

Tennessee Bar Journal
August, 2000

Article

***12 SEX IN PRISON**

Ronald G. Turner [\[FNa1\]](#)

Copyright © 2000 by Tennessee Bar Association; Ronald G. Turner

We all think about it. Society is obsessed by it. Can you imagine advertising without sex -- beer commercials without bikini-clad bimbos? Yet while we frequently joke about sex, we rarely talk about it seriously -- especially in conjunction with prisons. Except for the vague notion that homosexuality sometimes happens behind bars, we assume that once the gate clangs shut, inmates' sexuality and sexual needs do, too.

In this article I will bring sex out of the prison and into the open. I will begin with the fact that in the last decade the prison population in the United States has exploded and the number of women in prison has increased even faster. Next, I will look at the sexual ramifications of having more women in prison, including increased sexual abuse and harassment of both female inmates and guards. Next I will discuss prison homosexuality and the problem of AIDS in prison. Finally, I will review conjugal visits between inmates and their spouses and I will end with my personal thoughts on sex in prison. My conclusion is simple: Things must change.

TOO MANY WOMEN

The 1980s and early 1990s were a difficult time for U.S. correctional institutions. Prison officials were faced with inmate lawsuits and federal court orders demanding that overcrowding and poor conditions be addressed on one hand, and public demand for law and order resulting in mandatory and longer prison sentences, on the other. Unfortunately, despite falling crime rates serious overcrowding has continued in our jails and prisons. On Dec. 31, 1998, state prisons were operating at 13 to 22 percent over capacity and federal prisons were operating at 27 percent over capacity. [\[FN1\]](#)

One reason for overcrowding is an increase in the number of women being sent to prison.

Between 1980 and 1994 the number of women entering state and federal prisons in the U.S. increased by 386 percent, compared with an increase in men of 214 percent. [\[FN2\]](#) From mid-1998 to mid-1999 the number of male inmates in U.S. prisons increased 4.3 percent, while the number of female inmates increased 5.5 percent. At mid-year 1999 the total number of inmates in U.S. prisons was 1,860,000. Of these, more than 87,000 were women. [\[FN3\]](#)

LEGAL CONSIDERATIONS

Two threshold legal questions arise when considering sexual conduct by inmates in prison. First, is it against the law for inmates to engage in sex with guards or other inmates? Second, can inmates consent to such sexual conduct? The short answers to these questions are yes and no.

***13** The law in Tennessee is clear. Inmates have the right to be reasonably free from the threat of sexual assault under the Eighth Amendment's prohibition of cruel and unusual punishment. [\[FN4\]](#) Moreover, §41-21-241 of Tenn. Code Ann. provides that it is a Class A misdemeanor for a law enforcement officer or correctional officer to voluntarily engage in sexual contact or sexual penetration with a prisoner or inmate who is in custody at a penal institution. Under §39-13-501(6) "sexual contact" includes the intentional touching of another person's intimate parts or clothing, if such touching can be reasonably construed as being for the purpose of sexual arousal or gratification. Section 39-13-501(7) states that "sexual penetration" means sexual intercourse, anal intercourse, cunnilingus, fellatio, or any other intrusion into another person's body, but emission of semen is not required. Under §40-35-111(e)(1) these offenses carry a maximum sentence of 11 months and 29 days in prison and/or a fine not to exceed \$2,500.

In federal prisons it is a felony for a prison employee to engage in sexual intercourse or sexual contact with an inmate by

(Cite as: 36-AUG Tenn. B.J. 12)

using or threatening to use force. [FN5] The only defense available to the employee is to prove that he or she is married to the inmate. In addition to Tennessee 26 states and the District of Columbia have enacted statutes that make sexual intercourse or sexual touching of inmates by corrections employees a criminal offense. [FN6] The definition of the crime and the defenses permitted vary greatly from state to state. Some states require proof of penetration while others criminalize a much broader range of sexual acts. Other states require proof of coercion. In these states the inmate can consent to sex and thereby exonerate the employee.

Human Rights Watch (HRW) calls the present federal and state laws concerning sexual contact with inmates by prison employees a "hodgepodge of often inadequate and inconsistent protections." [FN7] They call for legislative changes in all states to recognize that a prison employee who engages in sex with a prisoner is committing a serious crime. They recommend that where the threat or use of force, or retribution is shown, the employee should be prosecuted for rape or sexual assault, which should be classified as a felony. They likewise recommend that the promise of privileges or goods for sex should be seen as a form of pressuring inmates, in light of the limited resources and privileges available to inmates.

