

## THE FEATURE





By Kelly Virella / Photographs by Marc Fader / Illustrations by David Senior

# Behind Bars:

## Love, Sex, Rape and New York's Women Prisoners

Reporting assistance by Catherine Dunn, Becca Fink, Isabella Moschen, Joshua Peguero, Barry Shifrin, Tiffany Walden





# Sex, Love and Violence

## *New York State's Prison Sex-Abuse Problem*

**O**ne day in the visiting room of New York State's Albion Correctional Facility, LaTrisa Hyman heard her friend and fellow inmate shriek, "He proposed to me! He proposed to me!" Looking across the room, she saw her friend's elated new fiancé, still on one knee, saying, "She said yes!" The bride-to-be was beaming. She had told Hyman, during previous walks in the recreation yard, that she was in love, but Hyman didn't expect her engagement. Hyman and the other inmates jumped up from their tables to rush over to the couple and congratulate them but sank back into their seats when the correctional officers guarding the room began yelling at them.

The officers needed to maintain order in the room, but their reaction may also have been colored by the identity of the man asking for the inmate's hand: He was one of their own—a correctional officer. "Sit down!" they yelled.

Thirty minutes later, when visiting time ended and the inmates queued up to return to their housing units, the newly engaged inmate showed Hyman the ring, a gold band with a sparkling, roughly half-carat diamond in the center and smaller stones along the sides. The bride-to-be explained that her intended was retiring from his



The Bayview Correctional Facility, a medium security women's prison on West 20th Street in Manhattan. In a recent federal survey of inmates, residents there reported the highest rate of staff sexual abuse of any participating correctional facility in the United States.

job in one week, would most likely be able to avoid discipline for having what prison officials considered an inappropriate relationship with her and was already entitled to his pension either way. The bride-to-be also told Hyman they'd never had sex, an act that would have been a crime.

Jeanette P. also got a ring from a correctional officer while doing time in a New York State prison, and they did have sex—regularly for about two years. She and the officer, Peter Z., fell in love at Bayview Correctional Facility, a medium-security prison on the West Side of Manhattan. Other inmates knew they were having a romantic relationship. One saw him leaving her room with his shirt untucked and scolded him, “Fix your clothes, boy!” But by the end, Jeanette alleges, he was hitting her, and she was afraid to report him to prison officials out of fear he would harm her more.

Sexual encounters between inmates and officers can also begin violently, with officers forcing inmates who have never loved them or wanted to have sex with them to submit. That's what a former inmate alleges happened to her at Albion Correctional Facility in 2007, and in August federal judge David G. Larimer agreed. (*City Limits* is referring only to inmates and officers who have been named

Documents obtained via the Freedom of Information Law indicate that prison officials never forward many inmate complaints to the prison system's inspector general.



in previous media accounts). On two occasions, once in May and once in June 2007, the then officer, Donald L. asked her to report to a school building to clean it. When she arrived each time, Donald tried to rape her, the judge found. One time, Donald succeeded, ripping her clothes and bruising her, the judge said. Citing her substantial emotional and psychological suffering—including anxiety, flashbacks, hopelessness and trouble resuming a healthy sexual relationship with her husband—the judge in August ordered Donald, who never showed up in court, to pay the inmate \$500,000 in damages. In an earlier criminal trial, Donald pleaded guilty to third-degree rape, not forcible rape.

**Last month, officials from the New York State Department of Correctional Services, or DOCS, were summoned to Washington to testify before a federal panel.** The subject: inmate allegations of sexual abuse by prison guards. When surveyed anonymously in 2008 and 2009, 11 participating U.S. correctional facilities posted the highest rates of inmate-alleged staff sexual abuse. Three are New York prisons.

One New York State prison—Bayview Correctional Facility—has the highest rate of inmate-alleged staff sexual abuse in the country. With 11.5 percent of inmates there reporting it in 2008 and 2009, the prison's rate of inmate-alleged sexual abuse was more than five times greater than the national average for women's prisons, 2.2 percent. About 57 percent of the participating Bayview inmates alleged being forced into the sex or threatened with force.

Also calling on DOCS to account for its prevalence of staff sexual abuse are the inmates themselves. The state of New York is embroiled in at least five inmate-initiated federal or state lawsuits about the issue, and for the past eight years, two New York City Legal Aid Society attorneys have been demanding, through a federal lawsuit they filed on behalf of 15 female prisoners, that DOCS implement changes.

Through spokesperson Peter K. Cutler, DOCS officials declined to comment for this story, but they have defended their policies and practices in various forums. A 1996 New York State Law holds that any person in custody in a New York State correctional facility cannot consent to any sex act with an employee who provides custody, medical or mental health services, counseling services, educational programs, or vocational training for inmates. A 2007 law expanded the definition of *employee* to include any person, including volunteers and contract employees, providing direct services to inmates. DOCS has sought another expansion that would apply the law to all DOCS employees.

DOCS has taken action against several officers who have broken this law. According to the agency, between 1996 and 2002, 19 male prison employees were convicted of violating it.

In addition, DOCS has attempted to combat staff sexual abuse by implementing several new measures over the years, including the placement of surveillance cameras in prisons. DOCS has maintained in court proceedings that it appropriately hires, supervises, trains and fires prison employees who don't follow the rules and the law.

And data that the agency has reported to the federal Bureau of Justice Statistics, or BJS, suggest that DOCS keeps officers in line. The bureau defines staff sexual abuse as all sexual contact—including that in which an inmate is a willing participant—and all verbal sexual harassment and voyeurism. According to DOCS, abuse is rare in the state's facilities—with only 79 substantiated incidents from 2005 through 2009—and rarely involves force or threats of force—six incidents during that time period. At Bayview, DOCS reports that there were two substantiated incidents of staff sexual abuse during this time, and one of them, in 2005, involved physical force.

But a *City Limits* investigation found that DOCS' official numbers may not tell the whole story.

Documents obtained via the Freedom of Information Law indicate that prison officials never forward many inmate complaints to the prison system's inspector general, who is officially responsible for investigating them. At the seven facilities serving women, 15 percent of allegations lodged from 2005 through 2009 were not reported to the inspector general.

And when DOCS substantiates a romantic relationship between an employee and an inmate, it does not include that relationship in its annual federal tally unless sexual contact has also been substantiated, officials say. The practice of excluding such incidents complies with BJS guidelines, but critics say it masks the state's real prevalence of staff sexual abuse.

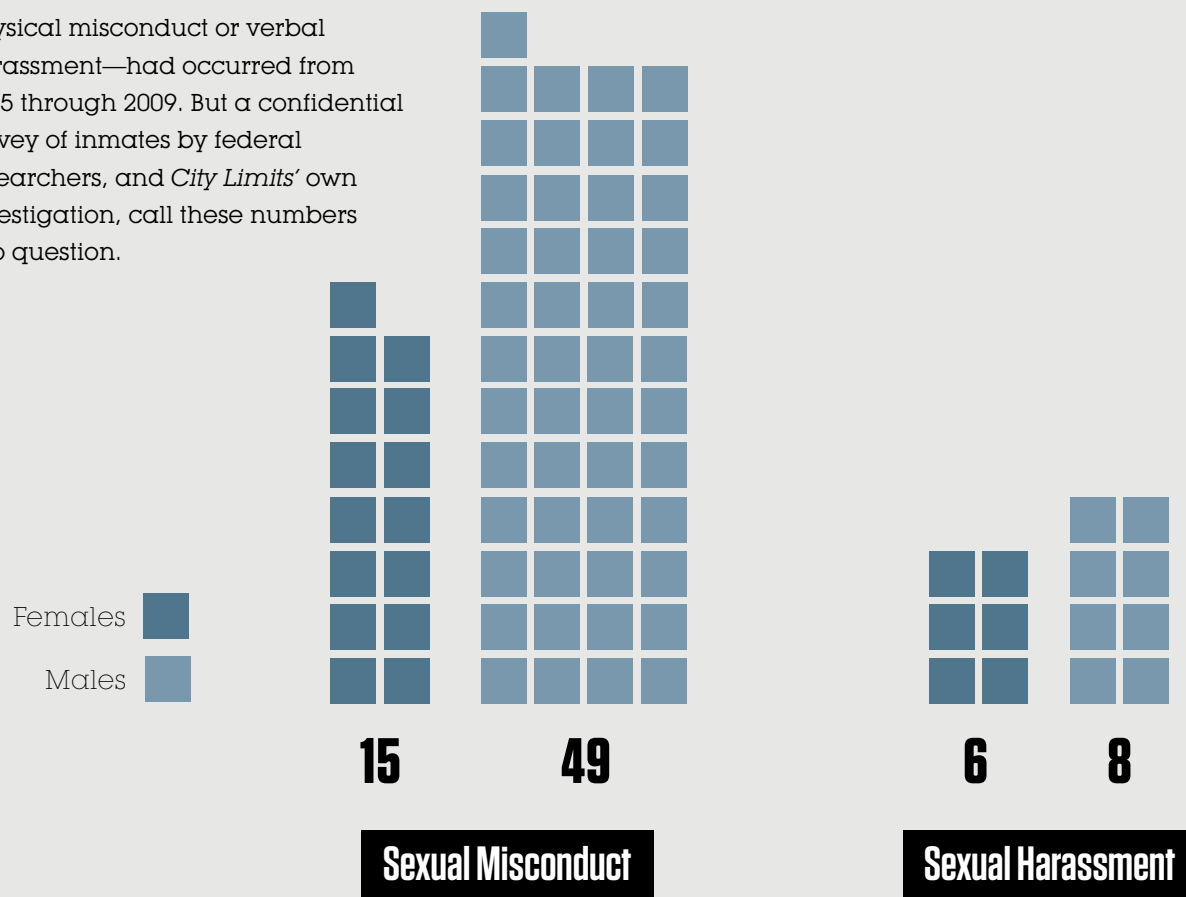
In addition, DOCS' handling of one year's recent sexual abuse reports casts doubt on the accuracy of the data it gave the federal government that year. In 2007, the agency reported 47 incidents of staff sexual abuse, then withdrew 23 of them, saying they didn't meet BJS criteria. (DOCS did not allow *City Limits* to review those 23 cases, preventing us from confirming that they didn't belong in their annual federal tally.)

Advocates for prisoners also criticize DOCS' approach to determining whether allegations of staff sexual abuse are true, saying the burden of proof is too high and that investigators don't give ample consideration to the history of complaints against certain employees. The 79 substantiated cases of staff sexual abuse from 2005 to 2009 came from a pool of some 1,100 inmate allegations.

Critics also charge that DOCS fails to appropriately discipline many employees involved in substantiated incidents of sexual abuse. While DOCS points to its record of prosecuting staff who break the law, it did not

# Rare Cases?

In reports to the Department of Justice, the New York State prison system said only 79 substantiated cases of staff sexual abuse—whether physical misconduct or verbal harassment—had occurred from 2005 through 2009. But a confidential survey of inmates by federal researchers, and *City Limits*' own investigation, call these numbers into question.



Number of Substantiated Incidents, 2005-2009

## Substantiated Incidents of Abuse of Female Inmates, 2005-2009

7 Albion	1 Lakeview
2 Bayview	5 Taconic
0 Beacon	0 Willard
6 Bedford Hill	21 Total

Data Source: DOCS. One report of sexual misconduct did not list the victim's gender

refer workers for prosecution in 16 of the 44 incidents from 2005 through 2009 where the worker ostensibly violated state statutes. And in 15 out of the 60 incidents in which sexual contact occurred between 2005 through 2009, the employee wasn't fired and didn't resign the year that the incident was substantiated. In one case, the only sanction applied was "discipline or reprimand."

Officials from the state's two corrections unions—the New York State Correctional Officers & Police Benevolent Association and the New York State Law Enforcement Employees Union, Council 82—did not respond to requests for comment.

**Hyman doesn't know whether her friend and the officer ever married, but if they did, they would be the exception to the rule.** Inmates in romantic relationships with staff often "date" or have sex with them in exchange for relatively benign and inexpensive contraband—such as gum, food from the outside and sneakers. But sex and romance between inmates and staff can have disastrous consequences.

An employee in love with or sleeping with a prisoner compromises his authority to discipline and control her. He may start to show her preferential treatment, bringing her contraband and allowing her to break rules for which he disciplines others. (Or allowing *him* to break rules for which *he* or *she* disciplines others—any combination of pronouns works, since female guards also fall in love with inmates.) Such favoritism can foment violence between inmates.

Mental health experts have argued that staff-inmate romantic and sexual relationships aren't good for the inmates either. If the relationship sours, the inmate can't always physically distance him- or herself from the employee and is subsequently at his or her mercy.

These concerns are especially keen for women inmates. For at least 35 years, legal advocates, prison officials and corrections unions have wrestled over how to protect female inmates from sexual abuse when male officers—who dominated the profession in New York State in 2010, making up 75 percent of prison guards—are given vast control over female inmates' lives and bodies. While staff sexual abuse occurs in men's and women's prisons and jails, it disproportionately affects female inmates, who are a stark minority in the state's prison system. According to DOCS, 25 percent of all substantiated incidents involved female inmates—who constituted a mere 2,500, or 4 percent, of the 58,000 people in custody on Jan. 1, 2010.

According to DOCS data, when female inmates are sexually abused, the perpetrator is almost always a male officer. From 2005 to 2009, all but one substantiated incident involving a female inmate involved a male employee.

