

# **SEXUAL MISCONDUCT IN PRISONS: LAW, REMEDIES, AND INCIDENCE**

*Special Issues in Corrections*

*May 2000*

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# SEXUAL MISCONDUCT IN PRISONS: LAW, REMEDIES, AND INCIDENCE

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## Introduction

To follow up on its November 1996 study of staff sexual misconduct in prisons, the National Institute of Corrections (NIC) undertook a project in 1999 focusing on changes since 1996 in related state laws and agency policies and practices. In these studies, sexual misconduct is defined as sexual behavior, contact, or relationships between correctional staff and inmates/offenders.

Greater awareness of the importance and seriousness of sexual misconduct has been evident in the late 1990s, particularly as it involves women inmates. Many jurisdictions have developed comprehensive strategies for preventing and responding appropriately to sexual misconduct.

Elements of these strategies have included:

- Passing new laws that define sexual misconduct as unlawful and exclude consent by the inmate as a legal defense;
- Assessing agencies' operational and management practices;
- Developing new agency policies specifically prohibiting staff sexual misconduct;
- Improving training programs to heighten staff awareness of the issue and its consequences;
- Revising agency procedures for investigating charges of staff sexual misconduct; and

- Developing new ways to increase inmates' awareness of the issue.

**NIC Efforts Against Sexual Misconduct.** In recent years, the NIC Prisons Division has worked with many departments of corrections (DOCs) in addressing the issue of sexual misconduct between staff and inmates. NIC has presented training to all levels of correctional leadership to assist them in developing deliberate management responses as they shape policy in their agencies.

Further initiatives have included:

- Providing on-site technical assistance to nine state DOCs and the federal prison system;
- Conducting a study with the National Women's Law Center on the status of state laws;
- Presenting a 36-hour seminar on policy and practice to more than 40 teams of DOC staff;
- Training institutional trainers from several DOCs to develop and implement training for line staff;
- Developing a video for use in staff training;
- Presenting a number of workshops at corrections-related professional conferences;
- Funding a cooperative agreement to develop investigative training in the area of staff sexual misconduct; and
- Conducting research in 1996 and 1999 on the experiences of correctional agencies.

**Project Method.** This study was intended primarily to identify new laws and initiatives created since 1996 to address and prevent staff sexual misconduct with inmates. It also collected data on recent incidence of sexual misconduct, litigation brought against correctional agencies, and outcomes for staff involved as well as exploring correctional managers' views on the causes and prevention of sexual misconduct.

A written survey instrument was mailed to 54 state, territorial, and federal agencies responsible for administering adult prisons. Responses were received from 49 states, the District of Columbia, Guam, Puerto Rico, and the Federal Bureau of Prisons (BOP). Staff in a variety of positions responded, such as DOC directors and deputy directors, wardens, equal employment and human resource officers, inspectors, auditors, and researchers.

## **Legislative Actions**

At the close of 1999, all but eight states (Alabama, Kentucky, Minnesota, Montana, Oregon, Utah, Vermont, and West Virginia) had enacted statutes that prohibit staff sexual misconduct with inmates. New statutes or supplemental legislation had been passed by 15 states since NIC's 1996 report (see Table 1, page 3).

The statutes typically define sexual misconduct as either a misdemeanor or felony offense, sometimes as determined by the nature of the specific behavior involved. Most often (in 35 states, the District of Columbia, and the U.S. Code), it is a felony offense.

Where states passed amendments or supplements to earlier legislation, the intent to expand the scope of the law to include, for example, volunteer workers or staff in community corrections settings or to specifically disallow consent of the inmate/offender as a defense.

Provisions of specific statutes related to staff sexual misconduct enacted since 1996 include the following:

- Arkansas—Expanded the scope of a law prohibiting sexual contact with inmates to cover city and county jails.
- Illinois—Defined the offense of custodial sexual misconduct, a Class 3 felony, which prohibits sexual conduct by a DOC employee or contractor.
- Maryland—Prohibited sexual acts with inmates and defined such acts as a misdemeanor.
- Massachusetts—Prohibited sexual relations between DOC staff or contractors and inmates or persons otherwise under direct custodial supervision and control; defines inmates as being incapable of consent to such sexual relations.
- Mississippi—Prohibited “sexual penetration of incarcerated offenders by law enforcement officers or employees” and defined such acts as a felony.
- Nebraska—Defined the offense of sexual assault of an inmate or parolee as “sexual contact or sexual penetration” and specified that consent of an inmate or parolee is not a defense.
- New Hampshire—Prohibited sexual contact by a person “in a position of authority” and cited victims in correctional institutions, juvenile detention facilities, or under probation or parole; made the offense a class B felony.
- Pennsylvania—Made “institutional sexual assault” a first-degree misdemeanor.
- South Carolina—Inserted language into an existing statute that defined as a felony “an employee of a correctional facility having sexual intercourse with an inmate of that facility.”
- South Dakota—Specifically prohibited sexual misconduct in prisons and defined it as a Class 6 felony.

