



# **Sexual Abuse in Custody: A Case Law Survey**

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**1<sup>st</sup> Circuit** (Maine, Massachusetts, New Hampshire, Rhode Island, Puerto Rico)

I. Male Correctional Staff /Male Inmate

A. *Successful Inmate Claim*

1. *Marion v. Commissioner, Maine Dep't of Corrections*, 2009 WL 1150104 (D. Me. Apr. 29, 2009): Male correctional officers forced a male inmate to hold his own genitals in a provocative position and walk down the hall while the correctional officers, including one female correctional officer, looked on. The court denied a motion to dismiss, as forcing the inmate to hold his genitals and walk down hall without a legitimate penological purpose could be considered an Eighth Amendment violation, and a potential state law claim of assault.

B. *Successful Agency Defense*

1. *Knowles v. Maine*, 2009 WL 3517589 (D. Me. Oct. 29, 2009): Male inmate alleged that he was sexually and racially harassed, and that male correctional officers called him "gay" and "the hairy little gay guy." The court ruled that although the conduct was unprofessional, words alone do not amount to an Eighth Amendment violation.
2. *Collins v. Graham*, 377 F. Supp. 2d 241 (D. Me. 2005): Male inmate claimed that male correctional officers made sexually suggestive statements, attempted to grab him in a sexual manner, and that one correctional officer exposed his genitalia to him. The court found that none of these allegations supported an Eighth Amendment violation.



3. *Palermo v. Rhode Island ACI*, 2010 WL 2731429 (D.R.I. Jun. 16, 2010): Male correctional officer repeatedly rubbed against male inmate while making "sexual comments." The court found that these allegations described only inappropriate conduct, and were insufficient to sustain an Eighth Amendment violation.

## II. Male Correctional Staff/Female Inmate

### A. *Successful Inmate Claim*

1. *Chao v. Ballista*, 806 F. Supp. 2d 358 (D. Mass. 2011): Female inmate had between 50-100 sexual encounters with a male correctional officer. The jury found that the coercive sexual relationship was sufficiently harmful to sustain an Eighth Amendment violation although the encounters were non-coercive (meaning the inmate did not explicitly refuse). The court also found the individual officer could be held liable for the state law claim of intentional infliction of emotional distress, as well as a violation of the state's civil rights act. The individual officer and the prison superintendent were found jointly liable for \$67,500, and the individual officer was held liable for punitive damages of \$6,200.
2. *Faas v. Washington County*, 260 F. Supp. 2d 198 (D. Me. 2003): A male correctional officer forced a female inmate to show him her breasts, placed his penis in her mouth, and masturbated onto the inmate. On a second occasion, the correctional officer inserted his finger into the inmate's vagina. The court denied the county and sheriff's motion for summary judgment, finding that the widespread non-coercive sexual relationships between correctional officers and staff could constitute deliberate indifference to the sexual assault of the female inmate, if the country and sheriff were aware of these relationships and failed to act accordingly.



## B. *Successful Agency Defense*

1. *Woods v. York County*, 534 F. Supp. 2d 153 (D. Me. 2008): A male correctional officer sexually assaulted a female inmate, prompting the facility to begin an internal investigation of the officer. While under investigation for the initial assault, the officer entered the inmate's cell, kissed her, fondled her breasts, and had her perform oral sex on him. The court found that prison officials could not be held liable for the second assault of the inmate under deliberate indifference, as there was no evidence of a custom of failing to investigate allegations of correctional officer misconduct.

## III. Inmate on Inmate

### A. *Successful Inmate Claim*

1. *Calderon-Ortiz v. LaBoy-Alvarado*, 300 F.3d 60 (1st Cir. 2002): Correctional facilities' knowledge that inmates were being housed without regard to custody and security needs, and that staff were not adequately supervising inmates was sufficient knowledge of an unreasonable and substantial danger to inmates. The correctional officials failed to end this practice, which constituted disregard of a substantial harm, and the facility could therefore be held liable under the Eighth Amendment.
2. *Fox v. Superintendent, Strafford County Dept. of Corrections*, 2012 WL 2277928 (D.N.H. June 18, 2012): Correctional officers placed a homosexual male inmate suffering from PTSD (as a result of past sexual abuse) in a cell with a known sexual predator, despite their awareness of the inmate's particular vulnerabilities. The inmate was subsequently raped by his cellmate. The court denied the officers' motion to dismiss,



finding the officers had sufficient knowledge of a substantial risk of serious harm.

#### IV. Juvenile – Detainee on Detainee

##### A. *Successful Detainee Claim*

1. *Rivera-Rodriguez v. Pereira-Castillo*, 2005 WL 290160 (D.P.R. Jan. 31, 2005): A male juvenile detainee was sexually assaulted by four inmates in an attack lasting approximately one-half hour. The court found that the correctional officers could be found deliberately indifferent, as the complaint alleged that the defendants were aware of security lapses and the unreasonable risk of assault, but failed to provide adequate security.



## 2<sup>nd</sup> Circuit (Connecticut, New York, Vermont)

### I. Male Correctional Staff /Male Inmate

#### A. *Successful Inmate Claim*

1. *Liner v. Goord*, 196 F.3d 132 (2d Cir. 1999): A male inmate in a state facility claimed that on three occasions male correctional officers sexually assaulted him while conducting body cavity searches. Despite the lack of a concrete, physical injury, the court found the harm suffered was more than *de minimis*, and therefore adequate to state a claim for relief under the Eighth Amendment.
2. *Mathie v. Fries*, 121 F.3d 808 (2d Cir. 1997): A male correctional officer at a county correctional facility sexually assaulted a male inmate. The officer repeatedly sexually abused the inmate, and on one occasion handcuffed the inmate to pipes in a security office and sodomized him. The inmate was awarded \$250,000 in compensatory damages and \$200,000 in punitive damages.
3. *Rodriguez v. McClenning*, 399 F. Supp. 2d 228 (S.D.N.Y. 2005): Male inmate at a state facility alleged sexual assault against a male correctional officer, arising out of an improper pat and frisk where the correctional officer used black leather gloves instead of latex gloves to repeatedly grope the inmate's genitals and buttocks and caress his chest. Although the type of sexual assault here was similar conduct that had previously been deemed not sufficiently serious, the court found that evolving standards of decency, as evidenced by the passage of laws prohibiting sexual abuse of prisoners in most states, made this a viable Eighth Amendment claim.



## B. *Successful Agency Defense*

1. *McEachin v. Bek*, 2012 WL 1113584 (W.D.N.Y. Apr. 2, 2012): Male correctional officer in a state facility who attempted to place his fingers in a male inmate's rectum on one occasion was not enough to create an Eighth Amendment claim.
2. *Irvis v. Seally*, 2010 WL 5759149 (N.D.N.Y. Sept. 2, 2010): A male inmate was sexually assaulted by a male correctional officer. The officer grabbed the inmate's penis on one incident and grabbed the inmate's penis and butt cheek on another. The court found that these allegations were not sufficient for an Eighth Amendment claim.
3. *Montero v. Crusie*, 153 F. Supp. 2d 368 (S.D.N.Y. 2001): Male inmate was not successful in bringing an Eighth Amendment claim against male correctional officers in a state facility who frequently squeezed inmate's genitals during pat-frisks.

## II. Female Correctional Staff/Male Inmate

### A. *Successful Agency Defense*

1. *Morales v. Mackalm*, 278 F.3d 126 (2d Cir. 2002): The court found that male inmate's allegations that female correctional officer requested that the inmate engage in sexual activity with her, and to masturbate in front of her and other female staff did not rise to the level of an Eighth Amendment violation.
2. *Boddie v. Schneider*, 105 F.3d 857 (2d Cir. 1997): Female correctional officer in state facility made verbal sexual comments to male inmate. The court found that although





sexual abuse can be an Eighth Amendment violation, the harm suffered by the inmate was not sufficiently serious in this case.

