

# Detering Staff Sexual Abuse of Federal Inmates



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## I. Introduction

The Department of Justice Office of the Inspector General (OIG) is responsible for investigating allegations of staff sexual abuse of inmates held in the custody of the Federal Bureau of Prisons (BOP). Federal law criminalizes all sexual relations and sexual contact between prison staff and inmates. See 18 U.S.C. §§ 2241, 2243, and 2244. In addition to the harm it causes to inmates, staff sexual abuse of inmates can also threaten the safety and security of the prison. For example, staff sexual abuse can corrupt prison staff and lead to other dangers, such as staff smuggling drugs or weapons into prison facilities for inmates.

The OIG believes that current federal laws criminalizing staff sexual relations with federal prisoners are deficient in two critical ways. First, the crime of sexual abuse of an inmate is only a misdemeanor punishable by a maximum sentence of 1 year, unless the staff member uses force or overt threats to sexually abuse the inmate. See 18 U.S.C. § 2243-44. Because prison employees control many aspects of inmates' lives, in most cases prison employees obtain sex from inmates without resorting to the use of force or overt threats. Yet, misdemeanor penalties do not adequately punish those prison employees who commit this crime. In addition, the OIG has found that many federal prosecutors are less interested in prosecuting sexual abuse cases, regardless of the strength of the evidence, because the crimes are not felonies. Moreover, the lenient federal laws are out-of-step with states laws – 43 states make unforced sexual relations with inmates a felony.

The second deficiency in current federal laws covering sexual abuse of inmates is that they do not apply when federal inmates are held in facilities under contract to the federal government rather than in BOP facilities. Courts have found that such contract facilities are not covered by the laws criminalizing sexual abuse of federal inmates because the laws are limited to “federal correctional, detention or penal facilit[ies].”<sup>1</sup> Similarly, this limitation has hampered the OIG’s ability to obtain prosecutions for staff who sexually abuse federal inmates incarcerated by the BOP at contract facilities. Moreover, the OIG has found that state prosecutors inconsistently prosecute these cases because many states focus their limited resources on sexual abuse against state, rather than federal, inmates. As a result, abuse of federal inmates held at contractor facilities may go unpunished because of limitations in the law’s coverage.

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<sup>1</sup> See, e.g., United States v. Gibson, 880 F.2d 795, 796 (4th Cir. 1989); United States v. Jimenez, 454 F. Supp. 610, 611 (M.D. Tenn. 1978).

This report examines sexual abuse of federal inmates by correctional staff and the current law's impact on deterrence of staff sexual abuse.<sup>2</sup> To conduct this review, we collected and analyzed 5 years of OIG statistical data on allegations we received regarding inmate sexual abuse and the resulting OIG investigations. We also surveyed OIG investigators who have substantial experience conducting investigations of staff sexual abuse of federal prisoners. In addition, we reviewed state laws on staff sexual abuse; court cases; and literature published by organizations, academics, journalists, and government agencies, including the BOP, the National Institute of Corrections (NIC), the Government Accountability Office (GAO), and the United Nations (U.N.).

Further, we interviewed various BOP officials about this issue, including former BOP Director Kathleen Hawk Sawyer; the former BOP General Counsel; the former BOP Chief of Internal Affairs; BOP Office of Internal Affairs investigators; and an official from the BOP's Human Resources Management Division. We also visited the Federal Prison Camp in Bryan, Texas, one of the BOP's facilities for housing female inmates only, where we interviewed the Warden and several staff members about staff sexual abuse of female inmates. Furthermore, we attended a conference at the Federal Correctional Complex (FCC) in Coleman, Florida, which addressed staff sexual abuse of inmates. At the conference, we heard presentations from four Wardens of FCC facilities, a sexual abuse case polygrapher, and a forensic scientist who works sexual abuse cases. We also attended a second BOP conference in Washington, D.C. where we discussed the problem of staff sexual abuse with Wardens from six BOP institutions that housed women.

This report describes the results of the OIG's review. It first discusses the nature, extent, and consequences of staff sexual abuse. It then examines current statutes that fail to adequately deter staff sexual abuse in prisons, offers examples of OIG sexual abuse cases that were not prosecuted because of the lenient penalties for sexual abuse, and presents OIG statistics on sexual abuse cases. Next, it compares federal laws to state and local laws regarding staff sexual abuse of inmates. It then analyzes the gap in the federal law regarding federal prisoners held in contract facilities. Finally, it sets forth our recommendations regarding changes in federal criminal law that we believe are needed to provide greater deterrence of staff sexual abuse of federal inmates.

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<sup>2</sup> This report does not examine inmate-on-inmate sexual abuse.

## II. Sexual Abuse of Inmates by Federal Prison Staff

### A. Prevalence of Staff Sexual Abuse

The OIG has investigated hundreds of allegations of sexual abuse of inmates by BOP staff. Cases involving staff sexual abuse of BOP inmates annually comprise approximately 12 percent of the OIG's total number of investigations. From fiscal years (FY) 2000 to 2004, the OIG opened sexual abuse investigations of 351 subjects who allegedly sexually abused inmates. In the same time period, approximately 185 OIG investigations of staff sexual abuse had criminal or administrative outcomes.<sup>3</sup>

The BOP also has recognized that staff sexual abuse is a significant problem within its institutions. For example, Kathleen Hawk Sawyer, the former Director of the BOP, stated that even though she believed a very small percentage of BOP staff members committed sexual abuse, sexual abuse of inmates was the biggest problem she faced as Director. She also stated that she believed sexual abuse of inmates was one of the most serious forms of misconduct by staff in the BOP.<sup>4</sup>

In 1999, the GAO issued a report that examined female correction facilities in four jurisdictions: (1) the Texas Department of Criminal Justice, (2) the California Department of Corrections, (3) the District of Columbia, and (4) the BOP.<sup>5</sup> The report noted that the BOP received 236 allegations of staff sexual abuse of female inmates in calendar years 1995 to 1998. In the same time period, 22 allegations of staff sexual abuse of female inmates were sustained and 14 resulted in criminal convictions. The report noted that the full extent of staff sexual abuse of female inmates in federal prisons was unknown because it was underreported.<sup>6</sup>

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<sup>3</sup> The 185 cases with criminal or administrative outcomes represent those that were closed or presented for prosecution during FYs 2000 through 2004 and are not a subset of the 332 investigations opened during the same time period.

<sup>4</sup> *Addressing Staff Sexual Misconduct With Offenders, Remote Conference for Investigating and Preventing Staff Sexual Misconduct in a Corrections Setting* (U.S. Department of Justice National Institute of Corrections 2001).

<sup>5</sup> Government Accountability Office, *Women in Prison: Sexual Misconduct by Correctional Staff*, GAO/GGD-99-104 (1999).

<sup>6</sup> Another report, issued in 1999 by the U.N. Commission on Human Rights, summarized the U.N. Commission's review of staff sexual abuse in U.S. state and federal prisons. The U.N. Commission's report concluded that staff sexual misconduct (cont.)

