

# Why Now

- ◆ National Awareness
- ◆ Systemic Pressures

# What is Sexual Misconduct?

Any Behavior or act of a sexual nature by an employee, contractor, service provider, volunteer, or any person or entity acting on behalf of an agency directed to:

- a person under the care or custody of the department or agency
- any collateral contact of an offender
- victims or victim's families
- any other persons who have official contact with the department or agency on behalf of offenders

# What is Sexual Misconduct Continued

Staff Sexual Misconduct includes but is not limited to acts or attempts to commit such acts as:

- \* sexual assault
- \* sexual abuse
- \* sexual harassment
- \* actions designed for sexual gratification of any party
- \* conduct of a sexual nature or implication
- \* sexual contact with the person
- \* obscenity
- \* unreasonable invasion of privacy and inappropriate viewing
- \* conversations or correspondence which suggests a romantic or sexual relationship between parties

# Consequences

What are the implications of staff sexual misconduct?

- \* For the staff?
- \* For the offenders?
- \* For operations?
- \* For the administrators?
- \* For the legislature?
- \* For families?
- \* For the public?

# Definition of Secure Confinement and Community Measures

## Secure Confinement

*Any institution where offenders are supervised by correctional officers 24 hours a day with no community interaction . This includes our modern idea of both jails and prisons*

## Community Measures

*Non-prison programs that allow offenders to reside in the community while serving a criminal sentence. This includes our modern idea of parole, probation, half-way homes, pre-release centers, and home detention.*

# National Awareness

- Increased incarceration of women
- Growth of offender population
- Escalation of numbers of staff hired
- Women generate more sympathy
  - ⇒media coverage focuses more on why women are in the criminal justice system e.g. past physical and sexual abuse
- Increased use of and awareness about community corrections

- Comparison to coverage of similar abuses in other institutions e.g. foster care, church, military & government

## Church

- Chicago Sun Times, *Archdiocese Probes New Claims of Abusive Priests: Complaints Jump Here After Scandal Hits Boston* (2002)

Numerous allegations reported of sexual abuse of minors by Chicago priests

## Foster Care

- U.S. Department of Health and Human Services, *Foster Care National Statistics* (2001)

Holding that there has been an increase in attention given to children in foster care and abuses

## Government

- The San Diego Union- Tribune, *Oceanside to settle sex-bias suit from 3 police employees* (2003)

Suit was filed in October of 2002 on behalf of 3 female police officers. The suit held that there was “continuing severe and pervasive course of discriminatory treatment, discriminatory harassment and a hostile work environment” at the police department

## Military

- BBC, *Sex Scandal Shakes U.S. Air force* (2003)

More than 50 cases of alleged sexual assault against female cadets have been reported at the academy since 1993.

# 4 W's and the H of Secure Confinement

## **Who are the offenders?**

Inmates who are under correctional watch by the judicial system and correctional officers within the institution

In 2000, there were 1,365,932 persons under correctional supervision. 1,305,253 of them were in secure confinement. 1,219,225 were male and 86,028 were female (Sourcebook of Criminal Justice Statistics 2002)

## **Where do they live?**

Inside of the adult jail or prison which to which they are assigned

## **What is their world like?**

Their world is ruled by the rules and culture of the institution where they live

## **With whom do they interact?**

Prison or Jail officials, other inmates, correctional staff, and their visitors

## **How do you interact with them?**

There are strict rules about what behavior is appropriate and the guidelines that govern the actions of correctional officers

# 4 W's and the H of Community Corrections

## **Who are the offenders?**

Offenders in the community who are under the supervision of the judicial system and parole/probation officers

In 2000, there were 1,365,932 persons under correctional supervision. 60,679 of them were under community corrections supervision. 53,084 were male and 7,595 were female (Sourcebook of Criminal Justice Statistics 2002)

## **Where do they live?**

Within the community

## **What is their world like?**

They live in a community such as our own, they may have jobs, go to church, and pick their children up from school

## **With whom do they interact?**

Everyone. Their family, friends, parole officer, bank tellers, grocery store employees, and members of the community at large

## **How do you interact with them?**

You can see them at the store, at church, in your office, at their homes, in their place of employment, or at your child's school.

# Recent Litigation, Media Coverage & Studies

- Recent Litigation

*Amador v. NY State Department of Correction Services* (S.D.N.Y. 03 Civ. 0650)

Suit was filed in behalf of individual current and released women inmates for injunctive and declaratory relief and monetary damages for sexual abuse in New York state prison.

