



Legal Considerations in Addressing Allegations of Prison Rape

NIC/WCL Project on Addressing Prison
Rape

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Legal Framework

- Prison Rape Elimination Act
- Constitutional Framework
- State Tort Framework

PREA

- Focus on preventing, reducing and sanctioning prison rape
- Focus on appropriate services to victims of prison rape
- Investigations will have an impact on data collection – most visible PREA outcome at present
- Standards that Commission will formulate will definitely address investigations
- Focus on efforts of NIC over next year will be on investigations

Constitutional Framework

- In order to remedy problem – must know of problem
- Investigation is key to identifying and remedying prison rape
- Failure to investigate deprives you of opportunity to be proactive and remedy problem
- Can make you vulnerable to litigation

Your Role in Litigation

- Prevention –training and policy
- insulate agency from liability – ensure procedures are in place to protect agency and officials
- Act – change policies and procedures even though litigation pending
- Restore confidence in agency
- Defend – if appropriate to do so
- Act – influence legislature
- Identify -- areas of concern
- Improve culture and practice

Major issues

- Staff Sexual Misconduct
- Inmate on Inmate Conduct
 - Rape
 - Sexual abuse
 - Voluntary sexual interaction
 - Consensual sex

Staff Sexual Misconduct

● Important Factors

- who raises the issue
 - male inmate
 - female inmate
- what has been your history
 - complaints about misconduct
 - complaints about other institutional concerns
 - community standing
- the context in which the issue is raised
 - Litigation
 - Investigation
 - Agency oversight

Inmate on Inmate Conduct

- Who raises the issue
 - Male
 - Female
- Nature of the conduct
 - Forced
 - Coerced
 - Consensual

Most common legal bases for challenges

- 42 U.S.C. 1983
- Eighth Amendment
- Fourth Amendment
- Fourteenth Amendment
- State tort claims

42 U.S. C. 1983

- Creates a federal cause of action for the vindication of rights found elsewhere
- Key elements
 - deprived or a right secured by the constitution or law of U.S.
 - deprivation by a person acting under color of state law
 - Don't forget volunteers and contractors

Eighth Amendment

- Prohibits cruel and unusual punishment
- Legal standard is deliberate indifference
 - established in a prison rape case Farmer v. Brennan
 - two part test
 - the injury must be objectively serious and must have caused an objectively serious injury
 - the official must have a sufficiently culpable state of mind and have acted with deliberate indifference or reckless disregard for the inmate's constitutional rights

What the court looks for

- Deliberate indifference to inmate vulnerability -- safety or health
 - official knew of and disregarded an excessive risk to inmate safety or health
 - official must be aware of facts from which an inference could be drawn that a substantial risk of harm exists and he must draw the inference

Important Cases

- Carrigan v. Davis, 70 F. Supp 2d 448 (D.Del. 1999)(sexual intercourse between an inmate and officer is per se 8th amendment violation. Consent is not a defense)
- Women Prisoners v. DC, 877 F. Supp. 634 (D.D.C. 1994)(sexual misconduct violates the 8th amendment of the Constitution)

Important Cases

- Smith v. Cochran, 339 F.3d 1205 (10th Cir. 2003)

Inmate who was assigned to work in state driver's license bureau as part of her sentence, able to sue state driver's license examiner for sexual misconduct under 8th amendment. State agency that is delegated the responsibility of the state can be liable under 8th amendment.

Smith v. Cochran, 339 F.3d 1205 (10th Cir. OK 2003)

- Sex was in exchange for favors
 - Seeing brother at job
 - Taking her to see her family (e'ee admits)
 - Gifts from friends and family
- ***Reported after she left TCCC –claims she had reported before***

Austin v. Terhune, 2004 WL 1088293 (9th Cir. 2003)

- Correctional officer exposed his genitalia to male prisoner
- ***Prisoner tried to file a grievance but was prevented from doing so by other officers***
- The exposing officer apologized later and told him not to complain
- Inmate refused and officer filed a false disciplinary on inmate
- ***Inmate placed in segregation for six weeks and continued to file grievances***
- ***Officials eventually investigated***
- Officer suspended w/o pay for 30 days
- No 8th amendment violation in the exposure
- ***Court allowed inmate to proceed in law suit for the retaliation***

Code of Silence

Baron V. Hickey, 242 F.Supp.2d
66 (D.Mass. 2003)

- County Corrections officer harassed by co-workers after he reported misconduct
- Reported co-workers playing cards with inmates
- Referred to as “rat”; people dropped cheese in front of him; tires slashed
- Complained on 30 separate occasions
- Claimed that he was forced to resign

