

CONTINUUM OF COERCION: STAFF SEXUAL MISCONDUCT IN  
JUVENILE JUSTICE DEPARTMENTS, PROGRAMS  
AND FACILITIES IN TEXAS

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## TABLE OF CONTENTS

	<b>Page</b>
ACKNOWLEDGEMENTS.....	iii
LIST OF TABLES.....	vi
ABSTRACT .....	vii
CHAPTER	
I.    STATEMENT OF THE PROBLEM.....	1
II.   REVIEW OF THE LITERATURE.....	3
Staff Sexual Misconduct in Adult Corrections .....	3
Staff Sexual Misconduct Statistics in Adult Corrections Applicable Legislation Staff Sexual Misconduct Case Law Staff Sexual Misconduct Investigations Across the Nation	
Police Sexual Violence .....	17
Staff Sexual Misconduct in Juvenile Corrections.....	19
Staff Sexual Misconduct Statistics in Juvenile Corrections Staff Sexual Misconduct Investigations in Juvenile Corrections Across the Nation	
III.  TEXAS JUVENILE JUSTICE AND CORRECTIONS.....	27
Texas Youth Commission.....	27
Texas Juvenile Probation Commission.....	30
Investigations of Sexual Abuse in Juvenile Justice Departments, Programs and Facilities	

IV.	METHODOLOGY .....	34
	Data Source.....	34
	Content Analysis.....	37
V.	FINDINGS AND ANALYSIS .....	41
	Continuum Categories of Staff Sexual Misconduct.....	41
	Known Incidence and Distribution .....	43
	Illustrative Cases.....	48
	A Continuum of Coercion.....	53
	Interpreting Exploratory Data.....	54
VI.	DISCUSSION .....	57
	Policy Implications .....	59
	REFERENCES .....	64

## LIST OF TABLES

<b>Table</b>	<b>Page</b>
1. Frequencies of department, program, facility types and staff titles for all allegations of staff sexual misconduct .....	44
2. Frequencies of department, program facility types and staff titles for affirmative findings of staff sexual misconduct.....	45
3. Summary of Sex, Race, Age of Staff and Juveniles in all Allegations.....	47
4. Summary of Sex, Race and Age of Staff and Juveniles in Affirmative Findings.....	48
5. Frequencies of Staff Sexual Misconduct by Continuum Category for all Allegations .....	54
6. Frequencies of Staff Sexual Misconduct by Continuum Category for Affirmative Findings.....	54

## **ABSTRACT**

### **CONTINUUM OF COERCION: STAFF SEXUAL MISCONDUCT IN JUVENILE JUSTICE DEPARTMENTS, PROGRAMS AND FACILITIES IN TEXAS**

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There have been very few studies of staff sexual misconduct in juvenile justice settings. Academic articles reference the possibility of the existence of the problem (O'Donnell, 2004). Very little is known of the extent of the problem in juvenile justice.

The data utilized in this study were obtained from the Abuse, Neglect and Exploitation Investigations Unit of the Texas Juvenile Probation Commission (TJPC). The data consist of allegations of staff sexual misconduct originating from juvenile justice departments, programs and facilities under the investigative

jurisdiction of the TJPC. Utilizing the data, a continuum of seven different categories of staff sexual misconduct ranging from “sexual innuendo” to “rape” was developed. The data revealed that the highest percentage of alleged staff sexual misconduct fell under the category of “inappropriate touching”. Based on behaviors captured on the continuum, one may discern that several factors may contribute to juvenile justice professionals engaging in staff sexual misconduct. Policy and administrative rules lacking prohibitions and low percentage of criminal prosecution may facilitate rationalization in the minds of some offenders.

## **I. STATEMENT OF THE PROBLEM**

Definitions of sexual abuse and sexual assault may vary significantly in state and federal statutes. Certainly those definitions differ from the definition of staff sexual misconduct. The Bureau of Justice Statistics defines staff sexual misconduct as:

Any behavior or act of a sexual nature directed toward an inmate by an employee volunteer, official visitor, or agency representative. Romantic relationships between staff and inmates are included (BJS, 2004, p.3).

The extent of the problem of staff sexual misconduct in juvenile justice is largely unknown. However, in Texas, the data is available to better determine the extent of the problem. Currently, grants are available to adult and juvenile corrections through the Prison Rape Elimination Act to study staff sexual misconduct. A preliminary study of administrative records conducted by the Bureau of Justice Statistics indicates that juvenile facilities had higher rates of staff sexual misconduct than adult facilities (BJS, 2004). However, a more comprehensive study of the problem of staff sexual misconduct is necessary due to the fact that the aforementioned study depends on self-reporting from the sample of facilities across the nation.

The data utilized in this master's thesis will be from one of the two agencies (Texas Youth Commission and Texas Juvenile Probation Commission) that comprise the juvenile justice system in Texas. Descriptive statistics from the

Texas Juvenile Probation Commission will be utilized in this study. This information will be utilized to identify policy issues and training needs in the field of juvenile justice. Although the findings of this study may be applicable to juvenile justice systems throughout the rest of the United States, no assumptions are made regarding the generalizability of the findings.

There have been very few studies of staff sexual misconduct in juvenile justice settings. Many academic articles reference the possibility of the existence of the problem in juvenile justice, but very few resources have been dedicated to studying the problem (O'Donnell, 2004). Very little is known of the prevalence and incidence of staff sexual misconduct in juvenile justice. Confidentiality, as it relates to the victims, is likely a significant issue in deterring researchers from studying the problem. A continuum of common issues that are most frequently identified in investigations of staff sexual misconduct will be addressed and described in this study.

## **II. REVIEW OF THE LITERATURE**

### **Staff Sexual Misconduct in Adult Corrections**

As previously mentioned, the literature pertaining to staff sexual misconduct in juvenile justice is limited. Literature from studies of staff sexual misconduct in adult corrections and policing will be reviewed prior to addressing the issue in juvenile justice.

Staff sexual misconduct in corrections is not a recent occurrence. Evidence suggests staff sexual misconduct has existed since the birth of corrections in the United States. However, the historical focus of sexual victimization in corrections has been on female inmates as the victims. “As long as there have been prisons and women in them, women have been sexually victimized” (Smith, 2006, p. 1). Adult and juvenile females were susceptible to a special classification of crimes in the nineteenth century.

Arrest, conviction, or imprisonment for offenses against chastity, decency, or public order carried a unique penalty for the nineteenth-century female criminal—the label of ‘fallen woman’....No longer the perpetrator of a single immoral act, those who crossed the boundary of chastity gained a lifetime identity as a ‘fallen woman’” (Freedman, 1981, p. 14).

Estelle Freedman’s research yielded evidence of staff sexual misconduct in the Auburn, New York, penitentiary in the 1820’s. One female inmate in the Auburn penitentiary became pregnant while in solitary confinement (Freedman, 1981).

Sheryl Pimlott and Rosemary C. Sarri (2002) chronicled another sexual abuse

incident that led to pregnancy at the Auburn New York State Prison in 1865. The incident at Auburn led to the establishment of a separate institution for women, the Mount Pleasant Female Prison. Nicole Hahn Rafter (1985) detailed an account of a woman incarcerated in the 1870's in a Carson City, Nevada prison for murder. The prisoner gave birth to twins while incarcerated. The twins were born of a relationship with the warden of the prison, according to Rafter.

As early as the 1860's, reformers began to focus attention on staff sexual misconduct perpetrated against women. "Women prison reformers complained that prisons degraded rather than reformed women by subjecting them to sexual abuse." (Smith, 2006, p. 1) Prison reformers, Sarah Smith and Rhoda Coffin, led efforts to end sexual abuse of women in state prisons. Smith and Coffin's efforts resulted in the construction of the first separate state prison exclusively for women which opened in 1874 in Indianapolis, Indiana (1981). Research from the 1970's through the 1990's continued to identify sexual abuse of female inmates (Pollock, 2003).