According to OIG investigators, one of the reasons for the underreporting of staff sexual abuse is that inmates fear that staff will retaliate against them if they bring forward allegations of sexual abuse. Inmates also believe that investigators will not find their allegations credible. Moreover, it is often difficult to obtain physical evidence to corroborate allegations of staff sexual abuse. In addition, as noted below, some inmates may not report sexual abuse because they receive unauthorized privileges or contraband in exchange for the sexual acts.

In September 2003, Congress passed The Prisoner Rape Elimination Act, a law that addresses various issues related to the sexual abuse of inmates in prison. Among other things, this law requires the BOP's NIC to provide education, training, and information to corrections agencies on staff sexual misconduct. See Pub. L. No. 108-79 (2003). In response, the NIC has conducted workshops and training programs for officials from various prisons and community corrections agencies regarding investigating allegations of staff sexual misconduct and addressing staff sexual abuse. The NIC also has provided law enforcement agencies on-site technical assistance with operations, policies, training, and techniques for addressing staff sexual misconduct with inmates.

## **B. Consent is Not a Defense**

It is important to note that consent is never a legal defense for corrections staff who engage in sexual acts with inmates. According to federal law, all sexual relations between staff and inmates are considered abuse. Even if a sexual act would have been considered consensual if it occurred outside of a prison, by statute it is criminal sexual abuse when it occurs inside a prison. See 18 U.S.C. § 2243 (c).

This legal doctrine is based on several factors. First, staff members and inmates are in inherently unequal positions, and inmates do not have the same ability as staff members to consent to a sexual relationship. Second, inmates may try to use sex to compromise staff and obtain contraband or unauthorized privileges, which can compromise the safety and security of a prison. Third, either knowingly or unknowingly, staff members who engage in sex with inmates may be exploiting inmates' vulnerabilities or past sexual abuse. As a result, staff sexual relations with inmates is always illegal.

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was "widespread" in U.S. prisons, especially when compared to systems in other industrialized countries. See United Nations Commission on Human Rights, Report of the Mission to the United States of America on the Issue of Violence Against Women in State and Federal Prisons 66 (1999).

We found these factors present in many OIG cases. For example, OIG agents who investigate sexual abuse cases stated they often found that guards took advantage of vulnerable or psychologically weak inmates to have sex with them. Such inmates included those who had drug addictions, who previously were physically or sexually abused, who had mental health issues, who had little experience in the criminal justice system, who were awaiting deportation, or who had previously engaged in prostitution.<sup>7</sup> According to the Warden of the BOP's Federal Prison Camp in Bryan, Texas, vulnerable inmates often expect someone will take advantage of them because they are used to being exploited. The Warden stated that by sexually abusing inmates, staff members become the very predators that inmates expect them to be.

Various OIG cases illustrate this point. For example, the OIG recently investigated the case of a BOP psychiatrist at a Metropolitan Detention Center who engaged in sexual relationships with some of his female mental health patients. The OIG's investigation resulted in the psychiatrist being convicted on 7 counts of sexual abuse of a ward and sentenced to 1 year incarceration for the abuse.<sup>8</sup>

The OIG also investigated allegations that a correctional officer engaged in sex with female inmates detained at a Federal Transfer Center. The investigation developed evidence that the officer targeted inmates who previously engaged in prostitution or who were about to be deported. The officer was convicted of 11 counts of sexual abuse and sexual contact with inmates, and he was sentenced to 12 years' incarceration and 3 years' supervised release.

In other instances, inmates have targeted staff for sexual relations to obtain control over the staff, to obtain contraband or unauthorized privileges, or to leverage the sexual relationship for a lighter sentence. For example, in one OIG case a male inmate used sex to attempt to compromise a male BOP staff member assigned to a Metropolitan Correctional Center. The OIG investigation developed evidence that the officer engaged in sexual activities with the inmate several times over a 3-month period. The evidence indicated that the inmate intended to

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<sup>7</sup> For a discussion of vulnerable inmates, see Brenda Smith, *An End to Silence: Prisoners' Handbook on Identifying and Addressing Sexual Misconduct* (2002). See also Elizabeth P. Layman, Susan W. McCampbell, and Andie Moss, *Sexual Misconduct in Corrections*, *American Jails* 10 (November-December 2000).

<sup>8</sup> The psychiatrist received an additional 1 year incarceration for absconding to Mexico to avoid trial. He was captured by the Border Patrol while trying to re-enter the United States.

extort the officer by threatening to report the officer's sexual misconduct to the BOP if the officer did not comply with the inmate's demands.

In another case, the OIG found that a United States Penitentiary inmate engaged in sex with the Executive Assistant to the Warden. The inmate admitted that he seduced the female Executive Assistant because the inmate was the leader of a gang and was looking for an edge in the power struggle with other inmate gangs.<sup>9</sup> The inmate had reported the relationship to authorities in hopes of having his sentence reduced. Following the OIG's investigation, the Executive Assistant was convicted on 2 counts of sexually abusing inmates and sentenced to 5 years' probation and 4 months' home confinement.

In other investigations, the OIG has found that inmates used sex to compromise staff members. For example, inmates have engaged in sexual relations with staff to obtain from the staff drugs or access to unmonitored phones, to communicate with other inmates while in isolation, to gain access to sensitive information (such as which inmates are informants), or to acquire information that could assist them in an escape.<sup>10</sup>

### **C. Sexual Abuse Is Not Limited by Gender**

One misconception about staff sexual abuse of inmates is that it only involves male staff engaging in sexual relations with female inmates. As the statistics below indicate, the scope of the problem also includes female staff with male inmates, male staff with male inmates, and female staff with female inmates.

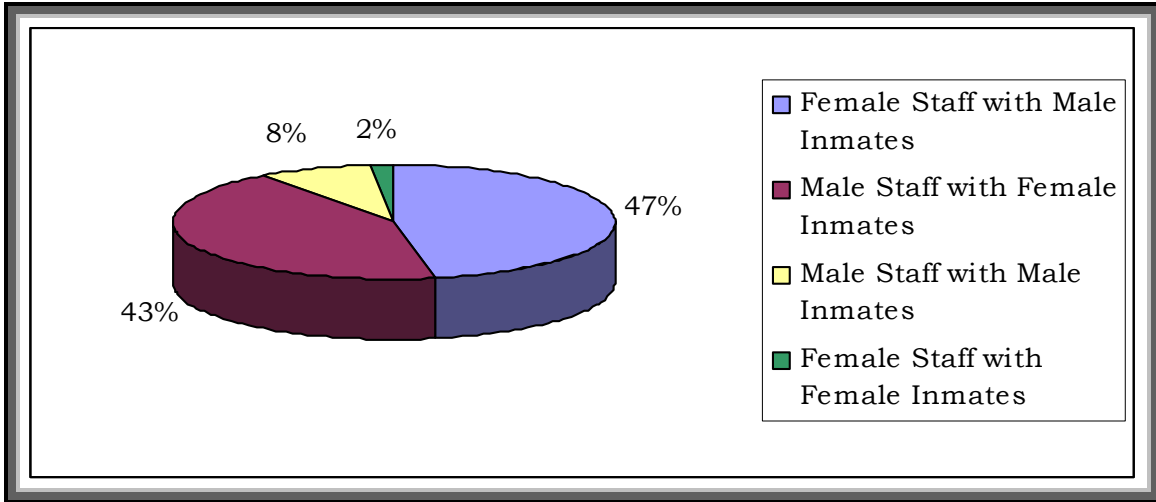
According to OIG case data, between FYs 2000 and 2004, the OIG opened sexual abuse investigations of 351 subjects. The following chart describes the gender breakdown of allegations investigated by the OIG during this period.

