Introductions

- Andrea Ritchie, 2014 Soros Justice Fellow
  - More info, resources at: andreajritchie.com

- Grace Franklin & Candace Liger, Founders, OKC Artists for Justice
  - Facebook: [https://www.facebook.com/okcart4justice/](https://www.facebook.com/okcart4justice/)
  - Twitter: @okcart4justice
What is it?

the needs of this article, the following definition is used: “Any behavior by a police officer, whereby an officer takes advantage of his or her unique position in law enforcement to misuse his or her authority and power to commit a sexually violent act, or to initiate or respond to some sexually motivated cue for the purpose of personal gratification. This behavior must include physical contact, verbal communication, or a sexually implicit or explicit gesture directed toward another person.” This definition was developed by elaborating on the police deviance literature and by incorporating general principles of acceptable and unacceptable
SEXUAL VIOLENCE BY LAW ENFORCEMENT OFFICERS

■ What forms does it take?
  ➢ Consensual on-duty sexual activity
  ➢ Sexual harassment
  ➢ Photos/videos
  ➢ Humiliation/degradation
  ➢ Unwarranted stops/callbacks/searches/strip searches
  ➢ Sexual assault
  ➢ Forcible rape
  ➢ Extortion of sex in exchange for leniency
  ➢ Private security
  ➢ Off duty sexual violence facilitated by the badge
Case Study: Daniel Holtzclaw

- Charged and tried for sexual assault and rape of 13 Black women in Oklahoma City

- Cases came to light when 54 year-old grandmother Jannie Ligons came forward after forced strip search and oral sex following a traffic stop on her way home from a domino game.

- Preyed on Black women criminalized for actual or perceived drug use, involvement in the sex trade, and women who he approached when engaged in “broken windows” policing

- Tried in fall of 2015, convicted, and sentenced in January 2016 to 267 years in prison.
Case Study: Daniel Holtzclaw

- **13 BLACK WOMEN TESTIFIED.**
  - More survivors who did not come forward.

- **OFFICER PRIVILEGE.**
  - Bail reduced from $5 million to $500k.
  - Paid leave before termination
  - Violation of bond condition

- **LACK OF NATIONAL MEDIA COVERAGE**
  - Prior to the trial and during the trial.

- **LACK OF VISIBLE SUPPORT FROM LOCAL AGENCIES**
  - Women's advocacy groups.
  - Churches and faith based organizations.
OKC Artists for Justice
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OKC ARTISTS FOR JUSTICE

FACTS VS. MYTHS

#ITSNOTOVER

MYTH

No DNA was found on Holtzclaw’s person.

Holtzclaw’s accusers were adult women.

Holtzclaw was conducting “good, community policing” by approaching women he made contact with while on duty through Facebook and showing up to their homes while off duty.

Holtzclaw was supported by his OKCPD peers.

FACT

Biological matter (a combination of vaginal fluid, saliva and/or skin cells) belonging to the 17 year old survivor was found on the inside and outside of Holtzclaw’s uniform on his groin area.

1 of the 13 survivors was 17 years old at the time she was raped.

Holtzclaw broke several OKCPD policies by making contacts with individuals using the privilege of his badge.

Not one member of the OKCPD testified on his behalf during the entire trial.

CONCERNED? PLEASE SHARE

Sexual Assault is extremely underreported with 68% of assaults never being reported to the police.

98% of rapists will never spend a day in jail.

FOR SOURCES CONTACT ARTISTSFORJUSTICEOKC@gmail.com

HOLTZCLAW FACTS

WHAT YOU NEED TO KNOW BY OKC ARTISTS FOR JUSTICE

1. Daniel Holtzclaw consistently turned off the AVL in his squad car; a GPS monitoring system that tracks the movements of squad cars. Turning off this system while operating a squad car is against police policy.

2. After the initial report against Holtzclaw the OKC Police Department triggered an internal investigation and found other victims of his crimes. Women did not conspire against him - the women assaulted were found by his own peers.

3. Holtzclaw waived his right to testify during the court proceedings yet has agreed to an interview with 20/20 and is working on an appeal.

CONCERNED? SHARE THIS NOW

#ITSNOTOVER

@OKCART4JUSTICE

For citations, please email at aristsforjusticeokc@gmail.com
LESSONS FROM HOLTZCLAW

- No written policy requirement of how complaints of officer sexual misconduct are received, processed, and/or investigated.