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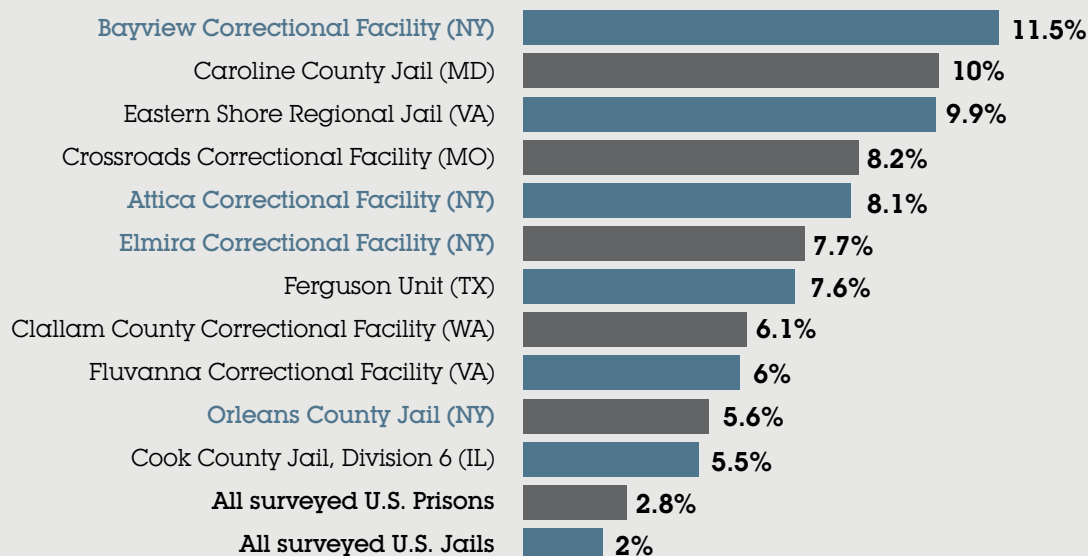
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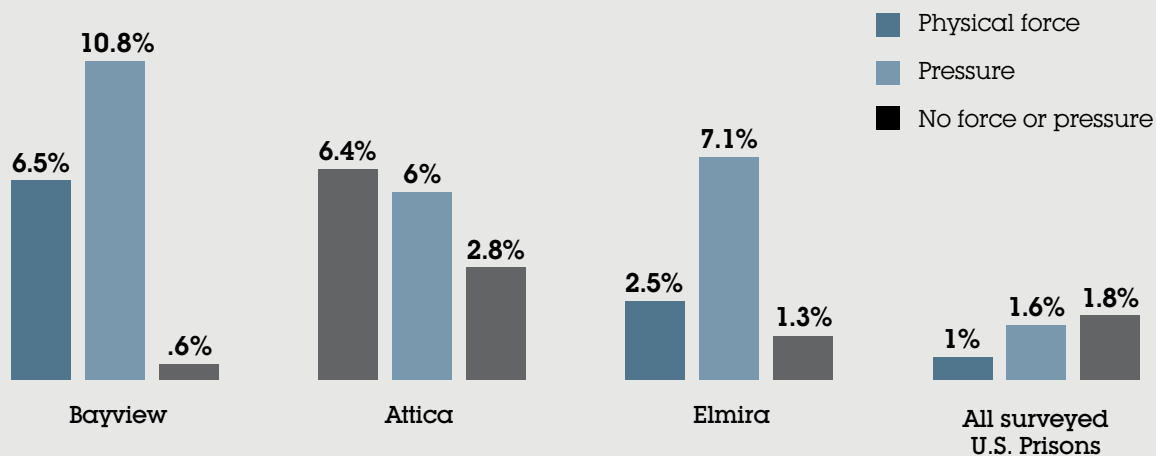
# Trouble at the Top

New York correctional facilities ranked high in the Bureau of Justice Statistics' sexual abuse survey. More of the New York inmates who reported misconduct say they were pressured, rather than physically forced, into sex.

## Facilities With High Reported Rates of Staff Sexual Abuse, 2008-2009



## Inmates Reporting Sexual Abuse: What Caused It



Data Source: BJS

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Over the years, many corrections officers and DOCS officials have been sued in connection with the allegations. The inmates often lose. But occasionally inmates win, as did Donald L.'s victim in August. Another former Albion prisoner won in February when she negotiated a \$75,000 settlement of a lawsuit alleging she was raped in 2005 by a corrections officer who pled guilty to sexual misconduct and official misconduct. And in a 2001 inmate victory, a New York State Court of Claims judge found that DOCS was 100 percent liable for the repeated forcible rape of a woman by an officer at Bedford Hills Correctional Facility in Westchester County. The state settled the case by agreeing to pay the woman \$225,000.

The trial in one of the other ongoing lawsuits, the one about the affair between Jeanette and Peter, ended in November. The parties are waiting for a judge to decide whether New York State bears any responsibility for what happened to Jeanette. Two more pending cases are expected to go to trial this year.

A major ruling could also be issued this year in *Amador v. Andrews*, an eight-year-old federal lawsuit filed on behalf of 15 New York State women demanding policy changes within DOCS. The pending suit alleges that the sexual abuse of women in New York State prisons isn't just a series of

unrelated incidents perpetrated by prison employees. The Southern District lawsuit alleges numerous ways in which it says DOCS' system for hiring, training, supervising, monitoring, investigating and firing officers fails to protect women. The parties are waiting for an appeals court judge to issue a ruling that could determine whether the case has a chance of securing any changes or will be confined to assessing whether individual officers violated individual inmates' civil rights.

The federal government, meanwhile, is close to issuing national guidelines for preventing sexual abuse in prisons. But states are not required to follow them, and New York State prison officials have taken issue with several of the draft regulations released in 2009. In a May 2010 letter to the U.S. Department of Justice, DOCS commissioner Brian Fischer wrote, "Unfortunately, the proposed standards are based more on academic research than on operational practicalities and will likely contribute to many more years of debate and litigation."

# Repeat Offenders

*Many Claims of Abuse—Involving a Few Officers*

**I**n 2000, Dori Lewis and Lisa Freeman, two attorneys with New York City’s Legal Aid Society, began going to New York State women’s prisons in search of inmates who were experiencing sexual abuse.

Soon after their interviews began, they started to see some patterns. The more inmates talked to Lewis and Freeman, the more the names of certain perpetrators recurred. What made the women’s stories all the more credible to them was that many of the repeat perpetrators operated according to a distinctive *modus operandi* and had a clear preference for women with a particular hair color, stature, shape or other physical feature. “A young woman at reception taken into the laundry room,” was one *modus operandi*. Often, the women had reported these repeat perpetrators. One officer had been reported seven times, Lewis and Freeman found.





The interviewing went on for about three years. They encountered one woman soon after she had been raped at Albion in early August 2001, by an officer that multiple women had allegedly complained to DOCS officials about. The rape resulted in a pregnancy and severe bleeding during bowel movements. The woman reported the incident within a few weeks of its occurrence. The alleged perpetrator—corrections officer Dean S.—pleaded guilty to rape in the third-degree, not forcible rape, in July 2002. (Dean S. served almost three years. He could not be reached for comment.)

Another female inmate had allegedly been raped at Bedford Hills by an officer whom multiple inmates had allegedly identified to prison officials as a perpetrator. In October 2001, she alleges, a correctional officer fondled her, grabbing her breasts. Then later that month, while the inmate was cleaning the kitchen area during a head count, the officer allegedly attacked her again, this time more violently, sodomizing her and raping her, causing her to seek medical attention. In mid-November 2001 he

allegedly abused her again, fondling her while everyone else was at a head count.

The officer allegedly told her that if she reported him, he'd punish her. She alleged that when word got back to him that she had been crying in the mess hall, he threatened her again and started

locking her in her cell during her free time. Nevertheless, she gathered the nerve to report his alleged transgressions. She says she wrote the superintendent of her prison twice, wrote to her counselor at the Family Violence Program and met with that counselor, told a captain at the prison what had happened, then notified staff from the inspector general's office. Finally, she says she filed a formal grievance with the New York State Department of Correctional Services. She was waiting for a resolution when she met with Lewis and Freeman. (The officer's attorney declined to comment, but said via-email "The allegations against [my client] are categorically denied.")

**Of the 300 women Lewis and Freeman talked to, 15 initially met their criteria for joining the lawsuit and agreed to participate, including the two alleged victims described above.**

The women filed their suit, *Amador v. Andrews*, in 2003, contesting DOCS system for hiring, training, supervising, monitoring, investigating and firing officers, alleging that it failed to protect them from sexual abuse. In addition to suing 12 correctional officers from four prisons, the lawsuit (named "Amador" for one of the

alleged victims) targets 12 high ranking DOCS officials, including the then Superintendent of the Albion prison, Anginell Andrews. Lewis and Freeman tried but failed to get certified as a class action lawsuit. Two of the original plaintiffs have since withdrawn from the case to pursue separate actions.

While interviewing New York State's female inmates, the attorneys concluded that sexual abuse in New York's prisons involves a few highly egregious officers, whom Lewis calls "complaint magnets." "I don't think there's a zillion bad officers," Lewis says.

"It's certainly a minority," Freeman agrees. "In some instances, there's groupthink, a small cadre of individuals who are just covering for each other, and in other instances there are a couple of lone bad officers here and there."

Indeed, the DOCS data reflect what Buffalo attorney George Muscato has to come to believe after representing several correctional officers in connection with allegations of sexual abuse, as well as one current client who maintains he is innocent: "99.5 percent of them are doing a great job," he says. "They're doing what they're supposed to be doing each day. They go to work every day, and they do a good job."

Mike Notto, a New York State Police investigator who conducts criminal investigations at Albion, agrees. He says prison employees are no more susceptible to corruption than are people in any other profession. "No matter where you go, there's always gonna be a bad element," he says. "When Walmart opens a new store, they create loss prevention programs because some employees will steal. There's a certain percentage of reporters who get in the corner and twiddle their thumbs while everyone else is working."

And some former inmates concur that abuse was rare at their facilities. A formerly incarcerated woman, Chrystal Reddick, says she didn't see or hear reports or rumors of sexual abuse during her time at Lakeview Shock Incarceration Correctional Facility, a prison boot camp in Brocton, about 28 miles from Buffalo, that serves both men and women. Since then, the district attorney with jurisdiction over Lakeview has prosecuted a case involving one officer accused of sexually abusing two to three female inmates. But Reddick says that during her six-month incarceration there for forgery 15 years ago, sexual contact with anyone on the premises didn't seem remotely possible. "Even if you try to have a personal conversation with a DI [drill instructor], they snap back," in revulsion, she says. "In the facility, you don't just stand there and have a conversation with a DI. And you never look them in the eye. You look them in the shoulder. It was always, 'Sir, yes sir.'"

But Michelle Davenport, who served a 19-month sentence for attempted robbery at the all-female Taconic

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# The Politics of Prison Rape

How PREA Came To Be



President Bush signing the Prison Rape Elimination Act in 2003. Photo: White House.

**In 2003, Congress voted unanimously for the Prison Rape Elimination Act, or PREA, which President Bush signed on Sept. 4 of that year.** PREA was the first federal law to address rape in prison. It requires a zero-tolerance policy on all sexual acts for all forms of detention. It came after years of advocacy, research and lawsuits.

The 1984 Georgia case *Cason v. Seckinger* featured women who claimed they were forced into sexual acts with staff, and one woman claimed she was made to have an abortion after a staff member impregnated her; it led to consent decrees that changed prison policies in Georgia. A 1996 decision in *Lucas v. White*, a case involving women in a federal prison who said they were “sexually assaulted physically and verbally, sexually abused and harassed, subjected to repeated invasions of privacy and subject to threats, retaliation and harassment when they complained about this wrongful treatment,” prompted the Federal Bureau of Prisons to issue a plan aiming to eliminate sexual abuse.

Later that year Human Rights Watch released a report highlighting the sexual abuse of women in U.S. prisons, as did Amnesty International in 1999. In 2001, Human Rights Watch released another report, this time focusing on male-prisoner rape, *No Escape: Male Rape in U.S. Prisons*. Compiled after several years of research, this first-ever survey of male-prisoner rape not only described the abuse to which prisoners were subjected but also outlined a plan of action for prisons to implement in order to end this mistreatment.

“*No Escape* was covered on the front page of the Sunday *New York Times*, above the fold, so it doesn’t get any more prominent than that,” says Lara Stemple, the former executive director of Just Detention International (known until 2008 as Stop Prisoner Rape), which was one of the leaders of efforts for a federal law aiming for the elimination of prison rape.

Congress hadn’t supported a 1998 effort to address prison rape. But two years after *No Escape*, when the more comprehensive PREA legislation was

introduced, it received a great deal of support, with co-sponsorship in the Senate including Ted Kennedy, D-Mass., and Jeff Sessions, R-Ala., and in the House of Representatives by Frank Wolf, R-Va., and Bobby Scott, D-Va.

“There was no truly organized opposition to this bill. It was really a matter of getting people to care about it,” says Stemple, adding that the passage of PREA was accomplished by humanizing the issue and discussing with the general public what had been happening to prisoners.

It helped that the cause attracted a wide array of supporters, from Prison Fellowship to Human Rights Watch to the conservative Hudson Institute.

“There was a significant coalition that included a broad range of faith-based leaders and civil and human rights organizations and prison conditions (advocates) and criminal justice folks and researchers who were really advocating for (PREA),” says Melissa Rothstein, the senior program director at Just Detention International. “In Congress, there was strong bipartisan support.”

Rothstein says that while prison rape jokes still get told, they began to ebb after the passage of PREA. “I think within the general community that this is something that people sort of knew and heard about and may have had preconceptions about but isn’t something that people were necessarily confronted to thinking about,” she says. “I think more people have given it thought because there has been this federal law, and through this federal law there’s been more attention to this problem.”

—Becca Fink





Michelle Davenport, a former inmate, says some guards at Taconic Correctional Facility didn't countenance sexual contact with inmates. But others did: She says she was propositioned by four female guards during her stay.

Correctional Facility beginning in 2007, takes a different view.

She says some officers at Taconic were full of integrity and tried to avoid corrupt co-workers because they didn't want to become entangled in investigations. "What I did learn about officers is, if you're having sex with an inmate, some officers ain't with that shit," she says. "I done seen officers be like, 'Man, take that shit somewhere else.'"