### III. Male Correctional Staff/Female Inmate

#### A. *Successful Inmate Claim*

1. *Amdaor v. Andrews*, 655 F.3d 89 (2d Cir. 2011): Female inmates brought suit against New York State prisons, claiming that the current Department of Correctional Services policies subject women to a substantial and unreasonable risk of sexual abuse. The court allowed the claim to proceed over defendant's objections that the inmate's had not exhausted their administrative remedies. The court held that the grievances filed by the inmates, alleging a failure to protect them from sexual abuse, were sufficient to satisfy the exhaustion requirement.
2. *Cash v. County of Erie*, 654 F.3d 324 (2d Cir. 2011): County and sheriff could be held liable for the sexual assault of a female pre-trial detainee. The court found that even if the sheriff had no knowledge that prior sexual assaults had occurred, a jury could find that he knew or should have known that correctional officers were engaging in sexual conduct with prisoners, and the facility's policies were insufficient to protect prisoners.
3. *Cash v. County of Erie*, 2009 WL 3199558 (W.D.N.Y. Sept. 30, 2009): Female detainee in county facility who was assaulted and raped by a male correctional officer was awarded a default judgment of \$500,000 compensatory and \$150,000 punitive damages.



4. *Morris v. Eversley*, 205 F. Supp. 2d 235 (S.D.N.Y. 2002): Former female inmate in a state facility brought suit against a male correctional officer for rape. The court held the claim against the superintendent and assistant warden in their official capacities would survive a motion to dismiss, as the inmate alleged facility officials knew corrections officers were engaging in sexual contact with female prisoners, as evidenced by complaints from female prisoners regarding sexual abuse, corroborated by pregnancies. The defendants failed to act to prevent the sexual contact, and were therefore held liable in their official capacities.
  
5. *Noguera v. Hasty*, 2000 WL 1011563 (S.D.N.Y. July 21, 2000): A female inmate was repeatedly touched and forced to have oral sex and intercourse with a male officer. The court denied summary judgment for two of the wardens because there was sufficient evidence to conclude they knew of the sexual abuse risks.

#### IV. Inmate on Inmate

##### A. *Successful Inmate Claim*

1. *Villante v. Department of Corrections of City of New York*, 786 F.2d 516 (2d Cir. 1986): Male inmate was assaulted by another inmate on several occasions, claiming correctional officers witnessed this happening. The court found the Department of Corrections of the City of New York and the Men's Queens House of Detention could both be found liable for a gross failure to train or supervise its officers, if the inmate could prove that they were on notice he was a continuous target of sexual harassment, and that placing him in protective custody near the assaulting inmate was grossly negligent.



V. Juvenile – Male Correctional Officer/ Female Detainee

A. *Successful Detainee Claim*

1. *Spencer v. Doe*, 139 F.3d 107 (2d Cir.1998): A juvenile detainee was sexually abused by a teacher in a detention facility. The court denied the motion to dismiss against the Director and Executive Director of the New York State Division of youth, the individual employees responsible for the abuse, and the principal of the facility, as they were under a duty to protect him from sexual molestation under the Fourteenth Amendment.



### 3<sup>rd</sup> Circuit (Delaware, New Jersey, Pennsylvania)

#### I. Male Correctional Staff /Male Inmate

##### A. *Successful Inmate Claim*

1. *Connors v. Northern State Prison*, 2009 WL 1562240 (D.N.J. May 28, 2009): Male inmate alleged that a prison doctor performed a rectal examination with unnecessary force and without lubrication while making discriminatory remarks about his lifestyle. The court denied the defendant's motion to dismiss, as the doctor's comments while performing a painful rectal examination could rise to the level of an Eighth Amendment claim.
2. *Banks v. Lackawanna County Com'rs*, 931 F. Supp. 359 (M.D. Penn. 1996): Male pretrial detainee asserted a Fourteenth Amendment claim against a male correctional officer who grabbed the inmate's penis and squeezed it. The court denied the defendant's motion for summary judgment, because if true, the inmate's allegations state a viable due process claim.
3. *Collins v. Union County Jail*, 150 N.J. 407, 696 A.2d 625 (N.J. 1997): A male inmate suffered post-traumatic stress disorder following a rape by a male correctional officer, and brought suit under the state's Tort Claims Act. The correctional officer was convicted of official misconduct in office, and discharged from employment. The county was dismissed as a party, and the jury awarded damages from the individual officer only. The New Jersey Supreme Court eventually remanded, allowing the liability suit to proceed against the county as well.



## B. *Successful Agency Defense*

1. *Juaquee v. Schappert*, 2012 WL 3206212 (E.D. Pa. Aug. 3, 2012): The court found there was no Eighth Amendment claim where a male correctional officer in state facility squeezed male inmate's buttocks and made a taunting remark.
2. *Kiser v. Kramer*, 2010 WL 4513421 (D. Del. Nov. 2, 2010): Male inmate alleged male correctional officer pulled on his testicle during a pat-down search, causing him pain. The court found this was an improper touching, but as it happened only once, it was not enough to state an Eighth Amendment claim.
3. *Jones v. Culinary Manager II*, 30 F. Supp. 2d 491 (E.D. Pa. 1998): No Eighth Amendment claim where male correctional officer pushed male inmate against boxes and "grinded" on the inmate's buttocks with his penis, threatening that he was going to have sex with the inmate at the first chance he got.

## II. Female Correctional Staff/ Male Inmate

### A. *Successful Agency Defense*

1. *Miller v. Coning*, 2011 WL 2708649 (D. Del. Jul. 12, 2011): Male inmate claimed he was sexually harassed by a female correctional officer. The court dismissed the inmate's complaint, as the inmate gave no information as to when or where these events occurred, and did not "allege conditions that are sufficiently serious to satisfy the component to state an Eighth Amendment claim."



### III. Male Correctional Staff/ Female Inmate

#### A. *Successful Inmate Claim*

1. *Carrigan v. Davis*, 70 F. Supp. 2d 448 (D. Del. 1999): Female inmate claimed a male correctional officer entered her room and forced vaginal intercourse, while the correctional officer maintained the inmate had seduced him into a non-coercive act of fellatio. The court found that any sexual act between an inmate and a correctional officer was a per se violation of the Eighth Amendment, regardless of consent.

### IV. Inmate on Inmate

#### A. *Successful Inmate Claim*

1. *Nestor v. Director of Northeast Region Bureau of Prisons*, 2012 WL 6691791 (D.N.J. 2012): A male inmate was convicted of sexual offenses against a minor. The Criminal Law Reporter published details regarding the inmate's conviction, and the inmate expressed concern for his safety to his case manager, fearing sexual assault when other inmates read the story. The inmate was later sexually assaulted by a fellow inmate and contracted syphilis. The court dismissed the case manager's motion for summary judgment, as failure to protect the male inmate after expressing concerns over sexual assault could constitute deliberate indifference.
2. *Bennett v. Correctional Medical Services*, 2008 WL 2064202 (D.N.J. May 14, 2008): Inmates alleged that he contracted Hepatitis C as a result of inmate-on-inmate sexual victimization, and attempted to bring a class action lawsuit. The court denied the class action suit, but allowed individual plaintiffs to pursue their claims under § 1983.



B. *Successful Agency Defense*

1. *Counterman v. Warren County Correctional Facility*, 176 F.App'x. 234 (3d Cir. 2006): Male inmate was sexually harassed by three male inmates, and was later sodomized by the same inmates. The court found the prison officials were not liable, as the offending inmate's bragging about the harassment did not qualify as an intolerable risk of harm.

V. Juvenile – Male Correctional Staff/Female Detainee

A. *Successful Detainee Claim*

1. *Beers–Capitol v. Whetzel*, 256 F.3d 120 (3d Cir. 2001): Female juvenile residents in a state juvenile detention facility brought § 1983 claim against employee who sexually assaulted them, and the employee's supervisors.
  - Offending employee was held liable, and a judgment for \$200,000 was entered.
  - Executive director and unit directors were not held liable, as only one allegation of sexual abuse was not sufficient to put them on notice of a pattern of sexual abuse.
  - Counselor could be held liable, as she was on notice that one of the employee's was "messing" with female residents.