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<sup>9</sup> See Jim Hughes, *Inmate Tells of Affair With Official*, Denver Post, Dec. 04, 2002.

<sup>10</sup> One BOP psychologist we interviewed stated that many inmates seduce staff not to intentionally manipulate them, but because they learned seduction as a survival skill before they were incarcerated.

**OIG Sexual Abuse Investigations by Gender  
FYs 2000-2004**



**D. Staff Sexual Abuse of Inmates Causes Serious Harm**

Staff sexual abuse of inmates is not a harmless or victimless crime, and it can present serious dangers to staff, correctional facilities, inmates, and society. Staff sexual abuse can undermine the security of institutions by corrupting staff members and increasing rivalry among inmates. Moreover, as found in many of the OIG’s sexual abuse cases, the subject’s crime often is not limited to sexual abuse. Nearly half of the subjects in OIG sexual abuse cases also smuggled contraband into prisons for the inmates with whom they had sexual relationships. The contraband ranged from “soft contraband” such as food, toiletries, cigarettes, and jewelry to “hard contraband” such as drugs and weapons. Many of these staff members helped inmates conceal contraband by alerting the inmates to unannounced searches or by storing the contraband with the staff’s own possessions.

Moreover, as former BOP Director Hawk Sawyer explained, staff sexual abuse of inmates can significantly harm inmates – the very people the federal government charges the BOP with protecting.<sup>11</sup> For example, according to one BOP psychologist, inmates may experience deep psychological and emotional trauma by being sexually abused in prison. Inmates also may suffer disciplinary actions for engaging in sexual

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<sup>11</sup> See *Addressing Staff Sexual Misconduct With Offenders, Remote Conference for Investigating and Preventing Staff Sexual Misconduct in a Corrections Setting* (U.S. Department of Justice National Institute of Corrections 2001).



relations with staff such as solitary confinement or undesirable transfers to another institution far from their families.

Staff sexual abuse also can expose the BOP and its staff to both civil and criminal liability. For example, the BOP paid \$600,000 to settle two separate lawsuits filed by inmates against the BOP because they had been sexually abused by BOP staff. In both cases, the BOP received allegations that a staff member was sexually abusing an inmate, but in order to investigate the allegations the BOP did not immediately remove the staff member from his post. As a result, the staff member abused the inmate again.

### **III. Penalties for Sexual Abuse of Inmates**

A critical deterrent to staff sexual abuse of federal inmates is effective prosecution and punishment for such actions. In our view, the federal penalties for staff sexual abuse need to be strengthened.

#### **A. Federal Law**

The federal penalties for staff members engaging in sex with inmates are contained in Title 18 of the United States Code (U.S.C.). A maximum penalty of life imprisonment can be imposed on staff members who cause an inmate to engage in a sexual act by using force; by threatening death, serious bodily injury, or kidnapping; or by administering intoxicants to the inmate. See 18 U.S.C. § 2241. The maximum penalty for causing an inmate to engage in a sexual act by using other kinds of threats, or for engaging in a sexual act with an inmate who is mentally or physically incapable of appraising the nature of the conduct, or declining participation in it, is imprisonment for 20 years. See 18 U.S.C. § 2242.

However, in cases that do not involve the use of force or threat of force, the maximum penalty for knowingly engaging in a sexual act with an inmate is the misdemeanor penalty of a maximum imprisonment for 1 year. See 18 U.S.C. § 2243.

The penalties for abusive sexual contact – as opposed to sexual abuse – follow a similar structure.<sup>12</sup> The maximum penalty for sexual contact by force, threat of force, or administering intoxicants to the

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<sup>12</sup> In essence, “sexual contact” is touching an inmate in sexual areas for a licentious purpose. “Sexual abuse” is engaging in a sexual act with any inmate, including sexual intercourse and oral sex. It includes sexual acts that are forced and unforced. See 18 U.S.C. § 2246.

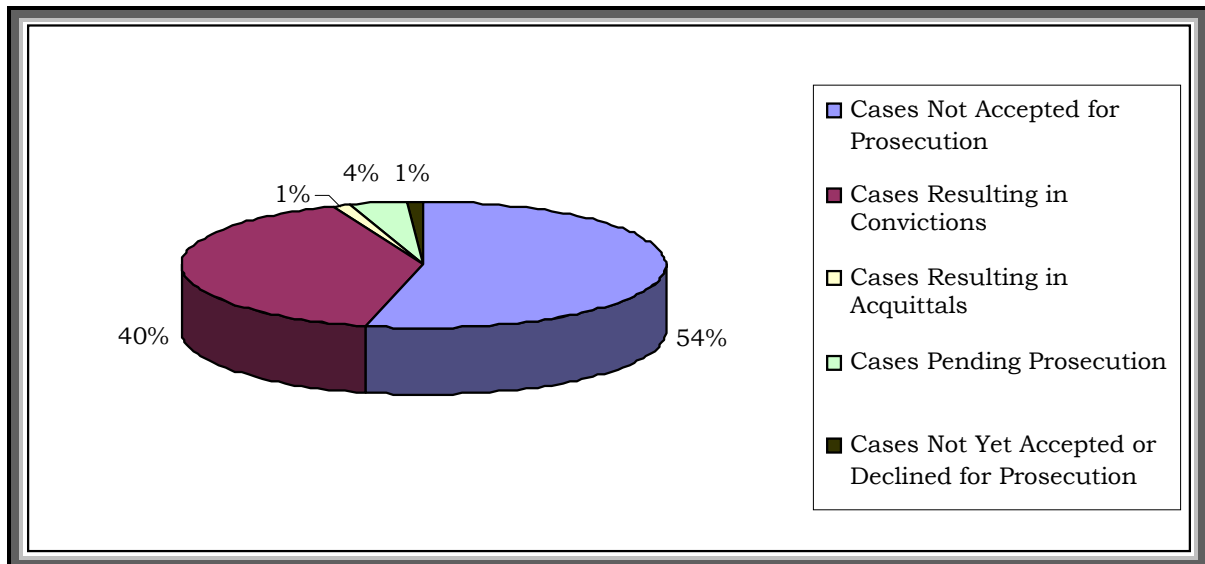
inmate is imprisonment for 10 years. See 18 U.S.C. § 2244 (a)(1). The maximum penalty for sexual contact by any other threat, or with an inmate who has mental or physical disabilities, is imprisonment for 3 years. See 18 U.S.C. § 2244 (a)(2). But in all other instances when force or threat of force is not used, the maximum penalty for sexual contact with an inmate is imprisonment for 6 months. See 18 U.S.C. § 2244 (a)(4).