But Davenport says the number of incidents that DOCS substantiates at Taconic is much too low—only five from 2005 to 2009. BJS has never surveyed Taconic inmates about the issue. Davenport says four female officers there propositioned her, but she never had sexual contact with prison staff.

**Inmates admit that other inmates sometimes fabricate allegations.** But there is also substantial reason to believe that many sexual encounters in prison go unreported, either to prison officials or to inmate advocates.

In 1999 a DOCS prison superintendent acknowledged that she might not know the real prevalence of staff sexual abuse in her prison. Elaine Lord, the then superintendent of the all-female Bedford Hills Correctional Facility, testified in a deposition that she believed the number of unreported incidents at her facility during the previous 12 months was greater than the roughly 30 allegations that had been reported to her.

Some women denied outright any involvement with an officer during their first interviews with Lewis and Freeman but admitted it during their second or third. The women were reluctant to talk because they feared the attorneys might be undercover DOCS officials and didn't want to become embroiled in an investigation, the lawyers suspect. "Women thought that we would judge them," says Freeman. "We learned to say, 'We don't judge you.'"

Sometimes women are unwilling to report sexual abuse with staff because they perceive it as advantageous, says Davenport. A friend of hers, she says, got pregnant from a Taconic correctional officer with whom she had willingly had a sexual relationship. The friend refused to identify the officer when prison staff confronted her, Davenport says, because the officer gave money to her and her family.

But sometimes inmates don't report sexual contact with officers because they're ambivalent about it, the attorneys say. For some, this ambivalence is a result of prior sexual victimization. A 1999 study of inmates at Bedford Hills found that 82 percent had been sexually abused before their incarceration. One of the women Lewis and Freeman met had been badly sexually abused by her brother for years. She kept a metal can of tuna beside her bed to fend off an officer who she alleged had propositioned her. But when he flirted with her, she sometimes flirted back, they say. According to Lewis and Freeman, her rationale was, "Part of me wants to say yes. I'm a convicted felon. I don't have any job skills. I have hepatitis. I'm sick. Nobody's gonna want me."

**The officer allegedly told her that if she reported him, he'd punish her. She alleged that when word got back to him that she had been crying in the mess hall, he threatened her again and started locking her in her cell during her free time.**

**Lewis and Freeman decided to file their lawsuit when they realized that alleged perpetrators often had been complained about repeatedly.** It appeared to them that DOCS took action against an officer only when the inmate was able to supply physical evidence—such as bodily fluids, a pregnancy test or an incriminating letter—of the sexual abuse. They believed that because few officers were "stupid enough" to leave such traces, perpetrators were generally able to operate with impunity.

Some of these doubts about DOCS' handling of sexual abuse allegations concerned not DOCS policies, but labor contracts that governed the agency's dealings with prison officers. Of specific concern were contract provisions governing suspensions and reassignments—disciplinary tools that advocates believed could be used when an officer was facing investigation, or had a history of multiple, unsubstantiated complaints.

In April 2002, Freeman and Lewis wrote to then DOCS Commissioner Glenn Goord asking the department to explain, among other things, whether it ever suspended or reassigned officers whom they allege had multiple prior complaints. A June 2002 reply from DOCS said it prohibits sexual contact between inmates and staff, trains staff to avoid it and investigates it when the agency receives complaints. In addition, the letter denies requiring that inmates corroborate allegations of staff sexual abuse with physical evidence or a staff member's confession.

According to the corrections officers' union contract then in place, suspensions could occur only when an officer was facing criminal charges or when there was probable cause to believe the officer was a danger. If an officer was suspended because DOCS believed he was a danger, DOCS was required to issue a notice of discipline within seven days of the suspension.

# States of Compliance

*Prison Systems React To PREA*

The Prison Rape Elimination Act of 2003, or PREA, has required the Bureau of Justice Statistics (BJS) to conduct annual statistical analyses of sexual incidents behind bars, leading to an unprecedented review of rape and sexual abuse in prisons nationwide. The 2008-2009 National Inmate Survey, the second of its kind, was administered to 81,566 adult inmates in 167 state and federal prisons, 286 jails and 10 special confinement facilities.

In addition to the survey's wide scope, experts say its anonymity allows for trends to surface that might not be captured by official records. Sexual assault is one of the most underreported crimes in the community at large, and in a closed system like a prison, reporting barriers can be even higher.

"The survey asks inmates about a set of very personal, stigmatized, emotional kinds of victimization experiences they may have had," says Richard Tewksbury, a professor of justice administration at the University of Louisville. He has also served as a visiting fellow at the BJS and has worked as a staff member on the National Prison Rape Elimination Commission. "In social science, there is a strong belief that

the only real way to get the reliable data on that is to confidentially query people about their own experience."

Institutional culture operates in a feedback loop: If prisoners are discouraged from reporting abuse to officials—whether because they see that complaints are never investigated or they fear retaliation of some kind—they lose trust in the formal procedures available to them and stop using them. In turn, lack of reporting impedes response to potential abuse, fostering a vicious cycle.

Researchers and proponents of reform can compare the incidence of abuse reported in these anonymous surveys with the incidence of abuse reported to prison officials. The gap between those figures may indicate that inmates are not coming forward with allegations of staff sexual misconduct.

"The BJS surveys confirm that very few sexual assaults in prisons and jails are actually reported, which is not that surprising," says Linda McFarlane, deputy executive director of Just Detention International, a prisoners' rights advocacy group.

The fact that there were some prisons and jails with National Inmate Survey results of staff sexual misconduct at or near zero means that "there are facilities that are more effective at addressing this," says McFarlane. She believes that some of these successful facilities have less overcrowding, some have better grievance systems, and some have better oversight.

Of course, even with the confidentiality afforded by the National Inmate

Survey, some inmates still might be reluctant to share. In facilities with low rates of reported abuse, says Jamie Fellner, senior counsel for the U.S. Program at Human Rights Watch, "that could be because these facilities have never had a culture of much violence. It could be because the inmates are too terrified to say anything, even on a survey. Or it could be that the staff is really doing its damndest to keep inmates safe. You just don't know."

As for the high-incidence facilities, she says, "You do know that if inmates have overcome the normal reticence of reporting, and they're reporting high numbers ... then something must be going on."

PREA's emphasis on data collection is intended to foster the kinds of policies and procedures that would prevent system-wide abuse. Some states have already begun to implement laws, programs and new policies that address the proposed PREA standards on curtailing sexual violence.

Innovative approaches have yet to become definitive best practices. But the BJS numbers are a jumping-off point for further research that simply has not been done. Sexual violence "has been the hidden topic in corrections practice and criminal justice research," says Faye Taxman, director of the Center for Advancing Correctional Excellence and a professor of criminology, law and society at George Mason University. "The Bureau of Justice Statistics did a great job at trying to demonstrate that you could capture sensitive information."

—Catherine Dunn



*Attorney General Eric Holder is eyeing new prison regulations that aim to reduce sexual abuse, but some advocates say the emerging guidelines do not go far enough. (See pg. 55)*



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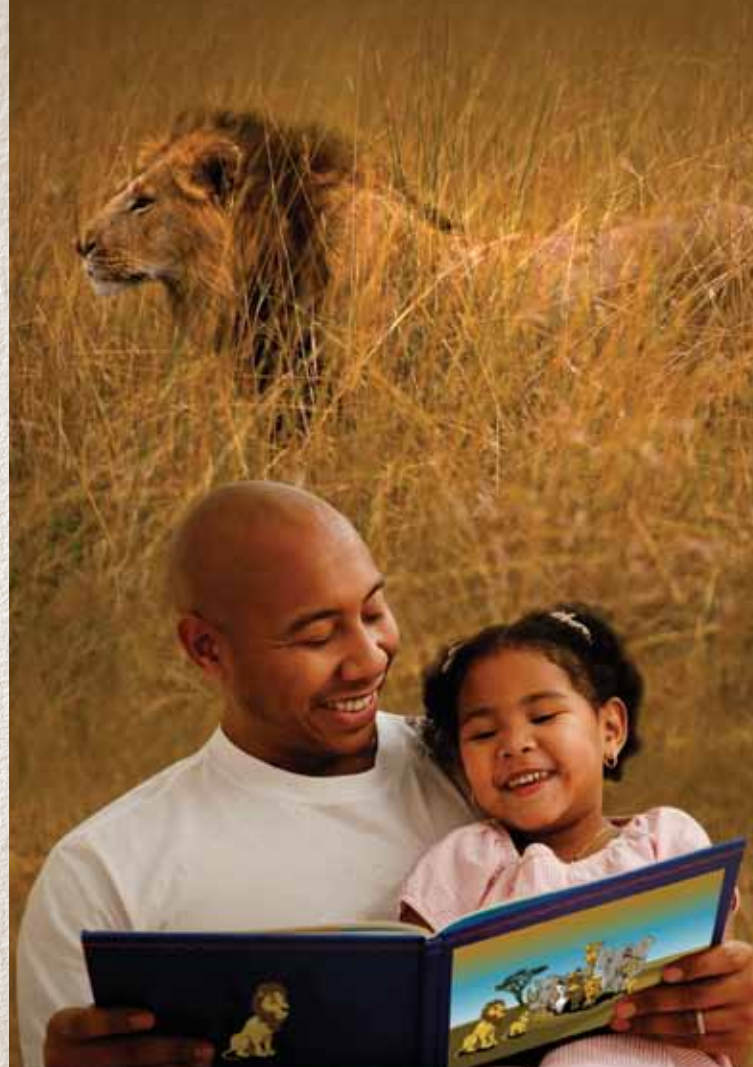
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specifying the infractions alleged. The officer also could not be reassigned to another prison or another location within the same prison, because the contract prohibited reassignment in connection with discipline.

Data DOCS provided to *City Limits* indicates that one female officer who worked at Green Haven, a men's prison 70 miles away from New York City, was transferred to another facility for engaging in sexual misconduct with a male inmate in 2005. So the department has made an exception.

But the most recent union contracts for corrections officers still prohibit DOCS from even temporarily reassigning—to another facility or to a similar job within the same facility—an officer under investigation, even one who allegedly forcibly rapes an inmate. The contracts still restrict DOCS' ability to suspend officers too.

Indeed, constraints that the union contracts impose on DOCS are illustrated by the difficulty that DOCS faced when trying to fire an officer and a lieutenant in connection with substantiated incidents.

The inspector general's office substantiated an inmate's allegations that Taconic correctional officer Frederick B. had sexually abused her after she provided investigators with an intimate physical description of the officer that they believed

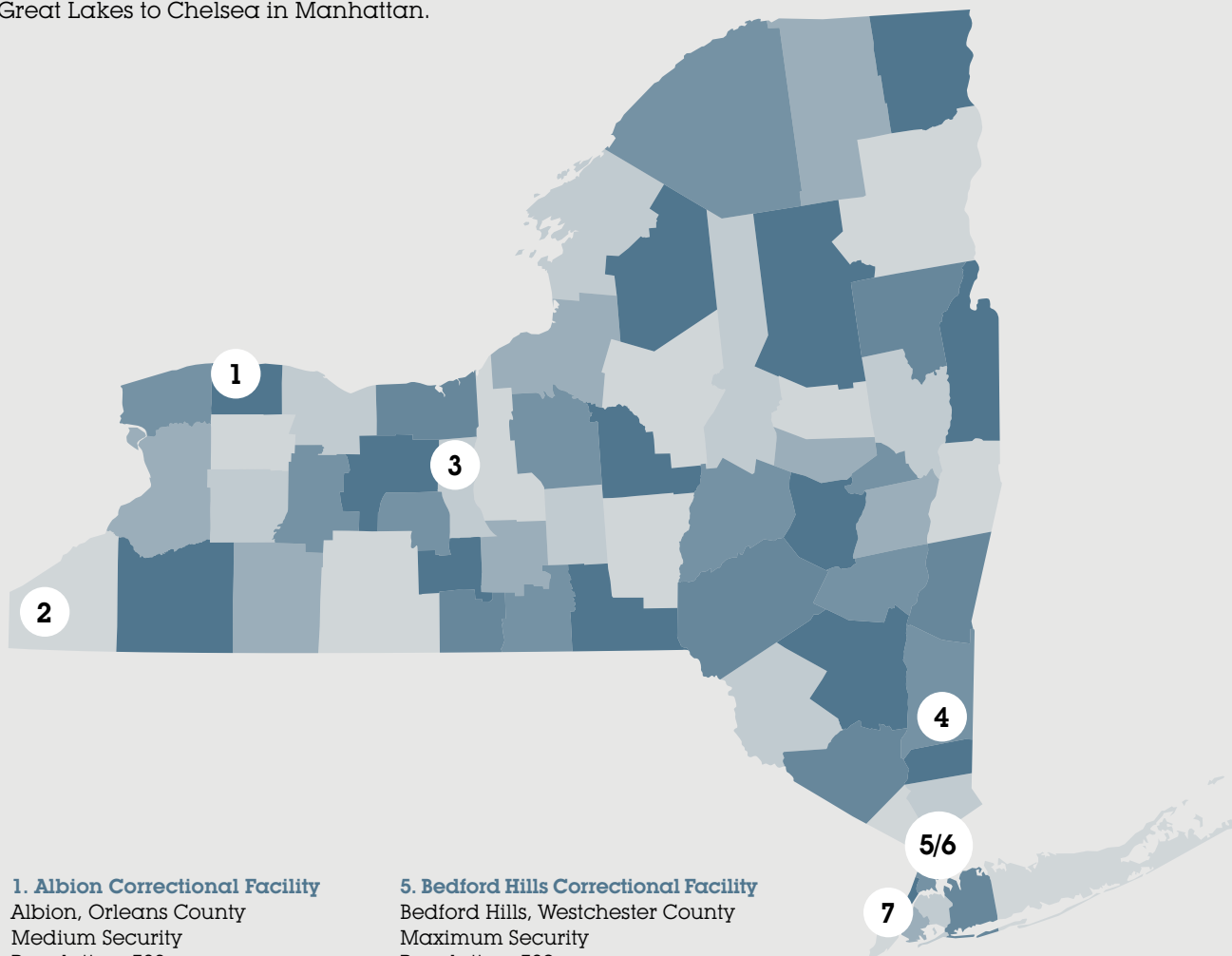
was incriminating. But during the 2003 trial, Frederick testified that she might have learned the information coincidentally, by hearing him and other officers discussing it. The jury exonerated him. Because the union contracts say an officer facing termination has the right to appeal that termination to an arbitration panel—which consists of three people picked by the officer and DOCS—Frederick appealed it. In 2004, the arbitrators ruled in Frederick's favor, prohibiting DOCS from firing him.