## 4<sup>th</sup> Circuit (Maryland, North and South Carolina, Virginia, West Virginia)

### I. Male Correctional Staff /Male Inmate

#### A. Successful Inmate Claim

1. *Carrington v. Easley*, 2011 WL 2132850 (E.D.N.C. May 25, 2011): Male inmate sexually assaulted while strip searched. The correctional officer instructed the inmate to remove his clothing, grabbed the inmate's penis, and attempted to place his mouth by the inmate's penis. The court found this was sufficient to state an Eighth Amendment violation, and awarded the inmate \$5,000 in punitive damages against the individual officer.

#### B. *Successful Agency Defense*

1. *McCoy v. Bazzle*, 2009 WL 3169963 (D.S.C. Sept. 28, 2009): The court found there was no Eighth Amendment violation where a male correctional officer touched a male inmate on his buttocks, absent any showing of a physical injury.
2. *Green v. Sacchet*, 2002 WL 32639150 (D. Md. Dec. 10, 2002): Male correctional officers forced male inmate to have intercourse with his cellmate, and made sexual advances against the inmate. The court found there was no Eighth Amendment violation, as no single incident was severe enough to be objectively, sufficiently serious, and the incidents considered cumulatively were not egregious.

### II. Female Correctional Staff/Male Inmate

#### A. *Successful Agency Defense*





1. *Smith v. Beck*, 2011 WL 65962 (M.D.N.C. Jan. 10, 2011): A male inmate was sexually abused by a female assistant superintendent several times a week over the course of nine months. The assistant superintendent was charged and convicted of sexual activity by a custodian. The court found that prison officials could not be held liable, as there was no evidence that they were aware of a pattern or practice of similarly high-ranking prison officials engaging in sexual abuse of prisoners.

### III. Male Correctional Staff/Female Inmate

#### A. *Successful Inmate Claim*

1. *Etters v. Bennett*, 2011 WL 976472 (E.D.N.C. Mar. 16, 2011): Female inmates filed suit against correctional officers, citing numerous instances of sexual assault. The court found that the allegations of repeated rape and the order to an inmate to expose her breasts and genitals to a correctional officer, who then put his mouth on the inmate's breast, would be violations of the Eighth Amendment. The court also found that allegations that a correctional officer observed an inmate dressing, or that an officer sexually propositioned or otherwise attempted to coerce a female inmate into sexual activity did not arise to the level of an Eighth Amendment claim.
2. *Mitchell v. Rappahannock Regional Jail Authority*, 703 F. Supp. 2d 549 (E.D. Va. 2010): Female inmate was sexually assaulted by a male correctional officer on over ten occasions, including forced oral sex. The court found the officer's supervisors could be held liable under the Eighth Amendment, as the supervisors had knowledge of the sexual assaults, having either witnessed or participated in the conduct.



3. *Carr v. Hazelwood*, 2007 WL 4410694 (W.D. Va. Dec. 14, 2007): Male correctional officer inserted his fingers into female inmate's vagina. The court found this allegation sufficiently stated an Eighth Amendment claim, as there was no legitimate purpose for the correctional officer's actions, and the injury was more than *de minimis*, as the inmate alleged she urinated blood and suffered from incontinence due to the assault.
  
4. *Heckenlaible v. Virginia Peninsula Regional Jail Authority*, 2007 WL 1732385 (E.D. Va. Jun. 13, 2007): Male correctional officer escorted a female pre-trial detainee to the shower, and stared at her while she was showering in violation of agency policy. That same day, he sexually assaulted her in her cell, forcing her to perform oral sex on him. The court found that both the officer and jail officials could be held liable under state law tort theories and Fourteenth Amendment due process.
  
5. *Oliver v. Harper*, 2011 WL 1104134 (E.D.N.C. Mar. 22, 2011): Male officer forced female inmate to have sex inside of inmate's cell. The court dismissed the plaintiff's Eighth Amendment claim against the prison officials, finding that a single prior incident was insufficient to support deliberate indifference. The court also dismissed the constitutional and state law claims against the county, the sheriff's department, and the officer's in their official capacity. The court allowed the plaintiff to proceed on her claim against the individual officer.



#### IV. Inmate on Inmate

##### A. *Successful Inmate Claim*

1. *Meadows v. Saunders*, 14 F.3d 595 (4th Cir. 1993): The court found there was a potential Eighth Amendment claim, where an inmate sexually assaulted by another inmate had previously complained to correctional officers about his fear of being assaulted.
2. *Woodhos v. Virginia*, 487 F.2d 889 (4th Cir. 1973): Plaintiff claimed to be a potential victim of sexual assault due to his age and build, and the pervasiveness of sexual assault in the facility in which he was housed. He also claimed to be in particular danger, as he aided a younger prisoner who was being sexually assaulted. The court found that an inmate has a right to be free "from constant threat of violence and sexual assault by his fellow inmates, and he need not wait until he is actually assaulted to obtain relief."
3. *Jones v. South West Virginia Regional Jail*, 2011 WL 1212727 (W.D. Va. Mar. 29, 2011): An inmate was sexually abused by his cellmate. The court dismissed his claims, because there was not sufficient information that any jail official knew, in time to prevent the harm, that the plaintiff's cellmate was abusing him.



## 5<sup>th</sup> Circuit (Louisiana, Mississippi, Texas)

### I. Male Correctional Staff /Male Inmate

#### A. *Successful Inmate Claim*

1. *Flores v. GEO Group*, 2011 WL 2160926 (W.D. La. May 13, 2011): Male correctional officer engaged in oral intercourse with male inmate. The officer claimed that the inmate willingly performed one act of non-coercive oral intercourse on him, while the inmate claimed that the officer forced him to perform oral intercourse on him on three separate occasions. The court dismissed the defendants' motion for summary judgment, finding that although non-coercive acts are not constitutional violations, there was a material issue of fact as to whether the act was non-coercive.
2. *Boyd v. Dill*, 2011 WL 1304725 (W.D. La. Apr. 1, 2011): Male resident of a community corrections facility was forced to have sexual intercourse with male employee. The court awarded the inmate \$150,000 under § 1983 and state law against the individual employee.

#### B. *Successful Agency Defense*

1. *Allen v. Johnson*, 66 Fed. Appx. 525 (5th Cir. 2003): The court found there was no Eighth Amendment violation where a male correctional officer touched a male inmate in an improper manner during routine pat-down searches.
2. *Copeland v. Nunan*, 250 F.3d 743 (5th Cir. 2001): The court found that a correctional officer touching a male inmate's penis and anus on three separate occasions did not amount to an Eighth amendment violation.



3. *Buckley v. Dallas County*, 2000 WL 502845 (N.D. Tex. Apr. 27, 2000): A male inmate claimed that male correctional officers grabbed and fondled his genitals during a pat-down search, and stopped only when the inmate did not become excited. The court dismissed the inmate's claim, because the harm suffered was not from severe and repetitive abuse, or wanton and sadistic infliction of pain that rises to the level of an Eighth Amendment violation.

## II. Female Correctional Staff/Male Inmate

### A. *Successful Agency Defense*

1. *Mitchell v. Miller-Roach*, 2011 WL 5865232 (N.D. Tex. Nov. 8, 2011): Female corrections officer made sexual gestures toward male inmate. The court found this was not enough to establish an Eighth Amendment violation.
2. *Wade v. Cain*, 2011 WL 612732 (M.D. La. Jan. 13, 2011): A male inmate claimed that a female correctional officer fondled him until he ejaculated. The court found there was no Eighth Amendment violation, because he suffered no physical injury, and that the single incident was not objectively sufficiently serious.
3. *Redd v. Harvey*, 2010 WL 3434212 (W.D. La. Aug. 9, 2010): A male inmate claimed that while in route to his unit, a female correctional officer stopped him to conduct a pat down search and after roughly placing her hand on his genitals, she commented "huge." Plaintiff alleged that this same officer did other similar, but unspecified acts, previously. The court found there was no constitutional violation, as only severe



and repetitive sexual abuse rises to the level of an Eighth Amendment violation.