HRW maintains that sexual activity between a prison employee and an inmate, even without coercion or the promise of goods or privileges, should be a crime. They note the power prison employees exercise over inmates concerning everything from early parole to daily work assignments. Because of this power, HRW holds that the victim's alleged consent should never be available as a defense. [FN8] This is similar to one writer's argument that women cannot meaningfully consent to sex with anyone who holds a position of power over them (such as therapists, doctors, lawyers, teachers, ministers and so forth) due to the nature of the relationship: the strong emotional and psychological influence these persons have over them. In short, they have "control" over the women even though, at the time, the women would not acknowledge it. Accepting this argument, it seems clear that corrections officers who have overt, physical control over women should likewise not be permitted to *14 claim that inmates have consented to sexual activity. In this regard, following a major shakeup in California after 40 allegations of sexual misconduct at various women's prisons, Cal Terhune, director of the Department of Corrections, issued a memorandum to all employees stating that "there is no such thing as a consensual sexual relationship between staff and inmates under California law." [FN9]

ABUSE BY GUARDS

While it is difficult to find accurate data on the number of incidents of sexual harassment, sexual abuse and rape of female inmates by prison employees, there can be little doubt that as the number of females in prison has increased, the number of such incidents has likewise increased. Between 1995 and 1998 a federal study found that 506 allegations of sexual misconduct were filed in California, Texas, the District of Columbia and the federal prisons system. [FN10] Likewise, a study by Amnesty International released in 1999 documented 96 such incidents since 1992. [FN11]

A study by HRW published in 1996 details numerous examples of sexual abuse of women inmates in California, Georgia, Illinois, Michigan, New York and the District of Columbia. [FN12] More than 60 inmates and former inmates were interviewed by HRW from 1994 through 1996. Their report begins: "... being a woman prisoner in U.S. state prisons can be a terrifying experience. If you are sexually abused, you cannot escape from your abuser. Grievance or investigatory procedures, where they exist, are often ineffectual and correctional employees continue to engage in abuse because they believe they will rarely be held accountable ... Few people outside the prison walls know what is going on or care if they do know. Fewer still do anything to address the problem." [FN13]

HRW investigators found not only the use of actual and threatened force, but the use by the guards of their "near total authority" over the inmates to provide or deny goods and privileges to compel inmates to have sex, or to reward them for having done so. In some instances, they found that sexual contact occurred without the use of force or a promise of reward. They found that in addition to actual sexual relations, male officers often take advantage of routine activities such as mandatory pat-frisks and room searches to "grope women's breasts, but-tocks and vaginal areas and to view them inappropriately while in a state of undress in the housing or bathroom areas." [FN14] Some male guards engage in verbal abuse and degradation of female inmates. While HRW found that all women are vulnerable to such sexual misconduct, first-time inmates and the young and mentally ill are particularly vulnerable. Likewise, lesbian, pregnant and transgendered inmates are often singled out for abuse by guards.

HRW notes one reason for the high incidence of such misconduct in the U.S. is that contrary to international rules, the United States allows male guards to hold "contact" positions over female inmates. These are positions in which the guards serve in constant physical proximity to the inmates. Under the Civil Rights Act of 1964, employers in the U.S. cannot deny a person a

(Cite as: 36-AUG Tenn. B.J. 12)

job solely on the basis of gender, unless the gender is "reasonably necessary" to the performance of the specific job. Federal courts have generally held that gender is not reasonably necessary to the performance of the job of a prison guard. Thus, male guards can work in female prisons, and vice versa. By some estimates, male officers now outnumber female officers in women's prisons by 2 or 3 to 1. However, the Civil Rights Act does not permit male guards to abuse female inmates, sexually or otherwise. Likewise, the 8th Amendment's prohibition of cruel and unusual punishment has been interpreted to provide inmates with a minimal right to privacy. And many states have enacted statutes making sexual abuse of an inmate by a prison employee a criminal offense -- generally a felony for serious abuse.

A problem frequently faced by inmates is retaliation if they report abuse. HRW found that in many cases the officer charged retains authority over the inmate and frequently gets back at her by issuing "write-ups," denying her "good time," which can be applied toward parole, or by placing her in administrative segregation (solitary confinement). [FN15] The report notes the inherent unfairness of this retaliation. Moreover, the report notes that there is frequently no independent investigation of charges of sexual abuse. In short, the fox is guarding the chickens! Likewise, except for Georgia, the research by HRW found no reliable centralized database of sexual misconduct, making it virtually impossible to monitor or remedy.