- Part of the successful investigation was because of the experience of the detectives in the sex crimes unit.
Case Study: Daniel Holtzclaw

Current organizing strategies:

- Advocating for a policy on sexual misconduct
- Resisting officers being given permission to carry their personal firearms
How is it similar to & different from racial profiling or excessive force?

- Pretextual stops
- Initiate law enforcement action based on race or other factors
- Unjustified use of force
- But unlike excessive force, sexual violence can rarely be legally justified. Exceptions:
  - Searches on probable cause
  - Prostitution stings
  - Lewd conduct stings
SEXUAL MISCONDUCT BY LAW ENFORCEMENT OFFICERS

How has research/conversation about sexual misconduct by law enforcement officers evolved over time?

- Initial focus on on-duty consensual sex
- Focus on people targeted, “blame the victim”
- No analysis of power relations
- Insertion into frame of “violence against women”
- Police deviance literature
- Criminal conduct → non/less criminal
SEXUAL MISCONDUCT BY LAW ENFORCEMENT OFFICERS

How do we know it’s happening?
- Complaints, media stories, arrests, lawsuits

What are challenges of data collection?
- There is no “official” data
- Research based on media reports
  - Depends on what media decide to cover
  - Depends on what media discloses re: facts & survivor
- Covers more serious cases only – no way of documenting daily harassment, searches
- Court cases – only egregious cases that are filed and reported
- Depends on survivor coming forward
WHAT DOES THE DATA WE DO HAVE TELL US?

ACCORDING TO A STUDY OF 548 CASES OF ARRESTS OF POLICE OFFICERS FOR SEX-RELATED CRIMES BETWEEN 2005 AND 2007

- Over half (51.3%) were for sexual misconduct on duty or when acting in an official capacity (52.9%).
- Cases involved forcible or statutory rape - the most frequently charged offenses (32.2%).
- Involved in forcible fondling (19.5%).
- Involved in statutory rape (10.8%).

The majority of victims of on-duty police sexual misconduct are adults (76%), however 24% of cases of on-duty sexual misconduct involved minors. Stinson et al. "Police Sexual Misconduct: A National Scale Study of Arrested Officers." 2014.
WHAT DOES THE DATA WE DO HAVE TELL US?

- Two 2001 studies of law enforcement license revocations in Missouri and Florida found that sexual misconduct was the basis for revocations in almost 25% of cases. R. L. Goldman and S. Puro, *Revocation of Police Officer Certification*, 45 St. Louis L. J. 541, 563, n.142 (2001).


- In 2006 the Salt Lake City Tribune quoted the Utah Peace Officer Standards and Training Director as estimating that as many as 30% of the sexual misconduct cases his agency investigates are not criminally prosecuted. The investigation also revealed that where prosecutions do take place, they are for misdemeanors. L. Rosetta and N. Carlisle, *Sexual Misconduct by Officers: A Third Might Go Unprosecuted*, Salt Lake City Tribune, October 29, 2006.
What systemic factors contribute?

- Work alone or in pairs
- Little direct supervision
- Have power over people interact with – “victims,” “suspects,” youth
- Late night work
- Low visibility
- “Organizational culture”
- Occupational access
What do we know about officers involved?

- They get away with it – little accountability
- “Pattern prone” – multiple offenders
- Acting alone or with one other
- Line officers
- Predominantly male
- New to the force
- Metropolitan, municipal agencies
SEXUAL MISCONDUCT BY LAW ENFORCEMENT OFFICERS

Where does it take place?

- Police cruisers
- Homes
- Streets
- Police lock-ups
- Explorer programs
- Responses to violence
- Policing “lewd conduct”
- Border
- Outside bars
SEXUAL MISCONDUCT BY LAW ENFORCEMENT OFFICERS

What do we know about enforcement contexts in which it takes place?

- Traffic stops
- Youth programs
- Prostitution enforcement
- War on drugs
- Stop & frisk
- “quality of life” policing
- Probation & parole
SEXUAL MISCONDUCT BY LAW ENFORCEMENT OFFICERS

What do we know about people targeted?