4. *Petty v. Venus Correctional Unit*, 2001 WL 360868 (N.D. Tex. Apr. 10, 2001): Female correctional officer induced a male inmate to masturbate for her on several occasions by making threats. The court found there was no Eighth Amendment violation, as the inmate did not actually believe the officer would follow through on her threats, and the harm he suffered was minimal.

### III. Male Correctional Staff/Female Inmate

#### A. *Successful Agency Defense*

1. *Doe v. City of Haltom City*, 106 F.App'x. 906 (5th Cir. 2004): The court found there was no Eighth Amendment violation where female inmate claimed she was subjected to verbal sexual harassment.
2. *Washington v. City of Shreveport*, 2006 WL 1778756 (W.D. La. Jun. 26, 2006): A female participant in a work release program was sexually assaulted by a male supervisor over the course of four days. The male employee fondled her breasts, touched her inner thigh, grabbed her wrist and asked her for sex. The court found there was no Eighth Amendment violation, as the only physical harm she suffered was a headache, and the incidents were neither severe enough to be objectively, sufficiently serious, nor were the incidents cumulatively egregious.
3. *Stockman v. Lowndes Cty, MS*, 2000 WL 33907696 (N.D. Miss. Aug. 21, 2000): A female inmate was raped by a male correctional officer. The court found that the county could not



be liable under the Eighth Amendment for deliberate indifference, as a pattern of non-coercive sexual encounters were not enough to show a custom or policy of sexual assault. The court held that non-coercive sexual conduct may violate municipal or state policy, but does not violate an inmate's constitutional rights.

#### IV. Inmate on Inmate

##### A. *Successful Agency Defense*

1. *Brown v. Harris County*, 409 F.App'x. 728 (5th Cir. 2010): A male pretrial detainee was assaulted by fellow inmates. The court found the county jail officials were not deliberately indifferent to his safety, although the inmate had expressed his fear of sexual assault due to his medium build and white skin color. The officer responsible for supervising the area had failed to notify her replacement of the possibility of a sexual assault on the inmate, but the court found this failure to notify was merely negligence, not deliberate indifference.
2. *Johnson v. Johnson*, 385 F.3d 503 (5th Cir. 2004): A male inmate was repeatedly sexually assaulted by other inmates. The court found that the correctional officers were aware of this risk and disregarded it, and therefore were liable to the inmate. The inmate had complained of the assaults, and the correctional officers did nothing, except to tell him to fight back. The supervisory officials, however, were entitled to qualified immunity.
3. *Ramirez v. Harris*, 05-97-01683-CV, 2000 WL 968243 (Tex. App. July 14, 2000): Male inmate was sexually assaulted and sodomized by another inmate. The court found the county



sheriff could be held liable in his individual capacity, was not entitled to qualified immunity.





## 6<sup>th</sup> Circuit (Kentucky, Michigan, Ohio, Tennessee)

### I. Male Correctional Staff /Male Inmate

#### A. *Successful Inmate Claim*

1. *Abney v. Thompson*, 2011 WL 2940612 (W.D. Ky. Jul. 19, 2011): A male inmate claimed repeated verbal harassment and physical contact over six months. The court denied the defendant's motion to dismiss, finding the inmate had sufficiently stated an Eighth Amendment claim.

#### B. *Successful Agency Defense*

1. *Jackson v. Madery*, 158 F.App'x 656 (6th Cir. 2005): A male correctional officer rubbing and grabbing a male inmate's buttocks in a degrading manner did not amount to an Eighth Amendment violation.
2. *Johnson v. Ward*, 2000 WL 659354 (6th Cir. May 11, 2000): A male inmate claimed that a male correctional officer placed his hand on the inmate's buttocks and made an offensive sexual remark. The court found this was not objectively, sufficiently serious to state an Eighth Amendment claim.
3. *Zander v. McGinnis*, 1998 WL 384625 (6th Cir. 1998): Verbal abuse which consisted of a male correctional officer mouthing pet names at an inmate for ten months was insufficient to state an Eighth Amendment claim.
4. *Evans v. Capello*, 2012 WL 1611227 (W.D. Mich. May 8, 2012): Male correctional officer rubbing male inmates wrists in a sexual manner could not sustain an Eighth Amendment violation, as it was one isolated incident.



5. *Reynolds v. Warzak*, 2011 WL 4005477 (W.D. Mich. Sept. 8, 2011): A male correctional officer grabbed a male inmate's buttocks and asked him, "[h]ow's that feel you little bitch?" The inmate further stated that the same officer had rubbed his chest, legs, and thighs during a pat down search on a separate occasion. The court found there was no Eighth Amendment violation.
6. *Myles v. Gaskill*, 2010 WL 2035730 (W.D. Mich. Jan. 8, 2010): The court found there was no violation where a male correctional officer grabbed a male inmate's buttocks during a pat-down search.
7. *Hamed v. Wayne County*, 803 N.W.2d 237 (2011): A male inmate was sexually assaulted by a deputy sheriff. The Michigan Supreme Court held that the sheriff and county could not be liable to sexual assault based on a theory of vicarious liability.
8. *Jones v. Bedford County*, 2009 WL 4841063 (Tenn. Ct. App. Dec. 15, 2009): Male inmate claimed he was sexually assaulted by a male correctional officer, and brought suit under the state Governmental Tort Liability act. The court dismissed his negligent supervision claim, because there was no evidence that the county was aware of the officer's actions.

## II. Female Correctional Staff/Male Inmate

### A. *Successful Inmate Claim*

1. *McGuffey v. Eesley*, 2011 WL 3739358 (W.D. Mich. Aug. 23, 2011): Female GED instructor repeatedly sexually abused



male inmate, which was sufficient to state an Eighth Amendment claim.

*B. Successful Agency Defense*

1. *Colston v. McLeod*, 2011 WL 673941 (W.D. Mich. Feb. 17, 2011): A male inmate claimed a female correctional officer rubbed his buttocks, grabbed his penis during a pat-down search, and hugged and kissed him on two separate occasions. The court granted the motion to dismiss, finding the inmate's claims insufficient to state an Eighth Amendment violation.

III. Inmate on Inmate

*A. Successful Inmate Claim*

1. *Bishop v. Hackel*, 636 F.3d 757 (6th Cir. 2011): A young, mentally slow inmate was assaulted by his older, larger cellmate. The court found that a deputy who was aware of the victim's status as vulnerable, and the offending inmate's status as predatory could be held liable under the Eighth Amendment for deliberate indifference. Furthermore, the court found there was a possibility the deputy had overheard the sexual assault taking place, which would have put a reasonable prison official on notice of a potential sexual assault.
2. *Greene v. Bowles*, 361 F.3d 290 (6th Cir. 2004): A transsexual inmate was assaulted by other inmates. The court found that a warden could be held liable for deliberate indifference to an inmate's safety, if he knew of the risk of housing a transsexual inmate in the same unit with a predatory inmate.



3. *Taylor v. Mich. Dep't of Corr.*, 69 F.3d 76 (6th Cir. 1995): The court found that correctional officers could be held liable for the sexual assault of an inmate, where they “arguably knew about the problem of widespread sexual assaults and knew that smaller, youthful prisoners were more vulnerable to attack than others.”
4. *Roland v. Johnson*, 856 F.2d 764 (6th Cir. 1988): A male inmate was raped by another inmate. The court found that prison officials could be found deliberately indifferent by their knowledge that the offending inmates had the propensity to commit sexual assaults, and failing to remove them from the victim’s cellblock. Furthermore, the warden had been shown a picture of the inmate that would have suggested the inmate fit the profile for a prison rape victim.
5. *Brown v. Scott*, 329 F. Supp. 2d 905 (E.D. Mich. 2004): A male inmate was raped by his cellmate. Prior to the assault, the inmate had requested to be moved, as he believed his cellmate was a predatory homosexual. The court allowed a suit against the unit manager to proceed, as the manager had denied inmate’s request to be moved.

