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**The JFA Institute**  
Washington, D.C./Austin, Texas

*Conducting Justice and Corrections Research for Effective Policy Making*

# **Sexual Violence In The Texas Prison System**

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## **Executive Summary**

The Texas Department of Criminal Justice (TDCJ) operates the nation's third largest prison system (along with California and the Federal Bureau of Prisons) with over 150,000 prisoners. Each year approximately 500-600 prisoner on prisoner sexual assaults are reported by prisoners and staff to the TDCJ. For each reported assault, detailed information is collected and stored on a specially created database that was developed as part of the agency's effort to report, evaluate and reduce prison sexual assaults.

The study was designed to provide comprehensive assessment of nearly 2,000 *officially* reported sexual assaults that occurred in the Texas prison systems between 2002 and 2005. The research design attempts to describe the attributes of these incidents in terms of victim and perpetrator attributes and the time and location of such events. We also examined the influence of the "prison environment" on the prevalence and nature of prison violence, including sexual assault.

This study had several objectives. First, we wanted to better understand the number and nature of sexual assault allegations being made in one of the nation's largest prison systems. Second, we wanted to understand how the Texas Safe Prison program operates and its impact on sexual assault within its numerous prisons. Finally, we wanted to see what lessons could be learned that would have a positive impact on reducing the number of sexual assaults for both Texas and other correctional systems.

### *Overall Rates of Sexual Assaults*

1. Texas has the highest reported number of alleged incidents at 550 for a rate per 1,000 prisoner population of 3.95, almost four times the national average for the states of 1.05. It also has one of the lowest substantiation rates (less than three percent).
2. The official alleged sexual assault rate since 1993 hovered between 1.2 and 0.6 per 1,000 inmate population until 1999 when the rate doubled. Shortly after the passage of the Texas Safe Prison Program, the rate increased again which is not surprising given that a major objective of the act was to increase the detection and reporting of such incidents.
3. Specifically, there has an increase in the reporting of "abusive sexual contacts" for each calendar year since 2001. This increase suggests that the prisoner awareness effort may be having an impact on a prisoner's willingness to report an act of sexual abuse/assault in prison.
4. A significant number of the allegations made by prisoners are not reported in a timely manner (30 % within the same day) and have no independent

- witnesses to the allegation. These delay and witness problems are major problems in attempting to sustain an allegation.
5. Approximately two-thirds of all reported cases of sexual assault allegedly occurred in an inmate cell, followed by assaults in the shower or bathroom area, assaults in dorms, and finally assaults occurring in common areas such as dayrooms, work places, cafeterias, etc.
  6. The locations for sustained assaults is more pronounced, with three-quarters of confirmed cases occurring in cells, and nearly 12% of confirmed cases occurring in the shower or bathroom facilities.
  7. Just over 50% of the sustained cases included forensic evidence from a rape kit or a forensic exam. On the other hand, rape kits and forensic exams were performed in only 20% of all alleged sexual assaults. The primary reason for not completing the exams was “time lapse”.

#### *Attributes of Victims and Assailants*

1. An extremely small percentage of the daily population is classified as a “victim” or “assailant” (about 2 percent). Such a small “base rate” means that it is virtually impossible to develop a statistical profile of potential victims and assailants.
2. White inmates are attacked more frequently than any other race (60%) while two thirds (68%) of the sustained incidents involved black assailants followed by 19% being Hispanic assailants and 12% white assailants.
3. In general the victims are younger than the assailants. The average age of victims in sustained cases is 3 years younger than the assailants, while the average age of victims in probable cause cases is 4 years younger than assailants.
4. Although only 12% of the allegations involved a mentally ill or intellectually impaired prisoner, this is eight times the proportion in the general prisoner population (1.6%).
5. A disproportionate number of alleged sexual assaults occurring within the safe-keeping and mentally ill/impaired prisoners (ten times the rate in the general population). It would appear that a number of these prisoners may become involved in aggressive sexual behavior after being placed in safe-keeping.
6. For males in particular, assailants are more likely to have violent offenses while victims are more likely to have a conviction for a sex assault offense or a non-assaultive sex offense.

7. For females, victims and assailants in sex assault allegations are more likely to have violent criminal histories.
8. While there may be some violence among gangs in sex assault allegations, the vast majority of victims (nearly 97%) are not associated with any gang. Gang affiliation is highest for assailants whose alleged sexual misconduct was sustained by TDCJ's internal review, with 20.5% of all sustained assailants affiliated with a gang.
9. On average, both victims and assailants tend to have served longer in TDCJ than all other TDCJ inmates. This may be related to the fact that TDCJ also houses state jail prisoners, operates SAFPF facilities, and in general deals with a much wider group of prisoners than those implicated in sex assault allegations.

#### *Unit Attributes*

1. While there is variation in the type of institutions where incidents were sustained, the majority of cases (86%) were sustained at large, male prisons operated by TDCJ.
2. Units housing the longer-term prisoners with higher custody levels have higher numbers and rates of allegations than other facility types.
3. Units housing special needs populations (psychiatric and mentally retarded) face particular challenges in managing their inmates, with higher rates of general inmate-on-inmate violence and higher rates of use of force, in relation to the population size of these facilities.

#### *Qualitative Analysis of Selected Units*

1. Staff at all levels was found to have a clear understanding of the organization's expectations and goals as it related to Safe Prisons Program requirements.
2. There did not appear to be any indication of "organizational indifference" at any of the facilities visited. There may be individuals within the organization that may 'look the other way' when faced with an allegation of sexual assault, but that was not a prevalent attitude observed within the facilities visited.
3. The number of allegations at the low rate facilities (Holiday and Murray) can be attributed to not only to the operational mission of the facilities but also to the fact that the majority of beds in both of the facilities are located in dormitory settings which make sexual assaults more difficult to occur

- undetected by staff. Ironically, cell blocks seem to contribute to sexual assaults.
4. Solid cell fronts, while permitting privacy for the inmates and reducing noise within the unit, also provides the degree of privacy that permits sexual assaults to occur. Unlike older prison designs where the cell fronts consisted of bars, the solid doors limit visual observation by staff and to a degree sound proof the cells to the point where staff have difficulty hearing what is going on in individual cells.
  5. The fact that the majority of the sexual assaults occur between 6 a.m. and 6 p.m. can also be understood when observing the level of activity in the housing units in TDCJ facilities. Even though during these hours the number of staff assigned to the units is increased, the level of activity that they are responsible for also increases dramatically. The responsibility of housing unit staff draws them away from the routine of checking on cell activity on a routine basis. This provides for periods of time when only the housing unit picket officer (Control Room Officer) is monitoring the day rooms and cell fronts. This issue should be reviewed by the TDCJ from a staff deployment and training standpoint.
  6. The low level of allegations occurring at the mental health facilities could be attributed to staff deployment levels. As would be expected of special needs treatment facilities the staff to inmate ratios are very high in comparison to other TDCJ facilities. This results in almost constant supervision of all the prisoners of the two facilities both during in-cell and out-of-cell activity periods.
  7. The openness of the cell clock design at facilities similar to Darrington may in fact result in discouraging the reporting of assaults. The lack of privacy may discourage incidents of sexual assault, but may also deter the reporting of legitimate allegations of assault.

### *Discussion and Recommendations*

Much of what is reported above matches prior studies. The number of official allegations of prisoner on prisoner sexual assault in Texas is relatively low although it is noted that its allegation rate is higher than most states. However, the higher allegation rate is due, in part, to the recently implemented Safe Prisons program which is designed to encourage by staff and prisoners the reporting of alleged sexual assaults.

Like most states the substantiation rate of the allegations is quite low. In Texas one of the major reasons why the substantiation rate is so low is the delay in having an allegation reported by the prisoner. As with any criminal investigation, any undue delay in reporting a criminal act reduces the ability of

the investigators to gather physical evidence and interview persons who would serve as potential witnesses.

The low rates of allegations and substantiated allegations makes it very difficult if not impossible to develop a statistical profile or risk instrument that would have strong predictive capabilities. However, there a number of attributes that distinguish the victims and perpetrators from other prisoners.

The alleged victims are generally younger than their assailants. There is a strong racial relationship in such incidents where victims are more likely white while their assailants are more likely black or Hispanic and be gang affiliated. The assailants are also older, more likely to have lived in urban areas, have been convicted of a violent crime, are in a higher custody level and have served more time in prison than their victims.

Not surprisingly the higher security facilities as well as units housing special needs populations (psychiatric and mentally retarded) face particular challenges in managing their inmates, with higher rates of general inmate-on-inmate violence and higher rates of use of force, in relation to the population size of these facilities. Incidents are more likely to occur in the day time in housing units where officers can be easily distracted or have poor line of sight to the celled housing units.

These profile data on the victims, assailants and facilities where such allegations are made suggest that one needs to see the crime of prison rape in a larger context. Specifically, it would appear that prison rape (or the threat of rape) is just one weapon predatory prisoners will use to impose their influence and control over other prisoners. The prisoners and prisoners that have the highest rates of sexual assault also have the higher rates of other serious misconduct and criminal activity. So it would suggest that in order to reduce prison rape other forms of serious misconduct must also be addressed.

Finally, the research suggests that the Texas Safe Prison program has produced a much greater awareness on the part of staff and prisoners on the issue of prison rape. One of the immediate effects has been a much higher rate of reporting and a more structured response and investigation to such allegations. And the data base that has been created allows the TDCJ to monitor the number, attributes and final dispositions of these incidents. Many states could benefit from adopting many of the key components of the Texas program.

There are some suggestions that we would suggest to Texas and other correctional systems that if implemented might serve to reduce sexual assaults. First, further efforts are needed to provide structured opportunities for prisoners to report any allegation of sexual assault –either staff on prisoner or prisoner on prisoner. One specific suggestion is to require case managers to always inquire

of the prisoner during a formal session or contact whether any assaults have occurred or if they are being threatened by other prisoners.

Second, there is a concern on what happens to prisoners who make an allegation but the case cannot be substantiated. There are a large number of these cases in Texas. Does staff make any effort to more closely monitor, re-assign or supervise the prisoners who have been implicated in the incident? It is not clear that any such efforts are being made by prison officials in such cases.

Third, the TDCJ should examine the reasons for the large number of cases in which either the victim or the alleged assaulter was transferred without any disciplinary or legal action. These are cases which have also been determined to be unsubstantiated. The questions centers on why do such a large number of prisoners involved in these alleged incidents end up getting transferred without any verification of the incident. Are these transfers based on legitimate concerns or a means of foregoing either discipline or prosecution?

Fourth the categories for designating prisoners in the TDCJ data base should be expanded so that it has the following four designations:

- a. Potential Victim
- b. Known Victim
- c. Potential Assailant
- d. Known Assailant

The low rate of officially reported sexual assault on prisoners means that it is not practical nor recommended that a traditional risk scoring system be attempted. To do so would produce an unacceptable level of “false positives” in terms of identifying both potential victims and assailants. This not to say that the factors and attributes that are associated with assailants and victims as presented in this report cannot be applied in some manner.

Rather, it is recommended that a criteria for applying the “potential” victim or assailant label should take the form of a check list that takes into account the factors found to be associated with such allegations in this study. An example of such a check list is provided in the main report.

Finally, this research did not adequately address the issue of sexual assault among female prisoners. We found at the women prisons that the attitudes expressed by the staff suggested that they believe sexual activity was more common then at male facilities but that such behavior was largely consensual. We are not persuaded that this is indeed the case. Clearly a separate and more detailed assessment of sexual assault among female prisoners is needed.

## **I. Introduction**

### **A. Background**

*“The number one fear of those going to prison: being raped... Prisons are single-sex institutions, but sex roles in prison are a bit more complicated. In any given facility, there are heterosexuals, homosexuals, transsexuals, and other sexual variations. Without doubt there is sex in prison – both consensual and coerced”<sup>1</sup>*

In September 2003, President George Bush signed the Prison Rape Elimination Act of 2003 (from here on referred as PREA or Act). This bill was passed by Congress in response to a growing concern that a significant number of the over 2 million persons incarcerated in the nation’s state and federal prisons, local jails and juvenile facilities are being sexually assaulted each year. Moreover, there is concern that many of these assaults are not being reported to correctional officials and/or those correctional agencies are not taking sufficient steps to prevent such crimes from occurring in the future including, using vigorous prosecution as deterrence.

The Act establishes three programs in the Department of Justice – one dedicated at collecting national prison rape statistics and conducting research; one dedicated to the dissemination of information and procedures for combating prison rape; and a grant program to assist in funding State programs. The Bureau of Justice Statistics (BJS), the National Science Foundation (NSF) and the National Institute of Justice (NIJ) are charged with conducting the research. BJS is now developing a methodology for measuring the number and type of rapes occurring in the nation’s prison system using both officially reported and self-reported survey data. The BJS data will be included in an annual report of the prevalence of prison rape by each state that participates in the data collection effort. An annual public review of the performance of those prison systems where the incidence of prison rape greatly exceeds the national average will be conducted following procedures set by the new law. If a State’s prison system does not fall into this category, or if it does and that State’s prison officials participate in the public hearings on their performance, the State will receive increased funds from certain federal grant programs.

A Prevention and Prosecution Program was created to serve as a clearinghouse for the provision of information and assistance to those authorities responsible for the prevention, investigation, and punishment of prison rape. This program will also provide training and assistance to federal, state and local prison officials on the prevention, investigation and punishment of prison rape. The Grant Program will make annual grants (up to \$40 million each year) to state and local programs that enhance the prevention and punishment of prison rape.

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<sup>1</sup> Ross, Jeffrey Ian and Stephen C. Richards. 2002. *Behind Bars: Surviving Prison*. Alpha Books: Indianapolis, IN.

Finally, the new law creates a National Prison Rape Reduction Commission which will conduct comprehensive hearings and examine all penal, economic, physical, mental, medical and social issues relating to prison rape in America. At the conclusion of its review the Commission will issue a comprehensive report on the subject, including a recommended set of national standards to reduce and eliminate prison rape. The commission's recommended standards will address practices for the investigation and elimination of prison rape including the training of correctional officers; sexually transmitted disease prevention; identifying, protecting, screening, isolating, and punishing vulnerable and potentially offending inmates; and other related issues.

The Commission's recommended national standards will be independently reviewed by the Attorney General, who may modify them, and will, thereafter, be published for notice and comment under the Administrative Procedure Act. Once the standards proposed by the Attorney General become a final rule, they will become immediately applicable to the Federal Bureau of Prisons. States may adopt the standards by statute, and those that do will receive increased funds for two years from certain federal grant programs. Clearly, the Act could have a major impact on state and local correctional practices. As noted above, the NIJ is expected to assist the development of new correctional standards by funding a number of studies that address the following themes or topics:

1. Identification and evaluation of sexual assault prevention programs;
2. Research on the impact of victimization and its treatment;
3. Research on risk assessment and management of vulnerable populations; and,
4. Research on HIV/AIDS or other sexually transmitted diseases and sexual violence.

Many of the public policy and research issues are reflected in the well-publicized case of Roderick Johnson, a former prisoner in the Texas prison system, whose allegations have resulted in major litigation in Texas, the passage of Safe Prison Act in Texas, and have drawn national attention to the problem of prison rape.<sup>2</sup> Mr. Johnson has claimed that while incarcerated, he became a sex slave where he was repeatedly raped by a number of prisoners at a particular Texas prison. Despite what he states were repeated requests to prison officials, no actions were taken either to transfer him to another prison or to house him in a location that would protect him from such assaults.

Mr. Johnson's case highlights the major policy issues surrounding the phenomenon of sexual assault within correctional facilities that require further research. Specifically, what factors (individual and environmental) contribute to the incidence of sexual assaults, were there actions that the agency could have taken to reduce the level of risk to sexual assault, and what are the costs to

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<sup>2</sup> "Back from the Brink: Former prison sex slave is striving for new life in Austin", [Austin American-Statesman](#), Sunday, January 11, 2004, pp A1 and A11.

victims in terms of pain, suffering, trauma and public health? Finally, there is a need to determine what pre-emptive actions can be taken by correctional agencies to better prevent such crimes from occurring in the future through better risk assessments, improved reporting standards, staff training, and more effective classification, housing and staff supervision techniques.

The following report summarizes a study of officially reported sexual assaults and rapes reported in the Texas prison system conducted by *The JFA Institute*, in cooperation with the Texas Department of Criminal Justice (TDCJ). In addition to a comprehensive assessment of the attributes of the victims and perpetrators of such crimes an attempt was also made to evaluate the role of the prison environment in such events.

## **B. Study Goals and Objectives**

The Texas Department of Criminal Justice (TDCJ) operates the nation's third largest prison system (trailing only the California and the Federal Bureau of Prisons) with over 150,000 prisoners.<sup>3</sup> Each year approximately 500-600 prisoner on prisoner sexual assaults are reported by prisoners and staff to the TDCJ. For each reported assault, detailed information is collected and stored on a specially created database that was developed as part of the agency's effort to report, evaluate and reduce prison sexual assaults. Among the items captured in this database are victim and assailant characteristics (including race, sex, age, and gang affiliation) and incident information (including date and time of incident, location of the incident and custody level at time of the incident).

The study was designed to provide comprehensive assessment of the estimated 1,938 *officially* reported sexual assaults that occurred in the Texas prison systems from January 1, 2002 through August 31, 2005. With nearly four years worth of data collected, the research team has been able to determine what prisoner attributes indicate who is more prone to either becoming a victim or victimizer of such crimes. TDCJ is hopeful that this analysis can provide a starting point to create risk screening instruments that may be used by the department as part of their overall classification and risk assessment systems. One instrument could be designed to identify prisoners who pose a high risk of becoming a victim of such crimes while another could be used to identify potential predators. As will be noted later on, there are many methodological, legal and ethical issues associated with the labeling of prisoners in such a manner. However, it may assist prison officials in preventing sexual assaults in the future to explore if such a screening process is possible and how best to implement it.

The research design also attempts to examine the influence of the "prison environment" on the prevalence and nature of prison violence, including sexual

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<sup>3</sup> This number is based on the TDCJ's count of active prisoners and is somewhat lower than the data published by BJS.

assault. In consultation with the TDCJ, we identified several facilities that represent locations with the highest and lowest rates of sexual assault, different populations and custody levels. Seven facilities were selected for this qualitative analysis. In these facilities we conducted extensive sites visits to try to determine what environmental and management factors may explain variance in the incidence of sexual assault violence. This analysis was directed at understanding management techniques that may impact the actual or reported number of sexual assaults. This information may assist TDCJ in making modifications in terms of how it manages prisoners who either pose a high risk of being victimized or are more likely to commit such crimes, in the on-going training of staff in recognizing and managing such risk, and legal actions that can be taken to respond to such crimes when they do occur.

Thus the overall purpose of the study is to: (a) produce and disseminate sound empirical research to be used by practitioners and policy-makers on the attributes of officially reported incidents of sexual assault; (b) explore screening methods to better identify prisoners most likely to become involved in the such crimes; and, (c) identify administrative and management methods that may serve to prevent such assaults from occurring in the future.

