



**U.S. Department of Justice
Office of the Inspector General
Evaluation and Inspections Division**

The Department of Justice's Efforts to Prevent Staff Sexual Abuse of Federal Inmates

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EXECUTIVE DIGEST

This review examined the efforts of the Department of Justice (DOJ or Department) to deter the sexual abuse of federal prisoners by federal correctional and law enforcement personnel. It is a crime for a prison employee to engage in any sexual contact or sexual relations with a federal prisoner.¹ Under the federal criminal code, consent by a prisoner is never a legal defense because of the inherently unequal positions of prisoners and correctional and law enforcement staff who control many aspects of prisoners' lives. Apart from criminal charges, federal corrections staff may be subject to administrative discipline for engaging in sexual misconduct that is not criminal but violates employee conduct policies, such as using indecent language or gestures, or surveilling prisoners for the purpose of sexual gratification.

Staff sexual abuse of prisoners has severe consequences for victims, undermines the safety and security of prisons, and in some cases leads to other crimes. Prisoners who are victims of staff sexual abuse may suffer physical pain, fear, humiliation, degradation, and desperation, and this harm can last beyond the victims' incarceration. Moreover, because female prisoners in particular often have histories of being sexually abused, they are even more traumatized by further abuse inflicted by correctional staff while in custody.

In addition to traumatizing prisoners, federal personnel may also neglect their professional duties and subvert their prison's security procedures in order to engage in and conceal their prohibited sexual relationships with prisoners. Federal personnel who are sexually involved with prisoners can be subject to extortion demands and may be more easily pressured to violate other prison rules and federal laws. Compromised personnel who have been found to have sexually abused prisoners also have been found to have provided contraband to prisoners, accepted bribes, lied to federal investigators, and committed other serious crimes as a result of their sexual involvement with federal prisoners.

¹ 18 U.S.C. §§ 2241-2245 (2007).

The *Prison Rape Elimination Act of 2003* directs prison officials to make the prevention of sexual abuse in prisons a top management priority.² The *Prison Rape Elimination Act* defines “prisons” broadly to include not only federal and state prisons and local jails, but also short-term lockups such as cellblocks and other holding facilities regardless of their size.

The Federal Bureau of Prisons (BOP) and the U.S. Marshals Service (USMS) have custodial control of federal prisoners and are responsible for maintaining safe, humane, and secure facilities. As of July 23, 2009, the BOP managed 115 prisons at 93 locations that housed approximately 171,000 federal prisoners. The USMS assumes custody of individuals arrested by all federal agencies and is responsible for housing, transporting, and ensuring the safety and security of prisoners from the time they are brought into federal custody until they are acquitted or incarcerated at a designated BOP prison. The USMS has operational control of courthouse cellblocks in each of the 94 federal judicial districts across the country. BOP and USMS officials are responsible for reporting all allegations of staff sexual abuse and sexual misconduct to the Department’s Office of the Inspector General (OIG).

The OIG and Federal Bureau of Investigation (FBI) have jurisdiction for investigating allegations of sexual abuse and sexual misconduct involving federal prisoners. In practice, generally the FBI investigates inmate-on-inmate sexual abuse, and the OIG investigates staff-on-inmate criminal sexual abuse. The OIG refers the remaining allegations to the BOP or USMS for investigation. If OIG investigators substantiate an allegation of criminal sexual abuse, they refer the case to the U.S. Attorney in the district where the allegation arose, the DOJ Civil Rights Division, or the DOJ Public Integrity Section for a decision on whether to prosecute the offense.

In April 2005, the OIG issued a report concluding that the penalties under federal law for staff sexual abuse of federal prisoners without the use of threat or force were too lenient and resulted in U.S. Attorneys declining to prosecute cases.³ Further, the criminal statutes at the time did not apply to personnel working in private facilities that housed federal prisoners pursuant to contracts with the federal government. The OIG recommended that the Department seek legislation to address those issues and to make sexual abuse statutes applicable to personnel working in privately managed contract prisons as well as those working in BOP-managed prisons.

² The *Prison Rape Elimination Act of 2003*, Pub. L. No. 108-79, 117 Stat. 972 (codified in 42 U.S.C. §§ 15601-15609), was signed into law on September 4, 2003.

³ U.S. Department of Justice, Office of the Inspector General, *Detering Staff Sexual Abuse of Federal Inmates*, Special Report (April 2005).

Congress subsequently passed two laws, the *Violence Against Women and Department of Justice Reauthorization Act of 2005* (DOJ Reauthorization Act of 2005), which increased the maximum criminal penalty for certain sexual abuse crimes, made those crimes felonies instead of misdemeanors, and extended federal criminal jurisdiction to all personnel working in private prisons under contract to the federal government.⁴ The *Adam Walsh Child Protection and Safety Act of 2006* (Adam Walsh Act) further increased the maximum penalties for certain sexual abuse crimes and requires federal employees who are found guilty of any criminal sexual abuse offense involving a federal prisoner to register as a sex offender.⁵

The OIG conducted this review to assess the Department's efforts to deter staff sexual abuse of federal prisoners. We analyzed trends in allegations of sexual abuse and sexual misconduct made against BOP and USMS employees from fiscal year (FY) 2001 through FY 2008; the effectiveness of BOP and USMS policies and procedures for detecting, reporting, and responding to allegations of staff sexual abuse; and the efforts of the OIG, FBI, and BOP to investigate alleged staff sexual abuse and sexual misconduct. We also analyzed the effect of the 2005 and 2006 legislation on prosecutions of criminal sexual abuse cases and prison sentences for convicted staff sexual abusers.

RESULTS IN BRIEF

The Department's progress in implementing staff sexual abuse prevention programs since 2001 has been mixed. The Department has conducted research and gathered data on allegations and incidents of staff sexual abuse and sexual misconduct, and has advocated for increased criminal penalties and expanded federal criminal jurisdiction for criminal sexual abuse to all private prisons under contract to the federal government. The Department also has continued to investigate, prosecute, and discipline federal personnel who have engaged in sexually abusive behaviors with prisoners. Despite those efforts, the Department needs to further improve its efforts to deter, detect, investigate, and prosecute staff sexual abuse of federal prisoners.

⁴ The *Violence Against Women and DOJ Reauthorization Act of 2005* (DOJ Reauthorization Act of 2005), Pub. L. No. 109-162, 119 Stat. 2960 (relevant sections are codified in 18 U.S.C. §§ 2241-2244 and § 1791), was signed into law on January 5, 2006.

⁵ The *Adam Walsh Child Protection and Safety Act of 2006*, Pub. L. No. 109-248, 120 Stat. 587 (codified primarily in sections of 42 U.S.C. as well as 10 and 18 U.S.C.), was signed into law on July 27, 2006.

Improvements are needed in the BOP's efforts to deter sexually abusive behavior.

The BOP has an established program for preventing, reporting, responding to, and investigating allegations of staff sexual abuse and sexual misconduct, and for disciplining BOP staff members who are found to have engaged in sexually abusive behavior with prisoners. However, allegations of criminal sexual abuse and non-criminal sexual misconduct more than doubled from FY 2001 through FY 2008. These allegations increased at a faster rate than either the growth in the prisoner population or the number of BOP staff. BOP officials told us they believe this increase is due to the BOP's efforts during this time period to educate and encourage staff and inmates to report abuse.

Sexual abuse was alleged to have occurred throughout the BOP during our 8-year review period, with allegations made at all but 1 of the BOP's 93 prison sites and against staff in every occupational category except human resources. We found that while staff in 15 of 16 BOP occupational categories were named in the allegations, employees who have the most contact with prisoners were more likely to be involved in allegations of sexual abuse and sexual misconduct with prisoners than others. The occupational categories that had the highest rates of allegations were food services, recreation, and education and vocational training.

We also found that the majority of allegations (65 percent) involved accusations of criminal sexual abuse rather than non-criminal sexual misconduct. Overall, female staff members were alleged to have committed sexual abuse and sexual misconduct in numbers disproportionate to their representation in the BOP workforce. While female staff members made up about 27 percent of the BOP workforce in each year of the study period, they were the subjects in 30 to 39 percent of allegations of staff sexual abuse and sexual misconduct throughout the study period.

In addition, we found that BOP officials at some prisons are not adequately considering all alternatives for safeguarding prisoners who reported being abused, which can result in fewer incidents of abuse being reported. In some locations, officials routinely placed alleged sexual abuse victims in a special housing unit or a local jail and then transferred them to another facility to protect them from further abuse. However, segregation and transfer can have negative effects on the victims and can reduce their willingness to report abuse and to cooperate in investigations. While less restrictive protective measures are available and in some circumstances would be sufficient, some BOP prison officials do not use them. We concluded that BOP prison officials should consider how best to protect alleged victims of sexual abuse only after

assessing the risks to their safety and the safety of the facility, and consider less restrictive protective methods.

We found that Psychology and Medical Services staff at some prisons could not verify that all inmate victims who had reported being sexually abused by a staff member had been referred for required psychological and medical assessments. The potential failure to provide victim services may have stemmed in part from guidance the BOP provides concerning which staff members should be notified of allegations of staff-on-inmate sexual abuse.

We also found that information in the BOP's allegation database, which is maintained by the Office of Internal Affairs (OIA), did not always identify the specific prison facility where incidents of sexual abuse and sexual misconduct were alleged to have occurred. For example, the BOP has 14 correctional complexes that include multiple prisons with different security levels located in close proximity to one another. Also, other stand-alone facilities may have satellite camps that have a different security level than the main facility. In order to conduct trend analysis by type of facility, an OIA official told us that the BOP would have to conduct a manual review of each investigative case file. This method of recording makes it difficult for senior BOP regional and headquarters administrators to review the number of allegations at each prison facility to identify trends and determine whether corrective measures are needed.

Finally, we found that the BOP's staff training on the prevention of sexual abuse was outdated and the BOP has not established effective goals and oversight mechanisms for its sexual abuse prevention program. The BOP's staff training has not been updated to reflect the changes to the law that occurred in 2006 and does not adequately address the unique challenges faced by female staff in working in cross-gender situations. Educational materials provided to prisoners were also outdated and were subject to being misinterpreted to mean that prisoners themselves could be disciplined if they reported abuse committed by staff. In addition, the BOP has established no overall goal for the reduction of sexual abuse, and the BOP does not review the program directly during its periodic reviews of each prison. We concluded that the BOP could increase the effectiveness of its sexual abuse prevention program by improving staff training and inmate education about sexual abuse prevention and reporting, and by providing better oversight of institutions' sexual abuse prevention programs.

The USMS does not have a sexual abuse prevention program.

In the 6 years since the passage of the *Prison Rape Elimination Act*, the USMS has not established a zero-tolerance standard for staff sexual abuse in its cellblocks and transportation system, and it has not taken action to make the deterrence of staff sexual abuse a management priority. The USMS also does not have a program for preventing, detecting, investigating, and addressing staff sexual abuse in its cellblock and transportation operations. The USMS has not provided training to USMS personnel about their responsibilities for responding to allegations of staff sexual abuse and the potential consequences of engaging in sexual acts or behaviors with prisoners.

The USMS also has not provided prisoners with information about how to report staff sexual abuse. Furthermore, USMS administrators are not providing oversight of USMS operations to ensure that personnel are responding appropriately to such allegations by protecting the alleged victim and providing victim services, securing the crime scene, collecting physical evidence, and ensuring that staff sexual abusers are dealt with appropriately. USMS officials said they believe the agency's general policies for protecting prisoners and USMS personnel are adequate to protect against staff sexual abuse. However, we concluded that the USMS policies do not provide sufficient guidance to staff for reporting and responding to allegations of staff sexual abuse of federal prisoners in USMS custody.

Investigating staff sexual abuse has many challenges.

OIG and BOP investigators told us that investigating staff sexual abuse and sexual misconduct poses many challenges that make it difficult to conclude whether sexual abuse or misconduct occurred. Victims of sexual abuse often delay reporting incidents because they do not want to be isolated in the special housing unit and transferred to another prison. When abuse is not reported promptly, the victim's memory of the incident may blur and important details and physical evidence are lost. Moreover, opportunities to develop further evidence often cannot be explored because it would expose the inmate to further abuse. In addition to the general challenges in conducting investigations in a prison environment, BOP local investigators told us that a lack of training and experience has hampered their investigations.

Due to these challenges, the majority of staff sexual abuse and sexual misconduct cases conducted by the BOP local investigators, OIA investigators, OIG, and FBI do not conclusively establish whether or not the alleged abuse

occurred.⁶ BOP local investigators had the highest percentage of inconclusive investigations (94 percent), followed by OIA investigators (71 percent), FBI Special Agents (80 percent), and OIG Special Agents (56 percent).⁷

Prosecutions of staff sexual abuse have increased.

Since 2006 when new laws changed misdemeanor sexual abuse crimes to felony crimes, the percentage of cases accepted for prosecution has increased. From FY 2001 through FY 2008, U.S. Attorneys accepted 102 (40 percent) of the 257 staff sexual abuse cases referred for prosecution by the OIG's Investigations Division. The acceptance rate of staff sexual abuse cases rose from 37 percent under the old laws to 49 percent under the new laws.

Of the 90 cases that were accepted for prosecution by Assistant U.S. Attorneys and resolved during the period of our review, 83 resulted in convictions, 1 resulted in an acquittal, and 6 were dismissed prior to trial. Seventy-five of the 83 convictions resulted from guilty pleas, while the remaining 8 were convicted at trial. Of the 83 convictions, 60 were either solely for sexual abuse or for sexual abuse in addition to another charge. The remaining 23 cases involved a conviction solely on a charge other than sexual abuse, such as introducing contraband into a prison, making a false statement during an investigation, or accepting a bribe. All of these cases included an incident of staff sexual abuse that investigators considered substantiated when referring the case for prosecution. Since the changes in the law, the proportion of convictions that involved sexual abuse offenses, as opposed to non-sexual abuse offenses, has decreased.

Also since the change in laws, the percentage of defendants convicted on sexual abuse charges that received prison time has increased from 30 percent to 78 percent. Although more defendants were incarcerated, the terms of incarceration were not always longer. The majority of sentenced defendants who received prison time received 1 year or less whether sentenced under the old or new laws.

⁶ Allegations of staff sexual abuse and sexual misconduct not handled by the OIG or FBI are investigated either by the BOP's Office of Internal Affairs or facility investigators.

⁷ The BOP's lower rate of conclusive outcomes for its investigations is at least partially a result of the process whereby the OIG and the FBI take the cases that have the potential to be criminally prosecuted. Consequently, cases investigated by BOP staff, especially those investigated by facility staff rather than by OIA investigators, typically have fewer viable investigative leads to enable conclusive decisions.

RECOMMENDATIONS

Our report contains 21 recommendations to help the Department improve its efforts to prevent the sexual abuse of prisoners:

- We recommend that the BOP consider alternatives to automatically isolating and transferring prisoners that allege sexual abuse and that the BOP develop procedures to ensure that alleged victims receive appropriate psychological and medical assessments. We further recommend that training for BOP staff members be updated to include the latest changes in the law concerning sexual abuse crimes and be strengthened to address more fully the challenges of cross-gender supervision of prisoners. BOP staff members responsible for investigating allegations need additional training to potentially improve the rate of conclusive outcomes for sexual abuse investigations. The BOP also must improve its oversight of its institutions' implementation of their sexual abuse prevention programs to ensure deficiencies are corrected and best practices are shared.
- We recommend that the USMS implement a program for preventing, detecting, investigating, and addressing staff sexual abuse in its cellblock and transportation operations. The USMS must develop new policies or revise existing policies to provide specific guidance to USMS staff members on the protocol for responding to sexual abuse allegations and providing victim services. We further recommend that the USMS periodically assess the implementation of its sexual abuse prevention program by USMS staff members.
- We recommend that the Executive Office for United States Attorneys train federal prosecutors about sexual abuse in prisons and strategies for effective prosecution of sexual abuse cases.

TABLE OF CONTENTS

BACKGROUND	1
PURPOSE, SCOPE, AND METHODOLOGY OF THE OIG'S REVIEW	15
RESULTS OF THE REVIEW	19
Section I: Data on BOP Staff Sexual Abuse	19
Section II: BOP Efforts to Prevent and Intervene in Staff Sexual Abuse Incidents	33
Section III: USMS Policies and Practices Relevant to Staff Sexual Abuse	51
Section IV: Investigations of Staff Sexual Abuse Allegations	55
Section V: Prosecutions of Staff Sexual Abuse Cases	63
CONCLUSION AND RECOMMENDATIONS	79
APPENDIX I: NUMBER OF ALLEGATIONS REPORTED BY BOP-MANAGED INSTITUTIONS	85
APPENDIX II: FEDERAL SEXUAL ABUSE CRIMES	89
APPENDIX III: U.S. SENTENCING GUIDELINES	91
APPENDIX IV: TIME FRAMES FOR REPORTING ALLEGATIONS TO THE OIG.....	93
APPENDIX V: THE FEDERAL BUREAU OF PRISONS' RESPONSE	95
APPENDIX VI: OIG'S ANALYSIS OF THE FEDERAL BUREAU OF PRISONS' RESPONSE	103
APPENDIX VII: THE UNITED STATES MARSHALS SERVICE'S RESPONSE.....	111
APPENDIX VIII: OIG'S ANALYSIS OF THE UNITED STATES MARSHALS SERVICE'S RESPONSE	115

APPENDIX IX: THE EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS' RESPONSE	117
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APPENDIX X: OIG'S ANALYSIS OF THE EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS' RESPONSE	121
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BACKGROUND

Introduction

This review examined the efforts of the Department of Justice (DOJ or Department) to deter the sexual abuse of federal prisoners by correctional and law enforcement employees and to detect and prosecute those employees who have sexually abused federal prisoners. As part of the review, the Office of the Inspector General (OIG) evaluated trends in the number and types of sexual abuse allegations against Federal Bureau of Prisons (BOP) and U.S. Marshals Service (USMS) employees, and the effectiveness of the BOP's and USMS's policies and procedures for deterring staff sexual abuse of prisoners. The OIG also examined the effect of 2006 legislation that increased the penalties for sexual abuse crimes by federal correctional and law enforcement employees.

The term "sexual abuse," as used in this report, describes a range of behaviors that include inappropriate touching, obtaining sexual relations through intimidation, and sexual assault by coercion, threats, or force. Any sexual contact between prison employees and prisoners is always illegal. Consent by a prisoner is never a legal defense because of the inherently unequal positions of prisoners and the correctional staff who control many aspects of prisoners' lives. In fact, in most cases prison employees obtain sex from prisoners without resorting to the use of overt threats or force.

Sexual abuse of prisoners by prison staff members has severe consequences for victims and also undermines the safety and security of prisons. Prisoners who are victims of sexual abuse may suffer physical pain, fear, humiliation, degradation, and desperation, and this harm can last beyond the victims' incarceration. According to the *Prison Rape Elimination Act of 2003*, after victims of prison rape are released from prison they may suffer physical and psychological effects that hinder their ability to integrate into the community and maintain stable employment, and this may lead to re-offending. Moreover, because female prisoners in particular often have histories of being sexually abused, they are even more traumatized by further abuse inflicted by correctional staff while in custody.⁸ Consequently, the National Prison Rape Elimination Commission, which was created by Congress in 2003 to recommend national standards for eliminating sexual abuse in

⁸ U.S. Department of Justice, Federal Bureau of Prisons, Institutional Cross Development Series, Course Code Number 51329, "Managing Female Offenders," February 2003, Chapter 1, Understanding Female Offenders. The BOP estimates that 80 percent of all female offenders have experienced physical or sexual abuse at one point in their lives.

prison systems, urges correctional agencies to implement proactive measures to protect prisoners from sexual abuse.

In addition to harming the victims of sexual abuse, staff sexual abuse of prisoners can also compromise the safety and security of prisons.⁹ For example, a staff member who is sexually involved with a prisoner can be subject to extortion demands and may be more easily pressured to violate other prison rules and federal laws. The staff member may also neglect his or her duties and subvert the institution's security procedures to engage in and conceal the prohibited sexual relationship. As other prisoners learn or suspect that a sexual relationship exists between a prisoner and a staff member, the prisoner may be subject to retaliation or pressure from other prisoners seeking an advantage for themselves.

BOP staff members have committed other crimes related to their sexual abuse or sexual misconduct, including smuggling contraband into prisons for prisoners with whom they were involved. Our review found that approximately 21 percent (26 of 122) of BOP staff members who admitted they had engaged in sexual abuse or sexual misconduct with an inmate also admitted smuggling contraband into the prison for the inmate.¹⁰ BOP officials told us that controlling contraband, which includes any item that prisoners are not allowed to possess in a prison, is a serious issue because it can shift the balance of power within a prison from prison staff to prisoners who can threaten to expose the correctional officers' sexual relations. This can create a dangerous environment for staff and prisoners. Among the types of contraband BOP staff admitted to providing prisoners with whom they were sexually involved were weapons, drugs, alcohol, cellular telephones, and money.

Other staff members who were involved in sexual relationships or sexual misconduct with prisoners have gone as far as helping prisoners to escape and bribing public officials and witnesses. In one case, a male BOP correctional officer agreed to pay a female inmate with whom he had engaged in a sexual act \$5,000 to arrange for his wife's murder. Of the 90 BOP staff members prosecuted for sexually abusing an inmate during the period of our review, about 38 percent (34) were convicted of other crimes committed in connection with the sexual abuse of an inmate.

⁹ See Maureen Buell, Elizabeth Layman, Susan McCampbell, and Brenda V. Smith, "Addressing Sexual Misconduct in Community Corrections," *Perspectives: The Journal of the American Probation and Parole Association* 27:2 (2003). The report was sponsored by the National Institute of Corrections as mandated in the *Prison Rape Elimination Act of 2003*.

¹⁰ U.S. Department of Justice, Federal Bureau of Prisons, Office of Internal Affairs Report for Fiscal Year 2007, 33-70; and Fiscal Year 2008, 26-31.

The cases examined as part of this review demonstrate that staff sexual abuse has far-reaching and serious consequences for the safety and security of BOP prisons. For example, an Operations Lieutenant in charge of a prison during his shift abandoned his duty post on several occasions to engage in sexual relations with a female inmate. In another instance, a Unit Manager manipulated the BOP's database to remove information about the inmate's gang affiliation and to enter a falsified transfer request that allowed the inmate to move from a high security prison to a low security prison.

In one particularly egregious case, a ring of correctional officers provided contraband to prisoners in return for sexual favors, permitted prisoners to leave their cells without authorization, and provided other BOP employees with keys to staff offices so that they could engage in sexual acts with prisoners. Moreover, the correctional officers conspired to keep their illegal activities from being reported to authorities and intimidated prisoners to keep them from cooperating with investigators once the corruption was discovered.¹¹

As these cases demonstrate, staff sexual abuse crimes have had serious consequences not only in prisons but also for individuals outside the prison, for the local community, and for other law enforcement personnel.

In the remainder of this Background section, we discuss laws that pertain to staff sexual abuse of and sexual misconduct with prisoners, the DOJ components responsible for the custodial control of prisoners, and the DOJ components responsible for investigating and prosecuting allegations of staff sexual abuse.

Prevention of Staff Sexually Abusive Behavior

The *Prison Rape Elimination Act* established the National Prison Rape Elimination Commission to study federal policies and practices and to recommend national standards for eliminating sexual abuse in prison systems. The Act also established the DOJ Review Panel on Prison Rape to gather information about prison sexual abuse. In addition, the Act directed officials of the DOJ Bureau of Justice Statistics to determine the prevalence and effects of prison sexual abuse, identify prisons with the highest and lowest prevalence of abuse, and identify the reasons for these prisons' success or failure.

¹¹ Six of the correctional officers were indicted in 2006, and when federal agents went to the prison to arrest them, one of the correctional officers pulled a gun he had smuggled in and began shooting. He wounded a BOP Lieutenant and an OIG Special Agent, who returned fire and killed the correctional officer. The agent, William Sentner III, died of his gunshot wound. Several other correctional officers under indictment were subsequently convicted on charges stemming from the investigation.

The *Prison Rape Elimination Act* directs federal officials to establish a zero-tolerance standard for prison sexual abuse and to make the prevention of sexual abuse in prisons a top priority.¹² To meet this standard, the Act directs federal officials to develop and implement national standards to prevent, detect, and punish prison sexual abuse; increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison sexual abuse; and protect the Eighth Amendment rights of prisoners which prohibit cruel and unusual punishment. While the Act focuses primarily on the sexual abuse of prisoners by other prisoners, its provisions also apply to the sexual abuse of prisoners by correctional staff.

Criminal Offenses and Penalties

Federal law criminalizes all sexual relations and sexual contact between federal correctional staff and prisoners.¹³ Illegal sexual behavior between a staff member and a prisoner ranges from sexual acts and contact without the use of threats or force to the use of violence or threats to force a victim into submission. The prohibition on sexual relations and sexual contact applies to any staff member in a federal prison, institution, or other facility in which individuals are held in custody at the direction of the U.S. Attorney General. Consent by the prisoner is never a legal defense for correctional personnel who engage in sexual acts or sexual contacts with prisoners.

In April 2005, the OIG reported that the penalties under federal law for the sexual abuse of prisoners without the use of overt threats or force were too lenient and resulted in prosecutors declining to prosecute staff sexual abuse cases.¹⁴ At that time, the federal crime of sexual abuse of a prisoner without the use of force or overt threats was only a misdemeanor punishable by a maximum sentence of 1 year. The federal crime of sexual contact with a prisoner without the use of force or threats was a misdemeanor punishable by a maximum sentence of 6 months. The OIG also found a deficiency in the criminal laws dealing with staff sexual abuse because they did not apply to privately operated prisons under contract to the BOP. The OIG recommended that the Department seek passage of legislation to address these issues.

Congress subsequently passed two laws increasing penalties for sexual abuse of wards. The *Violence Against Women and Department of Justice*

¹² 42 U.S.C. §§ 15601-15609 (2007). See Appendix II for definitions of specific sexual abuse crimes.

¹³ 18 U.S.C. §§ 2241-2245 (2007).

¹⁴ U.S. Department of Justice Office of the Inspector General, *Deterring Staff Sexual Abuse of Federal Prisoners*, Special Report (April 2005).

Reauthorization Act of 2005 (DOJ Reauthorization Act of 2005) increased the maximum criminal penalty for sexual abuse of a ward without the use of threats or force from 1 to 5 years, while increasing the maximum penalty for abusive sexual contact with a federal prisoner without the use of threat or force from 6 months to 2 years.¹⁵ The DOJ Reauthorization Act of 2005 also made those crimes felonies instead of misdemeanors. In addition, the Act extended federal criminal jurisdiction for sexual abuse of a ward, abusive sexual contact, and the introduction of contraband to all private prisons under contract to the federal government to house federal prisoners. The *Adam Walsh Child Protection and Safety Act of 2006* (Adam Walsh Act) further increased the maximum penalties for sexual abuse of a ward to 15 years.¹⁶ The Adam Walsh Act also requires all federal employees who are found guilty of any criminal sexual abuse offense involving a federal prisoner to register as a sex offender.

Conduct of a sexual nature that does not rise to the criminal level of sexual abuse as defined in 18 U.S.C. §§ 2241-2245 (2007) may nevertheless constitute sexual misconduct, sometimes serious in nature, that can result in administrative sanctions up to termination. Non-criminal sexual misconduct can include using indecent language, obscene gestures, and voyeurism.

DOJ Agencies with Custodial Control of Prisoners

Federal Bureau of Prisons

According to the BOP's mission statement, the BOP is responsible for confining sentenced criminals in prisons that are safe, humane, and secure. As of July 23, 2009, the BOP managed 115 prisons at 93 locations (some prisons are co-located). Those prisons confined approximately 171,000 (83 percent) of the total BOP prisoner population of about 207,000 federal prisoners. The remainder of approximately 36,000 prisoners was housed in

¹⁵ The *Violence Against Women and DOJ Reauthorization Act of 2005* (DOJ Reauthorization Act of 2005), Pub. L. No. 109-162, 119 Stat. 2960 (relevant sections are codified in 18 U.S.C. §§ 2241-2244 and § 1791), was signed into law on January 5, 2006. Although maximum penalties are set by law, actual prison sentences are based on federal sentencing guidelines and other factors identified by the court. Under the sentencing guidelines, recommended sentences for staff members who plead guilty or who are convicted of sexual abuse crimes may be much less severe than the maximum penalties set forth in the applicable law. For example, the recommended sentence for a BOP or USMS staff member with no criminal history who committed criminal sexual abuse of a ward is more than 1 year but less than 2 years, much less than the maximum potential sentence of up to 15 years in prison. (See Appendix III, U.S. Sentencing Guidelines.)

¹⁶ The *Adam Walsh Child Protection and Safety Act of 2006*, Pub. L. No. 109-248, 120 Stat. 587 (codified primarily in sections of 42 U.S.C. as well as 10 and 18 U.S.C.), was signed into law on July 27, 2006.

state, local, and privately managed prisons under contract to the BOP.¹⁷ As of June 27, 2009, the BOP had approximately 36,000 employees, most of whom worked within the BOP-managed prisons.

According to BOP Program Statement 5324.06, Sexually Abusive Behavior Prevention and Intervention Program, the BOP has a zero-tolerance standard for any acts of sexually abusive behavior committed by staff members toward prisoners. Prohibited behaviors include rape, sexual assault with an object, fondling, and sexual misconduct (indecent sexual language, gestures, or sexually oriented visual surveillance).¹⁸ The BOP has established five objectives for its sexual abuse prevention and intervention program:

1. Inform staff members and prisoners of the BOP's "zero-tolerance" philosophy in regards to sexually abusive behavior.
2. Put in place standard procedures to detect and prevent sexually abusive behavior at all BOP prisons.
3. Provide a prompt and effective response to the physical, psychological, and security needs of victims of sexual abuse.
4. Provide prompt intervention upon reports of allegations of sexually abusive behavior.
5. Discipline and, when appropriate, prosecute perpetrators of sexually abusive behavior in accordance with BOP policy and federal law.

The program statement assigns responsibilities and provides guidance for the appropriate response (described below), depending on the severity of the sexually abusive behavior. The Warden at each institution must ensure that all aspects of the program statement are implemented, including maintaining a current institution supplement detailing how the institution will comply with its provisions. The Warden must also designate a Program Coordinator who

¹⁷ The BOP is responsible for the custody and care of sentenced federal prisoners, as well as a significant number of pretrial detainees and convicted offenders awaiting sentencing. The term "inmate" is used to describe any person who has been found guilty of a felony or misdemeanor and who has been placed in BOP custody or detained in a BOP facility.

