

Responding to Sexual Abuse of Youth in Custody: Addressing the Needs of Boys, Girls, and Gender Nonconforming Youth Notification of Curriculum Use
April 2014

The enclosed Responding to Sexual Abuse of Youth in Custody: Addressing the Needs of Boys, Girls, and Gender Nonconforming Youth curriculum was developed by the Project on Addressing Prison Rape at American University, Washington College of Law as part of contract deliverables for the National PREA Resource Center (PRC), a cooperative agreement between the National Council on Crime and Delinquency (NCCD) and the Bureau of Justice Assistance (BJA). The Prison Rape Elimination Act (PREA) standards served as the basis for the curriculum's content and development with the goal of the Responding to Sexual Abuse of Youth in Custody: Addressing the Needs of Boys, Girls, and Gender Nonconforming Youth curriculum being to satisfy specific PREA standard requirements.

It is recommended that the Responding to Sexual Abuse of Youth in Custody: Addressing the Needs of Boys, Girls, and Gender Nonconforming Youth curriculum be reviewed in its entirety before choosing which modules to use. Any alterations to the original materials require either acknowledgement during their presentation or removal of the PRC and Project on Addressing Prison Rape logos.

BJA is currently undergoing a comprehensive review of the enclosed curriculum for official approval, at which point the BJA logo may be added.

Note: Use of the enclosed curriculum, either in part or whole, does not guarantee that an auditor will find a facility "meets standards." Rather, an auditor will take into consideration the curriculum used as part of their overall determination of compliance.

Notice of Federal Funding and Federal Disclaimer – This project was supported by Grant No. 2010-RP-BX-K001 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice nor those of the National Council on Crime and Delinquency (NCCD), which administers the National PREA Resource Center through a cooperative agreement with the Bureau of Justice Assistance.





**Training Curriculum:
Responding to Sexual Abuse of Youth in Custody:
Addressing the Needs of Boys, Girls and Gender Non-Conforming
Youth**

Module 14: Legal Liability and Gender

**The Project on Addressing Prison Rape
February 2014**

Notice of Federal Funding and Federal Disclaimer – This project was supported by Grant No. 2010-RP-BX-K001 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice nor those of the National Council on Crime and Delinquency (NCCD), which administers the National PREA Resource Center through a cooperative agreement with the Bureau of Justice Assistance.

NATIONAL
PREA
RESOURCE
CENTER

Copyright © 2014 American University Washington College of Law

All rights reserved. The Bureau of Justice Assistance retains a license to reproduce, publish, or otherwise use, and to allow others to use, this material for federal purposes. Otherwise, no part of this publication may be produced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage or retrieval system, without permission in writing from the Project on Addressing Prison Rape.

Requests for permission to make copies of any part of this publication can be made to:

*The Project on Addressing Prison Rape
American University Washington College of Law
4801 Massachusetts Ave, NW
Washington, DC 20016
202-274-4385
endsilence@wcl.american.edu*

Objectives

Identify and discuss the frameworks for legal liability.

Identify various forms of liability

Review case law and describe how claims are handled



Introduction

Civil Liability – Major Issues

- Staff Sexual Misconduct
- Youth-on-youth Conduct



Introduction

Youth-on-youth

Who Raises the Issue?

- Male youth
- Female youth

Nature of the Conduct:

- Forced
- Coerced
- Non-coerced



Introduction

Staff Sexual Misconduct – Important Factors

Who Raises the Issue?

- Male youth
- Female youth
- Gender non-conforming youth

Who Was the Perpetrator?

- Male staff
- Female staff



Introduction

Staff Sexual Misconduct – Important Factors

Agency/Facility History:

- Complaints about misconduct
- Complaints about other institutional concerns
- Community standing

Context in Which the Issue Is Raised:

- Litigation
- Investigation
- Agency oversight
- Review panel



Introduction

**Mitchell v. Neff, 2012 WL 2449863
(W.D. Ark. May 30, 2012)**

The Facts

- Conditions in the facility were like a “big party,” inmates smoking, drinking, and using cell phones
- Inmates were escaping through a hole in the roof, and returning with contraband
- Jail was in chaos
- Two inmates assaulted another inmate, severely injuring him.
- The sheriff resigned shortly before this incident