## **II. Review of the Relevant Literature**

### **A. Overview**

Over the past four decades, much has been written about the social organization, structure and culture of the American prison system. Beginning with Gresham Sykes classic 1958 book *The Society of Captives*, Erving Goffman's *Asylums*, and the more contemporary works of John Irwin (*The Felon and Prisons in Turmoil*), Hans Toch (*Living in Prison: The Ecology of Survival*) and J. Jacobs (*Stateville: The Penitentiary in Mass Society*), there has been considerable analysis of how "total" institutions function and how the inmates who are committed to them adapt to the prison environment.<sup>4</sup>

Although these studies typically address the topic of prison violence, little has been written on the number, type and form of sexual assault occurring within adult and juvenile correctional facilities. When we conducted a NCJRS literature search on the topic of prison rape and sexual assault, very few publications were located. Text books on corrections also give short shrift to the topic of prison rape. For example, Silverman's comprehensive 550 page text on corrections devotes only four pages to the topic of "sex in male prisons."<sup>5</sup>

However, these few studies do offer important information on the difficulties in measuring the prevalence of prison sexual assault, the types of prisoners who tend to become involved in such crimes as either a victim or offender, the influence of the prison environment (design, culture and management) on prison rape, and what actions correctional officials can take to reduce the incidence of prison rape. Taken as a whole, any assessment of the phenomenon of prison rape needs to incorporate a comprehensive research design that sees the event as the result of an interaction of people and place. – in other words, certain persons who are more likely to become either victims of rape or the predators of such prisoners, and certain environmental conditions that serve to increase or suppress the rate of sexual assault. What follows is a summary of this literature which provided a context for developing our research design.

### **B. The Prevalence of Prison Rape**

One of the major reasons for the passage of the Prison Rape Elimination Act of 2003 was the recognition that there are no accurate estimates regarding the extent of sex in adult and juvenile prisons, let alone the extent of sexual

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<sup>4</sup> See Sykes, G.M. 1958. *The Society of Captives*. Princeton, NJ: Princeton University Press; Goffman, E. 1961. *Asylums*. Garden City, NY: Anchor Books; Irwin, J. 1970. *The Felon*. Englewood, NJ: Prentice-Hall; Jacobs, J. 1977. *Stateville: The Penitentiary in Mass Society*. Chicago: University of Chicago Press; and Toch, 1977. *Living in Prison: The Ecology of Survival*. New York: Free Press.

<sup>5</sup> Silverman, Ira J. 2002. *Corrections : A Comprehensive View*. Belmont, CA: Wadsworth Publishing.

assault. The enabling legislation states that an estimated 13% of the prisoners now incarcerated in state and federal prisons have been sexually assaulted with many being exposed to repeated assaults. This would mean that approximately 200,000 of the 1.6 million prison population have been raped.

Our review of those studies that have attempted to measure both reported and unreported rapes shows that the rates vary dramatically by each study but, like national victimization studies, the prevalence of rape as reported via self report and confidential surveys far exceeds the number reported by prison officials. Those studies that have been done are limited to adult prisoners (mostly male) and report that while a significant number of prisoners are involved in sexual behavior, a smaller number report being sexually assaulted, and an even smaller number of cases are officially recorded by prison officials.<sup>6</sup> For example, a study done of federal prisoners in the 1980s found that 30% had experienced at least one homosexual experience but only 1% said that they had been forced to have sex.<sup>7</sup> In a 1996 study of two maximum security prisons, researchers found via self-report surveys that 22% of the prisoners had been sexually assaulted since being imprisoned.<sup>8</sup>

Much earlier, Torres found that 30% of the prisoners interviewed in Sing Sing prison reported being involved in at least one homosexual event but a much lower number reported being sexually assaulted. Here again the prison in question was a high security facility that tends to house prisoners who are more aggressive or require protection from such prisoners.<sup>9</sup>

Most recently, NIJ commissioned a review of the literature to sort the issues regarding how different methodologies and definitions of prison rape result in different prevalence and incident rates. This report was written by Gerald G. Gaes and Andrew L. Goldberg and was published in March 2004.<sup>10</sup>

Gaes and Goldberg conducted a Meta analysis of all the studies that met their criteria for inclusion. They found that the average prison lifetime sexual assault prevalence was 1.91 percent, meaning that this percentage of inmates has experienced a sexual victimization over a lifetime of incarceration. This estimate was based primarily on studies which reported completed victimizations.

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<sup>6</sup> Fagan, T.J., Wennerstrom, D., and Miller, J. (1996). "Sexual assault of male inmates: Prevention, identification, and intervention." *Journal of Correctional Health Care* 3(1):49-63.

<sup>7</sup> Nacci, P.L. and T.R.Kane. (1983, December). "The Incidence of sex and sexual aggression in federal prisons." *Federal Probation*, 48(1)31-36. Nacci, P.L. and T.R. Kane. (March 1984). "Sex and sexual aggression in federal prisons: Inmate involvement and employee impact." *Federal Probation*(48(1), 46-53.

<sup>8</sup> Struckman-Johnson, C., Struckman-Johnson, D., Rucker, L., Bumby, K., and Donaldson, S. (1996). "Sexual coercion reported by men and women in prison." *The Journal of Sex Research*. 33(1), 67-76.

<sup>9</sup> Rettig, R.P., Torres, M.J., and Garrett, G.R. (1977). *Manny: A criminal-addict's story*. Boston: Houghton Mufflin.

<sup>10</sup> Gaes, Gerald G. and Goldberg, Andrew L. (2004). *Prison Rape: A Critical Review of the Literature* National Institute of Justice, U.S. Department of Justice, Washington, DC, March.

The authors discussed why prevalence measures fluctuate significantly and the challenge of pinpointing a general prevalence rate for prison sexual assault:

*“These studies use different methods to establish the level of victimization (questionnaires, interviews, informants, administrative records); they use different questions, and they use different time frames. Definitions vary widely from rape to sexual pressure. Some of these estimates rely on self-reported victimizations, while others are based on the perceptions of inmates and staff on the overall level of victimization in the prison. These latter estimates always appear higher than self reports, and it is unclear what these latter estimates mean since there is no presumption that inmates or staff actually witness all of the sexual assaults they claim are occurring. Most studies fail to report how long the sexual assault victim has been in prison making it difficult to compare prisons across jurisdictions, due to the likelihood of different exposure periods”<sup>11</sup>*

BJS in its most recent study of sexual violence published in July 2005 reported that at present “there are no reliable estimates of the extent of unreported sexual victimization among prison and jail inmates and youth held in residential facilities.”<sup>12</sup> Therefore, BJS was required to conduct a national prevalence study under the Act. This study is now in the design stage as it involves sophisticated data collection methods using a large representative sample of correctional facilities to yield reliable victimization estimates for the prison, jail and juvenile detention systems of each state.

In the meantime, the BJS July 2005 study is the first ever national survey of administrative records on sexual violence in adult and juvenile correctional facilities. The statistics compiled for this study are based on incidents reported to correctional authorities during 2004. In other words, “what officials know” and “how many allegations were reported.” The survey selected more than 2,700 correctional facilities holding 79% of all adults and juvenile in custody in the nation.

Figure 1 shows the definitions of sexual conduct used by BJS in collecting data for their survey. BJS used a comprehensive set of definitions distinguishing nonconsensual sexual acts from abusive sexual contact, staff sexual misconduct and staff sexual harassment. It is important to note that over half of the federal and state prison systems surveyed were able to report along the definitions below. For nonconsensual sexual acts, 66% of the prison agencies were able to fully report; 51% for abusive sexual contacts; 67% for staff sexual misconduct; and 53% for staff sexual harassment. Other jurisdictions were able to report

<sup>11</sup> Ibid., Gaes, Gerald G. and Goldberg, Andrew L. (2004), page 2.

<sup>12</sup> Beck, Allen J. and Hughes, Timothy A. (2005). *Sexual Violence Reported by Correctional Authorities, 2004* Bureau of Justice Statistics, U.S. Department of Justice, Washington, DC, July.

partially along the categories or using a combination of the definitions (as for example, staff sexual harassment combined with staff sexual misconduct).

The BJS survey found that:

- There were 5,528 allegations of sexual violence reported in the systems sampled representing 8,210 allegations Nationwide in 2004<sup>13</sup>
- 42% of the allegations involving staff sexual misconduct; 37% inmate-on-inmate nonconsensual sexual acts; 11% staff sexual harassment; and 10% abusive sexual contact<sup>14</sup>
- The allegation rate of sexual violence per 1,000 inmates in 2004 was 3.15 (national estimate for all allegations)<sup>15</sup>
- The number of nonconsensual sexual acts in state operated prison facilities reported in the survey was 1,229 for a 1.05 rate per 1,000 inmates and of this number 17.6% were substantiated at the time of the survey, 45.3% were unsubstantiated and 37.2% were unfounded<sup>16</sup>

Table 1 below shows the number of allegations of inmate-on-inmate sexual violence and the number substantiated as reported by state prison authorities. The rate of allegations per 1,000 and the percent substantiated was computed by the authors using the BJS data. The BJA report also has similar tables for inmate-on-inmate abusive sexual acts and staff sexual misconduct but these are not presented here. There were 1,246 allegations of inmate-on-inmate sexual violence reported by state and federal prison authorities as seen in the table below. In addition, and not shown below, there were 287 allegations of inmate-on-inmate abusive sexual contacts; 1,506 allegations of staff sexual misconduct with inmates; and 417 allegations of staff sexual harassment of inmates.<sup>17</sup>

It is important to note that BJS warns that these results cannot be used to rank states along sexual assaults rates. As the report states:

*“The absence of uniform reporting and tracking procedures necessitates caution when interpreting the 2004 survey results. The data should not be used to rank systems or facilities. Higher or lower counts may reflect variations in definitions, reporting capacities, and procedures for recording allegations and not differences in the underlying incidence of sexual violence.”<sup>18</sup>*

<sup>13</sup> Ibid., Beck, Allen J. and Hughes, Timothy A. (2005), page 5.

<sup>14</sup> Ibid., Beck, Allen J. and Hughes, Timothy A. (2005), page 1.

<sup>15</sup> Ibid., Beck, Allen J. and Hughes, Timothy A. (2005), page 1.

<sup>16</sup> Ibid., Beck, Allen J. and Hughes, Timothy A. (2005), Tables 3 and 5.

<sup>17</sup> Ibid., Beck, Allen J. and Hughes, Timothy A. (2005), Appendix table 1a and 2 a.

<sup>18</sup> Ibid., Beck, Allen J. and Hughes, Timothy A. (2005), Page 4.

**Figure 1: How Sexual Violent Was Measured by the BJS Sexual Violence Study of July 2004**

**How sexual violence was measured**

The definition of “rape” as required under the Prison Rape Elimination Act of 2003 was operationalized by disaggregating sexual violence into two categories of inmate-on-inmate sexual acts and two categories of staff sexual misconduct. The inmate-on-inmate categories reflected uniform definitions formulated by the National Center for Injury Prevention and Control, in “Sexual Violence Surveillance: Uniform Definitions and Recommended Data Elements,” Center for Disease Control and Prevention. The categories were –

***Nonconsensual sexual acts***

Contact of any person without his or her consent, or of a person who is unable to consent or refuse; and

- Contact between the penis and the vagina or the penis and the anus including penetration, however slight; or
- Contact between the mouth and the penis, vagina, or anus; or
- Penetration of the anal or genital opening of another person by a hand, finger, or other object.

***Abusive sexual contacts***

Contact of any person without his or her consent, or of a person who is unable to consent or refuse; and

- Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.

Definitions of staff sexual misconduct and staff sexual harassment were based on “Training for Investigators of Staff Sexual Misconduct,” prepared by the National Institute of Corrections.

***Staff sexual misconduct***

Any behavior or act of a sexual nature directed toward an inmate by an employee, volunteer, official visitor, or agency representative. Romantic relationships between staff and inmates are included. Consensual or nonconsensual sexual acts include:

- Intentional touching of the genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, arouse, or gratify sexual desire; or
- Completed, attempted, threatened, or requested sexual acts; or
- Occurrences of indecent exposure, invasion of privacy, or staff voyeurism for sexual gratification.

***Staff sexual harassment***

Repeated verbal statements or comments of a sexual nature to an inmate by employee, volunteer, official visitor, or agency representative, including:

- Demeaning references to gender or derogatory comments about body or clothing; or
- Profane or obscene language or gestures.

Source: Beck, Allen J. and Hughes, Timothy A. (2005). *Sexual Violence Reported by Correctional Authorities, 2004* Bureau of Justice Statistics, U.S. Department of Justice, Washington, DC, July. Page 3.

There are a number of key findings in the BJS report. First as can be seen in Table 1 below, the inmate-on-inmate sexual violence rate per 1,000 inmates is extremely low (less than one per 1,000 prisoners and the substantiation rate is even lower (about 12% of all allegations are substantiated).

Second, although all of the state rates are extremely low, there is considerable variation among the states even when looking at large and small prison systems. For example, among the four most populous states of Texas, California, New York, and Florida there is significant variation in their reporting and substantiation rates. Texas has the highest reported number of incidents at 550 for a rate per 1,000 of 3.95, almost four times the national average for the states of 1.05. It also has one of the lowest substantiation rates (less than three percent). Yet, California, with a larger prison population reported only 23 inmate-on-inmate sexual violence incidents for a rate of .14, ten times below the national average. But California also claims it has substantiated all of its allegations. New York, with 15 incidents and a rate of .23 and Florida with 75 incidents and a rate of .97 were also below the national average but have higher substantiation rates as compared to Texas.

Do these variations in reported incidents and rates reflect differing levels of sexual assault? Obviously, the severe degree of variation among the states show that what is being measured here is variation in the reporting systems of each state. For example, the Texas prison rape prevention program includes monitors in each prison facility and extensive training and reporting requirements. It may be that the higher numbers reported in Texas are a result of this aggressive policy and not necessarily the results of the state prison system having a higher number of sexual assaults in comparison to the other states. However, the BJS national incidence study, when completed, will provide a better answer to this question and a more reliable benchmark to measure prevalence of sexual assaults among the different state prison systems.

The challenge of defining sexual assaults and encouraging their reporting in a prison setting is significant. NIJ funded Dr. Mark Fleisher to conduct an anthropological study of inmate culture to better understand how inmates perceive and deal with sexual assaults. The preliminary findings of the study were reported by the National Institute of Corrections (NIC) in their first annual report required by the Act.<sup>19</sup> This study was designed “to identify and clarify definitions of sexual activity in prisons, and to help policymakers and practitioners better understand the differences between consensual, coercive, and predatory sex in corrections institutions.”<sup>20</sup> The research reports that most often inmates are unfamiliar with the terms “coercive sex and consensual sex” and the inmate

<sup>19</sup> National Institute of Corrections, Annual Report to Congress, Prison Rape Elimination Act (PREA) Public Law 108-79, September 2004. Appendix A: Rape and Coercive Sex in American Prisons: Interim Findings and Interpretation on Preliminary Research, page 26-34.

<sup>20</sup> National Institute of Corrections, Annual Report to Congress, Prison Rape Elimination Act (PREA) Public Law 108-79, September 2004, page 5.

**Table 1: Allegations of Inmate-on-Inmate Sexual Violence Reported by State or Federal Prison Authorities, by Type, 2004**

	Prisoners	Allegations	Rate Per 1,000	Substantiated	Percent Substantiated
<b>Total</b>	1,318,616	1,246	0.94	152	12.2%
<b>Federal/b</b>	151,650	17	0.11	0	0.0%
<b>State</b>	1,166,966	1,229	1.05	152	12.4%
Alabama	24,768	6	0.24	2	33.3%
Alaska	3,158	0	0.00	0	0.0%
Arizona	26,833	18	0.67	4	22.2%
Arkansas	12,655	4	0.32	1	25.0%
California	160,703	23	0.14	23	100.0%
Colorado/e	16,609	5	0.30	3	60.0%
Connecticut	18,814	6	0.32	0	0.0%
Delaware	6,778	3	0.44	0	0.0%
Florid	77,647	75	0.97	2	2.7%
Georgia	44,026	51	1.16	0	0.0%
Hawaii	3,877	6	1.55	0	0.0%
Idaho	4,621	3	0.65	3	100.0%
Illinois	44,379	17	0.38	1	5.9%
Indiana	21,236	18	0.85	0	0.0%
Iowa	8,611	4	0.46	4	100.0%
Kansas	9,181	21	2.29	2	9.5%
Kentucky	10,814	7	0.65	2	28.6%
Louisiana	16,672	1	0.06	0	0.0%
Maine	1,986	0	0.00	0	0.0%
Maryland	23,622	3	0.13	1	33.3%
Massachusetts	10,043	12	1.19	2	16.7%
Michigan	48,111	39	0.81	17	43.6%
Minnesota	7,827	13	1.66	4	30.8%
Mississippi	11,456	3	0.26	0	0.0%
Missouri	30,139	17	0.56	3	17.7%
Montana	2,074	2	0.96	1	50.0%
Nebraska	4,053	12	2.96	0	0.0%
Nevada	10,152	15	1.48	4	26.7%
New Hampshire	2,426	0	0.00	0	0.0%
New Jersey	23,752	1	0.04	0	0.0%
New Mexico	3,703	4	1.08	1	25.00%
New York	64,778	15	0.23	2	13.3%
North Carolina	35,219	15	0.43	0	0.0%
North Dakota	1,176	0	0.00	0	0.0%
Ohio	42,231	86	2.04	14	16.3%
Oklahoma	17,727	29	1.64	2	6.9%
Oregon	12,678	16	1.26	5	31.3%
Pennsylvania	39,823	9	0.23	3	33.3%
Rhode Island	3,494	9	2.58	3	33.3%
South Carolina	23,321	14	0.60	1	7.1%
South Dakota	3,157	2	0.63	0	0.0%
Tennessee	14,306	8	0.56	2	25.0%
Texas	139,148	550	3.95	13	2.4%
Utah	4,550	18	3.96	2	11.1%
Vermont	1,632	6	3.68	1	16.7%
Virginia	29,514	5	0.17	1	20.0%
Washington	16,765	12	0.72	4	33.3%
West Virginia	3,987	12	3.01	11	91.7%
Wisconsin	21,560	31	1.44	7	22.6%
Wyoming	1,174	3	2.56	1	33.3%

“socio-sexual system is relativistic” and rape “have a slippery and fuzzy definitions”.<sup>21</sup> Prison sex is akin to an “amoral exchange of service for service (sex for protection), service for property (sex for cigarettes or commissary items), or a chain of such exchanges”.<sup>22</sup> Prison rape is a more common topic of conversation than an actual act.<sup>23</sup> According to Fleisher, the Act “has objectified definitions of rape and coercive sex; however, this research shows that PREA rape and coercive sex criteria are dissimilar from inmates’ perceptions and interpretations of coercive sex and rape. Such dissimilarity points to fundamental differences between PREA and inmate socio-sexuality.”<sup>24</sup>

The most common inmate terms that matches the PREA definition of rape is that of “predator”.<sup>25</sup> A predator is an “inmate who has the intention of engaging in violent sex.”<sup>26</sup> Predators punch their victims and rape them when they are unconscious. “The unconscious rape of a victim is cited as a common context, however, the frequency of such violent rapes to be relatively rare”.<sup>27</sup>

### **C. Prisoner Attributes and Risk Assessments**

There is widespread belief that correctional officials can do a better job of identifying prisoners who pose a higher risk to either being raped or perpetrating such crimes. Prison wardens believe that institutional policies and procedures, staff training and increased staff supervision are effective means of preventing sexual assaults between inmates. Wardens that are more aware of the sexual assault incidents that occur in their institutions are also more likely to believe that additional staff and training are effective deterrents.<sup>28</sup>

During the past decade, prison systems have experienced increased pressure to improve their approaches to classify prisoners according to custody, work, and programming needs. Fueled by litigation on rates of violence and over-crowding, classification systems are viewed as a principal management tool for allocating scarce prison resources efficiently and minimizing the potential for violence and/or escape. These systems are also expected to provide a greater level of safety to staff and prisoners by identifying and housing prisoners according to the risk they pose.