HRW claims that the Prison Litigation Reform Act of 1996 has "compromised the ability of any entity, private or public, to combat sexual misconduct in custody." [FN16] They reach this conclusion based on the fact that the Act invalidates any settlement by parties to a pending lawsuit that challenges abusive prison conditions, unless the settlement includes a finding that the conditions violate federal law. To avoid admitting such violations, prison officials often settle these lawsuits without a trial and the terms of the settlement remain private.

Types of abuse suffered by female inmates and reported by HRW include a variety of indignities including vaginal, anal and oral raping of female inmates. In addition, the investigators found examples of less drastic abuse. For example, one inmate reported that "prior to taking a shower she had to strip naked, bend over at the waist and spread her cheeks, in the full view of all staff, including men and women." [FN17] In addition, HRW found numerous examples of male guards watching female inmates shower, using the toilet, dressing and receiving medical exams, including gynecological exams. [FN18]

HRW found that frequently the abuse is gentle, based on the promise of a reward. Female inmates often see nothing unusual nor abusive in this. In light of their prior histories of sexual abuse, many simply accept this practice as a condition of favorable treatment. One inmate reported that an officer would "pop" or release certain inmates' doors while other inmates were at breakfast. The inmate would then go to the officer's *15 room or meet him in the laundry room for sex in exchange for extra soap and other gifts.

Sexual abuse of women in prison is not new. In the 19th century intake procedures for new inmates included a complete physical. The inmate was required to completely undress and submit to an examination by male guards or trustees who measured their bodies and recorded identifying marks in minute detail, such as "large burn on left thigh, birthmark on inside left leg ... breasts abnormally large." [FN19] As one inmate from that era said, "I am not prudish ... but it took all my poise and self-control to go through it without breaking. The men ... were kindness and sympathy and courtesy itself, but they could not rob it of its trying effects." [FN20]

The emotional effect of such humiliation on female inmates has been described by a male warden: "Being in jail is harder on a woman than a man. Men ... are used to being around each other naked ... Women are taught to undress in private and be modest ... She comes in here and we make her bathe in front of everyone. Right off that gives them mental problems that are hard to handle. The initial shock is the toughest thing. That sort of thing can break your spirit." [FN21]

While progress has been made to legally proscribe these situations, statutes remain in effect that can be problematic. For example, under §41-21-107(1) of Tenn. Code Ann. the warden is required to "take a complete description" of all newly admitted inmates, and under §41-21-108 the warden is required to see that the "baggage and person" of all newly admitted inmates are "carefully searched." The security rationale for these requirements is obvious. Unfortunately, so is the potential for abuse.

While younger adults and first-time inmates are frequently singled out for abuse, even more egregious is the abuse of juveniles. In 1999 a two-year investigation was concluded of Ventura School, a juvenile correctional facility in California for 732 boys and girls with a staff of 400. Fifteen employees were fired or forced to resign, after investigators concluded that five had sex with inmates and 10 had established "inappropriate relationships" with both male and female wards by bringing them food, magazines and other gifts. Both staff members and female wards at Ventura agreed that the work environment is

(Cite as: 36-AUG Tenn. B.J. 12)

difficult for the staff, who must "walk a narrow line in an institution occupied by streetwise criminals who are both defenseless and manipulative." [FN22] Even wards tend to see other wards who have sex with employees as not only "victims, but also as realists who spend the only currency they have left -- their sexuality -- to obtain gifts or favors." One female ward noted that her fellow inmates claim that they "couldn't understand how somebody could do that to them. They were like a victim. But in this place it's hard to believe everything you hear." [FN23] Similarly, the assistant superintendent said, "You're teaching youths who are violent, streetwise and sophisticated. They know how to manipulate people. Probably the simplest characteristic is that most of these wards believe in getting over on you." [FN24]

Ironically, despite these problems, education programs are up at Ventura. One hundred wards recently received high school diplomas and Ventura has been accredited by a national juvenile prisons association. Brad Gardner, the former media arts teacher who faces criminal charges, was called a "great teacher" by many students. One student said Gardner "believed in rehabilitation more than anyone at that institution." Gardner himself said that he "wanted to help young people get away from lives of crime and realize there's hope and there's a future." [FN25]

SAME-SEX SEX

In *The Prison Lesbian: Race, Class and the Construction of the Aggressive Female Homosexual 1915-1965*, [FN26] Estelle B. Freedman traces the development of lesbianism in U.S. prisons through the 1910s, '20s and '30s, outlining its racial overtones in great detail. As women's prisons developed and became racially integrated, lesbian relationships by interracial couples increased. The scientific literature available on the subject during those years portrayed African-American women as sexual aggressors preying on innocent white, heterosexual inmates who succumbed to their power. Freedman notes that lesbianism increased during World War II because of prison overcrowding and the requirement that inmates share cells.