Introduction

**Mitchell v. Neff, 2012 WL 2449863
(W.D. Ark. May 30, 2012)**

Court's Finding

- Inmate brought suit for deliberate indifference against employees who were aware of these conditions, including a Major (chief of security).
- Court found the Major was aware of the dangerous conditions in the jail, and was deliberately indifferent to a substantial risk of serious harm. \$5000 judgment against the major in his official capacity.
- The jail administrator brought in after the sheriff resigned was not held liable, as the assault took place only 2 ½ weeks after he began



Legal Framework

Legal Responsibilities

- Prison Rape Elimination Act
- Civil Rights of Institutionalized Persons Act
- Prison Litigation Reform Act
- Constitutional Framework
- State Tort Framework



PREA

Interpretation

PREA does not create a private right of action but can help to establish an 8th Amendment claim. *De'lonta v. Clarke*, 2012 WL 4458648 (W.D. Va., Sept. 11, 2012)

May be able to use PREA definitions to define causes of action. *Chapman v. Willis*, 2013 WL 2322947 (W.D. Va., May 28, 2013) (recognizing the possibility of employing the PREA definition of rape to define a claim).



Civil Rights of Institutionalized Persons Act (CRIPA)

Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997

- Federal Statute
- DOJ Special Litigation enforces:
 - Prisons and jails
 - State and local nursing homes
 - Juvenile facilities
 - Facilities for mentally ill
 - Facilities for developmentally disabled and mentally retarded
- Must be widespread pattern of abuse
- Facility under a CRIPA investigation can be monitored for a period of months, or even years



Civil Rights of Institutionalized Persons Act

Terrebonne Parish Juvenile Detention Center Houma, LA

January 2011: DOJ found that TPJDC violated youths' civil rights, and that the youth were subjected to: the (1) physical and sexual misconduct by staff; (2) excessive physical restraints; (3) inappropriate use of chemical agents; (4) excessive use of isolation; and (5) inadequate suicide prevention.

October 2011: Settlement agreement to remedy violations



Prison Litigation Reform Act (PLRA)

Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat 1321 (1995)

- Exhaustion requirement
- Limits on attorney fees
- Limits consent decrees
- Limits on appointment of special masters
- Physical injury requirement
- Limits on proceeding in forma pauperis [without paying fees]



Prison Litigation Reform Act

§ 115.352: Exhaustion of administrative remedies

(a) An agency shall be exempt from this standard if it does not have administrative procedures to address resident grievances regarding sexual abuse.

(b)(1) The agency shall not impose a time limit on when a resident may submit a grievance regarding an allegation of sexual abuse.

(3) The agency shall not require a resident to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse.

(4) Nothing in this section shall restrict the agency's ability to defend against a lawsuit filed by a resident on the ground that the applicable statute of limitations has expired.



Prison Litigation Reform Act

§ 115.352: Exhaustion of administrative remedies

(c) The agency shall ensure that— (1) A resident who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and (2) Such grievance is not referred to a staff member who is the subject of the complaint.

(e)(1) Third parties, including fellow residents, staff members, family members, attorneys, and outside advocates, shall be permitted to assist residents in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of residents.



Prison Litigation Reform Act

§ 115.352: Exhaustion of administrative remedies

(e)(2) If a third party, other than a parent or legal guardian, files such a request on behalf of a resident, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.

(3) If the resident declines to have the request processed on his or her behalf, the agency shall document the resident's decision.

(4) A parent or legal guardian of a juvenile shall be allowed to file a grievance regarding allegations of sexual abuse, including appeals, on behalf of such juvenile. Such a grievance shall not be conditioned upon the juvenile agreeing to have the request filed on his or her behalf.



Prison Litigation Reform Act

**Molina v. New York, 2011 WL 6010907
(N.D.N.Y. 2011)**

Facts

- Seventeen year old resident got into a physical altercation with a juvenile detention worker. The juvenile's arm was fractured as a result.
- Juvenile claimed that he filed a grievance upon his return from the hospital, although no such grievance was found
- Juvenile brought suit for excessive force and failure to intervene, and the facility claimed he had not exhausted under the PLRA



Prison Litigation Reform Act

**Molina v. New York, 2011 WL 6010907
(N.D.N.Y. 2011)**

Court's Analysis

- PLRA *does* apply to juvenile adjudications. The court used a three-part test to analyze whether the juvenile had exhausted his administrative remedies
 - “The age of the prisoner and their familiarity with the grievance procedure”
 - “Whether the defendants' own actions inhibiting the [juvenile's] exhaustion of remedies”
 - “Whether ‘special circumstances’ have been plausibly alleged that justify the prisoner's failure to comply with the administrative procedural requirements.”