#### *Staff Sexual Misconduct Statistics in Adult Corrections*

Efforts through legislation and case law to make prisons more humane have failed to eliminate sexual abuse, including staff sexual misconduct in prisons. Recent legislation focuses on sexual abuse statistics, which include inmate-on-inmate sexual assault and staff sexual misconduct in adult corrections. Experts have conservatively estimated that at least 13 percent of the inmates in the United States have been sexually assaulted in prison. Many inmates have

suffered repeated assaults. Under this estimate, nearly 200,000 inmates now incarcerated have been or will be the victims of prison rape. “The total number of inmates who have been sexually assaulted in the past 20 years likely exceeds 1,000,000” (Public Law 108-79, 2004, Section 2).

Cindy Struckman-Johnson and David Struckman-Johnson (Struckman-Johnson, 2000) conducted a study of the prevalence of sexual coercion of men in prison in seven Midwestern prison facilities. Struckman-Johnson defined sexual coercion as “pressured or forced sexual contact against one’s will” (2000, p. 379). The study was mainly focused on inmate on inmate sexual coercion, but the Johnsons found that approximately 20 percent of the sexual coercion incidents involved prison staff (Struckman-Johnson & Struckman-Johnson, 2000).

The Bureau of Justice Statistics completed a survey of administrative records on sexual violence in adult facilities for 2004. The survey included the data provided by administrators of 1,923 state and federal prisons, local jails, private prisons and jails, U.S. military operated facilities, Indian country jails and Bureau of Immigration and Customs Enforcement (ICE) facilities. The survey disaggregated prison sexual violence into four categories of inmate-on-inmate sexual acts and staff sexual misconduct. For the purposes of this thesis, the focus will be on staff sexual misconduct toward inmates and staff sexual harassment of inmates. In 2004, there were 2,282 allegations of staff sexual misconduct reported in the survey of the 1,923 aforementioned facilities. Of those allegations, administrators reported that 546 allegations (23.9 percent) were substantiated (BJS, 2004).

In 2005, the same type of survey was revised to collect additional information on substantiated incidents of overall sexual violence in prisons. Once again, for the purposes of this thesis, the focus will be on staff sexual misconduct and staff sexual harassment of inmates. The survey covered 1,867 adult facilities. The types of adult facilities were the same as the 2004 survey in that state and federal prisons, local jails, private prisons and jails, military facilities, Indian country jails and ICE facilities were surveyed. There were 2966 reported allegations of staff sexual misconduct and staff sexual harassment of inmates. At the time of the survey, it was reported that 745 of the allegation of staff sexual misconduct and staff sexual harassment were still under investigation. The survey included 344 reported substantiated incidents of staff sexual misconduct and sexual harassment of inmates. An interesting comparison between prisons and jails revealed that 33 percent of the victims of staff sexual misconduct in state and federal prisons were female. However, 78 percent of the victims of staff sexual misconduct in municipal and county operated adult jails were female. The majority of the incidents were reportedly “romantic relationships” for male and female victims (BJS, 2005).

In 2005, the Department of Justice Office of the Inspector General (OIG) released a report on staff sexual misconduct with federal inmates. Approximately 12 percent of the OIG’s total number of investigations from 2000 through 2004 involved staff sexual misconduct with federal inmates. The OIG report cited the 1999 U.N. Commission on Human Rights report on staff sexual misconduct in concluding that such incidents are most likely underreported in federal

institutions. The U.N. report published in 1999 concluded that the incidence of staff sexual misconduct in U.S. prisons is higher than prison systems of other industrialized nations (United Nations Commission on Human Rights, 1999).

The OIG report indicated that its agents cited common factors in its investigations of staff sexual misconduct in federal institutions. For example, guards often preyed on “psychologically weak” inmates. Many of these inmate victims of the guards had previously been sexually abused, had previously engaged in prostitution, or were pending deportation procedures. In other cases, inmates used sex to obtain special favors from guards, such as drugs, or to obtain access to sensitive information. One common misconception was identified in the report in that many people believe that most staff sexual misconduct involves male guards victimizing female inmates. However, of the 351 allegations of staff sexual misconduct investigated by the OIG from 2000 to 2004, 47 percent of the cases involved female staff with male inmates compared to 43 percent involving male staff with female inmates. The remaining 10 percent involved male on male staff sexual misconduct (8 percent) and female on female staff sexual misconduct (2 percent). In addition to staff sexual misconduct involving guards, the report cited investigations of ancillary staff such as psychologists, contract teachers, caseworkers and maintenance workers (OIG Report, 2005).

### *Applicable Legislation*

In the following section, the laws applicable to the topic of this thesis will be discussed: The Eighth Amendment, the Civil Rights of Institutionalized

Persons Act of 1980 (CRIPA) and the Prison Rape Elimination Act of 2003 (PREA). The Eighth Amendment protects the rights of incarcerated persons. Specifically, it protects incarcerated persons from cruel and unusual punishments. CRIPA is the enforcement legislation to protect the rights of persons incarcerated in adult and juvenile correctional facilities. CRIPA has been called “the single most effective method for redressing systemic deprivations of institutionalized persons’ Constitutional and Federal Statutory rights” (Rosenbaum, 1999, p. 2). Under this legislation, the United States Department of Justice, Civil Rights Division (DOJ), may investigate allegations involving correctional facilities and jails in adult and juvenile justice facilities. In addition, lawsuits may be brought by the DOJ to remedy systemic problems that lead to serious violations of federal rights. However, the DOJ is not authorized to seek monetary damages. Federal investigation of systemic issues of inmate-on-inmate sexual assault and staff sexual misconduct are investigated through CRIPA. CRIPA differs from PREA because PREA was drafted primarily to capture and analyze data of the incidence and effects of sexual assault in prisons. PREA has no enforcement piece to the legislation.

The Supreme Court’s interpretation of the Eighth Amendment’s prohibition of cruel and unusual punishment has evolved over the years. Cruel and unusual punishment has been difficult to define for the Court. The original application of cruel and unusual punishment clause was to provide protection from torturous and barbarous treatment. The inclusion of punishments disproportionate to crimes ultimately evolved to punishments:

incompatible with the evolving standards of decency that mark the progress of a maturing society.... such as those that are excessive because they either involve the unnecessary and wanton infliction of pain (Cozad, 1995, p. 2).

The Civil Rights of Institutionalized Persons Act of 1980 (CRIPA) was enacted to protect institutionalized persons against unconstitutional conditions. This legislation applies to adults and juveniles confined in institutions. The United States Department of Justice, Civil Rights Division is responsible for enforcement of CRIPA.

The Attorney General of the United States, under 42 U.S.C 1997, may initiate civil action when: reasonable cause to believe that any State or political subdivision of a State, official, employee, or agent thereof, or other person acting on behalf of a State or political subdivision of a State is subjecting persons residing in or confined to an institution, as defined in section 1997 of this title, to egregious or flagrant conditions which deprive such persons of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States causing such persons to suffer grievous harm, and that such deprivation is pursuant to a pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities, the Attorney General, for or in the name of the United States, may institute a civil action in any appropriate United States district court against such party for such equitable relief as may be appropriate to insure the minimum corrective measures necessary to insure the full enjoyment of such rights privileges, or immunities, except that such equitable relief shall be available under this subchapter to persons residing in or confined to an institution as defined in section 1997(1)(B)(ii) of this title only insofar as such persons are subjected to conditions which deprive them of rights, privileges, or immunities secured or protected by the Constitution of the United States (42 U.S.C 1997a).