Following the War and into the '50s the phenomenon of lesbianism in prison was taken on as a cause by McCarthyites who saw it as part of a communist plot, and by Hollywood that exploited it in such movies as "Caged." This movie portrayed older female inmates fighting for the attention of a young, new arrival. In addition, *True Confessions* magazine sensationalized accounts of "Love-Starved Girls in Reform School." [FN27] Predictably, politicians began pushing for tighter control of lesbianism in women's prisons. In addition, psychological weapons were brought to bear. In 1959 the Massachusetts Reformatory for Women began presenting lectures on lesbianism to young inmates warning them that it can never lead to happiness. [FN28]

More tolerant approaches to both lesbianism and male homosexuality in prison appeared in the 1970s. In 1977 *Conjugal Visits in Prison* was published, arguing that homosexuality in prison, as in any single-sex institution, is inevitable. [FN29] However, the author noted that a strong motivation for homosexual activity in prison is not simply sexual release. He observed that social, psychological and emotional needs are also involved, as men need closeness with other human beings. He observed that prisons "make no real allowance for the tension that results from idleness, monotony and boredom all exacerbated by the uncontrollable accumulation of sexual energy. The inevitable result is homosexual assault and rape on a scale that has only recently begun to be documented." [FN30]

Some writers have observed the differences in homosexual activity between male inmates and female inmates. In *Sex and Supervision*, the author notes that male homosexual activity is often characterized as "aggressive, predatory and ... violent" while female activity is more often "endemic but consensual." [FN31] In men's prisons homosexual rape is often viewed as acceptable while consensual gay relationships are not. One the contrary, in women's prisons rape is almost unheard of but consensual relationships are common. [FN32] Lesbians in prison frequently engage in "wedding ceremonies" and form "extended families." [FN33]

It is not uncommon for heterosexual female inmates to become involved in lesbian relationships while in prison. Dubbed "players," they are looked on with disdain by many lesbians. One player poignantly expressed her sexual experience in prison: "There's a difference between what I feel like when I do something with a girl from what it felt like outside when I did something with a man. When I was with my man outside, I felt big and strong and like a woman ... and like soft and full. But inside this place, when I do something with a girl, usually I feel like a little girl and someone's comforting me ... It's not really a sex thing ... All you know is it feels good." [FN34]

While homosexual activity in prison often lessens sexual tension, it can also lead to problems. Arguments between female lovers often lead to fights in women's prisons, while men are more prone to fight to protect their homosexual lovers from attack by other male inmates. [FN35] In describing the level of overt sexual activity in his institution, a male officer in a

(Cite as: 36-AUG Tenn. B.J. 12)

women's prison says there is kissing, hugging and handholding, nothing it is virtually impossible to write up every violation of the rules against such behavior.

Beyond the sexuality provided by a same-sex relationship is the intimacy, friendship, companionship and love it provides. One writer says that more research needs to be done to compare the way men and women form "supportive bonds" in prison, but she quotes one female inmate, "I think there is some difference between the way women bond with each other in prison and the way men bond ... but I know that it happens in both populations. And I believe it is what allows both men and women to survive prison with at least a little bit of their emotional beings intact." [FN36]

AIDS

A predictable consequence of over-crowding and sexual activity in prison has been an increase in the incidence of the HIV virus, AIDS and other sexually transmitted diseases (STDs). [FN37] While this increase can also be attributed to injection drug use and tattooing in prison, it has been observed that "correctional populations have the highest rate of HIV infection of any public institution." [FN38] While the rate of HIV-positive inmates dropped from 2.2 percent of all inmates in 1996 to 2.1 percent in 1997, the rate of HIV-positive female inmates was 3.5 percent! And the rate of AIDS in prison was 5.5 times greater in prison than in the general population in the U.S. [FN39]

HIV-negative inmates have no constitutional nor statutory right to be segregated from inmates who are HIV-positive. [FN40] Likewise, prison officials have no obligation to institute wholesale AIDS testing among inmates. [FN41] However, the Tennessee General Assembly has adopted several statutes specifically pertaining to AIDS in prison, including:

- (i) Section 42-51-101 of Tenn. Code Ann., which requires the warden to provide training in "universal precaution from bloodborne pathogens for all employees at risk for potential occupational exposure" thereto, including but not limited to HIV/AIDS and hepatitis B.
- (ii) Section 41-51-102, which requires the warden to test an inmate who may have exposed a prison employee, contract employee or visitor to such *24 bloodborne pathogen, with or without the inmate's consent. The warden is required to disclose the results of such testing to the individual who may have been exposed.
- (iii) Section 41-51-103, which requires the warden to inform funeral personnel who are sent to collect the dead body of an inmate known to be infected by a bloodborne pathogen of such infectivity.
- (iv) Section 41-21-107(5), which requires mandatory HIV testing of inmates under the age of 21, with or without the inmate's consent. The results of such testing are not a matter of public record.

