

GAO

Report to the Honorable  
Eleanor Holmes Norton  
House of Representatives

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June 1999

# WOMEN IN PRISON

## Sexual Misconduct by Correctional Staff



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**General Government Division**

B-282772

June 22, 1999

The Honorable Eleanor Holmes Norton  
House of Representatives

Dear Ms. Norton:

As you requested, this report addresses two questions about staff-on-inmate sexual misconduct<sup>1</sup> in women's prisons:

- What are the applicable laws, policies, and procedures for addressing such misconduct?
- What are the number, nature, and outcome of allegations that have been made in recent years?

As agreed with your office, the report focuses on four jurisdictions. These are the nation's three largest correctional systems for women offenders—the federal Bureau of Prisons (BOP), the California Department of Corrections, and the Texas Department of Criminal Justice—and the correctional system in the jurisdiction you represent, the District of Columbia. At calendar year-end 1998, the 3 largest systems collectively held over one-third of the nation's approximately 80,000 female prisoners. Comparatively, female offenders held by the District of Columbia Department of Corrections totaled about 320 at year-end 1998. We performed our work from December 1998 to May 1999 in accordance with generally accepted government auditing standards. Appendix I presents detailed information about our scope and methodology.

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**Results in Brief**

During the 1990s, most U.S. correctional jurisdictions have recognized that staff-on-inmate sexual misconduct is a problem that should not be tolerated. As of April 1999, the federal government, 41 states (including California and Texas), and the District of Columbia had passed laws criminalizing certain types of staff sexual misconduct in prisons. Also, most U.S. correctional systems have participated in training to help them develop and implement applicable policies and procedures to address such misconduct. The four correctional systems we studied have or were in the

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<sup>1</sup> Staff-on-inmate sexual misconduct can cover a wide range of inappropriate verbal, visual, and physical behaviors, such as using lewd language or making sexual remarks, observing an inmate's personal activities (e.g., showering) without a sound penological reason, and engaging in sexual contact or acts with or without an inmate's consent (e.g., touching, kissing, abuse or assault, intercourse, rape, etc.). Depending on its nature and applicable law, staff sexual misconduct may involve either noncriminal or criminal acts.

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process of developing specific policies that prohibit staff sexual misconduct.

While laws and policies could help minimize staff sexual misconduct, our work in four jurisdictions indicates that such misconduct still occurs. According to data provided by the 3 largest jurisdictions, during calendar years 1995 to 1998, female inmates in these jurisdictions collectively made a total of 506 allegations of staff sexual misconduct, of which 92 (or 18 percent) were sustained. Most of the sustained allegations resulted in staff resignations or employment terminations. Further, the full extent of staff sexual misconduct is unknown since two of the three jurisdictions (BOP and Texas) did not provide data on all types of allegations. The District of Columbia provided data for December 1995 to June 1998, during which 12 (or 11 percent) of 111 female-inmate allegations were sustained and resulted in staff resignations or disciplinary actions ranging from suspensions to employment terminations. Of the four jurisdictions studied, only BOP reported having any criminal prosecutions with convictions under sexual misconduct laws during 1995 to 1998. All four jurisdictions were involved in at least two civil lawsuits related to staff sexual misconduct during this period.

Officials in the four jurisdictions cited lack of evidence as the primary reason why more allegations were not sustained. The officials told us that most allegations involved verbal harassment, improper visual surveillance, improper touching, and/or consensual sex. The officials noted that allegations involving rape and other types of forced sexual assault were relatively rare. Generally, however, none of the four jurisdictions we studied had readily available, comprehensive data or reports on the number, nature, and outcomes of staff-on-inmate sexual misconduct allegations. The absence of such systemic data or reports makes it difficult for lawmakers, corrections management, and others to effectively address staff sexual misconduct issues in federal prisons.

We are making a recommendation to the Director, BOP, to develop systems and procedures for monitoring, analyzing, and reporting allegations of staff-on-inmate sexual misconduct in federal prisons.

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## Staff Sexual Misconduct Issues Have Received Attention in the 1990s

Generally, “sexual misconduct by correctional staff” refers to any type of improper conduct of a sexual nature directed at prisoners. Given the near total control and power imbalance inherent in a prison environment, there is widespread consensus among correctional officials, advocacy groups, and others that sexual misconduct by correctional staff should not be tolerated.

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During the 1990s, sexual misconduct by correctional staff against female inmates became a matter of increased concern for many correctional agencies. In addition to the large increase in the female inmate population, this concern, according to a 1996 report by BOP's National Institute of Corrections (NIC), was largely driven by two sources of external pressure.<sup>2</sup> Specifically, the 1996 report noted that, within the past 5 years:

- At least 23 departments of corrections had faced class action or individual damage suits related to sexual misconduct.
- Most state legislatures had passed laws either making certain types of sexual misconduct a criminal offense or increasing the penalties for the offense.

Also, during the 1990s, the Justice Department has filed civil lawsuits alleging systemic sexual misconduct by male correctional staff in women's prisons in two states (Arizona and Michigan). Both suits were filed in March 1997 under the Civil Rights of Institutionalized Persons Act of 1980,<sup>3</sup> which is designed to protect the rights of people housed in state and local governmental institutions, including state prisons. In March 1999, the Justice Department and Arizona entered into a settlement agreement, which among other things, requires Arizona to revise employee and inmate training, strengthen investigative techniques, and requires male officers to announce their presence—absent reasonable suspicion of inappropriate behavior—when entering areas in which female inmates may be undressed. In May 1999, the Justice Department and Michigan entered into a settlement agreement. According to Justice officials, in addition to provisions similar to the Arizona requirements, the settlement agreement requires Michigan to institute a 6-month moratorium on cross-gender pat-down searches (not an issue in Arizona).

In 1996, the Association of State Correctional Administrators identified staff sexual misconduct as one of its major management concerns. Further, in recent years, additional attention to staff sexual misconduct has resulted from media focus and reports issued by various

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<sup>2</sup> Sexual Misconduct in Prisons: Law, Agency Responses, and Prevention, November 1996. The report was based on the results of a survey conducted by NIC during the summer of 1996. In its survey, NIC mailed a data collection instrument to federal and state agencies responsible for administering adult prisons. NIC received responses from 53 departments of corrections—BOP, 47 states, the District of Columbia, Canada, Guam, the Northern Mariana Islands, and Puerto Rico. NIC plans to update this survey in the summer of 1999.

<sup>3</sup> P.L. 96-247 (1980).

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organizations—such as Human Rights Watch<sup>4</sup> and Amnesty International<sup>5</sup>—and an independent fact-finder for the United Nations.<sup>6</sup>

Since 1995, a primary agenda item of NIC has been to assist correctional departments in addressing the issue of sexual misconduct among staff and inmates. For example, since October 1995, NIC has trained groups of correctional leaders—including members of the Association of State Correctional Administrators, as well as deputy directors and wardens of correctional facilities—to assist them in developing deliberate management responses as they shape policy in their agencies.

