended ways to go about discussing these issues with youth. Agencies that may provide such assistance are listed at the end of this section.

Names and Pronouns

For transgender and gender-nonconforming youth, names and pronouns are significant, and the way names are used can contribute to or detract from a youth’s emotional well-being and mental health status.[63] Developing and communicating protocol for name and pronoun usage for transgender and gender-nonconforming youth to both youth and staff is a difficult task. Issues of confidentiality and harassment are a central concern. Discussing agency policies and practices about this issue with everyone in the facility—including all levels of staff and all youth—and engaging them in a plan to be respectful and follow agency policy creates an environment of respect and concern.

Agency policy may direct staff to address youth by their last name. It is difficult for all staff and facility youth to be consistent with this practice and avoid all reference to gender. Instead of trying to avoid the issue, it may be most effective to ask youth how they want staff and other youth to refer to them.

Transgender and gender-nonconforming youth may have an alternative name and Preferred Gender Pronoun (PGP) that is not a nickname, not related to gang affiliation, not used in a way that promotes violence, and is not in any other way illegal or inappropriate. Allowing youth to use their PGP or their preferred name can create an emotionally safe environment for those youth.[64] Forcing youth to conform to societal norms can be psychologically devastating and can create opportunities for increased risk.[65] Staff should consider how they might feel if they were in the youth’s position.

Questions staff can consider in trying to relate to LGBTQI youth:

- What message is the person calling you “she” sending about you and your identity?
- How would you interact with that person?
- Would you feel safe in their presence?
- Would it matter to you what that person says about why they are using “she” instead of “he”?

Grooming and Hygiene

An issue central to everyone’s gender identity is the ability to groom themselves in accordance with their self-identified gender. As clothing may be standard issue in a youth confinement facility, the automatic practice might be “Youth wear what we tell them to wear…period.” That may be true in general, but not all confinement facilities require residents to wear uniforms. In addition, uniforms may differ based on biological sex. There are ways for facilities to maintain structure while allowing youth the freedom to express their gender identity through clothing and commissary items that are allowed under agency policy. For example, it is possible for all youth, regardless of biological sex, to wear the same clothing. Youth may get to earn the privilege of wearing their own clothes. The point is that facility administrators should consider how their clothing policy is likely to impact a transgender or gender-nonconforming resident.

Allowing residents to groom themselves in accordance with their gender identity impacts emotional well-being and mental health.[66] This is a delicate issue in a youth confinement facility; leaders can implement practices that are respectful to youth and that maintain the structure of the environment.

- Require gender-neutral clothing for all youth.
- Allow all youth access to the same commissary or canteen items.
- Let youth style their hair in whatever way they wish as long as it does not conflict with safety measures.
- Allow transgender, gender-nonconforming, and intersex youth the option to shower privately.

Agencies should address these issues and related policies proactively and not wait until they are forced to address them because of a crisis or a lawsuit. Some questions agencies should ask themselves to be proactive about the safety of LGBTQI youth are:

- Are decisions about LGBTQI youth based on a youth’s emotional, physical, and sexual safety, or based on staff’s discomfort, myths, or misunderstanding of behavior and identity?
- Where will transgender or intersex youth be housed? How is this decision made, and what factors does the agency consider?
- Who are the final decision makers?
- How will decisions impact the emotional, physical, and sexual safety of youth and other residents?
- What guidance do the PREA Standards give about these issues?
- What is the non-discrimination policy for youth?
- What other policies and procedures need to be revised or developed?

Conclusion

LGBTQI youth in confinement are vulnerable and often misunderstood. Facility staff may resist special treatment for LGBTQI youth. Policy and procedures should reflect the facility’s commitment to accommodating LGBTQI youth in the interest of youth safety and in the interest of effective and smooth operations. Facility staff can show basic respect for these youth by considering their needs relative to sexual and emotional safety, housing assignments, clothing, grooming and hygiene, names and pronouns, programming and treatment services, and access to healthcare.

Resources

The following is a list of resources and agencies that provide assistance in developing plans to address the above questions:


The Unfair Criminalization of LGBT Youth in the Juvenile Justice System. [https://www.americanprogress.org/issues/lgbt/reports/2012/06/29/11730/the-unfair-criminalization-of-gay-and-transgender-youth/][68]

The Moss Group. [https://www.mossgroup.us/][69]

The Equity Project. [http://www.equityproject.org][70]

National Council on Crime and Delinquency. [https://www.nccdglobal.org][71]

National Institute of Corrections. [https://nicic.gov][72]

Office of Juvenile Justice and Delinquency Prevention. [https://ojjdp.ojp.gov][73]

National Defender Center.

The PREA Resource Center. [https://www.prearesourcecenter.org][74]
References


Endnotes

Crossover Youth


[3] For simplicity’s sake, the authors use the more informal term “crossover” youth throughout the chapter to refer to dual-system youth.


[6] Ibid.


[9] Ibid.


[12] Ibid.

[13] Ibid.

[14] Lutz and Stewart, “Crossover Youth.”

[15] Ibid.

[16] Ibid.

[17] Ibid.

[18] Ibid.


[21] Ibid.

[22] Bilchik, “Addressing the Needs of Youth.”

The Impact of PREA


[25] Ibid.

Sexually Abusive Youth


The Equity Project, 2009).

Delinquency Prevention, 2012).

System: A Report on Recommendations of the T

Firestone, scale, some guidelines for how to treat and serve youth in adult facilities are necessary

Society Foundation, 2009).

Mannarino, and Esther Deblinger

Aggressive Y

Sexual Behavior Problems,

Many juvenile justice leaders hold the position that best practice would eliminate the placement of youth in any adult confinement facility. Until this comes to pass on a national scale, some guidelines for how to treat and serve youth in adult facilities are necessary.


Grenier v. Kennebec County, (748 F.Supp. 908 (D. Me. 1990)).


LGBTQI Youth


Ibid.


Ibid.

Ibid.

Ibid.


Majd, Marksamer, and Reyes, Hidden Injustice.