

# ADVOCATING FOR INCARCERATED SURVIVORS DURING SEXUAL ABUSE INVESTIGATIONS

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## **Advocating for Incarcerated Survivors During Sexual Abuse Investigations**

Sexual abuse investigations can be a difficult, even traumatizing, experience — especially for survivors who are in custody. Incarcerated survivors who report sexual abuse face a high risk of retaliation and further victimization. During medical forensic exams, they usually are forced to wear handcuffs or restraints, with corrections officers present the entire time. To make matters worse, it's common practice for incarcerated survivors to be placed in solitary confinement after making a report. Additionally, many investigators handling cases of sexual abuse in detention hold negative views about incarcerated people; rather than embrace a trauma-informed approach, they reflexively doubt or openly question the motives of survivors who come forward.

The good news, however, is that advocates can help incarcerated survivors during investigations by providing emotional support and information about the process. As a first step, advocates must understand how sexual abuse investigations are conducted in the facilities where they work. In addition, they should know the rights that survivors have after making a report, and be ready for the questions and concerns that will likely come up.

### **Why Do So Few Survivors Report?**

Even more so than in the outside community, sexual abuse in custody is vastly underreported. As in any setting, sexual abuse behind bars carries a stigma, and many survivors stay silent due to shame. Like most survivors, incarcerated

survivors fear not being believed, and with good reason. Many facility leaders fail to establish a culture that values safe reporting and the rights of people in their custody to be safe from sexual abuse and harassment. Staff often do not take reports of sexual abuse seriously; they ignore and even mock people who come forward, and do little to ensure that the reporting process is safe. Some corrections officials insist that sexual abuse does not happen in their facilities, and that people who report are lying, perhaps to get transferred or get someone in trouble.

This tendency to assume that incarcerated survivors make false reports is due in large part to corrections agencies' failure to put in place a trauma-informed response to sexual abuse, including by ensuring that investigators understand the impact of sexual abuse and other trauma. Survivors of trauma often talk about their abuse in a fragmented, nonlinear manner, which untrained investigators may misinterpret to mean that the report is a fabrication. Accurately reporting dates and times can be challenging when incarcerated people do not have ready access to calendars or clocks, and the days are seemingly identical. Further, survivors commonly need to take time to process their abuse and figure out whether, how, and when to report it — a normal response to trauma that nevertheless is often used to undermine survivors' credibility.

Another obstacle to reporting sexual abuse inside a detention facility is the fear of retaliation. In many facilities, incarcerated people see that anyone who speaks out is routinely threatened, harassed, and attacked. Incarcerated survivors also fear, understandably, that they will be placed in solitary confinement if they come forward. In fact, a government survey found that 34 percent of people in custody who reported being sexually abused by other

incarcerated people and 41 percent of those reporting abuse by staff were placed in restrictive housing as a result.<sup>i</sup> Being isolated often exacerbates the survivor's trauma and increases their vulnerability. A person who is in segregation cannot participate in programs and loses access to emotional support networks. The practice itself of placing a person in prolonged or indefinite solitary confinement has been recognized as a form of torture under international law.<sup>ii</sup>

Placement in restrictive housing is just one of the ways that incarcerated people are punished for coming forward. Many receive disciplinary write-ups after reporting sexual abuse. In some cases, corrections officials wrongly conclude that an incarcerated survivor who has reported sexual abuse by another person in custody has voluntarily engaged in sexual behavior. Survivors of sexual abuse are often written up and face discipline for violating facility rules prohibiting consensual sexual contact. The consequences of being written up for rule violations are often long lasting. Disciplinary actions can limit an incarcerated person's access to programming or preferred housing placements, and can make it harder to accrue good-time credits toward being released or affect their likelihood of being granted parole.

Even when the facility's response is not punitive, it is often woefully inadequate. Nationwide, fewer than ten percent of all reports of sexual abuse in detention are substantiated, meaning that investigators have determined that the abuse occurred.<sup>iii</sup> The fact that investigators deem an overwhelming number of reports unsubstantiated (meaning that there was insufficient evidence to make a final determination as to whether the event occurred) and unfounded (meaning the abuse was determined not to have occurred) can be attributed to poor investigative practices and misunderstanding the impact of

trauma. Too often, front-line custody staff handle reports themselves, rather than calling in trained sexual abuse investigators. For their part, investigators often interview survivors with other corrections staff in the room — which has a chilling effect on survivors’ ability to speak openly, especially if the perpetrator is a staff member. In addition, survivors are rarely given the option to have an advocate present during an interview — despite the fact that it is required under the Prison Rape Elimination Act (PREA) standards.<sup>iv</sup> Even where reports are substantiated, it is unlikely that the perpetrator will be held accountable or that the survivor — and other incarcerated people — will be safe from them.<sup>v</sup>