#### IV. Juvenile – Correctional Staff/Detainee

##### A. *Successful Detainee Claim*

1. *S.H. v. Stickrath*, 251 F.R.D. 295 (S.D. Ohio 2008): Female minors in a detention facility filed suit in behalf of all girls confined in the facility, alleging that they were subjected to “grossly unconstitutional conditions of confinement,” including physical and sexual abuse from staff. The parties entered



into a settlement negotiation in order to remedy the conditions at the facility.



## 7<sup>th</sup> Circuit (Illinois, Indiana, Wisconsin)

### I. Male Correctional Staff /Male Inmate

#### A. *Successful Inmate Claim*

1. *Calhoun v. Detalla*, 319 F.3d 936 (7th Cir. 2003): Male correctional officers conducted a strip search of a male inmate in front of female correctional officers. Both the male and female officers laughed at the inmate, made sexual comments, forced him to perform provocative acts, and pointed towards his buttocks with their sticks. The court found this was sufficient to state an Eighth Amendment claim, as the search was designed to humiliate the inmate.
2. *Jackson v. Raemisch*, 2010 WL 3062971 (W.D. Wis. Jul. 30, 2010): A male inmate claimed male correctional officers sexually harassed him during a strip search, by fondling and grabbing his buttocks and penis, and laughing and making comments throughout. The court found this was sufficiently demeaning to equate to an Eighth Amendment claim.
3. *Turner v. Huibregste*, 421 F. Supp.2 d 1149 (W.D. Wis. 2006): A male correctional officer grabbed a male inmate's buttocks and fondled his penis during a pat down search, asking, "what is this?" The court found that this was sufficient to survive a motion to dismiss, but cautioned that the inmate would have to prove that the officer inappropriately grabbed and fondled his penis, rather than just manipulating his genitals for a standard pat-down search.
4. *Childerson v. Illinois Dept. of Corrections*, 2006 WL 2644941 (S.D. Ill. Sept. 14, 2006): Male inmate claimed that a male correctional officer ordered the inmate to remove his clothing



and propositioned him for a sexual act. When the inmate refused, the officer fondled the plaintiff. The court found this was sufficient to state an Eighth Amendment claim.

## II. Female Correctional Staff /Male Inmate

### A. *Successful Inmate Claim*

1. *Williams v. Humphrey*, 2009 WL 1444160 (W.D. Wis. May 20, 2009): A male inmate had sex with a female correctional officer in exchange for tobacco. The court found that even if the inmate had consented to the sexual activity, the officer was in a position of power over the inmate, and the sex was therefore coercive. The court denied the motion to dismiss as to the individual officer's involved.

## III. Male Correctional Staff /Female Inmate

### A. *Successful Agency Defense*

1. *Surratt v. Walker*, 2011 WL 1231312 (C.D. Ill. Mar. 29, 2011): A female inmate was raped by a male correctional officer. The court found that two prior unsubstantiated sexual assault inquiries coupled with general knowledge of sexual assaults was not sufficient to put prison officials on notice of a substantial risk of serious harm to the female inmate.

## IV. Inmate on Inmate

### A. *Successful Agency Defense*

1. *Riccardo v. Rausch*, 375 F.3d 521 (7th Cir. 2004): A male inmate relayed his fears of violence from his cellmate to correctional officers. Two days later,



cellmate sexually assaulted him. The court held that the correctional officer did not deliberately disregard a substantial risk of serious harm, because the harm that the inmate sought protection from did not occur.

2. *Tyson v. Bradford*, 2009 WL 455138 (S.D. Ill. Feb. 20, 2009): A male inmate was sexually assaulted and beaten by his cellmate. The court found the correctional officers could not be held liable, as the inmate had never reported any fear of sexual assault.

V. Juvenile – Male Correctional Staff/Female Detainee

A. *Successful Detainee Claim*

1. *Hawkins v. St. Clair County*, 2009 WL 559373 (S.D. Ill. Mar. 5, 2009): A female juvenile in a juvenile detention center claimed a male employee touched her genitals and breasts. Another detainee stated the employee sexually assaulted her on three occasions, fondled her breasts, kissed her and exposed his penis to her. The employee denied these allegations. The court denied summary judgment, finding there were material issues of fact as to whether the abuse had occurred.

B. *Successful Agency Defense*

1. *B v. Duff*, 2009 WL 2147936 (N.D. Ill. Jul. 17, 2009): Juvenile female detainees were sexually assaulted by a male correctional employee. The employee eventually pled guilty to two counts of criminal sexual assault for sexual misconduct against one of the minors. The court found that the warden could not be held liable for the sexual assaults. The warden was not deliberately indifferent, as the warden was never





informed of the assaults, and the juvenile denied assaults were taking place when the warden questioned her.



**8<sup>th</sup> Circuit** (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North and South Dakota)

I. Male Correctional Staff /Male Inmate

A. *Successful Inmate Claim*

1. *Seltzer–Bey v. Delo*, 66 F.3d 961 (8th Cir. 1995): Male detainee alleged that a male correctional officer conducted daily strip searches, made sexual comments about prisoner's penis and buttocks, and rubbed prisoner's buttocks with his nightstick. The court found this was enough to state a Fourteenth Amendment claim.
2. *Coffey v. Foxall*, 2010 WL 1254939 (D. Neb. Mar. 25, 2010): Male inmate alleged that male correctional officer touched his genitals and made sexual comments. The court found this was enough to state an Eighth Amendment claim. The male inmate further alleged the correctional officer's supervisors had been aware of the officer's behavior for twenty years. The court found this was sufficient for a claim of deliberate indifference against prison officials.

B. *Successful Agency Defense*

1. *Berryhill v. Schriro*, 137 F.3d 1073 (8th Cir. 1998): A male inmate claimed that male correctional officers inappropriately touched his buttocks. The court found this conduct was not sufficient to support an Eighth Amendment violation.
2. *Tarpley v. Stepps*, 2007 WL 844826 (E.D. Mo. Mar. 17, 2007): Male inmate alleged the male correctional officer squeezed his buttocks twice during pat-down searches. The court found this conduct was not an Eighth Amendment



violation, as it was conducted in a food service area where pat-downs were routinely conducted, other inmates were present, and the touching was not accompanied by sexual comments.

## II. Female Correctional Staff/Male Inmate

### A. *Successful Agency Defense*

1. *Watson v. Jones*, 980 F.2d 1165 (8th Cir. 1992): Female correctional officer performed almost daily pat-down searches on two male inmates, and examined their genitals, anus, and thigh areas. The court found this was sufficient to state an Eighth Amendment claim.

## III. Male Correctional Staff/Female Inmate

### A. *Successful Inmate Claim*

1. *Kahle v. Leonard*, 477 F.3d 544 (8th Cir. 2007): A male correctional officer sexually assaulted female pre-trial detainee on three separate occasions. The court denied a motion for summary judgment, as a jury could find both the correctional officer and his supervisor liable under the Fourteenth Amendment.
2. *Williams v. Prudden*, 67 F.App'x 976 (8th Cir. 2003): A male correctional officer forcibly ground his pelvis against female inmate, grabbed her breast, demanded sexual favors and attempted to force himself upon her. The court found this repeated conduct was sufficient to state an Eighth Amendment claim.