**Table 1. Statutes Prohibiting Sexual Misconduct Involving Correctional Staff and Inmates**

	Legislation Passed 1996 or Earlier	New or Supplemental Legislation Passed Since 1996	Level of Offense
Alabama	None	No response to this question	
Alaska	✓		Felony
Arizona	✓		Misdemeanor
Arkansas	✓	✓	Misdemeanor
California	✓		Felony or misdemeanor
Colorado	✓		Felony (if coercive)
Connecticut	✓		Felony or misdemeanor
Delaware	✓		Felony
District of Columbia	✓		Felony
Florida	✓	✓	Felony
Georgia	✓		Felony
Hawaii	✓		Felony
Idaho	✓		Felony
Illinois		✓	Felony
Indiana	✓		Felony
Iowa	✓		Aggravated misdemeanor
Kansas	✓		Felony
Kentucky	None		
Louisiana	✓		Felony
Maine	✓		Felony
Maryland		✓	Misdemeanor
Massachusetts		✓	(Not specified)
Michigan	✓		Misdemeanor
Minnesota	None		
Mississippi		✓	Felony
Missouri	✓		Felony
Montana	None		
Nebraska		✓	Felony
Nevada	✓		(Not available)
New Hampshire		✓	Felony
New Jersey	✓		(Not available)
New Mexico	✓		Felony
New York	✓		Felony or misdemeanor
North Carolina	✓		Felony
North Dakota	✓		Misdemeanor
Ohio	✓		Felony
Oklahoma	✓		Felony
Oregon	None		
Pennsylvania		✓	Misdemeanor
Rhode Island	✓		Felony
South Carolina		✓	Felony
South Dakota	✓	✓	Felony
Tennessee		✓	Misdemeanor
Texas	✓	✓	Felony (if coercive)
Utah	None		
Vermont	None		
Virginia		✓	Felony or misdemeanor
Washington		✓	Felony or misdemeanor
West Virginia	None		
Wisconsin	✓		Felony
Wyoming	✓	No 1999 survey response	Felony (if coercive)
U.S. Bureau of Prisons	✓		Felony or misdemeanor (criminal if coercive)
Guam	None		
Puerto Rico	None		

- Tennessee—Defined sexual conduct or sexual penetration with a prisoner or inmate as a Class A misdemeanor.
- Texas—Added “sexual contact” as an offense to previously existing categories of “sexual intercourse” and “deviate sexual intercourse”; also expanded the law to protect individuals in jails, in juvenile corrections, and “under the supervision of the department but not in custody of the department.”
- Virginia—Made “carnal knowledge” of an “inmate, parolee, probationer, or pre- or post-trial offender” a Class 6 felony if committed by correctional staff; also defined “sexual abuse” of the same group by staff as sexual battery, which is a Class 1 misdemeanor.
- Washington—Defined the crimes of “custodial misconduct” (sexual intercourse) as a Class C felony and “sexual contact” as a second degree gross misdemeanor.

Relevant legislation has been proposed or considered in several other states:

- The Vermont DOC presented draft legislation to the legislature in 1999 that would have criminalized sexual misconduct between staff and inmates. The legislature did not act on the proposed bill, but the DOC was planning to present a revised draft to the 2000 legislature.
- The Kentucky DOC planned to submit legislation on this topic to the General Assembly, in 2000.
- The California DOC drafted a bill for submission to the legislature that would increase the penalties for staff sexual misconduct and expand the scope of activities prohibited under the law.
- The Tennessee DOC is considering additional legislative recommendations, which would supplement the measure already passed in the 1996-99 reporting period.

- A bill was proposed but has not yet been passed in Alaska.
- A bill being considered in Michigan would increase the penalty for sexual misconduct.