<sup>21</sup> Ibid., National Institute of Corrections, September 2004, Appendix A, page 20.

<sup>22</sup> Ibid., National Institute of Corrections, September 2004, Appendix A, page 28.

<sup>23</sup> Ibid., National Institute of Corrections, September 2004, Appendix A, page 29.

<sup>24</sup> Ibid., National Institute of Corrections, September 2004, Appendix A, page 33.

<sup>25</sup> Ibid., National Institute of Corrections, September 2004, Appendix A, page 32.

<sup>26</sup> Ibid., National Institute of Corrections, September 2004, Appendix A, page 32.

<sup>27</sup> Ibid., National Institute of Corrections, September 2004, Appendix A, page 32.

<sup>28</sup> Hensley, Christopher; Dumond, Robert W.; Tewksbury, Richard; and Dumond, Doris (2002). “Possible Solutions for Preventing Inmate Sexual Assault: Examining Wardens’ Beliefs” American Journal of Criminal Justice, Vol. 27, No1.

Objective prison classification systems were originally adopted in the 1980s, but by the late 1990s significant modifications improved classification practices, including new risk assessment measures. The number of prisoners over-classified in higher custody levels has been reduced; custody decisions are made more consistently; criteria for custody decisions have been validated; prisoner program needs are assessed systematically; and institutional safety for both staff and prisoners has been increased.

While most prison systems have implemented successful objective classification systems for the general population, less attention has been devoted to identifying prisoners who require special placement or need to be managed differently from the so called “typical prisoner”. Such remedies have consisted of placing prisoners in administrative segregation or protective custody housing units. Unfortunately, these designations and placements often occur after the fact, when, because of disruptive and aggressive behavior, these prisoners need to be removed from the general population for either his own protection or to protect other prisoners in the general population. This is especially true for persons who have been sexually assaulted or fear such assaults. Often such prisoners are removed from the general prison population and assigned to a segregated protective custody unit.

As suggested earlier, sexual behaviors within a prison are rarely reported by inmates or are discovered by prison officials. And, because these incidents are rarely recorded, it creates a “low base-rate” or variance problem making it difficult to predict which prisoners and under what circumstances such acts will occur. Thus developing a “risk instrument” for identifying potential sexual assault victims or assailants, while desirable, may be more difficult to achieve.

There are a limited number of instruments now being used to assess the risk of either violence or sexual assault (Sexual Violence Risk-20<sup>29</sup>; the Hare Psychopathy Checklist, Revised; and Violence Risk Assessment Guide<sup>30</sup>). But these instruments have been designed based on recidivism studies of persons released from prison that subsequently are re-arrested and/or convicted for a violent crime including sexual assault or rape. They have not been used to identify prisoners who are prone to become victims or perpetrators of sexual assault.

Those studies that have been completed have found that certain demographic factors tend to be associated with these crimes including age, race, stature, gang affiliation, sexual orientation, prior criminal record and prior incarcerations, prior prison sexual assaults, mental health status, amount of time served to date, and gender. More precisely, victims tend to be young, white male

<sup>29</sup> Dunne, Felicity. (2000) A Framework for Reducing Reoffending: Differentiated Case Management In Victorian Corrections.

<sup>30</sup> Quinsey, V., Harris, G., Rice, M., Cormier, C. (1998) Violent Offenders. Appraising and Managing Risk. American Psychological Association, Washington DC

prisoners who are of small stature, are not affiliated with a prison gang or organization, who are just starting their sentences and have a history of mental health problems.

On the matter of race, it is also generally accepted that while most acts of violence in the “free community” are intra-racial, rapes in prisons tend to be inter-racial with a higher proportion of whites being victimized by black prisoners. This phenomenon has been used by some to argue that rape is not so much an expression of sexual deprivation but more a reflection of the long-standing race relations in the United States. For example, Carrol found that among officially reported rapes, 75% were black assailants and white victims.<sup>31</sup> The same statistical trend is being reported by the TDCJ with many of the prisoners being associated with prison gangs.

Fagan et al. found attributes associated with victims, also known as punks, kids or catchers. These victims tend to be smaller in stature, younger than their aggressors, seen as weak, passive and easily intimidated, and tend to be first time prisoners who are not “street wise”, not affiliated with a prison gang or organization, and often convicted of child molestation.<sup>32</sup> Dumond found certain categories of male prisoners who were especially vulnerable. These included:

*“(1) the young and inexperienced; (2) the physically weak and small; (3) those suffering from mental illness or developmental disabilities; (4) those who are not “tough” or “streetwise”; (5) those who are not gang affiliated; (6) the homosexual, transgendered, or overtly effeminate; (7) those who have violated the “code of silence”; (8) those who are disliked by staff or other inmates; and (9) those who have been sexually assaulted.”<sup>33</sup>*

Criminologists have argued that like rape on the “outside”, prison rape has less to do with the deprivation of normal sexual outlets and more to do with conquest and control, revenge or retaliation, sadism and degradation, status and affiliation, and maintaining social hierarchy in prison. With this background information, the following categories of high risk or special management populations are instructive. These are shown in Table 2 below. These “special management” designations relate to the identification and housing/separation, and supervision of prisoners likely to become either a victim or perpetrator of a sexual assault. For prison administrators, proper screening for risk and the

<sup>31</sup> Carroll, Leo. (1974). *Hacks, blacks, and cons: Race relations in a maximum security prison*. Lexington, MA: Heath.

<sup>32</sup> Fagan, T.J., Wennerstrom, D., and Miller, J. (1996). “Sexual assault of male inmates: Prevention, identification, and intervention. *Journal of Correctional Health Care* 3(1):49-63.

<sup>33</sup> Dumond, Robert W. (2003) “Confronting America’s Most Ignored Crime Problem: The Prison Rape Elimination Act of 2003” in *The Journal of the American Academy of Psychiatry and the Law*, Volume 31, Number 3, page 355.

management of the “known risk” can serve to prevent such incidents from occurring.

Finally, it is also well known that similarly designed facilities with similarly situated prison populations can produce very different rates of prisoner misconduct both within and across state prison systems. Relative to sexual assaults, they tend not to be randomly distributed across similarly designed prisons. As we will discuss later, the number of sexual assaults in Texas prison vary by facility, with some producing a disproportionate number of reported rapes even though the “base rate” is still low for all facilities. The research presented here tries to examine if such variations in misconduct rates for prisons that are equivalent in design and prison population attributes relate to differences in management style adopted by each prison administrator. Issues of management “attitude” have influenced the approach to the measurement, prevention and prosecution of prison sexual assaults as discussed below.

#### **D. Prison Management and “Deliberate Indifference”**

Advocates of prison rights have raised the concern that correctional systems have traditionally ignored the prevalence of sexual assault and actually allowed it to occur by not taking preventive actions that would reduce the extent of the problem. In this sense, there is a culture of indifference which not only results in a high degree of under-reporting but also can also encourage the phenomena of prison rape. These are situations where prison officials were aware of a sexual assault or misconduct but refused to intervene. Sexual assaults were seen by prison officials as part of the prison experience and it was up to the prisoner to fend for himself. There is also the implication that homosexual prisoners, who are more likely to become the targets of such rapes, are merely reporting consensual sexual acts that have become more aggressive in nature.

Man and Cronan argued that a possible legal remedy for the victims of prison rape was to claim that correctional administrators, by their failure to recognize and take pre-emptive actions to prevent such crimes from occurring, were in violation of the Eighth Amendment of the U.S. Constitution prohibiting cruel and unusual punishments.<sup>34</sup> This perspective is grounded in the *Farmer v. Brennan* 1994 decision. The case involved another situation where prison officials failed to take action to prevent sexual assaults from occurring. The prisoner in question had feminine characteristics including breast implants but was placed in the general population where he was beaten and raped. What has been now referred to as the “Farmer Deliberate Indifference” standard as defined by the Supreme Court consists of a two-part test.

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<sup>34</sup> Man, Christopher and John P. Cronan. “Forecasting Sexual Abuse in Prison: The Prison Subculture of Masculinity as a Backdrop for “Deliberate Indifference”. *Journal of Criminal Law and Criminology*. 92:1. Fall 2001/Winter: 127-185.

**Table 2: Typology of High-Risk and Special Management Inmates**

<b>Category</b>	<b>Assessment Method</b>	<b>Placement</b>
Security Threat Group	Subjective assessment based on at least three sources of independent objective data as applied to well-defined agency criteria.	Administrative Segregation or General Population -- High Custody
Likely Victim	Subjective assessment based on at least three sources of independent objective data as applied to well-defined agency criteria.	Protective Custody or Restricted General Population Facilities
Mentally Ill	Standardized psychometric tests and clinical judgment by MH staff.	Mental Health Unit and/or Administrative Segregation
<b>Chronic Misbehavior</b>		
Assaultive	Objective External Class	General Population – High Custody, Administrative Segregation, or Mental Health Unit
Non-Assaultive	Objective External Class	General Population – High Custody, Administrative Segregation, or Mental Health Unit
<b>Predator</b>		
Non-Sexual Predator	Subjective assessment based on at least three sources of independent objective data as applied to well-defined agency criteria.	General Population – High Custody, Administrative Segregation, or Mental Health Unit.
Sexual Predator	Subjective assessment based on at least three sources of independent objective data as applied to well-defined agency criteria.	General Population – High Custody, Administrative Segregation, or Mental Health Unit.
Developmentally Disabled	Standardized psychometric tests and clinical judgment by MH staff.	General Population (all custody levels) or Mental Health Unit.

First, the victim (prisoner) must show that the circumstances of his incarceration present a substantial risk of serious harm. Then one must establish that prison officials were aware of the situation but failed to provide a remedy. Thus they acted with “deliberate indifference” in failing to keep the inmate/victim safe from harm. Since certain conditions are known to contribute to violence and sexual assault, prison officials have a constitutional obligation to intervene in order to keep prisoners safe from harm. If no action is taken, one can claim that such inaction constitutes “deliberate indifference” and is therefore actionable in a court of law.

In a more general sense, and related to correctional policies, advocates have also argued that (a) overcrowding which limits the ability of prison officials to properly classify inmates in appropriate housing, (b) inadequate staffing and supervision of inmates, (c) lenient disciplinary actions against perpetrators, (d) weak investigation techniques of alleged sexual assaults and (e) indifference

from prison authorities may aggravate conditions that facilitate sexual assaults or intimidation that turns into apparently consensual sex.<sup>35</sup>

#### **E. The Risk to Public Health: Transmission of AIDS and Other Communicable Diseases**

Finally, there is the concern of the extent to which sexual assault further increases the transmission of HIV or AIDS among the prisoner population and the general public once the prisoner who has been assaulted and infected is released. Especially in the case of un-reported sexual assault, the victim may be reluctant to report any un-protected sexual activity. Similarly, infected predators, unless identified and segregated from the general population, may also be infecting other prisoners. One example is Michael Blocker who was a prisoner in the Illinois prison system who claimed that he was made a sex slave while incarcerated at the Menard Correctional facility and that prison officials failed to protect him from repeated assaults. He was subsequently paroled but was later found to be HIV infected. He successfully sued the prison administration and was awarded \$1.5 million in damages.<sup>36</sup> In part due to this nationally publicized case, correctional agencies began to routinely test their prisoner population at admission..

The BJS reports that a relatively small percent of the nation's prison population is infected with HIV.<sup>37</sup> In 2002, there were about 22,317 state prisoners with HIV or AIDS of which the Texas prison system reported 2,528. This represents about 2% of the entire prison system (both national and in Texas). Further, the rate of infections has remained relatively stable since 1995 when there were 24,256 such cases. Nonetheless, after "natural causes", AIDS is the leading cause of death among prisoners. The report is not able to determine the extent to which these prisoners were infected prior to their incarceration or were infected while incarcerated through either consensual or forced sex. According to monthly health reports filed by the Texas Department of Criminal Justice, about 48 percent of all prisoners diagnosed with HIV or AIDS caught the virus through intravenous drug use. Here again, however, prison officials do not know how widespread drug use is behind bars, or how many users are exposed to HIV in prison, and whether such infections result from sexual assaults.<sup>38</sup>

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<sup>35</sup> Human Rights Watch (2003). No Escape

<sup>36</sup> *From thief to cellblock sex slave: A convict's testimony.* (1997, October 19), New York Times, Section 4, p.7.

<sup>37</sup> Maruschak, Laura M.(2004) *HIV in Prisons and Jails, 2002.* Bureau of Justice Statistics, U.S. Department of Justice, Washington, DC. December.

<sup>38</sup> Rodriguez, Brenda "HIV, AIDS, and Rape in Texas Prisons" from States of Confinement: Policing, Detention, and Prisons, pp. 159-171, 2000, Joy James, ed.

### **III. Texas Prison Safe Program**

#### **A. Overview Texas Prisons**

Texas has the second largest prison system in the country after the federal system. The system is operated by the Texas Department of Criminal Justice (TDCJ). This state agency administers the correctional institutions (through its Correctional Institutions Division), the parole system, and the division that sets probation standards and distributes state probation funding.

At mid-year 2004, Texas had 169,110 prisoners in different types of correctional institutions, second only to the 179,210 prisoners in the federal system. Texas had an incarceration rate at 704 per 100,000 population; second only to Louisiana's 814.<sup>39</sup> Texas prison officials operate 106 facilities of which 51 are prisons, seven are prisons run by private operators, 22 are a special type of prison, like a transfer facility, medical facility or pre-release center, and the rest are facilities housing the equivalent of fourth degree felons (16 state operated and 5 privately operated "State Jails") or substance abusing prisoners in treatment (five facilities called Substance Abuse Felony Punishment Facilities). TDCJ's annual budget now exceeds \$2.1 billion.<sup>40</sup>

In terms of the classification, the agency has established a Classification and Records Central Office which oversees the custody level assigned to each of the approximately over 70,000 persons admitted to TDCJ prisons and states jails. Each prisoner admitted undergoes an extensive assessment at one of the state's reception facilities. That process results in a prisoner typically being assigned to one of five security levels with G1 (General Population 1) being the lowest security level and G5 the highest. Numerous other custody codes exist to protect inmates and staff in the management of the prisoner population.

In addition to the security level designation, a number of special management flags have traditionally been available to be applied to prisoners who pose a possible risk to the security of the prison system. These are referred to as "security precaution designator" and include Escape (ES), Staff Assault (SA), or Hostage (HS). Notably, prior to the adoption of the Safe Prisons Program as described in the next section, there were no flags to designate a person as either a possible sexual predator or a possible victim to such assaults. All prisoners are reviewed thereafter on an annual basis for purposes of updating and revising the designated security.

TDCJ maintains the information above in a comprehensive database that also captures the relevant demographic and criminal record data, retains each prisoner's history of transfers within the prison system, participation in a variety of

<sup>39</sup> Harrison, Paige M. and Beck, Allen J. (2005). *Prison and Jail Inmates at Midyear, 2004*. Bureau of Justice Statistics, U.S. Department of Justice, Washington, DC. April.

<sup>40</sup> Texas Department of Criminal Justice (2004). *Statistical Report, Fiscal Year 2004*. December.

prison treatment programs, and the prisoner's disciplinary conduct history. These data are used later for the analysis in this study.

## **B. Texas Safe Prison Program**

In 2001, the Texas Legislature enacted a provision as part of TDCJ's funding that required the establishment of a Safe Prisons Program. The primary program goal is to prevent and limit the number of sexual assaults by inmates on inmates. According to the legislative directive:

*"Strategies to prevent sexual assaults that may be used in the Safe Prisons Program include, but are not limited to, use of protective custody; use of an inmate's assault history in making cell assignments; use of an inmate's likelihood of victimization in cell assignments; education of correctional officers on the importance of preventing sexual assault, including prosecution; and use of surveillance cameras."<sup>41</sup>*

Sexual assault was defined as:

*Forcing another person, by violence or threats of violence, to perform a sexual act (a sexual act is any intentional contact between the genitals, anus, groin, breast, inner thigh, or buttocks of one person and the genitals, anus, groin, breast, inner thigh, buttocks, mouth, or hands of another person), sexual fondling, or sexual assault with an object. The term Sexual Abuse includes the acts relating to sexual assault as described in the Texas Penal Code.<sup>42</sup>*

TDCJ's definition of sexual assault is quite broad, and includes both nonconsensual sexual acts and abusive sexual contacts, as defined by BJS, in its scope. It is worth noting that some acts that fall under this definition of "sexual assault" do not meet the Texas Penal Code criteria for prosecution under state law. TDCJ uses this terminology for classification and disciplinary purposes, while the Office of the Inspector General (OIG) also investigates cases that meet state criteria for possible criminal prosecution outside of the agency.

As a method to monitor program implementation and effective operations, the legislature also included a provision that requires the agency to report to the Legislative Budget Board and the Governor the number of sexual assaults by inmates on inmates and the actions taken on each assault. Lastly, the rider created a Safe Prisons Coordinator who reports directly to the TDCJ Executive Director.

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<sup>41</sup> Safe Prisons Rider, General Appropriations Act, 78<sup>th</sup> Texas Legislature, Rider 59

<sup>42</sup> Texas Department of Criminal Justice (2004). *Safe Prisons Program Update*

Figure 2 below depicts the operational structure of the Safe Prisons Program. The agency created a Safe Prisons Program Council of correctional experts to provide guidance to the program and designated in each prison unit a Unit Safe Prison Program Coordinator who is responsible for the overall monitoring of the program at the facility level. The program also extended victims rights to victimized prisoners, which includes offering a victim representative if the investigation determines that a sexual assault exam was required.