1. *Riley v. Olk-Long*, 282 F.3d 592 (8th Cir. 2002): A female inmate was raped by a male correctional officer. The court found that both the prison warden and director of security were deliberately indifferent to the substantial risk of harm that correctional officer presented to female inmates. The correctional officer was held personally liable for \$20,000, while the warden was liable for \$25,000 in punitive damages.
2. *Ware v. Jackson County, Missouri*, 150 F.3d 873 (8th Cir. 1998): A female inmate was raped by male correctional officer. The court found there was sufficient evidence to find prison officials were deliberately indifferent, when investigations of sexual abuses allegations resulted in the recommendation that the offending officer be terminated, but the officer was retained and no additional safety measures were put in place.
3. *Berry v. Oswald*, 143 F.3d 1127 (8th Cir. 1998): A female inmate was raped by a male correctional officer. A jury found that the officer had violated the inmate's Eighth Amendment rights and committed the state tort of outrage against her, and awarded her \$65,000 in compensatory damages and \$15,000 in punitive damages.

B. *Successful Agency Defense*

1. *Freitas v. Ault*, 109 F.3d 1335 (8th Cir. 1997): A male inmate and female corrections officer entered into a non-coercive relationship. The court found this was not enough to constitute sexual harassment under the Eighth Amendment.
2. *Cotton-Schrichte v. Peate*, 2010 WL 5423737 (W.D. Mo. Dec. 23, 2010): A female inmate was not entitled to summary judgment on her Eighth Amendment claim against a male



correctional officer. The court ruled that as the sexual relationship was non-coercive, there was no constitutional violation. The court also found there was not sufficient evidence to hold the prison administrators liable, despite the fact the correctional officer had received two over-familiarity violations. Although there were rumors that the officer had sexual interaction with other inmates, there was no evidence these rumors were true.

3. *Meyer v. Nava*, 518 F. Supp. 2d 1279, 1283 (D. Kan. 2007): Female inmate was sexually assaulted and sodomized by male officer. The court found the sheriff was not deliberately indifferent, as he properly monitored the jail, and was unaware of an excessive risk of sexual assault.
4. *Tracy v. Coover*, 797 N.W.2d 621 (Iowa Ct. App. 2011): Female inmate brought suit against a male prison correctional officer, as well as the prison counselor and warden. Although there was a PREA investigation, and the counselor failed to report her sexual assault, the court found that the inmate did not exhaust her remedies and therefore dismissed her claim.
5. *Casazza v. South Dakota*, 616 N.W.2d 872 (2000): A female inmate was raped by a male correctional officer, and brought state tort suit against the state, the warden, and the Department of Corrections. The Supreme Court of South Dakota granted the defendants' motion for summary judgment on immunity grounds.

## II. Inmate on Inmate

### A. *Successful Agency Defense*



1. *Jones v. Clark*, 2010 WL 234958 (E.D. Ark. Jan. 15, 2010): A male inmate could not hold correctional officers liable for failure to protect him from a sexual assault from another inmate, where the inmate had only reported being slapped by another resident. The court found this single episode was not enough to hold prison officials deliberately indifferent under the Eighth Amendment.



**9<sup>th</sup> Circuit** (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, Northern Mariana Islands)

I. Male Correctional Staff /Male Inmate

A. *Successful Inmate Claim*

1. *Hill v. Mims*, 2009 WL 5198527 (E.D. Cal. Dec. 23, 2009): A male inmate complaining of lower back pain alleged that during a medical appointment a male facility physician grabbed and fondled the inmate's genitals. The court found that his allegation was sufficient to state an Eighth Amendment claim against the physician.
2. *Bromell v. Idaho Dep't of Corrections*, 2006 WL 3197157 (D. Idaho Oct. 31, 2006): A male inmate alleged that a male correctional officer rubbed against the inmate's buttocks and made sexual comments. The court found this conduct was enough to establish an Eighth Amendment violation.
3. *Fernandez v. Morris*, 2008 WL 2775638 (S.D. Cal. Jul. 16, 2008): A male pretrial detainee was coerced into sexual activity by a male correctional officer. The inmate contracted syphilis due to the encounter. The officer was ultimately convicted of sexual misconduct. The court found that the county and jail could be liable on the inmate's federal claims, while the sheriff could be held liable on state and federal claims.

B. *Successful Agency Defense*

1. *Austin v. Terhune*, 367 F.3d 1167 (9th Cir. 2004): A male correctional officer exposed his penis to a male inmate for 30–40 seconds. The court found this was not sufficiently



serious to sustain an Eighth Amendment claim, because the officer never physically touched the inmate.

2. *Blueford v. Prunty*, 108 F.3d 251 (9th Cir. 1997): The court found that words alone were not enough to state an Eighth Amendment violation, and held that a male correctional officer who engaged in “vulgar same-sex trash talk” could not be held liable.
3. *Johnson v. Carroll*, 2012 WL 2069561 (E.D. Cal. Jun. 7, 2012): A male inmate claimed a male correctional officer became aroused while conducting a pat-down search. The court found that the inmate’s psychological injury was not objectively, sufficiently serious to state an Eighth Amendment claim. Feelings of being “demeaned,” “degraded,” annoyed,” or “offended” were not severe enough to create a constitutional violation.
4. *Smith v. Los Angeles County*, 2010 WL 2569232 (C.D. Cal. Apr. 22, 2010): A pretrial detainee claimed that he was sexually harassed during a strip search. The court found that the search was authorized and found there was no Fourteenth Amendment violation, stating that “[e]ven if plaintiff believed that there was a sexual aspect to the search, more is needed.”
5. *Fisher v. Dizon*, 2008 WL 619149 (E.D. Cal. Mar. 4, 2008): The court found that a male correctional who poked an inmate twice in the buttocks did not violate that inmate’s Eighth Amendment rights.





## II. Female Correctional Staff /Male Inmate

### A. *Successful Inmate Claim*

1. *Wood v. Beauclair*, civ. 10-35300, -- F.3d -- (9th Cir. 2012): Female correctional officer entered into romantic relationship with a male inmate, which included personal conversations, hugging, kissing, and touching. After the inmate ended the affair, she began to be abusive towards him, conducting unnecessary searches and on one occasion she fondled his penis during a search. The court found the individual officer could be liable on an Eighth Amendment claim, but facility and supervisors could not be liable under a failure to protect theory.

### B. *Successful Agency Defense*

1. *Rice v. King County*, 2000 WL 1716272 (9th Cir. Nov. 15, 2000): The court found there was no Eighth Amendment violation where a female correctional officer "shoved her hand very hard into" a male inmate's testicles during a search.
2. *Somers v. Thurman*, 109 F.3d 614 (9th Cir. 1997): The court dismissed a male inmate's claim where female correctional officers made sexual comments about the inmate while he showered.

## III. Male Correctional Staff /Female Inmate

### A. *Successful Inmate Claim*

1. *Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. 2000): Male correctional officer sexually assaulted a male-to-female transgender inmate, by entering her cell and rubbing his



penis on her buttocks. The Court found this assault was enough to establish an Eighth Amendment claim against the officer.

2. *Jordan v. Gardner*, 986 F.2d 1521 (9th Cir.1993): The prison's policy that required male correctional officers to conduct random, suspicionless searches on female prisoners constituted cruel and unusual punishment under the Eighth Amendment.
3. *Barkey v. Reinke*, 2010 WL 3893897 (D. Idaho Sept. 30, 2010): A female inmate was sexually assaulted during a cross-gender pat search. The inmate had used the PREA hotline to report the incident, and therefore further exhaustion was unnecessary. The court denied both parties' motions for summary judgment.

B. *Successful Agency Defense*

1. *Crane v. Allen*, 2012 WL 602432 (D. Or. Feb. 22, 2012): A female inmate was sexually abused by a male corrections counselor, who had developed romantic feelings for her. He was allowed to retire, and eventually convicted of sexual misconduct. The court found that the deputy could not be held liable for deliberate indifference, as the corrections counselor had taken affirmative steps to hide the sexual activity.

IV. Inmate on Inmate

A. *Successful Detainee Claim*

1. *Lucas v. White*, 63 F. Supp. 2d 1046 (N.D. Cal. 1999): Three female inmates in a federal facility alleged that correctional officers deliberately exposed them to sexual abuse by



male inmates, including one violent rape. The government entered into settlement negotiations with the inmates, and each received a total of \$500,000.

