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Crime & Delinquency



Legal Liability for Sexual Abuse of Individuals Under Custodial Supervision

Prof. Brenda V. Smith
October 9, 2012

Presented by: The Project on Addressing Prison Rape *in collaboration with the*
National PREA Resource Center

Welcome and Agenda for Webinar

PRESENTER:

Prof. Brenda V. Smith, Director of the Project on Addressing Prison Rape

AGENDA:

- 2:00 p.m. – 2:15 p.m. Welcome and Conventions
- 2:15 p.m. – 3:45 p.m. Legal Liability Presentation
- 3:45 p.m. – 4:00 p.m. Questions



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Welcome and Agenda for Webinar

- The information provided in the webinar is the viewpoint of The Project on Addressing Prison rape, and does not represent the opinion of the Bureau of Justice Assistance, the Department of Justice, or the PREA Resource Center.
- We will only be answering questions related to legal liability as it stands under current jurisprudence, and will not be responding to questions regarding the PREA standards.



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Conventions

The conventions for this webinar are:

- Your microphone should be on mute.
- If you are joining us by phone and Internet please be sure the telephone button is checked under the audio section of the webinar tool box.
- If you are joining only by phone you are on mute—you will not be able to ask questions, but if you email your question to jyarussi@wcl.american.edu we can address it.
- If you have a question during the webinar, use the chat box feature to send your question to Jaime Yarussi.
- If you have technology issues, send an email message to Jaime Yarussi (jyarussi@wcl.american.edu).

If your question is not answered during the webinar, we will respond after the session.

We will prioritize pre-submitted questions during the webinar and post them along with the webinar archive.



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

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

- Male correctional officer escorted a mentally ill female pre-trial detainee to the shower, and stared at her while she was showering in violation of agency policy.
- That same day, he sexually assaulted her in her cell, forcing her to perform oral sex on him.
- Detainee cleaned herself off with a towel which she kept under the bed and cried herself to sleep.



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Introduction

Criminal Liability – Major Issues*

- Criminal Laws:
 - » Sexual abuse of persons in custody
 - » Statutory rape
 - » Sexual assault
- Sex Offender Registration
- Reporting Laws:
 - » Notification
 - » Mandatory reporting
- Licensing
- Vulnerable Persons Statutes

*For a lengthier discussion of criminal liability issues, please refer to resources found at: <http://www.wcl.american.edu/endsilence/>



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Introduction

Civil Liability Major Issues

Staff Sexual Misconduct

Inmate-on-Inmate Conduct

Cross-gender Searches



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Introduction

Staff Sexual Misconduct – Important Factors

Who Raises the Issue?

- Male inmate
- Female inmate

Who Was the Perpetrator?

- Male staff?
- Female staff?



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Introduction

Staff Sexual Misconduct – Important Factors

Agency/Facility History:

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

Context in Which the Issue Is Raised:

- Litigation
- Investigation
- Agency oversight



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Introduction

Inmate on Inmate – Important Factors

Who Raises the Issue?

- Male inmate
- Female inmate

Nature of the Conduct:

- Forced
- Coerced
- Consensual



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Legal Framework

Legal Responsibilities

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



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Prison Rape Elimination Act

Prison Rape Elimination Act

- Focuses on prevention, detection, response, and monitoring of prison rape.
- Provides standards to prisons, jails, lock-ups, and community confinement facilities to address prison rape.
- Federal facilities must comply, while state and local facilities stand to lose funding if non-compliant.



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Civil Rights of Institutionalized Persons Act

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

- Federal Statute
- DOJ Special Litigation enforces:
 - » Prisons and jails
 - » State and local nursing homes
 - » Juvenile facilities
 - » Facilities for mentally ill
 - » Facilities for developmentally disabled and mentally retarded
- Must be widespread pattern of abuse



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Prison Litigation Reform Act

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

- Exhaustion requirement
- Limits on attorney fees
- Limits consent decrees
- Limits on appointment of special masters
- Physical injury requirement
- Limits on proceeding IFP



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Federal Torts Claims Act

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

In limited circumstances, the FTCA waives sovereign immunity and provides a cause of action against federal agencies for:

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

Most common claims include:

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



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Constitutional Framework

Constitutional Claims

- 42 U.S.C. 1983
- Bivens Action
- Eighth Amendment
- Fourteenth Amendment
- Fourth Amendment



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Constitutional Framework

42 U.S.C. 1983

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

Key elements:

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



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Constitutional Framework

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

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



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Constitutional Framework

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

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



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Constitutional Framework

Eighth Amendment

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



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Constitutional Framework

Eighth Amendment, “Objectively serious injury”

- Sufficient:
 - » Improper touching without a legitimate penological purpose can be sufficient. *Calhoun v. Detalla*, 319 F.3d 936 (7th Cir. 2003).
 - » Repeated conduct can be sufficient. *Kahle v. Leonard*, 477 F.3d 544 (8th Cir. 2007).
- Not Sufficient:
 - » Single, isolated incidents that do not result in physical harm are generally not sufficient. *Wade v. Cain*, 2011 WL 612732 (M.D.La. 2011).
 - » Verbal comments alone are generally not sufficient. *Boddie v. Schneider*, 105 F.3d 857 (2d Cir. 1997).



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Constitutional Framework

Eighth Amendment, “Deliberate indifference”

Deliberate indifference to inmate vulnerability—safety or health.

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



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Constitutional Framework

Fourteenth Amendment

- Lower legal standard than Eighth Amendment, asking whether the individual was deprived of life, liberty, or property without due process of law.
- Applicable to juveniles and pre-trial detainees.



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Constitutional Framework

Fourth Amendment

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



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State Tort Framework

State Tort Claims

- Assault
- Battery
- Intentional infliction of emotional distress
- Negligent infliction of emotional distress
- Negligent hiring, firing, supervision, training



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Forms of Liability

Potential Liability

- Municipal
- Official
- Individual
- Personal



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Forms of Liability

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

- Municipality is a person who can be held liable under Section 1983.
- Injury must be inflicted due to an officially executed policy or toleration of custom.
 - » Inaction
 - » Failure to train or supervise
 - » Failure to investigate
- Cannot be held responsible under respondeat superior or vicarious liability.
 - » Must make showing that this officer was likely to inflict a particular injury and that agency had facts from which it concludes that it was likely.



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Forms of Liability

Official Liability

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



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Forms of Liability

Individual Liability

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



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Forms of Liability

Individual Liability – Elements

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



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Forms of Liability

Personal Liability

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

Direct participation not required.

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



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Forms of Liability

Qualified Immunity

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



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

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

The Facts:

- Male correctional officer escorted a mentally ill female pre-trial detainee to the shower and stared at her while she was showering in violation of agency policy.
- That same day, he sexually assaulted her in her cell, forcing her to perform oral sex on him.
- Heckenlaible cleaned herself off with a towel, which she kept under the bed, and cried herself to sleep.



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

The Facts:

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



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

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

Legal Claims:

- Against jail authority and Steele
 - » Assault and battery
 - » Intentional infliction of emotional distress
 - » Negligent hiring
 - » Negligent retention
 - » Negligence
- Against Steele
 - » 42 U.S. C. §1983: Fourteenth Amendment substantive due process right to bodily integrity.



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

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

Court's Ruling:

- Jail liable - distinguishes from cases where acts of employee were incidental to employment
- MSJ denied
 - » Intentional infliction of emotional distress
 - » Assault and battery
 - » Negligence
 - » Substantive due process claim
- MSJ granted
 - » Negligent hiring.
 - » Negligent retention.



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

Court's Analysis:

- Precautionary measures of agency:
 - » Policy prohibiting abuse of inmates.
 - » Policy prohibiting sex with inmates.
 - » Policy prohibiting search of female inmates by male staff unless accompanied by female staff, except in emergency.
- History of agency:
 - » No complaints against Steele.
 - » No complaints of sexual abuse of inmates.



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Case Law – Investigations

Male Correctional Employee/Female Inmate

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

The Facts:

- Officer made inappropriate comments to Riley about having sex with her roommate. He entered her room after lockdown, attempted to reach under her shirt, grabbed her from behind, and rubbed up against her.
- Inmate did not report because “she doubted that she would be believed and feared the resulting discipline.”
- Officer later entered her cell and raped her. She performed oral sex so she would not become pregnant.
- The officer was terminated and convicted under state law.



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Case Law – Investigations

Male Correctional Employee/Female Inmate

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

Legal Claims:

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

Court's Ruling:

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



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Case Law – Investigations

Male Correctional Employee/Female Inmate

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

Court's Analysis:

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



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

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

The Facts:

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



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1003, 126 S.Ct. (U.S. Nov 07, 2005)

Legal Claims:

- Against County and Sheriff
 - » § 1983: Eighth Amendment: Duty to employ competent law enforcement officers and to supervise.
 - » Negligent supervision.
- Offending Officers
 - » Assault and battery.