PLRA

- Porter v. Nussle, 122 S. Ct. 983, 986 (2002) (exhaustion requirement of PLRA)
- Morris v. Eversley, 2002 WL 1313118 (S.D. N.Y. June 13, 2002) (woman challenging sexual assault during incarceration was not required meet PLRA exhaustion requirement once released)
- White v. Haines, 2005 WL 1571203 (S. Ct. App. W.VA) (July 7, 2005)(state can provide for different exhaustion scheme than federal government with regard to complaints of sexual abuse in custody)

PLRA Implications for Addressing Staff Sexual Misconduct with Offenders

- Inmates have to exhaust even when claim involves prison rape
- Must have credible procedure for them to do so
- Inmates aren't going to report if they fear results
 - Retaliation from staff or other inmates
 - Investigations that drag on forever without resolution
 - Complaints not taken seriously

PLRA Implications for Addressing Staff Sexual Misconduct with Offenders

- Due to fear, inmates may wait until they leave to report
- No duty to exhaust if out of your system
- Go directly to litigation
- Agency is not in position to resolve and only option is settlement or litigation

Important Themes

- Sex in prison is a violation of the Eighth Amendment
- Special Responsibility for Inmates – no consent
- Courts look to the practice of the institution in determining liability
- Protect employees and inmates who report misconduct

Liability

- Municipal
- Official
- Individual
- Personal

Municipal Liability

- Monell v. Department of Social Services, 436 U.S. 658 (1978)
 - municipality is a person who can be held liable under Section 1983
 - Officially executed policy or toleration of custom within municipality must inflict the injury
 - inaction
 - failure to train or supervise
 - Failure to investigate

Municipal Liability

- Can't be held responsible under respondeat superior or vicarious liability for
 - Independent actions of employees
 - Wrongful conduct of single employee
 - Must make showing that this officer was likely to inflict a particular injury

Official Liability

- Will cause liability to municipality
- Did it happen on your watch
- Were you responsible for promulgating and enforcing policy
- Did you fail to act or ignore information presented to you
- Failure to TRAIN, SUPERVISE, FIRE

Individual Liability

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

Personal Liability

- Plaintiff must provide notice that the suit is against the official in her personal capacity
- Direct participation not required
 - Actual or constructive notice of unconstitutional practices
 - Demonstrated gross negligence or deliberate indifference by failing to act

Elements of Claim for Personal Involvement *Morris v. Eversley*, 282 F. Supp.2d 196 (S.D. N.Y. 2002)

- Official participated directly in the alleged constitutional violation
- Failed to remedy the wrong after being informed through a report or an appeal
- Enforced a policy or custom under which unconstitutional practices occurred or allowed the continuation of such policy or custom
- Was grossly negligent in supervising subordinates who committed the wrongful acts
- Exhibited deliberate indifference to the rights of inmates by failing to act on information indicating that unconstitutional acts were occurring

Qualified Immunity

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

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

- Court found warden and director of security were deliberately indifferent to the substantial risk of harm that guard presented to female inmates. Ward held personally liable to inmate in amount of \$25,000. Head of security held liable in amount of \$20,000.

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

- What happened?
 - Officer made inappropriate comments to inmate Riley about whether she was having sex with her roommate
 - He came into her room after lockdown and attempted to reach under her shirt
 - Grabbed her from behind and rubbed up against her
 - Inmate didn't report above because "she doubted that she would be believed and feared the resulting discipline"

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

- What happened?
 - Officer entered cell and raped her. She performed oral sex so she wouldn't become pregnant
 - Another inmate witnessed incident and reported it
 - Inmate placed in administrative segregation during investigation.
 - Officer terminated.
 - Convicted under state law

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

● Why?

- Prior to this incident other female inmates had complained
- Link had a history of predatory behavior
- ***Four prior investigations closed as inconclusive***
- Collective bargaining unit precluded permanent reassignment
- Head of security suspected but didn't take leadership
- Head of security had opportunity to terminate but didn't

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

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

Lessons Learned

- Examine patterns in your institution
- Same officer accused many times
- Look at medical
- Compromised grievance procedures
- Lack of leadership
- History of inconclusive findings

Ice v. Dixon, 2005 WL 1593899 (July 6, 2005)

● Facts

- Inmate sexually assaulted by staff member during incarcerated at Mahoning County Jail
- Bi-Polar Manic Depressive
- Defendant Dixon promised to arrange Ice's release from County Jail if she performed oral sex and other sex acts on him