Increasingly, corrections agencies are training investigators on best practices for investigating sexual abuse cases in custody and working with survivors of sexual abuse in a trauma-informed manner. Some agencies are implementing coordinated response approaches based on Sexual Assault Response Teams (SARTs) and other models adapted from the community. Corrections agencies across the country must consistently prioritize such efforts in order to encourage a reporting culture and ensure that incarcerated survivors are helped, and not traumatized, by the investigations process.

## **What PREA Requires**

Under the PREA standards, facilities are required to offer incarcerated survivors multiple ways to report sexual abuse and sexual harassment and educate both people living in the facility and staff who work there about these mechanisms.<sup>vi</sup> The facility must have in place a written plan to coordinate the actions of first responders, medical and mental health

practitioners, investigators, and facility leadership in response to an incident of sexual abuse.<sup>vii</sup> Corrections agencies must investigate all reports of sexual abuse and sexual harassment promptly, thoroughly, and objectively. The investigations process must include measures to ensure the well-being of survivors — such as providing access to a medical forensic exam and to a trained community advocate to accompany them and provide emotional support during the exam and investigatory interviews — and to offer any necessary follow-up services.<sup>viii</sup>

Additionally, corrections agencies are required to monitor and protect survivors from retaliation, such as by preventing perpetrators — whether another incarcerated person or staff — from having contact with the survivor.<sup>ix</sup> Facilities must notify survivors about investigative outcomes as long as they remain in that agency’s custody, including whether the report was substantiated, unsubstantiated, or unfounded, and inform survivors of the employment status of a staff perpetrator. Agencies must complete the investigation even if the survivor is released or transferred to another facility before it is finished. Crucially, survivors have the right to decline to participate in any aspect of the investigation.<sup>x</sup>

## **Where Advocates Come In**

As an advocate, you are likely to be the only professional an incarcerated survivor will come into contact with after reporting sexual abuse whose sole concern is their well-being. By helping survivors navigate the process, advocates can have a positive impact on their healing journey — regardless of the investigation’s outcome.

In addition to providing critically important emotional support during the forensic exam and investigatory interviews, advocates can elevate survivors' concerns related to the investigation process to facility officials, and offer any feedback they might have about the process's effectiveness. With the survivor's informed consent, advocates can call upon facility officials to go beyond PREA's requirement that incarcerated survivors be notified about the *outcome* of an investigation and request that survivors be kept informed about the investigation's progress — or even whether an investigation has been initiated at all. An advocate may also be able to arrange for the investigator to meet with the survivor to provide periodic updates. In this way, advocates can promote a more survivor-centered response that builds trust in the process and contributes to a reporting culture.

Incarcerated survivors may also seek an advocate's support in dealing with the dangers of reporting sexual abuse. Sadly, many staff do not handle reports with appropriate sensitivity or discretion. If it becomes known that an incarcerated person has reported abuse, they may be labelled a "snitch" and face harsh consequences, including further attacks. Worse still, the fact of an incarcerated person's abuse history alone can make them targets for yet further victimization. Advocates may be able to help survivors get facility officials to address specific concerns about reporting and can work with the survivor to create a safety plan.

Once the investigation has been completed, survivors may need help understanding their rights and assessing their options, especially if their report is not substantiated, or if the prosecutor declines to file charges after a

substantiated report of conduct that appears to be criminal is referred to them by the facility. Advocates can provide emotional support to help survivors process the outcome of the investigation and move forward.

Your efforts and the support you provide to survivors during the investigation process is crucial. Working with an advocate helps reduce the risk that survivors will be retraumatized and can even make a difference in preventing sexual abuse. When survivors feel safe and engaged in an investigation, they are less likely to recant or withdraw from the process, contributing to an institutional culture of openness and accountability that benefits everyone.

## **Tips for Supporting Incarcerated Survivors During a Sexual Abuse Investigation**

### **Learn what a sexual abuse investigation at the facility entails.**

Your contacts at the facility, especially investigators, can help you understand what happens once a report is made. Find out what the facility's investigation process and protocol entail, including: the parties involved; the steps facility staff take and the typical timeline for the completion of an investigation; how decisions about a medical forensic exam are made; safeguards and care available to the survivor and how to access support; the process for notifying survivors about the outcome of the investigation; and the limits of confidentiality (i.e., who needs to know and what they need to know). This



will help you explain to survivors what to expect and respond to their concerns.