The Prison Rape Elimination Act of 2003 (PREA) was signed into law by President George W. Bush on September 4, 2003. Under the Act, the Bureau of Justice Statistics of the Department of Justice is required to conduct a “comprehensive statistical review of and analysis of the incidence and effects of prison rape” (108-79, 2003). The statistical review and analysis shall include but

not be limited to the identification of the common characteristics of (A) both victims and perpetrators of prison rape; and (B) prisons and prison systems with a high incidence of prison rape. One of the purposes of the act is to “increase the available data and information on the incidence of prison rape, consequently improving the management and administration of correctional facilities” (PREA, 2003).

The Prison Rape Elimination Act or PREA is a misnomer. The legislation applies to staff sexual misconduct in community corrections, non-secure facilities and day programs in the juvenile justice setting, as well as adult prisons. Illegal acts covered in PREA include “consensual” relationships between staff and residents, detainees, participants in programs and probationers.

#### *Staff Sexual Misconduct Case Law*

Several significant cases have been litigated in the last 40 years specific to systemic abuses in adult correctional systems in the United States. The cases discussed in this section include cases in which the litigation was initiated by the DOJ through CRIPA or through class action lawsuits initiated by inmates. Some of the cases cited in this thesis yielded important decisions in reference to administrator accountability and consent.

The U.S. Supreme Court first required deliberate indifference, as it applies to conditions of confinement, in assessing cruel and unusual claims in *Estelle v. Gamble* (1976). *Estelle* was a medical care case, but Justice Marshall’s

message in this case set precedent and left a wide berth for applicability to other types of cruel and unusual punishment cases. According to Marshall:

a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference....it is only such indifference that can offend evolving standards of decency in violation of the Eighth Amendment (Cozad, 1995, p.2).

In 1994, *Farmer v. Brennan* (1994), the Court held that “prisoner rape” is a violation of the prohibition of cruel and unusual punishment in the Eighth Amendment of the Constitution. In *Farmer*, the court set a standard of deliberate indifference for prison administrators, which includes indifference to prison rape. “Justice Souter asserted that only a prison official’s subjective awareness of a substantial risk of harm to an inmate constitutes a valid Eighth Amendment claim” (Cozad, 1995, p. 4). Although this case involved an inmate being sexually assaulted by other inmates, the applicability to staff sexual misconduct is apparent. The Court recognized that, “being violently assaulted in prison is simply not ‘part of the penalty that criminal offenders pay for their offenses against society’” (NGO Report, 2006, p. 6).

In 1999, an important staff sexual misconduct case was litigated in Delaware. This case essentially eliminated the “consent” excuse that is often rationalized by correctional staff that engage in sexual relationships with inmates. In *Carrigan v. Davis* (1999), a female prisoner in the Women’s Correctional Institute in Delaware sued former corrections officer Peter Davis for sexually assaulting her while she was incarcerated in the facility. Carrigan won her lawsuit against Davis. Davis later appealed the decision based on “consensual sexual contact” with Carrigan. He argued that he did not violate her constitutional rights

because the acts were consensual. The court in this case laid the foundation for future legislation such as PREA because it found that, as a matter of law, an act of vaginal intercourse and/or fellatio between a prison inmate and a prison guard, whether consensual or not, is a *per se* violation of the Eighth Amendment” (Smith, 2001, p. 2). The court also found that prisoners are essentially incapable of consenting because of the existence of a relationship between prisoners and prison staff founded on “the utter lack of control that an inmate has over basic aspects of his or her life and the complete control that the prison and its employees assume over the inmate” (Smith, 2001, p. 2). Brigitte Sarabi of the Western Prison Project effectively encapsulated the court’s sentiment in the aforementioned case with this statement,

There’s no way sexual contact between someone incarcerated and the person guarding them can be consensual. The power differential is too great. You can’t say no. It is flat-out prisoner abuse (Hunter, 2006, p. 1)

In furtherance of the sentiment that there is no consensual relationship between staff and inmates, case law supports agency prohibitions on correctional and community corrections staff forming personal or romantic relationships with inmates, probationers or parolees. In *Keeney v. Heath*, (1995), the Seventh Circuit held that an agency may develop rules which prohibit a correctional officer from dating an inmate, regardless of whether that inmate is in jail or not. Rules prohibiting such relationships between staff and inmates do not violate the Due Process Clause of the Fourteenth Amendment (Smith and Simonian, 2006).

*Cason v. Seckinger* (2000), involved allegations of widespread staff sexual misconduct. The allegations included sexual relationships between female

prisoners and staff. The plaintiffs in the case claimed that the allegations were never investigated by the Georgia Department of Corrections. Indictments of 17 staff members for involvement in staff sexual misconduct with women inmates resulted. A similar case, *Women Prisoners v. District of Columbia* (1994), also resulted from a widespread pattern of sexual abuse in violation of the Eighth Amendment and the Fourteenth Amendment. The court attributed the systemic issues of the District of Columbia jail to a permissive culture of staff sexual misconduct. The permissiveness was attributed to a lack of staff training, inconsistent reporting practices and inadequate investigation of allegations.

In *Akers v. McGinnis* (2003), a probation officer filed suit against the Michigan Department of Corrections for terminating her for fraternizing with an inmate. The probation officer exchanged several letters with the inmate and admitted as much. The court ruled that the Michigan Department of Corrections had a “legitimate interest in preventing fraternization between its employees and offenders and their families...” (Smith and Simonian, 2006, p. 10).

In *Belvin v. The State* (1996), the appellant contended that since he was only a “surveillance” officer in the employment of the Clayton County Probation Office, Georgia law prohibiting sexual contact between a probation officer and a probationer did not apply to him. Under OCGA 16-6-5.1, a probation or parole officer can be charged with sexual assault for engaging in sexual contact with a probationer or parolee under the supervision of said officer, regardless of consent. The court held that the surveillance officer position maintains supervisory and disciplinary hearing authority over the probationer. This case sets an important

precedent in that it was held that ancillary staff in community corrections and secure corrections facilities are subject to legislation and criminal statutes.

The United States Department of Justice Special Litigation Division filed suit against the Arizona Department of Corrections in 1997 for violating CRIPA. The Arizona Department of Corrections demonstrated indifference to allegations by female offenders that they were not adequately protected from correctional staff. Specifically, female inmates were not protected from widespread patterns of staff sexual misconduct. A settlement agreement was enforced by the D.O.J. The terms of that agreement required that the Arizona Department of Corrections provide for the availability of psychological services to any victim of staff sexual misconduct, enhanced pre-employment screenings of staff hired to positions with female contact, enhanced training curriculum, revised policy and procedures and improved investigative procedures. A CRIPA Administrator was assigned to monitor the settlement agreement with the Department of Justice. The lawsuit was ultimately dismissed in 1999 when Arizona demonstrated that it was in compliance with the settlement agreement (Arizona Department of Corrections, 2006).

In 1997, the DOJ filed suit against Michigan for a pattern of staff sexual misconduct. The settlement agreement in the Michigan case required a six month moratorium on cross gender pat searches and prohibited male staff from providing sole supervision of female inmates. In addition, male staff were required to announce their presence before entering an area in which female offenders might be in a state of undress (Smith, 2003).

Staff sexual misconduct case law clarifies several key points, including the fact that correctional administrators may be held accountable civilly and criminally for demonstrating deliberate indifference to staff sexual misconduct of prisoners by correctional staff. In addition, court holdings explicitly prohibit sexual relationships between correctional staff and inmates, regardless of the gender of either party and regardless of consent. Finally, court holdings also explicitly prohibit sexual relationships between ancillary staff and inmates.

*Staff Sexual Misconduct Investigations Across the Nation*

Accounts of staff sexual misconduct in adult corrections can be found in virtually every state. For example, Randy Easter, a prison guard at the Southern Nevada Women's Correctional Center impregnated an inmate in 2003 (Hunter, 2006). In 2005, prison guard Nicholoas Defonte was arrested after investigation revealed that Defante was engaged in a sexual relationship with a female inmate of the Metropolitan Correctional Center in New York (2006). KPRC TV reported that there were problems in the Texas Department of Criminal Justice. According to the media account, "Records revealed nearly 1200 guard/prisoner liaisons over the past five years" (Hunter, 2006, p.11).