Also, as of March 1999, NIC had provided on-site technical assistance to 3 BOP facilities, 17 states, and the District of Columbia. According to NIC, during these on-site visits, NIC representatives provided assistance, such as

- conducting small focus groups with correctional staff and inmates to assess training needs and general practices within the institution,
- reviewing operational and management practices that may be contributing to staff isolation and vulnerability to sexual involvement, and
- providing relevant training to correctional staff.

Further, NIC has developed a 36-hour (initially a 24-hour) seminar on management strategies to address staff sexual misconduct. According to NIC, this seminar is to be attended by three-person teams who can shape and implement departmental policy and procedures. Topics covered include policy development, training strategies, investigative procedures, and institutional culture. According to NIC, as of April 1999, officials from BOP and correctional departments in 37 states have attended the training.

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<sup>4</sup> Human Rights Watch, Women Rights Project, All Too Familiar: Sexual Abuse of Women in State Prisons (Human Rights Watch: New York, NY), December 1996. The report reflects work conducted during March 1994 to November 1996 at a total of 11 nonfederal prisons housing female inmates in 5 states—California, Georgia, Illinois, Michigan, and New York—and the District of Columbia.

<sup>5</sup> Amnesty International, Rights for All (March 1999).

<sup>6</sup> Ms. Radhika Coomaraswamy, Report on the Mission to the United States of America on the Issue of Violence Against Women in State and Federal Prisons, in accordance with Commission Rights resolution 1997/44, January 4, 1999. The fact-finder's report is based on visits to federal and state prisons in six states—California, Connecticut, Georgia, Minnesota, New Jersey, and New York.

## Most Jurisdictions Have Laws That Criminalize Certain Types of Staff Sexual Misconduct in Prisons

According to NIC, as recently as 1990, perhaps as few as 11 U.S. correctional jurisdictions—the federal government and about 10 states—had laws specifically prohibiting certain types of staff-on-inmate sexual misconduct. As of April 1999, however, according to an update to a 1998 National Women’s Law Center report:<sup>7</sup>

- In addition to the federal government, 41 states and the District of Columbia had laws specifically criminalizing certain types of sexual misconduct in prisons.<sup>8</sup>
- The federal government and 5 of the 41 states define certain types of sexual misconduct in prisons as either a felony or a misdemeanor, depending on the nature and severity of the conduct.
- Of the other 36 states with applicable laws, 28 states (and the District of Columbia) define such conduct as a felony, and 8 states treat such conduct as a misdemeanor.

According to the National Women’s Law Center’s 1998 report, because the provisions of criminal statutes are jurisdiction specific, both the definition of sexual misconduct and the penalty imposed for violations vary from state to state. Further, the report noted that even if the state has no criminal law specifically prohibiting sexual misconduct by correctional staff, a prosecutor may apply the general sexual abuse or assault laws of the state. The Center’s report also noted that inmates may file civil actions for intentional infliction of emotional distress, negligence, and assault and/or battery.

NIC, in its 1996 report mentioned above, noted that some states’ laws criminalizing sexual misconduct apply to correctional staff in particular, whereas other states’ laws apply to public employees generally.

All four jurisdictions we studied—the federal government, California, Texas, and the District of Columbia—have laws criminalizing certain types

<sup>7</sup> The April 1999 update was compiled by Brenda V. Smith (Associate Professor, Washington College of Law, American University) and Giovanna Shay (Soros Justice Fellow, American Civil Liberties Union National Prison Project) and had not been published at the time of our review. Professor Smith authored the 1998 report while employed as the Director of the Women in Prison Project at the National Women’s Law Center, *An End To Silence: Women Prisoners’ Handbook on Identifying and Addressing Sexual Misconduct* (Washington, D.C.), April 1998.

<sup>8</sup> According to Professor Smith and Giovanna Shay, as of April 1999, the nine states without laws specifically criminalizing certain types of staff sexual misconduct were Alabama, Kentucky, Massachusetts, Minnesota, Nebraska, Oregon, Pennsylvania, Utah, and Vermont. The researchers noted that, although Nebraska and Vermont did not have laws, they had legislation pending.

of staff-on-inmate sexual misconduct. The federal law was passed in 1986,<sup>9</sup> while the other three laws—California,<sup>10</sup> Texas,<sup>11</sup> and the District of Columbia<sup>12</sup>—were passed during the mid-1990s.

Two of the four jurisdictions (the federal government and California) define certain types of staff sexual misconduct as either a felony or a misdemeanor depending on the frequency, nature, and/or severity of the conduct. The other two jurisdictions (Texas and the District of Columbia) define such conduct as a felony. None of the staff sexual misconduct laws in the four jurisdictions list consent as a defense.

## Sexual Misconduct Policies, Staff Training, and Inmate Awareness Are Important

Whatever the scope of applicable laws, NIC suggests that departments of corrections have policies that clearly define, prohibit, and specify penalties for the full range of sexual misconduct involving staff and inmates.

The four correctional jurisdictions we studied have or were in the process of developing staff sexual misconduct policies. More specifically, as of June 1999, BOP and the District of Columbia Department of Corrections had approved policies, the Texas Department of Criminal Justice had a draft policy (expected to be finalized and implemented in September 1999), and the California Department of Corrections was in the process of developing its policy.

NIC also suggests that, in addition to having a clear policy, the elements of a comprehensive approach to preventing staff sexual misconduct include the following:

- a staff-training program that presents clear information on applicable laws, agency policies, and penalties;
- a means for providing inmates with basic information about applicable laws, agency policies, and penalties, including the penalties for making false allegations regarding sexual misconduct; and
- specific procedures for handling and investigating allegations of staff sexual misconduct.

<sup>9</sup> The Sexual Abuse Act of 1986 (P.L. 99-646) (codified at 18 U.S.C. sections 2241-2244, and other scattered sections).

<sup>10</sup> California Penal Code section 289.6, "Employee or officer of detention facility; Engaging in sexual activity with consenting adult confined in detention facility."

<sup>11</sup> Texas Penal Code, section 39.04, "Violations of the Civil Rights of Person in Custody; Improper Sexual Activity with Person in Custody."

<sup>12</sup> The Anti-Sexual Abuse Act of 1994 (D.C. Law 10-257) (D.C. Code section 22-4101 et seq.).



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Three of the four jurisdictions we studied (BOP, Texas, and the District of Columbia) provide prison staff and female inmates with formal training or briefings that were specifically developed to address staff sexual misconduct. California Department of Corrections officials told us that although prison staff are not provided with training specifically developed to address staff sexual misconduct, this topic is covered during staff orientation and other training. California officials also told us that although female inmates are not provided training on staff sexual misconduct, they are given an orientation handbook that outlines the process for reporting any type of employee misconduct.

Further, all four jurisdictions have procedures for handling and investigating allegations of staff-on-inmate sexual misconduct, including when such allegations should be handled administratively or referred for criminal prosecution. Generally, an internal affairs component is responsible for conducting investigations and making referrals.