While federal law has been in place since 1986, the BOP has been working with the U.S. Department of Justice to enhance the penalties. The BOP is seeking an increase in the statutory penalty for sexual abuse of inmates, and if this legislation is enacted, the agency will work with the U.S. Sentencing Commission to increase the guideline range resulting in significant sentences of incarceration.

### **Litigation**

Survey responses indicated that at least 22 DOCs in 1999 were responding to litigation based on charges of sexual misconduct involving staff and inmates. In some DOCs, there was more than one sexual misconduct suit. This can be compared roughly with NIC’s 1996 findings, when 24 responding DOCs indicated they had been involved in litigation in the previous 5 years as a result of sexual misconduct allegations.

Sexual misconduct cases brought against DOCs since 1996 and reported in this survey typically were individual civil cases rather than class action suits. In 1996, however, two responding DOCs were named in class action suits. At least one agency was the subject of a suit brought by the U.S. Department of Justice.

**Substance of lawsuits.** DOCs were not asked to describe the issues raised in recent litigation on sexual misconduct. However, some illustrative information was provided:

- A case brought against one DOC in 1997 alleged deliberate indifference to staff sexual misconduct and invasions of privacy of women inmates. Under the terms of a settlement agreement, which was dismissed in 1999, the DOC enhanced its practices in several areas. Key points included

providing women inmates with information on inappropriate staff-inmate behavior and how to report it; providing psychological services to inmates involved or alleged to have been involved in inappropriate behavior with staff; revising pre-and in-service training; instituting a policy under which male staff must notify their supervisors when they will be alone in a secluded area with a woman inmate; enhancing investigative procedures; and conducting stringent pre-employment screening for all persons hired to positions with significant contact with women inmates. In addition, the agency's Female Programs Administrator conducts random interviews with staff and inmates.

- A case in a second DOC was closed when the inmate plaintiff confessed to lying.
- In suit filed in 1992 against a third DOC, many of the plaintiffs were unable to substantiate their allegations, but one male correction officer was convicted of a felony. The court held that this officer's conduct was outside the scope of employment; therefore, the state was not held liable.

**Awards and Settlements.** Since 1996, inmate plaintiffs in litigation against three DOCs have been awarded damages in cases involving staff sexual misconduct, according to survey responses.

- In one case, the court awarded \$80,000 in damages.
- In another case, damages of \$3.35 million were awarded. The case is on appeal and, according to the survey respondent, is likely to be reversed. The DOC is operating under a court order as a result of a class action filed in 1992 in which no damages were sought or awarded.
- The third DOC has not tracked the dollar amount of damages awarded in suits involving sexual misconduct.

DOCs in several other jurisdictions noted that they have settled one or more staff sexual misconduct cases out of court. One state paid a total of \$335,500 to settle five cases, and another paid \$73,000 in one case. Information on other settlement amounts, if any, was not included with the survey responses.

### **Agency Strategies for Addressing Staff Sexual Misconduct**

DOCs across the country have implemented new policies, investigation practices, staff training, and inmate education efforts since 1996 to reduce the incidence of sexual misconduct. Policy actions are summarized in Table 2, page 6, and other actions are summarized in Table 3, page 8.

**DOC Policies on Sexual Misconduct.** DOCs are increasingly recognizing the importance of defining a no-tolerance stance toward staff sexual misconduct through the department's own administrative policies. The number of DOCs with policies on staff sexual misconduct has increased significantly since 1996. At that time, only three DOCs had developed separate policies that specifically addressed sexual misconduct; more commonly, the topic was addressed in broader policy sections on officer conduct or ethics.

Though 1996 policies in at least 15 DOCs included direct and specific language about the sexual nature of the behaviors prohibited, several agencies discussed sexual misconduct only in very general terms that did not express a clear position or contribute to prevention and enforcement.

The picture today is very different:

- Since 1996, 20 DOCs have developed or revised their policies related to sexual misconduct.
- DOCs in an additional 12 jurisdictions were in the process of developing or revising their policies at the time of the survey.