There are numerous accounts of staff sexual misconduct perpetrated by female staff in adult corrections, as well. In 2005, a female guard employed by the Somerset County Sheriff's Officer was observed by another guard engaged in sexual intercourse with a male inmate. That same year a female guard at the Federal Correctional Institution in Fairton, New Jersey was convicted of engaging

in sexual acts with a male inmate. Some of the sexual acts occurred in a prison bathroom (Hunter, 2006).

Privately operated adult facilities have not been exempt from staff sexual misconduct allegations. In 1999, eleven former guards and a case manager were indicted for felony sexual assault and improper sexual activity at the Travis County State Jail operated by Wackenhut. The Texas Department of Criminal Justice retook control of facility operations that same year. In 2004, a jailer at the McLennan County Detention Center operated by CiviGenics in Waco, Texas was indicted for engaging in sexual activity with a person in custody. In 2005, another jailer employed by Bi-State Jail operated by CiviGenics in Texarkana, Texas was arrested for engaging in sexual activity with a person in custody (Deitch, 2004).

Scholars acknowledge the existence of staff sexual misconduct and the implications of such conduct in adult corrections. Andora Moss, the project director for a National Institute of Corrections cooperative agreement to the address the Prison Rape Elimination Act and the president of The Moss Group, has extensive experience in developing strategies to eliminate staff sexual misconduct. She acknowledges that there is work to be done. "Staff sexual misconduct remains a significant concern in the field" (Moss & Wall, 2005, p.74). Brenda Smith, a law professor at the Washington College of Law at American University and congressional appointee to the National Prison Rape Elimination Commission, has focused considerable attention to the sexual abuse of women prisoners.

One of the by-products of this influx of women into correctional settings has been the emergence of sexual misconduct against women in prison as

a major issue for corrections officials and attorneys who represent women (Smith, 2001, p.1).

However, evidence suggests that female staff engage in sexual relationships with male inmates, even though the majority of those encounters may be considered romantic relationships. Robert Dumond, a prominent licensed clinical mental health counselor with expertise on the subject, assisted the framers of the Prison Rape Elimination Act of 2003 in drafting the legislation. Dumond began addressing the issue well before the PREA legislation existed, “Even if the exchange between staff and inmate is consensual, it represents a barrier that can not be breached” (Dumond, 2000, p. 410). Dumond further contended that, “Such abuses are intolerable. They are fundamental violations of incarceration; they defile the guiding principles of correctional environments and tarnish the corrections profession” (Dumond, 2000, p. 410).

### **Police Sexual Violence**

Sexual victimization of suspects or other citizens by police officers is not unlike that of correctional officer’s victimization of inmates under their supervision. Kraska and Kappeler utilized federal litigation cases and media sources to examine the known incidence of police sexual violence (PSV). Their data included 124 cases of PSV collected from media accounts in one national newspaper between 1991 and the first six months of 1993. In addition, they examined cases litigated in Federal District Courts under 42 U.S.C. Section 1983 between 1978 and 1992. Some form of sexual violence was alleged in each of the cases. The authors understood the limitations of their study:

These data are limited in that they include only reported incidents of PSV that reached the media, or cases pursued by a plaintiff in the federal courts. Thus our data provide only indications of how often someone goes public with a complaint; they can tell us little about the *upper range* of the frequency of PSV (Kraska & Kappeler, 1995, p. 92).

The instances of PSV were conceptualized on a continuum ranging from invasions of privacy to rape. The categories utilized by Kraska and Kappeler in their continuum were unobtrusive behavior, obtrusive behavior and criminal behavior. Unobtrusive behavior includes voyeurism, sexually explicit photographs or videos of crime victims. Obtrusive behavior includes unnecessary or illegal body cavity searches, strip searches, provision of services or leniency for sexual favors, some instances of sexual harassment and punitive pat-down searches. Criminal behavior includes rape, sexual assault, sexual contact and some instances of sexual harassment (Kraska & Kappeler, 1995).

Kraska and Kappeler identified the issues of access and the opportunity for exploitation of their privileged position; these are consistent with the situation of staff sexual misconduct in adult and juvenile corrections. The opportunity for officers to exploit their position has been discussed in other literature, "...because officers handle many tasks with little supervision or out of sight of anyone else, the ability to engage in corrupt activity is always present" (Dantzker, 2000, p.177). In addition, police have "exceptional access to women" (Kraska & Kappeler, 1995, p. 107). The perpetrators in their study were able to utilize their positions to engage in unobtrusive, obtrusive and criminal behaviors. The other element identified throughout their continuum includes the "sexist nature of the conventional police culture" (Kraska & Kappeler, 1995, p. 107). They concluded

PSV is often mistaken as actions perpetrated by a few bad officers. Placing PSV on a continuum allows for the possibility that some of the behaviors have “common structural and cultural roots” (Kraska & Kappeler, 1995, p. 108) and may, in some cases, be supported by the institution of policing.

The subsequent expansion of the study of PSV by McGurrin and Kappeler in 2002 yielded at least one result that may differ from staff sexual misconduct findings in adult and juvenile corrections. The expanded study revealed that PSV was committed overwhelmingly (98.8) by male police officers (2002).

The aforementioned PSV studies bring forth commonalities that may enable perpetrators of staff sexual misconduct in policing and corrections. In both fields, perpetrators have “exceptional access” to potential victims and may be able to utilize their positions to engage in staff sexual misconduct. In addition, officers in both fields are in positions that automatically extend trust, thus granting inherent autonomy of actions.

### **Staff Sexual Misconduct in Juvenile Corrections**

Even before the birth of juvenile justice in 1899, forced placement resulted in the victimization of children by their caretakers. As early as 1830, forced placement to farms became a common practice to deal with incorrigible inner city children. Abuse and exploitation by rural caretakers was reportedly the norm (O’Connor, 2005). The strict code of female morality resulting in the incarceration of the “fallen woman” in the nineteenth century applied to teenage girls who, in today’s society, would be considered juveniles under statute.

The Mount Joy Female Convict prison in Ireland inspired the creation of separate women's prisons in the United States. British prison reformer, Mary Carpenter, influenced American prison reformers, such as Rhoda Coffin, Julia Ward Howe and Elizabeth Buffum Chace (Freedman, 1981). As reformers lobbied for the creation of separate prisons for women, the focus soon included the establishment of separate institutions for adults and juveniles. In 1856, the State Industrial School for Girls in Lancaster, Massachusetts was opened. The model utilized in the State Industrial School for Girls actually inspired the creation of separate women's prisons, such as the House of Shelter and the Female Prison and Reformatory Institution for Girls and Women (1981). It is apparent that reformer's efforts were inspired, at least in part, by the rampant abuse of women and girls by male guards prior to the creation of separate institutions.

Today's juvenile justice system differs from the criminal justice system in that the primary goal of the juvenile justice system is the rehabilitation and treatment of the juvenile. The underlying objective of juvenile justice is to change the juvenile offender's life in a positive way so that the juvenile may be deterred from continued delinquency and graduation to the criminal justice system. Currently, slogans such as , "changing lives one child at a time" may be found in just about every juvenile probation department and facility in the United States. However, all too often, the lives of juveniles are changed adversely by staff sexual misconduct. In some cases, young offenders emerge from the

juvenile justice system emotionally scarred and permanently damaged by sexual victimization perpetrated by the staff.