The cost of medical care for HIV-positive inmates is staggering. Because of the enormous cost of treatment for HIV/AIDS and other STDs, some writers have suggested that prevention should be the priority in prison. However, since inmates constitute a "marginalized" population, invisible to most of society once they have been removed from the headlines and sent to prison, finding effective means and political support for prevention has proven difficult. Generally, condoms and clean hypodermic needles are not available to inmates. A consideration of the ethical ramifications of providing them of inmates (free or for a fee) is beyond the scope of this article.

COED PRISONS

One development in recent years that has increased the potential for heterosexual activity in prison is coeducational correctional facilities. In the early 1970s facilities segregated by sex came to be viewed as an example of gender inequality, so the push for coed prisons began. In 1971 a "co- corrections" facility with separate buildings or cottages for men and women was built in Ft. Worth, Texas. By 1990 a number of co-corrections facilities had been built, and 45 percent of them housed males and females in the same building. [FN42] Actually, this was a move back to the past, as prisons were originally constructed to house both men and women, usually in one large room. [FN43] The first prison exclusively for women was built in the 1870s.

The purported advantages of coed prisons include reducing the dehumanizing effects of confinement by permitting friendships between male and female offenders; reducing unwanted homosexual advances; protecting weaker inmates who are vulnerable in same-sex institutions; creating a more "normalized" atmosphere; economies of scale; and equality for men and women -- particularly housing female inmates closer to home, which is often difficult in states with limited numbers of women's institutions. [FN44]

Whether these goals have been satisfied is subject to debate. However, one writer concludes that "it is apparent ... that

(Cite as: 36-AUG Tenn. B.J. 12)

co-corrections has done little to make things better for imprisoned women and they may, in fact be worse." She notes that traditional gender roles continue to be followed in coed facilities and that men appear to be treated better in terms of receiving furloughs and education programs. She also notes that sexual activity (both homosexual and heterosexual) continues in coed facilities. [FN45] Her concerns are echoed by others [FN46] who note that prostitution occurs in coed facilities and that such facilities have a higher cost due to the increase in staff needed to monitor sexual activity. That writer likewise claims that women inmates are generally less mature than men and tend to disrupt men's rehabilitation. [FN47]

CONJUGAL VISITS

Inmates have no absolute constitutional right to receive visitors. [FN48] Thus, the privilege of receiving visitors is generally subject to the discretion of prison officials and the denial of "contact" visits is not unconstitutional. [FN49]

Notwithstanding the lack of constitutional protection for visits with inmates, at the beginning of 1993, 17 states permitted conjugal (sexual) visits between inmates and their spouses. [FN50] The lack of widespread support for conjugal visits in the U.S. is contrary to many other countries that have a "less puritanical and hypocritical attitude about sex and/or a greater emphasis on the cultural value of the family as a primary and vital social unit." [FN51] Countries that permit conjugal visits include Sweden, Denmark, Russia, India, Pakistan, the Philippines, Mexico, Brazil, Canada, Chile, Costa Rica, Guatemala, Japan, Peru, Poland and Venezuela. [FN52] Many of these countries view conjugal visits as a basic human right, not a privilege.

In Mississippi conjugal visits have been permitted since 1918. The visits are held every other Sunday for a four-hour period. Several 8- x 10-foot "red houses" are set up for the visits scattered throughout the 21,000-acre site of the state penitentiary. The houses are furnished with beds, tables and mirrors. Children also visit and are watched by camp personnel while the inmates and their spouses enjoy some privacy. All inmates are eligible to participate regardless of the nature of their original offense or disciplinary problems inside the prison. As one prison employee said, "I don't know of anything that's more important. It's a touching sight to see a man and his wife greet each other on visiting day. I'd hate to have to tell my men that conjugal visiting was going to *26 stop." [FN53]

Proponents of conjugal visits note that the benefits are emotional as well as sexual. One writer proposes that "what a person really wants from a sexual experience is an interpersonal relationship. He wants to prove that he is desirable and that he is able to evoke a response from another person. In short, he wants to demonstrate that he is adequate as a person." [FN54] He goes on to say that "at least as important as the sexual gratification itself is a man's ability to maintain an image of himself as someone important to others, a need totally eradicated in the prison environment." [FN55]