V. Juvenile

A. *Successful Detainee Claim*

1. *R.G. v. Koller*, 415 F. Supp. 2d 1129 (D. Hawaii 2006):  
Teenage inmates at a youth correctional facility were subjected to harassment and abuse because they are, or were perceived to be LGBT. The court found that the facility violated the youths Fourteenth Amendment rights, by creating a pervasive climate of hostility towards, discrimination against and harassment against the youths based on perceived sexual orientation, sex, and/or transgender status. The court further found that segregating the youths based on perceived status was a violation of their due process rights.



## 10<sup>th</sup> Circuit (Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming)

### I. Male Correctional Staff /Male Inmate

#### A. *Successful Agency Defense*

1. *Rhoten v. Werholtz*, 243 F.App'x. 364 (10th Cir. 2007): Male inmate claimed a male correctional officer "slammed him against the wall, squeezed his nipples real hard, squeezed his buttocks, and pulled on his testicles real hard causing him a great deal of discomfort and pain." The court found the inmate failed to state an Eighth Amendment violation.
2. *Young v. Brock*, 2012 WL 385494 (D. Colo. Feb. 7, 2012): Male pre-trial detainee was groped by a male correctional officer during a pat-down search. The court found that a single, isolated incident was not enough to state a claim under the Fourteenth Amendment.
3. *Broadus v. Timme*, 2012 WL 639310 (D. Colo. Jan. 30, 2012): Male inmate claimed that male correctional officer subjected him to constant sexual abuse, and that on several occasions the officer fondled the inmate's genitals and buttocks, and ground his genital's on the inmate's backside. The court found that the inmate's allegations were conclusory, and dismissed the claim.
4. *Frierson v. Roberts*, 2011 WL 3611484 (D. Kan. Aug. 17, 2011): Male inmate alleged that male correctional officer conducted improper pat down searches on two occasions, by cupping the inmate's penis with his open palm. The court found this was not sufficient to state a claim.



5. *Martin v. Creek County Jail*, 2010 WL 4683852 (N.D. Okla. Nov. 12, 2010): Male inmate claimed a male correctional officer used the antenna from his C.B. radio and ran it down the inmate's buttocks. The court found there was no Eighth Amendment violation, as it was an isolated incident that did not result in physical injury.

## II. Female Correctional Staff /Male Inmate

### A. *Successful Inmate Claim*

1. *Joseph v. U.S. Fed. Bureau of Prisons*, 232 F.3d 901 (10th Cir. 2000): Female correctional official touched male inmate several times in a suggestive manner and exposed her breasts. The court found that there was no Eighth Amendment violation as the harm the inmate suffered was not objectively, sufficiently serious.

## III. Male Correctional Staff /Female Inmate

### A. *Successful Inmate Claim*

1. *Tafoya v. Salazar*, 516 F.3d 912 (10th Cir. 2008): Female inmate in a county jail was sexually assaulted by a male correctional officer. The court found the sheriff was aware of conditions that were substantially likely to result in sexual assault. The sheriff had previously been the subject of three civil suits for sexual assault, after which the sheriff instilled a "no contact" policy, conducted trainings, and installed security cameras. The court found that the sheriff's remedial measures were not enough, and found he was liable for the sexual assault committed by the correctional officer.



2. *Gonzales v. Martinez*, 403 F.3d 1179 (10th Cir. 2005): The court found that a sheriff could be held liable for deliberate indifference under the Eighth Amendment for the actions of male correctional officers. Evidence of prior physical assaults, lapses in jail security, and sexual harassment was enough to find a reasonable inference that the sheriff was aware of the risk of sexual assault to female inmates.
3. *Smith v. Cochran*, 339 F.3d 1205 (10th Cir. 2003): Male state license examiner raped female prisoner while she was out on work release. The Court found this was a violation of the Eighth Amendment.
4. *Fleetwood v. Werholtz*, 2011 WL 1527261 (D. Kan. Apr. 20, 2011) A male correctional officer drove a female inmate offsite to her work assignment. The officer grabbed her breasts and requested oral sex, which the inmate felt she could not refuse. The court found this constituted an Eighth Amendment claim against the individual officer, but dismissed the claims against other prison officials, for the inmate's failure to plead individual states of mind and actions for each defendant.
5. *Hall v. Terrell*, 648 F. Supp. 2d 1229 (D. Colo. 2009): A male correctional officer routinely sexually assaulted and raped a female inmate. The inmate was awarded \$354,070.41 in compensatory and \$1,000,000 in punitive damages against the individual officer.

*B. Successful Agency Defense*

1. *Adkins v. Rodriguez*, 59 F.3d 1034 (10th Cir. 1995): A male correctional officer made sexually suggestive verbal comments to a female inmate about her body, his own



sexuality, and his sexual encounters. The court found that the officer's sexual harassment of this inmate, while reprehensible, was not in violation of the inmate's Eighth Amendment rights.

2. *Hovater v. Robinson*, 1 F.3d 1063 (10th Cir. 1993): A female inmate was sexually assaulted by a male correctional officer while he escorted her in the building by himself, in violation of a prison policy requiring a female inmate to be escorted by either a female officer or two male officers. The court found the prison officials could not be held liable for the assault, as the risk to inmate safety posed by a male correctional officer having sole custody of a female inmate was not enough to create an Eighth Amendment violation.
3. *Price v. Suarez*, 2011 WL 635225 (D. Utah Feb. 11, 2011): Two female inmates in a county jail claimed they were sexually assaulted by a male correctional officer. The court found that neither the sheriff nor the county could be held liable, as the inmates did not provide any evidence the jail conducted a deficient training, and nothing in the correctional officer's background would have put the jail on notice that the officer was likely to sexually assault inmates.

#### IV. Inmate on Inmate

##### A. *Successful Inmate Claim*

1. *Hostetler v. Green*, 323 F.App'x. 653 (10th Cir. 2009): A female pre-trial detainee held in a county jail was raped by a male inmate, who had been allowed to enter her cell by a county jailer. The court found the female detainee had a Fourteenth Amendment claim against the jailer for deliberate indifference, as his violation of the policy prohibiting male



inmate's from entering female inmate's cells, permitted the inference that the jailer had knowledge of the risk presented by allowing the male inmate into the female inmate's cell.

2. *Ramos v. Lamm*, 639 F.2d 559 (10th Cir. 1980): The court found that inmates and correctional staff were living in constant fear of violent and sexual attacks, due in part to the "blind spots" inherent in the building layout, and inadequate levels of staffing. The court found the inmates were deprived of their constitutional right to be reasonably protected from sexual assault from other inmates.

## V. Juvenile – Detainee on Detainee

### A. *Successful Detainee Claim*

1. *Hobock v. Grant County*, 216 F.3d 1087 (10th Cir. 2000): A male juvenile detainee was housed in a cellblock with violent minors. On one occasion they severely beat the detainee, and on a second occasion, he was forced to engage in fellatio in his cell. Two detention officers knew the inmate was having difficulty with fellow inmates, and the video camera in his cell was not operating properly when the fellatio occurred. The court allowed the suit to proceed, finding that the county and individual officers were not entitled to immunity.
2. *C.J.W. By & Through L.W. v. State*, 253 Kan. 1, 853 P.2d 4 (1993): A juvenile inmate was sexually assaulted by another juvenile inmate. The inmate brought suit under the state's Torts Claims Act. The Supreme Court of Kansas held that the state owed a duty to protect the juvenile, and was not immune from liability.





## 11<sup>th</sup> Circuit (Alabama, Florida, Georgia)

### I. Male Correctional Staff /Male Inmate

#### A. *Successful Inmate Claim*

1. *Walker v. Freeman*, 2009 WL 63051 (N.D. Ga. Jan. 9, 2009): A male inmate claimed the deputy sheriff used threats to force the inmate to perform sexual acts, and to allow the deputy to perform sexual acts on him. The court found the inmate's allegations that the sheriff knew of the deputy's conduct and his failure to remove him were enough to substantiate the inmate's claim under the Eighth Amendment.