### **B. Outcomes of OIG Cases**

According to OIG case statistics, the majority of sexual abuse cases investigated by the OIG do not result in prosecution. Between FYs 2000 and 2004, the OIG presented 163 sexual abuse cases for prosecution. Of these cases, 73, or 45 percent, were accepted for prosecution. Sixty-five of these cases, or 40 percent, resulted in convictions, and 6 of these cases, or 4 percent, are still pending prosecution.<sup>13</sup> Two of them, or 1 percent, have been presented for prosecution, but have not yet been accepted or declined. Eighty-eight cases, or 54 percent, were declined for prosecution.

The following graph depicts the outcome of OIG sex abuse cases presented for prosecution in FYs 2000-2004.

**Outcome of OIG Cases Presented for Prosecution in FYs 2000-2004**



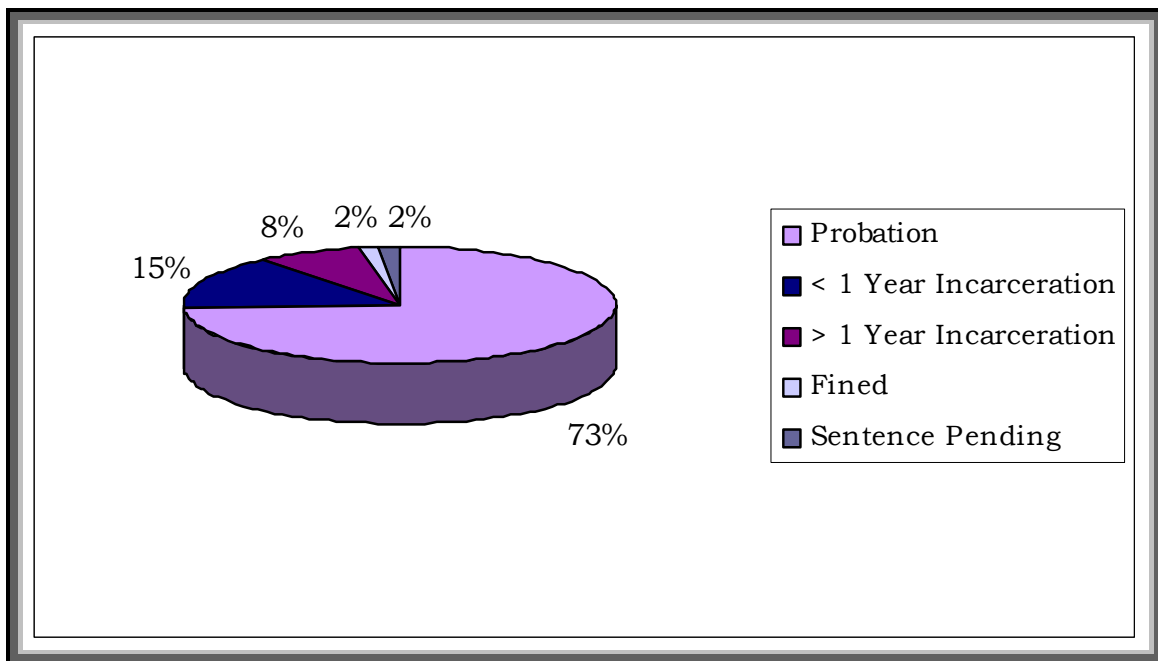
<sup>13</sup> “Convictions” includes convictions by juries, convictions by judges, plea agreements, and pre-trial diversions.

Of the cases declined in FYs 2000-2004, the majority were declined because of insufficient evidence. This often occurs because there is no physical evidence to corroborate inmates' allegations. The second most common reason why these cases were declined is because the offenses were only misdemeanors. In FY 2003, 65 percent of the cases presented for prosecution were declined because of insufficient evidence; 15 percent of the cases were declined because the offense was a misdemeanor. The remaining cases were declined because they did not occur in a BOP facility; the subjects resigned their employment; or the cases "lacked jury appeal," according to the prosecutors.

Even when prosecuted, the punishments for sexual abuse of inmates are not significant. Of the 65 subjects who were convicted of sexually abusing inmates, 48, or 73 percent, received a sentence of probation. Ten of them, or 15 percent, were sentenced to less than 1 year incarceration. Only 5 of them, or 8 percent, were sentenced to more than 1 year incarceration. One of them, or 2 percent, was required only to pay a fine, and another one's sentencing is pending.

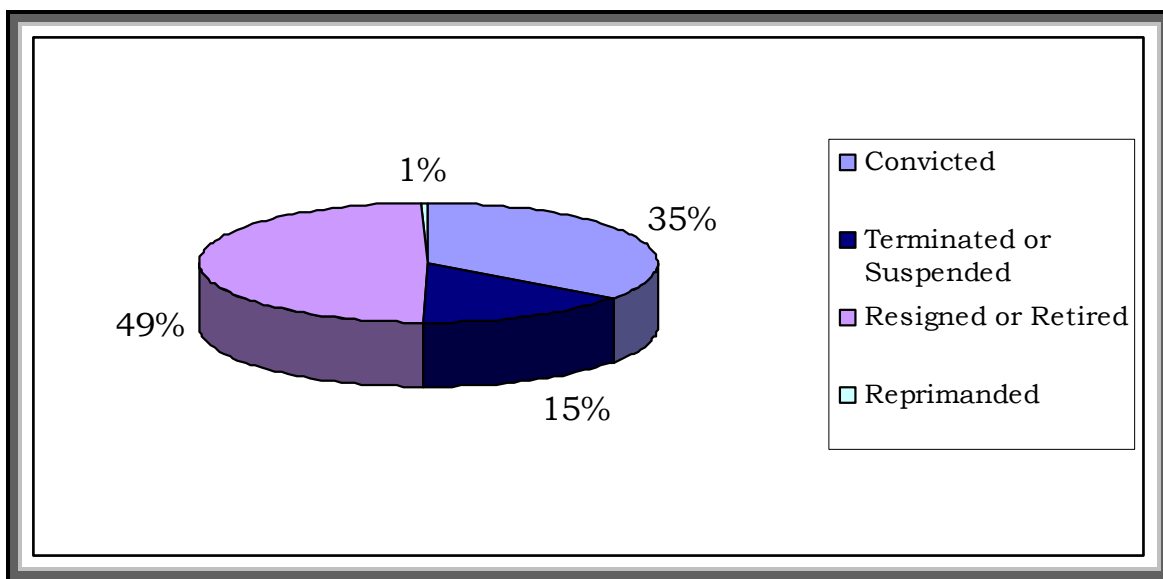
The following graph depicts the sentences received by subjects who were convicted of sexual abuse of inmates during FYs 2000-2004.