- Mostly women, some men
- Youth
- Black, Latinx and Indigenous women targeted in the “war on drugs”
- People who are or are perceived to be involved in the sex trades
- People with criminal records
- Survivors of domestic and sexual violence
- LGBT people, and particularly lesbian and trans women
- Female officers
DOJ Investigation of the Baltimore Police Department

“We heard complaints from the community that some officers target members of a vulnerable population—people involved in the sex trade—to coerce sexual favors from them in exchange for avoiding arrest, or for cash or narcotics. This conduct is not only criminal, it is an abuse of power. Unfortunately, we not only found evidence of this conduct in BPD’s internal affairs files, it appeared that the Department failed to adequately investigate allegations of such conduct, allowing it to recur.”
Who is targeted

- A 2014 report from the National Coalition of Anti-Violence Programs found that 57% of LGBT survivors of intimate partner violence who called the police experienced police misconduct.

- A survey of transgender people in DC found 15% of those who had interacted with police were physically assaulted by an officer, with 5% being sexually assaulted. Black trans persons were more likely to have been assaulted (23%) compared to Latinx (16%) and white trans persons (4%).

- Among Latina transgender women in Los Angeles County, for example, two-thirds report that they have been verbally harassed by law enforcement, 21% report being physically assaulted by law enforcement, and 24% report being sexually assaulted by law enforcement.

- BreakOUT’s survey of LGBTQ youth in New Orleans found that 59% of transgender youth surveyed had been asked for a sexual favor by the police in New Orleans, along with 12% of non-transgender LGBQ youth.
BREAKOUT!

in collaboration with

NCCD
National Council on Crime & Delinquency

We Deserve Better:

A Report on Policing in New Orleans
By and For
Queer and Trans Youth of Color
Brandy Hamilton and Alexandra Randle
Diane Bond
Juan Evans
Racial Justice Action Center
What are challenges for people coming forward?

- Shame, humiliation
- Fear of retaliation
- Barriers to filing complaints
  - civilian oversight
  - police accountability groups
  - anti-violence groups
What are challenges for accountability?

- Invisibility in discourse around violence against women/sexual violence & police accountability
- “Embarrasses” police departments – no political will
- Undercharged or charged differently
Accountability is more likely if...

- Survivor is young
- Citizen complaint
- Survivor is female
- Gender of officer
- Officer is older
- Officer is state trooper
- Media coverage
- Work for a municipality
Accountability is less likely if...

- Survivor is male
- Alcohol involved
- Family violence
- Gender of officer
- Suspended after arrest
What are solutions offered?

- Criminal prosecution
- Data collection
- Policies
- Training
- Supervision
- Early warning systems
- Revamp complaint & investigation processes
- PREA rules for police lockups
- Civil litigation
  - Individual
  - DOJ pattern and practice
Does your agency have a policy specifically addressing sexual misconduct by police officers against members of the public?

- 52% None
- 35% Policy
- 11% Training
2.13.1 Action Item: The Bureau of Justice Statistics should add questions concerning sexual harassment of and misconduct toward community members, and in particular LGBTQ and gender-nonconforming people, by law enforcement officers to the Police Public Contact Survey.

2.13.2 Action Item: The Centers for Disease Control should add questions concerning sexual harassment of and misconduct toward community members, and in particular LGBTQ and gender-nonconforming people, by law enforcement officers to the National Intimate Partner and Sexual Violence Survey.

2.13.3 Action Item: The U.S. Department of Justice should promote and disseminate guidance to federal, state, and local law enforcement agencies on documenting, preventing, and addressing sexual harassment and misconduct by local law enforcement agents, consistent with the recommendations of the International Association of Chiefs of Police.
Policy Response: Sexual Misconduct

- Need clear policies establishing zero tolerance for on-duty sexual harassment, misconduct and assault with members of the public.

- President’s Task Force recommends policies consistent with 2011 IACP Guidance:
  - 2.13.3 Action Item: The U.S. Department of Justice should promote and disseminate guidance to federal, state, and local law enforcement agencies on documenting, preventing, and addressing sexual harassment and misconduct by local law enforcement agents, consistent with the recommendations of the International Association of Chiefs of Police.

- Adoption and effective enforcement should be condition of federal funding.
SEXUAL ACTIVITY ON DUTY – Engaging in sexual activity while on duty is prohibited. (Engaging in sexual activity while on duty is harmful to the Department’s reputation and a breach of the public’s trust. It is prima facie evidence of neglect of duty.)

- Discourtesy may include overt rudeness, annoyance, abusive or insulting language, racial or ethnic slurs, overbearing attitude, sexual or social references, disrespect, or a lack of proper attention or concern.