Additional information on sexual misconduct laws, policies, and procedures in the four correctional jurisdictions we studied is presented in appendix II.

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## Staff Sexual Misconduct Occurs, Although the Full Extent Is Unknown

Available data provided to us by the four jurisdictions we studied indicate that staff sexual misconduct in women's prisons is not a hypothetical issue, i.e., such misconduct does occur. The data show that during calendar years 1995 to 1998:

- At least 92 allegations of staff sexual misconduct were sustained in the three largest U.S. correctional systems. That is, the allegations resulted in staff resignations,<sup>13</sup> employment terminations, or other administrative sanctions.
- Only BOP reported having any criminal prosecutions with convictions under staff sexual misconduct laws.
- Each of the four jurisdictions was involved in at least two civil lawsuits related to staff sexual misconduct.

While the data indicate that staff sexual misconduct occurs, the full extent of the problem is unknown. Many correctional experts believe that staff-on-inmate sexual misconduct is likely underreported nationally due to the fear of retaliation and vulnerability felt by female inmates. Also, as

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<sup>13</sup>Sustained allegations include applicable staff resignations that resulted during or after investigations. According to correctional officials, these were cases wherein the investigations concluded that a preponderance of the evidence supported the allegations that violations had occurred.

discussed more fully later in this report, the jurisdictions we studied did not have readily available, comprehensive data on the number, nature, and outcome of sexual misconduct allegations. For example, BOP and Texas provided data only on the more serious types of allegations, such as improper sexual contact and assault. These jurisdictions either did not have or could not readily compile data on allegations involving other types of sexual misconduct, such as verbal harassment and inappropriate visual surveillance.

**At Least 92 Allegations of Staff Sexual Misconduct Were Sustained in the Three Largest U.S. Correctional Systems During 1995 to 1998**

According to data provided to us by BOP, California, and Texas officials, female inmates in these three jurisdictions collectively made a total of at least 506 allegations of staff-on-inmate sexual misconduct during calendar years 1995 to 1998. As table 1 shows, 92 (or 18 percent) of the 506 allegations were sustained; that is, the allegations resulted in staff resignations, employment terminations, or other administrative sanctions.

**Table 1: Staff-on-Inmate Sexual Misconduct Allegations Reported and Sustained at BOP, California, and Texas Female Prisons, Calendar Years 1995 to 1998**

Staff-on-inmate sexual misconduct	Calendar years 1995 to 1998			
	BOP <sup>a</sup>	California	Texas <sup>b</sup>	Total
Number of allegations reported	236	117	153	506
Number of allegations sustained (staff resignations, employment terminations, or other administrative sanctions)	22 <sup>c</sup>	22	48	92
<b>Total allegations sustained as a percentage of allegations reported</b>	<b>9%</b>	<b>19%</b>	<b>31%</b>	<b>18%</b>

Note: For each jurisdiction, some allegations reported during calendar years 1995 to 1998 may not have been fully resolved (e.g., investigated and found unsubstantiated or sustained) during those same years. Similarly, some of the allegations sustained during these years may have been filed before 1995.

<sup>a</sup>BOP data represent only those allegations potentially involving sexual abuse as defined under federal law. Data on allegations involving other types of sexual misconduct—such as verbal harassment and inappropriate visual surveillance—were not readily available. Also, according to BOP officials, the data may include a small but indeterminable number of allegations that involve female staff and male inmates, female staff and female inmates, or male staff and male inmates.

<sup>b</sup>Texas data represent only those allegations referred to the Office of Internal Affairs. According to Texas officials, these allegations involved the more serious types of misconduct, such as sexual contact and assault. Data on allegations involving other types of sexual misconduct—such as verbal harassment and inappropriate visual surveillance—were not readily available.

<sup>c</sup>Also, 14 of the 22 sustained allegations resulted in criminal prosecutions with convictions.

Source: GAO summary of BOP, California Department of Corrections, and Texas Department of Criminal Justice data.

District of Columbia officials could not readily provide us with data on allegations for the entire 4-year period, 1995 to 1998. Rather, according to an official from the District’s Office of the Corporation Counsel, for the period December 1995 to June 1998, female inmates in the District made 111 allegations of staff sexual misconduct, of which 12 (or 11 percent)

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were sustained.<sup>14</sup> The official could not readily provide information on the nature or outcome of the allegations but noted that sustained allegations resulted in either staff resignations or disciplinary actions ranging from suspensions to employment terminations.

Officials in the four jurisdictions we studied cited lack of evidence as the primary reason why the number of sustained allegations was relatively small compared to the total number of reported allegations. The officials explained that medical or other physical evidence frequently was not available and, thus, investigators were often faced with instances of “she said versus he said.” The officials told us that another reason why more allegations were not sustained was that many allegations were false assertions made by inmates in an attempt to manipulate the system and victimize staff.

#### Federal Bureau of Prisons

The 22 allegations BOP sustained during 1995 to 1998 resulted in 18 staff resignations, 3 employment terminations, and 1 staff reassignment. As noted in table 1, each of the 22 allegations involved sexual abuse—which, by definition, is potentially criminal conduct. In fact, 14 of the 22 allegations sustained also resulted in criminal prosecutions with convictions. The 14 prosecution cases consisted of (1) the 3 employment termination cases and (2) 11 of the 18 staff resignation cases.<sup>15</sup>

Regarding the other seven staff resignation cases, BOP officials told us that six of the seven employees resigned without any adverse personnel action being recorded in personnel files.<sup>16</sup> Information provided to us by BOP indicates that two of the seven allegations had elements of forced sexual contact, whereas the other five cases perhaps involved consensual sex—which, nonetheless, can be a criminal offense under federal law. A BOP official noted that BOP does maintain a database of staff who resign while under investigation and that BOP checks the database for rehiring purposes.

#### California Department of Corrections

The 22 allegations California sustained during 1995 to 1998 resulted in 12 staff resignations, 4 employment terminations, and 6 other types of administrative sanctions being imposed (i.e., a letter of instruction, a pay

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<sup>14</sup> According to the Corporation Counsel official, the female-inmate allegations of staff sexual misconduct may include a small but insignificant number of allegations involving female correctional staff.

<sup>15</sup> The nature and outcome of the 14 prosecution cases are discussed later in this report.

<sup>16</sup> One of the seven employees who resigned worked for the U.S. Forest Service. He allegedly abused a BOP female inmate assigned to a work detail.

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reduction, and 4 unspecified adverse personnel actions). California officials could readily provide information on the nature of only the five allegations that were sustained during 1998. Of the five sustained allegations during that year, three resulted in resignations—two involving “overfamiliarity,” including the exchange of personal information (address and telephone number) and one involving alleged sexual intercourse—and two resulted in terminations (involving improper touching).

California Department of Corrections officials told us that in each of its 12 cases that resulted in resignations, the accused staff member resigned while under investigation. The officials noted, however, that the employees’ personnel files were documented with one of the following annotations: “resigned under adverse circumstances,” “resigned with fault,” or “resigned with prejudice.” California officials noted that since late calendar year 1998, all department investigations, including those during which staff members exercise their right to resign, are to be continued to resolution and, if warranted, the results recorded in personnel files.