**Table 2. Policy Updates on Staff Sexual Misconduct**

	Status of New or Revised Policies				Is Current Policy Language Explicit?	
	Completed since 1996	In progress	Planned or being considered	None	Yes	No
Alabama			✓		Not answered	
Alaska	✓				✓	
Arizona	✓				✓	
Arkansas			✓			✓
California		✓			✓	
Colorado	✓					✓
Connecticut				✓	✓	
Delaware				✓		✓
District of Columbia	✓				✓	
Florida				✓		✓
Georgia				✓	✓	
Hawaii				✓	✓	
Idaho	✓				✓	
Illinois				✓		✓
Indiana				✓	✓	
Iowa				✓	✓	
Kansas		✓			✓	
Kentucky		✓			✓	
Louisiana				✓	✓	
Maine				✓	✓	
Maryland				✓		✓
Massachusetts	✓				✓	
Michigan		✓			✓	
Minnesota			✓		✓	
Mississippi	✓				✓	
Missouri		✓			✓	
Montana	✓					✓
Nebraska		✓			✓	
Nevada				✓	✓	
New Hampshire	✓					✓
New Jersey				✓		✓
New Mexico		✓			✓	
New York				✓		✓
North Carolina		✓			✓	
North Dakota				✓		✓
Ohio	✓				✓	
Oklahoma	✓				✓	
Oregon	✓				✓	
Pennsylvania		✓			✓	
Rhode Island				✓	✓	
South Carolina	✓				✓	
South Dakota	✓					✓
Tennessee				✓		✓
Texas	✓				✓	
Utah	✓	✓		✓		
Vermont		✓				✓
Virginia	✓				✓	
Washington	✓				✓	
West Virginia	✓				✓	
Wisconsin				✓		✓
Wyoming	No survey response					
U.S. Bureau of Prisons	✓				✓	
Guam				✓		✓
Puerto Rico		✓			✓	



- Three further DOCs were planning or considering new policy development or revision in this area.
- Of the 32 DOCs developing or updating their policies on sexual misconduct since 1996, 24 indicated that their policy language is explicit in defining and prohibiting sexual misconduct between staff and inmates.

A few respondents provided background information about the context for their policy development efforts.

- One DOC respondent noted that the agency had experienced some incidents of sexual misconduct and related policies are being updated as a result.
- Another DOC was updating its policy to make it more specific in relation to volunteers and contract personnel.
- A third respondent commented that a new policy on sexual misconduct was being developed in response to a recently enacted criminal statute.

**Staff Training.** Since 1996, 26 DOCs have developed new staff training programs or substantially revised their training on sexual misconduct involving staff and inmates (see Table 3, page 8). Another eight agencies are in the process of developing new training for staff on this topic. Most new training programs for staff are designed specifically to reinforce DOC policies on sexual misconduct.

Of the agencies with new staff training on sexual misconduct:

- Seventeen (17) DOCs address the topic in both preservice and inservice training;
- Six (6) DOCs cover staff sexual misconduct only during inservice training;
- Three (3) DOCs cover the topic only in basic or preservice training.

The DOCs in Michigan, Oregon, Vermont, and Virginia provide specialized training to staff at institu-

tions housing women offenders. Michigan's revised training includes 40 hours of preservice training on critical issues in managing women offenders for new staff assigned to women's facilities. Staff in women's facilities receive an annual 6-hour seminar on staff/prisoner interactions. The Vermont DOC is providing such training only at its new women's facility but plans to phase the topic into academy and in-service training at all facilities and field sites.

The BOP has implemented staff training regarding sexual misconduct at several levels. New employees are trained on the Bureau's overall policy, and in-service training focuses on implementing the national policy on a local level. Specialized training emphasizes the responsibilities of staff when responding to incidents.

**Investigation Processes.** Nearly half of the responding agencies (25 DOCs) have, since 1996, completed an assessment of their investigation practices for responding to allegations of sexual misconduct involving staff and inmates. Reviews were underway in an additional three DOCs at the time of the survey.

In contrast to 1996, when seven DOCs reported the use of procedures unique to sexual misconduct cases, at least the following 15 agencies have developed special procedures.

- The human resources unit of the Alaska DOC now has two staff dedicated to review, advice, and investigation of all incidents involving staff misconduct.
- In California, the DOC's Office of Internal Affairs, rather than institutional investigators, now investigates allegations of sexual misconduct. The DOC anticipates that a significant number of Internal Affairs staff will acquire specialized training related to sexual misconduct investigations. Additionally, if during an investigation the employee exercises the right to resign, the investigation will still continue, and the DOC will take a more active role in initiating prosecution of the employee.