**Sentences Received by OIG Subjects Convicted of Sexual Abuse of Inmates During FYs 2000-2004**



More OIG sex abuse cases result in administrative outcomes rather than criminal actions. During FYs 2000-2004, 120 OIG sexual abuse cases had administrative outcomes. Twenty-eight of these subjects were terminated or suspended, 91 resigned or retired during investigation, and 1 was reprimanded.<sup>14</sup> The following graph depicts the percentage of subjects in OIG sexual abuse investigations during FYs 2000-2004 who were convicted, who were terminated or suspended, who resigned or retired during investigation, or who were reprimanded.

**Convictions and Administrative Outcomes in OIG Sexual Abuse Investigations during FYs 2000-2004**



While administrative actions, including termination, may seem substantial, these punishments often do not provide sufficient deterrence to staff sexual abuse of inmates. Moreover, the OIG has investigated staff sexual abuse cases in which prosecutors declined prosecution because the subject has resigned, retired, or was terminated, but the subject obtained a corrections job at a state or local facility and continued to sexually abuse inmates there.

**C. Examples of Sexual Abuse Cases Not Prosecuted**

OIG agents reported that they found that prison staff who sexually abuse inmates often do not believe they will be caught, and if they are

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<sup>14</sup> The subject who was reprimanded was not a BOP employee, but he supervised a BOP inmate who was on a work detail outside the prison.

caught do not believe they will be punished. Moreover, staff can generally conceal their sexual abuse because they are familiar with the prison and its operations, they control the prison environment, and they can arrange discreet encounters with inmates. In addition, OIG investigators find that, in some cases, other prison staff cover for correctional staff who commit sexual abuse by serving as alibis or lookouts. Moreover, staff know that inmates are reluctant to report sexual abuse, and that if inmates report sexual abuse they are unlikely to be believed because they are convicted criminals.

Importantly, even in many cases where there is sufficient evidence to prove that a staff member has sexually abused an inmate, the OIG has found that some prosecutors are reluctant to prosecute prison staff who do not use force or overt threats to obtain sex with inmates, often because the penalty is only a misdemeanor.<sup>15</sup>

The following are examples of OIG investigations of staff sexual abuse that were not prosecuted because the penalty was a misdemeanor:

- **Teacher Confesses to Sexually Abusing Inmate:** An employee of a Federal Correctional Institution intercepted a letter indicating that a contract teacher in the facility was having a sexual relationship with an inmate. The OIG substantiated the allegations, and the subject confessed to sexually abusing an inmate. However, the Assistant United States Attorney (AUSA) assigned to the case declined prosecution because, according to him, it was a “stupid sex case” that was only a misdemeanor and therefore a “waste of time.” The prosecutor asked the OIG agents, “Why do you people keep bothering us with these cases? It’s only a misdemeanor!”
- **Officer Confesses to Sexually Abusing Inmate:** A male correctional officer assigned to a U.S. Penitentiary was accused of sexually abusing several male inmates multiple times. One inmate alleged that the officer forcibly raped him three times. The officer confessed to sexually abusing one inmate and resigned his position with the BOP during the OIG’s investigation. The AUSA assigned to the case declined prosecution and stated it would not be an efficient use of United States Attorneys’ Office resources to prosecute the officer

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<sup>15</sup> In many cases, the OIG is only able to obtain prosecution of a staff member who sexually abused inmates if that staff member also committed a felony such as making false statements to the OIG during the investigation, which is punishable by a maximum sentence of 5 years’ imprisonment. See 18 U.S.C. § 1001.

for a misdemeanor offense since he resigned his position with the BOP.

- **Psychologist Sexually Abuses Inmate:** A female clinical staff psychologist assigned to a U.S. Penitentiary was overheard on the inmate telephone system discussing her sexual relationship with an inmate. The OIG opened an investigation, but the inmate and staff member refused to cooperate with the OIG. The staff member subsequently resigned from the BOP. The AUSA assigned to the case declined prosecution because the offense was only a misdemeanor and because he believed that the sexual relationship was not coerced and therefore was consensual.
- **Officer Confesses to Sexually Abusing Inmate:** An inmate incarcerated at an FCI reported to the OIG that she was having a sexual relationship with a BOP correctional officer. The inmate said the sexual activities had occurred at least 12 times. The officer initially denied the allegation. After a polygraph examination, he confessed to sexually abusing the inmate. The officer resigned his position with the BOP. The AUSA assigned to the case declined prosecution because the inmate was not coerced to have sex.
- **Maintenance Worker Confesses to Sexually Abusing Inmate:** The OIG received allegations that a BOP maintenance worker was observed engaging in sexual contact, on several occasions, with a female inmate at an FCI. Recorded telephone calls between the staff member and the inmate confirmed the sexual relationship. The inmate and staff member were both interviewed and confessed to having a sexual relationship. The staff member subsequently resigned his position with the BOP. The AUSA assigned to the case asked the OIG agent “why the OIG would arrest the maintenance worker if he had already resigned and the charge was only a misdemeanor?” The AUSA subsequently declined prosecution.
- **Education Technician Sexually Abuses Inmate:** The OIG investigated an allegation that an Education Technician assigned to an FCI engaged in a sexual relationship with an inmate. Both the employee and the inmate initially denied the allegations. In a subsequent interview, the inmate admitted to having a sexual relationship with the employee. When confronted with the inmate’s statement, the employee resigned her position with the BOP and refused to provide a statement.

The AUSA assigned to the case declined prosecution because it was only a misdemeanor.

- **Case Manager Has Sexual Contact with Inmate:** The OIG investigated allegations that a BOP Case Manager assigned to an FCI engaged in sexual contact with an inmate, introduced contraband into the institution, and engaged in other administrative misconduct, including unauthorized contact with an inmate's family members. The Case Manager denied the allegations; however, the OIG investigation developed evidence that substantiated all of the allegations. The Case Manager resigned her position with the BOP. The AUSA assigned to the case declined prosecution because it was a misdemeanor offense and because the Case Manager resigned her position.

## **D. State Laws**

### **1. Sexual Abuse**

During our review, we examined state laws on sexual abuse of inmates. We found that federal penalties for sexual abuse of inmates without force are relatively lenient compared to state laws. Unlike federal law, which imposes only a misdemeanor penalty for abuse without force or threat of force, 43 states impose penalties of greater than 1 year imprisonment for staff members who engage in unforced sexual acts with inmates.

