



Module 9: Prosecutorial Collaboration

Time: 3:00 p.m. – 4:00 p.m. (1 hour)

Training Objectives:

1. Identify techniques for writing the final report to ensure accuracy and clarity.
2. Explain criteria required for administrative action and prosecutorial referral, per requirements of PREA standard 115. (3)34.
3. Apply your understanding to increase prosecutions of cases that are substantiated and criminal in nature.

Materials Needed:

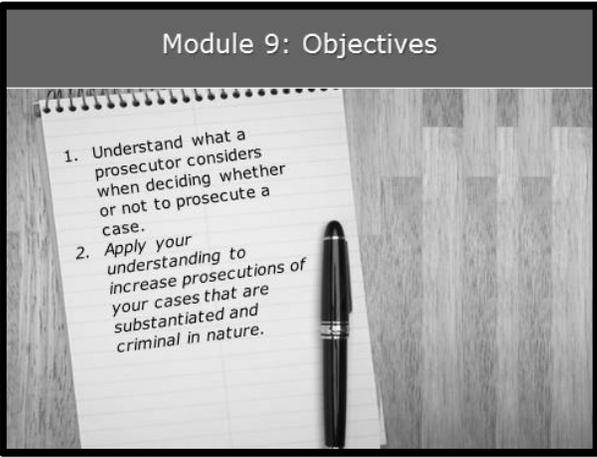
1. Easel pad and markers
2. PowerPoint® player/machine (lap top computer and LCD projector)
3. Screen or monitor

Training Objectives:

- This module is designed to address the requirement of 115.(3)34: Specialized Training for Investigators, for training on the criteria and evidence required to substantiate a case for prosecution referral. However, it addresses issues that are relevant to administrators as well. Consider inviting key administrators to observe the training who may be able to influence policy and determine next steps in areas related to increasing prosecutions of substantiated criminal allegations.
- Consider bringing in a local prosecutor to present or co-present this module. The agency can make use of this opportunity to enhance this relationship. Invite the prosecutor to modify this module to include the specific requirements of your county and his/her experience with your agency.
- Make use of your participants' experiences to engage them in discussion and bring up additional points specific to your agency or geographic location.
- Be advised that this module may contain material that utilizes concepts and language that may be upsetting or difficult for some participants. This may include statements referring to genitalia, sexual harassment, sexual abuse, trauma and suicide. Videos used may also contain profanity. Please review all materials prior to using to ensure they are appropriate for use in your agency and make substitutions where needed. You should also consider providing a general notice to participants at the beginning of each training session.

- Please note that this module was developed specifically for facilities that use the Adult Prisons and Jail or Juvenile PREA Standards. Facilities using the Community Confinement or Lockup standards should review all standard references to ensure that the content and language is appropriate for their facility type and inmate/resident population and adjust the material as needed to their specific circumstance.

This module was developed by Anthony Pierson, Esq., Chief Counsel for the Ohio Department of Youth Services in collaboration with The Moss Group, Inc.

Time	Lecture Notes	Teaching Tips
	Prosecutorial Collaboration	 Prosecutorial Collaboration
1 min	<p style="text-align: center;">Module 9: Objectives</p> <div style="border: 1px solid black; padding: 10px; text-align: center;"> <p style="background-color: #555; color: white; padding: 5px; margin: -10px -10px 10px -10px;">Module 9: Objectives</p>  <p>1. Understand what a prosecutor considers when deciding whether or not to prosecute a case.</p> <p>2. Apply your understanding to increase prosecutions of your cases that are substantiated and criminal in nature.</p> </div> <p>This module will enhance your understanding of why a prosecutor may or may not choose to prosecute a case, and what you can do to potentially influence that choice.</p>	 Objectives
3 min	<p style="text-align: center;">Begin with the End in Mind</p> <div style="border: 1px solid black; padding: 10px; text-align: center;"> <p style="background-color: #555; color: white; padding: 5px; margin: -10px -10px 10px -10px;">Begin with the End in Mind</p> <p>What is your end game?</p> <ul style="list-style-type: none"> • Filing a criminal charge • Pass the buck to law enforcement • Carryout policy objectives • Comply with PREA • Help ensure justice is carried out, even within the corrections facility <p style="font-size: small; text-align: right;">NATIONAL PREA RESOURCE CENTER</p> </div> <p>Always approach your investigations with awareness of your ultimate goal.</p> <ul style="list-style-type: none"> • Your goal is to enhance facility safety. How do you do that? • In cases of administrative allegations, you do that by filing administrative sanctions against the perpetrator, assuming the allegation is determined 	 Begin with the End in Mind