¹⁸ Staff-on-inmate sexual abuse has been included in the policy's definition of sexual abuse since 1997. The BOP also added more detailed mental health treatment protocols for victims of sexual assault that year. In 2005, the BOP revised the policy to change the definitions of sexually abusive and assaultive behaviors to better reflect the definitions in the *Prison Rape Elimination Act of 2003* and to better characterize types of sexually abusive behaviors.

has overall responsibility for the prison's sexual abuse prevention program and for coordinating the efforts of the prison's designated response team. In some prisons, an Associate Warden may be the Program Coordinator but delegate the day-to-day responsibilities to the Chief of Psychology. The Program Coordinator is responsible for ensuring that institutional departments provide a coordinated response to sexual abuse allegations and that all response team members are fully aware of their roles and responsibilities as outlined in a two-phased response protocol.

- Phase I - Initial Response and Crisis Intervention – In the initial phase of the BOP's response to sexual abuse incidents or allegations, staff members are instructed to immediately notify the Operations Lieutenant that an incident has occurred or is suspected of having occurred, or that an allegation of sexual abuse has been made.¹⁹ The Operations Lieutenant is responsible for immediately safeguarding the alleged victim and for promptly referring the victim to Psychology Services to undergo a psychological assessment and to identify any treatment needs. Psychology Services personnel talk with the alleged victim and provide information to the Program Coordinator about the results of their assessment.

The Program Coordinator is responsible for reviewing the results of the victim's psychological assessment and other information known about the incident or allegation and deciding whether to continue with the next steps in the response protocol. If the Program Coordinator decides an allegation is unfounded because, for example, the inmate credibly recanted the allegation or the alleged perpetrator was not in the unit or institution at the time of the alleged incident, the Program Coordinator may end the response protocol at this point. However, the Program Coordinator must implement the full response if the Program Coordinator decides that more information is needed or that there has been a credible and serious allegation of sexually abusive behavior.

- Phase II - Full Response Protocol – During the full response phase, BOP staff members consult and determine the actions needed to prevent the alleged perpetrator from further abusing the inmate. Psychology Services personnel are to be notified immediately and,

¹⁹ Other BOP program statements provide guidance on reporting allegations. Program Statement 1210.24, Office of Internal Affairs, provides that staff members who are not comfortable reporting an incident or allegation to institution staff can report directly to a BOP Regional Office, the BOP's Central Office, or the OIG. In addition, Program Statement 3420.09, Standards of Conduct, requires all BOP employees and contractors to immediately report any violation, or apparent violation, of the standards of conduct to the Warden or other appropriate authority.

once notified, they must see the victim within 24 hours to provide crisis intervention and to address any immediate treatment needs. Also within the first 24 hours, Psychology Services personnel are required to summarize their initial crisis evaluation in a written report and distribute copies to the unit team, medical services, and correctional services staff.²⁰

Medical Services personnel are required to provide medical evaluations and injury assessments when members of the response team suspect that the alleged victim was sexually assaulted either by force or with an object. Inmate victims cannot be forced to undergo treatment and testing for evidence of sexual abuse. If an inmate victim refuses treatment or testing, response team members are advised to explain to the alleged victim the importance of and the need for medical treatment. If the victim consents, the victim is escorted to the Health Services Unit or referred to a local emergency facility for a medical examination conducted by a medical provider trained in the collection of forensic evidence and in the appropriate medical services to provide to a victim of sexual assault.

According to the BOP's Assistant Director, Health Services Division, the medical care provided to sexual assault victims does not differ from other emergency medical services offered to prisoners. BOP prison officials have the option of bringing medical staff from a local hospital or rape crisis center to provide care and to collect physical evidence of staff sexual abuse, or to use BOP personnel trained in sexual abuse testing and evidence gathering. However, BOP policy in Program Statement P6031.02, Patient Care, January 15, 2005, recommends that Health Services staff transport victims of recent sexual assaults to a community facility or rape crisis center that is equipped (in accordance with local laws) to evaluate and treat sexual assault victims. At most institutions, emergency care is contracted out to the local hospitals, and prisoners who are sexually assaulted are transported to the local hospital's emergency room where sexual assault kits, care, and comfort services are provided.

²⁰ The BOP manages prisoners and encourages their participation in reentry programs through a unit management concept. Under this concept, the members of multidiscipline unit teams collaborate to determine each prisoner's program needs and to monitor the prisoners' participation in programs that encourage pro-social behaviors that benefit the prisoners, staff, and the community. The unit teams make decisions concerning supervision, work assignments, and programming for each prisoner, and at a minimum include the unit manager, a case manager, and a counselor and, generally, an education advisor and psychology services representative.

Also, BOP Program Statement 1380.05, Special Investigative Supervisors Manual, directs BOP investigative personnel to collect various types of crime scene evidence, including DNA evidence such as hair, body fluids, tissue, and clothing that may contain DNA evidence from both the victim and assailant, by placing the potential evidence in a paper bag. In addition, although not stated in the manual, according to the BOP's Assistant Director, Health Services Division, BOP prisons are required to ensure that collection of all physical evidence of sexual assaults, including DNA samples, occurs within 72 hours of an alleged assault, which is in accordance with guidelines issued by DOJ for performing sexual assault medical examinations.²¹

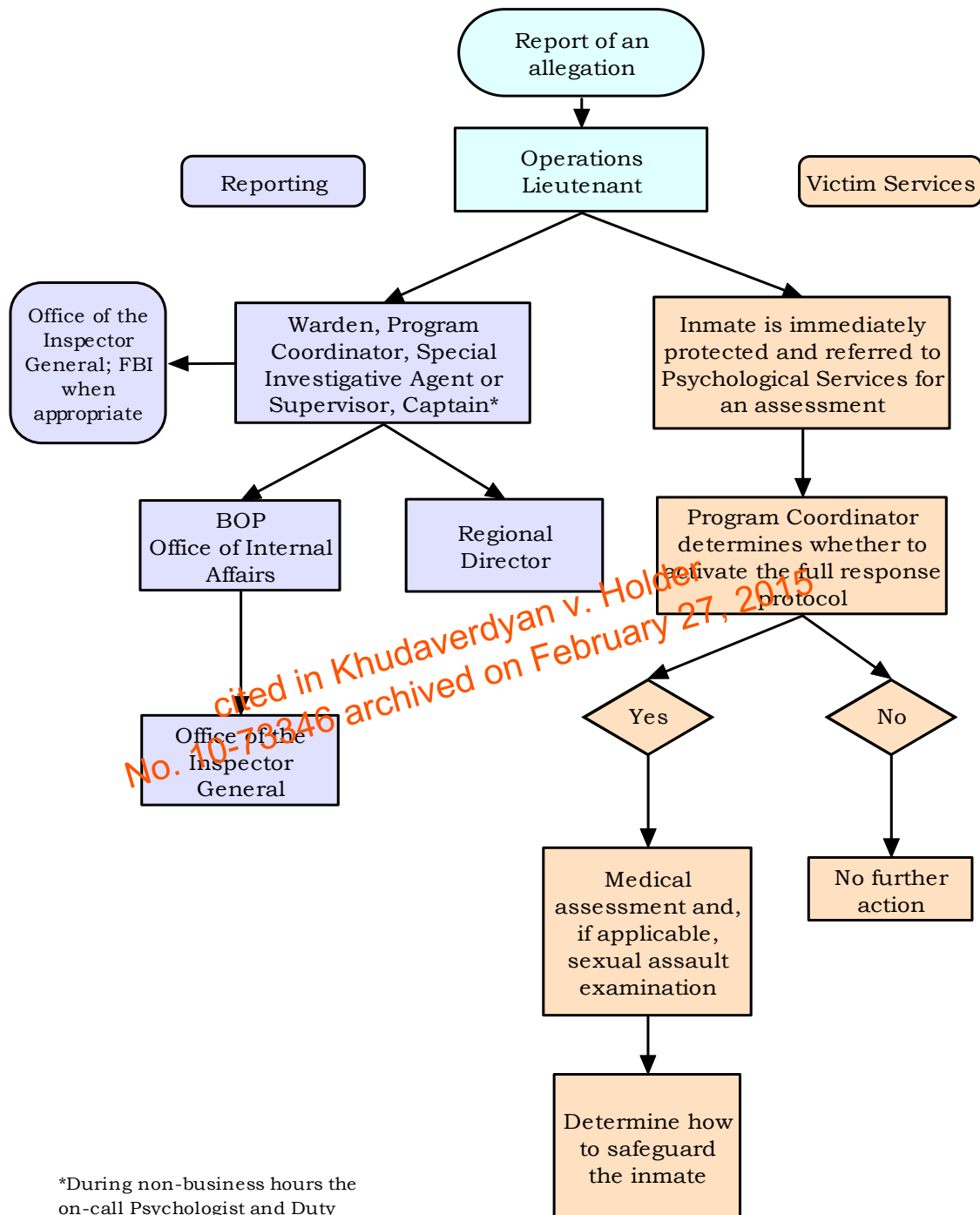
When allegations of sexual abuse involve an alleged staff member, the Operations Lieutenant must notify the Warden. The Warden notifies the Regional Director and the BOP's Office of Internal Affairs (OIA). The BOP's OIA is responsible for notifying the Department's OIG. The Warden may report an allegation directly to the OIG and to the BOP's OIA. The Warden may also report a case to the Federal Bureau of Investigation (FBI) Special Agents who are assigned to many BOP prisons, but the OIG would still be informed.

A 1998 memorandum, signed by OIG, BOP, and USMS officials outlines the required time frames for reporting allegations of employee crimes and misconduct to the OIG. There are three classifications of allegations, and each classification has a reporting time frame. BOP officials must immediately report to the OIG any allegations of sexual abuse that would constitute a prosecutable offense and those involving allegations of serious sexual misconduct by a high-ranking employee (Classification I). They must report any allegations involving violations of rules, regulations, or law that are not likely to result in criminal prosecution to the OIG within 48 hours (Classification II). BOP officials must report all allegations of misconduct that would have a minimal impact on BOP programs and operations to the OIG on a monthly basis (Classification III). (See Appendix IV.)

Figure 1 on the next page shows the steps of the full response protocol as described in BOP Program Statement 5324.06.

²¹ Department of Justice, Office for Victims of Crime, *Sexual Assault Nurse Examiner (SANE) Development and Operation Guide*, August 1999. The BOP's Program Statement 1380.05, Special Investigative Supervisors (SIS) Manual, also states, "It is not appropriate for SIS staff to attempt to develop into evidence lab technicians, but it is appropriate to develop the skills to recognize evidence and preserve it so that competent authorities can evaluate it." The BOP does not have policy regarding collecting DNA evidence from a female inmate's miscarried or aborted fetus to potentially determine the identity of an assailant through a paternity test.

Figure 1: The BOP's Protocol for Responding to Allegations of Staff-on-Inmate Sexual Abuse



Source: BOP Program Statement 5324.06.

Other provisions in the BOP's program statement require that staff and prisoners be informed of the zero-tolerance policy on sexually abusive behavior through staff training and prisoner education. BOP staff members receive that training during introductory law enforcement training, orientation at the prisons where they are assigned to work, and annual refresher training. Employee training covers staff sexual abuse prevention, detection, intervention, investigation, discipline, and prosecution.

Prisoners receive information on sexual abuse prevention when they enter the BOP system and when they arrive at a new prison after a transfer. According to the program statement, prisoner education must cover definitions of sexually abusive behavior, prevention strategies, reporting methods, victim services, and discipline and prosecution of staff sexual abusers. BOP personnel are required to screen all prisoners entering an institution to identify prisoners who are at risk for sexual victimization (such as prisoners with a history of sexual victimization; first-time offenders; or prisoners who are small in stature, have cognitive limitations, or special needs) and provide them with psychology services and appropriate housing to protect them from sexual abuse.

The BOP's Office of Internal Affairs collects and reports data on prisoner victims of staff sexual abuse to all Wardens and to the Psychology Services Administrator on a quarterly basis. It also publishes an annual report with summaries of all sustained cases of sexual abuse and sexual misconduct. In addition, the BOP reports data on both staff-on-inmate and inmate-on-inmate sexual abuse incidents to the Bureau of Justice Statistics as required by the *Prison Rape Elimination Act*.

United States Marshals Service

The USMS assumes custody of individuals arrested by all federal agencies and is responsible for housing, transporting, and ensuring the safety and security of prisoners from the time they are brought into federal custody until they are acquitted or incarcerated at a designated BOP prison. The USMS does not own or operate its own detention facilities, but through contracts houses about 56,000 federal prisoners each day in BOP prisons and state, local, and private jails. In addition, the USMS has operational control of courthouse cellblocks in each of the 94 federal judicial districts across the country.²² Federal prisoners may spend a considerable amount of time in those cells while awaiting court proceedings.

²² The *Prison Rape Elimination Act* defines "prisons" broadly to include not only federal and state prisons and local jails, but also short-term lockups such as cellblocks and other holding facilities, regardless of their size.

To transport prisoners, the USMS operates the Justice Prisoner and Alien Transportation System, which is one of the largest transporters of prisoners in the world. This transportation system handles more than 1,000 requests every day and moves approximately 350,000 prisoners each year between judicial districts, prisons, and foreign countries.

Unlike the BOP, the USMS does not have specific policies or a program for preventing sexual abuse during the confinement and transport of prisoners, nor does it have specific procedures for reporting and responding to allegations of staff sexual abuse of prisoners. Instead, under general USMS policies, USMS personnel are responsible for reporting any incidents or allegations of misconduct or criminal activity to their supervisors and to the USMS's Office of Internal Investigations. The USMS's Office of Internal Investigations is responsible for reporting all such allegations to the OIG.

Investigation of Staff Sexual Abuse Allegations

The OIG Investigations Division reviews all allegations it receives concerning alleged sexual abuse and sexual misconduct by Department staff or contractors against prisoners. The OIG generally investigates allegations of sexual abuse that appear likely to result in criminal prosecutions of BOP or USMS staff members. The OIG refers the remaining cases to the BOP's OIA or the USMS's Office of Internal Investigation.²³ The BOP's OIA or the USMS's Office of Internal Investigations will either conduct the investigation itself or refer the matter back to the institution or district office, respectively, where the complaint arose for review. The OIG generally completes the investigation in cases that are declined for prosecution and forwards the results to the BOP or USMS for administrative action.

The FBI and the OIG have joint jurisdiction for investigating staff sexual abuse cases. In practice, generally the FBI investigates inmate-on-inmate sexual abuse, and the OIG investigates staff-on-inmate criminal sexual abuse and some cases of administrative sexual misconduct. Of the 525 criminal sexual abuse cases involving BOP staff members that were investigated during fiscal year (FY) 2001 through FY 2008, 508 were investigated by the OIG and 17 by the FBI. Cases investigated by the FBI included cases occurring in prisons where the FBI had a resident agent, cases where the sexual abuse allegations related to public corruption allegations already being investigated by the FBI, and cases prosecuted as civil rights violations in which the Civil

²³ In the more serious administrative cases that it refers to the BOP or USMS, the OIG will require the BOP or USMS to forward its completed investigative report to the OIG for review.

Rights Division requested that the FBI investigate due to other civil rights work the FBI was conducting with that Division.

If an OIG investigation results in substantiation of conduct that is potentially criminal, the OIG refers the case to the U.S. Attorney for the district where the allegations arose, the DOJ Civil Rights Division, or the DOJ Public Integrity Section for a decision on whether to prosecute. If the case is accepted for prosecution, the OIG works with the prosecutor on the criminal case. If the case is declined for prosecution, the OIG completes the case as an administrative matter and sends the investigative report to the BOP or USMS for appropriate administrative action regarding their employee or contractor.

Prosecution of Staff Sexual Abuse

The 93 U.S. Attorneys prosecute federal criminal cases that occur in their districts, including cases of staff sexual abuse of prisoners. According to the *U.S. Attorneys' Manual*, U.S. Attorneys should prosecute cases when they believe a federal crime has been committed and they have admissible evidence that they believe will be sufficient to obtain and sustain a conviction. The reasons for deciding not to prosecute can include a determination that no substantial federal interest would be served by the prosecution, the subject can be effectively prosecuted in another jurisdiction, or there is an adequate non-criminal alternative to prosecution. Declinations and the associated reasons should be communicated by the U.S. Attorney to the investigative agency and be reflected in the office files.

cited in Khudaverdyan v. Holder
No. 10-73346 archived on February 27, 2015

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PURPOSE, SCOPE, AND METHODOLOGY OF THE OIG'S REVIEW

Purpose

Our review examined the efforts of the Department to prevent correctional and law enforcement employees from sexually abusing federal prisoners and to detect, intervene in, and respond to allegations of staff sexual abuse and sexual misconduct and to discipline and prosecute employees who sexually abused federal prisoners. As part of the review, the OIG evaluated trends in the number and types of sexual abuse allegations against BOP and USMS employees. In addition, the OIG examined the effect of the BOP's and USMS's policies and procedures for preventing staff sexual abuse of prisoners. The OIG also examined trends in the prosecutions of and sentences given to staff members found guilty of sexual abuse crimes after 2006 legislation enhanced the criminal penalties for such acts.

Scope

The scope of our review included all allegations and cases of staff sexual abuse and sexual misconduct from FY 2001 through FY 2008 involving federal prisoners under the direct management control of the BOP and the USMS. We reviewed the BOP's and USMS's policies, procedures, and activities for deterring, responding to, and investigating allegations of staff sexual abuse and sexual misconduct and for ensuring that staff members who were found guilty of sexually abusive behavior are disciplined and prosecuted. The review examined allegations and incidents of staff sexual abuse and sexual misconduct at the 115 BOP-managed prisons where 83 percent of federal prisoners were confined and where correctional workers were subject to federal sexual abuse laws during the entire study period. Employees working in privately managed prisons were not subject to federal laws on sexual abuse (18 U.S.C. §§ 2241-2245) until 2006 and thus were not included as part of this review.²⁴

Our review also included allegations and incidents of staff sexual abuse and sexual misconduct in cellblocks in the 94 federal judicial districts and those that occurred during the transportation of prisoners who were under the direct management of the USMS. We also reviewed laws, rules, regulations,

²⁴ As of July 23, 2009, 171,000 federal prisoners were confined in BOP-managed facilities, and 36,000 were confined in state, local, and privately managed facilities under contract to the BOP. Privately managed contractor facilities must comply with the same policies and procedures for addressing staff sexual abuse as federal prison facilities. See page 4 for a fuller discussion of the amendments in 2006, which extended the application of the federal sexual abuse laws to corrections staff working in contract facilities.

policies, and procedures governing OIG, BOP, and USMS investigations and the U.S. Attorneys' roles and responsibilities for prosecuting staff sexual abuse cases.

Methodology

Our fieldwork included in-person and telephone interviews, document reviews, and data analyses.

Interviews

- BOP employees (155), including employees at the Central Office, Regional Offices, and eight institutions:
 - Federal Detention Center Philadelphia, Pennsylvania;
 - Federal Correctional Institution Tallahassee, Florida;
 - Federal Correctional Complex Coleman, Florida;
 - Federal Correctional Complex Beaumont, Texas;
 - Federal Medical Center Carswell, Texas;
 - Federal Correctional Institution Danbury, Connecticut;
 - Federal Correctional Complex Victorville, California; and
 - Federal Prison Camp Duluth, Minnesota.
- OIG Investigations Division and Office of the General Counsel employees (13);
- Federal Bureau of Investigation (FBI) employees (10);
- U.S. Attorneys' Offices employees (9);
- USMS employees (5);
- Employees of agencies conducting research on prison rape: National Institute of Corrections, Bureau of Justice Statistics, Review Panel on Prison Rape, and the National Prison Rape Elimination Commission (9).

Document Reviews

- BOP and USMS policies, procedures, and literature relevant to staff sexual abuse prevention, intervention, and investigation, including standards of professional conduct as well as protocols for responding to allegations and conducting investigations of staff sexual abuse.
- Transcripts of hearings held by the National Prison Rape Elimination Commission and the Department's Review Panel on Prison Rape, and

draft standards for preventing, detecting, responding to, and monitoring staff sexual abuse in federal prisons and detention facilities.

- BOP investigative case files regarding allegations of staff-on-inmate sexual abuse.
- Executive Office for United States Attorneys' (EOUSA) policies and procedures for reviewing, categorizing, and determining whether to accept cases presented for prosecution, including the *U.S. Attorneys' Manual* and the manual for EOUSA's case management system, the Legal Information Office Network System.
- Court records available for the 102 cases accepted for prosecution.

Data Analyses

We examined records from databases maintained by the OIG, BOP's OIA, and EOUSA. However, the three databases did not contain all of the data we needed to meet our objectives. Consequently, we augmented the data with information from other sources such as case files and court records. We were not able to resolve all discrepancies, and in some cases we had to exclude cases with incomplete information or make informed decisions about interpreting the data.

- Allegations received from the BOP, USMS, and OIG – Because the BOP and USMS are required to notify the OIG of all allegations of staff sexual abuse, the component and OIG databases should have comparable data. However, we found differences in the OIG and BOP data due primarily to variances in data elements and data entry codes. We used BOP data to analyze trends in staff sexual abuse allegations because it is the primary source and because it provided more comprehensive information on sexual abuse allegations that are administrative rather than criminal in nature. The OIG primarily focuses its attention on criminal sexual abuse and does not collect as much data as the BOP on violations that are determined to be administrative in nature.
- Data on investigative outcomes from the BOP, OIG, and FBI – We used OIG data to determine the number and outcome of closed sexual abuse cases investigated by the OIG, and we used BOP data for all investigations conducted by BOP investigators. The Automated Case System (ACS) Application is used by the FBI to electronically record case information. Its design does not allow for the extraction of data specific to investigations of staff sexual abuse and sexual

misconduct.²⁵ Consequently, we used OIG and BOP data sources to determine which cases were investigated by the FBI and the outcomes of those investigations.

- Prosecution data from EOUSA, the OIG, and court records – We relied predominantly on OIG prosecution data that we verified through searches of court records in LexisNexis CourtLink. The OIG has detailed records on staff sexual abuse prosecutions because it is responsible for presenting the cases to the U.S. Attorneys and is notified of their decisions to accept or decline cases. Because officials at EOUSA and individual Assistant U.S. Attorneys acknowledged that declinations are not always recorded in their database, we used OIG data to determine the number of staff sexual abuse prosecutions. However, we used EOUSA data to determine the reasons for prosecutors’ declinations of staff sexual abuse cases, although the reasons were not documented consistently in EOUSA’s database.

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No. 10-73346 archived on February 27, 2015*

²⁵ Investigations of staff sexual abuse and sexual misconduct are recorded in the FBI’s ACS under the general category of “Color of Law” investigations, which the FBI defines as the deprivation of any rights, privileges, or immunities secured or protected by the U.S. Constitution by someone in their official government capacity. During FY 2001 through FY 2008, the FBI initiated 7,989 such investigations, of which only a small number involved sexual abuse of inmates by BOP staff. Because ACS cannot automatically identify just those cases involving BOP staff sexual abuse, extracting responsive data would have required a manual search that the FBI estimated would take hundreds of staff hours and months to accomplish. Because other reliable non-FBI data sources were available, to conserve resources and avoid delays in our review, we used non-FBI data sources to identify the cases investigated by the FBI.

RESULTS OF THE REVIEW

SECTION I: DATA ON BOP STAFF SEXUAL ABUSE

Allegations of sexual abuse and sexual misconduct by BOP staff with federal inmates more than doubled from FY 2001 through FY 2008, increasing at a faster rate than either the growth in the inmate or staff populations. About two-thirds of the allegations involved criminal sexual abuse, while the remaining third involved sexual misconduct such as using indecent language or gestures. Allegations of staff sexual abuse were reported at 92 of the BOP's 93 prison sites during this period and involved correctional staff in all but one of the BOP's occupational categories. We also found that female staff members were more likely to be accused of criminal sexual abuse or sexual misconduct than male staff members.

We reviewed the allegations of sexual abuse and sexual misconduct by BOP staff reported from FY 2001 through FY 2008 to determine the prevalence and characteristics of the allegations. Specifically, we determined the number of allegations and examined whether reported allegations are increasing commensurate with or to a greater or lesser extent than the growth in the inmate and staff populations. We also examined the types of alleged sexual abuse and sexual misconduct reported to identify trends in the categories of allegations. We examined the number of allegations reported by each correctional institution and by staff occupation and gender to identify whether allegations were more prevalent in any particular occupation and to what degree they differed by sex. We included allegations of both criminal sexual abuse and administrative sexual misconduct.

The BOP's standards of conduct prohibit its employees from allowing themselves to show partiality toward, or to become emotionally, physically, or sexually involved with, inmates. An employee may not engage in, or allow another person to engage in, sexual behavior with an inmate. BOP Program Statement 5324.06, Sexually Abusive Behavior Prevention and Intervention Program, applies to all sexually abusive behaviors by staff, including sexual fondling, sexual assault, sexual assault with an object, and sexual misconduct. All but one of those behaviors, sexual misconduct, are criminal acts covered by 18 U.S.C. §§ 2241-2245. The BOP defines sexual misconduct as the use of indecent language, gestures, or sexually oriented visual surveillance for the purpose of sexual gratification. Employees are subject to administrative action, up to and including termination, for any inappropriate contact or relationship

with inmates, regardless of whether such sexually abusive behavior constitutes a prosecutable crime.²⁶

The number of allegations of criminal sexual abuse and sexual misconduct against BOP staff more than doubled since 2001.

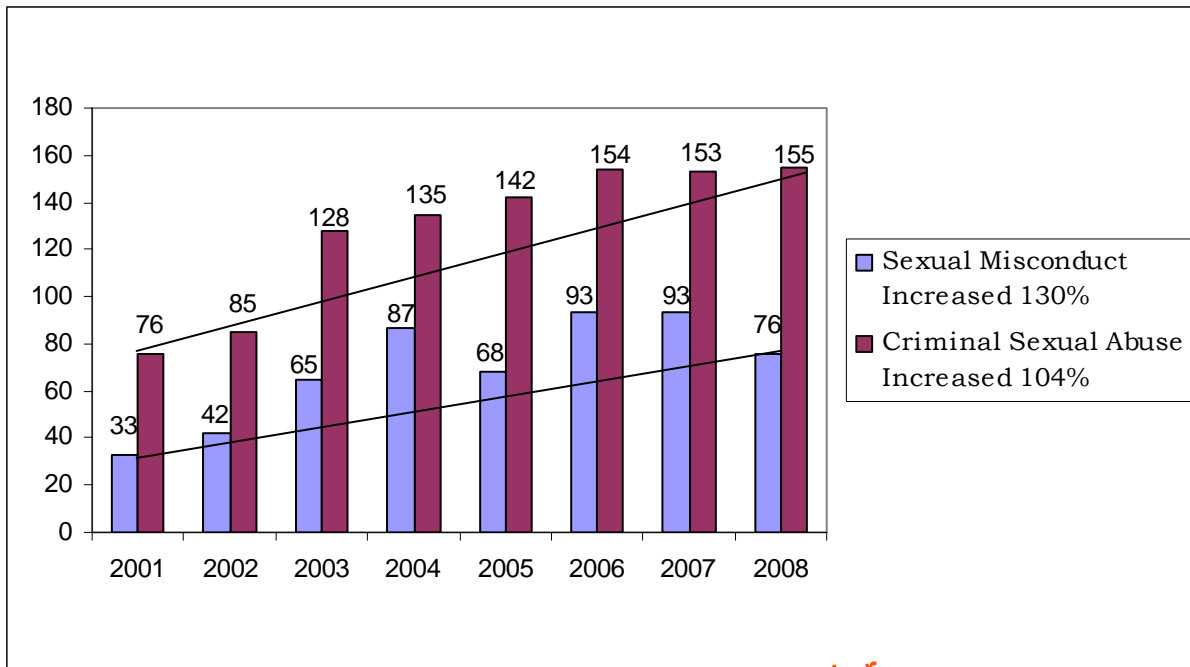
From FY 2001 through FY 2008, BOP institutions reported a total of 1,585 allegations of staff sexual abuse (1,028) and sexual misconduct (557) with federal inmates. Allegations of staff sexual abuse and sexual misconduct were reported in all but 1 of the 93 BOP-managed prison sites.²⁷ See Appendix I for the number of reported allegations by institution. During this 8-year period, the number of criminal sexual abuse allegations increased 104 percent, from 76 in FY 2001 to 155 in FY 2008, and the number of sexual misconduct allegations increased 130 percent, from 33 in FY 2001 to 76 in FY 2008 (see Figure 2). There was a general upward trend in the number of criminal sexual abuse allegations from FY 2001 through FY 2008. However, there was an 18 percent decline in allegations of sexual misconduct in FY 2008.

*cited in Khudaverdyan v. Holder
No. 10-73346 archived on February 27, 2015*

²⁶ BOP Program Statement 3420.09, Standards of Employee Conduct, February 5, 1999.

²⁷ BOP officials at the Federal Prison Camp Duluth, Minnesota, said they had no allegations of staff sexual abuse or misconduct from FY 2001 through FY 2008. The Federal Prison Camp Duluth is a minimum security BOP facility for male prisoners who have less than 10 years left on their sentences and who have been well-screened to ensure their suitability for confinement at the camp. According to the Warden, Duluth has an unusually stable workforce in its line staff.

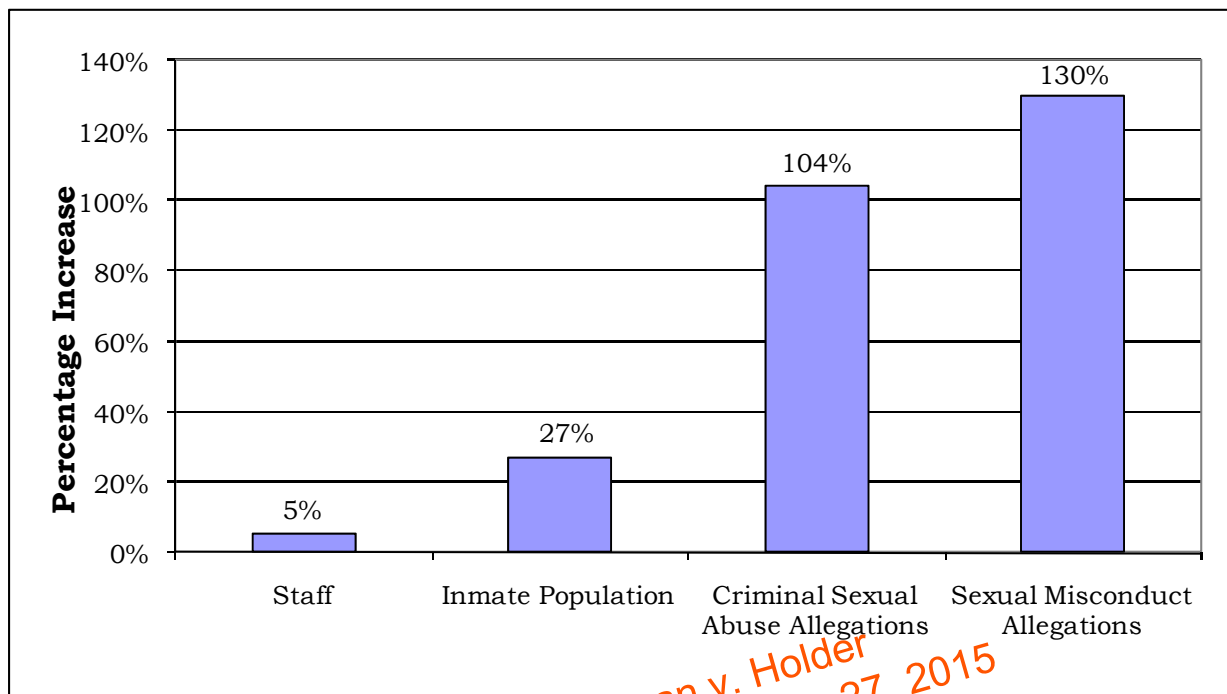
Figure 2: Staff Criminal Sexual Abuse and Sexual Misconduct Allegations, FY 2001 through FY 2008



Source: BOP Office of Internal Affairs database.