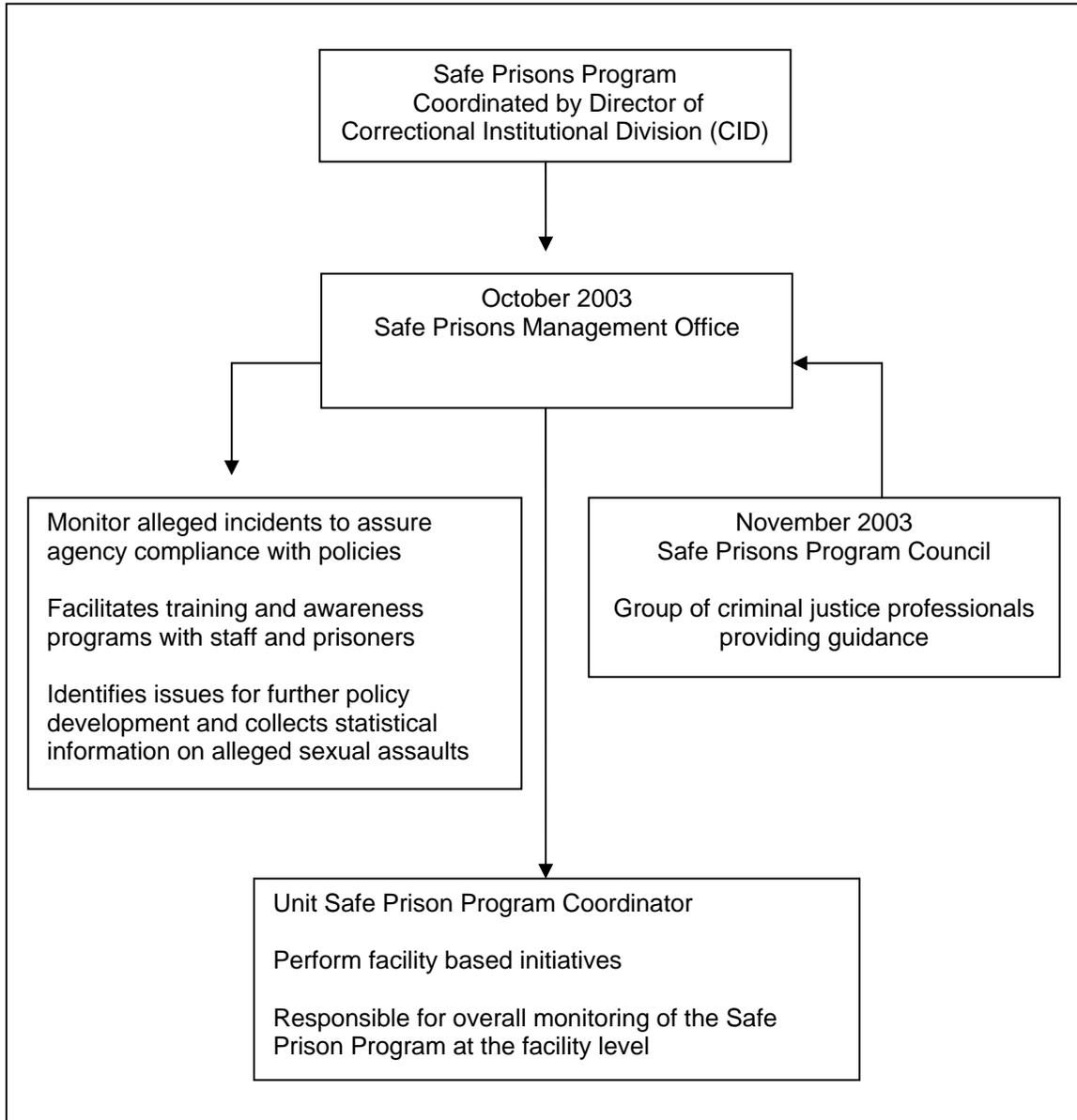
Since the passage of the act the agency has further enhanced and defined program components, created new policy directives and enhanced others that are geared towards maintaining a safe and secure prison environment for prisoners, established a data tracking system, implemented self-monitoring, created an additional administrative position to manage the day-to-day program operations and instituted an advisory committee to address specific policy issues related to prison sexual assaults. A brief description of each strategy is included below.

**Education** – The TDCJ Training Department has modified its Pre-Service and In-Service curricula to include a module that addresses the Safe Prisons Program for staff. The four-hour training block addresses prisoner sexual assault (prevention and care after an assault), prisoner extortion and prisoner life endangerment, as well as specific training on attendant policy directives. An “Institutional Character Profile” (ICP) has been instituted to identify the attitudes of staff and prisoners as they related to sexual assaults in the prison setting and then introduce education and training to address these attitudes. Additional information is also provided to staff agency-wide through agency publications and website. Prisoners are also educated on the risks of sexual assaults and the prosecution process at the reception centers and upon arrival at their unit.

**Housing Assignments** – Several policies have been created to appropriately classify prisoners for housing and job assignments. These assignments are based on information reported by the prisoner, previous assault/criminal history or information obtained from official documents. Although there is no objective based system for identifying at-risk prisoners, prisoners who meet specific criteria may be placed in protective custody and/or safekeeping status.

**Facility Enhancements** – The TDCJ is constantly reviewing information on how it can best address sexual violence in its institutions. One strategy used is the installation of surveillance cameras at specific locations on units. Using available data, the administration has invested in placement of various types of cameras for housing areas, recreation yards or isolated areas. Additional cameras are planned for implementation as data dictates.

**Figure 2: Operational Structure of the Texas Safe Prisons Program**



Source: Memorandum, Brad Livingston, Interim Executive Director, Texas Department of Criminal Justice, "Summary of the State Prisons Program".

**Statistics** – The agency has several databases that contain varying degrees of information on sexual assaults. The Emergency Action Center (EAC) collects limited data on all serious incidences, including alleged sexual assaults. In addition to the EAC statistics, data is maintained at the unit level on all prisoners identified or requesting protective custody/transfers as a result of a sexual assault. The Safe Prison Program Manager has established a database on all sexual assaults that are reported and/or investigated by their offices. In addition, this database contains specific data regarding the disposition of the case at the institutional level. Additional data can also be found in the Office of the Inspector General (OIG), which independently investigates sexual assault cases and decides if there is enough evidence to substantiate prosecution of perpetrators. Such cases are then referred to the local District or County Attorney for possible prosecution.

As a summary of the program states: “All allegations of sexual assault are referred to the OIG for investigation, those prisoners identified as potential predators by the OIG are then identified by the Safe Prison Program Manager on the TDCJ Mainframe System. The identification aids the facilities when considering housing or programs for the prisoner and parole when determine post release programs when the prisoner leaves custody.”<sup>43</sup>

The Safe Prisons Program Manager independently reviews each allegation of sexual assault reported on the EAC report, and monitors the actions of the OIG and the Classification Office to ensure that the incident has been appropriately reviewed and that appropriate actions have been taken with respect to referral to the prosecutor, and any changes to the prisoners’ classification status and housing location.

Figure 3 below shows the computer code definitions used to identify potential victims and predators. These codes can be used to monitor and house prisoners with a history of sexual assault or history of allegations of sexual assault.<sup>44</sup> Table 3 below shows the sexual assault investigation checklist delineating all the processes that need to be completed when an inmate alleged a sexual assault. Table 4 shows the prisoner protection investigation checklist.

Note that the information collected as part of the checklist is not the same as the data collected by the Safe Prison Management Office for its database. Consequently, the interview questions concerning extortion and coercion were not available for this study.

The Texas Safe Prison Program seems to integrate the key elements that can be defined as a “best practices” approach to dealing with the prevention,

<sup>43</sup> Source: Memorandum, Brad Livingston, Interim Executive Director, Texas Department of Criminal Justice, “Summary of the State Prisons Program”.

<sup>44</sup> Texas Department of Criminal Justice (2004). *Safe Prisons Program Update*

victim services and investigation of prison sexual assaults (Figure 4). The extent to which these practices have been appropriately implemented, with adequate funding and accountable management practices, was not an issue examined here although the present research indirectly addresses some implementation issues.

**Figure 3: Computer Codes Used in Texas Prison System Main Database to Identify Potential Perpetrators and Victims of Sexual Assault**

- PD – Sexual Predator
  - Prisoner found guilty of Sexual Assault or serving a sentence for Sexual Assault while incarcerated in an adult penal institution
- PP – Potential Sexual Predator
  - Prisoner has a history of alleged sexual assaults as the assailant. This matter has been investigated by OIG and found to meet the penal code elements. A history is defined as more than two allegations.
- SV – Sex Victim / Potential Sex Victim
  - Prisoner is the victim of a sexual assault which has resulted in the finding of guilt of the assailant. Prisoner is a potential sex victim as evidence by a history of sexual assault allegations. This matter has been investigated by OIG and found to meet the penal code elements. A history is defined as more than two allegations.

**Table 3: Texas Safe Prison Program Sexual Assault Investigation Checklist**

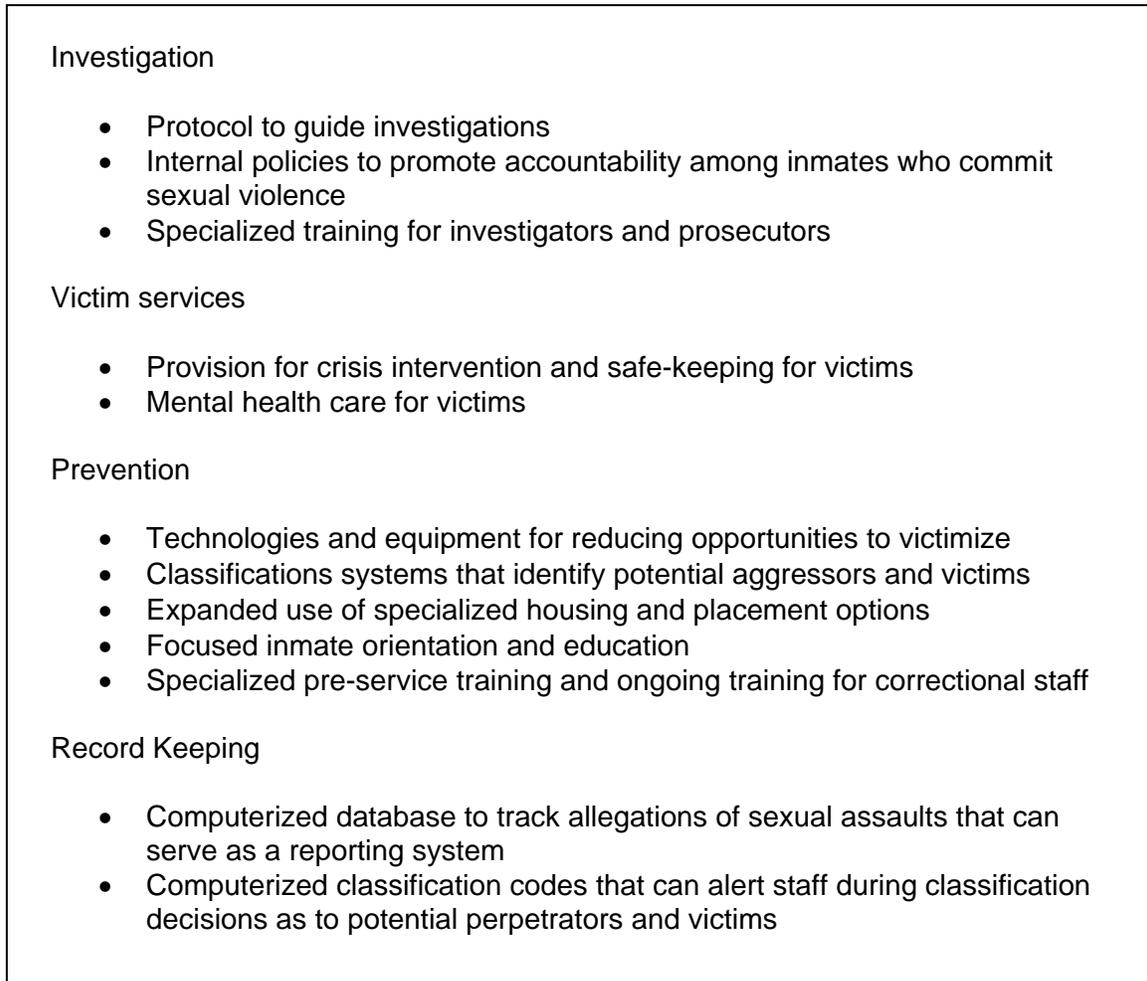
Date Completed	Time Completed (circle am/pm)	Procedures
	(a.m./p.m.)	1. Upon the allegation being made, immediately escort the alleged victim to the medical department. Notify medical staff of the prisoner's allegation. OIG will make the determination as to the necessity of completing a rape kit.
	(a.m./p.m.)	2. If there are no visible injuries, take one photograph of the front and one of the back of the prisoner while he is wearing State-issued underwear. If there are injuries, take photographs of the injuries as well as the front and back of the prisoner. All photographs are to be immediately labeled and signed by the security staff member taking the photographs.
	(a.m./p.m.)	3. Notify the Office of Inspector General
	(a.m./p.m.)	4. Notify Duty Warden
	(a.m./p.m.)	5. Determine the location of the alleged assault and protect and isolate it as a crime scene. Take photographs and videotape of the area.
	(a.m./p.m.)	6. If possible, collect the clothing the alleged victim was wearing at the time of the assault or immediately after and place the clothing in separate paper sacks. Properly label the items utilizing the evidence tags in Central Control. Limit the number of people who handle these items to the absolute minimum and complete the chain of custody.
	(a.m./p.m.)	7. Identify the alleged assailants and immediately place them in Pre-Hearing Detention.
	(a.m./p.m.)	8. Take photographs of the assailants and immediately label them.
	(a.m./p.m.)	9. Collect the clothing of the assailants and place the items in separate paper sacks. Label the sacks utilizing the evidence tags in Central Control. Limit the number of people who handle this evidence to the absolute minimum.
	(a.m./p.m.)	10. Report the incident to the Emergency Action Center (EAC). This must be done within three (3) hours of when the alleged incident was reported by the prisoner.
	(a.m./p.m.)	11. Identify all staff who would have been in the vicinity of the alleged assault and interview them. Obtain written statements from all staff members.
	(a.m./p.m.)	12. Draft a written report documenting the entire incident: before, during, and after. Include all of the information obtained in the previous steps. The names of the staff who collected evidence, including photographs and videotapes, should be documented with what they specifically did and outlined in the text.
	(a.m./p.m.)	13. Complete the TNG-93 and send e-mail to EAC and all other pertinent staff.
	(a.m./p.m.)	14. Complete a Prisoner Protection Investigation in accordance with AD-04.69 and turn into the Chief of Unit Classification.
	(a.m./p.m.)	15. Inform medical personnel to refer the victim to an Agency psychologist..

Source: Texas Safe Prisons Management Office, January 2005

**Table 4: Texas Safe Prison Program Prisoner Protection Investigation Checklist**

Check if Completed	Responses/Comments	Issues
		1. Name of offenders threatening you, AKA or housing area
		2. If name is not known, can you identify offenders from a video or a photo lineup?
		3. Are the offenders threatening you gang-related?
		4. What STG if any?
		5. Are you gang-related? If yes: a. What gang? b. Are you active? c. Are you an ex-member? (complete extortion checklist)
		6. Are you paying protection? If yes: a. Offender's names/AKA b. Is he STG-related? c. What are you paying with?
		7. Have you been involved in sexual activities either voluntary/non-voluntary? (If non-voluntary, complete sexual assault checklist.)
		8. Were you housed with a particular group in County Jail?
		9. Were you housed in protective custody in county jail?
		10. Were you involved in any incidents in county jail (fights, assaults, extortion, or gang-related activities)?
		11. Contact the County Jail to verify any information to substantiate the offender's allegations.
		12. Were you assaulted? If yes: a. Check with medical records to verify any injuries. b. If there are visible injuries, have the offender checked by the medical staff and note all injuries on the investigation.
		13. Check the classification folder for any previous offender protection investigations.
		14. Get any witness statements either from offender or staff.
		15. Verify as much information from the offender as possible.
		16. Is there any other pertinent information that you could provide for this investigation?

## **Figure 4: Best Practices Elements That Are Integrated into the Texas Safe Prison Program**



## **IV. Research Design and Method**

### **A. Overall Approach**

The study is designed to provide a comprehensive analysis of sexual assaults that have been reported officially within the Texas prison system between January 1, 2002 and August 31, 2005. Our interest is to provide a rich description of these events and then make comparisons to other prisoner populations to better understand what types of prisoners and under what conditions sexual assaults are most likely to occur. From this analysis, we are hopeful that better risk assessment tools can be developed and better management techniques deployed that will serve to reduce these crimes. However, as we will discuss later, the incidence of alleged sexual assaults is relatively low making it difficult to have statistically significant variance to identify risk factors.

The research design has two major components: (a) the quantitative analysis of approximately 1,938 officially reported incidents of sexual assault or rape from January 1, 2002 through August 31, 2005 and, (b) observations of the prison environment at seven selected prisons. The sections below explain this methodology in more detail.

### **B. Quantitative Analysis of Officially Reported Sexual Assaults**

The quantitative analysis consists of analyzing 1,938 cases of alleged sexual assault reported to the Safe Prison Management Office (SPMO) between January 1, 2002 and August 31 2005. As noted earlier, this office established a database on all reported sexual assaults that formed the basis of the statistical analysis. The office developed its own stand-alone Access database with details pertaining to the alleged incidents. In addition, the database contains race, sex, age, custody level, gang affiliation, and prison identification number for victims and alleged assailants. It also contains investigative information showing whether the department treated the allegation as a disciplinary case or otherwise.

TDCJ also provided a file of all prisoners on hand in a TDCJ facility as of June 30, 2005. The research team matched the information in the SPMO database with this file in order to make prisoner comparisons. In addition to demographic data, the on hand file contained offense of record, sentence length, and prison record information for the entire TDCJ population. Such data will help assess if there are any prisoner attributes that are associated with being either a victim or perpetrator of such incidents. Some preliminary analysis provided by the TDCJ suggests that among the victims and victimizers, the former are disproportionately younger, white, not affiliated with a prison gang, slight build by virtue of their height and weight, and serving their first prison term. Conversely, the alleged predators are disproportionately older, Black or Hispanic, affiliated with a prison gang, and serving their second or third prison term. Such analysis

will be used for purposes of determining if a risk assessment tool can be devised to identify those prisoners who are more likely to become either a victim or predator.<sup>45</sup>

In addition, the research team also reviewed unit specific aggregate data related to incidents reported to the Emergency Action Center (EAC). Each prison unit is required to report to the EAC major inmate misbehaviors like assaults, escapes, and disturbances. It is also required to report major use of force incidents and alleged staff misbehaviors. This information is used here to determine if facilities with high numbers of alleged sexual assaults also have high levels of other violent inmate incidents.