*Staff Sexual Misconduct Statistics in Juvenile Corrections*

The Bureau of Justice Statistics completed a survey of administrative records on sexual violence in juvenile facilities for 2004. The sample consisted of 510 state juvenile systems and 297 local/private juvenile facilities. The results of the survey revealed that state operated juvenile facilities had higher rates of alleged staff sexual misconduct than adult facilities at 11.34 allegations per 1000 youth compared to 1.12 per 1000 adult prisoners. The local/private facilities reported 3.22 allegations per 1000 youth. When compared to State and Federal adult prison systems, the number of allegations of staff sexual misconduct in state and local juvenile facilities was considerably higher than in the adult facilities (BJS, 2004). More importantly, 15.4 percent of the total number of allegations of staff sexual misconduct in state operated juvenile facilities were substantiated. In local and privately operated juvenile facilities, 17 percent of the total number of allegations of staff sexual misconduct were substantiated (Bureau of Justice Statistics, 2004). A second BJS report on the survey of juvenile facilities was scheduled to be completed in early 2007 (Bureau of Justice Statistics, 2005).

Virtually no literature exists to determine the extent of staff sexual misconduct in juvenile justice. The assumption of the reason for this void in literature may be drawn from findings specific to the adult system made by the Government Accounting Office in 1999. The GAO found that it was impossible

to measure the full extent of the problem due to “lack of systemic data collection and analysis of reported allegations...” in the adult system (Sexual Abuse Against Women, Smith, 2001, p. 3). The same problem may exist in juvenile corrections.

*Staff Sexual Misconduct Investigations in Juvenile Corrections Across the Nation*

Despite the absence of academic literature to measure the extent of the problem in juvenile justice, there are numerous documented cases of staff sexual misconduct in juvenile justice. Between the documented investigations and media accounts nationally, there appears to be cause for concern for the safety of juveniles in custody and under community corrections supervision. Some egregious accounts of systemic abuses seem to indicate that, in some systems, there may be an overall mentality amongst staff that anything goes. Some of these “anything goes” examples may explain why rationalizing sexual involvement with a juvenile may not be such a difficult gap to bridge for some staff. For example, unthinkable abuses were revealed when the DOJ filed suit against the state of Mississippi in December of 2003 following the investigations of the Oakley Training School in Raymond, Mississippi and the Columbia Training School in Columbia, Mississippi. A statement prepared by Assistant Attorney General for Civil Rights Alexander Acosta gave the following reasons for the suit:

Our investigation found evidence that juveniles were routinely hit, shoved, and slapped by staff, that juveniles were sprayed with pepper spray while in restraints. That in some cases suicidal girls were stripped naked and isolated for extended time periods in windowless empty rooms with only a drain in the cement floor to serve as a toilet. We found evidence of systemic abuses, including hog-tying and pole shackling. It was even

reported that girls, overcome by the heat during drills, were forced to eat their own vomit (Acosta, 2003, paragraph 3).

The leap to sexual involvement with a juvenile may not be that far fetched when the aforementioned abuses are occurring in modern juvenile justice.

Consider the following accounts of substantiated staff sexual misconduct cases from all over the United States.

In 2004 a former resident of the Ventura Youth Correctional Facility in California alleged that she was sexually assaulted in the facility in 2003 and 2004. It was also alleged that guards brought jewelry, extra food and other gifts to female residents in exchange for sexual favors. At least twelve guards were alleged to have engaged in sexual activity with residents (Hunter, 2006).

In 2004, a 44-year-old detention officer at the Adobe Mountain School in Arizona admitted to engaging in a sexual relationship with a 16-year-old resident of the facility. The perpetrator in this case was ultimately sentenced to three years in prison. Also in 2004, a male detention officer in the Adobe Mountain School admitted to offering candy, cigarettes and a soda to a female resident as an enticement for the girl to expose her breasts (Hunter, 2006).

In 2005, a former juvenile probation officer for the Oregon Youth Authority was convicted of engaging in sexual activity with five male probationers during his eleven years on the job. The perpetrator in this case supplied drugs to some of his victims. One of the victims has committed suicide since the abuse (Hunter, 2006).

In 2005, three staff from the Berrien County Detention Center in Michigan were terminated for sexually inappropriate behavior with young children. The

sexually inappropriate behavior included allowing certain residents of the facility to engage in sexual activity and sexual contact with a 12-year-old committed by one of the terminated staff (Detroit News, April 18, 2005).

Charges were filed against ten employees of the Marion County Juvenile Detention Center in Indiana in April of 2006. Nine of the ten employees were charged with 52 counts stemming from sexual abuse of juvenile inmates. The tenth employee charged was the superintendent of the facility who allegedly concealed evidence of one of the sexual abuse allegations and for failing to report the allegations of sexual abuse to Child Protective Services (Press release from the Marion County Prosecutors Office, April 24, 2006). In August of 2006, the DOJ announced that it would be initiating an investigation of the Marion County Juvenile Detention Center for violations of CRIPA. It was announced that the focus of the investigation would be on the protection of juveniles from harm, including sexual abuse, and the reporting of child abuse (Biddle, 2006).

In July of 2006, a female juvenile corrections officer in the King County Juvenile Detention Center in Seattle, Washington was charged with having sexual relationships with residents of the facility. The corrections officer was employed by King County for 11 years. An investigation conducted by the Seattle Police Department and the King County Prosecutor's Office revealed that the female officer brought food and candy to two juveniles in exchange for sex. The sexual encounters with one juvenile frequently occurred in his solitary cell. In addition to the charges brought against the female corrections officer, three male officers were accused of having sex with juvenile female residents of the facility. One of

the male officers allegedly had sex with two female residents in a broom closet (Bowermaster, 2006).

Staff sexual misconduct in juvenile justice is a betrayal of the ultimate goal of the system. In many cases juveniles enter the system already having experienced significant trauma in the community and at home. When a juvenile is victimized through staff sexual misconduct, the pre-existing problems are worsened. “The impact on the child victim’s psychosocial development may be more traumatic than on that of older victims” (Holmes, 2002, p. 213) Psychological treatment is often needed to come to terms with childhood victimization and the victim’s ability to trust is often damaged significantly (Holmes, 2002).

Unfortunately, there appears to be an overall mindset amongst juvenile justice administrators and law enforcement officials that most allegations of sexual abuse perpetrated by juvenile justice staff are fabrications made by the juvenile for various reasons. Administrators and police officer responses range from “she’s just making it up because she thinks she’ll be released quicker” or “he is just trying to get back at the officer because the officer wrote him up the other day”.

The public’s attitude toward sexual abuse of adult inmates and juveniles is problematic as well. It may be argued that the overall public sentiment is that sexual punishment is part of the experience or that criminals get what they deserve when they are victimized in corrections. The general public’s understanding of sexual victimization in corrections is probably dominated by

inmates sexually victimizing other inmates. However, there appears to be a general lack of concern toward any type of sexual victimization of criminals. It is likely that the majority opinion in the general public is that sexual abuse is inherent to incarceration (Ristroph, 2006).

### **III. TEXAS JUVENILE JUSTICE AND CORRECTIONS**

The juvenile justice system in Texas is bifurcated in that one state agency administers the institutional side of the system and the other state agency regulates the county juvenile justice programs, such as juvenile probation departments and county operated juvenile justice facilities.

#### **Texas Youth Commission**

The agency responsible for institutional corrections for juveniles was created in 1949 through the adoption of the Gilmer Aiken Act. The Gilmer Aiken Act created an agency known as the Texas Youth Development Council. The agency has evolved through reforms and landmark court cases into the agency currently known as the Texas Youth Commission. TYC is mandated to provide for the care, custody, rehabilitation and reestablishment of chronically delinquent offenders. TYC consists of 13 secure institutions and nine residential halfway houses. The mission of TYC is to protect the public, control the commission of unlawful acts by youth committed to the agency, and the rehabilitation of the youths while making them accountable for their conduct. The enabling legislation of the Texas Youth Commission is found in the Texas Family Code Section 51.01 and Chapter 61 of the Texas Human Resources Code.