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Cir. 2005) cert. den. Salazar v. Gonzales, 546 U.S.
1003, 126 S.Ct. (U.S. Nov 07, 2005)

Court's Ruling:

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



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

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1003, 126 S.Ct. (U.S. Nov 07, 2005)**

Court's Ruling:

- Sheriff not dismissed—"Knew of and disregarded 'an excessive risk to inmate health and safety.'"
 - » No employee evaluations since 1994.
 - » Only occasionally visited the jail
 - » Prior incidents established notice.
 - The inmates had access to vodka; drunk inmates sat in control room and knew how to run controls.
 - Dominick Gonzales exposed himself to female inmates in past and had asked female inmates to expose their breasts.



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

Campos v. Nueces County, 162 S.W. 3d 778 (Tex. App. 2005)

The Facts:

Female prisoners in county substance abuse treatment facility sued correctional officers and county under civil rights act and Texas Tort Claims Act for non-operating and improperly placed security cameras, doors, rooms and enclosures when those defects resulted in their sexual abuse and harassment.



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

Campos v. Nueces County, 162 S.W. 3d 778 (Tex. App. 2005)

Court's Ruling:

- Female prisoners were permitted to sue county and correctional officers.
- County waived sovereign immunity generally granted for premises defects and inmates had alleged that their injury was caused by defective premises.
- Intentional torts and negligence of individual correctional officers did not defeat the waiver of immunity.



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

Ice v. Dixon, 2005 WL 1593899 (N.D. Ohio 2005)

The Facts:

A bi-polar, manic depressive inmate was sexually assaulted during incarceration at Mahoning County Jail. Defendant Dixon promised to arrange Ice's release from county jail if she performed oral sex and other sex acts on him.

Legal Claims:

- Against County, Sherriff, and Dixon
 - » 42 U.S.C. § 1983: Eighth Amendment.
- Against Dixon
 - » Assault and battery.



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

Ice v. Dixon, 2005 WL 1593899 (N.D. Ohio 2005)

Court's Ruling:

- County immune in official capacity.
- Sheriff immune in official and individual capacity.
- Dixon immune in official capacity.
- Dixon **not** immune in individual capacity and on claims of assault and battery.

Court's Analysis:

- Specific policy and staff training.
- Within 48 hours of incident, videotaped plaintiff in interview.
- Took plaintiff to hospital for rape kit.
- Called Ohio Bureau of Criminal Investigation.
- Suspended Dixon.
- Internal Affairs involved.
- Sent to Mahoning County Prosecutor's Office.



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

Fernandez v. Morris, 2008 WL 2775638 (S.D.Cal. Jul. 16, 2008)

The Facts:

- Fernandez was arrested and held at Imperial County Jail for importing marijuana into U.S., where a deputy coerced and pressured her into having sex with him.
- The deputy infected the inmate with syphilis.
- The deputy was convicted of sex with a ward and admitted to “consensual” sex with Fernandez and two other inmates.



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

Fernandez v. Morris, 2008 WL 2775638 (S.D.Cal. Jul. 16, 2008)

Legal Claims:

- Against
 - County
 - Jail
 - Sheriff Carter (individual and official)
 - Against Sheriff Loera (individual and official)
- Basis
 - 42 U.S.C. §1983: Eighth Amendment
 - Assault & battery
 - Negligent hiring, supervision, training & control
 - Negligence
 - Intentional infliction of emotional distress
 - State civil rights claims



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

**Fernandez v. Morris, 2008 WL 2775638
(S.D.Cal. Jul. 16, 2008)**

Court's Ruling:

- County & jail remain in on 1983 claims.
- County & jail dismissed on state law claims (immunity).
- Carter & Loera remain in on state & 1983 claims except IIED.
- Carter & Loera out on state civil rights claims.



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

Doe v. Georgia Dep't of Corrs., 248 F.Appx. 67 (11th Cir. 2007)

The Facts:

- Inmate alleged he was sexually assaulted by a male correctional officer and reported the assault.
- Subsequent to his report, the same correctional officer assaulted a second inmate.

Legal Claim: 42 U.S.C. § 1983: Eighth Amendment

Court's Ruling: No liability.