**Table 3. Other Initiatives to Reduce Sexual Misconduct, 1996-1999**

	Staff Training		Investigation Process		Inmate Communication	
	Completed	In development	Completed	In development	Completed	In development
Alabama						
Alaska	✓		✓			
Arizona	✓		✓		✓	
Arkansas	✓					
California	✓		✓			✓
Colorado			✓		✓	
Connecticut	✓		✓			
Delaware						
District of Columbia	✓		✓			
Florida						
Georgia						
Hawaii	✓		✓			
Idaho	✓	✓				
Illinois			✓			
Indiana			✓			
Iowa						
Kansas		✓				
Kentucky						
Louisiana						
Maine						
Maryland	✓					
Massachusetts		✓		✓		✓
Michigan	✓		✓		✓	
Minnesota	✓					
Mississippi			✓			
Missouri	✓		✓			
Montana	✓					
Nebraska						
Nevada						
New Hampshire	✓		✓			✓
New Jersey						
New Mexico	✓		✓		✓	
New York	✓		✓			
North Carolina		✓				
North Dakota						
Ohio	✓					
Oklahoma	✓		✓		✓	
Oregon	✓		✓			
Pennsylvania	✓		✓			
Rhode Island	✓					✓
South Carolina						
South Dakota	✓		✓			
Tennessee	✓		✓			✓
Texas		✓	✓			✓
Utah				✓		✓
Vermont	✓			✓	✓	
Virginia	✓		✓		✓	
Washington		✓	✓			✓
West Virginia						
Wisconsin	✓					
Wyoming	No survey response					
U.S. Bureau of Prisons	✓		✓		✓	
Guam						
Puerto Rico	✓		✓		✓	

- The Connecticut DOC now uses its telephone monitoring system to determine whether inmates have called staff at home and to track the types of conversations that took place. The DOC also works closely with the state police and has used handwriting analysis and fingerprinting on documents found in inmates' cells.
- The District of Columbia DOC has appointed a Sexual Misconduct Coordinator, who conducts a preliminary screening of all sexual misconduct complaints filed to determine whether the conduct complained of constitutes sexual misconduct. Valid complaints are referred for investigation by the department's trained investigators.
- The Hawaii DOC has improved its investigation practices by responding more quickly to allegations and by achieving better multi-agency cooperation.
- The Indiana DOC has elevated allegations of staff sexual misconduct to priority level investigations.
- The Michigan DOC implemented refined guidelines and requirements for investigators conducting gender-based misconduct investigations.
- The investigation procedure in Missouri has been changed to incorporate specific language regarding the investigation of alleged staff sexual misconduct.
- In New Hampshire, "the allegations are vigorously investigated and swift action is taken against the alleged perpetrator."
- In New York, the Investigator General developed a new sex crime unit in September 1996, which is charged with investigating sexual misconduct allegations. The investigators are trained in how to conduct criminal investigations. This unit also investigates all domestic violence complaints.
- Since 1998, the Oklahoma DOC has contracted with a retired local police sex crimes investigator to provide a training session to agency investigators.
- Pennsylvania DOC staff participate in continuing education and conferences on investigating staff sexual misconduct.
- The Tennessee DOC uses community/professional resources in cases of rape; these resources include rape crisis centers and the Employee Assistance Program. Annual in-service training includes interview processes that focus on the special needs of sexually abused staff and inmates. The interview process includes gender alignment to ensure the least oppressive environment. Any detectable issue involving the victim is reported to the commissioner and staff for immediate intervention.
- The Utah DOC is assessing its current investigation procedures based on a March 1999 NIC seminar on the topic of sexual misconduct.
- In the Federal Bureau of Prisons, specialized training for staff investigators is conducted by staff from the Office of Internal Affairs. The BOP is also in the process of changing the OIA data base to include more information about these cases and is implementing a legal tracking system to track these cases in detail. These data bases will assist the BOP in identifying any significant trends, factors, or patterns that will allow the agency to deal more effectively with this issue.

**Apprising Inmates of Sexual Misconduct Issues.**

Since 1996, nine DOCs have developed new methods or substantially revised their methods of informing inmates about the issue of sexual misconduct (see Table 3, page 8). Another eight agencies were in the process of developing or updating their methods at the time of the survey.

Several survey respondents provided details on these efforts.