For unforced sexual abuse of an inmate, 12 jurisdictions set the maximum sentence length at 5 years' imprisonment.<sup>16</sup> Eleven jurisdictions set the maximum sentence length at somewhere between 6 and 10 years' imprisonment,<sup>17</sup> and 8 jurisdictions set the maximum sentence length at more than 10 years' imprisonment, with Idaho setting the maximum sentence at life.<sup>18</sup> Twelve jurisdictions set the maximum

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<sup>16</sup> Alaska, Florida, Illinois, Massachusetts, Mississippi, North Dakota, Ohio, Rhode Island, Utah, Virginia, Washington, and West Virginia.

<sup>17</sup> Alabama, Arkansas, Connecticut, Hawaii, Louisiana, Maine, Missouri, New Jersey, New Mexico, Pennsylvania, and South Carolina.

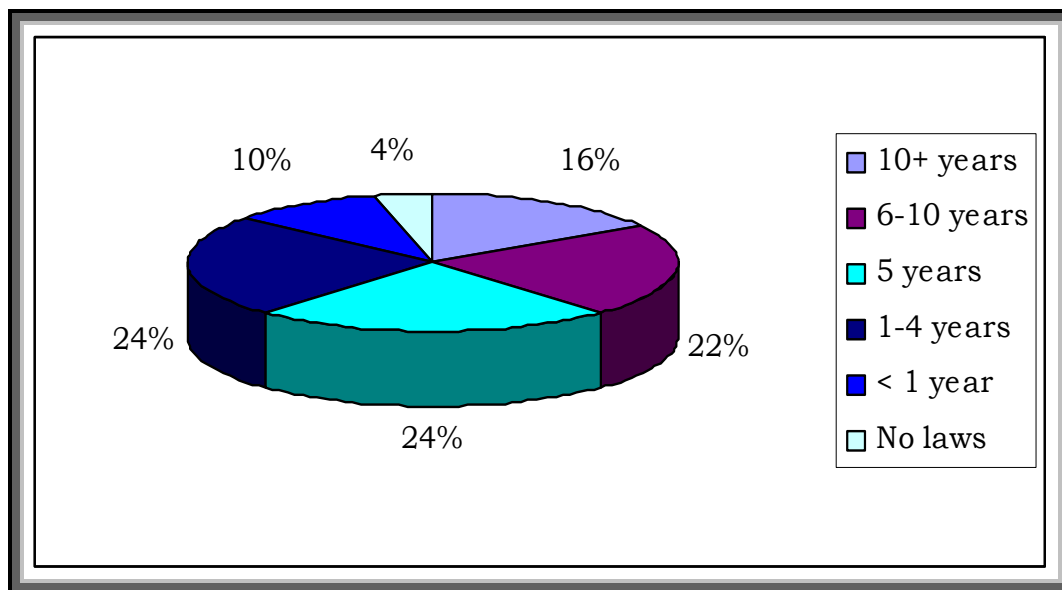
<sup>18</sup> Idaho, Michigan, Minnesota, Nebraska, North Carolina, Oklahoma, Wisconsin, and Wyoming.

sentence between 1 to 4 years' imprisonment.<sup>19</sup> The average maximum sentence length of these 43 jurisdictions is approximately 10 years' imprisonment.<sup>20</sup>

Only three states penalize unforced sexual abuse of inmates at the same level as the federal government (up to 1 year imprisonment).<sup>21</sup> Two states have a lighter sentence than the federal government, and two states do not have laws specifically criminalizing staff sexual abuse of inmates.<sup>22</sup>

Below is a graph comparing maximum sentences in all 50 states, as of 2004, for sexual abuse of inmates without force.

**Comparison of Maximum Sentence Ranges for Sexual Abuse of Inmates without Use of Force**



<sup>19</sup> Arizona, Colorado, Delaware, Georgia, Iowa, Indiana, Kansas, Maryland, Nevada, New York, South Dakota, and Texas.

<sup>20</sup> This average was calculated using 40 years as the numerical value for Idaho's maximum sentence of life imprisonment.

<sup>21</sup> Kentucky, New Hampshire, and Tennessee.

<sup>22</sup> Montana and California provide a maximum sentence of 6 months' imprisonment; Oregon and Vermont do not have laws addressing staff sexual abuse of inmates. However, the Vermont legislature is considering legislation that would make engaging in a sexual act with an inmate without force punishable by imprisonment for up to 5 years. See An Act Relating to Sexual Exploitation, H.0008, 2005-2006 Legislative Session (Vt. 2005).



## 2. Sexual Contact

As noted above, the maximum federal penalty for unforced sexual contact with an inmate is imprisonment for 6 months.<sup>23</sup> See 18 U.S.C. § 2244 (a)(4). Like unforced sexual abuse of inmates, this penalty is more lenient than most state penalties for the same offense. For unforced sexual contact with an inmate, 10 jurisdictions set the maximum sentence length at 1 year imprisonment,<sup>24</sup> and 8 jurisdictions set the maximum sentence length at somewhere between 1 to 4 years' imprisonment.<sup>25</sup> Seven jurisdictions set the maximum sentence length at 5 years' imprisonment,<sup>26</sup> 5 set the maximum sentence length at between 5 to 10 years' imprisonment,<sup>27</sup> and 3 set the maximum sentence length at more than 10 years' imprisonment.<sup>28</sup> Two states penalize unforced sexual contact with inmates at the same level as the federal government (up to 6 months' imprisonment),<sup>29</sup> and 15 jurisdictions do not have legislation specifically criminalizing unforced sexual contact with inmates.<sup>30</sup> Of the jurisdictions that criminalize unforced sexual contact with inmates, the average maximum sentence length is approximately 5 years' imprisonment.

Below is a graph comparing maximum sentences for unforced sexual contact with inmates in all 50 states as of 2004:

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<sup>23</sup> This does not include sexual contact by force, threat of force, or administering intoxicants to the inmate, or sexual contact by any other threat or with an inmate who has mental or physical disabilities.

<sup>24</sup> Alaska, Connecticut, Kentucky, Maine, New Hampshire, New York, Tennessee, Utah, Virginia, and Washington.

<sup>25</sup> Arizona, Colorado, Kansas, New Jersey, South Dakota, Texas, Georgia, and Nevada.

<sup>26</sup> Hawaii, Illinois, Massachusetts, Nebraska, North Dakota, Oklahoma, and South Carolina.