Frederick returned to work, only to be arrested again in September 2010 in connection with charges of sexually abusing a different inmate. That case is pending. Frederick's attorneys did not respond to multiple requests for comment.

In another case, the inspector general's office substantiated allegations that former Bedford Hills lieutenant Glenn L. sexually abused a female inmate whose name is not included in court records; in fact, according to records from a New York State Supreme Court case, Glenn confessed. The inmate's testimony corroborated the confession, and facility records show that the inmate was escorted to some unrecorded destination for 40 minutes at approximately noon on July 4, 2002. But arbitrators ruled that DOCS couldn't fire Glenn because DOCS "had not proven that the admitted sexual contact occurred at

# Female Facilities

New York State's 2,500 female inmates are housed in facilities from the edge of the Great Lakes to Chelsea in Manhattan.



## 1. Albion Correctional Facility

Albion, Orleans County  
Medium Security  
Population: 782

## 2. Lakeview Shock Incarceration\*

Brocton, Chautauqua County  
Minimum Security  
Population: 93

## 3. Willard Drug Treatment Campus\*

Willard, Seneca County  
Drug Treatment  
(No Security Rating)  
Population: 29

## 4. Beacon Correctional Facility

Beacon, Dutchess County  
Minimum Security  
Population: 135

## 5. Bedford Hills Correctional Facility

Bedford Hills, Westchester County  
Maximum Security  
Population: 780

## 6. Taconic Correctional Facility

Bedford Hills, Westchester County  
Medium Security  
Population: 316

## 7. Bayview Correctional Facility

West 20th Street, Manhattan  
Medium Security  
Population: 144

\*Both Lakeview and Willard serve men as well as women; the population figure shown is the female population.

Data Source: DOCS

# Unique People Services, Inc.

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4234 Vireo Avenue, Bronx, NY 10470

Phone: (718) 231-7711;

Fax: (718) 231-7720

[www.uniquepeopleservices.org](http://www.uniquepeopleservices.org)

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**Yvette Brissett-Andre, Executive Director**  
**Cheryelle Cruickshank, Assoc. Executive Director**

Unique People Services provides residential and supportive services to people living with HIV/AIDS, individuals formerly homeless with a mental illness, and individuals with developmental disabilities in the Bronx, Queens and Manhattan.

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Leading up to the October gala event, we are hosting a community brunch forum focusing on services to people with developmental disabilities at 9:45AM on Thursday, May 12, 2011 at Crowley Place, 83-34 58th Avenue, East Elmhurst, NY 11373.

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[mayopenhouse@uniquepeopleservices.org](mailto:mayopenhouse@uniquepeopleservices.org)

the charged date and time,” according to the 2005 opinion of New York State Supreme Court judge Guy P. Tomlinson, who heard the case after DOCS appealed it.

Tomlinson sided with DOCS, ruling that the arbitrators had overstepped their authority by requiring DOCS to prove the charges against Glenn beyond a reasonable doubt. The victory ultimately helped DOCS secure the right to fire the lieutenant. He could not be reached and the state’s two corrections unions did not respond to requests for comment. News reports indicate he was arrested but West Chester County prosecutors refused to divulge the outcome of the case, saying it was confidential.

The union contracts and the arbitration process aren’t the only shields bad officers hide behind, critics say. They also hide behind DOCS approach to determining whether allegations of staff sexual abuse merit substantiation.

It seems as though women have to prove beyond a reasonable doubt that an incident occurred just to get the same kind of investigation that a woman on the outside would receive, Freeman and Lewis say. With that high burden of proof, investigators don’t give proper weight to credible testimony from inmates, they say, requiring the women to supply corroborating physical evidence or produce employee eyewitnesses.

Lord testified in her 1999 deposition that about 20 times during the previous decade she believed that an allegation of sexual abuse should have been substantiated but didn’t have the proof necessary to confirm it.

DOCS’ investigative methods have defenders. Among them are two district attorneys who each have jurisdiction over a New York State correctional facility housing women and say they are pleased with the way the inspector general’s office executes investigations.

The district attorney of Orleans County, Joe Cardone, has jurisdiction over the Albion prison. DOCS does “a great job,” he says. “It usually starts from an inmate making a complaint. It gets to the administration at the facility. I frankly have yet to see a situation where the administration buried an investigation.” (Cardone, however, was under the impression that DOCS forwards each allegation of sexual abuse to the New York State Police for investigation.)

A June 2010 federal report produced by a consulting firm that interviewed DOCS officials contended that DOCS inmates are not required to prove beyond a reasonable doubt the allegations they make. The report says DOCS requires inmates only to prove that, according to the preponderance of the evidence,

it is more likely than not that an incident occurred. Cardone says he receives referrals from Albion “all the time” without physical evidence.

But in recent depositions, three investigators with the inspector general’s office described using a burden of proof that sounds very similar to a ‘beyond a reasonable doubt’ standard. In 2007 and 2008, the investigators testified that to substantiate an incident investigators have “to be able to prove that it happened” and that discipline is imposed only when investigators establish that it “definitely” happened. And in November, an inspector general investigator testified in a civil case that without corroborating evidence — such as semen or a letter — she would not substantiate sexual abuse allegations made by inmates alone.

In addition, during investigations, the inspector general’s office still doesn’t give adequate weight to similar prior complaints of sexual misconduct made against the same staff member, critics say. Inspector general’s records indicate that correctional officer Donald L. allegedly sexually abused one inmate before sexually abusing another inmate in 2007, says the latter inmate’s attorney, Terence Kindlon. As a result, he was transferred to another area of the prison, Kindlon alleges. “The depositions clearly, unequivocally, indicate to me without

a doubt that the state did have notice that this guy was doing this stuff,” Kindlon says.

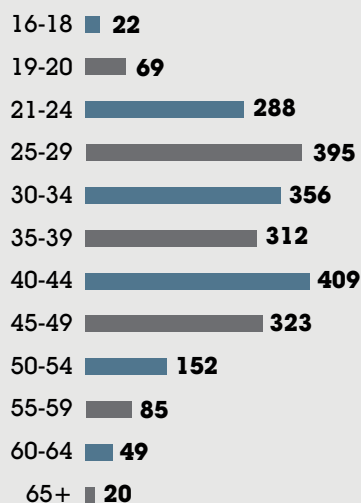
When she testified in 2005 before the U.S. Justice Department’s Commission on Safety and Abuse in America’s Prisons, former Bedford Hills superintendent Lord concurred that failure to heed multiple complaints caused problems. “Wardens and administrators need to take a lead in identifying and dealing with predatory staff. Their names appear over and over in use-of-force reports or complaints and grievances,” Lord said. “Of course, this issue is complicated by the fact that inmates can lie and misrepresent, the same as anyone else. However, at some point, administrators must move beyond denying that any information from inmates can’t be true because of denials by staff.”

**DOCS has implemented some new measures to combat sexual abuse since Lewis and Freeman filed their lawsuit.** In 2004, for example, Bedford Hills completed a two-year, \$3.6 million project to design and install 300 cameras, in line with one of Lewis and Freeman’s recommendations. In 2005 the department also began requiring that all employees (including non-uniform employees) receive initial and in-service training at least every three years about preventing, investigating and

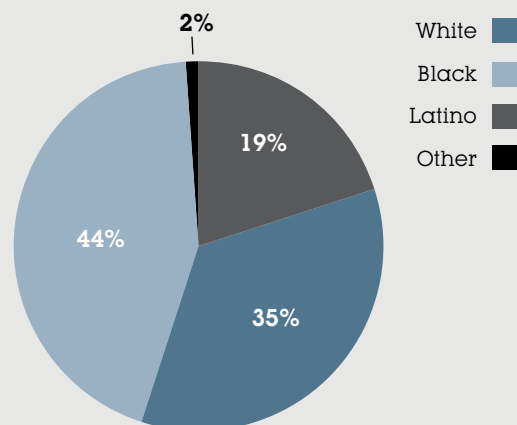
## Portrait of a Population

As of Jan. 1, 2010, there were 2,480 women in New York State’s corrections system. This is what that population looks like:

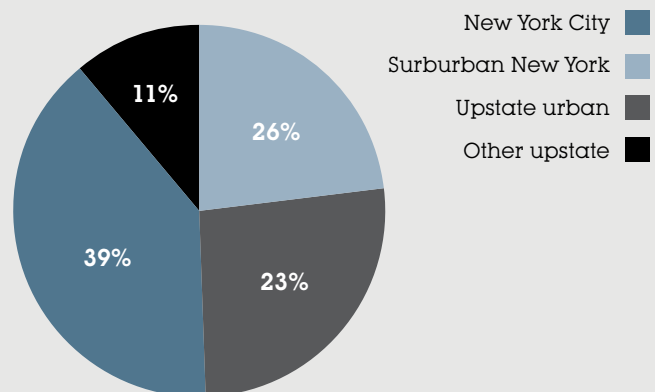
### Age



### Race/Ethnicity



### Where They Were Tried





**In 2005, New York prisons began requiring that all employees receive training at least every three years about preventing, investigating and responding to staff sexual abuse.**

responding to staff sexual abuse, Lewis and Freeman say. In June 2010, the agency reported a 54 percent compliance with proposed federal standards regarding staff sexual abuse, according to a report commissioned by the U.S. Department of Justice.

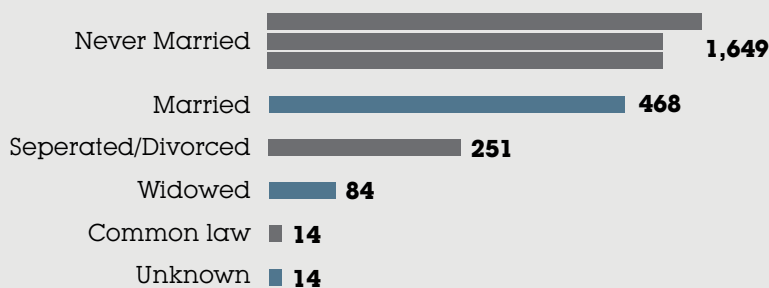
But critics say the prevalence of staff sexual abuse is still too high, citing BJS inmate surveys. In the inmate survey BJS conducted from October 2008 to December 2009, 630 inmates at just six New York State prisons reported being sexually abused during the previous 12 months.

Because inmates aren't allowed to consent to sex with prison staff, the culpability of the staff member is always clear. But some inmates are, at least initially, willing participants.

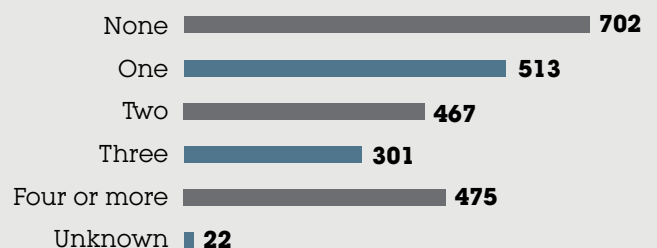
**That's how the relationship between Jeanette P. and Peter Z. began.** They got involved more than 10 years ago, in 1999, but because critics say the vast majority of DOCS' policies haven't changed since then, their story, which is still unresolved, is still relevant.

Their ill-fated nearly two-year affair followed a predictable pattern. Initially they began discussing their families and other personal matters. Then he started visiting the inmate during his break, sending her letters, bringing her gifts, and contacting her family. Pretty soon, they were having sex and declaring that they were in love.

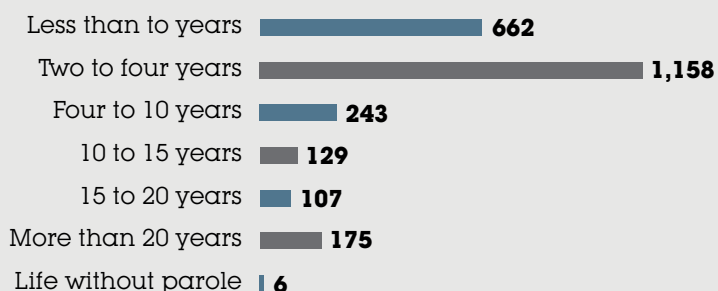
#### Marital Status



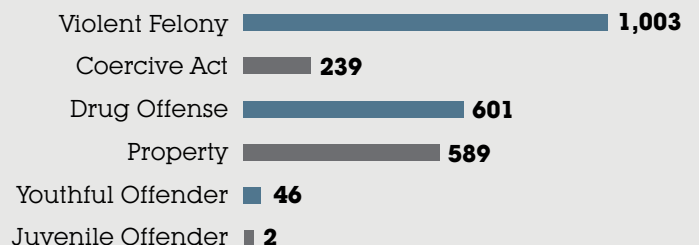
#### Number of Living Children



#### Minimum Sentence (in years)



#### Nature of Crime





# The Bayview Affair

## *Romance Behind Bars and its Consequences*

**P**eter Z. got his first job as a correctional officer in 1996, when he was a burly 6-foot-tall, 210-pound 24-year-old. About the same time, the then 25-year-old Jeanette P.—short and full figured at 5-2 and 170 pounds—started her six-to-12-year sentence for robbery. She had been using drugs and alcohol for at least 12 years, eventually including heroin and cocaine, with her longest period of abstinence being eight months. She also had four children..