The general increase in allegations of staff criminal sexual abuse and sexual misconduct with inmates was greater than the increase in either the BOP's staffing level or inmate population over the same time period. As shown in Figure 3, during the period in which allegations of criminal sexual abuse increased 104 percent and sexual misconduct increased 130 percent, the BOP's staffing level increased 5 percent and the inmate population increased 27 percent. Therefore, the increase in allegations of staff sexual abuse and sexual misconduct cannot be explained by increases in the numbers of inmates or staff. BOP officials told us they believe the increase was caused by the BOP's efforts during this time period to educate and encourage staff and inmates to report abuse.

Figure 3: Percentage Growth in BOP Staffing, Inmate Population, and Number of Staff Sexual Abuse Allegations, FY 2001 through FY 2008



Source: BOP data.

Allegations named staff in all but 1 of 16 occupational categories.

We examined the prevalence of criminal sexual abuse and sexual misconduct allegations against employees in various occupations. We found that, while staff in 15 of 16 BOP occupational categories were named in allegations, some occupational categories were more likely to be involved in allegations of sexual abuse of inmates than others. The occupational categories involved in the highest numbers of allegations were correctional services, unit and case management, food service, health and safety, mechanical services, and education and vocational training. Staff members in these occupational categories have the most contact with inmates. The occupational categories that have the highest rates of allegations per 100 employees were food services (8.6), recreation (6), and education and vocational training (5.2) (see Table 1).

Table 1: Occupational Categories Ranked by the Rate of Sexual Abuse and Sexual Misconduct Allegations Per 100 Employees, FY 2001 through FY 2008

Occupations	Employees		Allegations		Allegations per 100 Employees
	No.	%	No.	%	
1. Food Service	1,585	4.7%	137	8.6%	8.6
2. Recreation	698	2.1%	42	2.6%	6.0
3. Education/Vocational Training	984	2.9%	51	3.2%	5.2
4. Correctional Services	15,866	46.7%	776	49.0%	4.9
5. Unit/Case Management	3,060	9.0%	148	9.3%	4.8
6. Inmate Services	193	0.6%	9	0.6%	4.7
7. Religion	304	0.9%	13	0.8%	4.3
8. Health/Safety	2,402	7.1%	101	6.4%	4.2
9. Psychological Services	931	2.7%	37	2.3%	4.0
10. Federal Prison Industries, Incorporated	1,353	4.0%	49	3.1%	3.6
11. Mechanical Services	2,373	7.0%	65	4.1%	2.7
12. Business	1,657	4.9%	28	1.8%	1.7
13. Records/Inmate Systems	988	2.9%	15	0.9%	1.5
14. Computer Services	233	0.7%	2	0.1%	0.9
15. Warden's Office	927	2.7%	7	0.4%	0.8
16. Human Resources	433	1.3%	0	0.0%	0.0
17. Occupation Unknown	0	0.0%	105	6.6%	N/A
All Employees	33,987	100.0%	1,585	100.0%	4.7

Note: Federal Prison Industries, Incorporated, is a wholly owned corporation of the U.S. government that operates factories and employs inmates in federal prisons to work in the factories.

Source: BOP Office of Internal Affairs data.

The majority of allegations involved claims of criminal sexual abuse.

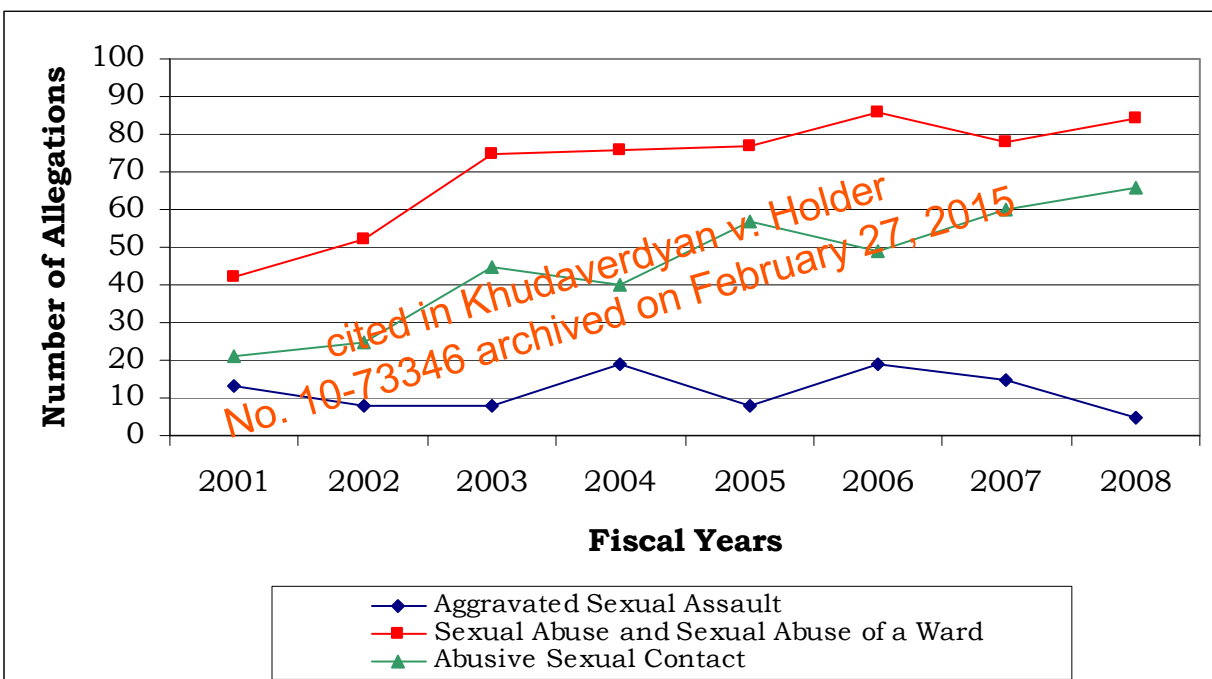
As discussed above, of the 1,585 allegations of sexual abuse and sexual misconduct reported from FY 2001 through FY 2008, 1,028 (about 65 percent) involved matters that would constitute criminal sexual abuse subject to prosecution. Of those 1,028 allegations that involved potentially criminal matters:

- 9.3 percent (95) alleged aggravated sexual assault (engaging in a sexual act by use of force or placing the inmate in fear of death or serious bodily injury);
- 55.4 percent (570) alleged sexual abuse (engaging in a sexual act with an inmate by threat or force) and sexual abuse of a ward (engaging in a sexual act with an inmate); and

- 35.3 percent (363) alleged abusive sexual contact (touching).

We examined trends in the categories of criminal staff sexual abuse alleged and found that allegations increased over the past 8 years for all categories of criminal sexual abuse except for the most serious (aggravated sexual assault). There were 21 total allegations of aggravated sexual assault in the first 2 years we reviewed (FY 2001 and FY 2002) and 20 total allegations in the last 2 years (FY 2007 and FY 2008). In contrast, comparing those same time periods, allegations of criminal sexual abuse and sexual abuse of a ward increased by 72 percent (from 94 to 162) and abusive sexual contact allegations increased 174 percent (from 46 to 126). Figure 4 shows the breakout of allegations by type over time.

Figure 4: Allegations of Staff Criminal Sexual Abuse by Type, FY 2001 through 2008



Note: The BOP does not make a distinction in its records between criminal sexual abuse and sexual abuse of a ward. As a result, we could not determine how many of the allegations involved sexual abuse with coercion and threats and how many did not.

Source: BOP Office of Internal Affairs data.

Gender-based differences existed in the allegations of staff sexual abuse.

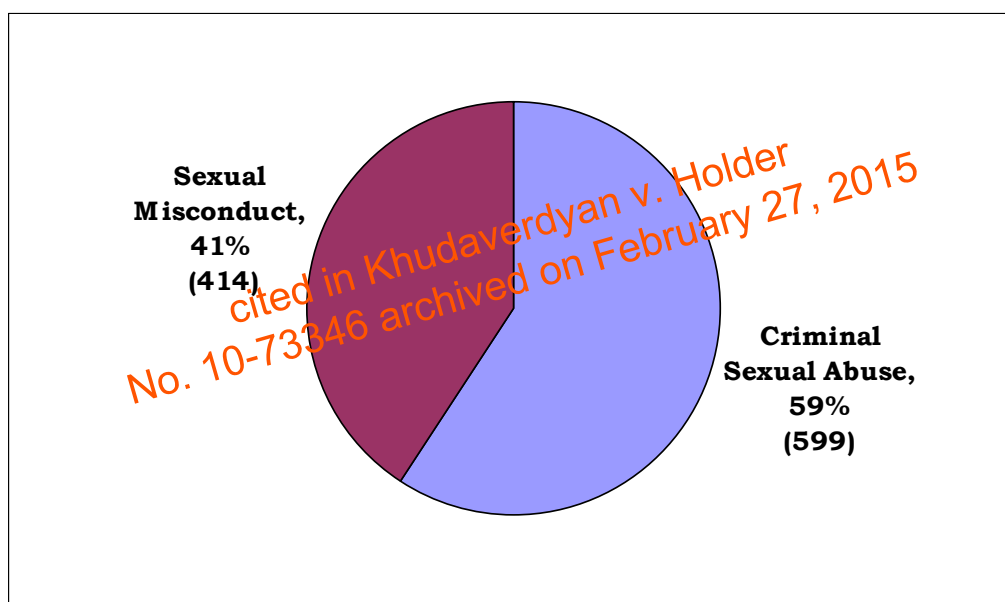
While we found some similarities, we also found differences in the types of allegations made against male and female staff members. Both male and female staff members were frequently accused of criminal sexual abuse and sexual abuse of a ward with a victim of the opposite gender. However, while

male staff members were frequently accused of abusive sexual contact with inmates of the same gender, female staff members were rarely accused of abusive sexual contact with inmates of the same gender. The gender of the accused staff member was not recorded in 29 of the 1,585 allegations made from FY 2001 through FY 2008.

Allegations Against Male Staff Members

As shown in Figure 5, BOP officials reported 1,013 of 1,585 (65 percent) allegations of sexually abusive behaviors involving male staff members. Of those, 414 (41 percent) involved allegations of sexual misconduct and 599 (59 percent) involved allegations of criminal sexual abuse.

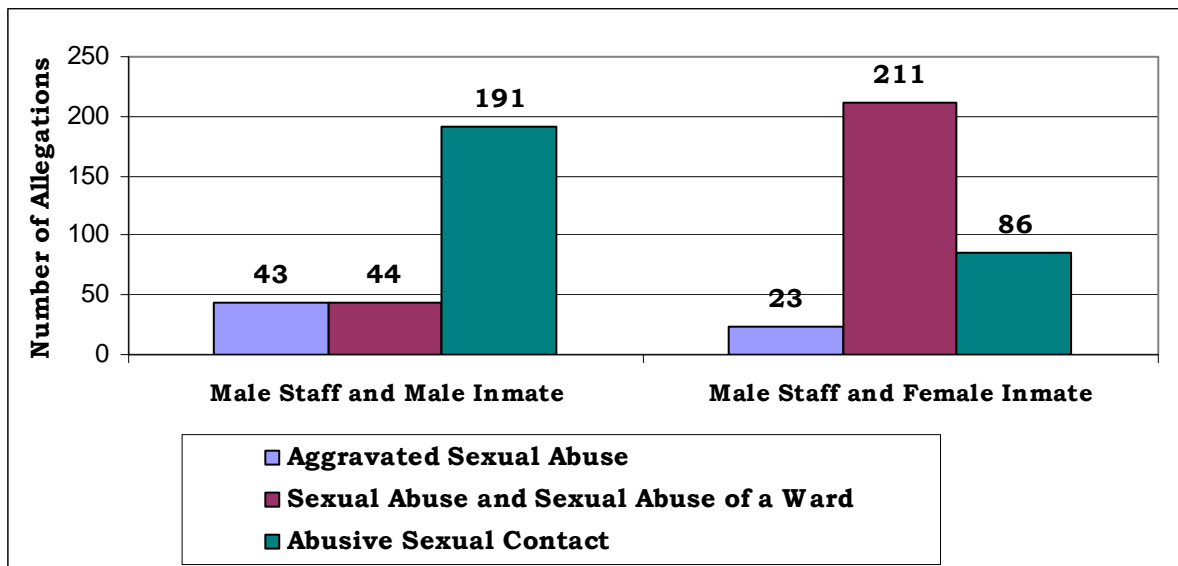
Figure 5: Allegations of Staff Criminal Sexual Abuse and Sexual Misconduct Involving Male Staff Members, FY 2001 through FY 2008



Source: BOP data.

Of the 599 allegations of criminal sexual abuse, there were 66 (11 percent) allegations of aggravated sexual abuse, 256 (43 percent) allegations of sexual abuse and sexual abuse of a ward, and 277 (46 percent) allegations of abusive sexual contact involving male staff members. Figure 6 shows the distribution of those allegations by the type of crime and the gender of the alleged subject and inmate victim.

**Figure 6: Allegations of Criminal Sexual Abuse
Involving Male Staff Members,
FY 2001 through FY 2008**



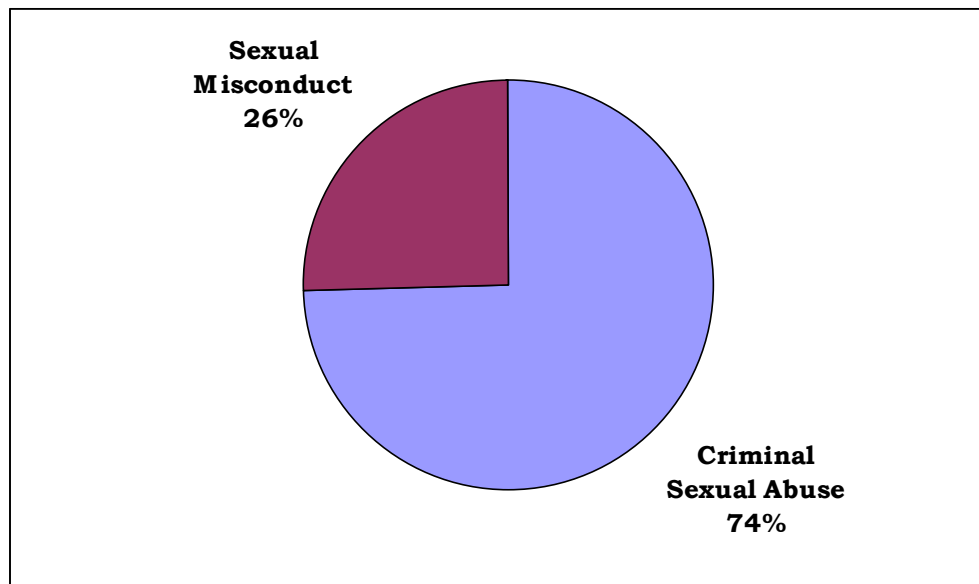
Source: BOP Office of Internal Affairs data.

As shown in Figure 6, male staff members were most often accused of criminal sexual abuse and sexual abuse of a ward with female inmates (211 or 35 percent) and abusive sexual contact with male inmates (191 or 32 percent). BOP officials believed that male staff members were most often accused of sexual misconduct stemming from pat searches. Although abusive sexual contact (touching) constitutes a crime rather than misconduct, the high number of abusive sexual contact allegations provides some support for the BOP's perception.

Allegations Against Female Staff Members

As shown in Figure 7, BOP officials reported 543 allegations of sexually abusive behaviors involving female staff members. Of those, 139 (26 percent) involved allegations of sexual misconduct and 404 (74 percent) involved allegations of criminal sexual abuse.

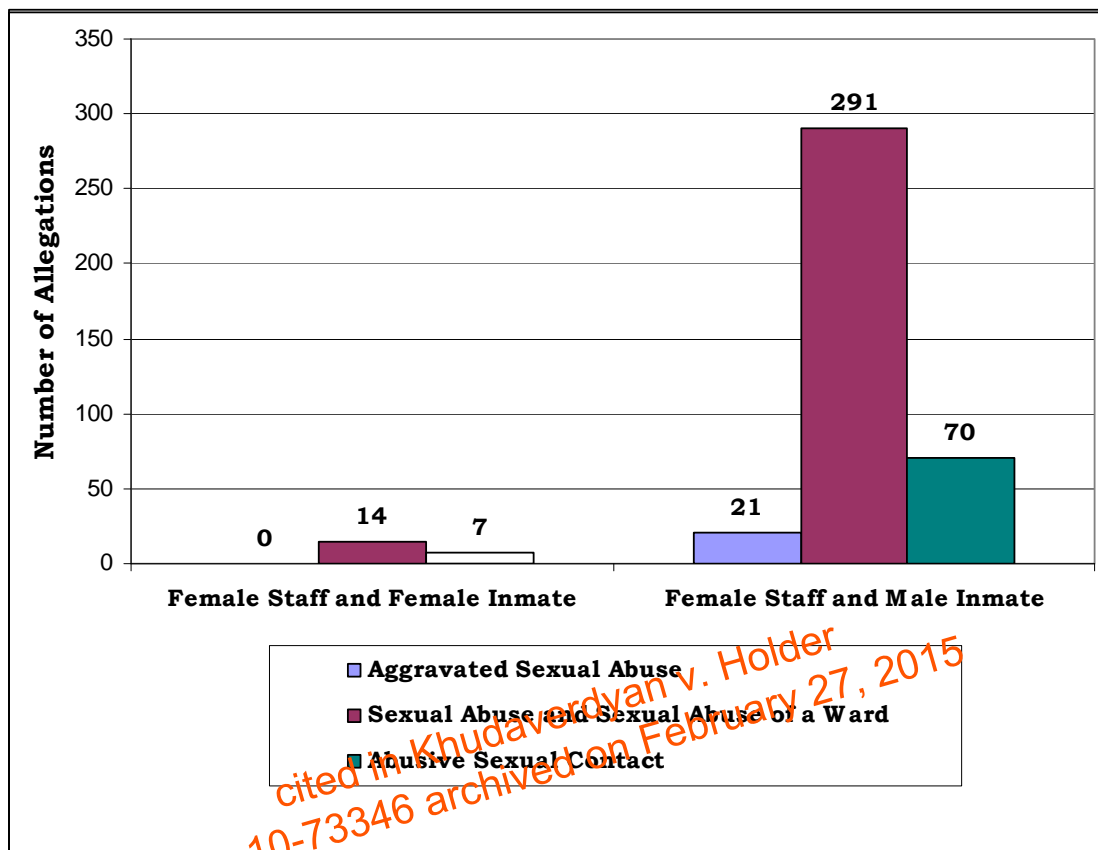
Figure 7: Allegations of Staff Criminal Sexual Abuse and Sexual Misconduct Involving Female Staff Members, FY 2001 through FY 2008



Source: BOP Office of Internal Affairs data.

Of the 404 allegations of criminal sexual abuse, there were 21 (5 percent) allegations of aggravated sexual abuse, 306 (76 percent) allegations of sexual abuse and sexual abuse of a ward, and 77 (19 percent) allegations of abusive sexual contact. Figure 8 shows the distribution of those allegations by the type of crime and the gender of the alleged inmate victim. Female staff members were most often accused of criminal sexual abuse and sexual abuse of a ward with male inmates. Few allegations involved female staff members and female inmates.

**Figure 8: Allegations of Criminal Sexual Abuse
Involving Female Staff Members,
FY 2001 through FY 2008**



Note: The data includes 404 allegations of criminal sexual abuse involving female staff members. The gender of one alleged victim was not known and was excluded from the chart.

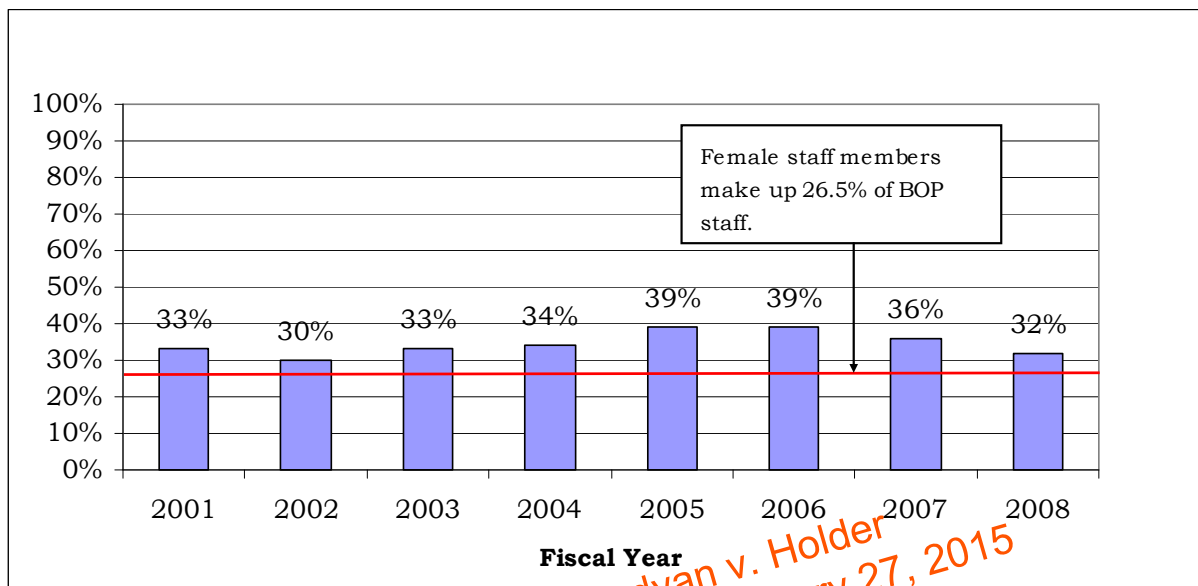
Source: BOP Office of Internal Affairs data.

Alleged Staff Sexual Abusers as a Percentage of the Workforce

Female employees were the subject of allegations of sexually abusive behavior at a higher rate than they were represented in the BOP workforce. The composition of the BOP workforce has remained stable at approximately 73.5 percent male and 26.5 percent female since before 2001. However, as shown in Figure 9, the proportion of all allegations of sexually abusive behaviors, including criminal sexual abuse and sexual misconduct, with female staff members named as subjects ranged from 30 percent to 39 percent in each year from FY 2001 through FY 2008, which exceeds the proportion of female staff members in the BOP workforce (26.5 percent). Approximately 6 percent of all female staff members were the subjects of allegations of sexually abusive

behaviors, predominantly of cross-gender offenses, from FY 2001 through FY 2008.²⁸

Figure 9: Percentage of Allegations of Criminal Sexual Abuse and Sexual Misconduct Involving Female Staff Members, FY 2001 through FY 2008

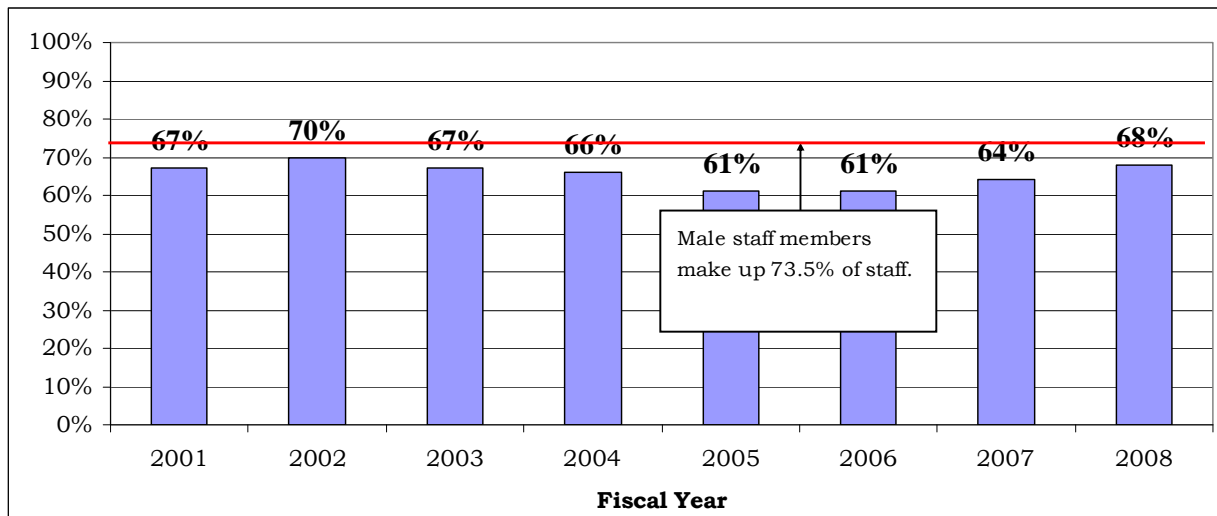


Source: BOP Office of Internal Affairs data

In contrast, the proportion of all allegations of sexually abusive behaviors, including criminal sexual abuse and sexual misconduct, involving male staff members named as subjects ranged from 61 percent to 70 percent in each year of our study period, which was less than their representation in the BOP workforce (73.5 percent) in every year reviewed. (See Figure 10.) Approximately 4 percent of all male staff members were the subjects of allegations of sexually abusive behaviors. More than half of those male staff members were the subject of same-gender allegations.

²⁸ The percentage of staff members of each gender who were the subject of allegations was based on the total number of allegations and an 8-year average of the number of staff of each gender. Multiple allegations naming the same subject were only counted once. There was an 8-year average of 8,600 female and 23,908 male staff members.

Figure 10: Percentage of Allegations of Criminal Sexual Abuse and Sexual Misconduct Involving Male Staff Members, FY 2001 through FY 2008



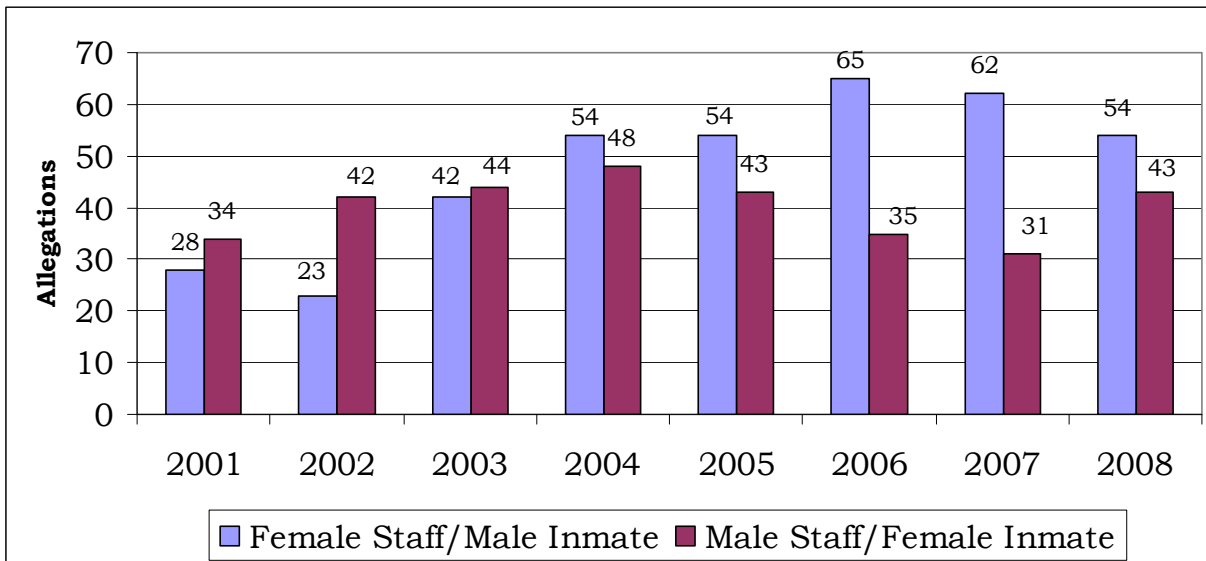
Source: BOP Office of Internal Affairs data.

Cross-Gender Allegations

Cross-gender allegations of sexually abusive behavior, meaning those involving male staff and female inmates or female staff and male inmates, were greater than same-gender allegations. Of the 1,556 allegations where the sex of the alleged staff abuser was known, 966 (62 percent) were cross-gender. Of these 966 cross-gender allegations, 702 involved criminal sexual abuse and 264 involved sexual misconduct. The number of allegations of sexually abusive behavior involving female staff members and male inmates exceeded those involving male staff members and female inmates each year from FY 2004 through FY 2008. While the BOP workforce is 73.5 percent male and 26.5 percent female, 53 percent (512) of cross-gender allegations involved female staff members and 47 percent (454) involved male staff members.

Figure 11 shows the total number of cross-gender criminal sexual abuse allegations (702) by female (382) or male (320) staff members from FY 2001 through FY 2008. The data demonstrates that since FY 2004, female staff members have been the subject of more allegations of cross-gender criminal sexual abuse than have male staff members.

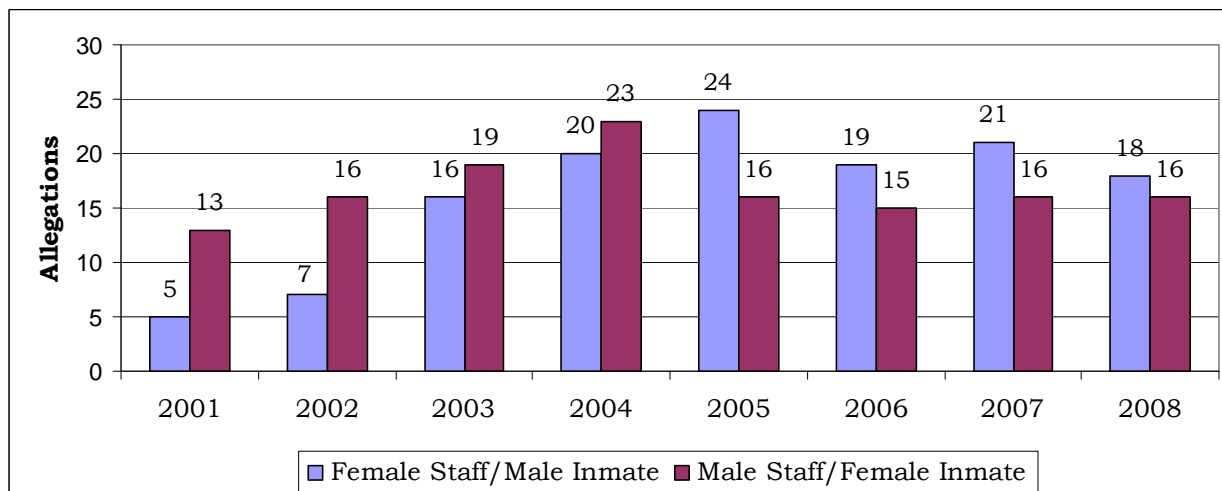
Figure 11: Cross-Gender Allegations of Criminal Sexual Abuse, FY 2001 through 2008



Source: BOP Office of Internal Affairs data.