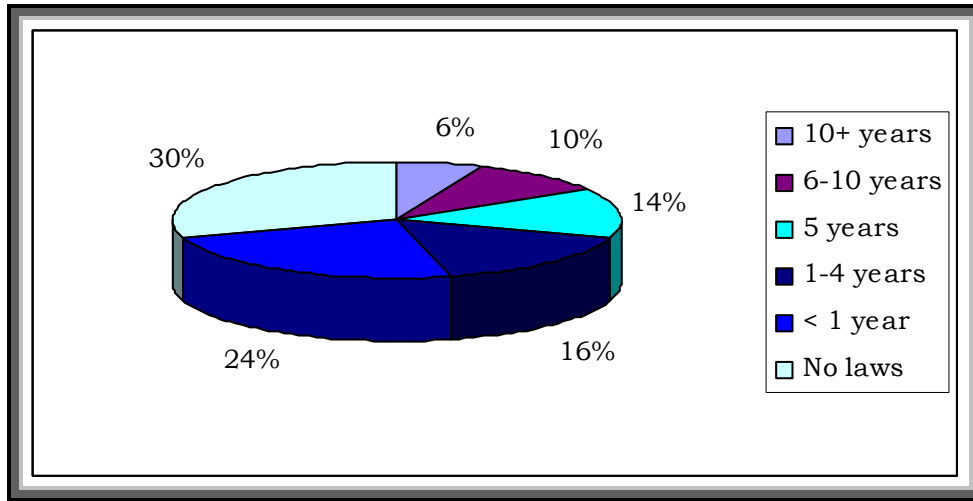
<sup>27</sup> Alabama, Louisiana, Minnesota, Missouri, and Pennsylvania.

<sup>28</sup> Michigan, Wisconsin, and Wyoming.

<sup>29</sup> California and Montana.

<sup>30</sup> Arkansas, Delaware, Florida, Idaho, Indiana, Iowa, Maryland, Mississippi, New Mexico, North Carolina, Ohio, Oregon, Rhode Island, Vermont, and West Virginia.

### Comparison of Maximum Sentence Ranges for Sexual Contact with Inmates without Use of Force



#### IV. Sexual Abuse in Contract Facilities

In addition to lenient federal penalties for sexual abuse of inmates, federal law does not cover sexual abuse of federal inmates held in contract facilities.

##### A. Federal Law

Over the past 25 years, the BOP has experienced significant increases in the number of federal inmates. Legislative enactments such as The Sentencing Reform Act of 1984 and subsequent sentencing guidelines caused the federal inmate population to more than double during the 1980s, from just over 24,000 in 1980 to almost 58,000 in 1989. As the federal government obtained increasing convictions in illegal drug and illegal immigration cases, the federal inmate population more than doubled again during the 1990s, reaching approximately 136,000 at the end of 1999. From 1999 to 2004, the federal inmate population increased 33 percent, reaching approximately 181,000 at the end of 2004. According to BOP Director Harley Lappin, the BOP estimates that the federal inmate population will increase to approximately 225,000 inmates by the year 2010.

To accommodate this rapid growth, the Department has entered into contracts with state and local governments and private commercial entities to house thousands of BOP inmates. At the end of 2004, more than 27,000 (15 percent) of all BOP inmates were confined in contract facilities.

However, the federal laws relating to sexual abuse and sexual contact with inmates, 18 U.S.C. §§ 2241-2244, do not apply to federal inmates in facilities under contract to the Department of Justice because these statutes apply only in the “special maritime and territorial jurisdiction of the United States or in a Federal prison.”<sup>31</sup> Courts have found that private facilities and halfway houses under contract with the Department to house inmates are not covered by these statutes because they are not encompassed in the language of the statute, which is limited to “federal correctional, detention or penal facilit[ies].”<sup>32</sup> Consequently, staff at contractor-owned and operated detention facilities who sexually abuse federal inmates cannot be prosecuted under federal law.

### **B. Examples of Sexual Abuse Cases Involving Federal Inmates That Were Not Prosecuted Because of Lack of Legal Jurisdiction**

Between FYs 2000 and 2004, 58 (or 17 percent) of the subjects investigated by the OIG for sexually abusing federal inmates were employees of contract facilities. However, the OIG has had difficulty obtaining prosecutions for contract employees who sexually abuse federal inmates incarcerated at contract facilities. The OIG has to rely on state prosecutors to prosecute these cases, but many state prosecutors focus their limited resources on prosecuting sexual abuse involving state, rather than federal, inmates. As a result, the OIG has identified instances of sexual abuse of federal inmates held at contractor facilities that go unpunished because of limitations in the current law’s coverage.

The following are a few examples of OIG investigations of staff sexual abuse that were not prosecuted because the abuse occurred at a contract facility:

- **Contract Officer Confesses to Sexually Abusing Inmate:** An OIG investigation developed evidence that a female correctional officer who worked at a facility under contract with the Department was engaged in a sexual relationship with a federal inmate housed at the facility. Both the officer and the inmate provided signed affidavits confessing they had a sexual relationship. An AUSA initially accepted the case for

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<sup>31</sup> See 18 U.S.C. §§ 2241-2244.

<sup>32</sup> See United States v. Gibson, 880 F.2d 795, 796 (4th Cir. 1989); United States v. Jimenez, 454 F. Supp. 610, 611 (M.D. Tenn. 1978).

prosecution, but later dropped the charges because courts have held that contract facilities are not considered federal prisons under federal law. The officer resigned her position at the facility, but never was prosecuted for her conduct.

- **Contract Employee Confesses to Sexually Abusing Inmate:** The OIG received allegations that a contract employee at a halfway house had a sexual relationship with an inmate resident. The OIG’s investigation developed evidence that substantiated the allegations. The employee subsequently confessed to engaging in sexual acts with the inmate resident on two occasions. The AUSA declined prosecution because, while the case “deserve[d] prosecution,” a halfway house did not meet the definition of a “prison.”

### C. State Laws

In contrast to federal law, sexual abuse laws in many states protect inmates under their supervision who are housed in facilities under contract with the states. A sample of these states’ laws is provided below:

- **California** – California’s law prohibits sexual abuse of inmates by employees, officers, agents, and volunteers of “a private person or entity that provides a detention facility or staff for a detention facility, or . . . a public or private entity under contract with a detention facility.”<sup>33</sup>
- **Georgia** – Georgia’s staff sexual abuse law covers all staff who supervise individuals who are in legal custody, regardless of whether the individuals are confined in a state institution or are on probation or parole.<sup>34</sup>
- **Massachusetts** – Massachusetts’ staff sexual abuse law explicitly covers staff members who are contractors. It also protects all inmates, regardless of whether they are confined in a state prison.<sup>35</sup>

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<sup>33</sup> Cal. Penal Code § 289.6.

<sup>34</sup> O.C.G.A. § 16-6-5.1.

<sup>35</sup> ALM GL ch. 268, § 21A.