Juveniles are committed to the Texas Youth Commission by judges, in most cases, for felony level offenses. The criteria for commitment to the Texas Youth Commission is that the juvenile be at least 10 years of age and no older than 17 years of age. TYC may maintain jurisdiction over the offenders until the age of 21. All offenders committed to TYC must be initially assessed at the Marlin Orientation and Assessment Unit to receive physical and psychological evaluations, educational testing and assessment of needs for specialized treatment. Once assessed at the Marlin Orientations and Assessment Unit, approximately 80 percent of the juveniles are assigned to secure correctional facilities, the remaining 20 percent are sent to programs and facilities operated by contract providers (TYC, 2006).

As of December 31, 2005, there were a total of 4,239 residents in 24 TYC facilities. Of the 4,239 residents, 3,815 were male and 424 were female. Texas Youth Commission's Youth Care Investigators received 506 allegations of staff sexual misconduct from FY 2001 through FY 2005. Through investigation, 60 of the allegations in that time frame were confirmed (B. Jackson, personal communication, December 4, 2006).

In February of 2007, TYC became the subject of tremendous scrutiny due to allegations of staff sexual misconduct in its West Texas State School in Pyote, Texas. An investigation conducted by Texas Ranger Brian Burzynski in February and March of 2005 revealed that the assistant superintendent of the facility and the principal in the education component sexually abused several youths in the facility. It was later disclosed that 10 male youths were victimized by the two

staff perpetrators (Ward, 2007b). One of several different allegations involved the assistant superintendent removing youths from their dorms and taking them to his office in the administration building late at night where he reportedly engaged in oral sex with the youths under the threat of extending the youth's commitments to TYC. The incidents began occurring in December 2003 and the superintendent was reportedly made aware of the allegations as early as May of 2004. The Executive Director of TYC was notified of the allegations by August of 2004 when it did not appear that the allegations were being taken seriously. Ultimately, the two staff perpetrators were allowed to resign in 2005 once it was determined that affirmative findings would be made resulting from the administrative investigations conducted by TYC (Blakeslee, 2007).

The system failed the victimized youths at the West Texas State School on at least two different levels. There was an apparent lack of urgency in requiring the initiation of the administrative investigations of the allegations by TYC by the superintendent and executive management of the agency (Ward, 2007a). In addition, once Texas Ranger Brian Burzynski conducted the criminal investigation in 2005, he forwarded the case to the Ward County District Attorney, Randall Reynolds, for prosecution. As of March 20, 2007, the cases have not been prosecuted. Mr. Reynolds stated that the cases had not been prosecuted due to communication problems. He had initially complained to the Texas Attorney General in January of 2007 that he is "one attorney office with limited resources and manpower" (Ward, 2007d, A11). However, court records indicate that, of the total felony cases filed in Ward County, approximately 90

percent were not prosecuted (Associated Press, 2007). As of March 2, 2007, The Office of the Governor was reportedly exploring the possibility of bringing sanctions against Mr. Reynolds (Ward, 2007a).

On March 7, 2007, law enforcement officers from the Office of the Inspector General, in addition to local law enforcement officers have been deployed to every TYC facility to scrutinize youth records and previously reported abuse allegations to insure adequate investigation (Ward, 2007b). Since the deployment of the law enforcement officers, it was discovered that a registered sex offender was working at a TYC facility in Coke County (Ward, 2007c). In addition, the Travis County District Attorney has initiated an investigation of the TYC state offices in Austin, Texas for allegedly altering documents disclosing the results of sexual abuse allegations (Ward, 2007c). Under the pressure of tremendous legislative scrutiny, the Executive Director, Dwight Harris, retired. The TYC Board, the TYC General Counsel and the TYC Deputy Director were forced to resign in lieu of termination (Ward, March 21, 2007). Senate Criminal Justice Committee Chairman John Whitmire commented, “this whole agency needs to be scrubbed” (Ward, 2007d, B7).

### **Texas Juvenile Probation Commission**

The Texas Juvenile Probation Commission (TJPC) was created in 1981 by the 67<sup>th</sup> Legislature. The overall purpose of the agency, according to the enabling legislation under Section 141.001 of the Texas Human Resources Code, is to make juvenile probation services available to juveniles throughout the state. The

mandate of TJPC is to provide alternatives to the commitment of juveniles to the Texas Youth Commission and to establish uniform standards for the community based juvenile justice system. In addition, TJPC is mandated to improve juvenile probation services; improve communications among state and local entities within the juvenile justice system; and to promote delinquency prevention and early intervention programs and activities for juveniles.

The Texas Juvenile Probation Commission provides oversight and funding for the local juvenile probation departments, locally operated pre- and post-adjudication facilities and juvenile justice alternative education programs. Currently, TJPC regulates 51 pre- adjudication facilities, 32 post-adjudications facilities, 5 holdover facilities and 169 locally operated juvenile probation departments and judicial districts. Juvenile probation services are available in each of the 254 Texas counties. In addition, TJPC maintains that same regulatory relationship with 37 Juvenile Justice Alternative Education Programs. TJPC achieves its mission through a comprehensive range of funding, monitoring and technical assistance programs. The Commission allocates funds appropriated by the Texas Legislature in the form of grants to assist local juvenile boards in operating juvenile probation departments, juvenile detention and correctional facilities.

TJPC provides a professional credential to certify that juvenile probation and detention officers meet the minimum statutory requirements for education, work experience and specialized training. In fiscal year 2005, TJPC certified 3,710 juvenile probation and detention officers.

The employment and certification of juvenile justice professionals is currently contingent on criminal history and sex abuse database checks as required by Texas Administrative Code standards. However, those standards currently permit the employment of individuals with felony convictions if that conviction occurred longer than ten years prior to the certification application. Persons with jailable misdemeanors may be certified as juvenile detention and juvenile probation officers if that conviction occurred longer than five years prior to the certification application. Finally, persons applying for certification must not be on community supervision or deferred at the time when applying for certification. Prior incarceration in the Texas Department of Criminal Justice or any other state prison system does not disqualify an applicant for certification, as long as 10 years have elapsed since the felony conviction or 5 years since the jailable misdemeanor. The current standards have been effective since September of 2003(Texas Administrative Code, 2003, Chapter 349.7).

*Investigation of Sexual Abuse in Juvenile Justice Departments, Programs and Facilities*

TJPC conducts investigations of all reported and alleged cases of child abuse and neglect in all secure juvenile facilities and in any program operated by a probation department or under a contract of a juvenile board. The Abuse, Neglect and Exploitation Investigations Unit consists of four investigators responsible for conducting investigations in the aforementioned departments, programs and facilities.

The Texas Family Code mandated TJPC to conduct investigations of abuse and neglect in locally administered juvenile justice departments, programs and facilities (administered by county juvenile boards) in 1997. Child Protective Services of the former Department of Protective and Regulatory Services was responsible for conducting investigations in the aforementioned facilities prior to 1997. TJPC currently classifies allegations of sexual abuse as either Sexual Abuse by Contact (SAC) and Sexual Abuse by Non Contact (SANC). SAC includes sexual contact and SANC may include indecent exposure, voyeurism or the distribution or exhibition of pornographic materials. SAC and SANC have yet to be defined in the Texas Administrative Code, but are currently defined in a working draft of a new abuse, neglect and exploitation chapter.

Sexual Abuse by Contact is any physical contact with a juvenile that includes: Intentional touching of the genitalia, anus, groin breast, inner thigh or buttocks with the intent to abuse, arouse or gratify sexual desire; deviate sexual intercourse, sexual contact; sexual intercourse; or sexual performance (Working Draft of TAC 358, 2007, p.2).