	<p>to be substantiated with a preponderance of the evidence.</p> <ul style="list-style-type: none"> ● In cases of criminal allegations, your goal is the criminal prosecution of the perpetrator, assuming the allegation is substantiated. ● You can increase the likelihood of prosecution by following policy, procedure, and the PREA standards. 	
<p>4 min</p>	<p style="text-align: center;">What Is the Legal Process?</p> <div style="border: 1px solid black; padding: 10px; margin: 10px auto; width: 80%;"> <p style="text-align: center;">What Is the Legal Process?</p> <ul style="list-style-type: none"> • Incident <ul style="list-style-type: none"> ○ Possibly an arrest • Investigation <ul style="list-style-type: none"> ○ Likely an arrest • Grand Jury • Indictment • Arraignment • Bond Hearing <div style="text-align: right; margin-top: 10px;">  <p style="font-size: small; margin: 0;">NATIONAL PREA RESOURCE CENTER</p> </div> </div> <p>What is the process of a prosecution?</p> <ul style="list-style-type: none"> ● First, there is an incident and, possibly, an immediate arrest. ● Following that, there is an investigation. If the investigation findings support prosecution, an arrest may be made at the conclusion of the investigation. ● Next, the case is reviewed by a grand jury. A grand jury is a group of XX people, chosen from XX group of people. A grand jury is convened by a XX. The grand jury has the power to subpoena witnesses and documents. It also assesses the evidence and determines whether there is sufficient evidence to charge someone with a serious crime. ● If a grand jury determines that there is probable cause, it hands up an indictment. This is the formal accusation that the person has committed the crime. 	<div style="text-align: center; margin-bottom: 10px;">  <p>What is the Legal Process?</p> </div> <p style="color: red; font-size: small;">Insert state-specific process re: grand jury, etc.</p> <ul style="list-style-type: none"> ● When is a grand jury required (if ever) ● Who initiates a grand jury

	<ul style="list-style-type: none"> • Next, an individual is officially informed of a criminal charge in an arraignment. At the arraignment, the criminal charging document is read aloud in the presence of the defendant. The defendant is given the opportunity to respond by entering a plea, usually of guilty or not guilty. • Once an individual is charged, a judge determines the appropriate bond (if any) at a bond hearing, and the individual either goes home or is sentenced to pre-trial detention. 	
<p>2 min</p>	<p align="center">What Is the Legal Process? Cont.</p> <div data-bbox="485 684 1084 1136" style="border: 1px solid black; padding: 10px;"> <p align="center">What Is the Legal Process? Cont.</p>  <ul style="list-style-type: none"> • Trial • Sentencing • Appeal <p align="right">NATIONAL PREA RESOURCE CENTER</p> </div> <ul style="list-style-type: none"> • Typically, defendants wait for months or even years to go to trial. Depending on the complexity of the case, the trial itself can also take a number of months. • Once the trial is complete, the defendant is found guilty or not guilty of the crimes he/she was charged with, and a sentence is determined. • Sentencing typically includes supervision in the community, imprisonment, and/or fines. 	 <p>What Is the Legal Process? Cont.</p>
<p>3 min</p>	<p>Why Does a Prosecutor Charge a Defendant?</p>	 <p>Why Does a Prosecutor Charge a Defendant?</p>

Why Does a Prosecutor Charge a Defendant?