- The Arizona DOC has posted high-visibility reminders in inmate living and other areas that remind readers of the agency's prohibition of inappropriate staff-inmate behavior. The agency's inmate orientation covers policies and consequences in detail and emphasizes confidentiality and non-retaliation. Some materials have been prepared in both English and non-English formats.
- The orientation provided to women prisoners at reception into the Michigan DOC has been expanded to cover appropriate and inappropriate staff and prisoner interactions. Women receive information on reporting misconduct and the support and services available to prisoner-victims and are provided a written guide in brochure form.
- The New Mexico DOC has begun conducting extensive discussions on the topic of sexual misconduct with inmates at the Reception and Diagnostic area.
- The Oklahoma DOC has developed an Offender Orientation Manual, which explicitly defines and prohibits over-familiarization and sexual misconduct between staff and inmates.
- The DOC in Rhode Island is incorporating information on sexual misconduct into the inmate handbooks of individual facilities as the handbooks are revised.
- In Texas, an aggressive training/educational process for informing inmates of the consequences of inappropriate staff/inmate relations has been just implemented in response to DOC policy and a new state law on this issue.
- The Virginia DOC has developed brochures presented to inmates during orientation.
- In the BOP, all inmates incarcerated as of November 1998 received an orientation and pamphlets on sexual misconduct; since then, new inmates receive these materials upon arrival at any BOP facility.

## **Incidence and Outcomes of Sexual Misconduct**

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**Incidence.** Of the 53 agencies that responded to the survey, only 36 provided data on substantiated incidents of sexual misconduct between staff and inmates in their prisons in fiscal or calendar year 1998. (The Alaska DOC provided data on calendar year 1999.) Among the remaining DOCs, several indicated they do not have a system in place for tracking sexual misconduct cases separately from other types of staff misconduct. Others chose not to release data because of current litigation. One agency could not respond because its system for tracking incidents does not include data on the sex of the inmate involved in allegations of staff sexual misconduct.

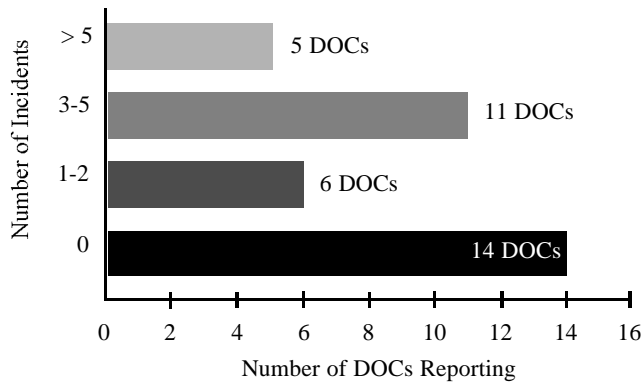
Figure A, page 11, summarizes the number of substantiated incidents involving male and female inmates, as reported by the 36 agencies that provided data on sexual misconduct incidents. These figures suggest no substantial difference in the numbers of sexual misconduct incidents involving male and female inmates, despite the marked difference in the numbers of male and female inmates in U.S. prisons. Although the data suggest that prison sexual misconduct may disproportionately involve women inmates, this conclusion cannot reliably be drawn. Another explanation may be that sexual misconduct involving women inmates is currently the focus of more attention than that involving inmates who are men. If so, the relative numbers may shift in the future as agencies broaden their focus to include the entire inmate population.

**Outcomes for Staff Involved.** Respondents from 37 DOCs reported the outcomes of sexual misconduct investigations in fiscal or calendar year 1998. (The Alaska DOC provided data for calendar year 1999.)

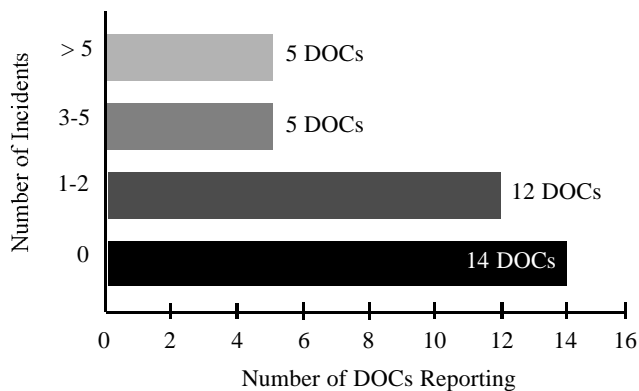
- **Staff discharged.** By far the most common outcome for staff involved in substantiated incidents of sexual misconduct with inmates was to be discharged. More than 115 DOC staff were discharged for sexual misconduct during the 1-year period reported. In at least one DOC, an employee was discharged, then reinstated through an arbitration process.