*Lucas v. White* (F. Supp. 2d 1046 1999)

In Dublin, California, three female inmates were awarded \$500,000 in damages after male staff from the men's security unit "sold them as slaves to male inmates."

*Women Prisoners of the District of Columbia Department of Corrections v. District of Columbia* (D.D.C. 1994)

The Court ordered that the District of Columbia to adopt order prohibiting sexual harassment involving employees and female inmates, to take appropriate steps to prevent and remedy sexual harassment, to provide diagnostic evaluations for women prisoners as they provide for.

## Recent Litigation Continued~

*Smith v. Cochran* (216 F. Supp2d. 1286)

Non-consensual sex between offenders and government employees with authority over the offender violates clearly established federal law

*Belvin v. Georgia* (470 S.E.2d 497)

The court held that the term probation officer includes a surveillance officer and is therefore prohibited from sexual contact with another person who is a probationer or a parolee under the supervision of said probation or parole officer.

*Sepulveda v. Ramirez* (967 F. 2<sup>nd</sup> 1413)

The court found that a male parole officer observing a female parolee urinate for urinalysis violates a parolee's Fourth Amendment rights.

- **Media Coverage**

*Inmate Sex Scandal Roils South Carolina: Culture of Corruption Alleged; Investigations Launched* by Sue Anne Pressley (Washington Post, January 23, 2001)

Covering numerous allegations of sexual intercourse between inmates and prison staff.

*Misconduct, drugs ignored at halfway houses suit says* by Zachery Kouwe (Denver Post, November 9, 2003)

Reporting on a court case brought by employees of two halfway houses claiming that the Colorado Department of Corrections, the Colorado Department of Public Safety, and the Adams Board of Commissioners knew about illegal sexual activity occurring in the halfway house involving staff and clients.

- **Studies**

*NO ESCAPE: Male Rape in U.S. Prisons* (Human Rights Watch, 2004)

Report from the Human Rights Watch chronicling male-on-male prisoner rape in the United States. The report makes recommendations to the U.S Congress, the National Institute of Corrections, the Civil Rights Division of the Department of Justice, to state agencies, and to state and local prosecutors on how to best identify, report, and prosecute those involved in male prisoner rape. Above all they argue that in order to do this agencies need clear and informative legislation and policies on how to deal with male rape in prisons.

U.S. Department of Justice National Institute of Corrections, *Sexual Misconduct in Prisons: Law, Remedies, and Incidence* (2000)

Report found continued activity on the issue of staff/inmate sexual misconduct, increase in legislation, slight increase in litigation related to the issue & improvement in written and implementation of specific internal policies prohibiting staff sexual misconduct with inmates.

U.S. Government Accounting Office, *Women in Prison: Sexual Misconduct by Correctional Staff* (1999)

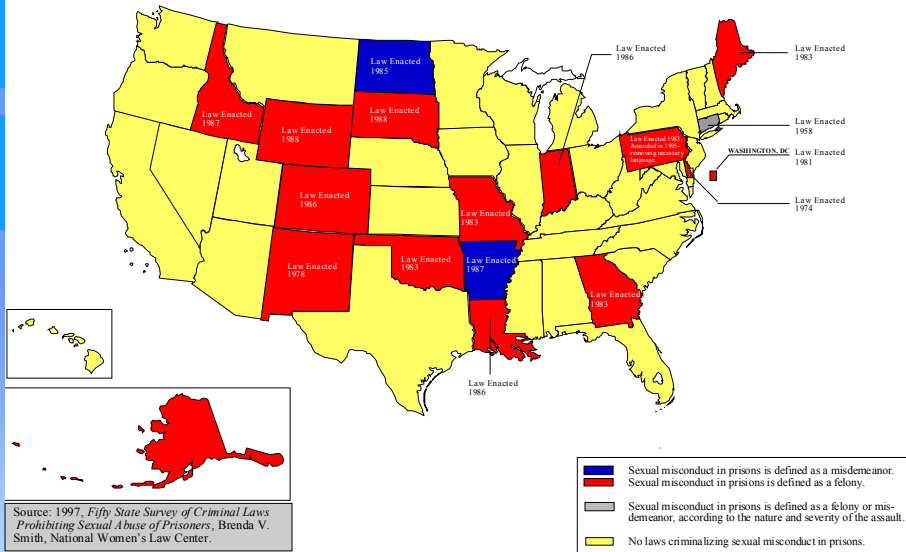
After examining four correctional systems, Texas, the Federal Bureau of Prisons, California and the District of Columbia, the report concluded that misconduct in correction facilities occurs and is underreported and also found participation in training programs that address sexual misconduct.