#### Texas Department of Criminal Justice

As table 1 also shows, Texas had the most sustained allegations (48) during the 4-year period, accounting for about 52 percent of the 92 total. Among these three jurisdictions, at 31 percent, Texas also had the highest figure for total allegations sustained as a percentage of allegations reported.

Texas Office of Internal Affairs officials could readily provide information on only the 11 allegations sustained during 1998. For that year, the 11 allegations involved consensual sex or other inappropriate sexual contact—which can be criminal offenses under Texas law—and resulted in employee resignations or terminations. The officials told us that most of the 11 sustained allegations resulted in the employee resigning either during the investigation or when he found out he would be terminated. The officials told us that regardless of whether the employees resigned or were terminated, Internal Affairs completed the investigations and documented the outcome in personnel files. The officials also told us that in each of the 11 cases, a “no rehire letter” was put in the employee’s file.

Texas Internal Affairs officials told us that, although detailed information was not readily available for allegations filed during 1995 to 1997, most of these allegations involved consensual sex or other inappropriate sexual contact. The officials also told us that, similar to the allegations sustained during 1998, most, if not all of the allegations sustained during 1995 to 1997 resulted in employee resignations or terminations.

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## Only BOP Reported Criminal Prosecutions With Convictions

As previously mentioned, all four of the jurisdictions we studied have laws that specifically criminalize certain types of staff-on-inmate sexual misconduct. Officials in all four jurisdictions told us that criminal prosecutions can be initiated even if the staff member resigns. However, only BOP reported having any criminal prosecutions with convictions under applicable laws during calendar years 1995 to 1998. BOP provided us with summary information for the 14 cases that resulted in prosecutions with convictions during this period. The summary information shows that the allegations involved male staff at seven different BOP facilities and included having sex with an inmate, having sex in exchange for money, sexual abuse, and forced sexual assault (i.e., rape). BOP provided the following sentencing information for the 14 cases:

- Seven convictions resulted in sentences of incarceration ranging from 3 to 232 months.
- Six convictions resulted in sentences of probation ranging from 12 to 60 months, of which, 1 conviction also included home confinement.
- One conviction resulted in a sentence of 3-months home confinement.

In addition to incarceration, probation, and home confinement, 10 of the 14 sentences included fines or restitution ranging from \$25 to \$5,000. Other sentencing provisions included community service and supervised release. Regardless of whether incarceration was or was not a sentencing provision, as previously mentioned, the 14 convicted staff members either resigned or BOP terminated their employment.

BOP's Office of Internal Affairs generates quarterly status reports on criminal investigations involving staff-on-inmate sexual misconduct and provides these reports to BOP's Office of General Counsel.

In California, at the time of our review, no cases involving alleged staff-on-inmate sexual misconduct were under investigation by cognizant prosecution authorities. However, the other two jurisdictions did have open or ongoing investigations at the time of our review. Specifically, in Texas, local district attorney's offices were considering three cases for possible prosecution; and, in the District of Columbia, the U.S. Attorney's Office was considering six cases.

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## Civil Lawsuits Related to Staff Sexual Misconduct Were Filed in All Four Jurisdictions

In addition to resignations, employment terminations, other administrative sanctions, and criminal prosecutions, staff-on-inmate sexual misconduct at female prisons may result in civil lawsuits. According to summary information provided to us by BOP, during 1995 to 1998, BOP was involved in 14 civil lawsuits. Of these 14 cases, 4 had been closed or dismissed, 3 had been settled, and 7 were still pending at the time of our review. In one of the cases settled, BOP agreed to pay three women \$500,000 to end a lawsuit in which the women claimed they had been beaten, raped, and sold by guards for sex with male inmates.

According to California Department of Corrections officials, the department was involved in two civil lawsuits related to staff sexual misconduct during 1995 to 1998. In one case, settled in 1996, the department agreed to pay the plaintiff and her attorneys \$73,000 to end a lawsuit that alleged forced sexual intercourse, among other things. The other lawsuit—alleging sexual harassment, assault, improper touching, and lewd sexual remarks—was still pending at the time of our review. However, according to department officials, the employee was terminated in 1997 for behavior not specifically related to the lawsuit.

Since 1995, the Texas Department of Criminal Justice has been involved in four civil lawsuits related to sexual assault claims by female inmates against male correctional staff, according to information provided us by the Law Enforcement Defense Division, Texas Office of the Attorney General. One of the lawsuits, filed by a female inmate in 1996, was closed in 1997 based on the federal district court's granting of a motion to dismiss. The other three lawsuits, each filed in 1998, were still open at the time of our review. One of these 3 open lawsuits was filed on behalf of 12 plaintiff female inmates, who alleged that they had been sexually assaulted. The other two open lawsuits each involved one plaintiff, i.e., a different female inmate in each case.

The District of Columbia Department of Corrections has had long-standing problems involving allegations of sexual misconduct by correctional staff. For example, in October 1993, female inmates filed suit in federal district court, alleging various violations of constitutional rights, including an allegation that the Department of Corrections failed to protect them against sexual harassment, sexual assault, and rape by guards.<sup>17</sup> A result of this lawsuit was that, in December 1994, the Department of Corrections

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<sup>17</sup> *Women Prisoners of the District of Columbia Department of Corrections v. District of Columbia*, 877 F. Supp. 634 (D.D.C. 1994), vacated in part, modified in part, 899 F. Supp. 659 (D.D.C. 1995), vacated in part, remanded by 93 F. 3d 910 (D.C. Cir. 1996), cert. denied, 117 S. Ct. 1552 (1997), on remand, 968 F. Supp. 744 (D.D.C. 1997).

was required by court order to develop a policy, provide staff and inmates with training, and take other appropriate steps to prevent and remedy staff sexual misconduct. The department implemented its initial sexual misconduct policy in March 1995.

In September 1995, female inmates performed a striptease for a group of predominantly male correctional staff, according to an official from the District's Office of the Corporation Counsel. The official noted that based on this incident (1) four correctional officers were fired and six were suspended without pay and (2) four civil lawsuits were filed, all of which were pending at the time of our review. The official told us that no other civil lawsuits were filed or ongoing from 1995 to 1998.

## Better Monitoring and Analysis Could Help Address Staff Sexual Misconduct

According to the cognizant NIC official, a nationally recognized expert on sexual misconduct in correctional facilities, both the reporting of staff-on-inmate sexual misconduct allegations and the breadth of investigations have improved in many jurisdictions during the 1990s. The official noted, however, that most U.S. correctional systems still do not adequately capture or track data related to such allegations. The absence of adequate information systems makes it difficult to monitor the incidence of sexual misconduct, to keep track of allegedly abusive employees or those who have been found to have violated prison rules and/or criminal law, and to identify corrective actions needed to help prevent such misconduct.