Figure 12 shows the number of cross-gender allegations of staff sexual misconduct (264) by female (130) and male (134) staff members from FY 2001 through FY 2008. Since 2005, female staff members have been the subject of more allegations of cross-gender sexual misconduct than have male staff members.

Figure 12: Cross-Gender Allegations of Staff Sexual Misconduct, FY 2001 through 2008



Source: BOP Office of Internal Affairs data.

cited in Khudaverdyan v. Holder
No. 10-73346 archived on February 27, 2015

SECTION II: BOP EFFORTS TO DETER STAFF SEXUAL ABUSE INCIDENTS

Some BOP prison officials are not adequately considering alternatives to placing victims in isolation when they receive allegations of staff sexual abuse and sexual misconduct, a practice that can inhibit reporting of sexual abuse. Some BOP prison officials also are not providing sufficient victim services to inmates who raise allegations of sexual abuse. In addition, some prisons did not report all such allegations to the BOP's Office of Internal Affairs and the OIG as required. We concluded that BOP officials could improve staff training and inmate education about sexual abuse prevention and reporting, and also improve oversight of prisons' sexual abuse prevention programs.

As discussed in the Background section of this report, the BOP has established a zero-tolerance standard for staff sexual abuse; developed standard procedures for detecting and preventing sexually abusive behavior; and established protocols for responding to, reporting, and investigating allegations of staff sexual abuse at its prisons. The BOP categorizes sexually abusive behaviors as sexual fondling, sexual misconduct, sexual assault (rape), and sexual assault with an object. Staff members are responsible for understanding and complying with the BOP's policies and procedures and for reporting all allegations or incidents of staff sexual abuse and sexual misconduct. Each Warden is required to assign a program coordinator who has overall responsibility for the prison's sexual abuse prevention and intervention program and for coordinating the efforts of the prison's designated response team.

According to BOP Program Statement 5324.06, Sexually Abusive Behavior Prevention and Intervention Program, April 2005, the BOP's sexual abuse prevention program has five key elements:

- Prevention through staff training and inmate screening, classification, and education;
- Detection through awareness and monitoring;
- Intervention through reporting and responding to all allegations to ensure that alleged victims are protected and provided with psychological and medical services;

-
- Investigations that include crime scene preservation, physical evidence collection, and after-action reviews; and
 - Disciplining and prosecuting all sexual abusers, maintaining full and accurate recordkeeping, and conducting analysis of incidents.

When some BOP prison officials received allegations of staff sexual abuse and sexual misconduct, they did not adequately consider alternatives to placing victims in isolation, a practice that can inhibit reporting of sexual abuse.

In response to allegations of sexual abuse, BOP officials frequently attempt to protect potential victims by isolating them in a special housing unit or a local jail, without considering alternatives. However, this isolation can have negative effects on the victims of staff sexual abuse or sexual misconduct and their willingness to report their abuse.

As discussed below, BOP officials at four of seven prisons included in this review told us that they routinely protected alleged victims from potential further abuse by segregating them from the general prisoner population, isolating them in a special housing unit or local jail, and then transferring them to another prison as soon as possible.²⁹ Those actions, while intended to protect the victims from additional abuse, often disadvantaged the prisoner victims and made other inmates reluctant to report abuse because they regarded those actions as punishment. In contrast, BOP officials at the three other prisons told us they used segregation, isolation, and transfer as a last resort because of the detrimental impact those actions can have on the alleged victim and the willingness of other inmates to report staff sexual abuse.³⁰ The officials at these three prisons instead used other measures to protect the inmates, as recommended by BOP policy and described below.

BOP policy provides alternatives for protecting victims. According to BOP Program Statement 5324.06, Sexually Abusive Behavior Prevention and Intervention Program, a prison's sexual abuse prevention Program Coordinator

²⁹ The four prisons that routinely placed alleged victims in isolated segregation included three Federal Correctional Complexes with low, medium, and high security facilities for male prisoners. One of the complexes also had an adjacent satellite camp for female prisoners. The other facility was a low security Federal Correctional Institution housing female prisoners that also had an adjacent detention center for male prisoners.

³⁰ The three prisons that considered alternatives to segregating the victims included a Federal Detention Center for pre-trial male and female prisoners, a low security Federal Correctional Institution for female prisoners with an adjacent satellite camp for minimum security females; and a Federal Medical Center providing specialized medical and mental health services for female prisoners.

should decide how best to safeguard an alleged victim after reviewing the incident report and the results of the alleged victim's psychological and, when appropriate, medical assessments. The program statement also lists options for safeguarding an alleged inmate victim of staff sexual abuse to prevent further abuse and to protect the victim from retaliation by other staff and inmates for making an allegation. Those options range from the most restrictive (placing the alleged victim in a special housing unit and transferring the alleged victim to another prison) to the least restrictive (leaving the inmate in the general population, but monitoring the situation). BOP policy also allows prison officials to protect the alleged victim by changing the victim's housing and work assignments to separate the victim from the alleged abuser and by changing the accused staff member's work assignments and duty station or placing the staff member on home duty pending completion of the investigation.³¹

BOP staff members that we interviewed at four of the seven prisons told us that their Wardens have sole discretion in deciding how to safeguard alleged victims and that, despite other options, they automatically placed alleged victims in a special housing unit, other isolated unit, or local jail until they could be transferred to another prison.

Isolated segregation and transfers disadvantage victims and inhibit reporting. As noted above, inmates who raise allegations of staff sexual abuse and sexual misconduct are sometimes placed in special housing units and subsequently transferred to other prisons to protect them from the risks of further abuse and retaliation by staff members and other inmates. However, we were told by BOP psychologists, wardens, and investigators; OIG Special Agents; and U.S. Attorneys that those measures can result in a victim's loss of educational and rehabilitative programs and other privileges as well as estrangement from their families. Clinical psychologists working at three prisons told us that isolation in a special housing unit or local jail can be emotionally and physically stressful to victims and result in a form of re-victimization. The psychologists and other BOP staff said that, if an inmate is kept in the special housing unit for more than a week, disruptions in the inmate's treatment and education programs are also likely to occur. A transfer to another prison can be especially difficult for inmates who have young children living near the prison because a transfer can take the inmates hundreds of miles away, thereby limiting their contact with their families.

³¹ According BOP Program Statement 5270.07, Inmate Discipline and Special Housing Units, December 29, 1987, disciplinary segregation is a form of separation from the general inmate population in which prisoners who commit serious violations of BOP rules are confined as punishment and as a deterrent to further prohibited behavior. Administrative detention is a non-punitive status in which an inmate is confined in isolation to ensure the safety of the inmate or others.

An Associate Warden for Operations at a Federal Correctional Institution Danbury told us that when an alleged victim is sent to the special housing unit, the inmate may remain in the unit for 1 to 2 weeks, several months, or even a year, depending on the complexity of the investigation and whether there is a subsequent prosecution. He said that moving the alleged victim to another prison also limits investigators' access to the victim, which inhibits the investigation. An OIG Special Agent who has investigated multiple staff sexual abuse cases told us transfers can be very difficult for female inmates because the BOP has far fewer female prisons than male prisons and they are geographically dispersed.

A BOP Special Investigative Agent working at the Federal Correctional Complex Coleman told us that Coleman does not have a special housing unit for its female inmates. Consequently, female victims are sent to the Sumter County Sheriff's jail until they are transferred to another federal prison, the closest being 200 miles away from Coleman. While the prisoner is awaiting transfer (usually 2 to 3 weeks) to another federal prison, Sheriff's personnel consider the prisoner to be in a "hold-over" status and, consequently, do not allow the inmate visits from family members. Once transferred, inmates can become estranged from their families who may lack the resources to travel longer distances to visit them.

While some inmates want to be moved after reporting staff sexual abuse, others fear isolation and the resultant loss of privileges they have earned through good behavior. BOP staff, OIG Special Agents, BOP investigators, and U.S. Attorneys told us that prisoner victims may be less likely to report sexual abuse of another inmate, admit they have been victimized, or ask for protection from a sexually abusive staff member because they regard assignment to the special housing unit and a transfer as punitive. Inmates also may be less likely to admit they were victims when the abuse is reported by a third party. According to two U.S. Attorneys we interviewed, inmates often initially deny being victims out of fear of being put in segregated isolation or being transferred. While they may later admit the abuse, their credibility with prosecutors, judges, and juries has been diminished by their initial denial.

Alternatives exist to isolated segregation and transfers. Personnel at three of the seven prisons we reviewed told us that because of the negative impacts of isolating and transferring victims of sexual abuse, they consider less restrictive options for protecting alleged victims whenever possible.³² The Chief of Psychology Services for the Federal Detention Center Philadelphia told us

³² The three prisons were the Federal Detention Center Philadelphia, the Federal Correctional Institution Danbury, and the Federal Medical Center Carswell.

that she interviews the alleged victims to assess their treatment needs and to determine how to minimize the risk of future abuse. She said victims sometimes express anxiety during the interviews about running into the perpetrators and want to be placed in the special housing unit. However, she said isolation in the special housing unit can be extremely detrimental to the mental health of the victims. She believes that other options, such as leaving the prisoners in the general prison population and monitoring the situation, changing the inmates' housing and work assignments to separate them from the alleged perpetrators, and reassigning the alleged perpetrators or putting them on home duty should always be considered. At the Federal Correctional Institution Danbury, the Warden said her institution considers the full range of options and tries not to put alleged victims in the special housing unit. The Special Investigative Supervisor at Danbury said that, in the last couple of abuse cases, Danbury personnel have reassigned or transferred the accused staff members to home duty instead of moving the alleged prisoner victims. He also said that they sometimes allow the prisoner to transfer back to Danbury after the investigation, especially when the perpetrator has resigned or been terminated.

According to a Program Manager for the sexual abuse prevention program at the Federal Medical Center Carswell, staff there cannot automatically transfer alleged victims because they may be ill and require special medical or mental health treatment that can be provided only at Carswell.³³ Instead of moving an alleged victim, the Warden prefers to reassign the accused staff member to prevent contact with the victim. Although the Warden and Captain determine how the alleged victim will be safeguarded, the Program Manager said they try to use the special housing unit as a last resort. She said they also talk with each alleged victim and, if the prisoner does not want to be moved, the staff will try to keep the victim in the general population as long as the victim feels comfortable and can be closely monitored. The BOP Special Investigative Agent at Carswell told us that one of the reasons inmates do not like to transfer out of the general population is because their participation in education or drug programs can be terminated if they are sent to the special housing unit for more than a week.

We concluded that alleged victims should not automatically be placed in BOP special housing units and subsequently transferred to another prison. Rather, decisions about how best to protect an alleged victim should be made

³³ The Federal Medical Center Carswell was unique among the prisons in our review because it had both a Program Coordinator who provided program oversight and a Program Manager who was responsible for day-to-day management of the sexual abuse prevention program. Also, at the suggestion of a former inmate and staff sexual abuse victim, Carswell officials had installed a dedicated telephone hotline so that prisoners could confidentially report sexual abuse to prison officials.

after individually assessing the risks to the inmate in each prison and considering less restrictive protective methods. The Program Coordinator should decide how best to protect the victim from further abuse after conferring with other members of the response team, talking with the prisoner, and reviewing the prisoner's psychological and medical assessments as required by the BOP Program Statement.

Recommendation

We recommend that the:

1. BOP require prison officials to assess the risks and consider BOP-sanctioned alternatives for safeguarding alleged prisoner victims of staff sexual abuse instead of automatically segregating, isolating, and transferring the prisoner victims.

Victims' psychological and medical services may have been curtailed at some prisons.

We found that Psychology and Medical Services staff at some prisons could not verify that all prisoner victims who had reported being sexually abused by a staff member had been referred for psychological assessments and medical assessments when the Program Coordinator believed that physical contact or injury was involved. BOP policy requires that in all cases of alleged sexual abuse, the Operations Lieutenant promptly refer all inmates reported or suspected of being the victim of sexually abusive behavior to Psychology Services for an assessment of vulnerability and treatment needs. The Program Coordinator, who at some prisons is also the Chief of Psychology, is required to review the initial psychological assessment before determining whether to activate the full response protocol. Psychology Services personnel are responsible for crisis intervention, assessment of treatment needs, documentation of the evaluation results, treatment, psychiatric referral, and other treatment options for the alleged victim. Medical Services personnel are responsible for examining, documenting, and treating inmates' injuries arising from sexually abusive behaviors, including testing when appropriate for pregnancy, HIV, and other sexually transmitted diseases. Where indicated, medical staff, trained in the collection of physical evidence should conduct an examination for physical evidence that may be important to a subsequent investigation. While psychological assessments are supposed to be conducted for all alleged inmate victims of sexual abuse, not all victims require medical services.

Two prisons that we visited – Federal Detention Center Philadelphia and Federal Medical Center Carswell – could not provide us with information to verify that required psychological and medical assessments were completed in

all cases of alleged sexual abuse. Philadelphia provided information on mental health evaluations for 20 alleged inmate victims of staff sexual abuse. Of the 20 cases, psychology records indicated that only 10 inmates were seen by Psychology Services personnel specifically in response to their allegations of sexual abuse. Philadelphia had medical records for only 2 of the 20 alleged victims because they had been transferred, along with their medical records, to other prisons. According to Philadelphia, those two cases did not involve physical contact or injury and, therefore, did not require a medical assessment. Similarly, Carswell provided information from psychology and medical records about evaluations on 12 of the 52 total cases of alleged sexual abuse reported during the study period. In the remainder of the cases, psychology or medical records were not available because the inmates had been transferred to other prisons or had been released from prison.

The Program Coordinators and Chiefs of Psychology and Medical Services at three other prisons said that they had not been informed of all allegations of sexual abuse involving staff members. Consequently, some alleged prisoner victims of sexual assaults and sexual abuse had not received psychological and medical services, as required. The Chiefs of Psychology at Coleman, Danbury, and Victorville confirmed that psychological services had not always been provided for alleged victims of staff sexual abuse in the past. For example, the Chief of Psychology at Coleman stated that Psychology Services reviewed the psychology records of the inmates involved in the complex's 30 allegations of staff sexual abuse and found that only 1 of the alleged victims had undergone the required psychological assessment. All three told us that they had recently taken steps to ensure that they or a member of their staff is notified when allegations of staff sexual abuse are made and that alleged victims receive psychological assessments of their treatment and protection needs.

The failure to provide victim services may stem in part from the BOP's guidance about who must be notified about staff-on-inmate sexual abuse allegations. Program Statement 5324.06 states that all sexual abuse allegations should be reported to the Operations Lieutenant who, in turn, informs the Program Coordinator; health, psychology, and correctional services staff; investigators; and the Warden. However, the Special Investigative Supervisors Manual requires BOP investigators to notify the Warden immediately of an allegation involving a staff member, and the Warden, in turn, must report the allegation to the BOP's Office of Internal Affairs and to the OIG or FBI. The manual states, "Access to information regarding an investigation at an institution shall be on a 'need-to-know basis.'"

BOP investigators and administrative staff at four prisons told us that the "need to know" provision sometimes results in prison officials delaying or deciding not to refer alleged victims for assessments by psychology and medical personnel. They said this is especially true when an allegation is made against

senior staff. For example, BOP investigators and administrative staff told us that allegations involving staff alleged to have sexually abused a prisoner are reported directly to the Special Investigative Agent and the Warden, and the Warden may decide not to notify other members of the sexual abuse response team, especially those who are not part of the facility's Executive Staff such as the Chief of Psychology. Consequently, in some cases the sexual abuse response protocols were not followed because concerns for the privacy of the accused staff member took precedence over the need to provide victim services. According to BOP staff members at the prisons we visited, this heightened level of confidentiality is not a concern when the alleged perpetrator is another prisoner and therefore the sexual abuse response protocol is followed routinely. We believe alleged victims should receive psychological and medical services without delay and that the provision of victim services should not and does not compromise the privacy of the accused staff member.

Recommendations

We recommend that the:

2. BOP develop procedures to ensure that all alleged inmate victims of staff sexual abuse receive psychological and medical assessments and that prison officials maintain a record of the accomplishment of the assessments.
3. BOP clarify guidance contained in Program Statement 5324.06 and the Special Investigative Supervisors Manual for reporting staff sexual abuse allegations and consider developing a separate program statement for responding to allegations of staff sexual abuse of prisoners.

Some prisons were not reporting all allegations of staff sexually abusive behavior.

Some allegations were not reported to the BOP's Office of Internal Affairs and the OIG as required.

We found that BOP investigative personnel at two prisons we visited – the Federal Detention Center Philadelphia and the Federal Correctional Institution Danbury – had not been reporting allegations they determined were unfounded to the OIA and the OIG. We concluded that some BOP staff members may be confused about the need to report all allegations to the BOP's OIA and the OIG, even those that they believe are unfounded, because of certain guidance contained in BOP Program Statement 5324.06 for the sexual abuse prevention program, which states:

In some cases, the Program Coordinator will determine that there is not sufficient reason to proceed; that is, the alleged victim credibly recanted, the alleged perpetrator was not in the institution on the date of the allegation, etc., and the Response Protocol may be terminated.

The program statement may give the impression that unless the full response protocol is activated, the allegation does not have to be reported.

Further, when BOP investigative personnel do not report all allegations to the OIA and the OIG, it affects the accuracy of the BOP's annual reporting of sexual abuse allegations to the Bureau of Justice Statistics. Under the provisions of the *Prison Rape Elimination Act*, the BOP is required to report and certify to the Bureau of Justice Statistics once a year that all allegations of staff sexually abusive behavior have been reported, including those allegations the BOP determines are unfounded. The Bureau of Justice Statistics defines unfounded allegations as those in which "the event was determined not to have occurred." At four of the BOP prison facilities that we visited, prison officials told us that most allegations were unfounded, but the BOP's OIA database only contained 66 unfounded allegations for our 8-year study period. In addition, the BOP had reported only 18 unfounded allegations of staff sexual abuse and sexual misconduct to the Bureau of Justice Statistics since 2004, which was the first year for reporting under the provisions of the *Prison Rape Elimination Act*.

We believe that BOP officials at all levels should report all allegations, including those that they have determined to be unfounded, to the OIA and the OIG, as well as in the BOP's annual report to the Bureau of Justice Statistics.

Recommendation

We recommend that the:

4. BOP direct prison officials to ensure that all allegations of staff sexual abuse are reported to the OIA, OIG, and Bureau of Justice Statistics, including those thought to be unfounded.

OIA's database of allegations did not specify in all cases the prison facility where the alleged incident occurred.

We found that information in the OIA database did not always identify the specific prison facility where incidents of sexual abuse and sexual misconduct were alleged to have occurred. For example, the BOP has 14 correctional complexes that include multiple prisons with different security levels located in close proximity to one another. Also, other stand-alone facilities may have satellite camps that have a different security level than the main facility. OIA officials told us that they record information in the OIA database about each allegation by the name of the accused staff member and the complex where the staff member was assigned without specifying the facility within the complex where the incident was alleged to have occurred. In order to conduct trend analysis by type of facility, an OIA official told us they would have to conduct a manual review of each investigative case file. This method of recording makes it difficult for senior BOP regional and headquarters administrators to review the number of allegations at each prison facility to identify trends and determine whether corrective measures are needed.

Recommendation

We recommend that the:

5. BOP require OIA officials to record the specific name of the prison facility where each allegation of staff sexual abuse and sexual misconduct was reported to have occurred.

BOP officials do not adequately train staff or educate inmates about sexual abuse prevention and reporting.

Staff Training

During 2008, BOP officials stated that they took steps to improve staff training aimed at preventing sexual abuse crimes. In a November 24, 2008, memorandum, the BOP's Assistant Director, Correctional Programs Division, told the OIG of recent and planned improvements in sexual abuse prevention

training that were to be part of the Institutional Familiarization and Annual Refresher training for BOP personnel. The revised training included a handout listing the warning signs of inappropriate relationships between staff and inmates and a video, "Facing Prison Rape," developed by the National Institute of Corrections to educate staff on the *Prison Rape Elimination Act* and to reinforce the BOP's zero-tolerance standard for staff sexual abuse.

The Assistant Director also stated that the agency was working on a training video in which the BOP Director will address the BOP's zero-tolerance standard. It will include the BOP's Chief of the Office of Internal Affairs speaking about the revised sexual abuse laws and the reality of having to register as a sex offender. The video is intended to become part of Institutional Familiarization and Annual Refresher training, but was not ready during our fieldwork.

Although the BOP is taking steps to improve training, its training on gender-specific issues remains incomplete and out of date. As previously discussed, almost all criminal sexual abuse allegations made against female staff were cross-gender and approximately half of the criminal sexual abuse allegations made against male staff were cross-gender. However, the cross-gender training the BOP provides as an enhancement to the initial law enforcement training all staff members receive focuses primarily on male staff members working in a female institution. It does not address the issues faced by female staff members working in a male institution.

According to BOP Program Statement 5200.01, Management of Female Offenders, August 4, 1997, female inmates have different physical, social, and psychological needs than male inmates, and management strategies that work well with male inmates can have a negative effect on female inmates because many female inmates have a prior history of sexual trauma and abuse. Therefore, to better prepare male and female staff members to work in a female prison, the BOP requires all staff members to complete an interactive, 40-hour, self-study online course, "Managing Female Offenders," each time they are assigned to work in a female prison, no matter how many times they have taken it in the past. This course is the only course the BOP offers that deals with gender-specific issues. It explains how female inmates serve their incarceration differently from male inmates, how some female inmates may manipulate staff, and how staff can avoid being manipulated by female inmates. The course has not been revised since February 2003 and, therefore, does not address the 2006 statutory changes that made sexual abuse of a ward and abusive sexual contact felonies. The course also does not address the implications of the statutory changes making sex offender registration mandatory if a staff member is convicted of one of those crimes.

The BOP's initial law enforcement training for new employees focuses on managing male inmates. However, female staff members working with male inmates are involved in cross-gender allegations at a higher rate than their male staff colleagues. Approximately 6 percent of all female staff members compared to approximately 2 percent of male staff members were the subjects of allegations of cross-gender criminal sexual abuse or sexual misconduct during our 8-year study period. Consequently, the BOP needs improved cross-gender training for female staff members working in male prisons.

Recommendations

We recommend that the:

6. BOP revise its self-study course, "Managing Female Offenders," to include instruction on the 2006 statutory changes that increased the penalties for sexual abuse of a ward and abusive sexual contact and that require staff members convicted of those crimes to register as sex offenders.
7. BOP develop improved training for female staff working in male prisons that focuses specifically on preventing and detecting female staff sexual abuse of male inmates.

Inmate Education

The BOP's sexual abuse prevention program provides inmate education when inmates are initially incarcerated and when they are transferred to a new prison. In addition, all inmates receive a copy of the BOP's 2005 pamphlet, "Sexually Abusive Behavior Prevention and Intervention, An Overview for Offenders." However, the information provided in the pamphlet is unclear and outdated. The BOP needs to update the pamphlet to include the 2006 statutory changes. The BOP also needs to clarify language in the pamphlet that we believe could incorrectly lead a prisoner victim to think that he or she would be disciplined or prosecuted for being sexually abused by a prisoner or a staff member. For example, the following excerpts from the pamphlet could be misleading to inmates, particularly the last sentence of the second excerpt.

Excerpt 1:

Prohibited Acts: Prisoners who engage in inappropriate sexual behavior can be charged with the following Prohibited Acts under the Inmate Disciplinary Policy.

Code 101/(A): Sexual Assault

Code 205/(A): Engaging in a Sex Act

Code 206/(A): Making a Sexual Proposal
Code 221/(A): Being in an Unauthorized Area with a
Member of the Opposite Sex
Code 300/(A): Indecent Exposure
Code 404/(A): Using Abusive or Obscene Language

Excerpt 2:

What is sexually abusive behavior? . . . NOTE: Sexual acts or contacts between two or more inmates, even when no objections are raised, are prohibited acts, and may be illegal. Sexual acts or contacts between an inmate and a staff member, even when no objections are raised by either party, are always forbidden and illegal.

The pamphlet language also is very formal and does not provide a practical definition of staff-on-inmate sexual abuse and assault.

Recommendation

We recommend that the:

8. BOP revise and update the 2005 Sexually Abusive Behavior Prevention and Intervention pamphlet to clarify that inmates will not be prosecuted or disciplined for being the victim of staff sexual abuse. In addition, the pamphlet should be revised to include a practical definition of staff-on-inmate sexual abuse and assault.

BOP officials have not set a goal for reducing staff sexual abuse and do not adequately oversee prisons' activities regarding sexual abuse of inmates.

The *Prison Rape Elimination Act* requires the BOP to make the elimination of all types of sexual abuse in prison a top management priority. One of Congress's stated purposes in passing the Act was to increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison rape. According to the National Prison Rape Elimination Commission:

Agencies must demonstrate zero tolerance not merely by words and written policy, but through actions, the setting of clear priorities, and the achievement of objective, measurable outcomes.

No Strategic Goal for Eliminating Staff Sexual Abuse

In response to the *Prison Rape Elimination Act*, BOP officials have established a national strategic goal of limiting the rate of serious inmate-on-

inmate assaults, including sexual assaults, in federal prisons to 14 assaults per 5,000 inmates by FY 2012.³⁴ However, BOP officials have not established a goal of reducing the rate of staff-on-inmate sexual abuse. We believe that the establishment of measurable goals for reducing staff sexual abuse would signal to the BOP's managers that they will be held accountable for their efforts in preventing and detecting staff sexual abuse, providing victim services, thoroughly investigating and resolving allegations, and ensuring that staff members who sexually abuse inmates are dealt with appropriately.

Recommendation

We recommend that the:

9. BOP establish a national goal for reducing staff sexual abuse of federal inmates.

No Oversight of Sexual Abuse Program at Prisons

The BOP's primary internal management control system requires that its Program Review Division conduct reviews of all BOP programs every 3 years. In addition, prisons are required to conduct operational reviews of all of their programs at least annually. Wardens also are required to conduct after-action reviews following allegations or incidents of sexual assault and to issue written reports on their findings. We found that these three levels of oversight have not been applied to the BOP's sexual abuse prevention program.

Program Reviews. According to the Senior Deputy Assistant Director, Program Review Division, the BOP has not conducted a program review focused specifically on assessing the effectiveness of its sexual abuse prevention program.³⁵ Instead, the reviews have focused on prison departments and functions such as Correctional, Psychological, and Health Services. However, portions or elements of the sexual abuse prevention program have sometimes been included in reviews of departments or functions. For example, one review of a prison's Psychology Services program included an examination of the files of 10 inmates who had received crisis intervention counseling to determine

³⁴ U.S. Department of Justice, *FY 2008 Performance and Accountability Report*, II-49.

³⁵ According to BOP Program Statement 1210.23, Management Control and Program Review Manual, August 21, 2002, the Program Review Division is responsible for conducting program reviews, which examine institutional compliance with laws, rules, regulations, and policy; adequacy of controls; efficiency of operations; and effectiveness in achieving program results. Program reviews are intended to provide Wardens, Regional Directors, and officials in the BOP's Central Office with information for assessing institutional performance, making program improvements, allocating resources, and developing strategic goals and objectives.

whether treatment plans were developed as required by BOP policy and standards of practice. One of the case files may have included a treatment plan for an alleged victim of sexual abuse but this would have been solely by chance. We concluded that the BOP should address its Sexually Abusive Behavior Prevention and Intervention Program during periodic reviews.

Recommendation

We recommend that the:

10. BOP conduct periodic program reviews to assess the effectiveness of the Sexually Abusive Behavior Prevention and Intervention Program.

Operational Reviews. Institution officials conduct annual operational reviews to evaluate the strengths and weaknesses of BOP prisons' programs and take corrective action. The Warden of each prison is responsible for ensuring that operational reviews are conducted within established time frames and is the review authority at the institutional level. At the region or division level, the Regional Director or the Assistant Director is designated as the review authority.³⁶ BOP officials we interviewed at four prisons told us they had not conducted operational reviews of their prisons' sexual abuse prevention program. Further, as with program reviews we found the operational reviews focused on functions rather than programs and therefore did not include a comprehensive, interdisciplinary evaluation of a prison's sexual abuse prevention program. Regular operational reviews could lead to prison improvements, such as posting surveillance cameras in areas known to be the frequent location of instances of sexual abuse to prevent and detect staff sexual abuse of inmates in those locations.

Recommendation

We recommend that the:

11. BOP direct prison officials to conduct operational reviews to assess the strengths and weaknesses of their sexual abuse prevention program.

After-Action Reviews. According to BOP Program Statement 5324.06, Wardens are required to conduct after-action reviews to assess the actions of

³⁶ According to BOP Program Statement 1210.23, Management Control and Program Review Manual, August 21, 2002, operational reviews are patterned after the program reviews and reference the same national program review guidelines. BOP managers can conduct an operational review at any time to determine program effectiveness, identify program weaknesses, and correct them through strategic planning.

staff following an incident of “rape or sexual assault with an object” and to issue a written report of their findings. The Warden has to approve a written report of the relevant facts of the case and forward it to the Regional Director within 2 working days after an incident of rape or sexual assault with an object. The Associate Warden for Psychology Services and Program Coordinator of the Sexually Abusive Behavior Prevention and Intervention Program at the Federal Correctional Complex Beaumont told us that the BOP “used to do after-action reports after certain types of incidents, but now they just do panel reviews. Usually, there isn’t a formal report because attorneys use them against BOP in litigation, and if there is one, it is narrowly distributed.”

While we believe it is important for Wardens to conduct after-action reviews of aggravated sexual assaults, we also believe it is important that they review their institutions’ responses to incidents of other types of felony sexual abuse. From FY 2001 through FY 2008, the BOP had only one substantiated incident of aggravated sexual abuse, which means that prison officials were required to conduct only one after-action review. However, the BOP had 113 substantiated incidents of other types of criminal sexual abuse for which no after-action reviews were required. While not required, some prison officials have conducted after-action reviews for these other types of criminal sexual abuse and identified ways to improve their prevention programs. For example, officials at Federal Medical Center Garswell conducted a review after a prison priest was found guilty of multiple counts of sexual abuse in the prison’s chapel. As a result, prison officials remodeled the chaplain area into a suite of offices, adding glass panes in all office doors and a new camera system to thwart further abuse.