Prison Litigation Reform Act

**Molina v. New York, 2011 WL 6010907
(N.D.N.Y. 2011)**

Court's Holding

- Court denied defendants' motion for summary judgment
 - Due to agency practice, the formal grievance procedure was not the only accepted method of filing a grievance
 - Plaintiff successfully pursued an informal method of grievance
 - The agency was on notice that the juvenile was attempting to file a grievance for use of excessive force



Federal Torts Claims Act

Federal Torts Claims Act, 28 U.S.C. 1346, et. seq.

In limited circumstances, the FTCA waives sovereign immunity or allows federal agencies to be sued for:

- The negligent or wrongful act or omission of any employee of the government.
- Intentional torts
- Acting within the scope of his or her employment.

Most common claims include:

- Assault and battery.
- Negligent hiring, training, or supervision.
- Negligent or intentional infliction of emotional distress.



Federal Torts Claims Act

Federal Torts Claims Act, 28 U.S.C. 1346, et. seq.

***Millbrook v. United States*, 133 S.Ct. 1441
(2013)**

On Wednesday, March 27, 2013, the United State Supreme Court issued its ruling in *Millbrook v. United States*, and held that the Federal Torts Claims Act (FTCA) waives sovereign immunity for correctional officers who commit intentional torts against inmates while acting within the scope of their employment.



Constitutional Framework

Constitutional Claims

42 U.S.C. § 1983

- Fourteenth Amendment
- Eighth Amendment
- Fourth Amendment



Constitutional Framework

42 U.S.C. § 1983

Creates a federal cause of action for the vindication of rights found elsewhere.

Key elements:

- Deprived of a right secured by the US Constitution or law of the United States.
- Deprivation by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42 (1988) (“A defendant in a section 1983 suit acts under color of state law when he abuses the position given to him by the state.”)



Constitutional Framework

42 U.S. C. § 1983, “Under the Color of State Law”

- City employee who supervised jail inmates working with the city public works department was “acting under color of state law” and could be sued under 42 U.S.C. § 1983. *Washington v. City of Shreveport*, 2006 WL 1778756 (W.D. La. 2006).
- Inmate assigned to work in state driver’s license bureau as part of her sentence could sue state driver’s license examiner for sexual misconduct under the eighth amendment. State agency that is delegated the responsibility of the state can be liable under the Eighth Amendment. *Smith v. Cochran*, 339 F.3d 1205 (10th Cir. 2003).



Constitutional Framework

Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971)

- Bivens action is the federal counterpart to a §1983 action.
 - Bivens held that a constitutional violation by a federal agent acting under color of his authority gives rise to a cause of action for damages.
- Federal officials can be brought into federal court for violating the federal constitution.



Constitutional Framework

Fourteenth Amendment

- Because youth have not been criminally prosecuted, courts will analyze claims of sexual abuse under the Fourteenth Amendment, rather than the Eighth Amendment cruel and unusual punishment standard
- Lower legal standard than Eighth Amendment, asking whether the individual was deprived of life, liberty, or property without due process of law.
- The Fourteenth Amendment offers a greater level of protection to juveniles, although many courts will still analyze claims involving youth using the Eighth Amendment



Constitutional Framework

Eighth Amendment

- Prohibits cruel and unusual punishment.
- Legal standard is “deliberate indifference,” for which the Supreme Court has created a two-part test. *Farmer v. Brennan*, 511 U.S. 825 (1994).
 - The injury must be **objectively serious**.
 - The official must have a sufficiently culpable state of mind and have acted with **deliberate indifference** or reckless disregard for the inmate’s constitutional rights.



Constitutional Framework

Eighth Amendment, “Objectively serious injury”

Sufficient:

- Improper touching without a legitimate penological purpose can be sufficient. *Seltzer–Bey v. Delo*, 66 F.3d 961 (8th Cir. 1995).
- Repeated conduct can be sufficient. *Kahle v. Leonard*, 477 F.3d 544 (8th Cir. 2007).