Court's Analysis:

Facility immediately commenced an investigatory process, and the first claim was unsubstantiated and contested.



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

**Wood v. Beauclair, civ. 10-35300,
-- F.3d -- (9th Cir. 2012)**

The Facts:

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

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



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

Wood v. Beauclair, civ. 10-35300, -- F.3d -- (9th Cir. 2012)

Legal Claims:

- 42 U.S.C. § 1983
 - » Eighth Amendment – sexual harassment
 - » Eighth Amendment – failure to protect
 - » Fourth Amendment – repeated searches
 - » First Amendment – retaliation

Court's Ruling:

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



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

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

The Facts:

- A male inmate was sexually abused by a female assistant superintendent several times a week over the course of nine months.
- The assistant superintendent was charged and convicted of sexual activity by a custodian.

Legal Claims:

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



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

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

Court's Ruling:

- Prison officials could not be held liable.
 - » No evidence that they were aware of a pattern or practice of similarly high-ranking prison officials engaging in sexual abuse of prisoners.



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Case Law – Staff Sexual Misconduct Juvenile

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

The Facts:

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

Legal Claims:

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



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Case Law – Staff Sexual Misconduct Juvenile

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

Court's Ruling:

- Fourteenth Amendment the Correct Standards – Allows to proceed.
 - » Juvenile institutions are not correctional facilities.
 - » Partially correctional, partially educational.
 - » Meant to discipline as opposed to punish.
 - » Rehabilitative and educational.
 - » Juvenile detention is not criminal adjudication.
 - » Juveniles entitled to greater protection from wanton and unnecessary pain.
 - » Even if the conduct violates the Eighth Amendment.
- State tort claims allowed as well.



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Case Law – Staff Sexual Misconduct Juvenile

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

The Facts:

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



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Case Law – Staff Sexual Misconduct Juvenile

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

Legal Claims: 42 U.S.C. § 1983

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



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Case Law – Staff Sexual Misconduct Juvenile

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

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

Liability:

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

No Liability:

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



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Case Law – Inmate on Inmate Male Inmate

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

The Facts:

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

Legal Claims:

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



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Case Law – Inmate on Inmate Male Inmate

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

Court's Ruling:

- Negligence claims dismissed.
- Sheriff potentially liable on failure to train theory, if the need for training to prevent sexual predators from sexually assaulting other inmates was obvious.
- Individual deputy on duty during attack held liable.
 - » Deputy was aware of the victim's status as vulnerable and the offending inmate's status as predatory.
 - » Possibility the deputy had overheard the sexual assault taking place, which would have put a reasonable prison official on notice of a potential sexual assault.
- Other deputies not held liable, as there was not sufficient contact to identify inmate as vulnerable.



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Case Law – Inmate on Inmate Male Inmate

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

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

Legal Claims:

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

Court's Ruling: No liability

- County jail officials were not deliberately indifferent to his safety, although the inmate had expressed his fear of sexual assault due to his medium build and white skin color.
- The officer responsible for supervising the area had failed to notify her replacement of the possibility of a sexual assault on the inmate, but the court found this failure to notify was merely negligence, not deliberate indifference.



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Case Law – Cross-Gender Searches Male Correctional Employee/Female Inmate

Colman v. Vasquez, 142 F. Supp. 2d 226 (2d. Cir. 2001)

The Facts:

- Female inmate incarcerated at FCI Danbury in special unit for victims of sexual abuse was subjected to cross-gender searches.
- She filed a complaint to psychiatrist who informed a lieutenant but received no response by administration.

Legal Claims:

- 42 U.S.C. § 1983: Fourth and Eighth Amendment claims regarding constitutionality of cross-gender searches.



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Case Law – Cross-Gender Searches Male Correctional Employee/Female Inmate

Colman v. Vasquez, 142 F. Supp.2d 226, (2d. Cir. 2001)

Court's Ruling:

- Fourth Amendment claim allowed to proceed, in the absence of a legitimate penological purpose for the search.
- Eighth Amendment claim allowed to proceed, due to the special vulnerability of the inmate.
- Court noted that other jurisdictions typically treat cross-gender searches of female inmates more harshly than cross-gender searches of male inmates.



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Case Law – Cross-Gender Searches Female Correctional Employee/Male Inmate

Johnson v. Phelan, 69 F.3d 144 (7th Cir. 1995)

The Facts:

Male detainee in Cook County Jail was viewed in the nude by female correctional officers. Was visible to correctional officers while showering, using the toilet, and undressing.