When the two met at Bedford Hills, a maximum-security prison about 50 miles north of New York City in 1996, Peter knew that DOCS policy barred him from having overly familiar relationships with inmates, he testified in August at a civil trial. But after they met, Jeanette started to see him as a friend, she testified at a recent civil trial. When she was transferred to Albion in 1997, she sent two letters to a friend of hers who knew him, saying, “Tell him I said hi,” she testified. In December 1998, when Jeanette and Peter were both coincidentally transferred within weeks of each other to Bayview, they started to become more familiar with each other.

# Patterns of Abuse

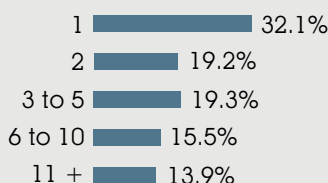
The women across the U.S. who told the Bureau of Justice they had been victims of (or participants in) sexual misconduct involving staff said the incidents were most likely to occur in a closet or locked space, and after they'd been behind bars for a month or more.



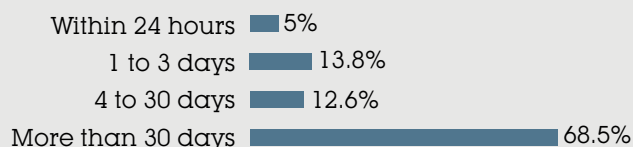
Attica Correctional Facility. Photo by Jayu.

## Characteristics of Alleged Abuse Incidents

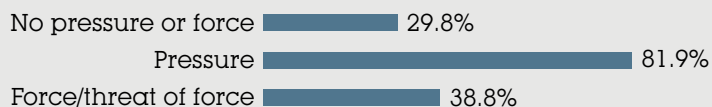
### Number of incidents



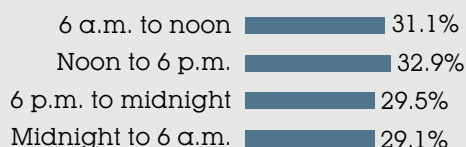
### How Long After Arrival



### Coercion



### Time of day



Data Source: BJS

For the first several months, Jeanette and Peter considered each other platonic friends. During his breaks, he would always come see her, Jeanette testified. "I was flattered 'cause I was incarcerated for God knows how many years, and he was the first officer that would pay mind to me. So yes, I was flattered," she testified. "I was incarcerated for many years, and I had long hair. I was always stated down [dressed in a state-issued prisoner's uniform]. I never wore makeup, and he was the first officer in many years, a man, that actually paid mind to me."

But on April 5, 1999, their relationship started to become sexual, according to a statement Jeanette gave investigators. That day, Peter asked her to come to the stairway next to the mess hall, stairwell C, to clean it. There, for the first time, they kissed and petted each other. In August 1999, they started having sexual intercourse, Peter testified, while the two were in stairwell C, ostensibly to clean it.

Soon after Jeanette and Peter's first sexual encounter in August 1999, they started having sex in her room, in the honor dorm—a small housing unit on the third floor reserved for inmates whom prison officials deemed mature enough to handle more freedom. By March 2001, Jeanette and Peter had had sex at least 15 times in her room, he testified in August. Eventually they also had sex in the officer's station—risking discovery by any potential passersby—on the roof of the building and in the gym, he testified. The two engaged in sexual activity whenever Peter worked in the honor dorm during the 11 p.m. to 7 a.m. shift or when he was the roundsman—a correctional officer who doesn't have a fixed post and makes security rounds throughout the facility. They also did it whenever he was the extra—a surplus officer without a specific assignment on a particular shift—and whenever he otherwise had the chance to come to Jeanette's room. When Peter got there, he would turn off his radio, reducing disturbances, she testified. Peter would be in Jeanette's room for an hour or more with the door closed when he was the officer on duty in the honor dorm, according to a statement inmate Allavy Hill made to investigators. Their encounters would last five to 10 minutes and never involved condoms, because he didn't want to bring them into the facility for fear he would be caught, according to a statement Jeanette gave investigators. For part of the time—at least until November 2000—she was taking officially authorized birth control pills to regulate her menstrual cycle.

Other inmates were aware of the affair. One, Audrey Pleasant, told investigators that she saw Jeanette sitting on Peter's lap and Peter going into her room and closing the door. Jeanette and Peter both testified that other officers knew about it. According to Peter and



# Male Prisons Not Immune

*Abuse, Consent and Gray Areas*

**The Department of Correctional Services' Directive 4910, Control of and Search for Contraband, mandates that inmates must endure a pat-frisk search upon returning from outside work details.** The type of pat frisk that Rafael Robles allegedly experienced on March 17, 2009, from correctional officer Keith Purcell stood out among other searches in his 22 years as an inmate in the New York State correctional system.

"He had me placed (sic) my hands on the wall, then he placed his front torso area pressed on my buttock, then he proceeded to caress my complete body in a sexual manner. C.O. Purcell actually glided his hands all over my body in a pervasive way while his torso continuity (sic) pressed on my buttock. In fact I can feel the outline of his penis on me," wrote Robles in a grievance letter written to the Department of Correctional Services (DOCS)

Inmate Grievance Resolution Committee (IGRC) supervisor

DOCS correctional officers and staff members adhere to the bodily-search procedure listed in Directive 4910, which states, "A pat frisk means a search by hand of an inmate's person and his or her clothes while the inmate is clothed, except that the inmate shall be required to remove coat, hat and shoes. The inmate will be required to run fingers through hair and spread fingers for visual inspection. The search shall include searching into the inmate's clothing. Requiring an inmate to open his or her mouth is not part of a pat frisk." The Central

Office Review Committee of the Inmate Grievance Program (CORC) accepted Robles' grievance partly. Robles did not possess enough evidence for the office to substantiate the allegations, but Purcell was ordered to complete additional officer training as Robles requested in his grievance.

According to a January 2011 release of sexual victimization reported by adult correctional authorities to the Bureau of Justice Statistics, most reported allegations of sexual victimiza-

tion of male prisoners involve female correctional staff. BJS statistics indicate that 69 percent of male inmates who said they'd been involved in sexual misconduct with staff from 2008 to 2009 said the staff member was female.

male because of the stigma that goes with being sexually abused by a man," says Glenn E. Martin, vice president of Development and Public Affairs at the Fortune Society.


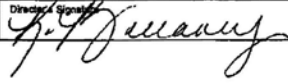
Misconduct is often not a simple case of guards as predators and inmates as innocent victims. Studies show that prisoners can be active participants in sexual misconduct. An additional complexity is the fact that transgender inmates may be housed in facilities designed for the inmate's former gender, not their current one.

Inmate Kitty Kearney, a transgender woman who takes female hormones, is listed by DOCS as a male prisoner named Kevin Kearney, and is incarcerated in a male facility. She claims she has been both a victim and beneficiary of staff sexual misconduct. While at Attica Correctional Facility in 2001, Kearney alleges, an officer—who allegedly operated a sex ring using transgender

inmates—beat and raped her because she refused to be "pimped out" to other inmates. After being beaten and raped a second time, Kearney entered protective custody.

Kearney, like some other male inmates, also participates in consensual relationships with correctional officers. "Officers pretty much make themselves known and available to you," says Kearney. "If a girl comes here from another spot, I can direct her. I can tell her this guy (is) with it."

—Tiffany Walden

 STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES  INMATE GRIEVANCE PROGRAM CENTRAL OFFICE REVIEW COMMITTEE	Grievance Number <b>CX-14966-09</b>	Desig./Code <b>1/49</b>
	Facility <b>Coxsackie Correctional Facility</b>	
	Title of Grievance <b>Inappropriate Frisk</b>	
	Director's Signature 	
5/27/09		
<b>GRIEVANT'S REQUEST UNANIMOUSLY ACCEPTED IN PART</b>		

The DOCS inspector general partly upheld this male inmate's sexual harassment grievance.

tion of male prisoners involve female correctional staff. BJS statistics indicate that 69 percent of male inmates who said they'd been involved in sexual misconduct with staff from 2008 to 2009 said the staff member was female.

New York State male facilities reported 49 substantiated incidents of staff-on-inmate sexual misconduct from 2005 to 2009, a small number given the roughly 60,000 inmates in New York prisons at any time.

But those statistics could reflect reluctance by male prisoners to report abuse by male guards. "A man in prison may be more inclined to report abuse by a female person of authority than a

# State to State

New York State led the nation in the number of allegations of staff sexual misconduct that prison officials reported to the federal Bureau of Justice Statistics in 2007 and 2008. But New York only found one in 20 allegations to be substantiated; the national average

was 22 percent. Meanwhile, California, which has more than twice as many inmates as New York, reported a mere 45 allegations over the two years—casting some doubt on the veracity of reporting by some states.

Top 5 States	Allegations	% Substantiated
New York	385	5%
Florida	280	1%
Texas	252	5%
Georgia	163	4%
North Carolina	159	19%

Bottom 5 States	Allegations	% Substantiated
New Mexico	4	0%
Connecticut	3	0%
Hawaii	3	0%
North Dakota	2	0%
Alaska	0	0%

Jeanette's testimony, six correctional officers knew about it and three helped facilitate it. (All officers that they allegedly told denied knowing about it during the trial or weren't called as witnesses.)

**After Jeanette and Peter started having sex, Jeanette later testified, she began to feel as if she was falling in love with him.** Peter testified that he also had romantic feelings for her. They passed notes to each other through inmate Adelaide Alvarez, according to a statement Alvarez gave investigators. Peter gave Jeanette greeting cards and love letters, his baby photo, his telephone number, and address, Jeanette told investigators. He even gave her a wedding band for Christmas one year. At the time, she believed the ring meant they would get married and "live happily ever after," Jeanette testified.

But the Hallmark card version of the Peter-Jeanette romance was only one side of a complex reality, at least according to Jeanette. According to her, no later than the summer of 1999, even before Peter and Jeanette had sex, Jeanette began to show some indication that she wasn't comfortable with their relationship. One day, she drafted a figurative eviction notice, dated June 2, 1999, and addressed it to Peter. The handwritten notice declares that she is forever evicting him from her life. The notice reads, in part, "This house of love has turned to anger, unlike yourself and your vicious inhuman treatment of the tenant and their rights. I ask that you return the keys to my heart and your deposit cannot be returned because of broken promises and damaged mind."

It's unclear what prompted the drafting of this note and whether Jeanette ever gave it to Peter, but by September 2000, Jeanette testified, she was clear that she wanted to end the relationship, in part because she'd heard he was with involved with other inmates. She also told an investigator, "My relationship with C.O. Peter was a bad one. He never did anything for me. He never brought me anything. Every time I asked him for something, he never brought it in."

When she told Peter that she wanted to end the relationship, he got upset, threw a tantrum and began manhandling her, she testified. She also alleged, in Lewis and Freeman's lawsuit, that Peter grabbed her around the neck and hit her with a pool cue (Jeanette joined their lawsuit when it was filed in 2003 and dropped out in 2009, upon Peter's insistence, she testified). Pleasant told investigators she recalled overhearing an argument in which Peter called Jeanette a "bitch" and Jeanette called him a "faggot."

Jeanette feared—according to her testimony—that no one would believe her if she reported him and that DOCS would transfer her from Bayview, where at least it was possible for her to see her four children. If she weren't incarcerated, she testified, she would have handled the alleged violence differently. "I would have moved, if he already knew where I lived. Or I would have told my brother. Or I would've called the cops," she testified.

Every time they argued, he assaulted her, grabbing her by the arms and slamming her against the wall, Jeanette told an investigator. When Jeanette threatened to report Peter to



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his superiors, Jeanette testified, he told her, “Go ahead. You know what’s going to happen. You’re going to get drafted [transferred], and I’m going to remain at my job.”

So for several more months, Jeanette testified, she continued having sex with Peter because it was easiest.

**Then in February 2001, their relationship became even more complicated: Jeanette believed she was pregnant. Peter told her to wait until he got a transfer to a new facility before telling people about it, according to a statement she gave investigators.** Then, in March, he told her he would leave the job, marry her and take care of her and the baby, she told investigators. (Peter testified that he learned about the pregnancy in March and did plan, at that time, to marry her.)

Jeanette and Peter knew that if she were pregnant, it was inevitable that the prison’s upper management would discover their open secret. The official responsible for supervising all line officers—the deputy superintendent of security, Kenneth Werbach—testified that in February and early March 2001,

he still didn’t have an inkling that anything was going on between her and Peter. That began to change in early March, when Sergeant Sammy Green couldn’t find or reach Peter, because he was

in Jeanette’s room. When Peter turned up in the lobby, red and nervous, Green suspected that something was wrong. An investigation began.

Before Peter’s front began to crumble, Jeanette had requested to be transferred to another facility so she could get away from him. Within a few days of Peter’s pivotal misstep, she was moved to a new floor. And two to three weeks later, she was transferred to Beacon, where she finally informed officials of her pregnancy and eventually began to cooperate with their investigation. At around the same time, Jeanette began talking to an attorney about filing a lawsuit in connection with her

ordeal. In a letter to a friend she wrote, “I hope everything goes okay with this claim for real. I can have my moms go on a long vacation, take care of my girls and the baby.”

Within four months, Peter resigned and was arrested. On That autumn, just before Jeanette gave birth to a healthy child, Peter pleaded guilty to rape in the third degree—for having sex with a person incapable of consent by reason of some factor other than being under 17 years old. For the crime, a felony that carries a maximum sentence of four years in state prison, he was sentenced to one to three years in prison. His incarceration began Dec. 18, 2001, and he spent nearly two years in prison.

After his release, he and Jeanette developed a custody agreement. Peter began paying child support, and the couple considered rekindling their relationship—but to no avail.