### **C. Supplemental Analysis of Prison Setting and Environmental Factors**

The second component of the research is oriented at attempting to understand the operational practices that can impact, both positively and negatively, the prevention of sexual assaults. As noted earlier, efforts to reduce, prevent and eventually eliminate the incidence of sexual assault in a correctional environment must involve the identification and understanding of the management and operational practices surrounding such events. This type of assessment may enhance the department's understanding of how its operational practices can be modified in order to improve its ability to deter these incidents in the future. It may also contribute to the national understanding and knowledge of the type of operational practices that need to be examined, modified, and/or replicated in order to reduce incidents of sexual assaults within correctional environments.

To accomplish the above, seven facilities were selected for site visits. The site visit included:

- Review of location of alleged incidents and issues related to location and inspection of the physical plant
- Review of operational practices in place at the time of the reported incident
- Interviews with supervisory staff of the institution

The questions framing the qualitative investigation were the following:

- Is the physical plant configuration of the specific unit a significant factor in terms of the ability of staff to prevent assaultive behavior, observe prisoners at all times, provide proper supervision, etc.?

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<sup>45</sup> Texas Department of Criminal Justice (2004). *Safe Prisons Program Update*

- Were there any “breakdowns” in the procedures controlling the movement of prisoners?
- What was the nature of the staffing and personnel practices in place at the time of the incidents, and were these practices a contributing factor to the alleged incident?
- Did the classification and placement decisions of prisoners involved in the incidents allow for the proper separation of prisoners?
- Were prisoner screening procedures in place to identify both sexual predators and their potential victims?
- Were prisoners screened for potential vulnerabilities or predator tendencies, and was this information documented properly for use in placement and management decisions relative to the prisoners?
- Did the training curriculum of the institution provide sufficient information relative to the prevention and investigation of sexual assaults?
- Were the investigative policies, procedures and practices adequate to ensure the proper investigation of any reported allegation of sexual assault?
- Were practices in place to record allegations, both substantiated and unsubstantiated so that prisoners with histories or tendencies of predatory behavior or vulnerabilities can be identified and closely monitored when appropriate?
- Were prisoners who have been identified as at risk for sexual victimization monitored and counseled when appropriate?
- What were the policies and practices of the institution relative to reporting the occurrence or allegation of sexual assault to designated law enforcement personnel?

Table 5 below shows the characteristics and location of the prison units selected for the site visits and the number of incidents of alleged sexual assaults in each unit in calendar year 2004, the last year for which 12 months of data was available. The prison units selected for the site visit were selected in consultation with the director of the TDCJ Correctional Institutions Division, the Deputy Director of TDCJ and the manager of the SPMO. As will be shown later, there is variance in the number and rates of allegations being made by prisoners in Texas by facilities or units. Some of this variance may be related to the fact that some facilities are intended to house prisoners either for protective custody or

disciplinary administrative reasons. But even within the same unit types, there are differing numbers and rates of reported sexual assaults.

The units were selected to represent facilities of different configurations, capacity, functions and different rates of incidence of alleged sexual assaults. The average alleged sexual assault incident rate reported to BJS in 2004 for Texas was 0.39 per 100 prisoners.<sup>46</sup> Five of the units selected for the site visits have higher than the system wide average incidence rate while two have lower than the average. It is important to note that with over 100 prison units in Texas, the selection of the units was not intended to provide a random sample of facility types representing the distribution of facilities, population, or incidents. The scope of the study did not allow for this methodology.

**Table 3: Characteristics and Location of Units Selected for Site Visits and Number and Rate of Incidents of Alleged Sexual Assaults in Each Unit in Calendar 2004**

Unit	Location	Date Unit Established	Population as of 6/30/05	2004 Incidents of Alleged Sexual Assaults (Rate Per 100 Inmates)	Custody/ Other
Darrington (Prison)	Rosharon, East Texas	1917	1,805 Males	9 (0.50)	G1-G5, Administrative Segregation, Outside Trusty Camp with 321 bed capacity
Hughes (Prison)	Gatesville, Central Texas	1990	2,882 Males	36 (1.25)	G1 – G5, Safekeeping, Administrative Segregation
Murray (Prison)	Gatesville, Central Texas	1995	1,197 Females	16 (1.34)	G1 – G5, Administrative Segregation
Skyview (Psychiatric Facility)	Rusk, North East Texas	1988	483 Co-gender	4 (0.83)	Mental Health, co-located with Hodge Unit
Holliday (Transfer Facility)	Huntsville, Texas	1994	2,060 Male	2 (.097)	G1, G2, G4, Administrative Segregation, Intake
Jester IV (Psychiatric Facility)	Richmond, Texas (Southwest of Houston)	1993	487 Male	9 (1.85)	Mental Health, co-located with Jester I, Jester III and Vance Unit)
Polunsky (Prison)	Livingston, East Texas	1993	2,845 Male	9 (0.32)	G1 – G5, Death Row, Administrative Segregation

Source: Texas Department of Criminal Justice web site, [www.tdcj.state.tx.us/stat/unitdirectory/da.htm](http://www.tdcj.state.tx.us/stat/unitdirectory/da.htm)

<sup>46</sup> Ibid., Beck, Allen J. and Hughes, Timothy A. (2005), Appendix table 1a and 2 a.

## **V. Analysis of Alleged Prisoner on Prisoner Sexual Assaults**

The statistical analysis has been organized into three main sections: (a) analysis of the alleged prisoner on prisoner incidents; (b) analysis of the prisoners implicated in the allegations; and, (c) analysis of the units where sexual assaults were alleged, and a more general analysis of inmate-on-inmate violence across units.

It is important to note that much of the analysis from the SPMO database relied on a description field (“motive”) as opposed to other available columns. Many inconsistencies in the reporting of incidents by each facility led the research team to examine each case by hand and code the information for analytical purposes. The unit where the incident was alleged to have occurred was confirmed in the “motive” field, as was the date of the incident, and the location within the facility. In many cases, the columns that were to contain these details instead contained where and when the allegation was made. The research team also used the “motive” field to identify whether injuries were sustained, whether a forensic exam or rape kit was completed, and whether the incident met the BJA criteria for nonconsensual sexual activity or abusive sexual contact. As will be discussed later, the definitions and data collection procedures need to be improved for more accurate reporting of sexual assaults.

### **A. Overview of Prisoner on Prisoner Incidents**

One of the issues we have tried to explore is the extent to which implementation of new programs and policies may impact the number of incidents being reported to prison officials. Texas offers such an example. Table 6 listed below summarizes the number of sexual assaults since 1993. As shown in the table, the official sexual assault rate hovered between 1.2 and 0.6 per 1,000 inmate population until 1999 when the rate doubled. Shortly after the passage of the Texas Safe Prison Program, the rate doubled again.

The TDCJ reported that that the reporting standards for sexual assault were more conservative prior to 2002. Historically, there had to be greater certainty that a sexual assault had actually occurred before it would be reported by staff or prisoners. One of the objectives of the TSPP was to accept any report of a sexual assault or sexual abuse regardless of the credibility or preliminary evidence surrounding the allegation.

Another thing to consider when exploring why the rates went up so dramatically is the nature of the allegation. Several of the alleged cases of nonconsensual sexual acts from 2002 through 2005 involved oral sex only, which often occurs without any injuries noted. Inmates comply because of the threat of violence, which makes it difficult to differentiate between consensual and nonconsensual acts. Since allegations prior to 1999 required physical or visible evidence, it would not be surprising if few allegations of oral sex were reported. Specifically,

in 2002, 44 of the nonconsensual sexual acts involved oral sex only, follows by 46 cases in 2003, 90 cases in 200 and 75 in 2005. But even with these considerations of sexual behavior that were not being reported prior to 2002, it would appear that the Texas program has increased the number of such allegations being made by prisoners.

**Table 6: Number and Rates of Alleged Prisoner on Prisoners Sexual Assault 1993-2005**

Year	N	Rate/1,000 Inmate	Population
1993	75	1.2	62,855
1994	84	1.0	84,355
1995	131	1.2	107,587
1996	84	0.6	130,413
1997	87	0.6	135,895
1998	89	0.6	143,085
1999	237	1.6	146,574
2000	234	1.6	150,309
2001	292	2.0	146,244
2002	460	3.2	146,244
2003	425	2.8	152,602
2004	609	3.9	154,978
2005	473	NA	NA

Since 2002, the TDCJ has been maintaining a detailed data base that allows one to track the final disposition of each allegation. Specifically, the data base provides a “case status” for each prisoner implicated in the sex assault allegation. This field indicates whether the internal investigation into the prisoner’s conduct is still Active, or whether TDCJ’s investigation resulted in a Closed Case (no finding), a Disciplinary for Consensual Activity, a Unit Transfer or placement into Safekeeping status, or whether the allegation was Sustained for the victim and/or prisoner. This “sustained” resolution essentially indicates whether a victim was classified as a “Sexual Victim” or whether an assailant was classified as a “Sexual Predator” or “Potential Sexual Predator”. None of these resolutions reflects a legal finding, but rather a disciplinary and classification finding for purposes of prison management. Although the data in the database is stored for each prisoner, the results have been summarized at the incident level for presentation here. Table 7 highlights these case resolutions.

**Table 7: TDCJ Incidents by Case Resolution Status,  
January 1, 2002 through August 31, 2005**

Report Year	Active or Unknown	Closed (No finding)	Disciplinary Received	Inmate Transfer/ Safekeeping	Sex Assault Sustained	Total
2002	3 (0.7%)	280 (60.9%)	8 (1.7%)	158 (34.3%)	11 (2.4%)	460
2003	5 (1.2%)	267 (62.8%)	8 (1.9%)	137 (32.2%)	8 (1.9%)	425
2004	3 (0.5%)	398 (65.4%)	24 (3.9%)	170 (27.9%)	14 (2.3%)	609
2005	0 (0.0%)	309 (69.6%)	26 (5.8%)	99 (22.3%)	10 (2.3%)	444
Total	11 (0.6%)	1254 (64.7%)	66 (3.4%)	564 (29.1%)	43 (2.2%)	1938

The number of sustained incidents has increased slightly since TDCJ began tracking the allegations in 2002, but the rates are consistent across years, with the exception of a lower rate in 2003. For the analysis in this section, the research team summarizes findings for all alleged assaults, as well as sustained allegations (2.2% overall) and allegations where the alleged victim was transferred to another unit or placed in Safekeeping (29.1% overall). For these latter cases “there was not enough evidence to support an occurrence of sexual assault” according to TDCJ’s definition, but the victim presented certain vulnerabilities or the alleged victim/assailant combination was found to be problematic. In subsequent tables, this subset of cases will be referred to as “Probable Cause” incidents.

As mentioned previously, the research team used the “motive” field to classify allegations according to the BJA definitions of nonconsensual sexual acts and abusive sexual contacts. Table 8 below shows this differentiation, and illustrates an increase in the reporting of abusive sexual contacts for each calendar year. This increase suggests that the prisoner awareness effort may be having an impact on a prisoner’s willingness to report an act of sexual abuse/assault in prison. Because the researchers relied on the “motive” field, the BJA breakdown should be viewed as an approximation; not all of the descriptions were detailed as to the nature of the sexual assault. Where there was a lack of detail, the research team classified the event as a nonconsensual sexual act.

Given the number of allegations, and given that less than 3% are sustained, we examined possible factors that may have affected the department’s ability to sustain an allegation. The next set of tables illustrate some of the difficulties faced by institutions in attempting to prove an allegation of sex assault, which may assist in establishing management practices or developing prisoner awareness programs in the future.

As shown in Table 9 a major reason for not being able to sustain an allegation is the delay in a prisoner reporting the incident to prison officials. This table shows the lapse in time from when an incident allegedly occurred to when that incident was reported to TDCJ officials, as confirmed by the narrative in the

**Table 8: TDCJ Sex Assault Allegations Classified by BJA Definition, January 1, 2002 through August 31, 2005**

Report Year	All Incidents		Sustained Incidents		Probable Cause Incidents	
	Nonconsensual Sexual Act	Abusive Sexual Contact	Nonconsensual Sexual Act	Abusive Sexual Contact	Nonconsensual Sexual Act	Abusive Sexual Contact
2002	427	33	11	0	149	9
2003	412	13	8	0	134	3
2004	543	66	14	0	151	19
2005	349	95	8	2	83	16
Total	1,731	207	41	2	517	47

**Table 9: Time Lapse from Incident Occur Date to Incident Report Date, January 1, 2002 through August 31, 2005**

2002						
	All Incidents		Sustained Incidents		Probable Cause Incidents	
Same Day	161	35.0%	8	72.7%	51	32.3%
Within 2 days	84	18.3%	1	9.1%	29	18.4%
3 to 7 days	76	16.5%	0	0.0%	27	17.1%
8 to 30 days	71	15.4%	1	9.1%	34	21.5%
1 month +	68	14.8%	1	9.1%	17	10.8%
Total	460		11		158	
2003						
	All Incidents		Sustained Incidents		Probable Cause Incidents	
Same Day	103	24.2%	2	25.0%	31	22.6%
Within 2 days	101	23.8%	2	25.0%	32	23.4%
3 to 7 days	74	17.4%	2	25.0%	24	17.5%
8 to 30 days	72	16.9%	1	12.5%	23	16.8%
1 month +	75	17.6%	1	12.5%	27	19.7%
Total	425		8		137	
2004						
	All Incidents		Sustained Incidents		Probable Cause Incidents	
Same Day	155	25.5%	7	50.0%	41	24.1%
Within 2 days	137	22.5%	3	21.4%	41	24.1%
3 to 7 days	91	14.9%	1	7.1%	24	14.1%
8 to 30 days	91	14.9%	2	14.3%	25	14.7%
1 month +	135	22.2%	1	7.1%	39	22.9%
Total	609		14		170	

<b>2005</b>						
	All Incidents		Sustained Incidents		Probable Cause Incidents	
Same Day	162	36.5%	5	50.0%	33	33.3%
Within 2 days	92	20.7%	1	10.0%	21	21.2%
3 to 7 days	48	10.8%	1	10.0%	13	13.1%
8 to 30 days	47	10.6%	2	20.0%	9	9.1%
1 month +	95	21.4%	1	10.0%	23	23.2%
Total	444		10		99	
<b>Total</b>						
	All Incidents		Sustained Incidents		Probable Cause Incidents	
Same Day	581	30.0%	22	51.2%	156	27.7%
Within 2 days	414	21.4%	7	16.3%	123	21.8%
3 to 7 days	289	14.9%	4	9.3%	88	15.6%
8 to 30 days	281	14.5%	6	14.0%	91	16.1%
1 month +	373	19.2%	4	9.3%	106	18.8%
Total	1938		43		564	

“motive” field. A majority of the sustained cases were reported on the same day as the assault, or within 2 days of the assault. However, the time lapse for probable cause cases resembles the time lapse for all reported incidents.

Other factors affecting whether a case can be sustained include the location where the assault was alleged to have occurred, as shown in Table 10 below. TDCJ’s Safe Prisons Program policy includes interviews with staff and inmates who were possible witnesses to the incident. However, it appears that there are few witnesses to an incident in the majority of reported cases of sex assault. Approximately two-thirds of all reported cases of sexual assault allegedly occurred in an inmate cell, followed by assaults in the shower or bathroom area, assaults in dorms, and finally assaults occurring in common areas such as dayrooms, work places, cafeterias, etc. The locations for sustained assaults is more pronounced, with three-quarters of confirmed cases occurring in cells, and nearly 12% of confirmed cases occurring in the shower or bathroom facilities. Section VI of this report discusses the configurations of various institution types, and why some facilities with certain cell designs might contribute to the incidence of sex assaults while others might reduce the incidence.

The issue of evidence collection is addressed in Tables 11 and 12. TDCJ determines whether to administer a rape kit or perform a forensic exam based on the nature of the allegation and on whether evidence is likely to be available. For cases of fondling or abusive sexual contact, such evidence will not be available

to collect. For cases reported several days or weeks after the incident, this evidence will not be available either.

Note that just over 50% of the sustained cases included forensic evidence from a rape kit or a forensic exam. On the other hand, rape kits and forensic exams were performed in only 20% of all alleged sexual assaults. For the remaining 80% of all alleged assaults, the reasons why these tests were not performed are listed in Table 11 below.

Time lapse from the incident occurring to the report date is the reason cited most frequently for not completing a rape kit or conducting a forensic exam, followed by nature of the allegation.

As part of the Safe Prisons Program protocol, the unit medical department is charged with examining a prisoner immediately after an assault is reported. Table 13 shows whether the medical exams revealed injuries to the victims or assailants. (Injuries Unrelated to Allegation refer to cases where injuries were found, but they were determined to have resulted from some other altercation with a prisoner, or from self-inflicted wounds.) The data show that injuries are noted in less than a quarter of all sustained allegations, and in only 10% of all alleged assaults. Such a finding seems to confirm the difficulty in distinguishing between consensual and nonconsensual activity.

**Table 10: Location within the Facility of the Alleged Sexual Assault, January 1, 2002 through August 31, 2005**

Location	All Incidents		Sustained Incidents		Probable Cause Incidents	
	Count	Percentage	Count	Percentage	Count	Percentage
Cell	1298	67.0%	32	74.4%	382	67.7%
Dorm	152	7.8%	2	4.7%	34	6.0%
Shower/Bathroom	170	8.8%	5	11.6%	56	9.9%
Common Area	127	6.6%	2	4.7%	32	5.7%
Unspecified	191	9.9%	2	4.7%	60	10.6%
Total	1938		43		564	

**Table 11: Whether a Rape Kit or Forensic Exam Was Performed, January 1, 2002 through August 31, 2005**

	All Incidents		Sustained Incidents		Probable Cause Incidents	
Rape Kit	220	11.4%	11	25.6%	71	12.6%
Forensic Exam	175	9.0%	11	25.6%	58	10.3%
None	1314	67.8%	20	46.5%	371	65.8%
Unspecified	229	11.8%	1	2.3%	64	11.3%
Total	1938		43		564	

**Table 12: Reasons Why a Rape Kit or Forensic Exam Was Not Performed, January 1, 2002 through August 31, 2005**

Reason	All Incidents		Sustained Incidents		Probable Cause Incidents	
Time Lapse	903	58.5%	15	71.4%	274	63.0%
Nature of Incident	226	14.6%	2	9.5%	62	14.3%
Other Reason	56	3.6%	1	4.8%	9	2.1%
Victim Refused	54	3.5%	0	0.0%	10	2.3%
Unspecified	304	19.7%	3	14.3%	80	18.4%
Total	1543		21		435	

**Table 13: Whether the Medical Exam Revealed Injuries to Victim or Assailant, January 1, 2002 through August 31, 2005**

Injury Level	All Incidents		Sustained Incidents		Probable Cause Incidents	
Injuries Found	200	10.3%	10	23.3%	74	13.1%
Injuries Unrelated	50	2.6%	1	2.3%	17	3.0%
No Injuries Found	935	48.2%	10	23.3%	252	44.7%
Exam Not Done	84	4.3%	1	2.3%	15	2.7%
Unspecified	669	34.5%	21	48.8%	206	36.5%
Total	1938		43		564	

## **B. Alleged Victims, Alleged Assailants, and all Other TDCJ Inmates**

This next section presents findings from a demographic analysis and from other differentiations among the inmate populations. The first four tables continue to rely on the SPMO database for a comparison of prisoners implicated in sex assault allegations. After that, the analysis expands to include comparisons with the TDCJ prisoner population on hand as of June 30, 2005.