Not Sufficient:

- Single, isolated incidents that do not result in physical harm are generally not sufficient. *Berryhill v. Schriro*, 137 F.3d 1073 (8th Cir. 1998).
- Verbal comments alone are generally not sufficient. *Boddie v. Schneider*, 105 F.3d 857 (2d Cir. 1997).



Constitutional Framework

Eighth Amendment, “Deliberate indifference”

Deliberate indifference to inmate vulnerability—
safety or health.

- Official knew of and disregarded an excessive risk to inmate safety or health.
- Official must be aware of facts from which an inference could be drawn that a substantial risk of harm exists and he/she must draw the inference.



Constitutional Framework

Smith v. Wade, 461 U.S. 30 (1983)

- The Supreme Court found the failure of facility authorities to separate aggressive youth from potential victims could demonstrate callous or reckless indifference, making them liable for the injury of the endangered youth
- Further held that the officer could be held liable for punitive damages



Constitutional Framework

Fourth Amendment

- Whether the individual has a legitimate expectation of privacy.
- Whether the search or intrusion was reasonable.
- Important implications for cross-gender searches.



State Tort Framework

State Tort Claims

- Assault
- Battery
- Intentional infliction of emotional distress
- Negligent infliction of emotional distress
- Negligent hiring, firing, supervision, training
- States are generally protected from tort suits under sovereign immunity. Some states, however, have passed legislation that permits detainees to bring tort suits against the state.



Forms of Liability

Potential Liability

- Municipal
- Official
- Individual
- Personal



Forms of Liability

Municipal Liability – Monell v. Department of Social Services, 436 U.S. 658 (1978)

Municipality is a person that can be held liable under Section 1983.

Injury must be inflicted due to an officially executed policy or toleration of custom.

- Inaction
- Failure to train or supervise
- Failure to investigate

Cannot be held responsible under respondeat superior or vicarious liability.

- Must make showing that this officer was likely to inflict a particular injury and that agency had facts from which it concludes that it was likely.



Forms of Liability

Official Liability

- Will cause liability to municipality.
- Did it happen on your watch?
- Were you responsible for promulgating and enforcing policy?
- Did you fail to act or ignore information presented to you?



Forms of Liability

Individual Liability

Officials sued in individual capacity may be protected from damages if the alleged wrongful conduct was committed while they performed a function protected by qualified immunity.



Forms of Liability

Individual Liability – Elements

- Participated directly in the alleged constitutional violation;
- After being informed of the violation through a report or appeal, failed to remedy the wrong;
- Created a policy or custom under which unconstitutional practices occurred, or allowed the continuance of such a policy or custom;
- Grossly negligent in supervising subordinates who committed the wrongful acts; or
- Deliberate indifference to others' rights by failing to act on information indicating unconstitutional acts were occurring.



Forms of Liability

Personal Liability

Plaintiff must provide notice that the suit is against the official in his/her personal capacity.

Direct participation not required.

- Actual or constructive notice of unconstitutional practices.
- Demonstrated gross negligence or deliberate indifference by failing to act.



Forms of Liability

Qualified Immunity

- No violation of federal law—constitutional or otherwise.
- Rights and law not clearly established at the time of the incident.
- Official's action was objectively legally reasonable in light of clearly established legal rules at time of the incident.



Case Law Digest



NATIONAL
PREA
RESOURCE
CENTER

Case Law – Staff Sexual Misconduct Juvenile

K.M. v. Alabama Department of Youth Services, 360 F. Supp. 2d 1253 (M.D. Al. 2005)

The Facts:

- **Four juvenile girls** sued the Alabama Department of Youth Services, the executive director, and employees, alleging they were physically and sexually assaulted and harassed.
 - Widespread public allegations of sexual abuse and harassment.
 - One plaintiff was sexually assaulted in the laundry room.

Legal Claims:

- 42 U.S.C. § 1983: Fourteenth and Eighth Amendment
- State Tort law (negligence, outrage, assault, and battery).



Case Law – Staff Sexual Misconduct Juvenile

K.M. v. Alabama Department of Youth Services, 360 F. Supp. 2d 1253 (M.D. Al. 2005)

Court's Ruling:

- Fourteenth Amendment is the correct standard
 - Juvenile institutions are not correctional facilities.
 - Partially correctional, partially educational.
 - Meant to discipline as opposed to punish.
 - Rehabilitative and educational.
 - Juvenile detention is not criminal adjudication.
 - Juveniles entitled to greater protection from wanton and unnecessary pain.
 - The conduct also violated the Eighth Amendment.
- The court allows the Fourteenth Amendment claim to proceed on a motion for summary judgment
- State tort claims allowed as well.