As previously mentioned, the four jurisdictions we studied generally had no readily available, comprehensive data or reports on the number, nature, and outcomes of staff-on-inmate sexual misconduct allegations. Rather, in response to our inquiries for such information, corrections officials conducted file reviews or undertook other manual efforts rather than rely on management information systems or other centralized sources.

BOP's Office of Internal Affairs is responsible for tracking both noncriminal and potentially criminal allegations of staff-on-inmate sexual misconduct in federal prisons.<sup>18</sup> However, information on all allegations was not readily available from BOP's tracking system. For example, Internal Affairs officials could not readily differentiate allegations of noncriminal sexual misconduct—involving, for example, indecent language—from other types of allegations classified as “unprofessional conduct.” Consequently, BOP did not provide us with any information on noncriminal allegations. According to BOP officials, while such

<sup>18</sup> The Justice Department's Office of the Inspector General is to review all cases and investigate those involving suspected criminal activity.

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information is not readily available from BOP's tracking system, noncriminal allegations are routinely reported and investigated.

Also, BOP's legal database could not readily differentiate lawsuits involving staff-on-inmate sexual misconduct from other lawsuits. Consequently, in response to our request, BOP obtained this information from each of its six regional offices. BOP officials told us that before our inquiries, BOP had awarded contracts for databases that, when implemented, will allow Internal Affairs and legal officials to perform data searches by name, subject matter, and other items.

California Department of Corrections officials told us that the department's current system does not provide a format for distinguishing staff sexual misconduct from other types of staff misconduct. Consequently, in response to our request, the department contacted each of California's five prisons housing female inmates to obtain information on the number and outcome of staff-on-inmate sexual misconduct allegations. Also, department officials told us that providing specific information or examples on the nature of allegations (e.g., verbal harassment, improper touching, and/or rape) was impractical, since it would require a thorough reading of all allegations or complaints filed as staff misconduct to identify those involving staff sexual misconduct.<sup>19</sup> In response to our request, department officials reviewed files and provided information on the nature of the five allegations sustained during 1998.

The Texas Department of Criminal Justice provided information on only those staff sexual misconduct allegations that were referred to the department's Internal Affairs Division by prison wardens. According to Internal Affairs officials, these allegations generally involved the more serious types of misconduct, such as sexual contact and assault. The officials noted that allegations involving other types of sexual misconduct—such as verbal harassment and inappropriate visual surveillance—are usually handled administratively by prison wardens and, consequently, information on these allegations is not readily available.

Further, Texas Internal Affairs Division officials told us that information on the allegations referred by wardens to Internal Affairs was not readily available or extractable from the department's systems or databases. Consequently, to obtain information on the number of staff sexual misconduct allegations filed and sustained during calendar years 1995 to 1998, the department conducted a case-by-case search of all allegations

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<sup>19</sup> In California's correctional system, inmate allegations or complaints are referred to as "appeals."



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filed under improper employee-inmate relationships. In response to our request, department officials reviewed files and provided information on the nature and outcome of cases sustained during calendar year 1998. However, the department could not readily determine the nature and results or outcomes of the allegations sustained during calendar years 1995 to 1997, because, according to department officials, providing such information would require a time-consuming review of case files.

As previously mentioned, District of Columbia officials could not readily provide us with data on the number, nature, or outcome of staff sexual misconduct allegations during the 4-year period, 1995 to 1998. Rather, District officials provided us with information on the number of allegations filed and sustained for the period December 1995 to June 1998. Also, the Department of Corrections has been required by court order since December 1994 to (1) notify the Metropolitan Police Department about any allegation involving unwelcome sexual intercourse or unwelcome sexual touching, (2) communicate with the police department concerning the status of any investigations of these allegations, and (3) periodically document the status of police investigations.<sup>20</sup> However, in response to our initial inquiries, the Department of Corrections did not have any current or readily available information on the status of police investigations. In response to our follow-up inquiries, the Department of Corrections obtained investigation status information from the Metropolitan Police Department.

Further, all four jurisdictions we studied did not routinely analyze data on staff sexual misconduct allegations or generate management reports to identify potential trends or problem areas. Correctional officials in these jurisdictions told us that the current systems used to capture sexual misconduct data do not facilitate subsequent analyses and reports.

Recognizing the need for better data and management systems to address staff sexual misconduct issues, NIC began offering training in this area in 1996. NIC suggests that important data to capture, monitor, and analyze include the facility in which the alleged incident occurred; the date, time, and place of the alleged incident; the name of the complainant and respondent(s); and the nature of the incident.

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## Conclusions

Because many female inmates may be reluctant or unwilling to report staff sexual misconduct and jurisdictions lack systematic data collection and

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<sup>20</sup> The District of Columbia Department of Correction's October 1997 policy on sexual misconduct against inmates requires that the status of police investigations be documented every 30 days.

analysis of reported allegations, the overall extent of staff-on-inmate sexual misconduct in female prisons is largely unknown. However, prior research and our work indicate that such behavior can and does occur. Moreover, there is widespread consensus that sexual misconduct by correctional staff should not be tolerated. While applicable laws, policies, and procedures would not eliminate staff sexual misconduct, these tools could help minimize the incidence of such behavior. For the most part, the jurisdictions we studied do have these tools.

None of the four jurisdictions we studied had readily available, comprehensive data or reports on the number, nature, and outcomes of staff-on-inmate sexual misconduct allegations. The systemic absence of such data or reports makes it difficult for lawmakers, correctional system managers, relevant federal and state officials, inmate advocacy groups, academicians, and others to effectively address staff sexual misconduct issues. For example, without such data or reports, correctional system managers cannot effectively monitor the incidence of staff sexual misconduct, keep track of allegedly abusive employees, and identify corrective actions needed to help minimize such misconduct. Also, absent better management information systems and more comprehensive data, it remains unclear the extent to which laws are routinely enforced and policies and procedures are followed. Accordingly, this is an area wherein NIC began providing training in 1996.

## Recommendation to the Director, BOP

We recommend that the Director of BOP develop systems and procedures to

- monitor and analyze allegations of staff sexual misconduct in federal prisons and
- periodically report results to the Justice Department's Office of the Inspector General and to appropriate BOP officials (e.g., senior managers and wardens).

These analyses and reports should be in sufficient detail to identify and monitor trends and determine whether any corrective actions are needed. For instance, the analyses and reports should quantify all categories of alleged staff sexual misconduct, including allegations of unprofessional or noncriminal conduct, as well as allegations involving potentially criminal conduct.

## Agency Comments and Our Evaluation

On May 26, 1999, we provided a draft of this report for review and comment to the Department of Justice, BOP, the California Department of

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Corrections, the Texas Department of Criminal Justice, and the District of Columbia Department of Corrections.

On June 3, 1999, Justice's Audit Liaison Office (Justice Management Division) orally advised us that (1) the draft had been reviewed by Justice's Office of the Deputy Attorney General, the Office of the Inspector General, and the Civil Rights Division and (2) these reviewers generally had no specific comments on the information presented in the draft. However, Justice's Civil Rights Division provided updated information regarding a civil lawsuit. That is, the division informed us that, in May 1999, the Justice Department and Michigan entered into an agreement to settle a civil lawsuit related to sexual misconduct by male correctional staff in the state's prisons for women. This information has been incorporated in this report where appropriate.