**With Peter’s guilt established, the question begging for an answer became how was the couple able to carry on a sexual affair for nearly two years—even engaging in sex in the officer’s station—without so much as arousing the suspicion of the prison’s upper management?** Answers to that question began to emerge in January 2004, after Jeanette filed her lawsuit against New York State in the Court of Claims—the exclusive forum for litigation seeking damages against the state. The lawsuit alleges that DOCS was responsible for what happened to her.

The answers that emerged from the lawsuit illustrate how an employee might game the system and demonstrate the challenges of assigning blame when he does.

DOCS attorney Suzette Rivera presented testimony that officials didn’t suspect Peter and Jeanette, because before April 2001, Jeanette never told them and Peter took care to cover his tracks. Officials testified that they had no reason to suspect Peter would do such a thing: He had undergone a criminal background check and a battery of tests before becoming an officer, including a psychological fitness test, and passed all of them. There were no prior complaints against Peter, according to DOCS testimony. And Jeanette was considered a mature inmate.

## BY THE NUMBERS

Federal statistics on sex  
and rape in prisons  
[www.citylimits.org](http://www.citylimits.org)

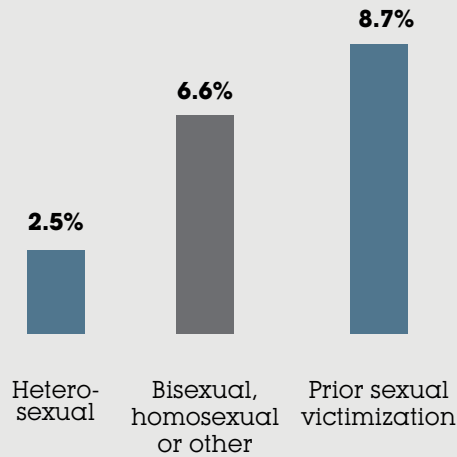
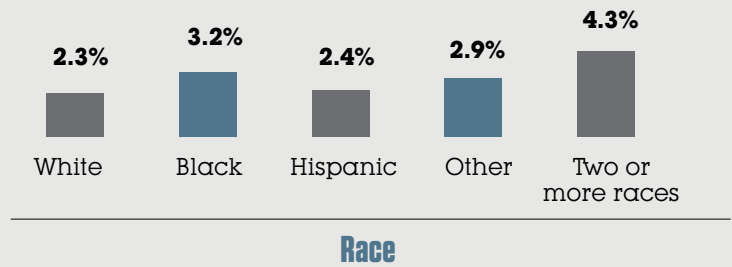


Albion Correctional Facility in Orleans County. It was while Jeanette P. was an inmate here that she began writing to Peter Z.

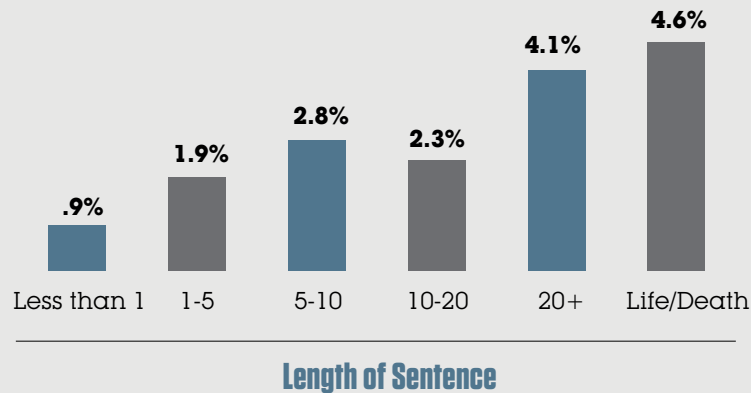
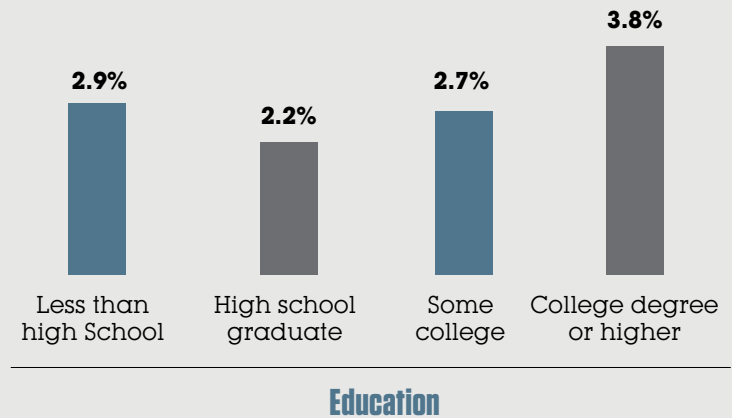


# Who's the Victim

Inmates who claimed to have been the victim of staff sexual misconduct in the Bureau of Justice Statistics' 2008-2009 nationwide survey were more likely to be multiracial, well-educated and facing long sentences. These statistics include male and female inmates nationwide and reflect the percentage of inmates in each category who reported being subject to some form of staff sexual abuse.



**Sexual Orientation and Incident History**



Data Source: BJS

A guard patrols the perimeter outside Bedford Hills Correctional Facility. Almost a third of the state's female inmates are housed there.



**“We can’t be everywhere at once. There’s not always going to be another officer or supervisor observing what that specific officer does. We must rely on the individual officers to perform their duties as they were trained to perform them.”**

Rivera, an attorney in the New York State Office of the Attorney General, also presented testimony that as soon as officials began to suspect there was an inappropriate relationship between the two, they took action.

Martin Horn, a professor at John Jay College of Criminal Justice and the former commissioner for New York City’s Department of Corrections, testified on DOCS’ behalf as an expert witness. He argued that prison supervisors cannot be omniscient. “We can’t be everywhere at once,” he testified. “There’s not always going to be another officer or supervisor observing what that specific officer does. We must rely on the individual officers to perform their duties as they were trained to perform them.”

There were no cameras in the stairwells where they had sex and no alarms on the doors leading to the stairwells. But cameras alone would not have prevented the affair, Horn testified. “Even where cameras are installed, there are blind spots,” he testified. “Cameras don’t look inside individual cells or rooms that inmates live in, neither do cameras in toilet and shower areas. In any situation where the facility is covered by cameras, there are places that aren’t subject to camera coverage.”

Horn testified that there were 24-hour periods during Jeanette’s and Peter’s affair when prison officials assigned not a single officer to supervise the honor dorm and no DOCS employee came to the third floor at all. During the 7 a.m. to 3 p.m. shift, when inmates were supposed to be in programs, no officer was ever assigned there.

But, Horn contended, the level of supervision in the dorm was appropriate, because the inmates assigned to the honor dorm were more mature.

Robert DeRosa, an expert witness for the plaintiff, saw matters differently. DeRosa testified that DOCS’ supervision of Peter left him “free to roam the building and access areas” and “to carry on this relationship unabated.” He testified, “No one challenged it.” When supervisors made security rounds, officers called ahead to alert one another that their bosses were coming.

The routine security inspections of his supervisors did not deter Peter, because they were predictable, Peter testified. The couple never feared having sex on the roof, because, Jeanette testified, “Nobody was coming up to the roof.” Roof checks by other guards occurred every hour, giving them sufficient time, she testified.

“When you have a facility managed like this, it’s pretty much open game for people to do what they want. That’s pretty much what happened here. Peter was allowed to do what he wanted over a period of time,” DeRosa testified.

**Jeanette’s trial ended Nov. 16, after four days of testimony.** If the judge rules in her favor, it would be at least the second time that an inmate or former prisoner has won a case alleging that DOCS is responsible for sexual abuse committed by a prison employee. Later this year, the Court of Claims could hear cases from two other women alleging that DOCS is responsible for their sexual abuse. One is correctional officer Donald L.’s victim, who already won a federal civil case against him.

Her Court of Claims lawsuit alleges that DOCS was negligent and careless in several ways, saying that prison officials should have locked the classroom where she was raped to prevent Donald from accessing it, because it was not in use. The lawsuit also alleges that Donald was negligently hired, improperly trained and improperly investigated. Through a relative, Donald did not comment.

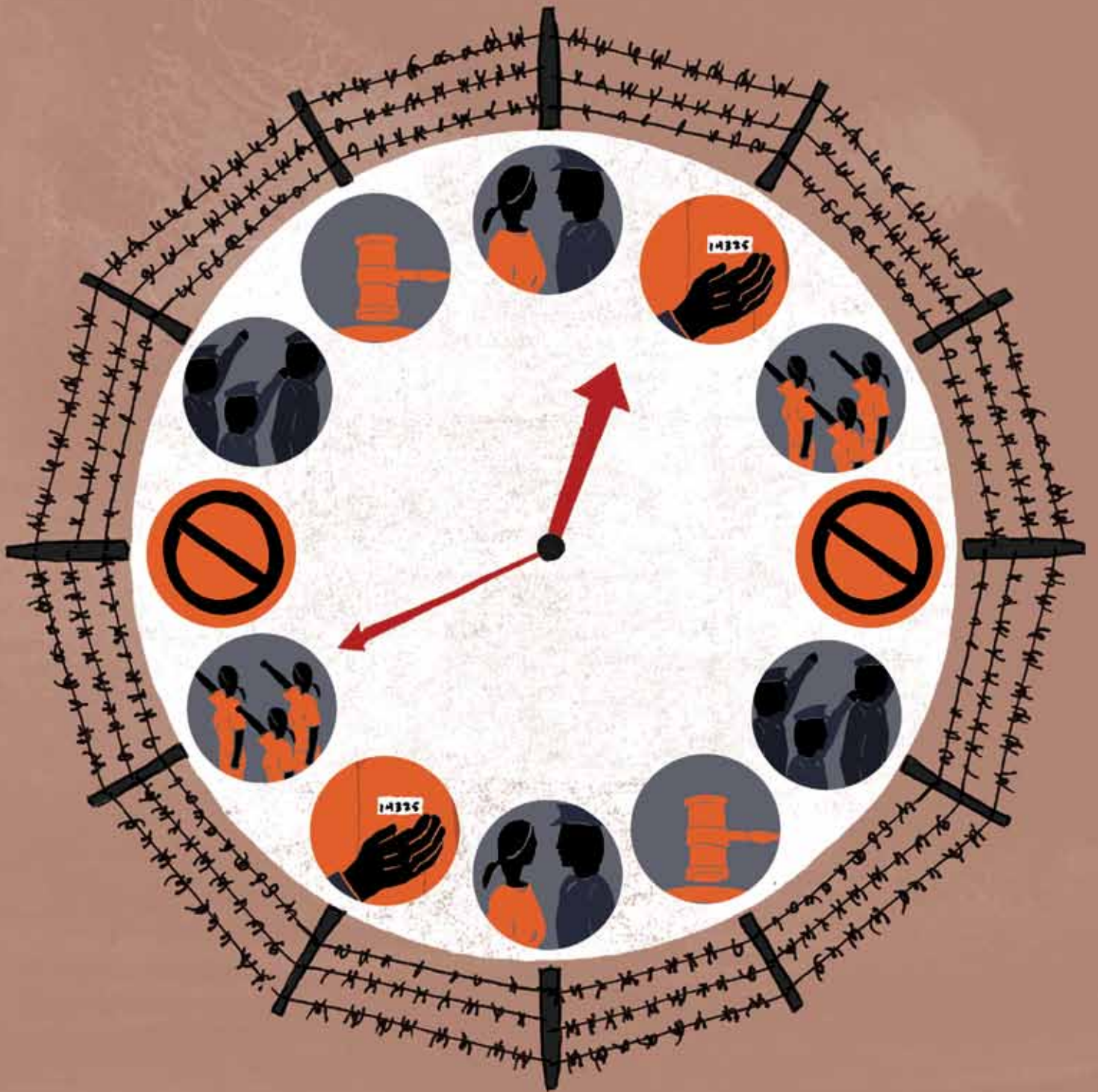
# A Clash of Rights

*Decades of Debate Over Male Guards in Women's Prisons*

In the late 1970s, when Thomas Terrizzi began working as an attorney in the Elmira, New York office of the newly formed Prisoners' Legal Services, sex between corrections officers and inmates wasn't an issue that prisoners complained about to PLS, then the only New York organization specializing in prisoners' rights. The state had very few female inmates then. In fact, some of the correctional facilities that currently house only women then housed men, either instead of women or in addition to them. Cross-gender supervision of inmates (in other words, men supervising women or women supervising men) was rare then, with most female inmates being supervised by women. Since 1955, the U.N. Standard Minimum Rules for the Treatment of Prisoners had banned cross-gender supervision. The men who worked at Bedford Hills before 1976 worked not in the housing units but in areas including the grounds, the school and the library. Men's prisons also had few female officers then.

Partly because most inmates were men, most of the complaints PLS received then came from male inmates. At the time, one of their most common complaints was that guards were using excessive force. Female inmates complained to PLS so rarely during that time that Terrizzi doesn't remember handling any of their







An inmate looks out from Bayview Correctional Facility in Manhattan. There and at other prisons, there is a tension between the rights of inmates—for whom prison is an involuntary home—and the rights of guards, for whom it is a workplace.





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complaints. "I think women just generally didn't complain much ... out of fear of retaliation," Terrizzi says.

But in 1976 New York's prisons underwent policy changes that would reverberate in sexual-misconduct allegations decades later. That year, DOCS—in an effort to comply with the equal employment law codified in Title VII of the Civil Rights Act of 1964—decided to allow male officers at Bedford Hills to supervise the women's living and sleeping quarters. The first male officers began those jobs in February 1977.

Within months, the opening salvo in the statewide battle to define the parameters of cross-gender supervision was fired, when 10 female inmates filed a lawsuit alleging that male officers' ability to view them naked in their cells and showers and on their toilets violated their privacy rights.

The first judge who heard the case in federal district court, Judge Richard Owen, concluded that some male officers were indeed viewing the women nude, sometimes as a result of performing their jobs and sometimes while being what he called "Peeping Toms."