- First offense is 6-10 day suspension, 2nd is 11 day – demotion, 3rd is termination
5.1.21 SEXUAL ACTIVITY

- Unless necessary in the performance of official duty and with the approval of the member’s commanding officer, members are prohibited from soliciting, or engaging in, sexual conduct or activity:
  
  - While on-duty.
  
  - In a police vehicle under control of the department.
  
  - In, or at, a police or governmental facility.
5-MM Sexual Misconduct

All employees of the Cleveland Police Department shall refrain from any behavior or communication that would likely be construed as lewd, lascivious or otherwise sexually inappropriate.

A. Employees shall not misuse their position with the Cleveland Police Department to coerce, persuade, force or initiate sexual contact or penetration with anyone.

B. While on duty, employees shall not engage in any form of sexual activity or penetration or participate in sexually motivated behaviors for the purpose of self-gratification.

C. Employees shall not use any city facility, vehicle and property or information system to initiate or participate in a sexual act with another or engage in voyeuristic behavior that is sexually motivated.

D. Unless the employee can demonstrate a legitimate departmental interest in such conduct, such as a recognized policy investigation into criminal activity or employee misconduct, employees shall refrain from any communications of sexually inappropriate material, electronic or otherwise, while on duty.

E. Officers shall not conduct any stop or investigation that is personally or sexually motivated and falsely veiled as a legal and warranted action within policy. Furthermore, all employees shall avoid inappropriate or unnecessary search, frisk or pat-downs.

(Violation of this policy is a Class A violation).
...sexual harassment includes, but is not limited to: requests for sexual favors; the use of threats or force to obtain sexual favors; sexual propositions or innuendo; suggestive comments; sexually-oriented teasing or joking; jokes about gender-specific traits; unwelcome or uninvited touching, patting, pinching or brushing against another’s body; obscene spoken or written language; obscene gestures; and display of offensive or obscene printed or visual material.

County employees must not subject other employees, contractors, consultants, **citizens**, applicants, **customers** or **clients** to sexual harassment. An employee who is found to have engaged in sexual harassment will be subject to appropriate disciplinary action, which may include dismissal.
SAMPLE POLICY ON
SEXUAL HARASSMENT AND MISCONDUCT BY LAW ENFORCEMENT
AGAINST
MEMBERS OF THE PUBLIC

*Developed by Andrea J. Ritchie, Soros Justice Fellow and the*

*Federal LGBT Criminal Justice Working Group*

The International Association of Chiefs of Police (IACP) recommends that all law enforcement agencies have written policies that spell out a zero-tolerance approach to sexual harassment and misconduct by members of law enforcement agencies against members of the public and arrestees. Additionally, a core requirement of the Prison Rape Elimination Act (PREA) standards is that law enforcement agencies create a written policy “mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency’s approach to preventing, detecting, and responding to such conduct.” (§151.111) The standards also require agencies to “employ or designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its lockups.”

**POLICY:**

This agency has a zero tolerance policy with respect to sexual harassment, sexual assault, sexual misconduct, sexual abuse, and rape of any member of the public by any member of the agency. Engaging in such conduct will be grounds for immediate discipline, up to and including suspension and/or termination.

**DEFINITIONS:**

Sexual misconduct by law enforcement is defined as any behavior by an officer that takes advantage of the officer’s position in law enforcement to misuse authority and power (including but not limited to force) in order to commit a sexual act, initiate sexual contact
Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence
POLLICY IMPLEMENTATION

- Transportation policies
  - Recording mileage
  - Calling in at the beginning and end of transport
  - Two officers of different genders

- Supervision
  - Spot checks
  - Stings
  - Integrity Audits

- Random follow up post contact by anti-violence groups?

- Other ideas?
LESSONS FROM HOLTZCLAW

- Intersectionality: Where do survivors turn?
  - Oklahoma has 2nd highest national incarceration rate for women
  - Survivors were more vulnerable in neighborhoods Holtzclaw targeted; direct access to backgrounds

- Sexual assault is very difficult to prove in a court of law.
  - According to Rape, Abuse, and Incest Nation Network, only about 2 percent of rapists will ever serve a day in prison, and only 32% of rapes actually get reported the police.
  - Rapid escalation in severity of attack due to perceived power
LESSONS FROM HOLTZCLAW

- A national policy that specifically deals with police sexual misconduct by officers when citizens are the complainants.

- Complaints of sexual assault should be investigated by detectives with a minimum of 3 years experience in Sex Crimes units.
  - May have to be investigated by IA for smaller departments.