In its written comments dated June 3, 1999, BOP concurred with our recommendation that BOP develop systems and procedures for monitoring, analyzing, and reporting allegations of staff-on-inmate sexual misconduct. The Director of BOP noted that, as stated in our draft, BOP has begun the process for acquiring a new, more sophisticated database. According to the Director, this database is expected to be operational by the end of calendar year 1999, and when fully implemented, will (1) allow better sorting and analysis of allegations of staff sexual misconduct and (2) enable BOP to improve its monitoring and identification of potential trends. During the period June 2-4, 1999, we also received oral comments from BOP indicating that the draft was reviewed by BOP's Office of Internal Affairs, Office of General Counsel, Correctional Programs Division, and NIC. These components provided technical comments and suggestions, which have been incorporated in this report where appropriate.

During the period June 2-7, 1999, the California Department of Corrections, the Texas Department of Criminal Justice, and the District of Columbia Department of Corrections provided either oral or written technical comments and clarifications, which have been incorporated in this report where appropriate.

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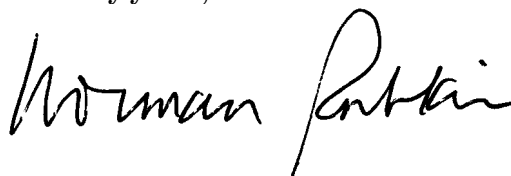
As arranged with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days after the date of this report. At that time, we will send copies to Representative Henry Hyde, Chairman, and Representative John Conyers, Ranking Minority Member, House Judiciary Committee; and to Senator Orrin Hatch, Chairman, and Senator Patrick Leahy, Ranking Minority Member, Senate

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Judiciary Committee. We will also send copies of this report to: The Honorable Janet Reno, Attorney General; The Honorable Kathleen Hawk Sawyer, Director, BOP; Mr. C.A. "Cal" Terhune, Director, California Department of Corrections; Mr. Wayne Scott, Executive Director, Texas Department of Criminal Justice; Mr. Odie Washington, Acting Director, District of Columbia Department of Corrections; and other interested parties. Copies will also be made available to others upon request.

The major contributors to this report were Danny Burton, Assistant Director; Eric Erdman, Evaluator-in-Charge; Kay Muse, Senior Evaluator; and Geoffrey Hamilton, Senior Attorney. Please contact me on (202) 512-8777 if you or your staff have any questions about this report.

Sincerely yours,

A handwritten signature in black ink that reads "Norman Rabkin". The signature is written in a cursive style with a large initial "N" and a long, sweeping tail.

Norman J. Rabkin  
Director  
Administration of Justice Issues

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## Abbreviations

BOP	Bureau of Prisons
NIC	National Institute of Corrections

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# Scope and Methodology

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## Overview Perspectives

To obtain overview perspectives regarding staff-on-inmate sexual misconduct, we conducted a literature search and also contacted the National Institute of Corrections (NIC), a component of the federal Bureau of Prisons (BOP) that provides assistance to federal, state, and local corrections agencies working with adult offenders. In recent years, NIC has focused on staff-on-inmate sexual misconduct issues and has provided extensive training to federal and state correctional system personnel.

Also, we contacted the National Women’s Law Center (Washington, D.C.), a nonprofit organization that has been working since 1972 to advance and protect women’s legal rights. In 1990, the center initiated a project to address problems confronting women prisoners. As part of this project, in 1998, the center produced an educational manual designed for incarcerated women and others concerned about sexual misconduct in correctional institutions.<sup>1</sup>

To obtain additional perspectives regarding staff sexual misconduct at female prisons, we contacted the Department of Justice’s Civil Rights Division, which is responsible for investigations and litigation under the Civil Rights of Institutionalized Persons Act of 1980.<sup>2</sup> According to the Justice Department, investigations are initiated when there is reason to believe that serious, systemic, unconstitutional conditions exist at a facility covered by the statute.<sup>3</sup> Investigations and related actions can involve general conditions of confinement, such as inadequate fire safety, poor sanitation, improper use of restraints, inadequate medical and mental healthcare, and staff sexual misconduct.

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## Four Correctional Systems Studied

As agreed with the requester, to obtain specific information about (1) applicable laws, policies, and procedures and (2) the number, nature, and outcomes of allegations made in recent years, we focused on four correctional systems—BOP, the California Department of Corrections, the Texas Department of Criminal Justice, and the District of Columbia Department of Corrections. The first three are the nation’s largest correctional systems for female offenders. At calendar year-end 1998, approximately

- 9,200 female inmates were in federal prisons,

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<sup>1</sup> National Women’s Law Center, *An End to Silence: Women’s Prisoners Handbook on Identifying and Addressing Sexual Misconduct*, April 1998.

<sup>2</sup> P.L. 96-247 (1980).

<sup>3</sup> This act is designed to protect the rights of people housed in state and local governmental institutions, including state prisons.



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- 11,500 female prisoners were under the jurisdiction of the California Department of Corrections, and
  - 10,700 female prisoners were under the jurisdiction of the Texas Department of Criminal Justice.

In 1998, these three correctional systems held over one-third of the nation's approximately 80,000 female prisoners. At calendar year-end 1998, about 320 female offenders were under the jurisdiction of the District of Columbia Department of Corrections.

Our contacts included officials in (1) BOP's Office of Internal Affairs, Office of General Counsel, and Correctional Programs Division; (2) the California Department of Corrections' Institutions Division and Internal Affairs Division; (3) the Texas Department of Criminal Justice's Internal Affairs Division; and (4) the District of Columbia Department of Corrections' Office of the Deputy Director for Institutions and the District's Office of the Corporation Counsel (Special Litigation Division). We reviewed applicable statutes; policy documents and operations manuals; inmate orientation handbooks; and available statistics (for calendar years 1995 to 1998) regarding the number of allegations filed and the number sustained (i.e., allegations that resulted in staff resignations, employment terminations, or other administrative sanctions). Further, we inquired about the number and outcomes or status of criminal prosecutions with convictions and civil lawsuits alleging staff-on-inmate sexual misconduct.

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## Limitations and Clarifications

The scope of our work did not include (1) interviewing inmates, (2) testing or confirming whether applicable policies for reporting and investigating sexual misconduct were being followed in actual practice, or (3) reviewing the merits of allegations or the appropriateness of outcomes or disciplinary actions.

Further, except for some civil lawsuits that are public records, correctional officials did not provide us information identifying either the individuals who filed allegations of sexual misconduct or the correctional staff who allegedly engaged in the prohibited behaviors. Thus, we did not specifically determine whether a relatively few inmates were responsible for making multiple or repeated allegations against relatively few or the same correctional staff.