We believe that limiting after-action reviews to allegations of rape or sexual assault with an object is too narrow and reduces the information available to the BOP to evaluate its sexual abuse prevention program. Further, we believe that program, operational, and after-action reviews of prisons’ implementation of the requirements of the BOP’s sexual abuse prevention program are critical for ensuring that prisons are complying with procedures for preventing, detecting, reporting, investigating, and responding to staff sexual abuse. Program reviews can identify and correct weaknesses in the BOP’s sexual abuse prevention program and determine where resources should be spent to help reduce the incidence of staff sexual abuse and misconduct. Operational reviews can identify internal problems with the BOP’s sexual abuse prevention programs. Finally, the BOP’s policy of requiring after-action reports on only two extreme types of sexual abuse cases prevents the BOP from obtaining useful information to assess compliance with the requirements of its program statement and its prisons’ response protocols.

Recommendation

We recommend that the:

12. BOP revise Program Statement 5324.06 to require Wardens to conduct after-action reviews of their responses to criminal staff sexual abuse incidents.

*cited in Khudaverdyan v. Holder
No. 10-73346 archived on February 27, 2015*

cited in Khudaverdyan v. Holder
No. 10-73346 archived on February 27, 2015

SECTION III: USMS POLICIES AND PRACTICES RELEVANT TO STAFF SEXUAL ABUSE

The USMS does not have a program for preventing, detecting, investigating, and addressing staff sexual abuse in its cellblock and transportation operations. The USMS has not established written protocols for reporting and responding to allegations of staff sexual abuse, has not trained staff concerning their responsibilities for preventing, detecting, and responding to staff sexual abuse, nor has it provided prisoners with information on reporting sexual abuse. Consequently, the USMS cannot ensure that victims of sexual abuse are provided proper medical and support services or that physical evidence of abuse is preserved for investigative purposes.

The USMS does not have a program for preventing staff sexual abuse.

The *Prison Rape Elimination Act*'s requirement that correctional and law enforcement authorities with responsibility for the operation of confinement facilities take a zero-tolerance stance toward sexual abuse extends to the USMS in its responsibility for cellblocks and transportation of prisoners.

The USMS manages cellblocks in federal courthouses in each of 94 federal judicial districts and transports about 350,000 prisoners each year. USMS employees transport federal prisoners in USMS vehicles to and from court appearances and medical appointments and between correctional facilities. USMS employees also monitor prisoners during their confinement in cellblocks while they are awaiting court appearances. Because USMS personnel do not have the same extended contact with prisoners as BOP staff, the USMS does not have the same potential for reoccurring sexual abuse between a staff member and a prisoner. Nevertheless, during USMS periods of prisoner supervision, there are opportunities for staff to sexually abuse prisoners.

Allegations Reported to the USMS Office of Internal Investigations and the OIG

We found that from FY 2001 through FY 2008, the USMS's Office of Internal Investigations reported six allegations of staff sexual abuse to the OIG, none of which were substantiated on sexual abuse charges. The OIG investigated one allegation, and the USMS Office of Internal Investigations handled the remaining five. In four of the cases, prisoners alleged they were sexually abused by a USMS staff member during transport (two cases), in a cellblock (one case), and during an arrest (one case). In the fifth case, a female prisoner alleged that two Deputy U.S. Marshals failed to take action when she reported being sexually abused during transport by male prisoners and that

one of the Deputies had made a sexually explicit remark when she reported her abuse to him. In the sixth case, a federal prisoner alleged retaliation by Deputy U.S. Marshals after the prisoner's attorney reported that the prisoner had been sexually assaulted by a county jail employee. In only one of the six cases was the alleged victim able to identify the subject. According to a USMS official with the Prisoner Operations Division, Deputy U.S. Marshals do not wear name tags, so a victim would not be able to identify the abuser except through a description or lineup.³⁷

Implementation of the Prison Rape Elimination Act

In 2007 testimony before the National Prison Rape Elimination Commission, a USMS official acknowledged that "because we deal with such a large population of prisoners, it is important for us [USMS] to look at the implications of the recently established *Prison Rape Elimination Act*."³⁸ However, in the 6 years since passage of the Act, USMS administrators have not established protocols for responding to and reporting incidents of staff sexual abuse. In addition, the USMS has not provided training to inform USMS personnel of their responsibilities for responding to allegations of staff sexual abuse and the potential consequences of engaging in sexual acts or behaviors with prisoners. Finally, it has not provided prisoners in USMS custody with information about how to report staff sexual abuse.

Internal Reporting and Response Protocol

In our review of the USMS's written policies, we found that USMS personnel are required to immediately report all allegations of staff sexual abuse of prisoners to the USMS Office of Internal Investigations, which in turn must notify the OIG.³⁹ We found no other written USMS policies providing direction on matters such as providing victim services or protecting physical evidence.

³⁷ While there were no substantiated cases of staff sexual abuse during our study period, the USMS has had confirmed cases in the past. One notable case involved a Deputy U.S. Marshal who was convicted of engaging in abusive sexual contact with prisoners under his supervision at a USMS-operated cellblock in a courthouse. He was sentenced to 51 months of incarceration.

³⁸ National Prison Rape Elimination Commission hearing, *Lockups, Native American Detention Facilities, and Conditions in Texas Penal and Youth Institutions*, March 26-27, 2007, 29.

³⁹ USMS Directive 2.2, Critical Reporting Requirements, Misconduct Investigations, June 2007.

An official in the USMS Prison Operations Division stated that, if there was an allegation of staff sexual abuse, the USMS would respond to the allegation based on the nature of the allegation and “common sense.” The same official stated that if an assault occurred in a cellblock, the USMS personnel would call 911 and the prisoner would receive medical attention.

USMS officials said the agency’s general policies for protecting prisoners and USMS personnel provide protection against staff sexual abuse. For example, USMS policy requires that during transport, a certain number of USMS personnel must supervise prisoners. When transporting a female prisoner, one of the personnel must be female, if possible. If all male staff members are used, supervisory authorization is required and the time and place of departure, odometer reading, persons in the vehicle, and estimated and actual time of arrival must be recorded in the radio log.

USMS policy also sets a standard for the number of USMS personnel that are required whenever a cell is unlocked or entered, when a prisoner is moved in the cellblock, and when meals are served. USMS policy states that the standard number also applies whenever a prisoner of the opposite sex is involved. In addition, an incident report is required if any problems arise during cross-gender supervision. According to USMS policy, cellblocks are monitored regularly, and all prisoners must be observed and counted at various intervals.

USMS officials stated that these policies are sufficient to prevent, detect, investigate, and deal with the consequences of staff sexual abuse in its cellblock and transportation operations. However, we believe that these policies alone are insufficient and the USMS should develop policies specific to the prevention, detection, and investigation of staff sexual abuse. Further, the USMS should train USMS personnel on how to respond to and report allegations of staff sexual abuse, how to identify either vulnerable prisoners or other key indicators of potential abuse by fellow staff members, how to protect themselves from being compromised, and the potential criminal and civil consequences of engaging in sexual acts with prisoners. Without written policies and sufficient training, USMS personnel may delay safeguarding an alleged victim or referring an alleged victim for medical treatment. They may also lose physical evidence such as DNA by failing to secure a crime scene or by failing to take a victim for a forensic medical examination.⁴⁰

⁴⁰ The National Prison Rape Elimination Commission has drafted national standards for eliminating sexual abuse in lockups, which include cellblocks. The standards call for the establishment of a zero-tolerance standard that is communicated throughout an agency; a written plan that outlines a coordinated response by medical staff, investigators, mental health, and victim advocates; staff training; and inmate education. As of July 7, 2009, the recommended national standards had not yet been adopted by the Attorney General.

Prisoners Not Told How to Report Staff Sexual Abuse

Federal prisoners held in USMS-managed cellblocks and those being transported by USMS staff members are not informed of how to report incidents of staff sexual abuse or what to do if they are victimized. When asked whether prisoners were provided with either oral or written information about reporting staff sexual abuse, an official with the USMS's Prisoner Operations Division stated that signs are posted in the cellblock instructing prisoners to report problems to a Deputy U.S. Marshal.

Summary

We believe that the USMS policies described above do not provide sufficient guidance to staff for reporting and responding to allegations of staff sexual abuse of federal prisoners in USMS custody. Furthermore, USMS administrators are not providing oversight of USMS operations to ensure that personnel are responding appropriately to such allegations by protecting the alleged victim and providing victim services, securing the crime scene, collecting physical evidence, and ensuring that staff sexual abusers are dealt with appropriately.

Recommendations

We recommend that the:

13. USMS develop and implement policy that ensures a zero-tolerance standard and that is aimed at preventing staff sexual abuse of federal prisoners under USMS custody in cellblocks and during transportation.
14. USMS develop and implement standard procedures for responding to, reporting, and investigating allegations of staff sexual abuse in cellblocks and during transportation.
15. USMS provide oversight and periodic reviews to ensure the effectiveness of USMS staff sexual abuse prevention policy and to assess the strengths and weaknesses of USMS prevention operations in cellblocks and during transportation.
16. USMS collect and analyze data on staff sexual abuse allegations, investigations, and prosecutions.

SECTION IV: INVESTIGATIONS OF STAFF SEXUAL ABUSE ALLEGATIONS

Most investigations into allegations of staff sexual abuse are inconclusive as to whether the alleged abuse occurred. The majority of the inconclusive investigations involved serious allegations of staff sexual abuse or sexual misconduct.

OIG and BOP investigators that we interviewed told us that investigating staff sexual abuse cases poses many challenges that make reaching a definitive conclusion about an alleged incident difficult. Challenges that the investigators cited included the following:

- Victims of sexual abuse often delay reporting incidents. According to personnel at six prisons we reviewed, inmates may not report sexual abuse because, as discussed previously, those who do are frequently isolated in solitary confinement after reporting and then transferred to another prison that may be farther from their families. Inmate victims who report incidents often delay doing so until they have been transferred to another institution for some other reason. An institution's psychologist who routinely counsels sexual abuse victims stated that many female prisoners have a history of being sexually abused prior to their incarceration and may not report their victimization because they do not recognize it as abuse. Indeed, many allegations of staff sexual abuse are reported by an individual other than the victim. Approximately 70 percent of the staff sexual abuse investigations the OIG opened between FY 2001 and FY 2008 resulted from a report by a third party, such as a staff member or fellow inmate. If abuse is not reported promptly, victims' memories of the incidents may blur and they may forget important details. When that happens, investigators say it is even more challenging for them to independently corroborate the victims' accounts of the abuse with information available in BOP logbooks and other sources. Additionally, when reporting is delayed physical evidence may be lost.
- Corroborating physical evidence is typically unavailable. Unlike sexual assaults by force where there may be evidence of bodily injury to the victim, staff sexual abuse rarely results in bodily injury to the victims. In addition, what little DNA or trace evidence such as hairs or fibers that may be available, may be lost if victims do not promptly report the abuse. DNA and other trace evidence on the victim's body generally must be collected within 72 hours after the crime occurs to have any chance of being usable.⁴¹ Similarly, DNA collected from the

⁴¹ *Sexual Assault Nurse Examiner (SANE) Development and Operation Guide.*

victim's clothing or the crime scene often deteriorates and may not be usable if it is not collected close in time to the incident.⁴²

In addition to the general challenges in conducting investigations in a prison environment, BOP investigators at six of the seven facilities we reviewed told us that they were hampered by a lack of training and experience.⁴³ These local investigators handle most of the cases that the OIG refers back to the BOP for investigation.

According to the BOP local investigators, specialized investigative training covering topics such as evidence gathering and crime scene evaluation was reduced from 2 weeks to 1 week in 2005. When asked why the training was reduced, BOP officials stated that budgetary constraints limited the funds available for travel to attend the training and some of the training duplicated other training provided to BOP Lieutenants. However, over the last year BOP officials have reevaluated the specialized investigative training and determined that it should be a longer course to better address the curriculum. The BOP will start providing the expanded training in FY 2010. BOP local investigators also told us that they sometimes receive additional training, but it is at the discretion of their Warden. For example, one local investigator said that the Warden had sent him to FBI training on interrogation and crime scene preservation. Another local investigator said the FBI came to the prison to provide similar training at his request. In total, investigative officers at six of the seven prisons we reviewed told us that they rely primarily on on-the-job training, such as mentoring from OIG and FBI Special Agents and other BOP investigators.

The results of the reviews that the BOP's Office of Internal Affairs conducts of field investigations may be an indicator that BOP investigators need more training. Since 2007, the Office of Internal Affairs has been reviewing investigations of staff (not just sexual abuse cases) completed by BOP local investigators. This change resulted from an OIG report recommending

⁴² BOP Program Statement 1380.05, Special Investigative Supervisors (SIS) Manual, contains procedures for BOP investigative personnel to properly handle and preserve various types of crime scene evidence, including DNA evidence such as hair, body fluids, tissue, and clothing that may contain DNA evidence from both the victim and assailant. The SIS manual states, "It is not appropriate for SIS staff to attempt to develop into evidence lab technicians, but it is appropriate to develop the skills to recognize evidence and preserve it so that competent authorities can evaluate it." The BOP does not have policy regarding obtaining DNA evidence from a female inmate's miscarried or aborted fetus to potentially determine the identity of an assailant in a sexual abuse case.

⁴³ Depending on the size of the institution, a BOP local investigator is either a correctional officer at the Lieutenant level who is permanently assigned as a Special Investigative Agent or a Special Investigative Supervisor.

that review and approval of investigations be handled separately from disciplinary decisions.⁴⁴ After implementation of this new policy, OIA's review found that approximately one-third of the investigations were deficient and OIA returned the investigative cases back to prison investigators for further investigation. OIA could not tell us how many of the deficient cases involved staff sexual abuse allegations, but the number of cases sent back for additional investigation indicates that field investigators need more training to improve their skills.

In addition to limited training, some Special Investigative Supervisors may not serve long enough to develop the experience needed to conduct thorough investigations. For example, one of the prisons we reviewed relied on a rotational Special Investigative Supervisor to conduct local staff sexual abuse investigations rather than a permanently assigned Special Investigative Agent like six other facilities we reviewed.⁴⁵ The Special Investigative Supervisor position is generally assigned as a temporary rotation (usually 18 months), which can inhibit development of long-term investigative expertise and institutional knowledge.⁴⁶

An OIG Special Agent who has worked closely with several local investigators told us that even when there is a permanent Special Investigative Agent, the position is often a stepping stone for career advancement within the BOP and, thus, there is frequent turnover in the position. Consequently, developing and retraining experienced investigators who understand how to address the challenges of staff sexual abuse and have institutional knowledge of specific prisons may be difficult for the BOP.

⁴⁴ Prior to 2007, Wardens would review an investigation and decide on appropriate discipline when an allegation of staff misconduct was sustained. Now, the Office of Internal Affairs reviews and approves the investigation before the Warden makes the determination on punishment. The OIG's *Review of the Federal Bureau of Prisons' Disciplinary System*, Evaluation and Inspections Report I-2004-008 (September 2004), recommended this change.

⁴⁵ BOP officials at the Federal Prison Camp in Duluth said they had no allegations of staff sexual abuse or misconduct from FY 2001 through FY 2008, and the camp is not included as one of the seven prisons that we reviewed. However, if an allegation had occurred the camp would have relied on a Special Investigative Supervisor to conduct the investigation.

⁴⁶ Program Statement 1380.05, Special Investigative Supervisors Manual, updated June 1998, states that at institutions that do not have a permanent Special Investigative Agent, but rather a GS-11 Lieutenant serving as a Special Investigative Supervisor, that position "shall ordinarily rotate at 18 month intervals." However, one Warden told us that this policy does not preclude a longer assignment and that she has purposely kept the same employee as the Special Investigative Supervisor for the past 3 years to retain an experienced employee in that position.

Recommendations

We recommend that the:

17. BOP increase training for Special Investigative Agents and Supervisors, reinstating the 2 weeks of instruction previously offered.
18. BOP consider assigning Special Investigative Supervisors to longer rotations or on a permanent basis to ensure they have the experience and investigative skills needed to conduct thorough investigations.

Trends in Sexual Abuse and Sexual Misconduct Investigations

The challenges of conducting investigations in a prison environment described above are reflected in the high rate of inconclusive determinations by all agencies that investigate staff sexual abuse.⁴⁷ In the following sections, we describe the trends in OIG, FBI, and BOP investigations of staff sexual abuse.

OIG Investigations into Allegations of Staff Sexual Abuse. From FY 2001 through FY 2008, OIG Special Agents opened 508 investigations into allegations of sexual abuse by BOP staff. As of September 30, 2008, the OIG had completed 473 of those investigations. The OIG opened an average of 71 investigations into allegations of sexual abuse or misconduct per year during the first 6 years we reviewed (through FY 2006), and opened 41 investigations each during FY 2007 and FY 2008. According to an OIG Supervisory Agent, the OIG has seen an increase in recent years of allegations that lack sufficient investigative leads to merit opening a case, and this may have contributed to the decline in the number of investigations.

Of the 473 closed investigations, OIG Special Agents determined that the evidence showed that staff criminal sexual abuse or misconduct occurred in 203 cases (43 percent) and that the allegations were unfounded in 5 cases

⁴⁷ After an investigation is completed, the investigator determines whether sexual abuse occurred (substantiated), did not occur (unfounded or exonerated), or could not be determined (unsubstantiated or inconclusive). An allegation is “substantiated” when the investigator determines that the evidence supported the material facts of the alleged incident. The BOP designates allegations as “unfounded” when investigators develop evidence contrary to an allegation or when an allegation was frivolous. The OIG “exonerates” the subject of a sexual abuse allegation when it finds positive evidence that the subject is innocent. Both of these latter designations mean that sexual abuse did not occur. An allegation is “unsubstantiated” or inconclusive when the evidence does not allow the investigator to determine whether the alleged incident occurred or not.

(1 percent). OIG Special Agents were not able to conclusively determine whether allegations were true or untrue in the remaining 265 cases (56 percent). Table 2 shows the outcomes of the OIG investigations by fiscal year.

**Table 2: OIG Investigations,
FY 2001 through FY 2008**

Fiscal Year	Opened	Closed	Outcomes of Closed Cases		
			Sexual Abuse or Sexual Misconduct Occurred	Sexual Abuse or Sexual Misconduct Did Not Occur	Inconclusive*
2001	70	70	32	1	37
2002	51	51	18	0	33
2003	84	82	35	2	45
2004	87	87	37	0	50
2005	68	68	27	1	40
2006	66	62	29	0	33
2007	41	36	17	1	18
2008	41	17	8	0	9
Total	508	473	203 (43%)	8 (1%)	265 (56%)

* An inconclusive outcome means that the allegation was unsubstantiated.

Source: OIG Investigations Division data.

FBI Investigations into Allegations of Staff Sexual Abuse. The FBI investigated a small number of allegations of BOP staff sexual abuse (17 cases) during the 8 years we reviewed.⁴⁸ As noted above, the FBI sometimes responds to allegations when it is better positioned geographically to provide an immediate response than the OIG. Additionally, some staff sexual abuse cases that were prosecuted as civil rights violations were investigated by the FBI at the request of the DOJ Civil Rights Division.⁴⁹ Of the 15 investigations completed by the FBI, allegations were substantiated in 3 cases (20 percent), while 12 cases (80 percent) were inconclusive.

⁴⁸ As previously stated, the Automated Case System (ACS) is used by the FBI to electronically record case information. Its design does not allow for the extraction of data specific to investigations of staff sexual abuse and sexual misconduct. Therefore, we used non-FBI data sources to identify the cases investigated by the FBI.

⁴⁹ When staff sexual abuse involves coercion or force, the perpetrator may be prosecuted under 18 U.S.C. § 242, Deprivation of Rights Under the Color of Law, instead of 18 U.S.C. §§ 2241-2244.

BOP Investigations into Allegations of Staff Sexual Abuse. Allegations of staff sexual abuse or sexual misconduct that are not investigated by the OIG or FBI may be investigated by either the BOP's Office of Internal Affairs or delegated for investigation to the BOP's Special Investigative Agents or Special Investigative Supervisors at the specific prisons. As shown in Table 3, from FY 2001 through FY 2008, BOP investigators opened 1,101 investigations into allegations of staff sexual abuse or misconduct with inmates. As of September 30, 2008, they had completed 921 of the investigations. The number of investigations opened by the BOP has generally increased over the past 8 years. The BOP opened an average of 119 investigations into allegations of sexual abuse or misconduct per year during the first 6 years we reviewed (through FY 2006) and opened 201 and 188 investigations during FY 2007 and FY 2008, respectively. However, most BOP investigations did not result in definitive outcomes. In total, only 88 (10 percent) of the 921 investigations completed by the BOP from FY 2001 through FY 2008 had conclusive outcomes, while the remaining 833 (90 percent) were inconclusive.

Table 3: Outcomes of Investigations Closed by the BOP, FY 2001 through FY 2008

Fiscal Year	Opened	Closed	Outcomes of Closed Cases		
			Sexual Abuse or Sexual Misconduct Occurred	Sexual Abuse or Sexual Misconduct Did Not Occur	Inconclusive*
2001	52	52	1	4	47
2002	91	91	6	17	68
2003	108	107	5	10	92
2004	134	131	3	7	121
2005	140	134	6	7	121
2006	187	169	3	9	157
2007	201	158	4	1	153
2008	188	79	3	2	74
Total	1,101	921	31 (4%)	57 (6%)	833 (90%)

* An inconclusive outcome means that the allegation was unsubstantiated.

Source: BOP Office of Internal Affairs data.

More specifically, 497 (54 percent) of the 921 closed cases were investigations of criminal sexual abuse, of which 57 (11 percent) had a conclusive outcome and 440 (89 percent) had an inconclusive outcome. The remaining 424 (46 percent) of closed cases were investigations of sexual misconduct, of which 31 (7 percent) had a conclusive outcome and 393 (93 percent) had an inconclusive outcome. The BOP reached a definitive

conclusion in slightly more criminal sexual abuse cases. However, overall the BOP had similar inconclusive rates for both types of sexually abusive behavior cases. This indicates that both types of cases are equally challenging for BOP investigators.

We found that investigations conducted by the BOP's Office of Internal Affairs were more likely to result in a definitive conclusion than were investigations conducted by local investigators at BOP facilities. When the OIG returns cases to the BOP for investigation, the Office of Internal Affairs handles the cases that are more complex or involve higher profile subjects such as employees with significant supervisory authority (Captain or above) and employees who are union representatives. The remaining cases are returned to the prisons for local investigation. Of the 921 completed investigations, Office of Internal Affairs investigators conducted 136 and reached a definitive conclusion in 40 (29 percent). Prison investigators conducted the other 785 investigations and reached a definitive conclusion in only 48 cases (6 percent). (See Table 4.)

Table 4: Outcomes by Investigative Office of Completed BOP Investigations of Staff Sexual Abuse and Sexual Misconduct, FY 2001 through FY 2008

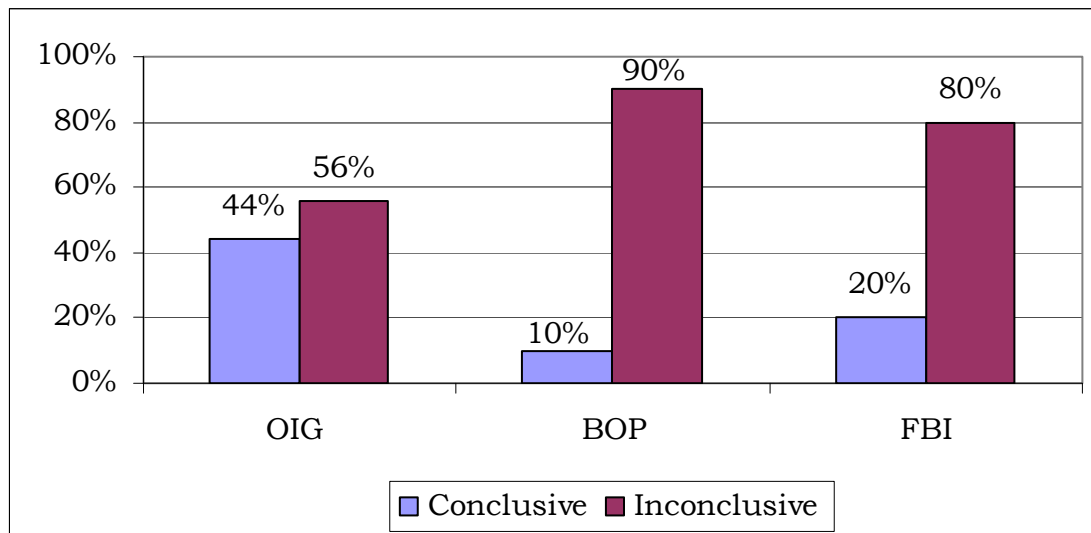
Investigative Office	Cases Closed	Outcomes		
		Sexual Abuse or Sexual Misconduct Occurred	Sexual Abuse or Sexual Misconduct Did Not Occur	Inconclusive*
Office of Internal Affairs	136	11 (8%)	29 (21%)	96 (71%)
Prison	785	20 (2%)	28 (4%)	737 (94%)
Total	921	31 (4%)	57 (6%)	833 (90%)

* An inconclusive outcome means that the allegation was unsubstantiated.

Source: BOP Office of Internal Affairs data.

Office of Internal Affairs investigators came to a definitive conclusion more often than local prison investigators in both criminal sexual abuse cases and sexual misconduct cases. They were able to determine that sexual abuse occurred or did not occur in 29 percent of their cases, while prison investigators were able to do so in only 6 percent of cases. Figure 13 shows a comparison of the percentage of conclusive and inconclusive outcomes of investigations by the OIG, BOP, and FBI.

Figure 13: Percentage of Staff Sexual Abuse and Sexual Misconduct Cases with a Conclusive Outcome by Investigative Agency, FY 2001 through FY 2008



Source: BOP Office of Internal Affairs data and OIG Investigations Division data.

In summary, of all the agencies conducting investigations, the BOP had the most difficult time determining whether staff sexual abuse or sexual misconduct occurred. While the OIG and the FBI were able to reach a definitive conclusion in 44 percent and 20 percent of their respective cases, the BOP resolved only 10 percent of its cases. However, OIG investigators told us that the BOP's lower rate of conclusive outcomes for its investigations is at least partially a result of the OIG and the FBI having taken cases that had stronger potential for criminal prosecution. Similarly, the BOP's OIA has the right of first refusal for cases investigated by the BOP. As a result, the fact that investigations conducted by local prison staff have the lowest conclusive rate is at least partly because the cases they investigate have the least viable investigative leads.

SECTION V: PROSECUTIONS OF STAFF SEXUAL ABUSE CASES

U.S. Attorneys' Offices slightly increased the percentage of criminal staff sexual abuse cases they accepted for prosecution since 2006 when legislation changed federal sexual abuse offenses from misdemeanors to felonies. All but 7 of the 90 prosecutions of BOP staff from FY 2001 through FY 2008 resulted in a conviction, with 8 defendants convicted at trial and 75 pleading guilty. While the number of defendants that received prison time has increased since the changes in the law, to date the legislation generally has not resulted in lengthier prison sentences for convicted staff. Further, female staff members are less likely than male staff members to receive prison sentences when convicted of sexual abuse of a ward, and females who were convicted received shorter sentences than their male colleagues. Some prosecutors stated that staff sexual abuse cases often have limited jury appeal and present a variety of other challenges; however, we found that other prosecutors have successfully overcome these challenges.

Acceptance of staff sexual abuse cases for prosecution has increased since enactment of stricter laws in 2006

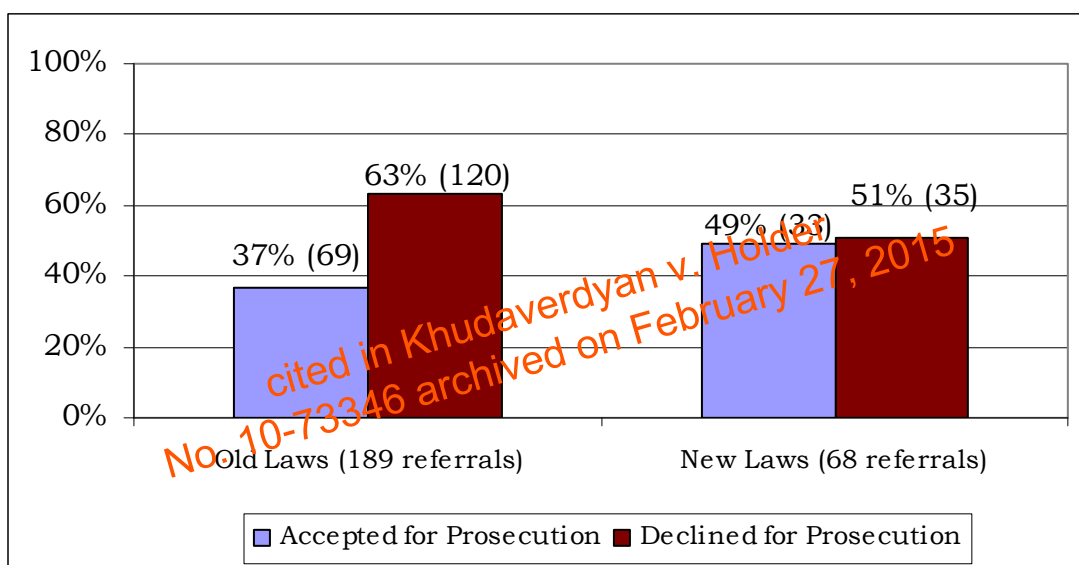
On January 5, 2006, the *Violence Against Women and Department of Justice Reauthorization Act of 2005* increased the maximum criminal penalty for sexual abuse of a ward from 1 to 5 years and the maximum penalty for abusive sexual contact with a federal inmate without the use of threat or force from 6 months to 2 years. The crimes, which had formerly been misdemeanors, became felonies. On July 27, 2006, the *Adam Walsh Child Protection and Safety Act of 2006* further increased the maximum penalties for sexual abuse of a ward to 15 years. The Adam Walsh Act also requires all federal employees who are found guilty of any criminal sexual abuse offense involving a federal inmate or detainee to register as sex offenders. We examined how the change from misdemeanors to felonies affected acceptance rates for prosecution and prosecutorial outcomes.

The acceptance rate of criminal staff sexual abuse cases rose from 37 percent to 49 percent after enactment of the new laws. From FY 2001 through FY 2008, U.S. Attorneys accepted 102 (40 percent) of the 257 staff sexual abuse cases referred for prosecution by the OIG's Investigative

Division.⁵⁰ Of those 257 cases, 189 involved allegations of sexual abuse that occurred before the changes in the law and the defendants were subject to the misdemeanor penalties. Of these 189 cases, 69 (37 percent) were accepted for prosecution and 120 (63 percent) were declined for prosecution.

The remaining 68 cases presented for prosecution involved alleged sexual abuse that occurred after the changes in the law and the defendants were subject to conviction on felony charges. Of these 68 cases, 33 (49 percent) were accepted for prosecution and 35 (51 percent) were declined. Figure 14 shows the increase in the acceptance rate since enactment of the new laws.