Case Law – Staff Sexual Misconduct Juvenile

K.M. v. Alabama Department of Youth Services, 360 F. Supp. 2d 1253 (M.D. Al. 2005)

Outcome

The Alabama Department of Youth Services entered into settlement negotiations with the plaintiffs after the court ruled on the motion for summary judgment.

- The Department eventually settled the case
- 49 female youth were parties to the settlement agreement.
 - The Department paid a total of \$12.5 million dollars.



Case Law – Staff Sexual Misconduct Juvenile

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.
- Counselor could be held liable, as she was on notice that one of the employee’s was “messing” with female residents.
- 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.



Case Law – Staff Sexual Misconduct Juvenile

B. v. Duff, 2009 WL 2147936 (N.D. Ill. Jul. 17, 2009)

- Juvenile females 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.



Case Law – Staff Sexual Misconduct Juvenile

S.H. v. Stickrath, 251 F.R.D. 293 (S.D. Ohio 2008)

Class action on behalf of all juveniles at ODYS

Came to forefront due to violent sexual abuse at
Scioto Juvenile Detention Facility

- 14 staff indicted
- 6 convicted of offenses from sexual battery to dereliction of duty
- Male and female staff abusing male and female youth



Case Law – Staff Sexual Misconduct Juvenile

S.H. v. Stickrath, 251 F.R.D. 293 (S.D. Ohio 2008)

Class action on behalf of girls at Scioto – 12/04

- Physical abuse
- Sexual abuse
- Inadequate mental health care
- Use of isolation

Special Litigation filed a CRIPA complaint –3/05

- Negotiated for 2 years
- Litigation expanded to include all facilities including those for boys

Final draft settlement -- April 2008



Case Law – Staff Sexual Misconduct Juvenile

R.G. v. Koller, 415 F. Supp. 2d 1129 (D. Haw. 2006)

The Facts:

- Teenagers confined at the Hawaii Youth Correctional Facility (HYCF), in Kailua, Hawaii, were subjected to a campaign of unrestrained harassment, abuse, and other maltreatment because they are or were perceived to be lesbian, gay, bisexual, or transgender (LGBT).
- Staff told youth that being gay was not of God.
- Staff allowed other youth to harass youth perceived as gay.



Case Law – Staff Sexual Misconduct Juvenile

R.G. v. Koller, 415 F. Supp. 2d 1129 (D. Haw. 2006)

Legal Claims: 42 U.S.C. § 1983

- Fourteenth Amendment: a pervasive climate of hostility toward, discrimination against, and harassment based on their actual or perceived sexual orientation, sex, and/or transgender status.
- First Amendment: acts of religious preaching by HYCF staff in content-based and viewpoint-discriminatory silencing of plaintiffs' speech.
- First, Sixth, and Fourteenth Amendment: interference with access to counsel and the courts, referencing a policy requiring parental consent before contacting ACLU.



Case Law – Staff Sexual Misconduct Juvenile

R.G. v. Koller, 415 F. Supp. 2d 1129 (D. Haw. 2006)

Outcome: DOJ CRIPA found conditions, policies and practices at HYCF violated constitutional and statutory rights of juvenile wards.

Liability:

- Fourteenth Amendment: Rampant and unchecked staff-on-youth abuse, exploitation of youth in a myriad of circumstances, and youth-on-youth abuse.

No Liability:

- First Amendment: Court found that youth were not able to show the staff members promotion of religion was sufficiently tied to “government endorsement of religion” either through an explicit policy, or ratification.
- First, Sixth, Fourteenth Amendment: Court found youth did not articulate facts that their right to counsel was impinged.



Case Law – Staff Sexual Misconduct Juvenile

New California Legislation – SB 1172

- California Governor signed SB 1172, authored by Senator Ted Lieu (D-Torrance), making California the first state to ban sexual orientation change efforts for minors.
- "Under no circumstances shall a mental health provider engage in sexual orientation change efforts with a patient under 18 years of age"
- "Any sexual orientation change efforts attempted on a patient under 18 years of age by a mental health provider shall be considered unprofessional conduct and shall subject a mental health provider to discipline by the licensing entity for that mental health provider."



Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate

**Heckenlaible v. Virginia Peninsula Regional
Jail Authority, 2007 WL 1732385 (E.D. Va.
Jun. 13, 2007)**

The Facts:

- **Male correctional officer** escorted a mentally ill **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.
- Heckenlaible cleaned herself off with a towel, which she kept under the bed, and cried herself to sleep.



Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate

Heckenlaible v. Virginia Peninsula Regional Jail Authority, 2007 WL 1732385 (E.D. Va. Jun. 13, 2007)

The Facts:

- Heckenlaible reported to supervisory staff the next day, and they placed Steele on administrative leave.
- They recovered towel and determined the presence of semen.
- Steele was fired for sex with inmate and refusal to cooperate in investigation.
- Steele was convicted of carnal knowledge of an inmate in 2004—a class 6 felony, and was still locked up at time of the writing of the opinion.



Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate

**Heckenlaible v. Virginia Peninsula Regional Jail
Authority, 2007 WL 1732385 (E.D. Va. Jun. 13, 2007)**

Legal Claims:

Against jail authority and Steele

- Assault and battery
- Intentional infliction of emotional distress
- Negligent hiring
- Negligent retention
- Negligence

Against Steele

- 42 U.S. C. §1983: Fourteenth Amendment substantive due process right to bodily integrity.



Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate

Heckenlaible v. Virginia Peninsula Regional Jail Authority, 2007 WL 1732385 (E.D. Va. Jun. 13, 2007)

Court's Ruling:

Jail liable - distinguishes from cases where acts of employee were incidental to employment

MSJ denied

- Intentional infliction of emotional distress
- Assault and battery
- Negligence
- Substantive due process claim

MSJ granted

- Negligent hiring.
- Negligent retention.



Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate

**Heckenlaible v. Virginia Peninsula Regional Jail Authority,
2007 WL 1732385 (E.D. Va. Jun. 13, 2007)**

Court's Analysis:

Precautionary measures of agency:

- Policy prohibiting abuse of inmates.
- Policy prohibiting sex with inmates.
- Policy prohibiting search of female inmates by male staff unless accompanied by female staff, except in emergency.

History of agency:

- No complaints against Steele.
- No complaints of sexual abuse of inmates.



Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate

Gonzales v. Huerfano County, 403 F.3d 1179 (10th Cir. 2005) cert. den. Salazar v. Gonzales, 546 U.S. 1003, 126 S.Ct. 624 (U.S. Nov 07, 2005)

The Facts:

- **Male jail administrator** sexually assaulted **female inmate**. Later that day the senior detention officer sexually assaulted another **female inmate**.
- Both women submitted written statements describing the assaults to detention officers who called the sheriff. The sheriff went to the jail but did not see the women until the next day. The sheriff was related to both the senior detention officer (son-in-law) and the jail administrator (nephew by marriage).



Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate

Gonzales v. Huerfano County, 403 F.3d 1179 (10th Cir. 2005) cert. den. Salazar v. Gonzales, 546 U.S. 1003, 126 S.Ct. 624 (U.S. Nov 07, 2005)

Legal Claims:

Against County and Sheriff

- § 1983: Eighth Amendment: Duty to employ competent law enforcement officers and to supervise.
- Negligent supervision.

Offending Officers

- Assault and battery.



Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate

Gonzales v. Huerfano County, 403 F.3d 1179 (10th Cir. 2005) cert. den. Salazar v. Gonzales, 546 U.S. 1003, 126 S.Ct. 624 (U.S. Nov 07, 2005)

Court's Ruling:

County Dismissed

- No allegation that county or sheriff set the policy which caused the injury.
- Otherwise immune from suit under state statute – Colo. Rev. Stat. §30-11-105.



Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate

**Gonzales v. Huerfano County, 403 F.3d 1179 (10th Cir. 2005)
cert. den. Salazar v. Gonzales, 546 U.S. 1003, 126 S.Ct. 624
(U.S. Nov 07, 2005)**

Court's Ruling:

Sheriff not dismissed—“Knew of and disregarded ‘an excessive risk to inmate health and safety.’”