#### B. *Successful Agency Defense*

1. *Doe v. Georgia Dep't of Corrs.*, 248 F.App'x. 67 (11th Cir. 2007): A male inmate in a state facility alleged that he was sexually assaulted by a male correctional officer, and reported the assault to correctional officers. Subsequent to his report, the same correctional officer assaulted a second inmate. The court found that the facility had immediately commenced an investigatory process, and that the first claim was unsubstantiated and contested, and therefore the facility officials were not deliberately indifferent to the sexual assault claims.
2. *Washington v. Harris*, 186 F.App'x 865 (11th Cir. 2006): Male inmate claimed male correctional officer grabbed his genitals, kissed him on the mouth, and threatened to perform oral sex on him. The court found that the inmate's allegations that he suffered momentary pain, "psychological injury," embarrassment, humiliation, and fear were



insufficient to state a harm cognizable under the Eighth Amendment.

3. *Jemison v. Mack*, 2012 WL 2601382 (S.D. Ala. Jan. 8, 2012): Male correctional officer made verbal sexual advances on male plaintiff, and escorted him from the cellblock in order “to just be close to [him].” The court found that this was insufficient to state an Eighth Amendment claim, as the inmate’s claim was not sufficiently serious.
4. *Helton v. Burks*, 2011 WL 7628516 (M.D. Ga. Aug. 3, 2011): Male inmate alleged correctional officer touched him on the buttocks. The court found that a single, isolated incident was not enough to state an Eighth Amendment violation.

## II. Female Correctional Staff /Male Inmate

### A. *Successful Agency Defense*

1. *Boxer v. Harris*, 437 F.3d 1107 (11th Cir. 2006): Male inmate claimed he was force to strip and masturbate for a female correctional officer. The court found this was a *de minimis* injury, and therefore not enough to state an Eighth Amendment claim.
2. *Allen v. McDonough*, 2011 WL 4102525 (N.D. Fla. Aug. 17, 2011): Male inmate claimed female correctional officer sexually harassed him by making sexual gestures with her tongue and hands. The court found this was not sufficiently serious to state an Eighth Amendment violation.



### III. Male Correctional Staff /Female Inmate

#### A. *Successful Inmate Claim*

1. *Crocker v. City of Fairhope*, 2005 WL 1027248 (S.D. Ala. Mar. 30, 2005): Female inmate was raped three times and forced to engage in oral sex once by male jailer. Summary judgment was denied for both parties, finding that while plaintiff presented a genuine issue of material fact, defendant's evidence could cause a jury to find that she was not raped.
2. *Hammond v. Gordon County*, 316 F. Supp. 2d 1262 (N.D. Ga. 2002): Female inmates alleged that male correctional officer required them to strip in order to receive toiletries, and engaged in sexual acts with them. One female inmate further alleged that male officers encouraged her to perform sexual acts on other inmates in exchange for cigarettes. Two of the officers in question were convicted of criminal charges. The court found the individual correctional officers could be held liable under Eighth Amendment, but found the county could not be held liable.

#### B. *Successful Agency Defense*

1. *Washington v. Albright*, 814 F. Supp. 2d 1317 (M.D. Ala. 2011): A female inmate was sexually assaulted by a male correctional officer, and later became pregnant as a result of the sexual assault. A lawsuit had previously been filed against the same facility, alleging overcrowding resulting in an increased risk of harm. The court found that all official policies and state laws prohibited the officer's conduct, and therefore the inmate had to present a factual predicate upon which to base her deliberate indifference claim, which she failed to do.



2. *Boyd v. Nichols*, 616 F. Supp. 2d 1331 (M.D. Ga. 2009): Male correctional officer raped female inmate on one occasion, and forced her to perform oral sex on him on a second occasion. The court found the sheriff was not deliberately indifferent, where there was no evidence that the sheriff had any knowledge that the officer would have been a threat to female inmates, nor knowledge of any issues with male correctional officers escorting female inmates, and the officer in question had been trained on how to interact with inmates.

#### IV. Inmate on Inmate

##### A. *Successful Inmate Claim*

1. *Brown v. Riley*, 2010 WL 3069490 (M.D. Fla. Aug. 4, 2010): A male inmate was sodomized by his cellmate, and informed correctional officers he had been “taken advantage of.” The officers later placed the inmate back with the same cellmate, where he was sodomized again. The court denied the defendant’s motion to dismiss, noting that if the officers had in fact understood the inmate’s statement to mean the inmate had been sexually assaulted, then the officer’s failure to act would be a violation of the inmate’s Eighth Amendment rights.
2. *LaMarca v. Turner*, 995 F.2d 1526 (11th Cir. 1993): A male inmate filed suit against correctional officers, claiming that he was constantly subjected to requests for sexual activity, or requests for payment for protection. The court found that the facility presented an unreasonable exposure to sexual assaults, and that the inmate successfully presented an Eighth Amendment claim for failure to protect.



B. *Successful Agency Defense*

1. *Zatler v. Wainwright*, 802 F.2d 397 (11th Cir. 1986): The court granted summary judgment for the defendant where an inmate was sexually abused by other inmates. The court found that the sheriff could not be held liable for deliberate indifference, due to a number of policies and procedures in place to identify and protect at-risk inmates.
2. *Mobley v. Gresco*, 2011 WL 3163159 (N.D. Fla. Jul. 1, 2011): A male inmate was sexually assaulted by two other inmates. The inmate only alleged mental injury, and therefore the court dismissed the claim, requiring a showing of physical injury to sustain the 1983 claim.

V. Juvenile – Male Correctional Officer/Female Detainee

A. *Successful Detainee Claim*

1. *K.M. v. Alabama Department of Youth Services*, 360 F. Supp. 2d 1253 (M.D. Ala. 2005): Female juvenile detainees claimed they were sexually assaulted by a male correctional officer. The court found that the officer could be held liable under state tort law, as well as the Fourteenth Amendment, and that he would not be protected by state immunity.



## D.C. Circuit

### I. Male Correctional Staff /Male Inmate

#### A. *Successful Inmate Claim*

1. *Thomas v. District of Columbia*, 887 F. Supp. 1 (D.D.C. 1995): A male correctional officer touched a male inmate's penis, sexually harassed and intimidated him. The court found this was sufficient to state an Eighth Amendment claim.
2. *Davis v. D.C. Dept. of Corrections*, 623 F. Supp. 2d 77 (D.D.C. 2009): Male inmate alleged he was sexually abused by a male correctional officer. The inmate claimed he had reported this conduct to staff members, and the court found this was sufficient to find that he had satisfied the exhaustion requirement.

### II. Male Correctional Staff /Female Inmate

#### A. *Successful Inmate Claim*

1. *Daskalea v. District of Columbia*, 227 F.3d 433 (D.C.Cir. 2000): The court affirmed an award of \$350,000 against the District of Columbia and its Department of Corrections for ongoing sexual abuse of a female inmate, due to correctional officer's routine sexual abuse of women prisoners.
2. *Women Prisoners of the District of Columbia Dep't of Corrections v. District of Columbia*, 877 F. Supp. 634 (D.D.C. 1994): Female inmates brought a class action suit against the District of Columbia Department of Corrections for widespread sexual abuse from male correctional officers. The court found that the sexual harassment the inmates were



experiencing “amounted to wanton and unnecessary subjection of pain” and “was so malicious that it violated contemporary standards of decency.”

B. *Successful Agency Defense*

1. *Chase v. District of Columbia*, 723 F. Supp. 2d 130 (D.D.C. 2010): Female pre-trial detainee claimed she was sexually assaulted by a male correctional employee on three occasions. The court dismissed the inmate’s claim, as the inmate brought the claim under the Eighth Amendment, rather than the Fourteenth Amendment, which protects pre-trial detainees.