Table 14 reports on the racial composition of sexual assaults for each incident, as reported in the SPMO database. “Mixed” refers to a situation in which more than one inmate is implicated as an assailant in the allegation, and the racial composition of the assailants spans more than one racial group. “Other” typically refers to Asian or Native American inmates.

White inmates are attacked more frequently than any other race, by all the racial groups listed above. Nearly 60% of sustained incidents involved a white victim, with 42% coming from black assailants and 9% coming from white assailants followed by 7% Hispanic assailants. Close to 50% of probable cause incidents involved a white victim. Moreover, two-thirds (67.5%) of the sustained incidents involved black assailants, while 18.7% involved Hispanic assailants and 11.6% involved white assailants. These results are consistent with the findings from other research efforts, notably Carroll and Dumond.

Additional demographics purported to be a factor in sex assaults include the age of victims and assailants. Table 15 presents the findings from this research effort with regard to the issue of age, showing whether the alleged assailant was older, younger, or approximately the same age as the victim. For this analysis, the terms “older” and “younger” included cases where prisoners’ age differed by more than a year in either direction, while prisoners of approximately the same age were within a year of each other. “Unknown” refers to incidents where the victim was unable to identify specific assailants. Two-thirds (67.4%) of the sustained incidents involved assailants who were at least a year older than their victims. This finding also seems to confirm the stereotype of the prison rape victim.

While there is little difference in average age among all alleged victims and assailants, the results are more pronounced for sustained incidents and probable cause incidents (Table 16). The average age of victims in sustained cases is 3 years younger than the assailants, while the average age of victims in probable cause cases is 4 years younger than assailants. The average age of assailants is not particularly old, possibly reflecting the alleged gang affiliation of these prisoners.

Table 17 addresses whether the victims are disproportionately mentally ill or intellectually impaired at the time the incident was reported to officials. The data has been divided according to whether the victim was mentally ill/intellectually impaired, whether the assailant was mentally ill/intellectually impaired, or whether both victim and assailant were mentally ill/intellectually impaired.

**Table 14: Racial Composition of Victims and Assailants in Sex Assault Allegations, January 1, 2002 through August 31, 2005**

Racial Composition	All Incidents		Sustained Incidents		Probable Cause Incidents	
	Count	Percentage	Count	Percentage	Count	Percentage
Black on Black	272	14.0%	5	11.6%	61	10.8%
Black on Hispanic	167	8.6%	6	14.0%	47	8.3%
Black on Other	6	0.3%	0	0.0%	3	0.5%
Black on White	449	23.2%	18	41.9%	174	30.9%
Hispanic on Black	62	3.2%	2	4.7%	17	3.0%
Hispanic on Hispanic	74	3.8%	3	7.0%	21	3.7%
Hispanic on Other	1	0.1%	0	0.0%	1	0.2%
Hispanic on White	136	7.0%	3	7.0%	57	10.1%
Mixed on Black	12	0.6%	0	0.0%	3	0.5%
Mixed on Hispanic	11	0.6%	0	0.0%	3	0.5%
Mixed on Other	1	0.1%	0	0.0%	0	0.0%
Mixed on White	34	1.8%	1	2.3%	17	3.0%
Other on White	1	0.1%	0	0.0%	0	0.0%
White on Black	49	2.5%	0	0.0%	6	1.1%
White on Hispanic	47	2.4%	1	2.3%	12	2.1%
White on Other	5	0.3%	0	0.0%	0	0.0%
White on White	131	6.8%	4	9.3%	36	6.4%
Unspecified Asslnt	480	24.8%	0	0.0%	106	18.8%
Total	1938		43		564	

**Table 15: Age Variance of Victims and Assailants in Sex Assault Allegations, January 1, 2002 through August 31, 2005**

Assailant Age	All Incidents		Sustained Incidents		Probable Cause Incidents	
	Count	Percentage	Count	Percentage	Count	Percentage
Assailant Older	724	37.4%	29	67.4%	231	41.0%
Assailant Younger	500	25.8%	9	20.9%	148	26.2%
Approx Same Age	232	12.0%	4	9.3%	79	14.0%
Assailant Unknown	482	24.9%	1	2.3%	106	18.8%
Total	1938		43		564	

**Table 16: Average Age of Victims and Assailants in Sex Assault Allegations, January 1, 2002 through August 31, 2005**

	All Incidents	Sustained Incidents	Probable Cause Incidents
Victims	32.1 years	29.7 years	30.8 years
Assailants	33.1 years	33.1 years	35.4 years

**Table 17: Whether Victim or Assailant Was in a Custody Class of Mentally Ill or Intellectually Impaired, January 1, 2002 through August 31, 2005**

Mental Illness Level	All Incidents		Sustained Incidents		Probable Cause Incidents	
	Count	Percentage	Count	Percentage	Count	Percentage
Not classified MI or II	1713	88.4%	40	93.0%	532	94.3%
MI victim	143	7.4%	1	2.3%	24	4.3%
MI assailant	4	0.2%	1	2.3%	1	0.2%
MI victim & assailant	51	2.6%	1	2.3%	6	1.1%
II victim	7	0.4%	0	0.0%	0	0.0%
II assailant	2	0.1%	0	0.0%	0	0.0%
II victim & assailant	18	0.9%	0	0.0%	1	0.2%
Total	1938		43		564	

Though 12% of the allegations involved a mentally ill or intellectually impaired prisoner, only 7% of the sustained allegations were found to involve this special population of prisoners. Nonetheless, the findings show that three of the 43 sustained cases involved mentally ill inmates, a significant result given the low proportion of prisoners classified as mentally ill among the entire TDCJ population. None of the sustained cases involved an intellectually impaired prisoner.

To examine this issue more in more detail, Table 18 provides a complete comparison of prisoner custody class codes for alleged victims and assailants at the time the incident was reported with all other TDCJ inmates (the comparison group) who were on-hand in a TDCJ facility on June 30, 2005. The custody class data has been aggregated to simplify its presentation in this report. Note that the table above uses the victims and assailants from the SPMO sex assaults database, where a single prisoner may be implicated in more than one incident. Because this analysis evaluated custody codes at the time of the reported incident, it was important to include all incidents in the analysis. Further comparisons between victims, assailants, and the rest of the TDCJ population will select unique prisoners from the SPMO sex assaults database.

**Table 18: Custody Class of Victims and Assailants at the Time of the Alleged Incident, and Custody Class of All Other TDCJ Inmates as of June 30, 2005**

<b>Custody Level</b>	<b>Victims</b>		<b>Assailants</b>		<b>All Other Inmates</b>	
Prison – Minimum	598	30.7%	611	35.2%	99,951	67.0%
Prison – Medium	365	18.8%	333	19.2%	9,489	6.4%
Prison – Close/Max	279	14.3%	264	15.2%	4,012	2.7%
State Jail – Low Risk	4	0.2%	3	0.2%	1,115	0.7%
State Jail – Med Risk	82	4.2%	92	5.3%	12,610	8.5%
State Jail – High Risk	3	0.2%	4	0.2%	277	0.2%
Safekeeping Pop	295	15.2%	287	16.5%	2,505	1.7%
Admin Segregation	51	2.6%	23	1.3%	9,389	6.3%
Mentally Ill/Impaired	220	11.3%	85	4.9%	2,394	1.6%
Other Custody Class	49	2.5%	34	2.0%	7,444	5.0%
<b>Total</b>	<b>1,946</b>	<b>1.3%</b>	<b>1,736</b>	<b>1.1%</b>	<b>149,186</b>	<b>97.6%</b>

The significant finding here is the disproportionate number of alleged sexual assaults occurring among the safe-keeping and mentally ill/impaired prisoners. One would have expected a lower rate among the safe-keeping population since that is one major reason why they are so classified and housed. It would appear that a number of these prisoners may become involved in aggressive sexual behavior *after* being placed in a safe-keeping housing unit.

But the other major finding to be gleaned from Table 18 is that an extremely small percentage of the daily population is classified as a “victim” or “assailant”. Such a small “base rate” means that it is virtually impossible from a statistical perspective to develop a purely statistical profile of potential victims and assailants. We will discuss in greater detail the implications of this finding.

The following tables compare these three categories of prisoners by race, offense of record, sentence length, county of conviction, gang affiliation, and time served from most recent admission date. In many cases, special attention has been paid to the issue of gender in relation to prison sexual violence. Accordingly, many of the tables will also separate out the results for males and females in order to make comparisons along those lines.

As noted earlier in this report, white inmates are disproportionately the victims in sex assaults, while black inmates are disproportionately the assailants. Table 19 indicates that Hispanic inmates are under-represented in the sex assault allegations as compared to the overall Hispanic population within TDCJ. Though not shown in the table above, the breakdown by race in sustained assaults is even more pronounced. For the sustained cases, 66.7% of the

victims were white, followed by 20.0% Hispanic victims, and 13.3% black victims. For assailants, 64.7% were black, followed by 20.6% Hispanic and 14.7% white.

**Table 19: Race of Victims, Assailants, and All Other TDCJ Inmates on Hand as of June 30, 2005**

MALES						
	Victims		Assailants		All Other Inmates	
Black	285	25.8%	668	60.1%	52,342	38.1%
Hispanic	215	19.5%	248	22.3%	41,974	30.6%
White	601	54.4%	194	17.5%	42,322	30.8%
Other	4	0.3%	1	0.1%	678	0.5%
Total	1,105	0.8%	1,111	0.8%	137,316	98.4%
FEMALES						
	Victims		Assailants		All Other Inmates	
Black	30	39.5%	45	60.0%	4,517	38.1%
Hispanic	14	18.4%	14	18.7%	2,175	18.3%
White	32	42.1%	16	21.3%	5,121	43.1%
Other	0	0.0%	0	0.0%	57	0.5%
Total	76	0.6%	75	0.6%	11,870	98.8%

Table 20 suggests that the prisoner's offense of record is also a factor in predicting the inmate's behavior while incarcerated. The table categorizes prisoners according to Violent, Sex, Property, Drug, DWI, and Other offenses. For this analysis, sex assaults have been separated out from the Violent category. For males in particular, assailants are more likely to have violent offenses of record than the TDCJ population overall, while victims are more likely than the TDCJ population overall to have a conviction for a sex assault offense or a non-assaultive sex offense. For females, the data simply suggests that victims and assailants in sex assault allegations are more likely to have violent criminal histories than the overall female population in TDCJ. The results below seem to confirm other studies, suggesting that male victims are more likely to have a history of sex offenses.

**Table 20: Offense Category of Victims, Assailants, and All Other TDCJ Inmates on Hand as of June 30, 2005**

<b>MALES</b>						
	Victims		Assailants		All Other Inmates	
Violent	387	35.0%	565	50.9%	50,585	36.8%
Sex Assault	290	26.2%	185	16.7%	17,359	12.6%
Sex (NonAssaultive)	77	7.0%	36	3.2%	5,301	3.9%
Property	223	20.2%	207	18.6%	24,944	18.2%
Drug	72	6.5%	84	7.6%	26,315	19.2%
DWI	13	1.2%	3	0.3%	5,578	4.1%
Other	43	3.9%	31	2.8%	7,234	5.3%
Total	1,105	0.8%	1,111	0.8%	137,316	99.4%
<b>FEMALES</b>						
	Victims		Assailants		All Other Inmates	
Violent	37	48.7%	34	45.3%	3,322	28.0%
Sex Assault	2	2.6%	3	4.0%	211	1.8%
Sex (NonAssaultive)	1	1.1%	1	1.3%	62	0.5%
Property	13	17.1%	16	21.3%	2,930	24.7%
Drug	16	21.1%	18	24.0%	4,015	33.8%
DWI	0	0.0%	2	2.7%	342	2.9%
Other	7	9.2%	1	1.3%	988	8.3%
Total	76	0.6%	75	0.6%	11,870	98.8%

As noted in the literature review Dumond also suggested that gang affiliation played a role in victimization. Table 21 below presents the confirmed or suspected gang affiliation for prisoners in the SPMO database. Gang affiliation information was not available for all of the TDCJ inmate population. As the table illustrates, while there may be some violence among gangs in sex assault allegations, the vast majority of victims (nearly 97%) are not associated with any gang. The table below shows this breakdown for sustained and probable cause incidents. Gang affiliation is highest for assailants whose alleged sexual misconduct was sustained by TDCJ's internal review, with 20.5% of all sustained assailants affiliated with a gang.

**Table 21: Gang Affiliation of Victims and Assailants from January 1, 2002 through August 31, 2005**

Affiliation	Victims		Assailants	
	Count	Percentage	Count	Percentage
No gang affiliation	1,879	96.6%	1,493	86.0%
Gang affiliation	67	3.4%	243	14.0%
Total	1,946		1,736	

Specific Gang Breakdown				
Gang Affiliation	Victims Count	Victims Percentage	Assailants Count	Assailants Percentage
Crips	21	31.3%	90	37.0%
Bloods	6	8.9%	41	16.9%
Mandingo Warriors	2	3.0%	26	10.7%
Mexican Mafia	9	13.4%	11	4.5%
Other affiliations	29	43.4%	75	30.9%
Total	67		243	

**Table 22: Gang Affiliation of Victims and Assailants from January 1, 2002 through August 31, 2005**

Affiliation	Sustained Incidents		Probable Cause Incidents	
	Victims	Assailants	Victims	Assailants
No gang affiliation	33 (94.3%)	35 (79.5%)	547 (96.5%)	25 (89.3%)
Gang affiliation	2 (5.7%)	9 (20.5%)	20 (3.5%)	3 (10.7%)
Total	35	44	567	28

Table 23 presents the average time served for victims, assailants, and all other TDCJ inmates. For this analysis, time served refers to amount of time incarcerated in TDCJ as of the prisoner's most recent receive date. The results might be somewhat impacted for prisoners who have been released on parole prior to the last receive date. However, the findings here confirm other research efforts: assailants have served a longer time in prison than victims. Unfortunately, we were not able to distinguish in the data whether the victims or assailants are serving their first sentences or subsequent sentences.

The table shows that assailants in sex assault allegations tend to have been incarcerated for longer periods in TDCJ than victims, even for assailants whose alleged conduct was not able to be sustained by an internal review. On average, both victims and assailants tend to have served longer in TDCJ than all other TDCJ inmates. This may be related to the fact that TDCJ also houses state jail prisoners, operates SAFPF facilities, and in general deals with a much wider group of prisoners than those implicated in sex assault allegations.

**Table 23: Average Time Served for Victims, Assailants, and All Other TDCJ Inmates on Hand as of June 30, 2005**

Average Time Served	Victims	Assailants	All Other Inmates
All Prisoners	5.6 years	8.1 years	4.1 years
Sustained Cases	5.8 years	8.4 years	n/a
Probable Cause Cases	5.5 years	6.4 years	n/a

### C. Unit Analysis

A brief examination into the units is provided in this section, with more descriptive analysis to be provided in Section VI of this report. For all tables in this section, the results refer to units where the assaults allegedly took place, as opposed to where the incidents were reported. Table 24 shows the top ten units with the highest number of sex assault allegations, in descending order. All of these institutions listed above share the following characteristics: They are all male prison facilities operated by TDCJ with capacities from 2,800 to 3,700 inmates. It is therefore not surprising that these facilities generated the highest number of allegations.

Units with the highest rate of allegations per 100 inmates are provided in Table 25 below. The data has been sorted in descending order based on an average of the rates for 2002, 2003, and 2004 – the years with complete data available. Rate results from 2005 are skewed downward because only 8 months of data was available.

**Table 24: Top Ten Units Where Sex Assault Allegations Were Alleged to Have Occurred from January 1, 2002 through August 31, 2005**

Units	2002	2003	2004	2005	Total
Allred	35	38	38	31	142
Telford	38	28	26	28	120
Hughes	27	34	36	20	117
Stiles	29	19	30	16	94
Clements	13	17	42	15	87
Michael	19	18	28	19	84
Robertson	18	22	22	17	79
Connally	14	20	27	11	72
McConnell	21	20	22	8	71
Beto	15	14	12	14	55
All Other Units	231	195	326	265	1,017
Total	460	425	609	444	1,938

**Table 25: Top Ten Units by Incidence Rate Where Sex Assault Allegations Were Alleged to Have Occurred from January 1, 2002 through August 31, 2005**

Units	Population	2002	2003	2004	2005	Total
Jester IV	487	2.053	1.232	1.848	0.411	1.711
Skyview	483	1.863	1.035	0.828	0.828	1.242
Hughes	2,882	0.937	1.180	1.249	0.694	1.122
Telford	2,806	1.354	0.998	0.927	0.998	1.093
Allred	3,633	0.963	1.046	1.046	0.853	1.018
Montford	983	0.916	1.221	0.712	0.610	0.949
Stiles	2,861	1.014	0.664	1.049	0.559	0.909
McConnell	2,847	0.738	0.702	0.773	0.281	0.738
Robertson	2,841	0.634	0.774	0.774	0.598	0.727
Connally	2,836	0.494	0.705	0.952	0.388	0.717

Population figures as of June 30, 2005.

Four of the institutions from Table 24 are again listed in Table 25. However, with this rate-based perspective, we find that three of the top ten institutions in terms of rates of allegations were alleged to have occurred in psychiatric facilities: Jester IV, Skyview, and Montford. In part, this finding reflects the lower population than the other seven institutions. However, the population housed in psychiatric facilities may be more likely to be a victim or assailant in such allegations, or they may be more likely to allege such an incident given the medications and nature of mental illnesses. Section VI will explore this issue in more detail.

While the above tables present findings for all the alleged incidents, Table 26 below lists the 23 units where incidents have been sustained through internal investigation over the past four years. Only 43 of the 1,938 allegations were sustained, and only one of these incidents has been sustained at a psychiatric facility during the study period.