- No employee evaluations since 1994.
- Only occasionally visited the jail
- Prior incidents established notice.
 - The inmates had access to vodka; drunk inmates sat in control room and knew how to run controls.
 - The senior detention officer had exposed himself to female inmates in past and had asked female inmates to expose their breasts.



Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate

Kahle v. Leonard, 477 F.3d 544 (8th Cir. 2007)

The Facts:

- Kahle was a detainee in the jail while Leonard was still completing his on-the-job training.
- According to jail policy, a correctional officer entering a cell after lockdown was “unusual and (literally) noteworthy event”
- Leonard entered Kahle’s cell three times, and sexually assaulted her each time



Case Law – Staff Sexual Misconduct Male Correctional Employee/Female Inmate

Kahle v. Leonard, 477 F.3d 544 (8th Cir. 2007)

Legal Claims:

Against Supervisor

- 42 U.S.C. § 1983: Eighth Amendment.

Against Individual Officer

- Assault and battery.

Court's Ruling:

“Reasonable jury could conclude that [supervisor] was aware of a substantial risk of serious harm to Kahle and that he exhibited deliberate indifference to that risk.”



Case Law – Staff Sexual Misconduct Male Correctional Officer/Male Inmate

Seltzer–Bey v. Delo, 66 F.3d 961 (8th Cir. 1995)

The Facts:

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.

Legal Claim: 42 U.S.C. § 1983: Fourth

Court's Ruling: Potential for liability.

Court's Analysis:

Searches may have been for the officer's personal gratification



Case Law – Staff Sexual Misconduct Female Correctional Employee/Male Inmate

Wood v. Beauclair, 692 F.3d 1041 (9th Cir. 2012)

The Facts:

Female correctional officer entered into romantic relationship with a **male inmate**.

- Personal conversations.
- Hugging, kissing, and touching.
- On one occasion she attempted to touch him sexually.
- Inmate heard rumor that officer was married and attempted to end the relationship. After he attempted to end it, she began to be abusive toward him, conducting unnecessary searches.
- On a second occasion she touched his penis during a search.



Case Law – Staff Sexual Misconduct Female Correctional Employee/Male Inmate

Wood v. Beauclair, 692 F.3d 1041 (9th Cir. 2012)

Legal Claims:

42 U.S.C. § 1983

- Eighth Amendment – sexual harassment
- Eighth Amendment – failure to protect
- Fourth Amendment – repeated searches
- First Amendment – retaliation

Court's Ruling:

- Sexual harassment claims could proceed.
- Lack of ability to consent at the forefront.
- Failure to protect claims were foreclosed.
- No evidence the officer's supervisors were aware of the conduct.
- Court dismissed First Amendment claim.
- Jury found no Fourth Amendment violation.



Case Law – Staff Sexual Misconduct Female Correctional Employee/Male Inmate

Smith v. Beck, 2011 WL 65962 (M.D.N.C. 2011)

The Facts:

- 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.

Legal Claims:

- Against prison superintendent and officials at North Carolina Department of Corrections
 - 42 U.S.C. § 1983: Eighth Amendment
- Assistant Superintendent
 - 42 U.S.C. § 1983: Eighth Amendment
 - Intentional Infliction of Emotional Distress



Case Law – Staff Sexual Misconduct Female Correctional Employee/Male Inmate

Smith v. Beck, 2011 WL 65962 (M.D.N.C. 2011)

Court's Ruling:

Prison officials could not be held liable.

- No evidence that they were aware of a pattern or practice of similarly high-ranking prison officials engaging in sexual abuse of prisoners.

Assistant superintendent could be held liable on both the Eighth Amendment and state tort law claim.



Case Law – Inmate on Inmate Male Inmate

Bishop v. Hackel, 636 F.3d 757 (6th Cir. 2011)

The Facts:

- A young, mentally slow **male inmate** was assaulted by his older, larger cellmate
- Deputy on duty did not stop the attack

Legal Claims:

- Against sheriff and deputies
 - 42 U.S.C. § 1983: Eighth Amendment
 - Negligence



Case Law – Inmate on Inmate Male Inmate

Bishop v. Hackel, 636 F.3d 757 (6th Cir. 2011)

Court's Ruling:

- Negligence claims dismissed.
- Sheriff potentially liable on failure to train theory, if the need for training to prevent sexual predators from sexually assaulting other inmates was obvious.
- Individual deputy on duty during attack potentially liable.
 - Deputy was aware of the victim's status as vulnerable and the offending inmate's status as predatory.
 - 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.
- Other deputies could not be held liable, as there was not sufficient contact to identify inmate as vulnerable.