**Figure A. Incidence of Sexual Misconduct, Fiscal or Calendar Year 1998**

**Substantiated Incidents Involving Female Inmates**



**Substantiated Incidents Involving Male Inmates**



- **Staff resigned.** Staff resignations were the next most common outcome for those involved in substantiated sexual misconduct incidents. At least 26 staff resignations resulted from sexual misconduct during the year. An additional 23 staff of the BOP, including 8 contract staff, were either discharged or resigned in fiscal year 1998 alone. In at least one DOC, a resignation is considered an admission that the alleged behavior did occur, unless evidence to the contrary is available.
- **Staff prosecuted.** DOCs reported that at least 20 staff involved in substantiated sexual misconduct were prosecuted. Sixteen (16) BOP staff,

including three (3) contract staff, were convicted of federal criminal charges of sexual misconduct.

- **Staff disciplined.** DOCs reported that internal disciplinary measures were used to deal with a total of nine (9) staff involved in substantiated sexual misconduct incidents.

**Respondents' Views on the Problem of Sexual Misconduct**

**Causative Factors.** Survey respondents were asked to identify the factor(s) they observed to be the leading cause of sexual misconduct involving staff and inmates in their agencies.

- The factor most often cited (36 respondents) was “individual staff members who willfully disregard policy and training.”
- Six (6) respondents cited the “need for improved staff training.”
- A few survey respondents identified the influence of institutional culture factors, such as the need to offer more inclusion to minority and female staff.
- Respondents also noted the influence of personal characteristics, such as low self-esteem and vulnerability of staff. One observed that some inmates have targeted vulnerable staff rather than the reverse. Another noted that most incidents have involved staff members who isolated themselves from their co-workers because of real or perceived personal or professional difficulties. A third respondent pointed to situational availability, noting, “Staff are aware sexual contact is prohibited and at some point make the decision to disregard. Staff are in a position to abuse prisoners and to be manipulated by prisoners who have much time to detect staff weakness and exploit it.”

Eight agency respondents indicated that the question was not applicable, as sexual misconduct incidents have been rare or non-existent in their prisons.

**Prevention Strategies.** The survey also asked which strategies for reducing sexual misconduct were considered most likely to be effective.

A number of strategies had the support of many respondents:

- Staff training (28 respondents);
- Full prosecution of staff offenders (7);
- New legislation, or more stringent penalties for conviction on sexual misconduct charges (7);
- New, revised, or strengthened policies on staff sexual misconduct (7);
- Prompt and thorough intervention and investigations (5); and
- Strong disciplinary actions (4).

Smaller numbers of respondents identified other focus areas, including new or improved inmate training, greater central office review, improved incident tracking and consistency of response, confidential and random interviews with prisoners and exit interviews as inmates are released, increased security through cameras, etc., effective employee assistance programs, reliance on numerous strategies for deterrence and prevention rather than a single one, focus groups on institutional culture factors, mentoring programs for new hires, and continued vigilance. One respondent noted that staff “must focus on self-awareness and must be aware of their fellow officers and be ready to intervene.”

Several DOCs described multifaceted efforts that together communicate the “zero tolerance” stance of their agencies. In the BOP, for example, these include an emphasis on duty to report; an emphasis on a prohibition against retaliation towards those who report incidents; the development of a video featuring the BOP director; and inmate orientations and pamphlets on how to report incidents locally, to regional offices, or to the Office of Internal Affairs.

## **Conclusion**

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This study confirmed that there has been considerable activity in the past 3 years on the part of states and DOCs in attempting to prevent or reduce sexual misconduct involving prison staff and inmates. Changes in agency policy, staff training, and new statutes reflect an increasingly proactive stance toward preventing and responding to staff sexual misconduct.

Data reviewed separately by NIC suggest more cases are now being investigated as a result of new attention to prison sexual misconduct. As this issue continues to be tracked by correctional managers, future data may show that today’s efforts have been effective in reducing the incidence of sexual misconduct.

Based on the experiences of DOCs and the lessons agencies have learned in applying remedies to their own situations, NIC is planning to develop a resource document on staff sexual misconduct that is expected to be available in fiscal 2001. For further information on NIC programs and assistance in this area, contact Andie Moss at (800) 995-6423, extension 140, or [amoss@bop.gov](mailto:amoss@bop.gov). ■