Dr. Robert Shelton, chief of psychiatry for the Texas Department of Corrections, says, "conjugal visitation could be instituted in many prison settings without disruption of proper procedures and with a lessening of tension and frustration. Complete isolation of men and women from all sexual activities of a heterosexual nature is completely unrealistic and results in ... hostile, aggressive and sometimes dangerous behavior toward other inmates and prison personnel. Maintenance of some family communication and integrity by the inmate's being with his wife and children would certainly lessen the high number of divorces which occur after a man goes to prison." [FN56]

Even without conjugal visits many inmates and their spouses find ways to be sexually intimate in visitation settings. Sexual contact in visiting rooms ranging from fondling to intercourse is not uncommon. [FN57] While many wives resent the lack of privacy, some report that an atmosphere of courting has returned, and their relationship is actually better than it was prior to imprisonment.

Problems in resuming sexual relations after release are likewise not uncommon. As one wife reported, when her husband received a 48-hour furlough for Christmas, they stayed at a Holiday Inn, but "we found that we couldn't sleep together in the same bed. He was in jail for so long that he wasn't used to sharing a bed. We wanted twin beds because we were not used to sleeping together ... We laughed about that." [FN58]

While convicted inmates have no legal right to conjugal visits, pre-trial inmates may. The standard for evaluating the constitutionality of restrictions imposed upon pre-trial detainees is whether such restrictions amount to "punishment" of the detainees. [FN59] An argument can be made that depriving a married pre-trial detainee of sexual relations with his or her spouse constitutes punishment, particularly if the detainee is incarcerated for an extended period of time prior to trial. While no cases have been found supporting this argument, and while obvious counter-arguments, (such as the lack of appropriate

(Cite as: 36-AUG Tenn. B.J. 12)

facilities for such visits) come to mind, it would be interesting to see how the courts would respond to this argument.

FEMALE GUARDS

Women in prison include not only female inmates but employees. While *27 female inmates face potential abuse and harassment from male guards, female employees face abuse and harassment from male inmates, male co-workers and male supervisors. While men have historically worked in women's prisons, the reverse is a recent development. The changes in the law that opened more opportunities for men to work in women's prisons likewise provided the chance for women to work in men's prisons. In 1969 only 12 percent of the employees in corrections were women. By 1990 this number had increased to 43 percent. [FN60] In 1978 men represented 17 percent of the officers in women's prisons, but by 1988 they represented 35 percent. [FN61] Originally the primary concern for women working in men's prisons was safety. Between 1978 and 1988 this shifted to include concern for the privacy of the male inmates, as well. [FN62]

One writer offers female employees working in men's prisons advice on gaining the respect of male inmates and on avoiding sexual harassment from both inmates and male co-workers. He recommends that female employees interact with inmates in a straightforward manner; develop a reputation for fairness and impartiality; dress appropriately; be prepared for initial negative reactions; maintain a professional distance from inmates; deal with conflicts decisively; build positive relationships with male coworkers; develop a support network of other women in the organization; keep an open mind; do their job; and keep their own mental health in good repair. [FN63]

While actual sexual abuse of female employees by male co-workers is rare, sexual harassment (in violation of federal law and the regulations of most institutions) continues. Such harassment can range from male supervisors giving female subordinates bad work assignments, to constantly making comments on the employee's physical appearance. [FN64] One female guard said, "Every day I wake up and ask myself if I can face another day. It's not the work, it's not the danger, it's not the inmates -- it's the attitude of the male officers." [FN65]

Theories explaining such harassment by co-workers include exploitation of power over those less powerful; the belief by some men that women simply have no business working in men's prisons; racial prejudice by some white males; the traditional conservative structure of the law enforcement subculture that requires unquestioning respect of one's supervisors; and the fact that the criminal justice subculture has traditionally been an "old boy network." [FN66]

Despite the risk of harassment and abuse, most guards (both male and female) prefer to work with male inmates. They find working with males easier. In addition, female guards report that most male inmates show them more respect than female inmates.