Also, we did not independently verify information provided to us by corrections officials regarding the number, nature, and outcomes of sexual misconduct allegations made by female inmates during calendar years

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1995 to 1998. However, we did obtain annual statistics that do add to the 4-year totals presented in table 1. Also, the information we reported regarding the nature and outcomes of allegations is based on written responses provided to us by corrections officials. These responses, according to senior corrections officials, were compiled by applicable program staff and were reviewed by applicable managers before being provided to us.

Finally, as previously mentioned, “sustained” allegations include applicable staff resignations that resulted during or after investigations. According to correctional officials, these were cases wherein the investigations concluded that a preponderance of the evidence supported the allegations that violations had occurred.

# Laws, Policies, and Procedures Related to Staff-on-Inmate Sexual Misconduct in Four U.S. Correctional Jurisdictions

This appendix presents information about staff-on-inmate sexual misconduct<sup>1</sup> laws, policies, and procedures regarding women’s prisons in four correctional jurisdictions—the federal Bureau of Prisons (BOP), the California Department of Corrections, the Texas Department of Criminal Justice, and the District of Columbia Department of Corrections.

## Federal Bureau of Prisons

At the federal level, criminal offenses enacted by the Sexual Abuse Act of 1986 are the primary laws covering staff-on-inmate sexual abuse.<sup>2</sup> Under the act, a staff person who engages in a sexual act with an inmate is criminally liable. Consent is not listed in the statute as a defense to criminal prosecution. According to an April 1999 survey,<sup>3</sup> the federal government is one of the few jurisdictions that does not define all cases of staff sexual assault in prisons as a felony. Rather, misconduct is defined as either a felony or a misdemeanor, depending on the nature and severity of the assault.

According to BOP officials, since 1973, BOP’s “standards of employee conduct” has covered inappropriate staff relationships with inmates. The officials noted that in 1996, BOP modified its standards to prohibit an employee from engaging in, or allowing another person to engage in, sexual behavior with an inmate.

In 1995, BOP approved a sexual misconduct policy that primarily addressed inmate-on-inmate sexual misconduct. In December 1997, BOP updated its policy to include instances of staff-on-inmate sexual misconduct and to present more detailed mental health treatment protocols for victims. The 1997 policy update defines staff-on-inmate sexual misconduct as “engaging in, or attempting to engage in a sexual act with any inmate or the intentional touching . . . with the intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person.” As with applicable federal law in which consent is not listed as a

<sup>1</sup> Staff-on-inmate sexual misconduct can cover a wide range of inappropriate verbal, visual, and physical behaviors, such as using lewd language or making sexual remarks, observing an inmate’s personal activities (e.g., showering) without a sound penological reason, and engaging in sexual contact or acts with or without an inmate’s consent (e.g., touching, kissing, abuse or assault, intercourse, rape, etc.). Depending on its nature and applicable law, staff sexual misconduct may involve either noncriminal or criminal acts.

<sup>2</sup> The Sexual Abuse Act of 1986 (P.L. 99-646) (codified at 18 U.S.C. sections 2241-2244 and other scattered sections). The laws address aggravated sexual abuse, sexual abuse, sexual abuse of a minor or ward, and abusive sexual contact.

<sup>3</sup> The April 1999 survey was conducted by Brenda V. Smith (Associate Professor, Washington College of Law, American University) and Giovanna Shay (Soros Justice Fellow, American Civil Liberties Union National Prison Project) and had not been published at the time of our review.

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## Appendix II

### Laws, Policies, and Procedures Related to Staff-on-Inmate Sexual Misconduct in Four U.S. Correctional Jurisdictions

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defense, the 1997 policy update also provides that any sexual act between staff and inmates is prohibited, even when no objections are raised.

BOP's current policy does not cover the full range of staff sexual misconduct, but an update of the policy is planned for late 1999. That is, currently, while sexual acts and improper touching are covered, the policy does not mention other types of misconduct, including, for example, indecent sexual language or gestures and inappropriate visual surveillance. According to BOP officials, although such behaviors are not covered by BOP's sexual misconduct policy, these behaviors are included under a more encompassing category in BOP's standards of employee conduct. While the standards do not specifically define or prohibit staff sexual misconduct, BOP training documents indicate that these other types of misconduct are defined and discussed during staff training. Also, according to BOP officials, before our inquiries, BOP had planned to update its sexual misconduct policy in late 1999 to cover noncriminal sexual behavior, such as indecent, profane, or abusive language or gestures and inappropriate visual surveillance of inmates.

Key elements of BOP's 1997 sexual misconduct policy include (1) educating and training staff and inmates; (2) safeguarding, assessing, treating, and managing sexually assaulted inmates; and (3) investigating, disciplining, and/or prosecuting perpetrators of sexual assault.

BOP's policy requires that all staff be trained to recognize signs of sexual assault, understand the identification and referral process, and have a basic understanding of sexual assault prevention and response techniques. In 1998, BOP began training its staff regarding staff-on-inmate sexual misconduct, and it plans to continue such training in future years during required annual refresher courses. Specialized training is also required for staff who are likely to be most involved in the treatment or management of sexually assaulted inmates, such as health and psychology services staff. Further, the Director of BOP has addressed BOP's zero tolerance towards staff sexual misconduct during training and briefings to senior BOP officials. According to BOP officials, before 1998, the topic of staff sexual misconduct was covered during other staff training.

BOP's policy also requires that inmate education include information about (1) how inmates can protect themselves from becoming victims while incarcerated, (2) treatment options available to victims of sexual assault, and (3) methods of reporting incidents of sexual assault. According to BOP, each inmate is also provided a handbook that details BOP's policy and explains the process for filing sexual misconduct

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## Appendix II

### Laws, Policies, and Procedures Related to Staff-on-Inmate Sexual Misconduct in Four U.S. Correctional Jurisdictions

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complaints. The handbook describes the various methods inmates can use to report allegations of staff sexual misconduct—i.e., directly to a facility staff member, the warden, a chaplain, the applicable BOP regional office, and/or the Justice Department’s Office of the Inspector General. According to BOP policy, after reporting an allegation, the complainant should be referred for a medical examination and offered immediate protection.

BOP’s Office of Internal Affairs is responsible for tracking all sexual misconduct allegations.<sup>4</sup> The Justice Department’s Office of the Inspector General is to review all cases and investigate those involving suspected criminal activity. If warranted, the Inspector General’s Office can refer cases to the U.S. Attorney’s Office for prosecution. Cases not involving criminal activity are to be returned to BOP’s Office of Internal Affairs for an administrative investigation, which can result in various types of disciplinary action.

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## California Department of Corrections

California state law related to staff sexual misconduct specifically defines prohibited sexual activity.<sup>5</sup> Under this law, correctional staff who engage in sexual activity with an inmate are criminally liable. Consent is not a defense to criminal prosecution for this offense. The first violation of this offense is considered a misdemeanor and any subsequent violation of this offense is a felony.