SANC is any sexual behavior which is exhibited, performed or simulated in the presence of a juvenile or with reckless disregard for the presence of a juvenile andwith the intent to arouse or gratify the sexual desire of any person (2007, p. 2 & 3)

## IV. METHODOLOGY

### Data Source

The data utilized in this master's thesis consists of reports of staff sexual misconduct made to the Texas Juvenile Probation Commission (TJPC) in several different ways. The majority of the reports are made by juvenile justice departments, programs and facilities under the authority of the TJPC. Most of the reports are made in written format by utilization of the TJPC's Incident Report Form. Other reports were made independent of the primary reporting mechanism, including complaints by staff employed by the departments, programs and facilities. Parents, concerned citizens, the victims and juvenile witnesses also reported allegations of staff sexual misconduct, as well. Many of the reports made by parties other than the departments, programs and facilities were reported on the TJPC's toll free abuse and neglect reporting hotline. Reporters have the option of reporting allegations anonymously.

The data set includes all allegations of staff sexual misconduct reported to the TJPC in fiscal years 2004, 2005 and 2006. Essentially, the incidents utilized in this study were reported between September 1, 2003 and August 31, 2005. Each case for the prescribed time frame was extracted from the database for use in this master's thesis. All incidents of staff sexual misconduct are reported to the TJPC as Sexual Abuse by Contact and Sexual Abuse by Non-Contact. Reports of

staff sexual misconduct that are classified as sexual abuse by contact by TJPC include the intentional touching of the genitalia, anus, groin, breast, inner thigh or buttocks. In addition, these cases include sexual intercourse and oral sex. Sexual abuse by non contact includes sexual behavior performed or simulated in the presence of a juvenile or with reckless disregard for the presence of a juvenile. In addition, sexual abuse by non contact includes voyeuristic behaviors by staff. All reported allegations of sexual abuse by contact and sexual abuse by non contact are investigated and all available data is maintained in the TJPC Abuse, Neglect and Exploitation Investigations Database.

The exploratory nature of this study dictates that we must determine from where the allegations and affirmative findings are originating. In addition, we must determine the staff titles most frequently associated with allegations of staff sexual misconduct. We know that the data consist of allegations originating from departments, programs and facilities across the state. For the purposes of this study, the variables were further subdivided into secure pre-adjudication facilities, secure and non-secure post-adjudication facilities, community supervision (probation) and juvenile justice alternative education programs. Staff titles include juvenile detention officer, drill instructor, probation officer and ancillary staff. Ancillary staff are support staff, excluding juvenile detention officers, drill instructors and juvenile probation officers. Ancillary staff may include teachers and bus drivers at JJAEPs, medical personnel assigned to work in facilities, counselors and volunteers.

A data sheet was developed to capture the demographic information of the juveniles and the staff offenders for each case. Variables including race, age, and gender of the juveniles were included. Staff demographic variables were age, race, gender and job title. The custody status of the juvenile was recorded on the data sheet. The custody statuses were categorized as secure pre-adjudication, secure post adjudication, community supervision, juvenile justice alternative education program and juvenile justice program. Most importantly, a summary section was incorporated into the data sheet that allowed for the summarization of the allegation and the investigative process for each case. The data sheet included a section utilized to capture the TJPC investigation dispositions. The local law enforcement criminal investigation outcome and local prosecutor outcomes were also listed on the data sheet.

All aforementioned information was extracted from the database for 202 allegations of staff sexual misconduct and written into each data sheet. One data sheet was completed for each case. Although, demographic information was recorded for juveniles and staff in all reported cases, there were certain variables that weren't always present in the TJPC data. For example, the race of the staff isn't normally recorded in the TJPC Abuse, Neglect and Exploitation Investigations database. Race of the staff was frequently recorded utilizing the recollection of the assigned investigator. In addition, if there was no recall of race by the assigned investigator, hispanic surname was utilized in some cases to record race of the staff offender on the data sheets.

## Content Analysis

Content analysis is defined as, “the systematic analysis and selective classification of the contents of mass communication” (Hagan, 2006, p. 262). It is a means of analyzing data that can not be quantified. Content analysis involves:

- The selection of categories and subjects to be analyzed
- The rigorous establishment of criteria for inclusion, a feature which ensures the study can be replicated by others
- Carefully following the preestablished classification scheme
- Statistically analyzing the results (Hagan, 2006, p. 263).

Upon completing all data sheets for this study, each data sheet was systematically analyzed to develop seven continuum categories. It was determined that the range of behaviors reported as sexual abuse by contact and sexual abuse by non-contact to the TJPC would be placed on a continuum to determine the nature of staff sexual misconduct in juvenile justice departments, programs and facilities. The development of the continuum categories was achieved through the identification of the primary behavior reportedly exhibited by staff offenders resulting in the allegation. The seven categories were developed due to each of the 202 allegations effectively fitting into one of the seven continuum categories. Tables were developed for all demographic variables, as well as the seven continuum categories. Each variable and category was manually counted by reviewing each data sheet. No identifying information for staff or juveniles was recorded on the data sheets. In addition the counties and facilities from which the allegations originated were not recorded or utilized in this study.

“Reliability is demonstrated through stable and consistent replication of findings on repeated measurement” (Hagan, 2006, p. 298). Interrater reliability was utilized to verify consistent replication since it addresses the consistency of the implementation of the categorization of the behaviors demonstrated for all reports of staff sexual misconduct. Interrater reliability was sufficient to ensure that the results could be replicated.

It is important to recognize that no assumptions can be made from reporting alone. The likelihood that many instances of staff sexual misconduct go unreported is high. This is not a prevalence study because it does not comprise a complete set of cases. Because this study does not use a complete set of cases, any results are preliminary. This study relies on only the reported cases of staff sexual misconduct and it is impossible to discern the true extent of the problem in juvenile justice in Texas. In addition, unsubstantiated cases do not necessarily mean that an incident of staff sexual misconduct did not occur. If an affirmative finding was not made in a case, it may have simply meant that the allegation could not be proven through investigation. Therefore, because of the high probability that many cases went unreported or unproven, all allegations are included in this study. It is problematic that many cases of staff sexual misconduct reportedly occur when only the offender and the victim are present. Often times, there are no juvenile or staff witnesses to these incidents. Even in the cases in which a juvenile witness was present, the account of the incident given by the witness may have been inconsistent with the allegation to the point that it was difficult to substantiate the case. Staff witnesses to an incident may

have been reluctant to corroborate an allegation based on their reluctance to “rat out” a fellow juvenile justice professional. In some instances, staff ignore obvious signs of wrongdoing simply because they don’t want to believe that a fellow juvenile justice professional would engage in such deplorable activity.

Another barrier to discerning prevalence of the problem is the reluctance to report the allegation by the victims. There are disincentives to reporting including the victim’s fear of retaliation. Juveniles confined to secure facilities often want to “do their time” by completing their program or their stay in detention. Reluctance to report or cooperate with an investigation has often been articulated in those terms. There is a sense amongst victims that they are not protected from retaliation and that the offender will not be punished. In general, “staff against inmate incidents are not as important as rapes in the community” (Urban Institute, 2006, p. 41). A lack of community will and lack of sympathy has been cited as reasons why elected prosecutors do not focus on the prosecution of staff sexual misconduct (Urban Institute, 2006). Based on the infrequent prosecutions of cases, even those substantiated through administrative investigation by the TJPC, the sentiment of no justice for the victim may not be unfounded.

Due to the aforementioned limitations, all allegations were studied in an attempt to discern the possible extent of staff sexual misconduct. Demographics of offenders and victims, as well as the continuum of behaviors, were included in this study. Illustrative cases of allegations and affirmative findings of staff sexual misconduct are utilized in the second part of the study to provide examples of

staff behaviors that resulted in allegations of staff sexual misconduct. Those illustrative behaviors were placed under the continuum category characterizing that behavior.