- Heinous Crime
- Defendant is an evil person
- Defendant committed an egregious act
- The victim is sympathetic
- The case can easily be proven
 - Investigation is solid

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- Prosecutors are ultimately the most powerful players in this sequence of events because they are the people who determine what to charge defendants with, if they charge them with anything at all.
- A number of different factors play into whether the prosecutor decides to charge an individual with a crime.
- The type of crime can play a role, especially if the crime is particularly heinous. Many prosecutors may consider media attention in this decision.
- Similarly, if the defendant seems particularly evil, as demonstrated through his/her record or otherwise, this can increase the likelihood of them being charged.
- If the victim is particularly sympathetic, this may also play a role as a jury is more likely to empathize with him/her. This can be detrimental to the prosecution of cases where the victim is an inmate –juries may not easily empathize with a criminal.
- The actions of an investigator can also have a major influence on the decision to prosecute. If the investigator does a thorough job and provides enough solid evidence to give the prosecutor a good shot at winning the case, the chances of prosecution increase drastically.

Ask: In your professional experience, what influences the decision to charge defendants? What are the challenges with correctional cases?

<p>3 min</p>	<p>Why Does a Prosecutor Not Charge an Inmate/Resident?</p> <div data-bbox="485 237 1084 688" style="border: 1px solid black; padding: 10px; margin: 10px 0;"> <p style="text-align: center;">Why Does a Prosecutor <u>Not</u> Charge an Inmate/Resident?</p> <ul style="list-style-type: none"> • Bad investigation • Little likelihood of obtaining a conviction • Victim is not sympathetic • Overworked • Witness availability and cooperation • Inmates/residents are already in custody <p style="text-align: right; font-size: small;">NATIONAL PREA RESOURCE CENTER</p> </div> <ul style="list-style-type: none"> ● If the investigation is not solid, or the evidence is insufficient or corrupted, the prosecutor will not want to charge the defendant. ● Additionally, the prosecutor will be hesitant to charge the defendant if the victim or the witnesses aren't available or won't cooperate. Investigators should consider this in their interactions with the victim and the witnesses during the investigation. ● Prosecutors may also hesitate to charge a defendant who is already in prison or jail because it is perceived as a waste of time. Many prosecutors are overworked and have only limited time to take cases to trial. If they're not taking a criminal off the streets, why should they spend their time on the case when there are other cases that may impact public safety? ● Ultimately, every prosecutor wants to obtain a conviction. If they don't believe they'll be able to do that, they may not charge. 	 <p>Why Does a Prosecutor Not Charge an Inmate/Resident?</p>
<p>5 min</p>	<p>Why Does a Prosecutor Not Charge an Offender?</p>	 <p>Why Does a Prosecutor Not Charge an Offender?</p>

	<div data-bbox="488 191 1084 646" style="border: 2px solid black; padding: 10px;"> <p style="text-align: center;">Why Does a Prosecutor <u>Not</u> Charge an Inmate/Resident?</p> <ul style="list-style-type: none"> • Victim and witnesses may lack credibility • Sex between inmates/residents and staff may be considered consensual <p style="text-align: right; font-size: small;">NATIONAL PREA RESOURCE CENTER</p> </div> <ul style="list-style-type: none"> • Especially in cases of staff-inmate/resident sexual abuse, a prosecutor may struggle with the fact that an offender may not have as much credibility in the eyes of a jury as a staff member. • Members of the jury or the prosecutors themselves may not see staff-on-inmate/resident sexual misconduct as truly criminal if the case appears to be “consensual.” 	<p>Ask: What challenges do cases of sexual abuse in corrections face with regard to perceptions of the jury?</p>
<p>3 min</p>	<p>Video</p>	 <p>Consider including a video clip to introduce the concept of defense techniques in a humorous manner. The movie <i>Chicago</i> provides some humorous options, and can currently be found on youtube.com http://www.youtube.com/watch?v=1c8XLJ9MEhk</p>
<p>4 min</p>	<p style="text-align: center;">Defense Techniques</p>	 <p>Defense Techniques</p>