STRIP SEARCHES

One area of corrections that is fraught with potential for sexual abuse is strip searches. To combat the smuggling of contraband (generally drugs) into jails and prisons, the law permits body cavity searches of both male and female inmates, employees and visitors. The psychological effect of such searches has been noted by the 6th Circuit: "A strip search, regardless of how professionally and courteously conducted, is an embarrassing and humiliating experience." [FN67]

Section 41-1-102(d)(1) of Tenn. Code Ann. requires periodic routine searches of employees for contraband through the use of dogs, magnetometers and pat-down searches by a person of the same sex. If reasonable suspicion arises that contraband exists, the highest officer present in the institution may authorize a strip search or other body search more intrusive by an officer of the same sex in a private setting. However, the court in Daugherty held that a strip search of a visitor based solely on an anonymous letter and the uncorroborated allegation of a corrections officer was unreasonable and violated the Fourth Amendment. The court noted that the search in question revealed no contraband; the inmate had no history of drug involvement; and the visitor/spouse had been coming to the prison for an extended period without incident.

CONCLUSION

In 1985 we incarcerated 500,000 people in the United States. By 1995 that number had grown to more than 1 million and we are fast approaching 2 million. [FN68] Our jails and prisons are literally bursting at the seams!

Do we need to lock up violent law-breakers? Certainly. Does society need to be protected from people who commit violent

(Cite as: 36-AUG Tenn. B.J. 12)

acts? Obviously. But many inmates enter prison nonviolent and they leave filled with violence, anger and hate. I submit that this is a travesty -- the ultimate failure of our correctional system. I further submit that depriving inmates of the opportunity to express their sexuality with their spouses significantly contributes to this problem.

I believe that tastefully controlled conjugal visits between inmates and *28 spouses should be implemented in all states. Comments by those familiar with such visits show that the visits touch not only sexual needs, but emotional needs, as well. Through the visits inmates retain a sense of dignity -- a sense of their "humanness." While many taxpayers and politicians will argue that deprivation of sex is merely part of the punishment inmates bring on themselves, I submit that if we are to successfully return inmates to the outside, we must begin rebuilding their sense of self-worth while they are inside.

We are sitting on a powder keg in this country. When we force inmates into boring idleness day after day; when we isolate them from other human contact 23 out of every 24 hours; and when we pretend their sexual energy magically goes away upon conviction, we are kidding ourselves. We are adding powder to the keg, waiting for the explosion. We better be ready. It will be on our hands.

MORE REFERENCES

- Butler, Anne M., *Gendered Justice in the American West: Women Prisoners in Men's Penitentiaries, Urbana and Chicago, Ill.*: University of Illinois Press, 1997.
- "Drug War Battle Fatigue," *American Bar Association Journal*, December 1999, page 112.
- "15 Employees at Juvenile Prison are Forced Out in Sex Scandal," *The Los Angeles Times*, June 15, 1999, page 2.
- Miller, Susan L. (editor), *Crime, Control and Women: Feminist Implications of Criminal Justice Policy*, Thousand Oaks, Calif.: Sage Publications Inc., 1998.
- Nelson, James B., and Longfellow, Sandra P. (editors), *Sexuality and the Sacred*, Louisville, Ky.: Westminster/John Knox Press (1994).
- Rutter, Peter, *Sex in the Forbidden Zone*, New York, New York: Ballantine Books, 1989.
- "Women in Prison Victims of Violent Abuse," *USA Today*, Arlington, Va., March 4, 1999, page 05 A.

[FN1]. **Ronald G. Turner is of counsel with the law firm of Neal & Harwell** in Nashville. He graduated magna cum laude from the University of Central Florida, received his law degree from Vanderbilt Law School and is assistant professor of criminal justice at Cumberland University in Lebanon. He serves on the Metropolitan Council of Nashville and Davidson County.

[FN1]. Chen, Hans H., "U.S. Prison Population Hits All-Time High," *APBNews.com*, April 2000.

[FN2]. *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons*, Human Rights Watch. New York: Yale University Press, 1996, p. 17.

[FN3]. Chen.

[FN4]. See *Grubbs v. Bradley*, 552 F. Supp. 1052 (M.D. Tenn. 1982) and *Carver v. Knox County*, 753 F. Supp. 1370 (E.D. Tenn. 1989).

[FN5]. *All Too Familiar*, p. 38.

[FN6]. *Id.*, p. 40.

[FN7]. *Id.*, p. 42.

[FN8]. *Id.*, p. 43.

(Cite as: 36-AUG Tenn. B.J. 12)

[FN9]. "State Investigates Sex Crimes at Women's Prisons," The Los Angeles Times, Sept. 23, 1999, p. 3.

[FN10]. "Sex Abuse of Women Found in Prisons: GAO Study Faults D.C. Corrections," The Washington Post, July 22, 1999, page B 04.

[FN11]. Zimmer, Lynn E., Women Guarding Men, Chicago, Ill.: The University of Chicago Press, 1986, p. 05A.