**Table 26: All Units Where Sex Assault Allegations Were Sustained by Calendar Year from January 1, 2002 through August 31, 2005**

Units	Operated By/ Type of Facility/ Gender	2002	2003	2004	2005	Total
Allred	TDCJ/Prison/Male	1	2	2	2	7
Lewis	TDCJ/Prison/Male	2	0	1	1	4
Hughes	TDCJ/Prison/Male	0	2	1	0	3
McConnell	TDCJ/Prison/Male	1	1	1	0	3
Robertson	TDCJ/Prison/Male	1	0	2	0	3
Stiles	TDCJ/Prison/Male	2	0	1	0	3
Eastham	TDCJ/Prison/Male	0	2	0	0	2
Michael	TDCJ/Prison/Male	0	0	2	0	2
Wynne	TDCJ/Prison/Male	2	0	0	0	2
Connally	TDCJ/Prison/Male	0	0	1	0	1
Daniel	TDCJ/Prison/Male	0	0	0	1	1
Estes	Private/Prison/Male	0	0	0	1	1
Ferguson	TDCJ/Prison/Male	0	0	0	1	1
Jester IV	TDCJ/Psychiatric/Male	0	0	0	1	1
Lychner	TDCJ/State Jail/Male	0	0	1	0	1
Middleton	TDCJ/Transfer/Male	0	0	1	0	1
Murray	TDCJ/Prison/Female	1	0	0	0	1
Plane	TDCJ/State Jail/Female	0	0	0	1	1
Polunsky	TDCJ/Prison/Male	0	1	0	0	1
Roach	TDCJ/Prison/Male	0	0	1	0	1
Scott	TDCJ/Prison/Male	0	0	0	1	1
Smith	TDCJ/Prison/Male	1	0	0	0	1
Wallace	TDCJ/Prison/Male	0	0	0	1	1
Total		11	8	14	10	43

While there is variation in the type of institutions where incidents were sustained, the majority of cases (86%) were sustained at large, male prisons operated by TDCJ. Only one incident was sustained at a privately operated facility. Two incidents were sustained at TDCJ-operated State Jail facilities, one housing females and the other housing males. A total of two incidents were sustained among female prisoners. One incident was sustained at a transfer facility. Finally, as noted earlier, one incident was sustained at a psychiatric facility.

It has been suggested that units where sex assault allegations occur are also units where other incidences of violence are occurring, and that sex assaults can be viewed as another example of violence in prisons. TDCJ captures in its Emergency Action Center database serious prisoner assaults, prisoner assaults involving weapons, and major uses of force, among other measures of violence. Table 27 presents an analysis of these incidents for calendar years 2002, 2003, and 2004. Each year provides a summary of serious prisoner assaults, prisoner assaults with weapons, major uses of force, and sex assault allegations. An average of each year's rates of major uses of force (MUF) per 1,000 inmates was calculated to mitigate the effects of variation in unit capacity. The 10 units with the highest MUF rates are presented for discussion.

Once again, the three psychiatric facilities are represented in this table, as well as a facility housing mentally retarded inmates (MROP). The female facility listed above houses females on death row, as well as all the standard G1-G5 custody levels and prisoners in administrative segregation. The other five facilities house male prisoners of all custody levels. All of the facilities listed above are operated by TDCJ.

**Table 27: Top Ten Units by MUF Rate Where Sex Assault Allegations Were Alleged to Have Occurred from January 1, 2002 through August 31, 2005**

Units	Unit Type	Pop	Gender	2002	2003	2004	Avg MUF
Jester IV	Psychiatric	487	Male	107	106	91	186.86
Skyview	Psychiatric	483	Co-gender	73	99	81	149.76
Connally	Prison	2,836	Male	292	325	353	92.26
Clements	Prison	3,628	Male	377	301	559	95.37
Montford	Psychiatric	983	Male	131	100	89	89.52
Lewis	Prison	2,163	Male	207	200	257	88.61
Hodge	MROP	821	Male	72	86	73	77.55
Robertson	Prison	2,841	Male	261	262	237	76.97
Mt. View	Prison	604	Female	35	43	69	76.16
Darrington	Prison	1,805	Male	131	139	185	75.35

Population figures as of June 30, 2005.

## **D. Summary of Findings**

Because nearly four years of sex assault allegations were available for this study, there is a higher base rate for analyzing reported assaults. In addition, there were enough sustained cases or cases where probable cause warranted the removal of the alleged victim from the cell assignment or facility, that some meaningful conclusions can be drawn.

- Incidents are much more likely to occur in a cell than in a more public place such as a shower or dorm environment.
- Incidents that are reported immediately or within a day or two have a higher chance of being sustained.
- Incidents where rape kits or forensic exams were performed also have a higher chance of being proven.
- Victims are generally younger than their assailants.
- Victims are more likely white while their assailants are more likely black or Hispanic.
- Assailants have a higher likelihood of gang affiliation than victims.
- Assailants come from larger cities/counties, perhaps a correlation to the gang affiliation finding.
- Assailants have served more time in prison than victims, anywhere from two to four years longer on average.
- Although the data concerning mentally ill prisoners was not extensive, there is some evidence supporting the conclusion that mentally ill prisoners are more at risk of assault.
- Prisoners with criminal records involving violent crimes are more likely to perpetrate assaults against prisoners with criminal records involving sex crimes (assaultive and non-assaultive).
- Prisoners with longer sentence lengths are more likely to perpetrate assaults against prisoners with less severe sentence lengths.
- Units housing the longer-term prisoners with higher custody levels have higher numbers and rates of allegations than other facility types.
- Units housing special needs populations (psychiatric and mentally retarded) face particular challenges in managing their inmates, with higher rates of general inmate-on-inmate violence and higher rates of use of force, in relation to the population size of these facilities.

## **E. Process and Data Issues**

Since its inception in 2002, TDCJ has made numerous enhancements to the Access database to improve the data collection effort. For example, the database now distinguishes between an incident report date and time and an incident occurrence date and time. Enhancements in 2005 added fields concerning whether an incident was accepted by OIG, whether an incident involved fondling only (abusive sexual contacts), whether a rape kit was utilized, and whether a prisoner was found guilty of a disciplinary violation. This

information will be useful for future studies, and also for reporting allegations to federal agencies.

In addition to the enhancements already in place, TDCJ's database could benefit from a few additional ones:

- If a rape kit was not utilized in the investigation, why not? A “drop down” list of possible reasons would be best for analytical purposes.
- Capture the type of incident using the BJA definitions for easier federal reporting, and possibly also include a field that summarizes the nature of the assault, including fondling, oral sex, penetration, and other options.
- Capture whether a prisoner alleged coercion or extortion as part of the assault, in order to begin differentiating between the consensual, coercive, and predatory sexual conduct in prisons. Currently, there is no meaningful way to distinguish between these three types of inmate behaviors. TDCJ is able to identify predators electronically, but does not appear able to identify cases involving extortion or coercion other than through the narrative description.
- Capture how the prisoner communicated the allegation to officials in the institution – during a classification hearing (months after the fact), upon intake at a different facility, in an I-60 form, in a grievance form, communications with guards or management at the facility, or other means.

For all of these suggestions, the quality of the data matters. It is best to provide a list of responses from which users can choose, rather than allowing users to enter the data in a text field. Many of the problems with the current system involve such text fields, from gang affiliation to injuries noted, making meaningful analysis more difficult.

Special care needs to be made in educating users of the system. In particular, users need to be sure that they enter data related to the incident occurrence, including date, time, facility, and custody code at the time of the alleged assault.

## **VI. Qualitative Analysis of Units**

### **A. Site Visit Selection and Protocol**

As noted earlier, efforts to reduce, prevent and eventually eliminate the incidence of sexual assault in a correctional environment must involve the identification and understanding of the management and operational practices surrounding such events. This type of assessment may enhance the department's understanding of how its operational practices can be modified in order to improve its ability to deter these incidents in the future. It may also contribute to the national understanding and knowledge of the type of operational practices that need to be examined, modified, and/or replicated in order to reduce incidents of sexual assaults within correctional environments.

To accomplish the above, seven facilities were selected for in-depth site reviews. These facilities included the following:

- Darrington – general population, administrative segregation
- Jester IV – mental health unit
- Holilday – transfer unit
- Hughes – general population, administrative segregation, safe keeping
- Murray – female prisoners
- Polunsky – general population, administrative segregation, death row
- Skyview – mental health unit

These units were selected in consultation with the director of the TDCJ Correctional Institutions Division, the Deputy Director of TDCJ and the manager of the SPMO. There is a variance in the function, design, capacity, custody level, and the number and rates of allegations made by prisoners within these units.

It is important to note that with over 100 prison units in Texas, the selection of the units was not intended to provide a random sample of facility types representing the distribution of facilities, population, or incidents. The scope of the study did not allow for this methodology.

The site visit to these selected facilities included a comprehensive review of the following factors and issues:

- Operational practices in place at the time of the reported incidents
- Physical inspection of the facility in order to fully understand how and where the incidents had occurred
- Interviews with supervisory staff of the institution

- The physical plant configurations and/or location of incidents in terms of the ability of staff to prevent assaults, observe prisoners at all times, and provide proper supervision
- Review the degree that alleged perpetrators had access to the location of the incident and, if the location was restricted, how did the perpetrator obtain access
- Review of the procedures controlling the movement of prisoners
- Determine the staffing deployment and personnel practices of the facility and if these practices could be a contributing factor to a sexual assault
- Review the prisoner classification and placement processes and if these processes insure proper separation of prisoners
- Review the prisoner screening procedures in place that are intended to identify both sexual predators and their potential victims
- Review processes that are intended to insure that prisoners are screened for potential vulnerabilities or predator tendencies and whether this information was documented for use in placement and management decisions relative to the prisoners
- Review the training curriculum relative to the prevention and investigation of sexual assaults and implementation of the Safe Prisons program
- Review the investigative policies, procedures and practices that are designed to ensure the proper investigation of any reported allegation of sexual assault
- Determine if practices were in place to record allegations, both substantiated and unsubstantiated so that prisoners with histories or tendencies of predatory behavior or vulnerabilities can be identified and closely monitored when appropriate
- Review the policies and practices of the institution relative to reporting the occurrence or allegation of sexual assault to designated law enforcement personnel

## **B. Observations and Findings**

TDCJ policy mandates that staff has a duty to protect prisoners in their custody and that operational practices, policies and procedures should be geared to ensure that protection is provided to all prisoners. Prison environments are complex organizations that are affected by a wide range of factors including the physical design of the units, complement and deployment of staff, and training and experience of staff, among others. The intent of this section is to summarize the overall assessment of the ability of the TDCJ facilities to achieve maximum effectiveness of its Safe Prison Program initiative. The following will identify some of the key strengths and weaknesses of the organization as it relates to the Safe Prisons Program.

## 1. *Organizational Commitment to the Reduction of Sexual Assault*

The existence of policies and procedures that mandate specific action on the part of the organization and its staff does not always guarantee the outcomes expected by the organization's leadership. The fact that a policy has been developed and issued does not necessarily result in the desired outcomes, especially in an organization as large and geographically dispersed as the TDCJ. It is important, therefore, to determine to what degree the entire organization, including those at the institutional line level, have embraced and implemented the policy requirements associated with the Safe Prisons program.

During the course of the facility visits, staff at all levels were contacted both formally and informally to determine their knowledge and understanding of the policy requirements, and to subjectively determine the level of commitment by the organization to the Safe Prisons ideals. This qualitative review found:

- Staff at all levels had a clear understanding of the expectations and goals of the organization as it related to Safe Prisons
- Inmates were aware of the elements of the program and the processes to be utilized to report an allegation
- Classification staff, Safe Prisons staff and housing unit staff appeared to communicate well regarding issues relative to housing placement of those who appeared vulnerable and with those who were identified as potential predators
- Signs were prominently posted at numerous locations within the facilities reminding inmates of the provisions of the Safe Prison Program in relation to reporting allegations
- There did not appear to be any indication of "organizational indifference" at any of the facilities visited. There may be individuals within the organization that may 'look the other way' when faced with an allegation of sexual assault, but that was not a prevalent attitude observed within the facilities visited
- Observations during the monthly and quarterly Safe Prison Program meetings at the institutional level indicated that there was a high level of communication, cooperation, and exchange of information between staff and operational and program units, and a willingness to seek out improvements to the processes related to the program
- The impact of the Safe Prison program requirements were found at all operational levels and functions within the units examined

- From the intake processes at the Holliday Unit through the housing placement decisions, transfer decisions, and program placement recommendations at each unit, the need to be alert and aware of the organization's goal to eliminate sexual assault incidents was apparent.

## 2. *Investigative Processes*

The Safe Prisons policies detail in very specific terms the investigative process to be followed when an allegation of sexual assault comes to the attention of staff within the TDCJ. There is a clear protocol that guides the investigators through the initial review of the allegation. It was reported that each of the Safe Prisons staff have completed the required training as specified and many had prior investigative experience either in public law enforcement or as the designated Strategic Threat Group officer. As noted previously, there was not an ability to review investigative files so there was no ability to conduct an assessment of the quality of the individual investigations. However, the process utilized to investigate and process case was reviewed with the Safe Prison Program Coordinators at each unit visited. The process appears efficient and effective in the management and investigation of allegations of this nature

## 3. *Data Collection and Analysis*

The TDCJ has a great deal of data available related to the allegations of sexual assault within its facilities. These data are in both electronic and hard copy formats. The data reported in this document represents an example of capabilities of the TDCJ database to collate and analyze data. At the institutional level there are additional logs that document allegations and the dispositions of these cases.

The Prisoner Protection Investigation Log (SPP-01) tracks investigation requests. This information is maintained at each unit within the TDCJ but is not collated into one single database department wide. TDCJ policy requires that the Unit Safe Prisons Project Coordinator shall maintain a file on victims, predators, and all prisoners who are being investigated. Some of these files are maintained manually while others are maintained locally in an electronic format. Upon transfer to another facility the hard copy safe prisons file is forwarded to the receiving unit.

What is not available is a single database, accessible to selected staff at all units, of all allegations filed. At present the units only have electronic access to allegations filed at their respective units. We suggest that it is important that intake staff, classification staff, Safe Prisons staff, and administrative staff have access to the number and type of allegations filed that would include the name of the victim and the name of the alleged predator, the location and the investigation outcomes, staff and inmate witnesses, investigative officer, etc. This information is presently available in a variety of locations and formats in

TDCJ but it is not available in a single database that permits access at the unit level. Staff should be able to determine how many system-wide allegations have been filed, the nature of these allegations, and the outcomes of the investigation as they review a prisoner for placement within the TDCJ units.

The following outlines examples of the capabilities of a database to accomplish the above purposes:

- Permits the identification all allegations filed against a specific prisoner
- Identifies all allegations filed by a specific prisoner, either as a predator or a victim
- Allow for sorting of allegations by location, date, time of day, and other relevant variables
- List the investigative staff and the disposition of each case closed by the specific investigator

These examples represent only a few of the analytical reports that can be utilized by the TDCJ in its effort to improve its monitoring capability of the reporting and handling of allegations of sexual assault. The available data can be utilized to assist intake staff, classification staff, and others involved in the decision making of placement of prisoners within units and specifically to housing units. The TDCJ should examine its existing database and hard copy records and initiate efforts to expand its capability by making the Prisoner Protection Investigation Log a department wide database whose information is retrievable at each unit.

#### *4. Facility Designs and Staff Deployment*

The seven facilities selected for the on-site reviews represented a variety of physical plants and construction designs. This permitted an examination of how the physical design of the facility could either contribute to the incidence of sexual assault or aid in the prevention of the occurrence of these events. Those facilities that were similar in design had significantly different operational missions and philosophies so it still represented an opportunity to contrast the impact at each individual facility. The following summarizes the key findings and observations at each facility.

##### Holliday and Murray

The Holliday and the Murray units are identical in design. The exception involves the 50-bed Administrative Segregation Unit at the Holliday Unit and the 130-bed capacity Administrative Segregation Unit at Murray. The majority of beds at both facilities are in dormitories. Holliday is a transfer unit (intake and

transfer processing center) and as such the movement in and out of the facility is extremely high and results in a reported average length of stay of less than six months. The Murray Unit is a facility housing female prisoners, and with the exception of the Close Custody Unit, is of similar design and configuration to the Holliday Unit.

The number of allegations at both the Holliday and Murray Units were extremely low. This may be attributed to not only the operational mission of the facilities but also the fact that the majority of beds in both of the facilities are dormitories. As reported earlier in this report, the incidence of allegations housed in dormitories was very low as compared to cells.

Staff at each of these facilities reported that the dormitory's lack of privacy and more direct visual supervision by staff contributed to the low number of allegations. While dormitory housing is not considered the ideal in terms of prisoner privacy or for the management of prisoners in a security setting, it evidently does discourage sexual assault. The thought that open dorms with open showers, toilets, etc would facilitate sexual assault is countered by the lack of privacy and the improved visual supervision that the design offers to staff. This however, only can be a deterrent factor if the units are properly supervised and staffed. Both Units appeared to have adequate staff deployed in a manner that would insure proper supervision of the units.

As noted the Murray Unit housed female prisoners. We observed that there was an underlying attitude among some of the line staff at the Unit that there was a high incidence of consensual sexual behavior occurring among the prisoner population. Informal discussions with line staff indicated that this was expected and a part of the life style of female prisoners. It was reported that they felt that the incidence of sexual assault was low because of the willingness of the female prisoners to engage in consensual sex with other prisoners.

This attitude was not apparent among supervisory staff nor was it expressed by those involved in investigations and Safe Prisons implementation. It is an issue that should be addressed by the TDCJ either through further discussion with staff or through initiation of a formal cultural assessment of the facility. It was unclear if the attitudes expressed by these staff members had affected the reporting or investigation of sexual assault at the Unit.

### Hughes and Polunsky

The Hughes and Polunsky Units, which are identical in design and similar in mission and operational philosophy, are multi-custody units that house inmates from G-1 up to G-5 (trustees up to maximum security). In addition, the Polunsky unit houses death row prisoners. The majority of inmates are housed in cells that are double-bunked. Each unit has an 'expansion dorm' that is a large dormitory for G-1 and G-2 inmates.

Neither facility reported an allegation of sexual assault in the dorm housing units in 2004 or through August 2005. This is consistent with what is reported department wide. As with Holiday and Murray, staff reported that the lack of privacy was a contributing factor, but also indicated that the classification and selection process of those housed in these units prevented predators or potential victims from being housed in the dormitory units.

The vast majority of allegations at these facilities occurred in the housing units that utilized cells and specifically in double-bunked cells. In reviewing this finding with staff it was suggested that the solid cell fronts, while permitting privacy for the inmates and reducing noise within the unit, also provides the degree of privacy that permits sexual assaults to occur. Unlike older prison designs where the cell fronts consisted of bars, the solid doors limit visual observation by staff and to a degree sound proof the cells to the point where staff have difficulty hearing what is going on in individual cells. The solid cell fronts are considered by many to be advancement in prison cell design and construction and yet, in the case of preventing assaults in cells, this design may not provide a deterrent due to the privacy it provides to its occupants. TDCJ is experimenting and testing alternative cell fronts for these types of units. Among these are the clear Lexan covers that would permit improved viewing into the cells.

The fact that the majority of the sexual assaults occur between 6 a.m. and 6 p.m. can be understood when observing the level of activity in the housing units of these facilities. Even though during these hours the number of staff assigned to the units is increased, the level of activity that they are responsible for also increases dramatically. The responsibility of housing unit staff draws them away from the routine of checking on cell activity. This provides for periods of time when only the housing unit picket officer (Control Room Officer) is monitoring the day rooms and cell fronts. Because of the solid doors the picket officers' ability to monitor activity within the double-bunked cells is extremely limited. This provides an opportunity for both consensual sexual activity and sexual assaults to occur without observation of staff. This issue needs to be reviewed and addressed both from a staff deployment approach and from a training issue with all housing unit staff.