In many cases, parallel investigations will be conducted in response to reports of sexual abuse in detention: an administrative investigation and a criminal one. Administrative investigations focus on whether a facility rule has been violated. The findings of these investigations are evaluated using a “preponderance of the evidence” standard, which is met if it appears more likely than not that the rule violation occurred. Rule violations are punished by internal disciplinary action. Administrative investigations are conducted by the facility, usually a trained internal investigator or supervisor, and sometimes the PREA Compliance Manager. While sexual harassment investigations are usually administrative, such conduct could rise to the level of a criminal matter if the harassment includes threats or extortion,

Criminal investigations focus on whether a law has been broken; violations of the law can result in being convicted of one or more crimes, and perhaps, serving time. Criminal investigations may be conducted by facility personnel if they are sworn peace officers, as is the case in many county jails and prisons that have specialized investigations units within the agency. In many jurisdictions, an outside law enforcement agency — such as the county sheriff, local or state police, or state bureau of investigation — may be tasked with conducting the criminal investigation. If the investigation produces evidence that points to conduct that is criminal in nature, the matter must be turned over to the prosecutor’s office.

It may seem like it is preferable to turn criminal investigations over to outside law enforcement instead of handling the investigation internally. After all,

investigators in the community often have more experience handling sexual abuse cases and tend to have more training in trauma-informed interviewing. However, outside investigators typically are unfamiliar with detention settings and lack a grasp of the dynamics of sexual abuse in confinement. An advocate who has some experience working with incarcerated survivors can be helpful in bridging this gap in knowledge.

## **Help to strengthen the facility’s approach to addressing sexual abuse.**

As advocates, you can help facility leaders understand your role and how you can enhance their investigations process by drawing on your expertise serving survivors in the community (and/or at other corrections facilities). You can point to available local coordinated response efforts related to addressing sexual violence, such as the community SART, and explain how the facility can access local services, encouraging them to do so. Emphasize that this type of partnership will help them ensure an effective, trauma-informed response to sexual abuse and build a reporting culture.

In addition, it is worth discussing what direct support your program might be able to offer in the facility’s response to sexual abuse, including being incorporated formally into the facility-based multidisciplinary team that is activated when a report is made. Facilities are also required to do a sexual abuse incident review after the conclusion of an investigation; you may be able to participate in an incident review and provide input on trauma-informed practices. Additionally, you can offer to be a resource on responding

to incarcerated people who have experienced sexual abuse, help train investigators on handling reports, or work with LGBTQI+ people and other populations who face a heightened risk.

## **Have a protocol in place to determine when and how you will provide advocacy on behalf of an incarcerated survivor.**

It's good practice to develop a plan for evaluating requests to advocate on behalf of an incarcerated client. Your plan should reflect the terms of your agreement with the facility about whom to contact with concerns. For example, your program's memorandum of understanding (MOU) may specify that the agency PREA Coordinator or the facility PREA Compliance Manager is your main point of contact, and that you will consult with or make referrals to facility mental health staff (without breaking confidentiality) as appropriate. Where a client has not received a timely response, you may be able to make a real difference to the survivor by — with their informed consent — simply asking the agency for follow-up information.

## **Set realistic expectations.**

Building a strong relationship with facility staff will help you better advocate for your clients. However, when you engage in advocacy on a client's behalf, be sure not to make any promises about what will happen, and emphasize that you have no control over any information once it has been shared with the facility. You should tell clients, in writing, the results of any advocacy or

information you receive from your corrections partners about the investigation.

## **Acknowledge facility concerns regarding security.**

In any corrections facility, the staff's focus is on security. Before working on-site, make sure to ask your facility contact (such as the PREA Coordinator) about security protocols, including any restrictions on what you can wear inside the facility, what you will be allowed to bring into the facility, and what materials may be exchanged between advocates and incarcerated people.

Visitors to corrections facilities are usually not allowed to provide anything to, or accept anything from, incarcerated people. Prior to visiting the facility, advocates should show their contact the materials they intend to provide to their incarcerated clients. In addition, advocates should explain that they will accept from their clients only those materials that are relevant to the provision of services, such as self-help resources for survivors. Advocates should explain these materials will be treated confidentially and stored in their counseling record.