- **Ohio** – Ohio proscribes sexual abuse of a prisoner confined in a detention facility by an employee of that detention facility.<sup>36</sup> According to Ohio law, “detention facility” includes “any public or *private* place used for the confinement of a person charged with or convicted of any crime in this state or another state or under the laws of the United States” (emphasis added).
- **Texas** – Texas law penalizes officials, employees, contractors, and volunteers at any correctional facility who sexually abuse inmates: “An official of a correctional facility, an employee of a correctional facility, a person other than an employee who works for compensation at a correctional facility, a volunteer at a correctional facility, or a peace officer commits an offense if the person intentionally [sexually abuses] an individual in custody.”<sup>37</sup> Under Texas Penal Code § 1.07, “correctional facility” includes “a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and a community corrections facility operated by a community supervision and corrections department.”
- **Virginia** – Virginia’s staff sexual abuse law encompasses all persons who are in a position of authority over persons in legal custody, including contract employees and volunteers.<sup>38</sup>

## V. Conclusions and Recommendations

Even when staff sexual abuse of inmates occurs without force or threat of force, it is a serious offense that harms inmates and can have a destructive effect on the safety and security of institutions. Sexual abuse of inmates can corrupt staff members, lead to the introduction of contraband, and expose the BOP and staff to civil and criminal liability. Staff sexual abuse of inmates also undermines rehabilitation efforts and increases the difficulty of inmates successfully re-entering society.

Despite the serious harm caused by staff sexual abuse of inmates, lenient penalties under current federal statutes hinder the deterrent effect of these laws. Most states impose significantly harsher penalties than the federal government for staff sexual abuse of inmates.

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<sup>36</sup> ORC Ann. § 2907.03.

<sup>37</sup> Tex. Penal Code § 39.04.

<sup>38</sup> Va. Code Ann. § 18.2-64.2.

Further, the law applies only to staff who sexually abuse federal inmates incarcerated in federal prisons and does not cover employees who sexually abuse federal inmates incarcerated in contract facilities. Many other jurisdictions' sexual abuse laws extend to contract facilities and protect inmates who are under the supervision of the state, even if they are not confined in a state facility. These states' laws provide far greater protection for inmates confined in contract facilities than federal law, which provides no protection at all for these inmates.

The OIG believes that the federal laws criminalizing staff sexual abuse of inmates should be strengthened to provide greater deterrence of staff sexual abuse of inmates and to cover employees and contractors who sexually abuse federal inmates. Accordingly, the OIG makes the following recommendations:

- 1. The Department should seek passage of legislation to increase the statutory maximum penalty for Sexual Abuse of a Ward to 5 years' imprisonment.**

Currently, the maximum penalty for sexual abuse of a ward (18 U.S.C. § 2243(b)) is 1 year imprisonment, a misdemeanor. We believe that the penalty for this crime should be increased to 5 years' imprisonment. Making this crime a felony would bring the punishment in line with most state statutes, would provide greater deterrence to staff, and would increase the likelihood that sexual abuse offenders will be prosecuted. Sample language to amend the statute is attached to this report as Appendix A.

- 2. The Department should seek passage of legislation that would increase the statutory maximum penalty for Abusive Sexual Contact to 2 years' imprisonment.**

As with Sexual Abuse of a Ward, the current maximum penalty for Abusive Sexual Contact (18 U.S.C. § 2244 (a)(4) and (b)) is a misdemeanor – 6 months' imprisonment. We recommend that the maximum penalty for this crime be increased to 2 years' imprisonment, making it a felony conviction. Sample language to amend the statute is attached to this report as Appendix A.

- 3. The Department should seek passage of legislation that would extend federal criminal jurisdiction to individuals who engage in a sexual act with a federal prisoner housed in a detention facility under contract to the Department.**

Employees in contract detention facilities who sexually abuse federal inmates should be covered by federal law. Extending the law to

employees who sexually abuse federal inmates in contract detention facilities would reduce and deter such sexual abuse and would increase substantially the likelihood that staff who commit such offenses will be prosecuted. Sample language to amend the statute is attached to this report as Appendix A.

# **APPENDIX A**



## OIG Proposed Amendments to Sexual Abuse Statutes

### I. Increasing the Penalties for Staff Sexual Abuse of Inmates

Sexual abuse of inmates without force or threat currently is a misdemeanor with a maximum possible sentence of 1 year for sexual intercourse and 6 months for sexual contact.

The OIG proposes that the statutory maximum sentence for Sexual Abuse of a Ward (18 U.S.C. § 2243(b)) be increased from 1 year to 5 years. We also propose that the maximum sentence for Abusive Sexual Contact (18 U.S.C. § 2244 (a)(4) and (b)) be increased from 6 months to 2 years. The following statutory revisions will accomplish those changes.

#### A. Sexual Abuse of an Inmate

Title 18 of the United States Code, Chapter 109A, § 2243(b), the section regarding penalties for sexual abuse of a ward without the use of force, threats, or intoxicants, should be amended by striking “one year” and inserting “five years”:

§ 2243(b) **Of a Ward.**— Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who is—

- (1) in official detention; and
- (2) under the custodial, supervisory, or disciplinary authority of the person so engaging;

or attempts to do so, shall be fined under this title, imprisoned not more than *five years*, or both.

#### B. Sexual Contact with an Inmate

Title 18 of the United States Code, Chapter 109A, § 2244(a)(4), the section regarding penalties for sexual contact with a ward without the use of force, should be amended by striking “six months” and inserting “two years”:

§ 2244(a)(4) **Sexual Conduct in Circumstances Where Sexual Acts Are Punished by This Chapter.**— Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in or causes sexual contact with or by another person, if so to do would violate—

(1) section 2241 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than ten years, or both;

(2) section 2242 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than three years, or both;

(3) subsection (a) of section 2243 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than two years, or both; or

(4) subsection (b) of section 2243 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than **two years**, or both.

Title 18 of the United States Code, Chapter 109A, § 2244(b), the section regarding penalties for sexual contact with a ward in all other circumstances, should be amended by striking “six months” and inserting “two years”:

§ 2244(b) **In Other Circumstances.**— Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in sexual contact with another person without that other person’s permission shall be fined under this title, imprisoned not more than **two years**, or both.

## **II. Extend federal criminal jurisdiction to detention facilities under contract to the Department.**

The Department of Justice has contracts with state and local governments and private commercial entities to house many federal inmates. However, the federal statutes involving sexual abuse of federal inmates, 18 U.S.C. §§ 2241-2244, apply only in the special maritime and territorial jurisdiction of the United States or in a federal prison. Federal inmates held in contract facilities are not covered by these statutes. Consequently, staff at contractor owned and operated detention facilities who sexually abuse federal inmates cannot be prosecuted under 18 U.S.C. §§ 2241-2244.

The OIG proposes that Title 18 of the United States Code, Chapter 109A, be amended by inserting the language “or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General” after the appropriate sections to ensure that federal inmates held in contract

facilities are covered by these statutes. For example, § 2241, Aggravated Sexual Abuse, would be amended as follows:

§ 2241(a) **By Force or Threat.**— Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison **or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General**, knowingly causes another person to engage in a sexual act—

(1) by using force against that other person; or

(2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

The same addition should be made after the phrase “in a Federal prison” in the following sections:

§ 2241, Aggravated Sexual Abuse, subsection (b) and the first sentence only of (c);

§ 2242, Sexual Abuse;

§ 2243, Sexual Abuse of a Minor or Ward, subsections (a) and (b); and

§ 2244, Abusive Sexual Contact, subsections (a) and (b).