- IA detectives should have additional training in sexual assault or IA detectives who will specifically handle sexual complaints should have additional training. This is essential particularly if the department is smaller which may lead to conflicts of interest.

- Police unions should be able to protect officers but not at the expense of the public.
LESSONS FROM HOLTZCLAW

- Mandatory recordkeeping of an officer’s sexual misconduct that can be accessed on national database.

- Adequate investigation of sexual violence complaints and removal of officer from active duty during investigation after the officer reaches a certain number of complaints (ex. >avg. officer complaint).

- Collaborations between local DVSA organizations and police departments to develop training that could be used for internal investigations of officer misconduct.

- Special protections for victims who file sexual assault complaints against law enforcement.
WHAT CAN ANTI-VIOLENCE GROUPS DO BETTER?

- Ask survivors specific questions about their interactions with police, including whether police officers made sexually inappropriate comments, gestures, overtures, or engaged in sexual assault.

- Collect and track data on police sexual misconduct

- Advocate for adoption and effective enforcement of policies specifically addressing police sexual misconduct against members of the public by their local department.
  - Meet regularly with the department to discuss implementation.

- Advocate for civilian oversight agencies to address the issue

- Work with groups focused on police violence and accountability to address the issue collaboratively
SEXUAL MISCONDUCT BY LAW ENFORCEMENT OFFICERS

Resources

Implementing policies and procedures to prevent, detect, and respond to sexual abuse in lockups and local jails can provide protection to both detainees and officers, may limit the agency’s exposure to liability, and can bolster the reputation of the agency in the community. Law enforcement leaders responsible for administering a lockup, even just one holding cell, should familiarize themselves with the PREA standards.

The PREA Resource Center offers comprehensive resources, including an extensive library; stories of efforts at compliance from around the country; information about national training; webinars; resources, including tool kits and model policies; and a direct link to staff who can answer your questions. Learn more about the PREA standards and access additional resources to help eliminate sexual abuse in confinement at: www.prearesourcecenter.org

Learn about IACP’s Elimination of Sexual Abuse in Confinement Initiative and download guides on addressing sexual offenses and misconduct by law enforcement, investigative strategies for sexual assaults, and strategies for engaging in victim oriented policing at: www.theiACP.org/PREA

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Elimination of Sexual Abuse in Confinement:
Chief’s Checklist

This checklist offers a broad starting point for an agency to consider. Each agency’s strategy for establishing a culture of zero tolerance of sexual abuse in confinement will be unique based on their capacity and needs. Don’t wait until it’s too late – prepare to proactively address and prevent incidents through department mission, policy, and training.

- Review the PREA standards
  - Download a copy of just the standards for lockups at www.theiACP.org/PREA
  - Download a copy of the complete final rule, which includes the standards for adult prisons and jails, lockups, community confinement facilities, and juvenile facilities, at www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf

- Compare the PREA standards to your current policy and practice
  - In what areas are you doing well? In what areas could you improve? What resources will be required in order to help you improve?

- Designate a PREA coordinator
  - Does not have to be a full-time position; an accreditation manager, if you have one, would be a good candidate

- Develop a PREA implementation plan
  - Use the tools available through the PREA Resource Center to help develop your plan – www.prearesourcecenter.org

- Draft a policy on zero-tolerance of sexual abuse in confinement
  - Policy guidance is available through www.prearesourcecenter.org

- Conduct training of all personnel
  - Use the training tools available through www.prearesourcecenter.org

- Ask questions and get assistance
  - Contact info@prearesourcecenter.org

Ensuring Safety and Reducing Liability in Police Lockups & Holding Cells:
How New PREA Guidelines Affect Law Enforcement

Risk Management  Safety • Leadership • Integrity  Prevent • Detect • Respond • Eliminate

IACP: Serving the Leaders of Today, Developing the Leaders of Tomorrow
SEXUAL MISCONDUCT BY LAW ENFORCEMENT OFFICERS

Sexual Abuse in Confinement

Individuals in confinement have equal rights to safety, dignity, and justice and administrators of confinement facilities, including lockups used for temporary confinement, have a duty to uphold those rights. Sexual abuse in confinement is not an issue exclusive to prisons and jails; local lockups and other short-term holding facilities are environments where people can be more vulnerable to sexual abuse, either from other detainees or staff. The prevalence of the problem of sexual abuse in local lockups is unclear; statistics of these incidents are not tracked, but it is well established that sexual abuse is an under reported crime. What is clear is the seriousness of the issue of sexual abuse in confinement and the duty of law enforcement to protect the rights and safety of individuals in confinement.