	<div data-bbox="487 195 1084 646" style="border: 1px solid black; padding: 10px;"> <h3 style="text-align: center; background-color: #555; color: white; padding: 5px;">Defense Techniques</h3> <ul style="list-style-type: none"> The victim is no saint Witnesses are biased and evil people Poor investigative work Beyond a reasonable doubt standard not met <p style="text-align: right; font-size: small;">NATIONAL PREA RESOURCE CENTER</p> </div> <p>Prosecutors will anticipate that the defense will bring up all of these issues if it is brought to trial.</p> <ul style="list-style-type: none"> They will make the argument that the victim is an inmate/resident and therefore he/she is not credible or deserving of a trial. Similarly, any witnesses who are inmates/residents will be seen as lacking in credibility. Ultimately, though, a lot of the defense will rest on an attack of the investigative process and the evidence presented. 	<p>Ask: Has anyone testified at a trial of a case for which they conducted the investigation? What was your experience with the defense attorney?</p>
<p>3 min</p>	<div data-bbox="487 1102 1084 1598" style="border: 1px solid black; padding: 10px;"> <h3 style="text-align: center; background-color: #555; color: white; padding: 5px;">It All Begins With an Investigation</h3> <div style="display: flex; justify-content: space-between;"> <div style="text-align: center;">   </div> <div> <ul style="list-style-type: none"> Investigation Report must be complete and accurate <ul style="list-style-type: none"> NO bias Crime Scene Preservation <ul style="list-style-type: none"> Do not forget that sometimes a person's body is the crime scene (DNA) Evidence Preservation Photograph EVERYTHING </div> <div style="text-align: right; font-size: small;"> NATIONAL PREA RESOURCE CENTER </div> </div> </div> <p>How can you, as an investigator, present a case to the prosecutor that they would consider prosecuting?</p> <ul style="list-style-type: none"> First, your investigation report must be accurate, clear, and unbiased. Remember that every report you write on a criminal case may be used in a trial, and a prosecutor will be thinking about what a 	<div data-bbox="1193 1102 1291 1165" style="text-align: center;">  </div> <p>It All Begins With an Investigation</p> <p>Ask: What other recommendations do participants have?</p>

	<p>defense attorney can do with the report you submit. If they believe that the report can be used to the defense’s advantage, they will be hesitant to move forward.</p> <ul style="list-style-type: none"> • Make sure your report comes with appropriate evidence supporting the findings. Photograph everything. Make sure you and your team members know how to collect and preserve evidence from both the crime scene and the victim and suspect’s bodies. Stay up-to-date on the best practice in the field. 	
<p>3 min</p>	<p>We Have a Solid Investigation, Now What?</p> <div data-bbox="485 730 1084 1182" style="border: 1px solid black; padding: 10px;"> <p style="text-align: center;">We Have a Solid Investigation, Now What?</p> <ul style="list-style-type: none"> • Know your criminals • Create, train, and implement • Respond to subpoenas • Cure witness problems • Train employees on how to be a trial witness • Collaborate with the local law enforcement and prosecutors <p style="text-align: right; font-size: small;">NATIONAL PREA RESOURCE CENTER</p> </div> <p>Your job isn’t finished once you’ve completed an investigation.</p>	 <p>We Have a Solid Investigation, Now What?</p> <p>Ask: What can an investigator do once the investigation is complete to enhance the possibility of prosecution?</p>
<p>3 min</p>	<p>Know Your Criminals</p> <div data-bbox="485 1325 1084 1776" style="border: 1px solid black; padding: 10px;"> <p style="text-align: center;">Know Your Criminals</p> <ul style="list-style-type: none"> • Put together a Pending Charges list • When seeking prosecution present full disciplinary history of inmate/resident • Provide information regarding reason for original incarceration <p style="text-align: right; font-size: small;">NATIONAL PREA RESOURCE CENTER</p> </div> <p>When interacting with the prosecutor, be prepared to be as helpful as possible.</p>	 <p>Know Your Criminals</p> <p>Ask: What has been participants’ experience with this?</p>