Figure 14: Percentage of Staff Sexual Abuse Cases Accepted and Declined for Prosecution by Applicable Law, FY 2001 through FY 2008



Note: The change in the laws occurred on January 5, 2006, with the enactment of the *Violence Against Women and Department of Justice Reauthorization Act of 2005*

Source: OIG Investigations Division database.

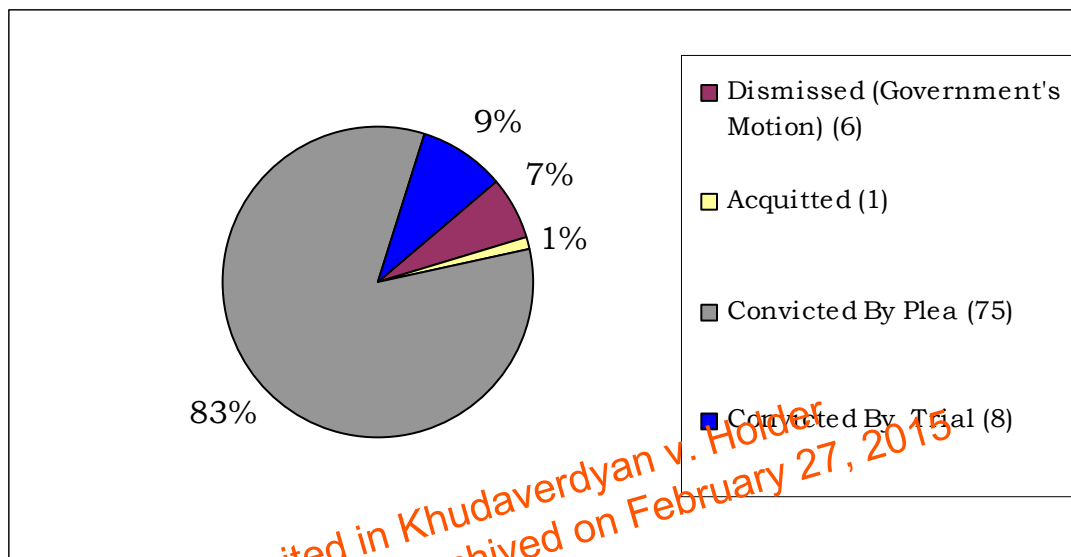
The increased acceptance rate of criminal sexual abuse cases by federal prosecutors since the changes in the law may indicate that prosecutors are accepting the cases because they are now felonies instead of misdemeanors. All the cases referred for prosecution involved BOP employees. Ultimately, some of the cases were not prosecuted on sexual abuse charges even though they involved an incident of sexual abuse that had been substantiated by an investigation, an outcome we explain below.

⁵⁰ Of the 155 cases that were declined, 78 of the subjects resigned their positions, 1 retired, 6 were suspended, 8 were terminated, and 5 accepted pretrial diversion agreements. See page 74 for a description of pretrial diversion.

Most prosecutions resulted in convictions.

Out of the 102 cases accepted for prosecution from FY 2001 to FY 2008, 12 were still open as of September 30, 2008. As illustrated by Figure 15, the remaining 90 cases that were resolved during the period of our review generally resulted in convictions.

Figure 15: Status of Staff Sexual Abuse Cases Accepted for Prosecution and Resolved by Close of FY 2008



Source: OIG Investigations Division data.

Of the 90 resolved cases, 75 entered guilty pleas, 8 were convicted at trial, 1 was acquitted by a jury, and 6 were dismissed by the government prior to trial. Most of the convictions (90 percent) were convictions by plea in which the prosecuting attorney and defendant negotiated the terms surrounding the defendant's admission of guilt, including the charges to which the defendant would plead guilty and the charges the government would dismiss. When the cases were examined by the gender of the defendant, male defendants (87 percent) and female defendants (94 percent) were both predominantly convicted by plea.

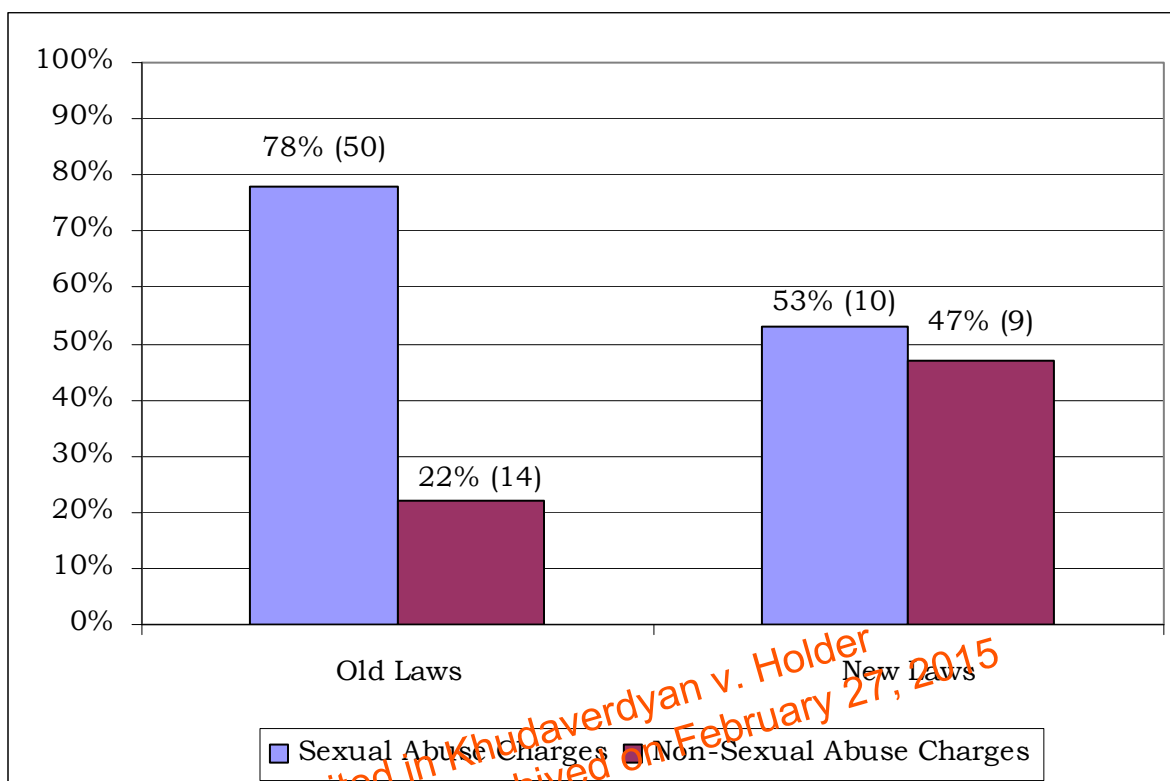
However, prosecutors have been successful at trial as well. Of the nine cases taken to trial, all but one resulted in a conviction. At the end of the review period, September 30, 2008, no sexual abuse cases subject to the new laws had gone to trial and reached a verdict.

The percentage of convictions on sexual abuse charges decreased after the change in laws.

Prosecutors exercise their legal judgment in determining whether to indict defendants on multiple charges or pursue a specific charge other than sexual abuse, such as introducing contraband, accepting a bribe, or making a false statement during the course of an investigation. In addition, in negotiating a plea the defendant may admit guilt to certain charges but not others. Therefore, some defendants may have committed the same types of crime – such as sexual abuse of a ward – but been convicted on different charges. Of the 83 convictions, 60 cases (72 percent) involved either a conviction based solely on a sexual abuse charge or sexual abuse in addition to another charge. The remaining 23 (28 percent) involved a conviction on a non-sexual abuse related charge such as introducing contraband, making a false statement during an investigation, or accepting a bribe. All of these cases included an incident of staff sexual abuse that investigators considered to be substantiated when the cases were referred for prosecution. We noted that in the cases where defendants were subject to the new laws a higher percentage were convicted on other charges, as opposed to a sexual abuse offense (Figure 16). Overall, the percentage of the convictions obtained on sexual abuse charges dropped from 78 percent under the old laws to 53 percent under the new laws.

Quoted in Khudaverdyan v. Holder, No. 10-13346, archived on February 27, 2015

**Figure 16: Convictions Before and After Enactment
of the New Laws,
FY 2001 through FY 2008**

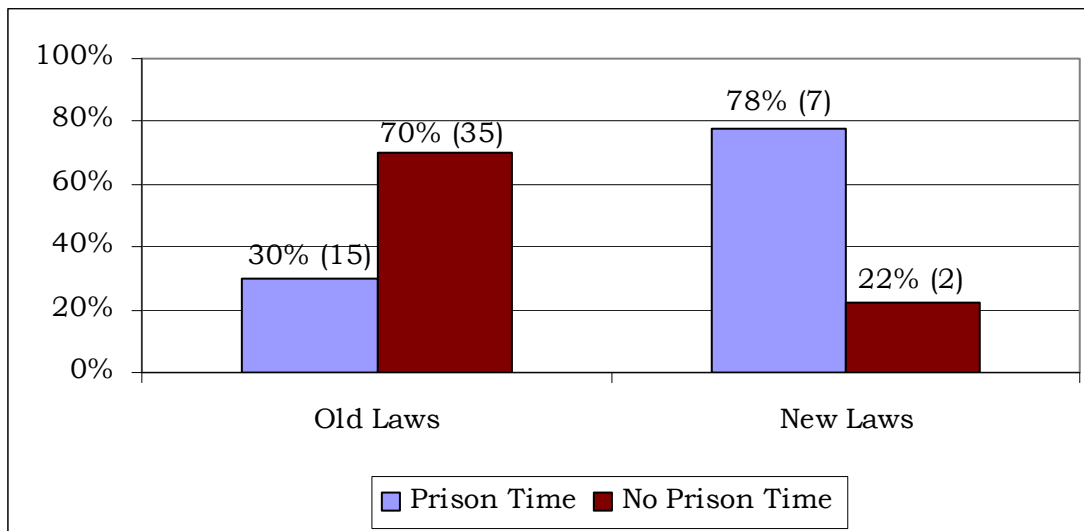


Source: OIG Investigations Division data and LexisNexis CourtLink records.

The new laws for sexual abuse offenses generally resulted more frequently in prison sentences, but not in lengthier prison sentences for convicted staff.

The new laws appear to have increased the percentage of defendants who received prison time for their convictions on sexual abuse charges, but most defendants sentenced to prison still received 1 year or less. Of the 60 defendants convicted on sexual abuse charges, 59 have been sentenced. For these 59 sentenced defendants, 15 of 50 (30 percent) received prison time under the old laws compared to 7 of 9 (78 percent) who received prison time under the new laws enacted in 2006. Figure 17 shows the sentences grouped by applicable laws, with a higher percentage of defendants receiving prison time under the new laws.

**Figure 17: Sentences Involving Incarceration
for Convictions on Sexual Abuse Charges
Before and After Enactment of the New Laws**



Note: We used the offense date to determine which laws applied to a particular case. This figure includes only convictions on sexual abuse charges. An additional 23 cases involved a substantiated incident of sexual abuse, but the defendant was convicted on another charge such as providing a false statement or introduction of contraband. We excluded any sexual abuse conviction under the new laws because the defendant had yet to be sentenced.

Source: OIG Investigations Division data and LexisNexis CourtLink records.

The new laws enacted in 2006 have not resulted in universally longer prison sentences for defendants sentenced to prison. The majority of sentenced defendants who received prison time received 1 year or less whether sentenced under the old laws (13 of 15 defendants, or 87 percent) or whether sentenced under the new laws (5 of 7 defendants, or 71 percent). For the sentences at or under 12 months, the median for defendants under the old laws was 10 months (sentences ranged from 3 to 12 months) compared to a median of 5 months for defendants under the new laws (sentences ranged from 1 to 10 months). However, for the four defendants who received prison sentences greater than 1 year, two defendants under the old laws received lighter sentences (14 months and 108 months) than the two defendants under the new laws (48 months and 120 months). Table 5 shows the length of the prison sentences before and after enactment of new laws.

Table 5: Length of Prison Sentences Before and After Enactment of the New Laws for Convictions on Sexual Abuse

Defendants Subject to the Old Laws	Prison Sentence	Defendants Subject to the New Laws
Number of Defendants		Number of Defendants
	1 month	1
1	3 months	
1	4 months	
	5 months	2
3	6 months	1
1	9 months	
2	10 months	1
5	12 months	
1	14 months	
	18 months	
	21 months	
	48 months	1
1	108 months	
	120 months	1
Total 15		Total 7

Note: Of the cases subject to the old laws, there were 10 convictions for sexual abuse of a ward, 4 convictions for sexual abuse of a ward and abusive sexual contact, and 1 conviction for sexual abuse and sexual abuse of a ward. Of the cases subject to new laws, all convictions were for sexual abuse of a ward.

Source: OIG Investigations Division data and LexisNexis CourtLink data.

Despite the longer maximum sentences established in the criminal statutes, the shorter prison sentences may be attributable to federal sentencing guidelines considered by judges in sentencing convicted staff members. The U.S. Sentencing Commission revises the federal sentencing guidelines annually in November.⁵¹ During our study period, federal sentencing guidelines for sexual abuse of a ward changed twice, once in November 2004 and again in November 2007. The current sentencing guidelines recommend a penalty of 15 to 21 months for a first-time offender convicted of sexual abuse of a ward, the most common charge. However, the guidelines state that judges may consider decreasing the sentence to as low as 10 months if they believe that the defendant has accepted responsibility for the crime. This reduction was also available under prior versions of the guidelines. (See Appendix III for a fuller description of the federal sentencing guidelines.)

However, since the changes in the law involving prison sexual abuse in 2006 there have been two cases where judges have sentenced convicted staff sexual abusers to prison sentences that exceeded the recommended guidelines.

⁵¹ The Supreme Court has determined that the guidelines are advisory rather than mandatory. See *United States v. Booker*, 543 U.S. 220 (2005).

One defendant sentenced after 2006 received 48 months' incarceration (significantly exceeding the 10 to 16 months recommended in the guidelines that applied at the time of the offense). The sentence was close to the maximum of 5 years in the criminal statute in place at the time.⁵² The defendant, a BOP chaplain, engaged in sexual acts with several inmates who were participating in services and Bible study classes. The judge justified this upward departure from the sentencing guidelines because the defendant violated his duty not only as a correctional staff member but also as a member of the clergy.

In another case, a defendant received a 10-year sentence for sexual abuse of a ward to be served concurrently with a 15-year sentence for arranging his wife's murder. The defendant was a BOP correctional officer who began a sexual relationship with a female inmate in October 2007. As the sexual relationship progressed, the defendant approached the inmate for assistance in killing his wife. The defendant agreed to pay the inmate \$5,000 in exchange for coordinating his wife's murder.

Convicted female staff members received more lenient sentences.

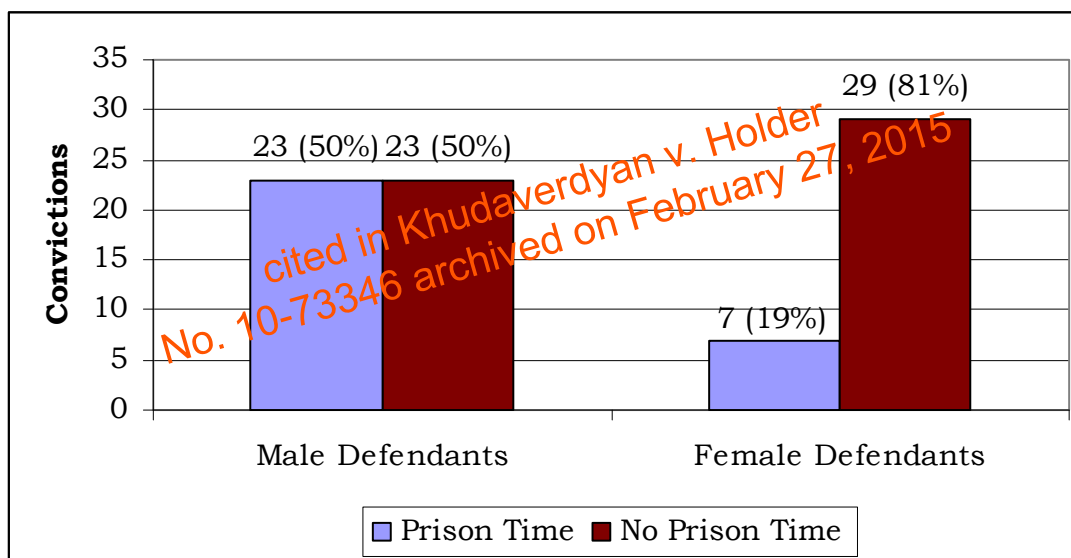
BOP staff at every level and at all of the prisons we visited told us they believed that female staff sexual abusers were treated more leniently than male staff sexual abusers. They said female perpetrators were less likely to be prosecuted and, when convicted, less likely to receive prison time. BOP staff, OIG Special Agents, and Assistant U.S. Attorneys stated that in their experience juries and judges often ignored the statutory provision that consent is not a defense to sexual contact between a female staff member and male inmate and therefore did not consider the act to be a criminal offense. For example, some BOP staff, OIG investigators, and prosecutors told us that a common perception existed that a female staff member was not capable of sexually abusing a male inmate and that she had to have been manipulated by the inmate.

One example of this misperception can be found in a FY 2007 case where a female correctional officer charged with sexual abuse of a ward and introduction of contraband pled guilty to the contraband charge in return for the prosecutor's promise to recommend a 1-month prison sentence. The court rejected the recommended sentence and imposed probation instead, stating that the defendant was an "incredibly vulnerable victim" who had been manipulated by the inmate.

⁵² The incident occurred after the *Violence Against Women and Department of Justice Reauthorization Act of 2005* raised the maximum to 5 years, but before the *Adam Walsh Child Protection and Safety Act* raised the maximum to 15 years.

Our analysis of penalties for convictions on sexual abuse charges or on associated charges such as introduction of contraband, bribery, or making false statements shows that female staff members receive prison sentences at a significantly lower rate than their male counterparts. As shown in Figure 18, out of the 46 male defendants convicted and sentenced, 23 (50 percent) received a prison sentence. However, out of the 36 female defendants convicted and sentenced, only 7 (19 percent) received a prison sentence. More than twice as many male defendants than female defendants received prison time. We also found a gender difference in the length of prison sentences imposed. The median prison sentence for male defendants was 12 months, with sentences ranging from 1 to 120 months. However, the median length of prison sentences for female defendants was 6 months, with sentences ranging from 3 months to 21 months. Also, five female defendants entered into pretrial diversion agreements, while no male defendants entered into these agreements.

Figure 18: Penalties for All Convictions by Gender, FY 2001 through FY 2008



Notes: In 59 cases, defendants were convicted on federal sexual abuse charges. In the remaining 23 cases, defendants were convicted on other charges such as introduction of contraband or bribery associated with sexual abuse. One case awaits sentencing.

Source: OIG Investigations Division data and LexisNexis CourtLink data.

When we reviewed only the sentences of staff members who were convicted on a criminal sexual abuse charge, we found that the same bias toward lengthier sentences for male defendants persisted. We found that out of the total of 59 convictions on a sexual abuse charge for which the defendants had been sentenced (1 was awaiting sentencing), male staff members received prison sentences in 49 percent of the cases compared with prison sentences for only 18 percent of the convicted female staff members.

EOUSA's database did not contain complete data on declinations of staff sexual abuse cases, but U.S. Attorneys most often cited weak evidence and lack of criminal intent for declinations.

According to the *U.S. Attorneys' Manual*, when Assistant U.S. Attorneys decide not to prosecute a case, they are supposed to record any actions taken on the case – including immediate declinations and the reasons for the actions.⁵³ A case should be recorded as an immediate declination when the Assistant U.S. Attorney spends less than an hour working on the case and does not expend any investigative resources.

Assistant U.S. Attorneys we interviewed as well as EOUSA officials told us that the declination of a case is sometimes decided informally and that these decisions are not always recorded. When officials in EOUSA searched the legal case management database to respond to the OIG's request for data for this review, they found records of roughly one-fourth (40) of the declined staff sexual abuse cases that we found in the OIG's database (155).

To provide us with case data, EOUSA officials could not simply query their database. We first had to provide EOUSA officials with a list of the names of BOP staff members who had been investigated by the OIG for staff sexual abuse. EOUSA officials ran the names through their system and provided us with the results. Consequently, we reviewed the EOUSA data and compared it to other information provided by the BOP's Office of Internal Affairs, the OIG's Investigations Division, and court records to validate the information.⁵⁴

In reviewing the declination data that was available, we found that Assistant U.S. Attorneys gave a variety of reasons to explain why they decided not to prosecute staff-on-inmate sexual abuse cases. Our review of available EOUSA data on 40 declined cases from FY 2001 through FY 2008 showed that Assistant U.S. Attorneys cited a lack of evidence of criminal intent and weak or insufficient admissible evidence as the most common reasons for the declinations. Those reasons also were the most common reasons cited by the Assistant U.S. Attorneys we interviewed in five judicial districts we visited. Table 6 shows EOUSA's data on why Assistant U.S. Attorneys declined the 40 staff sexual abuse cases and delineates whether the cases were subject to the new laws enacted in 2006.

⁵³ *U.S. Attorneys' Manual*, Chapter 9-27.00, Principles of Federal Prosecution, Records of Prosecutions Declined.

⁵⁴ Analysis of staff sexual abuse prosecutions in the prior sections was based on data from the OIG investigations database and court records.

**Table 6: Declinations of Staff Sexual Abuse Cases
by U.S. Attorneys' Offices,
FY 2001 through FY 2008**

Reasons EOUSA Gave for Declining Prosecution	Declined Cases		Total Declined
	Subject to Old Laws	Subject to New Laws	
Lack of evidence of criminal intent	13	1	14
Weak or insufficient admissible evidence	9	0	9
Pretrial diversion completed	3	2	5
Minimal federal interest or no deterrent value	2	1	3
Suspect being prosecuted on other charges	2	0	2
Agency request	2	0	2
Witness problems	1	1	2
Civil, administrative, or other disciplinary alternatives	0	1	1
Lack of investigative resources	0	1	1
Office policy (failed to meet prosecutive guidelines)	1	0	1
Total	33	7	40

Notes: The number of declinations reported by EOUSA was less than the number reported by the OIG (see pages 64 and 65) because some cases are declined informally and the Assistant U.S. Attorney does not always record the decision.

Source: EOUSA data.

Lack of Evidence of Criminal Intent. In 14 of the recorded declinations, federal prosecutors declined the cases because they did not believe that the evidence was sufficient to convince judges or juries that crimes had occurred. Even though federal law states that consent is never a defense in staff sexual abuse cases and that any sexual relationship with an inmate is a crime, six of the Assistant U.S. Attorneys we interviewed raised the concern of proving criminal intent when the prison staff member and the inmate both claim their sexual relationship was “romantic” or “consensual” in nature.

For example, an Assistant U.S. Attorney in the Eastern District of Texas stated that it is very difficult to obtain a conviction when the sexual relationship is not coerced because the inmate is not perceived as a crime victim. The Assistant U.S. Attorney said she asked a judge to dismiss a case involving a female nurse who was caught engaging in a sex act with an inmate

in an x-ray closet because the relationship was “consensual” in that the inmate had not raised objections to the relationship.

However, this view that cases should be declined when the staff member obtained sex from the inmate without the use of overt force or threats was not universal among the Assistant U.S. Attorneys we interviewed. An Assistant U.S. Attorney in the Middle District of Florida said, “Staff-on-inmate sexual abuse is like statutory rape – even if the inmate says it was consensual, they are in no position to consent. I would accept ‘consensual’ cases for prosecution because the law has nothing to do with consent.” In addition, two Assistant U.S. Attorneys in the Northern District of Florida also stated that consent would not deter them from prosecuting a BOP staff member.

Weak or Insufficient Admissible Evidence, Victim Corroboration, and Witness Credibility. In nine of the recorded declinations, federal prosecutors declined the cases because of inadequate physical evidence. The Assistant U.S. Attorneys we interviewed said they were reluctant to prosecute when there was no evidence, such as DNA or a confession from the defendant, to corroborate the testimony of the victim. Assistant U.S. Attorneys noted that corroborating physical evidence is often lost due to a victim’s delay in reporting the incident, thus making it more difficult to prosecute.

Assistant U.S. Attorneys also said they were reluctant to go forward with only the testimony of the victim because the victim usually had credibility issues. As noted by one prosecutor, every inmate victim and witness has a criminal record, which impacts the credibility of their testimony with judges and juries. In addition, prosecutors stated that they had to overcome judges’ and jurors’ suspicions that inmate victims may have fabricated their allegations of abuse for a variety of reasons, such as to damage staff members’ reputations, secure shorter sentences, or create the basis for lawsuits after release. When testifying before the National Prison Rape Elimination Commission in August 2006, a former U.S. Attorney for the Northern District of Florida stated that, at trial, judges instruct the juries in staff sexual abuse cases that they may consider the victim’s status as a convicted felon when judging their credibility. Consequently, inmate victims’ and witnesses’ testimony alone may not be sufficient to refute the word of an alleged staff perpetrator who is a member of the law enforcement community with no prior criminal record. An Assistant U.S. Attorney in the Eastern District of Pennsylvania said that an inmate victim’s credibility is further damaged when he or she initially denies the abuse, sometimes out of fear of the consequences, and then later reports it.

Pretrial Diversion. Five cases, all involving female defendants, were declined during our review period because the defendants completed the terms of a pretrial diversion agreement. According to the *U.S. Attorneys’ Manual*,

“pretrial diversion is an alternative to prosecution which seeks to divert certain offenders from traditional criminal justice processing into a program of supervision and services administered by the U.S. Probation Service. In the majority of cases, offenders are diverted at the pre-charge stage. Participants who successfully complete the program will not be charged or, if charged, will have the charges against them dismissed; unsuccessful participants are returned for prosecution.”⁵⁵

Minimal Government Interest. Three cases were declined because Assistant U.S. Attorneys decided that the government had a minimal interest in prosecuting the cases or that the prosecutions would have no deterrent value. When we compared the data from EOUSA’s database and the BOP’s OIA database, we found that all three cases were sustained on sexual abuse of a ward and all three subjects resigned before BOP officials terminated them. In one case, the subject confessed to sexually abusing the inmate, but the BOP’s record stated that the case was declined because it lacked substantial jury appeal. While resignation or termination does not automatically mean that staff members will not also be prosecuted, OIG Special Agents we interviewed noted that prosecutors sometimes do not pursue criminal prosecution because the perpetrator is no longer a threat to inmates after leaving the institution. However, OIG agents also stated that it is possible for a perpetrator who resigns but is not prosecuted to be hired at a state or private prison.

Some prosecutors have developed methods to overcome barriers to prosecution.

We found that many of the Assistant U.S. Attorneys who were more reluctant to prosecute sexual abuse cases did not appreciate the significance of staff-on-inmate sexual abuse cases. During our interviews, a federal prosecutor, an OIG investigator, and a BOP Senior Attorney all stated that some prosecutors lacked an understanding of the effect staff sexual abuse has on the lives of inmates; lacked experience prosecuting sexual abuse cases in general, but especially those occurring in a prison setting; and lacked knowledge about the prison culture and the coercive influence of contraband on sex and security in a prison.

We found that, while prosecuting staff sexual abuse cases presented challenges, some Assistant U.S. Attorneys working along with BOP officials and investigators were willing to take on these cases even if they were difficult. Described below are two examples of actions on the part of a BOP official,

⁵⁵ *U.S. Attorneys’ Manual*, Chapter 9-22.200, Criminal Resource Manual, Pretrial Diversion Procedures.

prosecutors, and investigators that contributed to better understanding of sexual abuse cases and influenced prosecutions and sentencing.

- In 2006, federal prosecutors in the Northern District of Florida were able to convict two former correctional officers at the Federal Correctional Institution Tallahassee in a staff sexual abuse case by convincing the jury of the seriousness of the crime and its far-reaching consequences in a prison. The prosecutors won convictions despite credibility issues with inmate victims. For example, female inmates told the prosecutors that they often tried to manipulate staff members into sexual relationships for their own entertainment and that sexual relationships with staff members can be lucrative if the victims can later sue the government for negligence or receive a sentence reduction for cooperating with the investigation. The prosecutors overcame these challenges by focusing not only on the sexual abuse, but also on the policy violations and illegal activity that the staff members committed to facilitate the sexual abuse and to remain undetected. This required the prosecutors to have extensive knowledge of the prison environment and the dynamics of staff sexual abuse as well as assistance from BOP officials and OIG investigators. The prosecutors demonstrated to the jury that the two officers provided contraband to inmates in return for sexual favors, switched their work assignments so they had access to their victims, permitted inmates to leave their cells without authorization, and provided other officers keys to staff offices so that they too could engage in sexual acts with inmates undetected. Prosecutors also demonstrated how the correctional officers conspired to keep their illegal activities from being reported to authorities and intimidated inmates to keep them from cooperating with investigators once the corruption was discovered. Thus, the prosecutors were able to portray the correctional officers' actions as a conspiracy that involved collusion, witness tampering, and security breaches and not merely sexual contact with inmates. The jury convicted both defendants on multiple charges.
- A BOP Supervisory Attorney who handled legal matters for the Federal Correctional Complex Florence and the Federal Correctional Institution Englewood asked the Assistant U.S. Attorney assigned to a staff sexual abuse case in 2007 to tour the prison where the incident occurred. The BOP attorney told us that the tour helped the Assistant U.S. Attorney better understand how the prison environment differs from the environment outside of a prison and the challenges of maintaining control over a prison population. The BOP attorney and the Assistant U.S. Attorney subsequently submitted a letter to the U.S. Probation Office on the case, outlining the detrimental effects

sexual abuse had on the victim and the prison.⁵⁶ This letter was made part of the pre-sentencing report that the judge evaluated when determining the defendant's sentence. According to the BOP attorney, the defense attorney had requested that the defendant receive only a period of probation, and the pre-sentencing report's findings supported that request. However, after reviewing the letter from the BOP attorney and the Assistant U.S. Attorney along with other facts in the case, the judge imposed a 6-month prison sentence. During sentencing, the judge stated that probation would not reflect the seriousness of the crime and would not act as a deterrent to other prison staff.

While staff sexual abuse cases are challenging to prosecute, prosecutors can overcome some of the difficulties by working closely with BOP officials and investigators as well as by increasing their knowledge of the prison environment. As we noted in the discussion of prosecution statistics above, Assistant U.S. Attorneys were generally successful in obtaining convictions when they prosecuted staff sexual abuse cases. Out of 90 prosecutions resulting from allegations raised from FY 2001 through FY 2008 that were resolved during the period of our review, all but 7 resulted in a conviction.