## **Be prepared for resistance.**

Facilities that encourage advocates to play an active role in investigations are able to create an environment where incarcerated survivors feel safe sharing their experiences. Yet the involvement of outside partners like survivor advocates in addressing sexual abuse in their facilities makes many corrections

officials uncomfortable. Indeed, many facilities have been slow to implement the PREA standards that pertain to outside advocacy. You may find that facility officials try to dissuade you from advocating on behalf of your clients or set up obstacles to make it more difficult for you to do your job. If you meet with such resistance, you should keep in mind that survivors need — and have a right — to receive the services that you can provide.

## **Additional Resources**

- Just Detention International (JDI), *Hope Behind Bars: An Advocate’s Guide to Helping Survivors of Sexual Abuse in Detention* (2017), available at [https://justdetention.org/wp-content/uploads/2017/12/Advocates\\_Manual\\_FINAL\\_2017\\_3.pdf](https://justdetention.org/wp-content/uploads/2017/12/Advocates_Manual_FINAL_2017_3.pdf).
- JDI, *Training Module 5: The Basics of Providing Services to Incarcerated Survivors*, available at <https://justdetention.org/wp-content/uploads/2017/02/Module-5.pdf>.
- JDI, *Hope for Healing, Information for Survivors of Sexual Assault in Detention* (2009), available at: <https://justdetention.org/wp-content/uploads/2015/10/Hope-for-Healing-Information-for-Survivors-of-Sexual-Assault-in-Detention.pdf>.
- JDI, *Why Didn’t They Say Anything: Key Barriers to Reporting Sexual Abuse in Detention* (Fact Sheet) (2018), available at: <https://justdetention.org/wp-content/uploads/2015/10/Fact-sheet-Why->

Didn%E2%80%99t-They-Say-Anything-Key-Barriers-to-Reporting-Sexual-Abuse-in-Detention.pdf.

- PREA Resource Center, *Power Hour Chat with a PREA Expert on Standard 115.71* (webinar), available at: <https://www.prearesourcecenter.org/implementation/training/webinars/power-hour-chat-prea-expert-standard-11571>.

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<sup>i</sup> Beck, et al. *Sexual Victimization Reported by Former State Prisoners, 2008* (Bureau of Justice Statistics, May 2012), available at:

<https://www.bjs.gov/%20content/pub/pdf/svrfsp08.pdf>.

<sup>ii</sup>United Nations Office of the High Commission on Human Rights, *United States: prolonged solitary confinement amounts to psychological torture, says UN expert* (Feb. 2020),

available at: <https://ohchr.org/en/press-releases/2020/02/united-states-prolonged-solitary-confinement-amounts-psychological-torture>.

<sup>iii</sup> Emily Beuhler, *Sexual Victimization Reported by Adult Correctional Authorities, 2016–2018* (Bureau of Justice Statistics, June 2021), 4; available at

<https://bjs.ojp.gov/content/pub/pdf/svraca1618.pdf>.

<sup>iv</sup> National Standards To Prevent, Detect, and Respond to Prison Rape, 28 CFR 115 (Department of Justice, 2012), available at:

<https://www.federalregister.gov/documents/2012/06/20/2012-12427/national-standards-to-prevent-detect-and-respond-to-prison-rape>.

<sup>v</sup> Allen J. Beck, Ph.D., et al, *Sexual Victimization Reported by Adult Correctional Authorities, 2009–11* (Bureau of Justice Statistics, 2014),

<https://bjs.ojp.gov/content/pub/pdf/svraca0911.pdf>.

<sup>vi</sup> PREA Resource Center (PRC), *PREA Standards in Focus 115.51: Reporting*, available at <https://www.prearesourcecenter.org/sites/default/files/library/115.51%20SIF.pdf>.

<sup>vii</sup> PRC, *PREA Standards in Focus 115.65: Coordinated Response*, available at: <https://www.prearesourcecenter.org/sites/default/files/library/Standard%20in%20Focus%20115.65.pdf>.

<sup>viii</sup> PRC, *PREA Standards in Focus 115.71: Investigations*, available at: [https://www.prearesourcecenter.org/sites/default/files/library/115.71%20SIF\\_0.pdf](https://www.prearesourcecenter.org/sites/default/files/library/115.71%20SIF_0.pdf).

<sup>ix</sup> PRC, *PREA Standards in Focus 115.51: Reporting*.

<sup>x</sup> PRC, *PREA Standards in Focus, 115.71: Investigations*.

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