	<ul style="list-style-type: none"> ● Keep track of all of your cases in a pending charges list. ● Provide the prosecutor with as much information as possible on the person you want to charge. For example, if the suspect is an inmate/resident, provide the prosecutor with the suspect’s full disciplinary history and the reason for his/her original incarceration. ● Be pre-emptive – anticipate what you think the prosecutor might need, and provide it. 	
<p>3 min</p>	<p style="text-align: center;">Create-Train-Implement</p> <div style="border: 2px solid black; padding: 10px; margin: 10px auto; width: 80%;"> <p style="text-align: center; background-color: #555; color: white; padding: 5px;">Create-Train-Implement</p> <p>Create, train, and implement</p> <ul style="list-style-type: none"> • investigations • crime scene preservation • evidence preservation • video retention policy <p style="text-align: right; font-size: small;">NATIONAL PREA RESOURCE CENTER</p> </div> <p>Ensure your internal processes are designed to maximize prosecutions.</p> <ul style="list-style-type: none"> ● Develop and train staff on investigation techniques; crime scene preservation; evidence collection and preservation; video retention policy; and report writing. ● Be intentional. 	 <p>Create-Train-Implement</p> <p>Ask: How is this being done in your agency? What could be improved?</p>
<p>3 min</p>	<p style="text-align: center;">Subpoenas</p>	 <p>Subpoenas</p>

	<div data-bbox="485 191 1084 646" style="border: 2px solid black; padding: 10px;"> <h3 style="text-align: center; background-color: #555; color: white; padding: 5px;">Subpoenas</h3> <ul style="list-style-type: none"> • Prosecutors often use the subpoena process to evaluate whether anyone cares about the case. A subpoena that does not receive a response conveys that no one cares about the outcome. <ul style="list-style-type: none"> • Subpoenas may not actually require attendance • Subpoena compliance should be mandated via policy • If necessary, witnesses and victims must appear <p style="text-align: right; font-size: small; margin: 0;">NATIONAL PREA RESOURCE CENTER</p> </div> <p>You also have to stay abreast of the case you submitted to the prosecutor. Your role is still not finished.</p> <ul style="list-style-type: none"> • One way a prosecutor determines whether a case is important to anyone is through subpoenas. If you are subpoenaed and don't respond, the prosecutor is less likely to charge. Therefore, make sure you promptly respond to all subpoenas. • Work with victims and witnesses to ensure they will be present, if necessary. • Talk with administrators and ask them to consider mandating subpoena compliance in policy. 	<p>Ask: What has been participants' experience with this?</p>
<p>4 min</p>	<div data-bbox="485 1188 1084 1644" style="border: 2px solid black; padding: 10px;"> <h3 style="text-align: center; background-color: #555; color: white; padding: 5px;">Cure Witness Problems</h3> <ul style="list-style-type: none"> • Evidence of a crime becomes evidence in court through use of witnesses. No witnesses usually mean no evidence. <ul style="list-style-type: none"> • Ensure witnesses remain available. Keep records of new addresses and changes of employment. • Take steps to protect personal information from being turned over to inmate through discovery. • Must appear in court when necessary. <p style="text-align: right; font-size: small; margin: 0;">NATIONAL PREA RESOURCE CENTER</p> </div> <p>Witnesses are extremely important to a trial — they provide much of the evidence.</p> <ul style="list-style-type: none"> • Without evidence, a case will go nowhere. If a prosecutor believes that witnesses will not be available for the trial, they will not prosecute. 	<div data-bbox="1193 1150 1291 1207" style="text-align: center;">  </div> <p>Cure Witness Problems</p> <p>Ask: What has been participants' experience with this?</p>