Recommendations

We recommend that the:

19. BOP submit a letter to the U.S. Probation Office, to be made part of the pre-sentencing investigative report, for each BOP staff member convicted of a sexual abuse crime. The letter should outline how the defendant's sexual abuse of the inmate undermined prison safety and petition for a sentence commensurate with the crime.
20. EOUSA ensure that all staff sexual abuse cases presented for prosecution, as well as the reasons for any case declinations, are documented in its Legal Information Office Network System.
21. EOUSA provide training to Assistant U.S. Attorneys on the significant negative effect staff sexual abuse has on inmates and BOP prisons, and provide training on how to effectively prosecute these cases.

⁵⁶ The U.S. Probation Office compiles the pre-sentencing report, which includes a recommended sentence based on the U.S. Sentencing Guidelines. The defendant and prosecution are allowed the opportunity to provide additional information for the court to consider when determining the defendant's sentence.

cited in Khudaverdyan v. Holder
No. 10-73346 archived on February 27, 2015

CONCLUSION AND RECOMMENDATIONS

The Department's progress in implementing staff sexual abuse prevention programs since 2001 has been mixed. The Department has conducted research and gathered data on allegations and incidents of staff sexual abuse and sexual misconduct, and has advocated for increased penalties and extended federal jurisdiction for criminal sexual abuse to all private prisons under contract to the federal government. The Department also has continued to investigate, prosecute, and discipline federal personnel who have engaged in sexually abusive behaviors with prisoners. Despite those efforts, the Department needs to further improve its efforts to deter, detect, investigate, and prosecute staff sexual abuse of federal prisoners.

Although the BOP has an established program for preventing, reporting, investigating, and responding to allegations of staff sexual abuse and sexual misconduct, allegations more than doubled from FY 2001 to FY 2008. The majority of those allegations involved criminal sexual abuse rather than administrative sexual misconduct. Many also involved allegations of other serious crimes such as providing inmates with contraband, bribing public officials, and conspiracy, which were found to have been committed by staff members to further their improper sexual behavior with inmates. Sexual abuse allegations were widespread throughout the BOP during our 8-year review period, involving all but 1 of the BOP's 93 prison sites and staff in every occupational category except human resources. While female staff members were only 26.5 percent of the BOP workforce in each year of the study period, they were the subjects in 30 to 39 percent of the allegations of staff sexual abuse and sexual misconduct. Approximately 6 percent of female staff members, compared to 4 percent of male staff members, were the subjects of allegations of sexually abuse behavior.

We believe that the BOP can improve its current efforts to deter staff sexual abuse. The BOP should update and clarify its educational materials for inmates. The BOP can also improve inmates' willingness to cooperate in investigations by not automatically placing an inmate who reports an allegation of staff sexual abuse in segregated isolation or transferring the inmate to another prison. The BOP also needs to ensure that it provides all alleged victims with psychological and medical services as required by BOP policy. We also concluded that the BOP could increase the effectiveness of its sexual abuse prevention program by ensuring that all allegations are reported to the OIA, the OIG, and the Bureau of Justice Statistics; improving staff training about sexual abuse prevention and reporting; and providing better oversight of prisons' sexual abuse prevention programs.

The USMS is responsible for transportation of prisoners and cellblock operations in courthouses. In the 6 years since passage of the *Prison Rape Elimination Act*, the USMS has not established protocols for responding to and reporting incidents of staff sexual abuse as required by the Act. In addition, the USMS has not provided training to its personnel about their responsibilities for responding to allegations of staff sexual abuse and the potential consequences of engaging in sexual acts or behaviors with prisoners. The USMS has not provided prisoners with information about how to report staff sexual abuse. USMS officials said the agency's general policies for protecting prisoners and its personnel are adequate to protect against staff sexual abuse. However, we concluded that the policies do not provide sufficient guidance to staff for reporting and responding to allegations of staff sexual abuse of federal prisoners in USMS custody. Furthermore, USMS administrators are not providing oversight of USMS operations to ensure that personnel are responding appropriately to such allegations by protecting the alleged victim and providing victim services, securing the crime scene, collecting physical evidence, and ensuring that staff sexual abusers are dealt with appropriately. We believe that the USMS should develop new policies or update its current policies to include guidance on deterring, reporting, and responding to allegations of sexual abuse.

We found that of the agencies conducting investigations of staff sexual abuse, the OIG and the FBI were able to reach a definitive conclusion in 44 percent and 20 percent of their cases, respectively, while the BOP resolved 10 percent of its cases. The BOP's lower rate of conclusive outcomes for its investigations is at least partially a result of the OIG and the FBI having taken cases that had stronger potential for criminal prosecution. Cases investigated by BOP staff, especially those investigated by prison staff, typically have fewer investigative leads to enable conclusive decisions. Moreover, OIG and BOP investigators stated that investigating staff-on-inmate sexual abuse cases poses many challenges that make reaching a definitive conclusion about an alleged incident difficult. Those challenges included victims' delayed reporting of incidents and lack of corroborating physical evidence. In addition to the general challenges in conducting investigations in a prison environment, BOP investigators told us that they were hampered by a lack of training and experience.

Acceptance of staff sexual abuse cases for prosecution has increased since enactment of the new laws. However, some prosecutors we interviewed did not sufficiently understand the impact of staff sexual abuse on inmates; did not have experience prosecuting sexual abuse cases in general, but especially those occurring in a prison setting; or lacked knowledge about the prison culture and the coercive influence of contraband on sex and security in a prison. However, while prosecuting staff sexual abuse cases presented

challenges, other Assistant U.S. Attorneys worked successfully with BOP officials and investigators to prosecute these cases.

We found that all but 7 of the 90 prosecutions of BOP staff from FY 2001 through FY 2008 that were resolved during the period of our review resulted in a conviction. Enacting stricter penalties for staff sex crimes had a mixed effect on the sentences of convicted defendants. While the number of defendants that receive prison time increased after the changes, the legislation generally has not resulted in lengthier prison sentences. Further, female staff members are less likely than male staff members to receive prison sentences when convicted of sexual abuse of a ward, and females who were convicted received shorter sentences than their male colleagues. We concluded that the BOP, U.S. Attorneys' Offices, and EOUSA should work with prosecutors to stress the importance of prosecuting staff sexual abuse cases because of the harm this conduct can have on individual inmates as well as on the safety and security of BOP prisons.

To improve the Department's efforts to prevent the sexual abuse of prisoners, we recommend that the:

1. BOP require prison officials to assess the risks and consider BOP-sanctioned alternatives for safeguarding alleged prisoner victims of staff sexual abuse instead of automatically segregating, isolating, and transferring the prisoner victims.
2. BOP develop procedures to ensure that all alleged inmate victims of staff sexual abuse receive psychological and medical assessments and that prison officials maintain a record of the accomplishment of the assessments.
3. BOP clarify guidance contained in Program Statement 5324.06 and the Special Investigative Supervisors Manual for reporting staff sexual abuse allegations and consider developing a separate program statement for responding to allegations of staff sexual abuse of prisoners.
4. BOP direct prison officials to ensure that all allegations of staff sexual abuse are reported to the OIA, OIG, and Bureau of Justice Statistics, including those believed to be unfounded.
5. BOP require OIA officials to record the name of the specific prison facility where each allegation of staff sexual abuse and sexual misconduct was reported to have occurred.

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6. BOP revise its self-study course, "Managing Female Offenders," to include instruction on the 2006 statutory changes that increased the penalties for sexual abuse of a ward and abusive sexual contact and that require staff members convicted of those crimes to register as sex offenders.
 7. BOP develop improved training for female staff working in male prisons that focuses specifically on preventing and detecting female staff sexual abuse of male inmates.
 8. BOP revise and update the 2005 Sexually Abusive Behavior Prevention and Intervention pamphlet to clarify that inmates will not be prosecuted or disciplined for being the victim of staff sexual abuse. In addition, the pamphlet should be revised to include a practical definition of staff-on-inmate sexual abuse and assault.
 9. BOP establish a national goal for reducing staff sexual abuse of federal inmates.
 10. BOP conduct periodic program reviews to assess the effectiveness of the Sexually Abusive Behavior Prevention and Intervention Program.
 11. BOP direct prison officials to conduct operational reviews to assess the strengths and weaknesses of their sexual abuse prevention program.
 12. BOP revise Program Statement 5324.06 to require Wardens to conduct after-action reviews of their responses to criminal staff sexual abuse incidents.
 13. USMS develop and implement policy that ensures a zero-tolerance standard and that is aimed at preventing staff sexual abuse of federal prisoners under USMS custody in cellblocks and during transportation.
 14. USMS develop and implement standard procedures for responding to, reporting, and investigating allegations of staff sexual abuse in cellblocks and during transportation.
 15. USMS provide oversight and periodic reviews to ensure the effectiveness of USMS staff sexual abuse prevention policy and to assess the strengths and weaknesses of USMS prevention operations in cellblocks and during transportation.

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16. USMS collect and analyze data on staff sexual abuse allegations, investigations, and prosecutions.
 17. BOP increase training for Special Investigative Agents and Supervisors, reinstating the 2 weeks of instruction previously offered.
 18. BOP consider assigning Special Investigative Supervisors to longer rotations or on a permanent basis to ensure they have the experience and investigative skills needed to conduct thorough investigations.
 19. BOP submit a letter to the U.S. Probation Office, to be made part of the pre-sentencing investigative report, for each BOP staff member convicted of a sexual abuse crime. The letter should outline how the defendant's sexual abuse of the inmate undermined prison safety and petition for a sentence commensurate with the crime.
 20. EOUSA ensure that all staff sexual abuse cases presented for prosecution, as well as the reasons for any case declinations, are documented in its Legal Information Office Network System.
 21. EOUSA provide training to Assistant U.S. Attorneys on the significant negative effect staff sexual abuse has on inmates and BOP prisons, and provide training on how to effectively prosecute these cases.

cited in *Khudaverdyan v. Holder*
No. 10-73346 archived on February 27, 2015

**APPENDIX I: NUMBER OF ALLEGATIONS REPORTED
BY BOP-MANAGED INSTITUTIONS**

Table 7 shows the institutions that reported allegations of staff sexual abuse of inmates during the period from FY 2001 through FY 2008. The institutions are listed in descending order by total number of allegations.

Table 7: Allegations of Staff Sexual Abuse of Inmates Reported by BOP-Managed Institutions from FY 2001 through FY 2008

Institution	Type	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	Total
Coleman	FCC	7	3	13	13	13	7	12	12	80
Florence	FCC	1	3	10	4	9	8	20	13	68
Tallahassee	FCI	1	5	11	18	9	10	8	5	67
Carswell	FMC	3	19	10	7	5	7	3	4	58
Danbury	FCI	16	12	4	4	3	4	4	8	55
Beaumont	FCC	5		4	10	5	8	9	11	52
Marianna	FCI	1	4	14	1	2	3	8	8	41
Victorville	FCC	1	1	5	2	10	8	6	8	41
Atlanta	USP		2	9	10	6	1	4	3	35
Brooklyn	MDC	1	3	5	10	5	5	5	6	35
Dublin	FCI	5	9	4	4	1	3	5	2	33
Allenwood	FCC	3	1	1	9		3	8	5	31
Petersburg	FCC	2	6	5	2	2	6	5	2	30
Lexington	FMC	2	2	1	4	8	3	3	6	28
Bryan	FPC	1	4	3	2	5	5	3	4	27
Philadelphia	FDC	1		2	5	8	4	1	5	26
Terre Haute	FCC		5	8	1		5	3	4	26
Forrest City	FCC		1	4	5	4		3	6	23
Yazoo City	FCC	3	2	1	3	3	2	6	3	23
Fort Dix	FCI	5	1		1	2	3	7	3	22
SEATAC	FDC		3	4	2	3	5	2	3	22
Lee	USP		1	10	5	4		1		21
Rochester	FMC		3	2	2	7	2	3	2	21
Atwater	USP			2	1		1	15	1	20
Butner	FCC	1	1	2	1		10	4	1	20
Hazelton	USP					2	12	4	2	20
Fort Worth	FCI	2		4	3	3	3	4		19
Alderson	FPC	1	2	1	2	4	1	1	6	18
Manchester	FCI		1	1	5	1	3	1	6	18
Phoenix	FCI	5	2	1	2	4		3	1	18
El Reno	FCI			1			9	5	1	16
Guaynabo	MDC	2	1	4	5	2		1	1	16
Houston	FDC	1		3	1	3	2	5	1	16
Miami	FDC	2		1	4	5	2	2		16

Institution	Type	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	Total
Chicago	MCC			1	5	4	1	2	2	15
Estill	FCI	2	1	2	5	2	3			15
Jesup	FCI	2		1		4	4		4	15
La Tuna	FCI	1			3	1	2	1	7	15
Marion	USP	2			1	4	6	1	1	15
Oklahoma City	FTC		1			3	2	2	7	15
Oxford	FCI			3		3	4	1	4	15
Devens	FMC	2	2		4	2		4		14
Lompoc	FCC	3	2	3	4			1	1	14
Miami	FCI	2	1	1	1	2	2	3	2	14
San Diego	MCC	4	3	3	1	1			2	14
Gilmer	FCI			1	1	2	4	4	1	13
Greenville	FCI	1		2	4		3	3		13
Lewisburg	USP				2	3		1	7	13
Pollock	FCC	1	4	1		2	3	1		12
Tucson	FCC	1			7		1		3	12
Waseca	FCI		1	2	2	4	3			12
Edgefield	FCI	3			2	4	1		1	11
McCreary	USP				1	4	4		2	11
New York	MCC		1	3	1	1	1		2	11
Fairton	FCI			1	2	2	1	1	3	10
Memphis	FCI	1		2	2	1	6			10
Springfield	USMCFP			1	1	1	3	1	1	10
Bennettsville	FCI						3	5	1	9
Big Sandy	USP				1	1	2	3	2	9
Ray Brook	FCI		1	1	2	2	1	1	1	9
Seagoville	FCI					3	2	3	1	9
Big Spring	FCI		2		1	1	2	1	1	8
Honolulu	FDC			1	2			2	3	8
McKean	FCI	1	2	2	2			1		8
Otisville	FCI			1		2	1	3	1	8
Schuylkill	FCI						3	4	1	8
Three Rivers	FCI		1	1	2		1	2	1	8
Beckley	FCI	1				1	1	2	2	7
Canaan	USP					2	3	1	1	7
Cumberland	FCI	2		1		3			1	7
Elkton	FCI	2		1	1		2	1		7
Leavenworth	USP					2	4	1		7
Los Angeles	MDC	1	1		1		1		3	7
Milan	FCI				1	1	2	2	1	7
Oakdale	FCC	1	1	1	2	1			1	7
Sandstone	FCI				3	1	1		2	7
Sheridan	FCI	1	2			1		2	1	7
Morgantown	FCI					1	3	2		6
Pekin	FCI	1		1	1	1		1	1	6

Institution	Type	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	Total
Terminal Island	FCI				1		4		1	6
Williamsburg	FCI						2	2	2	6
Loretto	FCI	1		1		1	1	1		5
Montgomery	FPC						5			5
Talladega	FCI						1	2	2	5
Texarkana	FCI			1			2	2		5
Yankton	FPC		1					2	2	5
Ashland	FCI		1	1	1				1	4
Bastrop	FCI	1			2				1	4
Englewood	FCI	1			2		1			4
Pensacola	FPC			2			1		1	4
Herlong	FCI								3	3
Safford	FCI		1	1						2
Duluth	FPC									0
Total		109	127	193	222	210	247	246	231	1,585

Note: The BOP manages 115 separate institutions located at 93 sites in 6 regional districts. However, the BOP's OIA records sexual abuse allegations for co-located institutions and satellite camps as though they were one institution.

Source: BOP Office of Internal Affairs data.

Acronyms

FCC	Federal Correctional Complex
FCI	Federal Correctional Institution
FDC	Federal Detention Center
FMC	Federal Medical Center
FMCFP	Federal Medical Center for Federal Prisoners
FPC	Federal Prison Camp
FTC	Federal Transfer Center
MCC	Metropolitan Correctional Center
MDC	Metropolitan Detention Center
USP	United States Penitentiary

*cited in Khudaverdyan v. Holder
No. 10-73346 archived on February 27, 2015*

APPENDIX II: FEDERAL SEXUAL ABUSE CRIMES

Under Title 18 of the U.S. Code, sexual relations between BOP staff and inmates constitute sexual abuse and are a criminal violation, even if the sexual act would have been considered consensual had it occurred outside of a prison. This law applies to anyone (staff or inmate) in a BOP-managed prison, institution, or other facility in which individuals are held in custody by the direction of the Attorney General. Staff members face the following criminal penalties, which reflect legislative changes since 2006, if they are convicted of sexual behavior or acts with an adult inmate.

1. Aggravated Sexual Abuse (18 U.S.C. § 2241(a) and (b)) – Causing or attempting to cause an inmate to engage in a sexual act by use of force or placing the inmate in fear of death, serious bodily injury, or kidnapping; by rendering them unconscious; or through drugs or other intoxicants. Staff members convicted of this crime shall be fined, imprisoned for any term of years or life, or both.
2. Sexual Abuse (18 U.S.C. § 2242) – Engaging in a sexual act with an inmate by threatening them or placing them in fear (other than in fear of death, bodily harm, or kidnapping) or with inmate incapable of appraising the nature of the conduct or declining participation. Staff members convicted of this crime shall be fined and imprisoned for any term of years or for life.
3. Sexual Abuse of a Ward (18 U.S.C. § 2243 (b)) – Engaging in or attempting to engage in a sexual act with an inmate or detainee who is under the perpetrator’s custodial, supervisory, or disciplinary authority. A staff member convicted of this crime shall be fined, imprisoned for not more than 15 years, or both.
4. Abusive Sexual Contact (18 U.S.C. § 2244 (a)) – Engaging in or causing sexual contact (touching) with or by another person. A staff member convicted of this crime shall be fined or imprisoned for not more than:
 - a. 2 years for the sexual contact with an inmate;
 - b. 3 years, if the sexual contact with an inmate involved the use of threats or fear other than death, serious bodily injury, or kidnapping; or

-
- c. 10 years, if the sexual contact with an inmate involved the use of force against the inmate or threats of death, serious bodily injury, or kidnapping.
 - 5. Sexual Abuse Offenses Resulting in Death (18 U.S.C. § 2245) – Murdering an individual in the course of a sexual abuse offense. A staff member convicted of this crime shall be fined, imprisoned for any term of years or for life, or punished by death.

Under the provisions of the *Adam Walsh Child Protection and Safety Act of 2006*, convictions on any of the sexual abuse crimes involving sexual contact between staff members and prisoners triggers federal sex offender registration requirements as well as most state registration requirements.

Sexually abusive behavior that does not rise to the criminal level of sexual abuse defined in Title 18 may be classified as sexual misconduct. These behaviors include acts such as using indecent language, obscene gestures, or voyeurism. Sexual misconduct is not subject to prosecution, but is a violation of the BOP's standards of conduct that may result in an administrative sanction up to termination.

cited in *Khudaverdyan v. Holder*
No. 10-73346 archived on February 27, 2015

APPENDIX III: U.S. SENTENCING GUIDELINES

Federal criminal laws establish maximum penalties for individuals convicted of sexually abusing federal inmates, but actual prison sentences are typically based on federal sentencing guidelines and other factors identified by the court during court proceedings.⁵⁷ In determining the type of sentence to impose under the guidelines, the judge considers the nature and seriousness of the offender's conduct, the statutory purposes of sentencing, and the pertinent offender characteristics. The following paragraphs describe how the sentencing guidelines are used to calculate sentences based on the seriousness of the crime committed and the criminal history of the offender.

The federal sentencing guidelines, developed by the U.S. Sentencing Commission, assign most federal crimes to one of 43 "offense levels" based on the specific characteristics of the crime. Each offender also is assigned one of six "criminal history categories" based on the offender's past criminal conduct, with more extensive or recent criminal resulting in a higher category rating. An offender with a record of prior criminal behavior is considered by the guidelines to be more culpable than a first-time offender. The point at which the offense level and the criminal history category intersect on the guidelines' sentencing table determines a presumptive "guidelines range" that generally will translate into the offender's sentence.

Under the sentencing guidelines, judges are instructed to choose a sentence from within the recommended range based on the defendant's total sentencing points, unless the court identifies factors not considered by the Commission that should result in a different sentence. In these instances, the guidelines state that a court may consider a "departure" from the guidelines' recommended sentence range to impose either a harsher or more lenient sentence.

Below are examples of the range of recommended sentences for defendants with no prior criminal history (Category I criminal history) and the base offense with additional points added for specific offense characteristics related to staff sexual abuse of inmates:

- Aggravated Sexual Abuse (18 U.S.C. § 2241 (a) or (b)) has a base offense level score of 34 plus 2 points for sexual abuse of an inmate or detainee in the custody, care, or supervisory control of the defendant,

⁵⁷ The Supreme Court has determined that the guidelines are advisory rather than mandatory. See *United States v. Booker*, 543 U.S. 220 (2005).

for a total offense level of 36. The recommended sentencing range is between 15 years, 8 months and 19 years, 7 months.

- Sexual Abuse (18 U.S.C. § 2242) has a base offense level of 30 for criminal sexual abuse plus 2 points for sexual abuse of an inmate or detainee in the custody, care, or supervisory control of the defendant, for a total offense level score of 32. The recommended sentencing range is between 10 years, 1 month and 12 years, 7 months.
- Sexual Abuse of a Ward (18 U.S.C. § 2243 (b)) has a base offense level score of 14 (the guidelines do not list any specific offense characteristics for this offense) with a recommended sentencing range between 1 year, 3 months and 1 year, 9 months.
- Abusive Sexual Contact (18 U.S.C. § 2244 (a)) has base offense levels ranging from 14 to 22 with sentencing ranges between 1 year, 3 months and 4 years, 3 months depending on whether certain specific offense characteristics such as use of force are present.
- Sexual Abuse Offenses Resulting in Death (18 U.S.C. § 2245) has a base offense level score of 43 for first degree murder and the guidelines recommend a sentence of life in prison.

As calculated under the sentencing guidelines, actual sentences of staff members who plead guilty or who are convicted of sexual abuse crimes may be much less severe than the maximum penalties set forth in the applicable statute (18 U.S.C. §§ 2241-2245). For example, as shown above a BOP or USMS staff member with no prior criminal record who committed criminal sexual abuse of a ward (§ 2243(b)) generally would receive a recommended sentence of more than one year but less than 2 years, much less than the maximum potential sentence of up to 15 years in prison under the statute.

APPENDIX IV: TIME FRAMES FOR REPORTING ALLEGATIONS TO THE OIG

All allegations of criminal wrongdoing or serious administrative misconduct by Department employees must be reported to the OIG. A 1998 memorandum signed by OIG, BOP, and USMS officials outlines the required times frames for reporting allegations of employee crimes and misconduct to the OIG. There are three classifications of allegations and the required times for reporting them to the OIG:

- Classification I – Immediate Notification. BOP and USMS officials must immediately report to the OIG all non-frivolous allegations against any employee which, if substantiated, would constitute a prosecutable offense, and any allegation of serious misconduct against an employee with the rank of GS-15 or above. This includes criminal sexual abuse and assault between employees and persons in custody. BOP and USMS personnel cannot initiate an investigation of these allegations before reporting them to the OIG, and they cannot delay the initial reporting to collect information.
- Classification II – 48-Hour Reporting. This classification includes any non-frivolous allegations against any employee that involve violations of rules, regulations, or law that, if substantiated, would not likely result in criminal prosecution. The BOP and USMS must notify the OIG within 48 hours of the time management learns of the matter. They can begin an investigation as soon as they are aware of the allegation, but the OIG reserves the right to either conduct the investigation or to direct them to continue their investigation. If the OIG decides to conduct the investigation, the component must stop theirs. This reporting classification includes allegations of inappropriate sexual relationships between staff members and prisoners.
- Classification III – Monthly Reporting. Component officials must report all allegations of misconduct that would have a minimal impact on programs and operations to the OIG monthly. This reporting classification includes allegations of prohibited personnel practices, such sexual misconduct, that are not likely to result in termination, demotion, or a lengthy suspension.

cited in Khudaverdyan v. Holder
No. 10-73346 archived on February 27, 2015

APPENDIX V: THE FEDERAL BUREAU OF PRISONS' RESPONSE



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

August 20, 2009

MEMORANDUM FOR MICHAEL D. GULLEDGE
ASSISTANT INSPECTOR GENERAL
FOR EVALUATION AND INSPECTIONS

Harley G. Lappin

FROM: Harley G. Lappin, Director

SUBJECT: Response to the Office of Inspector General's
(OIG) Draft Report: Review of Department of
Justice's Efforts to Prevent Staff Sexual Abuse of
Federal Inmate, Assignment Number A-2008-002

The Bureau of Prisons (BOP) appreciates the opportunity to respond to the recommendations from the OIG's draft report entitled Review of Department of Justice's Efforts to Prevent Staff Sexual Abuse of Federal Inmates. As a threshold matter, the BOP is fully committed to a zero-tolerance standard for the incidence of staff sexual abuse in our facilities. The BOP has a comprehensive program for preventing, reporting, responding to, and investigating allegations of staff sexual abuse and misconduct. We strive to improve on the strong foundation we have established in this arena. We would also like to provide the following comments.

We believe it is important to note that beginning on p. iv, continuing on p. 19 and highlighted throughout the report is the statistic that allegations of sexual abuse and sexual misconduct by BOP staff with federal inmates more than doubled from FY 2001 through FY 2008, increasing at a faster rate than either the growth of the inmate or staff populations. The context and tone of this reported statistic assumes that an increase in allegations is a negative outcome and to a certain extent, suggests that the behavior is occurring. In order to critically assess the data, it is imperative that the rate of sustained sexual abuse and misconduct cases by BOP staff with federal

inmates be included for the same reporting period covered in this report.

Following discussions with BOP staff, the OIG did add the sentence on p. iv, indicating that we attributed the increase in reported allegations to our efforts to educate and encourage reporting of these incidents. We recommend OIG consult with Dr. Allen Beck, Bureau of Justice Statistics, regarding the rate of reported allegations of sexual abuse in correctional facilities and whether it is common to see an increase in allegations when an agency focuses on training in this arena.

Please find the Bureau's response to the recommendations below:

Recommendation #1: BOP require prison officials to assess the risks and consider BOP-sanctioned alternatives for safeguarding alleged prisoner victims of staff sexual abuse instead of automatically segregating, isolating, and transferring prisoner victims.

Response: The BOP concurs. Program Statement 5324.06 requires staff to immediately safeguard the inmate victim when sexually abusive behaviors have been reported. The policy indicates that how this is accomplished will vary depending on the severity of the alleged behavior. The alternatives for safeguarding the victim will vary by institution (physical design of the institution, availability of nearby facilities, etc.) and by the facts presented in each case. The BOP has a duty to protect the victim and there will be circumstances where the victim will need to be segregated in order to ensure their safety. We will advise the Warden to consider alternatives to placing an inmate in the Special Housing Unit or transferring the alleged victim of staff sexual abuse. This will be completed by December 30, 2009.

Recommendation #2: BOP develop procedures to ensure that all alleged victims of staff sexual abuse receive psychological and medical assessments and that prison officials maintain a record of the accomplishments of the assessments.

Response: The BOP concurs, with a caveat. The concern, which may have led some alleged victims of sexual abuse to not receive services, is not primarily the privacy of the subjects, but rather the concern that wider dissemination of information to staff other than the Warden and investigative staff might compromise the integrity of an ongoing OIG, Federal Bureau of

Investigation or Office of Internal Affairs (OIA) investigation. Thus, while services should not be denied to any alleged victim, in some cases there may be a need for alternative means of providing such services other than established protocol. The BOP is committed to ensuring victims of sexual assault receive appropriate medical and psychological assessments and if necessary, treatment. The Correctional Programs Division and Health Services Division will collaborate on the appropriate procedures to be used for tracking referrals for these services by February 1, 2010.

Recommendation #3: BOP clarify guidance contained in Program Statement 5324.06 and Special Investigative Supervisors Manual for reporting staff sexual abuse allegations and consider developing a separate program statement for responding to allegations of staff sexual abuse of prisoners.

Response: The BOP concurs. The BOP recognizes at a minimum, guidance needs to be provided to staff on reporting staff sexual abuse allegations. We will undertake a review of the policies and determine whether a separate program statement is needed for responding to allegations of staff sexual abuse of prisoners. This review will be completed by December 30, 2009.

Recommendation #4: BOP direct prison officials to ensure that all allegations of staff sexual abuse are reported to the OIA, OIG, and Bureau of Justice Statistics, including those believed to be unfounded.

Response: The BOP concurs. The Chief, OIA, will advise Wardens to report all allegations of staff sexual abuse to the OIA, including those allegations believed to be unfounded. OIA will refer all allegations of staff sexual abuse to OIG. This will be completed by December 30, 2009.

Recommendation #5: BOP require OIA officials to record the name of the specific prison facility where each allegation of staff sexual abuse and sexual misconduct was reported to have occurred.

Response: The BOP concurs. The OIA will develop a method for entering specific facility information in sexual abuse cases in their database which can be retrieved as necessary. This will be completed by December 30, 2009.

Recommendation #6: BOP revise its self-study course, "Managing Female Offenders," to include instruction on the 2006 statutory changes that increased the penalties for sexual abuse of a ward and abusive sexual contact and that require staff members convicted of those crimes to register as sex offenders.

Response: The BOP concurs. The BOP is currently revising the self-study course, "Managing Female Offenders," and will include the 2006 statutory changes that increased the penalties for sexual abuse of a ward and abusive sexual contact. It will also include the requirement for staff members convicted of those crimes to register as sex offenders. This will be completed by January 1, 2010.

Recommendation #7: BOP develop improved training for female staff working in male prisons that focuses on preventing and detecting female staff sexual abuse of male inmates.

Response: The BOP concurs. The BOP continuously updates and enhances Annual Training (AT) lesson plans to address issues relevant to today's correctional environment. This component of AT has been revised in recent years to address issues raised by the Prison Rape Elimination Act (PREA). Specifically, a video is currently being prepared to address staff on PREA to be utilized in AT and Institution Familiarization for new incoming staff. For next year's lesson plans, we will include information related to the prevalence of cross-gender allegations against female staff members working in male institutions. However, we also propose modifications to address the issues raised for each gender in cross-gender supervision. While the current rates of cross-gender allegations against female staff are higher, this issue merits attention for both female and male staff.

Handwritten note: cited in Khudaverdyan v. Holder No. 10-73346 archived on February 27, 2015

Recommendation #8: BOP revise and update the 2005 Sexually Abusive Behavior Prevention and Intervention pamphlet to clarify that inmates will not be prosecuted or disciplined for being the victim of staff sexual abuse. In addition, the pamphlet should be revised to include a practical definition of staff-on-inmate sexual abuse and assault.

Response: The BOP concurs the pamphlet needs to be updated and the definitions clarified. While we concur inmates will not be prosecuted or disciplined for being the victim of staff sexual abuse, we believe it is important to remind inmates that

they are prohibited from soliciting staff members sexually. Revisions to the pamphlet will be completed by February 1, 2010.