[FN12]. All Too Familiar, p. 1.

[FN13]. Id.

[FN14]. Id., p. 2.

[FN15]. Id., p. 6.

[FN16]. Id, p. 37.

[FN17]. Id., p. 84.

[FN18]. Id., p. 86.

[FN19]. Engvall, Robert P., "Can Justice and Economic Efficiency Coexist Peacefully: A Look at the Potential Impact of Further Privatization within the Correction Industry," Journal of Negotiations in the Public Sector. Baywood Publishing Company Inc., vol. 26, issue 3, 1997, page 134.

[FN20]. Id.

[FN21]. Burkhart, Kathryn Watterson, Women in Prison. Garden City, New York: Doubleday & Company Inc., 1973, p. 94.

[FN22]. "Facility Faces Conflicting Roles as Prison and School," The Los Angeles Times, Feb. 7, 1999, page 14.

[FN23]. Id.

[FN24]. Id.

[FN25]. Id., p. 15

[FN26]. Hodes, Martha (editor), Sex, Love, Rage: Crossing Boundaries in North American History, New York University Press, 1999, p. 423.

[FN27]. Id. p. 428.

[FN28]. Id, p. 435.

[FN29]. Burstein, Jules Quentin, Conjugal Visits in Prison, Lexington, Mass.: D.C. Heath and Company, 1977, p. 18.

[FN30]. Id., p. 19.

[FN31]. Pollock, Joycelyn M., Sex and Supervision: Guarding Male and Female Inmates, New York, New York: Greenwood Press, 1986, p. 24.

[FN32]. Belknap, Joanne, The Invisible Woman: Gender, Crime and Justice, Belmont, California: Wadsworth Publishing Company, 1996, p. 112.

[FN33]. Id., p. 111.

[FN34]. Burkhart, p. 362.

(Cite as: 36-AUG Tenn. B.J. 12)

[FN35]. Pollack, p. 71.

[FN36]. Belknap, p. 112.

[FN37]. From AIDS to Internet: Correctional Realities, American Correctional Association, Arlington, Va., 1999, p. 2.

[FN38]. Id.

[FN39]. "HIV in Prisons -- 1997," Bureau of Justice Statistics Bulletin, November 1999, p. 4.

[FN40]. See *Robbins v. Clarke*, 846 F.2d 1331 (8th Cir. 1991).

[FN41]. See *Glick v. Henderson*, 855 F.2d 536 (8th Cir. 1988).

[FN42]. Belknap, p. 112.

[FN43]. Pollock, p. 102.

[FN44]. Id.

[FN45]. Belknap, p. 114.

[FN46]. Pollack, p. 103.

[FN47]. Smykla, John Ortiz, *Coed Prisons*, New York, New York: Human Sciences Press, 1980, p. 47.

[FN48]. See *Bellamy v. Bradley*, 729 F.2d 416 (6th Cir. 1984).

[FN49]. See *Inmates, Washington County Jail v. England*, 516 F. Supp. 132 (E.D. Tenn. 1980), affirmed, 659 F.2d 1081 (6th Cir. 1981) and 21 Tenn. Juris., Prisons, Section 7.

[FN50]. Allen, Harry E., and Simonson, Clifford, E., *Corrections in America*, Upper Saddle River, New Jersey: Prentice-Hall Inc., 1998, p. 286.

[FN51]. Burstein, p. 24.

[FN52]. Id., p. 25.

[FN53]. Id., p. 31.

[FN54]. Id.

[FN55]. Id.

[FN56]. Id., p. 29.

[FN57]. Fishman, Laura T., *Women at the Wall*, Albany, New York: State University of New Press, 1990, p. 164.

[FN58]. *Ibid.*, p. 230.

[FN59]. See 21 Tenn. Juris., Prisons, Section 3.

[FN60]. Morton, Joann B. (editor), *Change, Challenge and Choices: Women's Role in Modern Corrections*, Waldorf, Maryland: St. Mary's Press, 1991, p. 19.

[FN61]. Id., p. 36.

[FN62]. Id., p. 37.

[FN63]. *Id.*, p. 59.

[FN64]. Zimmer, p. 93.

[FN65]. *Id.*, p. 100.

[FN66]. Moyer, Imogene L., *The Changing Roles of Women in the Criminal Justice System*, Prospect Heights, Ill.: Waveland Press Inc., 1992, p. 239.

[FN67]. See *Daugherty v. Campbell*, 33 F.3d 554 (6th Cir. 1994).

[FN68]. Allen and Simonson, p. 594.

END OF DOCUMENT