He ordered DOCS to develop a plan that could prevent Bedford Hills' male officers from viewing the women nude.

The policy DOCS developed became the basis for a court order in 1979. It required female guards to be on hand at all times in case there was an emergency requiring privacy; barred male guards from overnight duties that might require looking in female cells; prohibited male guards from working infirmary posts where female nudity was possible; and mandated that male guards give female inmates a five-minute warning before opening their cell doors. Beyond that, male guards were allowed to keep working in women's living quarters.

Within seven months, the corrections lieutenants' union and its executive director appealed part of the judge's order, reigniting the battle over cross-gender supervision. The appeal argued that barring male officers from the female housing areas overnight infringed unduly on the male officers' fair-employment rights. They also argued that the provision would infringe female officers' employment rights: Removing male officers from night shift duties would bump female officers from preferred daytime shifts, to which they would normally be entitled by virtue of seniority, they argued.

The appeals court judge sided with the union, ruling that female inmates could prevent the male officers from seeing them nude at night by wearing appropriate clothing or covering



their windows with a curtain for up to 15 minutes at a time.

That May 1980 appeals court ruling secured for New York State's male corrections officers fuller entrée into the housing areas of women's prisons. But for at least 10 more years, it didn't change the nature of the complaints PLS received, which continued to be primarily from men, Terrizzi says.

By the 1990s, Terrizzi began to hear occasionally that a female prisoner or former female prisoner had sued a male officer for damages in connection with allegations of sexual abuse, the first evidence that cross-gender supervision in women's prison was beginning to have some unintended consequences. But even those cases were rare, he says. "Those cases got little publicity. You couldn't track them, really," he says. "They oftentimes would get settled very quickly and wouldn't be on the radar screen." Not until 1996, when Terrizzi was a PLS supervisor, did PLS receive significant complaints about cross-gender supervision in women's prisons.

One day that year, his office received a letter from a woman at Albion saying that officers had just videotaped her strip frisk, a procedure in which an inmate disrobes and officers search the crevices of her body for contraband. The strip-frisking was being conducted by female officers while male officers stood watching just outside an ajar door. When Terrizzi read it, he was shocked and immediately called the DOCS counsel's office. An attorney there acknowledged that officers were videotaping some strip frisks and said the officers had permission from DOCS' central office, Terrizzi says. Video cameras were used only when officers believed they might have to use force to conduct the strip frisk, a DOCS spokesperson told *The New York Times*. "They were doing it to have a record of the strip search, so there's no allegations of wrongdoing," Terrizzi says DOCS explained. "They said it was as much a protection for the woman as for staff, which is pretty outrageous. Obviously

the procedure is so humiliating and degrading to begin with for everybody."

Operating under a consent decree from a case in which male inmates alleged they were improperly strip-searched, Terrizzi gradually found 72 women who complained of the same treatment. He also learned that videotapes of the searches were not stored in any controlled way, he says (A DOCS spokesperson told *The New York Times* the videos were locked away). Under a settlement, DOCS agreed to pay each victim, of which there were ultimately 85, \$1,000. But DOCS did not agree to stop the videotaping, according to the paper, saying they'd done nothing wrong.

**After that settlement made the news, more women began pursuing legal action against DOCS to launch allegations of sexual abuse.** Within less than two years of the strip-frisk victory, more female inmates launched a new attack against DOCS on yet another front related to cross-gender supervision—the pat frisk, a procedure for detecting contraband that directed officers to touch a clothed inmate's vaginal and breast areas.

One lawsuit alleged—and the then-corrections commissioner largely confirmed—that an instructional videotape that DOCS then used to train officers suggested that a pat-frisk was to be conducted as follows: "An officer begins by ordering the inmate to stand against the wall with her back to him. The officer then approaches the inmate from behind, placing his hands on the inmate's neck and inside the collar of her shirt. He works his hands down every inch of the surface of her body. Probing for small items, the officer runs his hands under and over the woman's breast, brushing her nipples. Searching the woman's legs, the officer grips one inner thigh. His hands press against the woman's vagina before moving down her thigh

## Time Served

In New York and nationwide, a timeline of efforts to reduce sexual abuse in prison.

**1976** DOCS—in an effort to comply with the equal employment law codified in Title VII of the Civil Rights Act of 1964—decides to allow male officers at Bedford Hills to supervise the women's living and sleeping quarters.

**1979** Court order requires DOCS to

restrict duties of male guards in female prisons in order to prevent male staff from seeing inmates nude.

**1980** Appeals court overturns part of the court order.

**1984** The Georgia court case *Cason v. Seckinger*, one of the

first to address sexual abuse in prisons, presses claims by women that they were forced into sexual acts with staff. The case leads to changes in state prison policy.

**1996** The federal Bureau of Prisons issues guidelines aimed at reducing staff sexual abuse. Human Rights Watch releases a report highlighting the sexual abuse of women in U.S. prisons. A new New York State law

holds that any person in custody in a New York State correctional facility cannot consent to any sex act with an employee.

**1998** Congressman John Conyers Jr., D-Mich., introduces the Custodial Sexual Abuse bill, which would have mandated a registry of staff who engaged in sexual activity with inmates. The bill fails.

**1998** New York States DOCS revises

its pat-frisk policy, increasing the number of circumstances under which pat frisks must be conducted. A federal lawsuit alleges that pat frisks in New York State prisons provide a pretext for abusers to sexually abuse inmates.

**1999** National Institute of Corrections survey shows that only the BOP and six out of 50 states routinely allowed men to pat-search women. New York State is one of them.



Even though, according to Lord, male guards at Bedford Hills tended to let female officers do pat frisks of female inmates, the frequency with which male officers pat-frisked female inmates still increased, and so did the complaints from inmates and officers. Lord estimated that in 1999 all officers—male and female—were conducting a combined total of 200 to 250 pat frisks a day. Because the procedure made some officers uncomfortable, 20 to 30 of them complained to her about it,

After numerous inmates complained to her that two or three male officers were making sexual remarks during the pat frisks, she sent an e-mail to one of her deputies in June 1997: “At this point I do not intend to go ahead with random pat frisks. I’m already sick of what I’m hearing about what some

**2011** As prisoner advocates, state prison officials and the Justice Department wrestle over the development of new regulations authorized by PREA to reduce sexual misconduct behind bars, New York State prison leaders are called to Washington to explain their facilities' prominence in the BJS survey.





Taconic Correctional Facility is across a road from Bedford Hills prison in Westchester County. There were only five substantiated cases of staff sexual abuse there from 2005 through 2009, but there are questions about whether state prison statistics capture all cases of inappropriate behavior.



**"I think women just generally didn't complain much ... out of fear of retaliation."**

of our finest males think they're going to get out of this. Sad to say, I truly believe the inmates in these cases. Stop it now and we will discuss how you might get control but no go until such time." Lord testified she believed that some corrections officers "couldn't wait to touch" female inmates.

Lord also said that she and her deputy handled the women's complaints by speaking with them and the officers involved. Her deputy had staff monitor one of the guards. But neither official reported the officers to the inspector general's office, nor, to Lord's recollection, were those guards subjected to any disciplinary proceedings in connection with these incidents. Lord further testified that she never restricted cross-gender pat-frisking.

**Inevitably, the issue of cross-gender pat frisks went to court.** Angelos filed a federal lawsuit on behalf of New York State's female prisoners in 1998, demanding an end to the practice, alleging that it provided a pretext for the misconduct of abusers and emboldened some officers to touch inmates sexually in other contexts. The judge assigned to the case, Allen G. Schwartz, was a former corrections officer. Very early on, the judge made it clear that he was going to rule in the inmates' favor if they didn't reach a settlement, Angelos says. Schwartz told them that he couldn't imagine frisking a woman that way, she says.

DOCS initially resisted any change, and testimony by then Commissioner Goord provided some insight as to why. Goord testified in his deposition that equal employment law bars DOCS from eliminating cross-gender pat frisks. He cited an equal employment complaint that had been filed by female officers in 1996, when DOCS temporarily restricted cross-gender pat frisks at Albion in an effort to allay the concerns of advocacy groups. The female officers who filed the charge alleged that their new pat-frisk duties infringed on their rights to select their jobs based on seniority. DOCS ended the Albion experiment restricting cross-gender pat-frisks within seven months.

But DOCS' resistance to the demands of Hamilton and the other plaintiffs did not last long. During the lawsuit's first year, the agency compromised, agreeing to restrict cross-gender supervision under the terms of a settlement. The settlement made male pat-frisks of female inmates less intrusive, but ultimately permitted male officers to continue pat-frisking

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the majority of female inmates. A May 2010 letter written by DOCS commissioner Brian Fischer to the U.S. Department of Justice describes the results of the settlement, which governs pat-frisks today: "Under this policy, a male officer cannot perform a non-emergency pat down search upon any female inmate who has been issued a Cross Gender Pat Frisk Exemption. Typically, such an exemption would be issued following a determination that the inmate suffers from post-traumatic stress disorder because of a history of sexual abuse."

The reforms haven't eliminated concerns about pat-frisks. In fact, DOCS believes that misunderstandings about pat-frisks might explain some of the sexual misconduct allegations its inmates have made against guards. Some evidence suggests, however, that the problems in New York's female prisons are deeper than that.

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# Corrective Measures

*State Prisons and Advocates Keep Battling over Sex-Abuse Regulations*

**E**ach of the 11 correctional facilities that the Bureau of Justice Statistics put on its 2008-2009 list of prisons and jails with the nation's highest levels of inmate-reported staff sexual abuse had a rate that was at least 55 percent higher than the national average. New York had three state prisons among the 11.

But DOCS officials have downplayed New York's prominence on that list. In August, when BJS released the results of its 2008-09 survey, NYS DOCS spokesperson Linda Foglia issued a statement saying that some surveyed inmates who reported staff sexual abuse might be mistaking pat friskers' intentions.

The statement says in part: "Because safety and security remain a top priority, we conduct frequent pat frisks of inmates to help keep potentially dangerous contraband out of prison. These frisks can lead to allegations of inappropriate touching or abuse. We will work with the Department of Justice to see, based on the anonymous self-reporting data presented, if there are in fact identifiable patterns of abuse and to determine how much of the issue may be a question of interpretation and perception."



Dori Lewis, one of two Legal Aid lawyers representing former DOCS inmates in an eight-year-old lawsuit against the prison system.



Indeed, BJS found nationwide that inmate-reported staff sexual abuse often occurred in conjunction with strip searches and pat downs. But the vast majority of victims participating in the survey—91 percent of women and 86 percent of men—reported that they had also experienced staff sexual abuse outside that context, suggesting that inmates aren't overreporting sexual abuse because they're confused about the difference between a frisk and a fondle.

The scrutiny DOJ is giving DOCS is more than it's been getting from the state's own watchdog.

The Commission of Corrections, a three-member panel with the statutory authority to shut down unsafe prisons, hasn't sent its staff to conduct a routine inspection of a New York State prison in about five years, with 70 percent of the staff responsible for conducting those inspections laid off, says James E. Lawrence, the commission's director of operations. The commission focuses its scarce resources on New York State jails and has recently aggressively enforced the law banning sexual contact between inmates and staff at one upstate jail, prohibiting it from housing female inmates until the problems were rectified, says John Caher, the agency's spokesperson. DOCS doesn't need such an intervention, Lawrence says, saying that DOCS has strong leadership in their central office in Albany and many resources. "They have a very sophisticated sex crimes unit," he says. "They're using DNA work. They're using sniffers. They've got sophisticated investigative techniques."

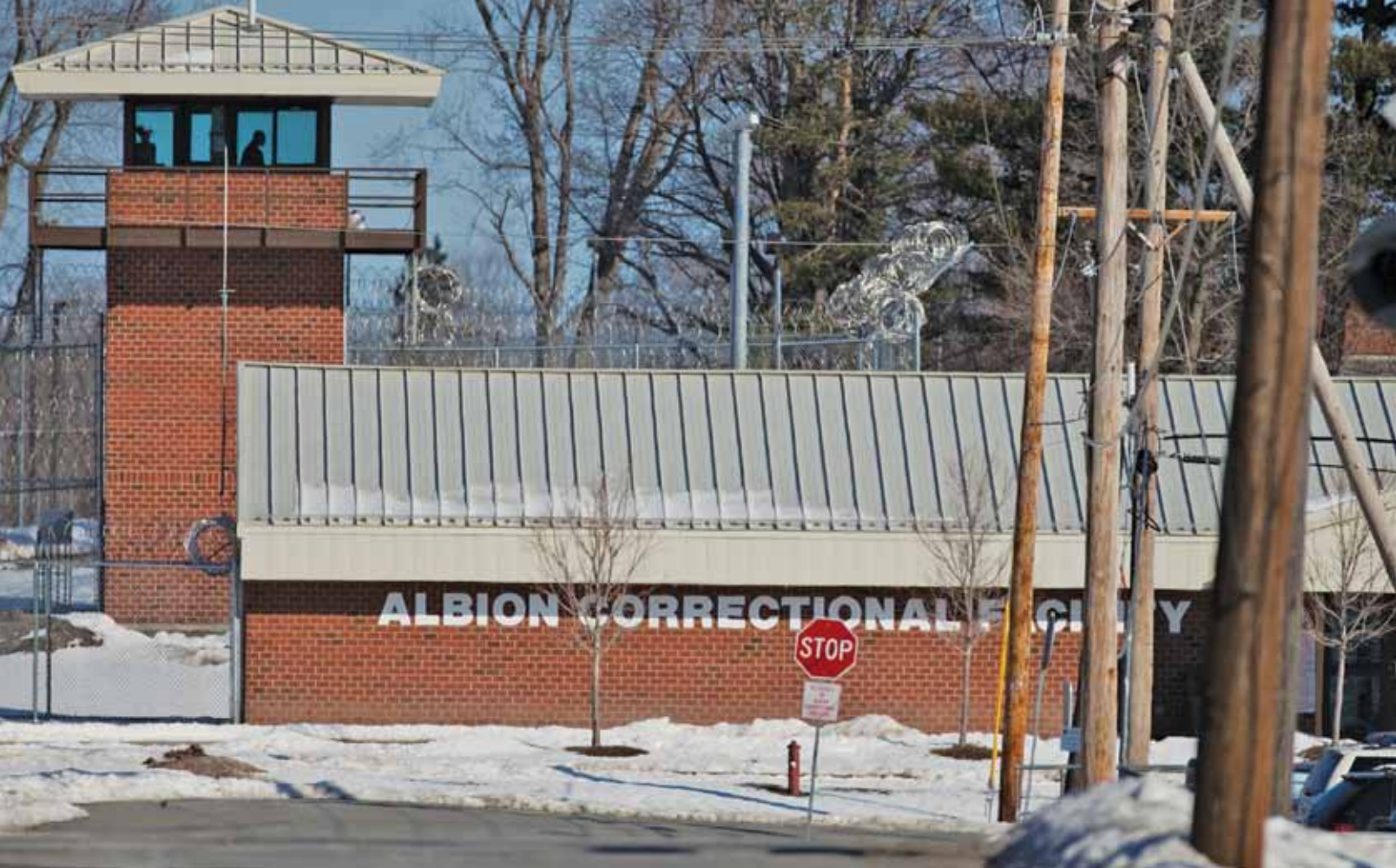
But the State Senate and Assembly are each considering bills that would scrutinize DOCS track record, by implementing a commission to study sexual abuse in the state's prisons and propose solutions. A version of the assembly bill has been under consideration since 2004. In mid-March it passed out of committee with unanimous support, says Jeffrion Aubry, the chair of the assembly's Crime and Corrections Committee. Aubry says the legislature needs to study the problem despite the federal government's ongoing seven-year national study of it. "We have anecdotal evidence that there is a problem, that's been reported through lots of different sources," the Queens Democrat says. "We need to be more diligent in monitoring what's going on."