Recommendation #9: BOP establish a national goal for reducing staff sexual abuse of federal inmates.

Response: The BOP does not concur. The BOP has a zero-tolerance policy for staff sexual abuse. We strive to achieve this policy through education, training, detection, prevention and appropriate response procedures. Establishing a national goal in this arena is untenable since the lag time between reported allegation and closure of the investigation often spans more than one year. Moreover, setting a goal of any type, whether percentage or numerical, gives the impression that a certain number of sexual abuse cases is acceptable for the agency. We believe our current strategic plan, BOP Objective 4.09, appropriately highlights the issue of Sexual Abuse and provides a mechanism for management staff to be aware of the trends. Therefore, we request this recommendation be closed.

Recommendation #10: BOP conduct periodic program reviews to assess the effectiveness of the Sexually Abusive Behavior Prevention and Intervention Program.

Response: The BOP concurs. The Program Review Branch is modifying the Psychology Services Program Review Guidelines to incorporate new review steps which will assess the effectiveness of the Sexually Abusive Behavior Prevention and Intervention Program. Once completed and published, we will evaluate the program during all future Psychology Program and Operational Reviews. This will be completed by January 1, 2010.

Recommendation #11: BOP direct prison officials to conduct operational reviews to assess the strengths and weaknesses of their sexual abuse prevention program.

Response: The BOP concurs. The Program Review Branch is modifying the Psychology Services Program Review Guidelines to incorporate new review steps which will assess the effectiveness of the Sexually Abusive Behavior Prevention and Intervention Program. Once completed and published, we will evaluate the program during all future Psychology Program and Operational Reviews. This will be completed by January 1, 2010.

Recommendation #12: BOP revise Program Statement 5324.06 to require Wardens to conduct after-action reviews of their responses to criminal staff sexual abusive incidents.

Response: The BOP concurs. BOP policy will be revised to require after-action reviews in sustained cases of staff sexual abuse incidents. An after-action review may not be required if allegations are determined to be unfounded. Policy revisions will be completed by February 1, 2010.

Recommendation #17: BOP increase training for Special Investigative Agents and Supervisors, reinstating the 2 weeks of instruction previously offered.

Response: The BOP concurs, as funding permits. Special Investigative Supervisor (SIS)/Special Investigative Agent Training for Fiscal Year 2010 has been expanded to two weeks. The new agenda contains approximately 35 hours of crime scene investigative specific training. While the BOP would like to be able to offer the two week training in the years to come, funding may not permit it.

Recommendation #18: BOP consider assigning Special Investigator Supervisors to longer rotations or on a permanent basis to ensure they have experience and investigative skills needed to conduct thorough investigations.

Response: The BOP does not concur. Rather than change established rotation schedules or make SIS Lieutenant positions permanent, assignment of sexual abuse cases should be based on the skill and experience of the investigator.

Recommendation #19: BOP submit a letter to the U.S. Probation Office, to be made part of the pre-sentence investigative report, for each BOP staff member convicted of a sex abuse crime. The letter should outline how defendant's sexual abuse of the inmate undermined prison safety and petition for a sentence commensurate with the crime.

Response: The BOP concurs with the concept. However, the Office of General Counsel would like to assess and consult with DOJ staff regarding the possible conflicts of interest presented by this recommendation. Their assessment will be completed by December 30, 2009.

If you have any questions regarding this response, please contact
VaNessa Adams, Assistant Director, Program Review Division, at
(202) 353-3206.

*cited in Khudaverdyan v. Holder
No. 10-73346 archived on February 27, 2015*

cited in Khudaverdyan v. Holder
No. 10-73346 archived on February 27, 2015

APPENDIX VI: OIG'S ANALYSIS OF THE FEDERAL BUREAU OF PRISONS' RESPONSE

The Office of the Inspector General provided a draft of this report to the Federal Bureau of Prisons (BOP) for its comment. The BOP's response is included in Appendix V to this report. The OIG's analysis of the BOP's response and the actions necessary to close the recommendations are discussed below.

Recommendation 1. The BOP require prison officials to assess the risks and consider BOP-sanctioned alternatives for safeguarding alleged prisoner victims of staff sexual abuse instead of automatically segregating, isolating, and transferring the prisoner victims.

Status. Resolved – open.

Summary of the BOP Response. The BOP concurred with this recommendation. The BOP agreed to advise Wardens to consider alternatives to placing an inmate in the Special Housing Unit or transferring the alleged victim of staff sexual abuse. This will be completed by December 30, 2009.

OIG Analysis. The action planned by the BOP is responsive to our recommendation. Please provide the OIG with documentation that Wardens have been advised to consider alternatives for safeguarding inmate victims of sexually abusive behaviors based on a risk assessment process that includes an evaluation of not only the safety needs of the alleged victim but their psychological and medical needs as well.

Recommendation 2. The BOP develop procedures to ensure that all alleged inmate victims of staff sexual abuse receive psychological and medical assessments and that prison officials maintain a record of the accomplishment of the assessments.

Status. Resolved – open.

Summary of the BOP Response. The BOP concurred with this recommendation and reaffirmed its commitment to ensuring that alleged victims of sexual assault receive the appropriate medical and psychological assessments and, if necessary, treatment. The BOP stated that the Correctional Programs Division and Health Services Division will collaborate on the appropriate procedures to be used for tracking referrals for these services by February 1, 2010.

OIG Analysis. The action planned by the BOP is responsive to our recommendation. Please provide the OIG with a copy of the approved procedures for tracking referrals and verifying the accomplishment of victim services.

Recommendation 3. The BOP clarify guidance contained in Program Statement 5324.06 and the Special Investigative Supervisors Manual for reporting staff sexual abuse allegations and consider developing a separate program statement for responding to allegations of staff sexual abuse of prisoners.

Status. Resolved – open.

Summary of the BOP Response. The BOP concurred with this recommendation and agreed to undertake a review of its policies and to determine whether a separate program statement is needed. The BOP said it would complete its policy review by December 30, 2009.

OIG Analysis. The action planned by the BOP is responsive to our recommendation. Please provide the OIG with a copy of the approved separate program statement or the approved revisions to the existing program statement that clarify the BOP's guidance for reporting staff sexual abuse allegations.

Recommendation 4. The BOP direct prison officials to ensure that all allegations of staff sexual abuse are reported to the BOP's Office of Internal Affairs (OIA), OIG, and Bureau of Justice Statistics, including those believed to be unfounded.

Status. Resolved – open.

Summary of the BOP Response. The BOP concurred with this recommendation. The BOP agreed that its OIA will advise Wardens to report all allegations of staff sexual abuse, including those believed to be unfounded, to the OIA and to the OIG. The BOP agreed to complete this action by December 30, 2009.

OIG Analysis. The action planned by the BOP is responsive to our recommendation. Please provide the OIG with documentation that the OIA Chief has advised Wardens to report all allegations, including unfounded allegations, to the OIA and the OIG.

Recommendation 5. The BOP require OIA officials to record the name of the specific prison facility where each allegation of staff sexual abuse and sexual misconduct was reported to have occurred.

Status. Resolved – open.

Summary of the BOP Response. The BOP concurred with this recommendation and stated that the OIA will develop a method for entering specific facility information about staff sexual abuse cases in its database so that it can be retrieved as necessary. The BOP stated that this action will be completed by December 30, 2009.

OIG Analysis. The action planned by the BOP is responsive to our recommendation. Please provide the OIG with documentation on the method developed by the OIA and a sample report from the database.

Recommendation 6. The BOP revise its self-study course, “Managing Female Offenders,” to include instruction on the 2006 statutory changes that increased the penalties for sexual abuse of a ward and abusive sexual contact and that require staff members convicted of those crimes to register as sex offenders.

Status. Resolved – open.

Summary of the BOP Response. The BOP concurred with this recommendation and agreed to revise its self-study course, “Managing Female Offenders,” to include changes in the laws that increased the penalties for staff sexual abuse of a ward and abusive sexual contact and imposed a requirement for sex offender registration. The BOP stated it would complete the revisions by January 1, 2010.

OIG Analysis. The action planned by the BOP is responsive to our recommendation. Please provide the OIG with a copy of the revised self-study course.

Recommendation 7. The BOP develop improved training for female staff working in male prisons that focuses specifically on preventing and detecting female staff sexual abuse of male inmates.

Status. Resolved – open.

Summary of the BOP Response. The BOP concurred with this recommendation and agreed that the current rates of cross-gender allegations merit attention for both male and female staff members. The BOP stated it would improve its training through the development of a video on the *Prison Rape Elimination Act* to be used as part of its Annual Training for current staff and its Institutional Familiarization training for new employees. The BOP also stated that it will modify its 2010 lesson plans to include information related to the prevalence of cross-gender allegations involving female staff working in

male institutions and to address issues raised for both male and female staff in cross-gender supervision situations.

OIG Analysis. The actions planned by the BOP are responsive to our recommendation. Please provide the OIG with a copy of the new training video and any accompanying literature, as well as copies of the revised lesson plans for the 2010 Annual Training and Institutional Familiarization training.

Recommendation 8. The BOP revise and update the 2005 Sexually Abusive Behavior Prevention and Intervention pamphlet to clarify that inmates will not be prosecuted or disciplined for being the victim of staff sexual abuse. In addition, the pamphlet should be revised to include a practical definition of staff-on-inmate sexual abuse and assault.

Status. Resolved – open.

Summary of the BOP Response. The BOP concurred with this recommendation. The BOP agreed that the pamphlet needs to be updated and the definitions clarified.

OIG Analysis. The action planned by the BOP is responsive to our recommendation. Please provide the OIG with a copy of the revised pamphlet.

Recommendation 9. The BOP establish a national goal for reducing staff sexual abuse of federal inmates.

Status. Resolved – open.

Summary of the BOP Response. The BOP did not concur with this recommendation. The BOP stated that it has a zero-tolerance policy and that establishing a national goal is untenable since the lag time between the reported allegation and the completion of the investigation often spans more than a year. The BOP also stated that establishing a numerical goal to reduce staff sexual abuse gives the impression that a certain number of sexual abuse cases is acceptable by the BOP. The BOP stated that its Strategic Plan Objective 4.09 appropriately highlights the issue of sexual abuse and provides a mechanism to inform management of trends.

OIG Analysis. The OIG accepts the BOP's explanation as to why it would prefer to not establish a numerical goal for reducing staff sexual abuse of federal inmates. The OIG stresses the importance of the BOP striving to reduce staff sexual abuse, to continue to focus attention on this issue, and to attempt to achieve the non-numerical goals established in its Strategic Plan Objective 4.09, which directs the BOP's OIA to determine high-risk areas and develop methods to reduce staff misconduct. In addition, the OIG notes that

even without establishing numerical goals, the BOP staff misconduct report prepared annually by OIA should include data which shows trends over time. The report as it is constituted now only includes misconduct statistics for a particular fiscal year. Please provide documentation showing that the BOP staff misconduct report prepared annually by OIA will include data which shows trends over time.

Recommendation 10. The BOP conduct periodic program reviews to assess the effectiveness of the Sexually Abusive Behavior Prevention and Intervention Program.

Status. Resolved – open.

Summary of the BOP Response. The BOP concurred with this recommendation. The BOP has agreed to modify the Psychology Services Program Review Guidelines to incorporate new review steps that will assess the effectiveness of the Sexually Abusive Behavior Prevention and Intervention Program. Once completed and published, the BOP will evaluate the program during all future Psychology Program and Operational Reviews. This will be completed by January 1, 2010.

OIG Analysis. The action planned by the BOP is partially responsive to our recommendation. The Sexually Abusive Behavior Prevention and Intervention Program is an interdisciplinary program that requires participation from several BOP departments, including Psychology Services, Health Services, and Correctional Services. However, incorporating additional review steps into the Psychology Services Program Review Guidelines will not fully assess the effectiveness of the program. We believe additional review steps also must be incorporated into the other disciplines' review guidelines. Please provide the OIG with a copy of revised guidelines for all disciplines involved in the Sexually Abusive Behavior Prevention and Intervention Program.

Recommendation 11. The BOP direct prison officials to conduct operational reviews to assess the strengths and weaknesses of their sexual abuse prevention program.

Status. Resolved – open.

Summary of the BOP Response. The BOP concurred with this recommendation. The BOP has agreed to modify the Psychology Services Program Review Guidelines to incorporate new review steps that will assess the effectiveness of the Sexually Abusive Behavior Prevention and Intervention Program. Once completed and published, the BOP will evaluate the program

during all future Psychology Program and Operational Reviews. This will be completed by January 1, 2010.

OIG Analysis. The action planned by the BOP is partially responsive to our recommendation. The Sexually Abusive Behavior Prevention and Intervention Program is an interdisciplinary program that requires participation from several BOP departments, including Psychology Services, Health Services, and Correctional Services. However, incorporating additional review steps into the Psychology Services Program Review Guidelines will not fully assess the effectiveness of the program. We believe additional review steps also must be incorporated into the other disciplines' review guidelines. Please provide the OIG with a copy of revised guidelines for all disciplines involved in the Sexually Abusive Behavior Prevention and Intervention Program.

Recommendation 12. The BOP revise Program Statement 5324.06 to require Wardens to conduct after-action reviews of their responses to criminal staff sexual abuse incidents.

Status. Resolved – open.

Summary of the BOP Response. The BOP concurred with this recommendation. The BOP has agreed to revise its policy to require after-action reviews in sustained cases of staff sexual abuse incidents. Policy reviews will be completed by February 1, 2010.

OIG Analysis. The action planned by the BOP is responsive to our recommendation. Please provide the OIG with a copy of the policy revisions.

Recommendation 17. The BOP increase training for Special Investigative Agents and Supervisors, reinstating the 2 weeks of instruction previously offered.

Status. Resolved – open.

Summary of the BOP Response. The BOP concurred with this recommendation as funding permits. Special Investigative Supervisor (SIS)/Special Investigative Agent Training for FY 2010 has been expanded to 2 weeks. The new agenda contains approximately 35 hours of crime scene investigative specific training. While the BOP would like to offer the 2-week training after FY 2010, funding may not permit it.

OIG Analysis. The action planned by the BOP is responsive to our recommendation. Please provide the OIG with a syllabus outlining the expanded training.

Recommendation 18. The BOP consider assigning Special Investigative Supervisors to longer rotations or on a permanent basis to ensure they have the experience and investigative skills needed to conduct thorough investigations.

Status. Resolved – open.

Summary of the BOP Response. The BOP did not concur with this recommendation. The BOP stated that rather than change established rotation schedules or make SIS Lieutenant positions permanent, assignment of sexual abuse cases should be based on the skill and experience of the investigator.

OIG Analysis. Because most staff sexual abuse allegations are investigated by BOP staff at the facilities, the skill and experience of the local investigators are critical, but frequent rotation of SIS Lieutenants can inhibit their investigative development. Although the expanded training described in the BOP's response to Recommendation 17 may provide newly appointed SIS Lieutenants with better foundation knowledge to conduct investigations, we believe that a typical 18-month assignment does not provide sufficient experience. Please provide the OIG with information on how the BOP will better manage its investigative caseload and assign sexual abuse cases to BOP staff who have sufficient skill and experience to conduct these investigations.

Recommendation 19. The BOP submit a letter to the U.S. Probation Office, to be made part of the pre-sentencing investigative report, for each BOP staff member convicted of a sexual abuse crime. The letter should outline how the defendant's sexual abuse of the inmate undermined prison safety and petition for a sentence commensurate with the crime.

Status. Resolved – open.

Summary of the BOP Response. The BOP concurred with this recommendation. However, the BOP's Office of General Counsel would like to assess and consult with DOJ staff regarding the possible conflicts of interest presented by this recommendation. Their assessment will be completed by December 30, 2009.

OIG Analysis. The action planned by the BOP is responsive to our recommendation. Please provide the OIG with the results of your assessment and consultation with DOJ staff.

Please provide the OIG with the information described above in each recommendation, or the status of corrective actions, by January 5, 2010.

cited in Khudaverdyan v. Holder
No. 10-73346 archived on February 27, 2015

APPENDIX VII: THE UNITED STATES MARSHALS SERVICE'S RESPONSE



U.S. Department of Justice

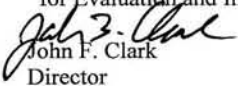
United States Marshals Service

Office of the Director

Washington, DC 20530-1000

August 26, 2009

MEMORANDUM TO: Michael Gullledge
Acting Assistant Inspector General
for Evaluation and Inspections

FROM: 
John F. Clark
Director

SUBJECT: Review of the Department of Justice's Efforts to Prevent
Staff Sexual Abuse of Federal Inmates, Assignment
Number A-2008-002

Thank you for the opportunity to comment on the draft audit report on your Review of the Department of Justice's Efforts to Prevent Staff Sexual Abuse of Federal Inmates. We have reviewed the recommendation pertaining to the United States Marshals Service (USMS) in the report, and our comments are attached.

Should you have any question or concerns regarding this response, please contact Ms. Isabel Howell, Audit Liaison, at 202-307-9744.
Attachment

**USMS Response to Draft Audit Report on DOJ's
Efforts to Prevent Staff Sexual Abuse of Federal Inmates**

Recommendation 13:

"USMS develop and implement policy that ensures a zero-tolerance standard and that is aimed at preventing staff sexual abuse of federal prisoners under USMS custody in cellblocks and during transportation."

Response: (*Agree*) The USMS, Prisoner Operations Division (POD), is drafting policy to be disseminated for review and approval by the Detention Management Committee (DMC) in October 2009. Once the DMC approves the proposed policy, the policy will be sent to the labor Union for comment. Upon receipt of the policy and comments from the Union, the policy will be implemented by dissemination from the USMS Director along with a memorandum stating there is a "zero-tolerance" policy in effect. The policy will require all employees to complete an annual on-line training course, also being developed by USMS POD. The USMS expects to have the training and policy implemented by January 1, 2010.

Recommendation 14:

"USMS develop and implement standard procedures for responding to, reporting, and investigating allegations of staff sexual abuse in cellblocks and during transportation."

Response: (*Agree*) The USMS, Office of Internal Investigations (OII) is responsible for investigating any allegations of employee misconduct. POD and OII will meet prior to September 30, 2009, to develop standard procedures for national dissemination and implementation by January 1, 2010.

Recommendation 15:

"USMS provide oversight and periodic reviews to ensure the effectiveness of USMS staff sexual abuse prevention policy and to assess the strengths and weaknesses of USMS prevention operations in cellblocks and during transportation."

Response: (*Agree*) As a part of the standard procedures established and implemented in Recommendation 14 between OII and POD, an element will include periodic reviews conducted by the USMS, Office of Compliance Review (OCR). The reviews conducted by OCR will test compliance with the policy, as well as the strengths and weaknesses of USMS prevention operations in cellblocks and during transport.

Recommendation 16:

"USMS collect and analyze data on staff sexual abuse allegations, investigations, and prosecutions."

Response: (*Agree*) Despite the USMS having so few allegations of this nature in the past, the USMS recognizes the need to specifically track and analyze data specific to this type of allegation. To that end, prior to September 30, 2009, POD, OIL, and OCR will meet with the USMS, Information Technology Division (ITD), to conceptually develop a secure module within the Justice Detainee Information System (JDIS). This module will allow for information specific to these allegations to be warehoused for periodic review and analysis. This periodic review and analysis will be used to track trends for reporting to the USMS and DOJ management officials. Any trends discovered will drive future policy and procedure revisions.

Due to procurement requirements, and the need to develop a statement of work, the USMS has set a goal for establishing an IT option within JDIS by Fiscal Year 2011.

cited in *Khudaverdyan v. Holder*
No. 10-73346 archived on February 27, 2015

cited in Khudaverdyan v. Holder
No. 10-73346 archived on February 27, 2015

APPENDIX VIII: OIG'S ANALYSIS OF THE UNITED STATES MARSHALS SERVICE'S RESPONSE

The Office of the Inspector General provided a draft of this report to the U.S. Marshals Service (USMS) for its comment. The USMS's response is included in Appendix VII to this report. The OIG's analysis of the USMS's response and the actions necessary to close the recommendations are discussed below.

Recommendation 13. The USMS develop and implement policy that ensures a zero-tolerance standard and that is aimed at preventing staff sexual abuse of federal prisoners under USMS custody in cellblocks and during transportation.

Status. Resolved – open.

Summary of the USMS Response. The USMS concurred with this recommendation. The USMS will draft and implement a zero-tolerance policy for sexual abuse of prisoners. The policy will require all USMS employees to complete annual training. The USMS expects to have the policy and training implemented by January 1, 2010.

OIG Analysis. The action planned by the USMS is responsive to our recommendation. Please provide the OIG with a copy of the written policy and training course.

Recommendation 14. The USMS develop and implement standard procedures for responding to, reporting, and investigating allegations of staff sexual abuse in cellblocks and during transportation.

Status. Resolved – open.

Summary of the USMS Response. The USMS concurred with this recommendation. The USMS's Office of Internal Investigations will meet with the Prisoner Operations Division prior to September 30, 2009, to develop standard procedures for responding to, reporting, and investigating allegations of staff sexual abuse for national dissemination and implementation by January 1, 2010.

OIG Analysis. The actions planned by the USMS are responsive to our recommendation. Please provide the OIG with a copy of the procedures developed for responding to, reporting, and investigating allegations of staff sexual abuse.

Recommendation 15. The USMS provide oversight and periodic reviews to ensure the effectiveness of USMS staff sexual abuse prevention policy and to assess the strengths and weaknesses of USMS prevention operations in cellblocks and during transportation.

Status. Resolved – open.

Summary of the USMS Response. The USMS concurred with this recommendation. As a part of the standard procedures established and implemented in Recommendation 14 between the Office of Internal Investigations and the Prisoner Operations Division, the USMS will include periodic reviews conducted by its Office of Compliance Review. These reviews will test compliance with the policy as well as the strengths and weaknesses of USMS prevention operations in cellblocks and during transport.

OIG Analysis. The actions planned by the USMS are responsive to our recommendation. Please provide the OIG with a copy of the procedures developed to ensure compliance with USMS policy as well as assess the strength and weaknesses of its prevention policy.

Recommendation 16. The USMS collect and analyze data on staff sexual abuse allegations, investigations, and prosecutions.

Status. Resolved – open.

Summary of the USMS Response. The USMS concurred with this recommendation. The USMS will develop a secure module within its Justice Detainee Information System that will allow for information specific to sexual abuse allegations to be warehoused for periodic review and analysis. This periodic review and analysis will be used to track trends for reporting to USMS and DOJ management officials. Any trends discovered will drive future policy and procedure revisions. The USMS has set a goal for establishing the module and the review and analysis process by FY 2011.

OIG Analysis. The actions planned by the USMS are responsive to our recommendation. Please provide the OIG with documentation on the module concept.

Please provide the OIG with the information described above in each recommendation, or the status of corrective actions, by January 5, 2010.

APPENDIX IX: THE EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS' RESPONSE



U.S. Department of Justice

Executive Office for United States Attorneys
Office of the Director

Main Justice Building, Room 2244A (202) 514-2121
950 Pennsylvania Avenue, N. W.
Washington, D.C. 20530

MEMORANDUM

AUG 19 2009

DATE:

TO: Michael D. Gullledge
Assistant Inspector General for Evaluation and Inspections

FROM: H. Marshall Jarrett
Director

SUBJECT: Response to OIG's Report Entitled: Review of Department of Justice' Efforts to Prevent Staff Sexual Abuse of Federal Inmates, Assignment Number A-2008-002

This memorandum is submitted by the Executive Office for United States Attorneys (EOUSA) in response to the report by the Office of Inspector General (OIG) entitled "Review of Department of Justice' Efforts to Prevent Staff Sexual Abuse of Federal Inmates." EOUSA appreciates the significant work that the OIG put into this review and its attention to the important issues addressed in the report. We are grateful for your efforts to promote integrity, efficiency, and effectiveness in the enforcement of federal criminal and civil laws. It is in this spirit that EOUSA has reviewed the OIG's report and accepts, and will endeavor to carry out to the best of its ability, OIG's recommendations.

As an initial matter, it is important to note the unique nature of the relationship between EOUSA and the United States Attorneys' Offices (USAOs), and the status of EOUSA/USAO as a component within the Department of Justice. Unlike most other DOJ components, EOUSA and the USAOs do not constitute a single hierarchical organization with a headquarters office directing policy decisions and resource management. Rather, each United States Attorney (USA) is the chief law enforcement officer in his or her district. Each USA, unless serving in an Acting or interim capacity, is appointed by the President and confirmed by the Senate. As a holder of high office, the USA is afforded significant discretion to manage his or her office according to locally perceived priorities and needs, albeit within the umbrella of overarching Departmental priorities. The 94 USAOs vary in size from 20 employees to over 800 employees. Each office has a unique identity and local "office cultures" vary greatly. It is in this context that EOUSA interacts with the USAOs to "[p]rovide general executive assistance and supervision to the offices of the U.S. Attorneys." 28 C.F.R. § 0.22.

The United States Attorney community remains mindful of the importance of prosecuting staff sexual abuse in the prison environment. As the report noted, since 2006, the percentage of criminal staff sexual abuse cases accepted for prosecution by United States Attorneys' Offices has increased, 83 defendants have been convicted, and the number of defendants who received prison time has increased.

Recommendations

EOUSA welcomes this review as an opportunity to make the recommended improvements in these areas. EOUSA will endeavor to implement both of the report's recommendations to the best of its ability.

20. *EOUSA ensure that all staff sexual abuse cases presented for prosecution, as well as the reason for any case declinations, are documented in its Legal Information Office Network System.*

The report recommends that all staff sexual abuse cases presented to USAOs for prosecution be documented in LIONS along with the reason for any declinations. Under current practice, cases which are formally presented to USAOs by law enforcement agencies and which are prosecuted by USAOs are entered into LIONS. Under current practice, cases which are formally presented to USAOs for prosecution, on which the AUSA spends more than an hour, but which are later declined, are also entered into LIONS. Currently, the LIONS system prompts the USAO to provide a reason for declination for every referral that is opened, i.e., on which an AUSA spends more than one hour, but ultimately closed without prosecution.

There is a third category of cases, which is encompassed in the report's review, which may not be reflected in LIONS under current practice, i.e., cases which are presented to an AUSA but on which the AUSA does not spend more than one hour prior to making the determination that it cannot be prosecuted at that time. This situation may arise, for example, when a referral comes in the form of a short phone call to the AUSA from a law enforcement agent. Cases initially declined under this scenario may be opened at a later time when, for example, additional evidence is obtained. This practice reflects the fact that LIONS is a management tool intended to measure and manage the workloads of AUSAs in the 94 individual districts. In other words, LIONS measures the time period exceeding one hour during which the AUSA was performing a certain type of work. The current system, however, is not intended as a measure of AUSA vigilance on prison staff sexual abuse cases.

EOUSA accepts the report's recommendation and will finalize written guidance to the USAOs requesting that they document every case of prison staff sexual abuse formally presented for prosecution by law enforcement including those cases on which an AUSA spends less than one hour, disseminate the new guidance by memorandum to the USAO community, and update all system user manuals to reflect this effort. EOUSA can implement this recommendation within 180 days.

-
21. *EOUSA provide training to Assistant United States Attorneys on the significant negative effect staff sexual abuse has on inmates and BOP prisons, and provide training on how to effectively prosecute these cases.*

As noted in the report, some USAOs have been very successful in pursuing staff sexual abuse cases at trial. In addition, the report documents the many ways that staff sexual abuse endangers the safety inside the federal prisons in ways that are less obvious and extend beyond the danger to the individual victims of sexual abuse. EOUSA recognizes the importance of disseminating this information to those districts in which federal prisons are located.

In February 2007, EOUSA's Office of Legal Education (OLE) sponsored classroom training on Prosecution of Criminal Cases in Federal Prisons, including presentations on Investigation and Prosecution of Sexual Abuse and Other Crimes Committed by BOP Employees. These presentations were broadcast on the Justice Television Network (JTN) in August and September 2007. EOUSA will post these presentations on the Video-on-Demand Library of EOUSAs Learning Management System, JUSTLearn, which is accessible to all U.S. Attorney's office personnel from their desk-top computer. EOUSA will advise districts of the availability and importance of such training in conjunction with its implementation of the recommendation regarding LIONS entries as discussed above. EOUSA will also develop and provide additional training to AUSAs within 180 days.

*cited in Khudaverdyan v. Holder
No. 10-73346 archived on February 27, 2015*

cited in Khudaverdyan v. Holder
No. 10-73346 archived on February 27, 2015

APPENDIX X: OIG'S ANALYSIS OF THE EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS' RESPONSE

The Office of the Inspector General provided a draft of this report to the Executive Office for United States Attorneys (EOUSA) for its comment. EOUSA's response is included in Appendix IX to this report. The OIG's analysis of EOUSA's response and the actions necessary to close the recommendations are discussed below.

Recommendation 20. EOUSA ensure that all staff sexual abuse cases presented for prosecution, as well as the reasons for any case declinations, are documented in its Legal Information Office Network System.

Status. Resolved – open.

Summary of the EOUSA Response. EOUSA concurred with this recommendation. EOUSA will finalize written guidance to the U.S. Attorneys' Offices (USAO) requesting that they document every case of prison staff sexual abuse formally presented for prosecution by law enforcement, including those cases on which an Assistant U.S. Attorney spends less than 1 hour, disseminating the new guidance by memorandum to the USAO community, and updating all system user manuals to reflect this effort. EOUSA stated it can implement this recommendation within 180 days.

OIG Analysis. The action planned by EOUSA is responsive to our recommendation. Please provide the OIG with a copy of the written guidance provided to the USAOs and the updates to system user manuals.

Recommendation 21. EOUSA provide training to Assistant U.S. Attorneys on the significant negative effect staff sexual abuse has on inmates and BOP prisons, and provide training on how to effectively prosecute these cases.

Status. Resolved – open.

Summary of the EOUSA Response. EOUSA concurred with this recommendation. EOUSA stated that in 2007, its Office of Legal Education presented a training course on Prosecutions of Crimes in Federal Prisons, which included presentations on the investigation and prosecution of sexual abuse and other crimes committed by BOP employees. EOUSA will post these presentations on the video-on-demand library of EOUSA's learning management system, JUSTLearn, which is accessible to all USAO personnel from their desktop computers. EOUSA will advise districts of the availability and importance of such training in conjunction with its implementation of Recommendation 20 regarding Legal Information Office Network System

entries. EOUSA also will develop and provide additional training to Assistant U.S. Attorneys within 180 days.

OIG Analysis. The actions planned by EOUSA are responsive to our recommendation. Please provide the OIG with a copy of the 2007 presentations, the accompanying guidance provided to USAOs, and any additional training developed and provided by EOUSA regarding the prosecution of staff sexual abuse of inmates.

Please provide the OIG with the information described above in each recommendation, or the status of corrective actions, by January 5, 2010.

*cited in Khudaverdyan v. Holder
No. 10-73346 archived on February 27, 2015*