Prison Rape Elimination Act and Standards

- In response to the problem of sexual abuse of people in confinement, Congress passed the Prison Rape Elimination Act (PREA) in 2003.
- The final standards, released on May 17, 2012 by the US Department of Justice (DOJ), include a set specifically intended for lockups (including small departments with only one holding cell and up to large departments with hundreds of cells in multiple subdivisions).
- In response to the actions by Congress and DOJ, IACP has established the Elimination of Sexual Abuse in Confinement Initiative to educate and inform law enforcement leaders about the PREA standards and help them understand the implications of the standards for local law enforcement.
- According to DOJ, PREA standards apply to all local lockups, even those with one cell used to detain people for only a few hours. Moreover, DOJ also indicates that PREA provides no financial penalties for facilities not operated by the state for non-compliance. States are required to require that any local facilities they contract with are PREA compliant. It is also possible that private litigants may assert that noncompliance is evidence that the facility is constitutionally deficient, which could be an additional liability for the agency.
- The design of the standards for lockups is intended to offer flexibility within the limited resources that most agencies have. Many of your current policies and practices may already be in line with the standards.
- The release of the PREA standards provides an opportunity for law enforcement to take a strong leadership role on the issue of sexual abuse in confinement by evaluating current practices and establishing a culture of zero tolerance of sexual abuse in lockups and local jails.

Summary of Major Provisions of PREA Lockup Standards

The standards are first and foremost designed to prevent, detect, and respond to sexual abuse (detainee-on-detainee and staff-on-detainee) in any confinement setting. The PREA standards consist of policies and procedures that are intended to be attainable by all affected agencies. Go to www.theiacp.org/PREA to read the PREA standards for lockups.

- Prevention Planning
  - Have a written policy mandating zero tolerance
  - Appoint a PREA Coordinator
  - Develop a staffing plan for monitoring and supervision
  - Limit cross-gender viewing and searches
  - When upgrading facilities, consider detainee safety and protection from sexual abuse

- Responsive Planning
  - Have standard evidence protocol and provide access to forensic medical exams
  - Have policy to investigate all allegations

- Training and Education
  - Train employees, volunteers, and contractors
  - Notify detainees, employees, volunteers, and contractors of the agency's zero-tolerance policy
  - Provide specialized training for investigations of sexual abuse in confinement settings

- Reporting
  - Have multiple ways to privately report abuse: verbally, in writing, anonymously, and from third parties
  - Have a method to report abuse to an entity outside of the agency

- Official Response Following a Detainee Report
  - Staff must report immediately if they know, suspect, or have information about an incident of sexual abuse
  - Agency must take steps to protect the detainee at risk of imminent sexual abuse
  - First responder must separate victim and abuser; protect crime scene; and protect physical evidence to be collected
  - Have a coordinated response plan
  - Preserve ability to protect detainees from contact with abusers (may impact a collective bargaining agreement)
  - Have a policy to protect detainees and staff from retaliation for reporting abuse

- Screening for Risk of Victimization and Abusiveness
  - If detainees are not housed overnight, staff should consider whether a detainee is at high risk of being sexually abused on a case-by-case basis
  - If detainees are housed overnight, all detainees should be screened to assess their risk

- Investigations
  - If you conduct your own investigations, do so promptly, thoroughly, and objectively
  - Use investigators who have received special training

- Discipline
  - Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse
  - Contractors or volunteers who engage in sexual abuse shall be prohibited from contact with detainees

- Medical and Mental Care
  - Provide victims of sexual abuse with prompt access to emergency medical treatment (at no cost to the victim, regardless of whether they cooperate with an investigation or name an abuser)

- Data Collection and Review
  - Conduct an incident review after every sexual abuse investigation
  - Collect data for every allegation using a standardized instrument and set of definitions
  - Review data for areas for improvement
  - Store data collected for at least 10 years

- Audits (If you do not detain people overnight, you are exempt from the audit standards)
  - Conduct an audit every 3 years using an external auditor
  - Make the audit report available to the public
PREA & POLICE LOCK UPS

- Doesn’t apply outside police precincts or detention facilities (police cars, streets, homes other places of detention)

- Police lockups are exempt from PREA regulation requirements re: (1) data collection and (2) access to outside crisis counseling while in police custody