California Department of Corrections policy documents do not specifically or separately cover staff-on-inmate sexual misconduct. Rather, California Department of Corrections officials told us that such behaviors are included under a more-encompassing category of “employee misconduct,” as presented in Title 15 of the California Code of Regulations and the department’s Operations Manual. According to the manual, allegations of “serious” employee misconduct—which include having intimate relationships with an inmate—are to be investigated by the department’s Office of Internal Affairs. If sustained by Internal Affairs, these serious allegations are to be referred to (1) the applicable warden, who can impose administrative sanctions (adverse personnel actions) ranging from an official reprimand to employment termination and/or (2) the local district attorney’s office for criminal prosecution. Allegations of less serious or performance-related conduct—such as becoming overly familiar with an inmate (e.g., sharing a lunch with an inmate)—are subject to a fact-finding

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<sup>4</sup> BOP, Program Statement 1210.17, “Office of Internal Affairs,” August 4, 1997.

<sup>5</sup> California Penal Code, section 289.6, “Employee or officer of detention facility; Engaging in sexual activity with consenting adult confined in detention facility.”

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## Appendix II

### Laws, Policies, and Procedures Related to Staff-on-Inmate Sexual Misconduct in Four U.S. Correctional Jurisdictions

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inquiry conducted by a staff person assigned by the warden or other appropriate authority.

According to California Department of Corrections officials, although prison staff are not provided with training specifically developed to address staff sexual misconduct, this topic is covered during staff orientation and other training. The officials told us that female inmates are not provided formal training to assist them in recognizing, handling, and reporting staff sexual misconduct. The officials noted, however, that female inmates are given an orientation handbook that outlines the process for reporting any type of employee misconduct. In January 1999, the department appointed an ombudsman—reporting directly to the Chief Deputy Director, Field Operations—to oversee conditions in female prisons and to serve as a focal point for the most sensitive complaints and issues.

In March 1999, senior officials from the California Department of Corrections attended NIC training on staff-on-inmate sexual misconduct. Based on information presented at this training, according to California officials, the department has adopted a three-pronged approach to the issue of staff sexual misconduct as follows:

- First, a bill drafted by the department has been submitted to the California legislature to increase the penalties for staff sexual misconduct and expand the scope of proscribed activities under the law.
- Second, in April 1999, the Director, California Department of Corrections, distributed a memorandum to all staff emphasizing the department’s “zero tolerance” towards employees engaging in sexual misconduct with inmates and parolees. Also, as of May 1999, the department was in the process of drafting regulations specifying its zero-tolerance towards staff sexual misconduct.
- Third, the department’s Office of Internal Affairs, rather than institutional investigators, now investigates allegations of staff sexual misconduct. The department anticipates that a significant number of Internal Affairs staff will acquire specialized training related to sexual misconduct investigations.

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## Texas Department of Criminal Justice

Texas state law was changed in September 1997 to provide that correctional staff who engage in sexual intercourse or in deviate sexual intercourse with an individual in custody are criminally liable.<sup>6</sup> According to Texas Department of Criminal Justice officials, effective September 1, 1999, new laws will also prohibit certain types of sexual contact and will cover both incarcerated and supervised (e.g., parolees) individuals. The officials told us that before 1997, other state laws generally applicable to sexual assault or aggravated sexual assault could be used to prosecute cases of staff-on-inmate sexual assault.

The Texas Department of Criminal Justice's employees' general rules of conduct cover prohibited employee-offender relationships. At the time of our review, Texas had a draft policy on staff sexual misconduct with offenders (expected to be finalized and implemented in September 1999). The draft policy also addresses prohibited employee-offender relationships and specifically defines staff sexual misconduct, including written or electronic communication of a sexual nature; obscene or sexual advances, gestures, or comments; sexual intercourse; and other sexual conduct (e.g., inappropriate touching).

The draft policy also specifies penalties or disciplinary actions related to sexual misconduct, describes staff responsibilities for reporting prohibited sexual activities, and requires staff training regarding sexual misconduct with inmates. Also, according to department officials, female inmates are provided sexual misconduct training during intake orientation and are given a handbook that describes the process for reporting any type of employee misconduct.

The department's Internal Affairs Division is responsible for investigating the more serious types of staff sexual misconduct allegations, such as sexual contact and assault. Internal Affairs is to refer suspected violations of criminal law to local district attorney's offices for prosecution. All other alleged violations of departmental policy are to be investigated by the facility or department administration, with possible disciplinary action taken against the employee.

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<sup>6</sup> Texas Penal Code, section 39.04, "Violations of the Civil Rights of Person in Custody; Improper Sexual Activity with Person in Custody."

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## District of Columbia Department of Corrections

According to various correctional experts, the District of Columbia has one of the strictest and most comprehensive sets of sexual abuse laws and policies in the country. The District's Anti-Sexual Abuse Act of 1994, in general, makes staff-on-inmate sexual acts and sexual contact felony offenses.<sup>7</sup>

The District of Columbia Department of Corrections has been required by court order since December 1994 to take appropriate steps to prevent and remedy staff sexual misconduct. The court order provisions are primarily addressed in the department's sexual misconduct policy, as revised in 1997.

In general, the department's policy defines prohibited staff sexual misconduct to include sexual abuse (any sexual act or sexual contact), sexual harassment (verbal or physical sexual conduct creating a hostile environment), and invasion of privacy (observing an inmate's personal activities without a sound penological reason or failing to announce presence when entering the housing unit of an inmate of the opposite sex without a sound penological reason). The department's policy, as does the staff-on-inmate provision of the Anti-Sexual Abuse Act of 1994, provides that consent is not a defense to the crime of staff-on-inmate sexual abuse. The policy also specifies administrative penalties for sexual misconduct involving staff and inmates. Further, the department's policy prohibits

- overt or covert retaliation by any staff against either female inmates or correctional staff for filing a sexual misconduct complaint or cooperating in investigations of sexual misconduct;
- interference with sexual misconduct investigations or refusal to testify during an investigation;
- failure of staff to report any sexual misconduct, either witnessed or suspected; and
- breach of confidentiality by an employee.

Also, among others, the policy's provisions include the following:<sup>8</sup>

- All correctional staff are required to receive training on prohibited sexual misconduct, and all inmates are to be briefed (during intake orientation) and provided written information on prohibited practices and reporting procedures.

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<sup>7</sup> Anti-Sexual Abuse Act of 1994 (D.C. Law 10-257) (D.C. Code section 22-4101 et seq.).

<sup>8</sup> District of Columbia Department of Corrections Order 3350.2B, "Sexual Misconduct Against Inmates" (revised October 15, 1997).



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**Appendix II**

**Laws, Policies, and Procedures Related to Staff-on-Inmate Sexual Misconduct in Four U.S. Correctional Jurisdictions**

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- A confidential 24-hour telephone hotline was installed for inmates to use in reporting sexual misconduct. Also, inmates may report such misconduct directly to the warden or any staff member.
  - A sexual misconduct coordinator position was established to monitor complaints filed and ensure that allegations are investigated. The coordinator is to refer potentially criminal allegations to local law enforcement authorities, who, when applicable, are to refer cases to the U.S. Attorney's Office for prosecution.

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