Ice v. Dixon, 2005 WL 1593899 (July 6, 2005)

- On motion for summary judgment
 - Mahoning County immune in official capacity
 - Defendant Wellington, Sheriff immune in official capacity and individual capacity
 - Defendant Dixon, perpetrator immune in official capacity
 - Dixon not immune in individual capacity and on claims of assault and battery against Ice

Why this result

- Specific Policy
- Training to staff
- w/in 48 hours of incident videotaped plaintiff in interview
- Took plaintiff to hospital for rape kit
- Called Ohio Bureau of Criminal Investigation
- Suspended Dixon
- Internal Affairs involved
- Sent to Mahoning County Prosecutor's Office

Elements of Failure to Protect

- Prison official knew that the inmate faced a substantial risk of serious harm
- Disregarded risk by failing to take reasonable steps to abate the risk

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

● Facts

- Female inmate
- Incarcerated at FCI Danbury
- In special unit for victims of sexual abuse -- the Bridge Program
- Random pat searches by male staff
- Sexual advances by staff member
- Complaint to psychiatrist who informed a Lt.
- No response by administration
- Sexual assault in 1997

Colman v Vasquez

- Failure to protect and train
 - Warden and Lt failed to investigate her complaints about the defendant
 - Warden and Lt. Failed to discipline officer
 - Warden Harden failed to properly train Lt. Meredith to investigate allegations of sexual misconduct and harassment

Colman result

- Motion to dismiss on basis of qualified immunity denied
 - Inmate informed a staff psychiatrist that officer had forcibly kissed her
 - Informed warden
 - Sham investigation with phony OIG investigator

Brown v. Scott, 329 F.Supp.2d 905 (E.D. Mich. 2004)

- Inmate sued unit manager for not changing his cell assignment upon request
 - Told unit manager that cell mate was predatory homosexual rapist
 - Had been warned by other inmate
 - Unit manager says did he proposition you
 - 3 days later forcibly raped

Brown v. Scott, 329 F.Supp.2d 905 (E.D. Mich. 2004)

- Unit managers defense
 - No record of cellmate as homosexual predator
 - Inmate only referred to rumor
 - Didn't ask for protection
 - Would have moved if he had asked
- Allowed suit to proceed

Williams v. Caruso, 2005 WL 2261602 (W.D. Mich Sep. 17, 2005)

- Inmate classified as homosexual predator sued about classification and lost
 - Had a major misconduct for sexual assault
 - Found involved
 - Shipped
 - Convicted for the assault
 - Procedural claim that at disciplinary he was not classified as homosexual predator and should not have been shipped and placed on current restrictions
- State prevails

Corona v. Lunn, 2002 WL 550963 (S.D.N.Y April 11, 2002)

● Facts

- Lunn assigned to investigate allegations of sexual misconduct
- Receives information that Ross had sex with Corona
- Ross initially denies
- Ross admits later to sex
- Ross has history of mental illness

Corona v. Lunn, 2002 WL 550963 (S.D.N.Y April 11, 2002)

● Facts (cont'd)

- Lunn takes statement
- Lunn corroborates detail with records and review of facility
- Files a felony complaint against Corona
- He is placed on administrative leave without pay
- Correctional officer Corona charged with sexual assault of inmate
- Acquitted after jury trial
- Reinstated with back pay
- Corona files suit for false arrest and malicious prosecution

Claims

- False arrest
 - Defendant intended to confine plaintiff
 - Plaintiff was aware of confinement
 - Plaintiff did not consent to confinement
 - The confinement was not otherwise privileged

Claims

- No false arrest because Lunn had probable cause.
 - Could rely on informant testimony notwithstanding her psychiatric history
 - Corroborated her testimony
 - Was objectively reasonable to believe that probable cause existed
 - Reasonable officers could have disagreed over whether probable cause existed

Claims

● Malicious Prosecution

- Defendant maliciously commenced or continued prosecution against plaintiff in a criminal proceeding that ended in plaintiff's favor
- No probable cause

Result: In this case there was probable cause to arrest. Nothing happened post arrest to negate earlier probable cause.

Conclusions

- Corrections officials can and are held personally liable for staff sexual misconduct with offenders
- Corrections agencies and officials can be held liable for failure to train, supervise, investigate and discipline in their municipal and official capacities

Conclusions

- Proactive policies can protect the agency and staff from liability.
- Corrections officials must know the culture of the agency and how investigations are perceived
- Officials' actions and policies must have credibility