	<ul style="list-style-type: none"> ● Keep track of your witnesses. If they are former staff, keep track of their address and employment. <p>Take steps to protect personal information.</p> <ul style="list-style-type: none"> ● Many defense attorneys are willing to work with prosecutors to protect employee personal information. ● Although names of employees are usually released, defense attorneys are likely to allow redaction of home addresses and personal telephone numbers. ● The rules of evidence and discovery (depending on your jurisdiction) generally allow this information to be withheld from discovery. These protections are often overlooked and will most likely not be invoked unless the agency urges the prosecutor or in house counsel take steps to protect the information. <p>The investigator needs to be available to appear in court when necessary. Additionally, if the prosecutor is struggling with finding the witnesses or getting them to cooperate, the investigator can assist.</p> <ul style="list-style-type: none"> ● Ensure that your agency is not inhibiting the process. ● Go talk to the witnesses if they are housed within one of your facilities. See if there is anything you or the agency can do to make them feel more comfortable testifying. ● Require employees to appear if subpoenaed. 	
<p>2 min</p>	<p>Witness Training</p>	 <p>Witness Training</p>

	<div data-bbox="485 191 1084 646" style="border: 2px solid black; padding: 10px;"> <p style="text-align: center; background-color: #555; color: white; padding: 5px;">Witness Training</p> <ul style="list-style-type: none"> Agencies should train employees on how to be a good witness. They will feel much more confident throughout the court process as well as provide better outcomes at trial. <p style="text-align: right; font-size: small;">NATIONAL PREA RESOURCE CENTER</p> </div> <p>Train staff who will be testifying on how to be trial witnesses.</p> <ul style="list-style-type: none"> Staff members who are concerned about the process will not be cooperative witnesses and may decrease chances of prosecution. Staff members who are trained will be more beneficial to the prosecution during the trial. 	<p>Ask: What has been participants' experience with this?</p>
<p>3 min</p>	<p>Collaborate with Local Law Enforcement and Prosecutors</p> <div data-bbox="485 1010 1084 1465" style="border: 2px solid black; padding: 10px;"> <p style="text-align: center; background-color: #555; color: white; padding: 5px;">Collaborate with Local Law Enforcement and Prosecutors</p> <ul style="list-style-type: none"> Use the team approach to get "buy-in" from all aspects of law enforcement. <ul style="list-style-type: none"> - Hook and Haul - Pending Charges List Regular calls and follow up provides solidarity and dispels the feeling that someone is being "thrown under the bus." Thank your law enforcement officers and prosecutors for doing a good job. <p style="text-align: right; font-size: small;">NATIONAL PREA RESOURCE CENTER</p> </div> <p>Most importantly, collaborate with both your local law enforcement and your prosecutor. Build relationships.</p> <ul style="list-style-type: none"> If necessary, organize and facilitate a meeting with prosecutors, judges, your agency director, investigators, and wardens to hash out all roadblocks. You may be surprised to hear what others feel are the problems. You may find a simple solution to fix another agency's hesitancy to prosecute a case. 	<div data-bbox="1193 968 1287 1031" style="text-align: center;"> </div> <p>Collaborate with Local Law Enforcement and Prosecutors</p>

	<p>As mentioned earlier, compile a pending charges list.</p> <ul style="list-style-type: none"> ● This list should track every major crime in your facility and delineate the defendant; the date of crime; court dates, if any; names of victims; and other helpful information. ● In order to fix the problem, you must first be able to identify the problem. <p>Regularly follow-up with the law enforcement and prosecutors with whom you work to ensure good relationships are maintained.</p> <ul style="list-style-type: none"> ● Expressed gratitude will be appreciated. ● Reach out to your prosecutor if they are not prosecuting cases to find out why and what you can do differently. ● If they continue to resist prosecuting, work with your supervisors internally to determine the best strategy to increase prosecutions. 	
3 min	Questions?	