Legal Claims:

- 42 U.S.C. § 1983
 - » Fourth Amendment—unreasonable search and seizure.
 - » Fourteenth Amendment—due process and cruel and unusual punishment.



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Case Law – Cross-Gender Searches Female Correctional Employee/Male Inmate

Johnson v. Phelan, 69 F.3d 144 (7th Cir. 1995)

Court's Ruling:

- Monitoring of naked detainees by correctional officer was reasonable under Fourth Amendment.
 - » “Good use of staff.”
 - » “Cross-sex monitoring reduces the need for prisons to make sex a criterion of employment, and therefore reduces the potential for conflict with Title VII and the equal protection clause.”
- Monitoring of naked detainee did not violate his due process rights, nor was cruel and unusual punishment.



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Case Law – Investigations

Male Correctional Employee/Female Inmate

Peddle v. Sawyer, 64 F. Supp. 2d 12 (D.Conn. 1999)

The Facts:

- Peddle was a female inmate with a serious history of physical and sexual abuse, incarcerated at FCI Danbury.
- Officer Cephas had history of sexual misconduct complaints, including incident outside of the prison in which he exposed himself to a woman.
- Cephas obtained personal information about Peddle and her family and used it to coerce her into sex with him.
- Singled Peddle out for pat searches and targeted her for sexual coercion and abuse.
- Cephas and another correctional officer tell Peddle not to tell about the abuse.



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Case Law – Investigations

Male Correctional Employee/Female Inmate

Peddle v. Sawyer, 64 F. Supp. 2d 12 (D.Conn. 1999)

OIG Investigation:

- OIG set up sting to try to catch Cephas in act.
- Peddle's cellmate was to notify OIG investigators when Peddle had left cell in middle of the night.
- Investigators waited for cellmate's call at local police station.
- Cellmate failed to call.
- OIG agents confronted Peddle and Cephus early the next morning.
- Peddle admitted to contact and produced towel containing Cephas' semen.
- Cephas convicted of sexual abuse of a ward.



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Case Law – Investigations

Male Correctional Employee/Female Inmate

Peddle v. Sawyer, 64 F. Supp. 2d 12 (D.Conn. 1999)

Legal Claims:

- 42 U.S.C. § 1983
 - » Fourth Amendment
 - » Fifth Amendment
 - » Eighth Amendment

Outcome:

- Case settled
- Primary vulnerabilities from government perspective were Cephas' history and failure of the sting operation.



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Conclusions

Conclusions

- Corrections officials can be held liable in their official, individual, and personal capacities for sexual violence against inmates by either staff or other offenders.
- Municipalities can be held liable for sexual violence against inmates if the violence is a result of a policy or custom of the county or agency or if it follows official policy set by the agency head.
- Enacting and enforcing strong policies and procedures can help to limit agency liability.
- Conducting and documenting training of all staff, volunteers, and contractors can help to limit agency liability.
- A robust policy of reference and background checks can help limit agency liability.



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Questions



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Evaluation

- We would like your feedback! An evaluation survey is posted at: [\[insert link here as soon as JY gets it\]](#)
- Surveys should be completed by **Tuesday, October 23, 2012 at 5:00 p.m. EDT.**
- A link to this survey will be emailed to you immediately following this webinar. If you watched this webinar in a group, please forward the link for evaluation to the whole group.



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Contact Information

For more information about the **National PREA Resource Center**:
www.prearesourcecenter.org; or ask questions at info@prearesourcecenter.org

Michela Bowman
PRC Co-Director
mbowman@nccdglobal.org

Jenni Trovillion
PRC Co-Director
jtrovillion@nccdglobal.org

Tara Graham
Sr. Program Specialist
tgraham@nccdglobal.org

For more information about **The Project on Addressing Prison Rape**:
www.wcl.american.edu/endsilence; or ask questions at endsilence@wcl.american.edu

Prof. Brenda V. Smith
Director
bvsmith@wcl.american.edu

Jaime M. Yarussi
Assistant Director
jyarussi@wcl.american.edu

Melissa C. Loomis
Research Fellow
mloomis@wcl.american.edu

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Thank you for your participation!

- The Legal Liability webinar archive, PowerPoint presentation, and questions will be available on the National PREA Resource Center website 48 hours following the webinar.
- Webinar materials will be located at: [\[insert link here\]](#)



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