U.S. Department of Justice National Institute of Corrections, *Sexual Misconduct in Prisons: Law, Agency Response, and Prevention* (1996)

Report found “significant activity” among state departments of corrections on the issue of staff/inmate misconduct, significant litigation related to the issue, and poor policies addressing the issue.

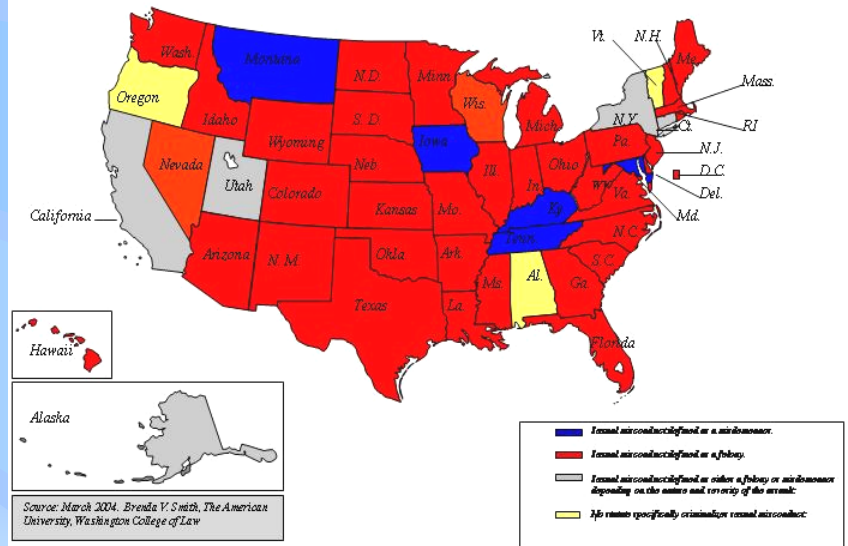
- Rise in Legislation: Comparison of state statutes in 1990 and 2002

**State Criminal Laws Prohibiting Sexual Misconduct with Offenders in 1990**  
National Institute of Corrections



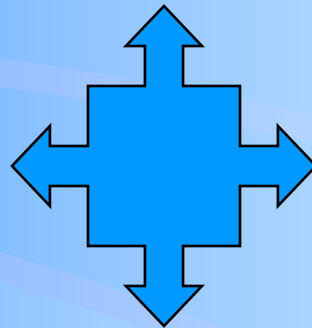
**State Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody**

National Institute of Corrections/American University, Washington College of Law – March 2004



# Systemic Pressures

Premature promotions due to increased  
number of management/supervisory positions needed



Diminished staff training resources  
& ineffective training -- hesitancy  
to be specific on sensitive issues

Public policy & attitude  
towards offenders

More “free world” abuse of power cases

# Themes

- Leadership must come from the top of the organization in addressing misconduct.
- Policies need to be in place to direct staff
- Effective training is part of a strategic response
- The external environment has a stake in the agency's handling of sexual misconduct
- During crisis is not the time to build media relations
- Legislation with clear penalties for sexual misconduct can be an important tool
- Daily operations of the agency must create a zero tolerance atmosphere

# Themes Continued

- Staff misconduct disrupts everything
- An incident or lawsuit stimulated an environment that polarizes staff, population and leadership
- Staff fear investigations and often have anger and misunderstanding regarding the process
- It is myth that sexual misconduct is a result of cross-supervision
- It is a myth that only officers are vulnerable

# Summary

- Increase of public awareness in issues of abuse
  - Domestic Violence
  - Battering
  - Victim's Assistance
- Litigation
- Growth of Offender Population
- Escalation of numbers of staff hired
- Premature Promotions due to increased number of management/ supervisor positions needed

# Summary Continued

- Diminished staff training
- Ineffective training- hesitancy to be specific on sensitive issues
- More “free world” abuse of power cases
- Public policy and attitude towards offenders
- Unclear community boundaries