Assemblyman Steve Hawley—a Republican from the 139th District, which contains the Albion prison, the female prison with the most substantiated incidents since 2005—issued a statement that says, in part: "While it is

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All 67 New York State prisons—including Albion—face an uncertain future as budget cuts reduce capacity and, perhaps, force the closing of some facilities.

clear no incidence of sexual abuse of female prisoners by correctional officers can be tolerated, we must also be careful to ensure that further measures taken to prevent and punish this behavior do not have an unwarranted impact on the vast majority of dedicated, hardworking, decent and law-abiding correctional officers, who work 365 days a year to operate our prisons.”

**Over the years, DOCS has implemented some measures that address staff sexual abuse.**

Although the agency doesn’t currently have enough cameras to meet a proposed federal standard, it has been installing them. Since 1995 the department has spent more than \$35 million on the implementation of these systems.

DOCS “currently conducts criminal background checks on all new hires (including contract employees and volunteers) and has established a link with the New York State Division of Criminal Justice Services, which informs DOCS if an agency employee is arrested for any type of crime for the duration of his/her employment with DOCS,” says a letter that DOCS Commissioner Brian Fischer wrote the U.S. Department of Justice in May 2010. The letter also says, “DOCS presently

provides each offender with an orientation concerning sexual abuse prevention upon admission to the system and upon every transfer to a new facility.” Fischer also pointed to the department’s Sex Crimes Unit, which consists of a deputy inspector general, an assistant deputy inspector general and 12 investigators who receive intensive training in investigative techniques.

But prison records indicate that many allegations never make it to the inspector general’s office. Prison officials at the seven prisons with women inmates recorded on so-called monthly staff-on-inmate incident/threat summary forms a combined total of 534 allegations from June 2005 to December 2010. But according to these forms, the resolution of 78 of these allegations, or 15 percent, did not involve the prison officials’ reporting them to the inspector general. Reporting rates varied widely among facilities. Bayview reported at least 97 percent of its allegations; Willard only 27 percent.

**But some think more ambitious changes are needed.** “When it comes to sexual assaults in prisons, there is much that needs to be done,” Karen Murtagh-Monks, the Albany-based executive director of Prisoners’



# Sparring Over Prison Rules

Advocates, DOJ Disagree on Abuse Elimination Guidelines

A celebration was in order when the National Prison Rape Elimination Commission (NPREC) completed its six years of work. Since the members' appointments in 2003, they had consulted victims, experts and administrators, held hearings, and reviewed studies, to determine how to combat the sexual abuse of inmates by other inmates and staff. In June 2009, they handed off their report to the U.S. attorney general, Eric Holder, who had by law one year to make any changes to their recommendations and promulgate a national set of standards.

But it was not until Jan. 24 of this year, more than six months overdue, that Holder published his proposed National Standards to Prevent, Detect and Respond to Prison Rape. And to the dismay of commissioners and advocates alike, the AG's revisions have weakened several of the standards to such a degree that some policies could be a step backward from what most state agencies already have in place.

To aid in his review of the commission's recommendations, the AG assembled a working group of representatives from a range of departments, like the Bureau of Prisons and the DOJ's Civil Rights Division and Office of Legal Policy. The group began by contracting out a cost-analysis study. Meanwhile, in January and February 2010, the DOJ held listening sessions in which both advocates and members of individual state departments of corrections could give their input. One month later, the AG published an Advanced Notice of Proposed Rulemaking, prompting more than 650 public responses. The

cost study took until June to complete. Finally, the working group revised the standards and contracted a second study to determine the financial impact of each new provision.

Although advocacy groups and several editorials in *The Washington Post* and *The New York Times* criticized these procedures and the delays they caused, the Justice Department felt the process was necessary to create a set of standards that states would be inclined to adopt, DOJ officials say.

Moreover, the Prison Rape Elimination Act of 2003, or PREA, expressly mandates that the national standards may not impose "substantial additional costs compared to the costs presently expended by federal, state and local prison authorities." A DOJ official tells *City Limits* he felt this placed "inherent limitations" on what the AG could demand from state corrections departments.

Indeed, the New York State Department of Correctional Services voiced concerns over funding during the first round of public commentary. "It is apparent that the Commission did not heed (PREA's cost) limitation as the proposed standards would greatly increase the costs to this and virtually any other correctional department in the nation," wrote Brian Fischer, NYS DOCS commissioner.

Only one agency nationally—the Bureau of Prisons (BOP), the branch of the DOJ that runs 116 federal correctional facilities across the country—will be legally bound by the final set of standards. But state prison agencies will face a 5 percent cut in federal

funding if they fail to comply with the new standards.

If implemented according to the AG's revisions, "the proposed standards would make a difference," NPREC commissioner Jamie Fellner, senior counsel at Human Rights Watch, allows. "But it would be a wasted opportunity to make the significant difference Congress had sought. The standards could and should be much stronger."

The commission's proposed rules, for instance, emphasized the importance of limiting cross-gender pat searches to prevent the abuse of inmates by staff. A 1999 National Institute of Corrections survey showed that only the BOP and five out of 50 states routinely allowed men to pat-search women in all facilities. Among them, Michigan has since eliminated the practice.

However, the DOJ wrote in the proposed standards that it felt the benefits of eliminating cross-gender pat-down searches do not justify the costs of "imposing such a rule across the board," with an exception for inmates who "previously suffered cross-gender sexual abuse while incarcerated." Potential costs of a cross-gender pat-frisk ban could include hiring additional male or female staffers to match the inmate population.

Melissa Rothstein, senior program director at the advocacy group Just Detention International (JDI), notes that there are areas in which the DOJ did clarify and even strengthen certain provisions. In one such case, the DOJ's proposed standard "expands the commission's recommendation by requiring access to (forensic) exams

not only in cases of penetration but whenever evidentiarily or medically appropriate.”

But Rothstein added that the DOJ “weakened some of the most critical” provisions, including one that would have applied the standards to immigration detention centers. The DOJ told

is a professor at Washington College of Law at American University. While Smith acknowledged the importance of proposing “attainable” rules, she worried that with the grievance and cross-gender supervision standards, the DOJ had done “what was best for the Bureau of Prisons.”

review. When it signs off, the DOJ will publish the standards as final rule.

The attorney general is motivated by a desire to make a final set of standards that is “robust, effective and attainable—and which can endure over the years,” says the DOJ’s Jessica Smith, a senior public affairs specialist.

## How Strict a Standard?

Nearly eight years after a federal law to reduce sexual misconduct in prison, advocates, prison officials and federal regulators are debating rules to achieve the legislation’s aims.

STANDARD	What the Prison Rape Elimination Commission proposed	What New York prison officials Said	What the DOJ has said
CROSS-GENDER VIEWING AND SEARCHES	“Except in the case of emergency or other extraordinary or unforeseen circumstances, the facility restricts nonmedical staff from ... [performing] cross-gender pat-down searches.”	“The proposed standard as drafted will have drastic immediate fiscal impact as well as substantial reoccurring costs.”	Citing cost concerns and worries about equal employment rules, the DOJ disagrees with the Commission’s recommendation and proposes to allow cross-gender pat-down searches.
AUDITS OF STANDARDS	To measure compliance, “audits must be conducted at least every three years by independent and qualified auditors.”	Recommends “eliminating or significantly modifying the requirement for audits” so it does not “create an enormous taxpayer burden.”	Believes that independent audits are “critical” but since audits are “time-consuming” and “resource intensive,” concludes that “further discussion is necessary.”
EMPLOYEE TRAINING	“The agency trains all employees on a resident’s right to be free from sexual abuse ... free from retaliation for reporting sexual abuse, the dynamics of sexual abuse, and the common reactions of sexual abuse victims.”	NYS DOCS recommended that the training requirement be reduced, citing costs of up to \$3.7 million to implement what the commission called for.	Kept the Commission’s standard and added “training in how to avoid inappropriate relationships with inmates.” In addition, agencies must provide documentation that “the required training was provided and, for staff training, that the training was understood.”
INMATE REPORTING	The “facility provides multiple internal ways” for residents to report sexual abuse and “at least one way for residents to report the abuse to an outside public entity or office not affiliated with the agency that has agreed to receive reports and forward them to the facility head.”	NYS DOCS felt the provision was “too specific,” and that the second sentence should instead read: “The facility also provides at least one way for residents to report the abuse to an outside public entity or office not affiliated with the agency.”	The DOJ proposes that “instead of enabling reports to an outside public entity,” an agency can meet the standard by reporting to an internal office, “but that is operationally independent from agency leadership.”

commissioners that only the Department of Homeland Security had the jurisdiction to make demands on the immigration detention system.

Some of the disagreement springs from competing ideas about what impact the DOJ guidelines will have. The DOJ might think that these standards will be a floor, but for many jurisdictions, “they’re going to become a ceiling,” says Brenda Smith, who served on the NPREC and

The DOJ launched a 60-day public comment period on its proposed standards, which ended on April 4, 2011. “The department will review all comments submitted on the proposed rule and will take such comments into account in developing the final rule,” a DOJ official said. The DOJ expects to complete this process by the end of 2011. The last step is to send the standards over to the Office of Management and Budget for regulatory

Until then, Cindy Struckman-Johnson, a professor of psychology at the University of South Dakota, who sat on the NPREC, is still optimistic, telling *City Limits*, “We remain hopeful that the AG will be responsive to the concerns that we are raising.”

—Isabella Moschen

## The Commission of Corrections, a three-member panel with the statutory authority to shut down unsafe prisons, hasn't sent its staff to conduct a routine inspection of a New York State prison in about five years, with 70 percent of the staff responsible for conducting those inspections laid off.

Legal Services, a statewide network of legal clinics, said via e-mail.

Critics and even some neutral observers say that to reduce the prevalence of sexual abuse, DOCS needs to further restrict cross-gender supervision.

When asked how DOCS should address the problem, Orleans County district attorney Joe Cardone says the prevalence is already low but adds that DOCS should hire more women in women's prisons. "As much as possible, have same-gender guards in these facilities," he says, adding that he doesn't think it would violate equal employment law. "Those women that are hired, is there anything wrong with assigning them to women's facilities as opposed to men's facilities?"

At the very least, DOCS should stop assigning male staff members to posts that give them the opportunity to have unmonitored contact with female prisoners—like jobs in housing areas, especially at night—Freeman and Lewis say. Another preventive step that DOCS should take is limiting officers' access to private, unmonitored areas such as kitchen storerooms, storage closets, slop sink areas and laundry areas, where sexual abuse may be easier to commit. In addition, when an employee generates a lot of complaints, prison officials should always increase the supervision of that person, to ensure that his unmonitored contact with female prisoners is limited, say Freeman and Lewis. Such changes can be implemented without violating the union contract, but ultimately, DOCS might have to consider doing that too, they say.

"You may never be able to achieve zero complaints in a year, but you can certainly not be one of the leaders of the country," Freeman says. "There are steps that can be taken to reduce the risk." It's unclear yet whether their lawsuit against DOCS will force the agency to take any

of those steps. A judge has ruled that since none of the inmates' original grievances articulated in enough detail what policy changes they sought, their lawsuit cannot pursue such changes. They have appealed the ruling.

**Some of the criticisms of DOCS could still be addressed by the federal standards scheduled for adoption later this year.** But Lewis and Freeman lack faith in DOCS' willingness to comply, in part because Commissioner Fischer contested some of the standards initially proposed. Indeed, Fischer himself expressed skepticism that correctional systems could comply with all the standards. "This requirement of 100 percent compliance is a goal that is likely unachievable," he says in his letter to the DOJ.

Moreover, Fischer says he doesn't support the use of independent and qualified auditors to monitor DOCS' compliance with the standards. His letter says accreditation by the American Correctional Association should be sufficient. All 67 DOCS prisons have already attained such accreditation.

"I recommend eliminating or significantly modifying the requirement for audits of compliance with the standards," he says, adding that it "will create an enormous taxpayer burden by creating a team of consultants."