#### Skyview and Jester IV

The Skyview and Jester IV facilities serve as one of the primary assessment, diagnostic and treatment facilities for mentally ill inmates. Jester IV has a capacity of 505 inmates while Skyview has a capacity of 528. The physical designs are significantly different. Jester IV is a facility that houses all of its population in cells while the majority of the Skyview population is housed in small dormitory housing units. Skyview does have a large close custody unit for those

who are experiencing acute mental illness or those who represent a security risk. This is a cell unit similar to that found in the more modern Jester IV Unit.

The incidence of sexual assaults reported at these two facilities is high in comparison to other TDCJ facilities. What is unusual is the fact that the vast majority of these occur prior to arriving at the two mental health facilities. They are attributed to these two facilities only because the allegations are reported to staff of the two facilities. When the allegations attributed to the sending institutions are removed, as was done for the analysis in Section V, the actual incidence of sexual assaults occurring on these two units is low.

There are similarities in the operation of these two facilities that can explain to a certain degree the low incidence of sexual assaults occurring at the units. As would be expected of special needs treatment facilities, the staff to inmate ratios is very high in comparison to other TDCJ facilities. This results in almost constant supervision of all the prisoners of the two facilities. When inmates are out of the cells for either group activity or treatment programming, the prisoners are under constant supervision. This is combined with the fact that very few of those housed in cells are double-bunked. The opportunity to engage in behavior involving sexual assault is limited because of the single cells and open dormitory configuration. The staff/inmate ratio permits constant supervision at all times. The existence of these factors may help explain the low incidence of sexual assaults occurring among those housed at these two facilities.

Staff of the two facilities provided some theories to explain why incidents that occurred primarily at facilities in which the prisoner was previously housed were now reported in these two facilities. The researchers did not interview any inmates as part of this research but the staff referred to their conversations with inmates and well as their own views. Some of the theories stated were the following:

- Mentally ill prisoners felt much more comfortable reporting these types of incidents to treatment staff versus the security staff found at the sending institutions; therefore, when inmates arrive at the mental health facilities they tend to report incidents that had occurred in the past.
- Inmates viewed staff at the two mental health facilities as much more empathetic to allegations of this nature and more professional in the handling of any investigation into the allegations.
- Sexual assaults were reported as a means to justify the behavior that had occurred prior to placement at the facility. For an example, mental health staff reported that a suicide gesture could be offered as the result of being the victim of a sexual assault.

- Inmates alleged sexual assaults as a means to manipulate placement to preferred housing at the two mental health facilities. Most inmates and staff acknowledge that the conditions and environment at the two facilities are preferable to that found at other high security facilities within the TDCJ and that inmates may be using the allegation of a sexual assault as a means to retain placement of these two facilities.

The above are anecdotal explanations to the high incidence of reporting at these two facilities and do not represent any assumptions that can be verified through research and investigation of each case. The TDCJ should establish a process within the investigation protocol to determine and record the reasons for the late reporting of these incidents and determine if any action or policy change is warranted. On the surface there does not appear to be any common elements to where or when these allegations made upon arrival at the mental health facilities are coming from. A variety of originating facilities are involved so they are not originating at one or two facilities in which a larger problem may be occurring. Further examination of this issue may bring some solid explanation to light.

### Darrington

Darrington is a 1,791 bed facility that was originally constructed in 1917. The majority of housing units were constructed in the 1930's. The facility includes a 321 bed trustee camp located outside the perimeter of the main facility. The facility houses G-1 (trustee) through G-5 male prisoners in a combination of dormitories and traditional cellblocks.

Darrington was selected for review due to the low incidence of reported sexual assaults. What differentiates this facility from units that house inmates of similar security levels and demographics like those found at Hughes and Polunsky, is the design of the facility and in particular the housing units.

The facility is a telephone pole design with all the housing units situated off the main corridor of the facility. The cellblocks are the traditional three-tier, open cell units. There were 20 double bunked cells on each of the three tiers although one cell on each tier was no longer used for housing. Unlike Polunsky and Hughes the cell fronts were the traditional bars and not closed steel fronts. The permitted clear observation into the cells by staff and also created the potential to hear any disturbance or assault occurring in the cells.

The general population units were staffed with one correctional officer whose work station was located on the lowest tier near the entrance to the cellblock. At this location his/her observation of the cells was somewhat limited. However, a roving officer could observe all locations within the unit. This was clearly a difficult unit to supervise by one officer. Staff reported that it is always their intent to staff the units with two officers, but severe staff shortages have

made compliance with this a rare occurrence. On the occasion of the site visit to this unit the temperature outside was extremely high and large fans were being employed to circulate air within the units. This created a great deal of noise that further limited the officers' ability to monitor the unit. Still, staff felt that the open cell fronts reduce the level of privacy within the cellblocks and thus probably serve as a deterrent to sexual assault. Not only can a patrolling officer observe a potential assault, other inmates in adjacent cells would be able to hear and report any assault within the cells of the units.

The configuration of this unit differentiates it from other facilities with higher incidence of reported sexual assaults. It should also be noted that the lack of privacy within the cellblocks may also serve to discourage the reporting of incidents to staff. The design of the units precludes doing almost anything in private if the units are properly staffed. This is compounded by the fact that virtually all the activities for the majority of inmates assigned to the cellblocks occur in groups or within the cellblock. Very little out of cell time is also permitted to this particular group of prisoners further reducing the opportunity to report allegations or concerns in private. It would be difficult to report an allegation of sexual assault and assure the privacy of the complaint in this specific situation. Prisoners may fear retaliation from other inmates if it is discovered that they have reported an allegation of sexual assault. The benefits of the openness of the design of these units may in fact result in discouraging the reporting of assaults. The TDCJ should continue to examine methods in which inmates can report allegations of sexual assault without fear of being discovered while assigned to the unit in which the alleged incident originated.

##### *5. Intake/ Classification*

The Safe Prisons program relies upon the cooperation and communication of a variety of staff within the institutions in order to achieve its goal of reducing or eliminating sexual assaults. At all the facilities visited the communication links between the classification staff and the Safe Prisons staff appeared to be strong and effective. There are no specific concerns or issues with the Intake/Classification process as observed in this qualitative review.

The following summarizes these some key observations in the area:

- a. During the TDCJ intake process, each inmate record is reviewed and the inmate is interviewed by the Security Threat Group (STG) Office and the Unit Safe Prisons Project Coordinator (see Incoming Chain Interview – Form SPP-08) to determine if there is a potential or a history of the prisoner being either a victim or predator. If indicators are present the separation of the prisoner begins immediately upon intake.
- b. The inmate's institutional record when applicable contains information and documents relative to a history of predatory behavior, victimization, and

- need for safekeeping placement and is available for review during all classification and placement hearings.
- c. Staff assigned to implement and monitor the decision of the classification staff in terms of housing placement utilize 'tags' on the placement board to track the housing assignment of those with special designations such as predator, safekeeping prisoner, etc. This permit a visual check of the location of all prisoners who need to maintain separation within the facility.
  - d. In addition to the normal classification and risk scales the Classification staff utilizes a department-wide standard of not housing together those whose weight and age are significantly different. The standard at present is 40 lbs and 9 years. Inmates who exceed this range in comparison to the cellmate cannot be housed together. The result is that an inmate who weighs 155 cannot be housed with a prisoner who weighs more than 195. This is intended to reduce the vulnerability of smaller and less mature inmates.

## 6. *Staff Education and Training*

The TDCJ Correctional Training and Staff Development Department has issued lesson plans and curriculum for a variety of training programs intended to educate staff on the elements of the Safe Prison Project and to improve their ability to identify and respond to all elements of sexual assaults in a correctional environment. These programs are offered during both pre-service training and in-service training for existing staff annually. The curriculum is comprehensive and includes handouts, training manuals, crime victims brochures, and other related materials.

The scope of this review did not allow for the comprehensive examination of the effectiveness of this training material. However, informal discussions with staff throughout the seven units did permit an assessment of the knowledge and understanding of the elements of both the provisions of the Safe Prison program and the dynamics surrounding sexual assault in a correctional setting.

Staff at all levels and functions were found to be knowledgeable and understanding of the purpose, scope and requirements of the Safe Prisons policies. Staff understood the protocol to be utilized in the event an incident or allegation of sexual assault was observed or reported to them. Safe Prison staff was knowledgeable and trained in the provisions of the policies and the procedures to utilize in handling an allegation. Classification staff, administrative staff, and other ancillary staff were found to be informed and understanding of the purpose of the policies and their specific requirements and responsibilities in the prevention and investigation of sexual assault.

### **C. Summary of Key Findings for the Unit Analysis**

1. Staff at all levels was found to have a clear understanding of the organization's expectations and goals as it related to Safe Prisons Program requirements.
2. There did not appear to be any indication of "organizational indifference" at any of the facilities visited. There may be individuals within the organization that may 'look the other way' when faced with an allegation of sexual assault, but that was not a prevalent attitude observed within the facilities visited.
3. The TDCJ should examine its existing database and hard copy records and initiate efforts to expand its capability by making the Prisoner Protection Investigation Log a department wide database whose information is retrievable at each unit.
4. The number of allegations at both the Holiday and Murray Units were extremely low and can be attributed to not only to the operational mission of the facilities but also to the fact that the majority of beds in both of the facilities are located in dormitory settings. As reported earlier in this report, the incidence of allegations housed in dormitories was very low as compared to cells.
5. The vast majority of allegations within the TDCJ occur at housing units that utilized cells and specifically in double-bunked cells. In reviewing this finding with staff it was suggested that the solid cell fronts, while permitting privacy for the inmates and reducing noise within the unit, also provides the degree of privacy that permits sexual assaults to occur. Unlike older prison designs where the cell fronts consisted of bars, the solid doors limit visual observation by staff and to a degree sound proof the cells to the point where staff have difficulty hearing what is going on in individual cells.
6. The solid cell fronts are considered by many to be advancement in prison cell design and construction and yet, in the case of preventing assaults in cells, these solid cell fronts may not be a deterrent to prevent sexual assaults due to the privacy it provides to its occupants.
7. The fact that the majority of the sexual assaults occur between 6 a.m. and 6 p.m. can also be understood when observing the level of activity in the housing units in TDCJ facilities. Even though during these hours the number of staff assigned to the units is increased, the level of activity that they are responsible for also increases dramatically. The responsibility of housing unit staff draws them away from the routine of checking on cell activity on a routine basis. This provides for periods of time when only the housing unit picket officer (Control Room Officer) is monitoring the day

- rooms and cell fronts. This issue should be reviewed by the TDCJ from a staff deployment and training standpoint.
8. The low level of allegations occurring at the mental health facilities could be attributed to staff deployment levels. As would be expected of special needs treatment facilities the staff to inmate ratios are very high in comparison to other TDCJ facilities. This results in almost constant supervision of all the prisoners of the two facilities both during in-cell and out-of-cell activity periods.
  9. The TDCJ should establish a process within the investigation protocol to determine and record the reasons for the late reporting of incidents as was found at the mental health units and determine if any action or policy change is warranted. As noted in the report, a large percentage of cases were reported only after a significant period of time had lapsed. The TDCJ should review the reasons for these time delays to ensure that they are not a result of breakdowns in the either the reporting or investigative process. Specific attention should be paid to the reporting processes of those incidents reported at the mental health facilities but having occurred at the sending institution.
  10. The openness of the cell clock design at facilities similar to Darrington may in fact result in discouraging the reporting of assaults. The lack of privacy may discourage incidents of sexual assault, but may also deter the reporting of legitimate allegations of assault. The TDCJ should continue to examine methods in which inmates can report allegations of sexual assault without fear of being discovered while assigned to the unit in which the alleged incident originated.
  11. The TDCJ should examine the reasons for the large number of cases in which either the victim or the alleged assaulter was transferred without any disciplinary or legal action. These are cases which have also been determined to be unsubstantiated. The questions centers on why do such a large number of prisoners involved in these alleged incidents end up getting transferred without any verification of the incident. Are these transfers based on legitimate concerns or a means of foregoing either discipline or prosecution?

## **VII. Summary and Discussion**

This study had several objectives. First, we wanted to better understand the number and nature of sexual assault allegations being made in one of the nation's largest prison systems. Second, we wanted to understand how the Texas Safe Prison program operates and its impact on sexual assault within its numerous prisons. Finally, we wanted to see what lessons could be learned that would have a positive impact on reducing the number of sexual assaults for both Texas and other correctional systems.

Much of what has been reported here matches prior studies. The number of official allegations of prisoner on prisoner sexual assault in Texas is relatively low although it is noted that its allegation rate is higher than most states. However, the higher allegation rate is due, in part, to the recently implemented Safe Prisons program which is designed to encourage by staff and prisoners the reporting of alleged sexual assaults.

Like most states the substantiation rate of the allegations is quite low. In Texas one of the major reasons why the substantiation rate is so low is the delay in having an allegation reported by the prisoner. As with any criminal investigation, any undue delay in reporting a criminal act reduces the ability of the investigators to gather physical evidence and interview persons who would serve as potential witnesses.

The low rates of allegations and substantiated allegations makes it very difficult if not impossible to develop a statistical profile or risk instrument that would have strong predictive capabilities. However, there a number of attributes that distinguish the victims and perpetrators from other prisoners.

The alleged victims are generally younger than their assailants. There is a strong racial relationship in such incidents where victims are more likely white while their assailants are more likely black or Hispanic and be gang affiliated. The assailants are also older, more likely to have lived in urban areas, have been convicted of a violent crime, are in a higher custody level and have served more time in prison than their victims.

Not surprisingly the higher security facilities as well as units housing special needs populations (psychiatric and mentally retarded) face particular challenges in managing their inmates, with higher rates of general inmate-on-inmate violence and higher rates of use of force, in relation to the population size of these facilities. Incidents are more likely to occur in the day time in housing units where officers can be easily distracted or have poor line of sight to the celled housing units.

These profile data on the victims, assailants and facilities where such allegations are made suggest that one needs to see the crime of prison rape in a

larger context. Specifically, it would appear that prison rape (or the threat of rape) is just one weapon predatory prisoners will use to impose their influence and control over other prisoners. The prisoners and prisoners that have the highest rates of sexual assault also have the higher rates of other serious misconduct and criminal activity. So it would suggest that in order to reduce prison rape other forms of serious misconduct must also be addressed.

Finally, the research suggests that the Texas Safe Prison program has produced a much greater awareness on the part of staff and prisoners on the issue of prison rape. One of the immediate effects has been a much higher rate of reporting and a more structured response and investigation to such allegations. And the data base that has been created allows the TDCJ to monitor the number, attributes and final dispositions of these incidents. Many states could benefit from adopting many of the key components of the Texas program.

There are some suggestions that we would suggest to Texas and other correctional systems that if implemented might serve to reduce sexual assaults. First, further efforts are needed to provide structured opportunities for prisoners to report any allegation of sexual assault –either staff on prisoner or prisoner on prisoner. One specific suggestion is to require case managers to always inquire of the prisoner during a formal session or contact whether any assaults have occurred or if they are being threatened by other prisoners.

Second, there is a concern on what happens to prisoners who make an allegation but the case cannot be substantiated. There are a large number of these cases in Texas. Does staff make any effort to more closely monitor, re-assign or supervise the prisoners who have been implicated in the incident? It is not clear that any such efforts are being made by prison officials in such cases.

Third, the TDCJ should examine the reasons for the large number of cases in which either the victim or the alleged assaulter was transferred without any disciplinary or legal action. These are cases which have also been determined to be unsubstantiated. The questions centers on why do such a large number of prisoners involved in these alleged incidents end up getting transferred without any verification of the incident. Are these transfers based on legitimate concerns or a means of foregoing either discipline or prosecution?

Fourth the categories for designating prisoners in the TDCJ data base should be expanded so that it has the following four designations:

- e. Potential Victim
- f. Known Victim
- g. Potential Assailant
- h. Known Assailant

The low rate of officially reported sexual assault on prisoners means that it is not practical nor recommended that a traditional risk scoring system be attempted that would assign prisoners to the potential victim and potential assailant categories. To do so would produce an unacceptable level of “false positives” in terms of identifying both potential victims and assailants. This not to say that the factors and attributes that are associated with assailants and victims as presented in this report cannot be applied in some manner.

Rather, it is recommended that a criteria for applying the “potential” victim or assailant label should take the form of a check list that takes into account the factors found to be associated with such allegations in this study. An example of such a check list is shown on the following page. This checklist, which needs to be customized for each state would serve to ensure that all prisoners are being assessed in a systematic manner on the extent to which they may later become involved in sexual assault incidents. The concept is that prisoners so identified would be monitored for a set period (at least six months) of time to determine whether the designation should be retained or removed.

Finally, this research did not adequately address the issue of sexual assault among female prisoners. We found at the women prisons that the attitudes expressed by the staff suggested that they believe sexual activity was more common than at male facilities but that such behavior was largely consensual. We are not persuaded that this is indeed the case. Clearly a separate and more detailed assessment of sexual assault among female prisoners is needed better understand the dynamics of sexual assault among females.

## SEXUAL ASSAULT VICTIM/ASSAILANT PROFILE CHECKLIST

### I. Identifying Data

Date Of Referral: \_\_\_/\_\_\_/\_\_\_ Referred By: \_\_\_\_\_

Facility: \_\_\_\_\_ Inmate Name: \_\_\_\_\_ DOC Number: \_\_\_\_\_

Reason for Referral: \_\_\_\_\_

\_\_\_\_\_

### II. Possible Victim Factors

- |  | <u>Yes/No</u> |
|--|---------------|
| 1. Youthful Age (18 or younger)                      | _____         |
| 2. Elderly (60 or older)                             | _____         |
| 3. Physical stature (5'6" or less and/or LT 140 lbs) | _____         |
| 4. Developmental Disability/Mental Illness           | _____         |
| 5. First Incarceration Ever                          | _____         |
| 6. Homosexual/Bi-sexual                              | _____         |
| 7. History of sexual abuse                           | _____         |
| 8. History of facility consensual sex                | _____         |
| 9. Prior History of Protective Custody (adult/juv)   | _____         |

If three or more "Yes", enter alert code for Vulnerable Inmate

Comments: \_\_\_\_\_

\_\_\_\_\_

### III. Possible Predatory Factors

- |   | <u>Yes/No</u> |
|---|---------------|
| 1. Current or Sexual Assault Conviction             | _____         |
| 2. Past history of institutional predatory behavior | _____         |
| 3. Any History of Sexual Abuse                      | _____         |
| 4. Any History of Physical Abuse                    | _____         |
| 5. Gang affiliation                                 | _____         |

If two or more "Yes", enter alert code for Potential Aggressor

Comments: \_\_\_\_\_

\_\_\_\_\_

Completed By: \_\_\_\_\_ Facility: \_\_\_\_\_