- Currently most departments not working toward compliance

- Call for survey like National Inmate Survey and access to crisis counseling for people in police custody
SEXUAL MISCONDUCT BY LAW ENFORCEMENT – CIVIL LITIGATION

- Violates constitutional right to privacy & bodily integrity
- Violates 4th Amendment Right to be free of unreasonable search & seizure
- Violates 14th Amendment right to substantive due process of law – conduct that shocks the conscience
- Violates international human rights law - torture
SEXUAL HARASSMENT AND ASSAULT IN POLICE CUSTODY – 4th AMENDMENT

- Unreasonable seizure
- Intrusion on bodily integrity
  - Key case: *Fontana v. Haskin*, 262 F.3d 871 (9th Cir. 2001) (arrest for drunk driving, on the way to the precinct officer told Fontana she had nice legs, put his arm around her, told her he could be her “older man,” and other sexual comments)
  - Key facts: plaintiff “helpless, handcuffed, and frightened”
  - “there can be no countervailing governmental interest to justify sexual misconduct”
  - “*de minimus*” bodily intrusions (i.e. brushing up against a woman during fingerprinting) do not rise to constitutional violations.
SEXUAL ASSAULT AND RAPE BY ON-DUTY POLICE OFFICER

- Violation of the right to bodily integrity
- Violation of the right to privacy
- Conduct which shocks the conscience constitutes a deprivation of liberty

Was victim in custody?

- *Rogers v. City of Little Rock*, 152 F.3d 790 (8th Cir. 1998) (officer pulled woman over, followed her home to get her insurance, and raped her);
- *Jones v. Wellham*, 104 F.3d 620 (4th Cir. 1997) (14th A, not 4th applies where officer extorted sex in exchange for not arresting her – no custodial arrest)

Victim of crime or suspect?

- *York v. Story*, 324 F.2d 450 (9th Cir. 1963) (14th A violation of right to privacy when victim of crime photographed by police unnecessarily and naked photos distributed to fellow officers; dissent argues is mere tort)
COLOR OF LAW

“The Supreme Court has broadly interpreted the color of law requirement, concluding that ‘[m]isuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken under color of state law.’” United States v. Giordano, 442 F.3d 30, 42-43 (2d Cir. 2006) (citing United States v. Walsh, 194 F.3d 37, 50 (2d Cir. 1999) quoting United States v. Classic, 313 U.S. 299, 326 (1941)).

On or off duty:

- Officer who raped female motorist after following her home after a traffic stop acted under “color of law” Rogers v. City of Little Rock, 152 F.3d 790 (8th Cir. 1998) but not officer who sexually abused school girl while off duty Roe v. Humke, 128 F.3d 1213 (8th Cir. 1997).

- Chavez v. Guerrero 465 F. Supp. 2d 864 (N.D. Ill. 2006) – even though initial encounter took place at a police station, subsequent calls for a date were not under “color of law” – did not use police authority.

- Breaking into a woman’s house after earlier gaining admission under the pretense of conducting police business not acting under color of law, Almand v. DeKalb Co. 103 F.3d 1510 (11th Cir. 1997).
IDENTIFYING CLAIMS

- PC brings case explicitly involving sexual assault
- PC comes in with case of false arrest or excessive force – uncovering potential sexual harassment and assault claims requires asking the right questions
- PC comes in with case of domestic violence or sexual assault – what questions do we ask about police response?
- How can anti-violence groups:
  - support survivors in coming forward?
  - Collect information that will support their cases?
  - Identify patterns and practices?
CALL TO ACTION!

- CONTACT US DOJ OFFICE OF VIOLENCE AGAINST WOMEN
- CONTACT US DOJ CIVIL RIGHTS DIVISION
- CONTACT WHITE HOUSE OFFICE ON VIOLENCE AGAINST WOMEN

**DEMAND THAT THE DEPARTMENT OF JUSTICE**

- ISSUE A MODEL POLICY ON SEXUAL VIOLENCE AS RECOMMENDED BY THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING
- WITHHOLD FEDERAL FUNDING FROM DEPARTMENTS THAT DO NOT ADOPT AND EFFECTIVELY IMPLEMENT POLICY
- IMMEDIATELY INITIATE FEDERAL DATA COLLECTION ON POLICE SEXUAL VIOLENCE
Additional Resources


- https://www.rainn.org/about-rainn/victims-services