Case Law – Inmate on Inmate Male Inmate

Brown v. Harris County, 409 F. Appx. 728 (5th Cir. 2010)

The Facts: A male pre-trial detainee was assaulted by fellow inmates.

Legal Claims:

42 U.S.C. § 1983: Fourteenth Amendment

Court's Ruling: No liability

- 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.



Case Law – Investigations

Male Correctional Employee/Female Inmate

Riley v. Olk-Long, 282 F.3d. 592 (8th Cir. 2002)

The Facts:

- **Male officer** made inappropriate comments to **female inmate**, which she did not report because “she doubted that she would be believed and feared the resulting discipline.”
- Officer later entered her cell and attempted to rape her. She performed oral sex so she would not become pregnant.
- The officer was terminated and convicted under state law.



Case Law – Investigations

Male Correctional Employee/Female Inmate

Riley v. Olk-Long, 282 F.3d. 592 (8th Cir. 2002)

Legal Claims:

- Against warden and director of security
 - 42 U.S.C. § 1983: under Eighth Amendment.

Court's Ruling:

- Warden and director of security were deliberately indifferent to the substantial risk of harm that correctional officer presented to female inmates.
- Held personally liable to inmate in amount of \$20,000 from director and \$25,000 in punitive damages from the warden.



Case Law – Investigations

Male Correctional Employee/Female Inmate

Riley v. Olk-Long, 282 F.3d. 592 (8th Cir. 2002)

Court's Analysis:

- Prior to this incident other female inmates had made complaints.
- Officer had a history of predatory behavior; four prior investigations were closed as inconclusive. A collective bargaining unit precluded permanent reassignment.
- Director suspected the officer was abusive but did not take action and did not terminate the officer when **he** had the opportunity.



Case Law – Investigations

Female Correctional Employee/Male Inmate

**Manago v. Williams, No. 2:07–cv–2290 LKK KJN P.,
2013 WL 1005118 (E.D. Ca. Mar. 13, 2013)**

The Facts:

- **Male inmate** alleged that a **female officer** was attempting to engage him in sexual activity.
- Internal investigations asked the inmate to go undercover to implicate the female officer in a sexual misconduct charge. Inmate claimed the investigator encouraged him to have sex with the officer, which he did.
- The officer was terminated for overfamiliarity, not for engaging in sexual relations with an inmate, which she denied.
- Inmate alleged he was threatened by other officers as a result of the officer's termination



Case Law – Investigations

Female Correctional Employee/Male Inmate

**Manago v. Williams, No. 2:07–cv–2290 LKK KJN P., 2013
WL 1005118 (E.D. Ca. Mar. 13, 2013)**

Legal Claims:

- First Amendment retaliation
- Eighth Amendment cruel and unusual punishment

Court's Ruling:

- Permitted Eighth Amendment claims
 - Individual officer
 - Mental health professionals
 - Investigators
- Denied First Amendment claims



Case Law – Investigations

Female Correctional Employee/Male Inmate

**Manago v. Williams, No. 2:07–cv–2290 LKK KJN P.,
2013 WL 1005118 (E.D. Ca. Mar. 13, 2013)**

Reasoning

First Amendment claim denied

- He was not “chilled” from giving testimony regarding the sexual misconduct

Eighth Amendment claims permitted

- Against individual officer: Plaintiff entitled to presumption that any sexual contact was non-consensual
 - Correctional officer did not meet burden to prove it was consensual
- Against investigators: Court found they acted with deliberate indifference to his mental health needs by permitting him to participate in the investigation



Summary

- Corrections officials can be held liable in their official, individual, and personal capacities for sexual violence against youth committed by either staff or other offenders.
- Municipalities can be held liable for sexual violence against youth if the violence is a result of a policy or custom of the county or agency or if it follows official policy set by the agency head.
- The respective genders of the staff member and the youth can have a dramatic effect on liability.
- Most cases involve adult inmates. The standards for youth are lower, hence courts' protections are greater.
- Conducting and documenting training of all staff, volunteers, and contractors can help to protect people in custody and limit agency liability.
- Robust policy of reference & background checks can limit agency liability.