## V. FINDINGS AND ANALYSIS

### **Continuum Categories of Staff Sexual Misconduct**

Allegations of Staff Sexual Misconduct ranged from staff sharing personal sexual experiences with juveniles to forcible rape. The extreme instances of staff sexual misconduct often elicit reactions of shock and disgust from juvenile justice professionals and the general public. However, staff sexual misconduct on the lower end of the continuum is sometimes the precipitating event to the upper end cases. Some of the lower end behaviors may be characterized, in some instances, as grooming behavior often demonstrated by sex offenders. Seven categories were listed on the continuum.

“Sexual Innuendo” includes behaviors such as sexually explicit statements made to juveniles by staff. It may also include staff sharing explicit sexual experiences with juveniles or asking juveniles to verbalize sexually explicit experiences outside for other than therapeutic reasons. Behaviors such as staff providing personal phone numbers and addresses for the purpose of maintaining inappropriate contact with juveniles outside the realm of juvenile justice setting.

“Sexually Explicit Requests” includes allegations of sexually explicit requests and inquiries intended to elicit sexual interest. Sexually explicit requests include requests by staff that juveniles expose the breasts, buttocks or sex organ.

In addition, these requests may include the explicit requests or suggestions that the juvenile become involved in a sex act or dating relationship with staff.

“Sexual Gestures and Voyeuristic Behavior” are allegations that involve staff that view a juvenile(s) in a state of undress (showers, use of toilet) for sexual gratification. If a staff member exposes the breasts, buttocks, penis or vagina to a juvenile, the act(s) is included in this category of the continuum. Allowing a juvenile to view pornographic images or images of nude persons with implied sexuality is included in this category of the continuum.

“Inappropriate Searches” includes pat searches that exceed the acceptable search protocols. Instances in which staff touches the breasts, buttocks, vagina or penis under the guise of a legitimate pat search are included in this category. For example, moving a bra away from the breast of a juvenile under, while claiming to be checking for contraband, is behavior that would fit into this category.

“Inappropriate Touching” includes incidents in which the staff purposefully touches the juvenile in a way that is intended to express sexual interest or elicit a sexual response. In addition, the classification includes touching of the buttocks, breast, penis or vagina. However, these incidents do not include sexual intercourse, anal sex or oral sex.

“Sexual Intercourse and Oral Sex” includes sexual intercourse, anal sex and oral sex between staff and juveniles. Although “consent” does not exist in juvenile justice, this continuum category includes instances in which there was no apparent force utilized to physically overpower the juvenile.

“Rape” includes instances in which staff force or coerce a juvenile to engage in a sex act. These acts may include forced penetration of the vagina, anus or mouth. Rape also includes instances in which a threat of force or retaliation is utilized by the staff to gain submission from the juvenile. In addition, they may include forced penetration with an object.

### **Known Incidence and Distribution**

A total of 202 allegations of staff sexual misconduct were included. All allegations were made between September 1, 2003 and August 31, 2006. Of the 202 allegations 48 affirmative findings were made by TJPC investigators. Interestingly enough, 63 percent (n=30) of the aforementioned 48 affirmative findings were investigated by local law enforcement agencies as criminal offenses. Only 21 percent (n=10) of the 48 affirmative findings made by TJPC investigators were prosecuted by local prosecutors.

The majority of allegations originated from secure pre-adjudication facilities at 42 percent (n=84). Secure and non-secure post-adjudication accounted for 34 percent (n=69) of the total allegations. Community supervision accounted for 2 percent (n=5) and juvenile justice alternative education programs (JJAEP) accounted for 22 percent (n=44). Of the total affirmative findings, only 19 percent (n=9) originated from secure pre-adjudication facilities. Secure and non-secure post adjudication facilities accounted for 38 percent (n=18). Community supervision accounted for 8 percent (n=4) and JJAEPs accounted for 35 percent (n=17).

The staff most frequently listed as alleged perpetrators in staff sexual misconduct were juvenile detention officers at 64 percent (n=130) of the total allegations. Drill instructors employed in secure post adjudication programs and non secure programs were named as alleged perpetrators in 5 percent (n=10) of the total allegations. Probation officers accounted for 4.5 percent (n=9) and ancillary staff accounted for 21 percent (n=42) of the total allegations. Of the total affirmative findings, juvenile detention officers accounted for 48 percent (n=23) of the offenders, drill instructors accounted for 13 percent (n=6), juvenile probation officers accounted for 6 percent (n=3) and ancillary staff made up 33 percent (n=16).

**Table 1. Frequencies of department, program, facility types and staff titles for all allegations of staff sexual misconduct (n=202)**

<b>Variable</b>	<b>Frequency</b>	<b>Percentage</b>
<b>Department, Program and Facility Type</b>		
Secure Pre Adjudication	<b>84</b>	<b>42</b>
Secure and Non Secure	<b>69</b>	<b>34</b>
Post Adjudication	<b>5</b>	<b>2</b>
Community Supervision	<b>44</b>	<b>22</b>
JJAEP		
<b>Staff Title</b>		
Juvenile Detention Officer	<b>130</b>	<b>64</b>
Drill Instructor	<b>21</b>	<b>10.5</b>
Juvenile Probation Officer	<b>9</b>	<b>4.5</b>
Ancillary Staff	<b>42</b>	<b>21</b>

**Table 2. Frequencies of department, program, facility types and staff titles for affirmative findings of staff sexual misconduct (n=48)**

<b>Variable</b>	<b>Frequency</b>	<b>Percentage</b>
<b>Department, Program and Facility Type</b>		
	<b>9</b>	<b>19</b>
<b>Secure Pre Adjudication</b>	<b>18</b>	<b>38</b>
<b>Secure and Non Secure</b>	<b>4</b>	<b>8</b>
<b>Post Adjudication</b>	<b>17</b>	<b>35</b>
<b>Community Supervision</b>		
<b>JJAEP</b>		
<b>Staff Title</b>		
<b>Juvenile Detention Officer</b>	<b>23</b>	<b>48</b>
<b>Drill Instructor</b>	<b>6</b>	<b>15</b>
<b>Juvenile Probation Officer</b>	<b>3</b>	<b>6</b>
<b>Ancillary Staff</b>	<b>33</b>	<b>33</b>

The demographics of staff and juveniles were analyzed by sex, race and age. The information was gathered for all allegations of staff sexual misconduct (n=202) and affirmative findings (n=48) to discern any distinctions between the two data sets. Of the 202 allegations, the sex of the staff listed as the alleged perpetrator was 78.8 percent (n=159) male, 20.8 percent (n=42) female and .4 percent (n=1) unknown. Of the 48 cases in which affirmative findings were made, the gender breakdown is 65 percent (n=31) male and 35 percent (n=17) female. The sex of the juveniles listed as the alleged victims all allegations was 50 percent (n=101) male, 49.5 percent (n=100) female and .5 percent (n=1) unknown. The sex of juveniles in affirmative findings was 48 percent (n=23) male and 52 percent (n=25) female.

The race of all staff listed as alleged perpetrators in all allegations of staff sexual misconduct (n=202) was 30 percent (n=61) African American, 32 percent (n=64) Hispanic, 30 percent (n=61) White, and 8 percent (n=16) Unknown. The race of staff in affirmative findings of staff sexual misconduct (n=48) was 42 percent (n=20) African American, 31 percent (n=15) Hispanic and 27 percent (n=13) White. It should be noted that thirteen of the affirmative findings involving African American staff were attributed to two staff. Of the total allegations, 24 percent (n=48) of the alleged victims were African American, 45 percent (n=90) were Hispanic, 29 percent (n=30) were White and 2 percent (n=4) were Unknown. The race of victims in affirmative findings was 29 percent (n=14) African American, 46 percent (n=22) was Hispanic and 25 percent (n=12) was White.

The ages of staff offenders were categorized by ages 21-30, 31-40, 41-50, 51+ and unknown. Of the total allegations (n=202), 36 percent (n=72) of staff offenders were between the ages of 21 and 30, 17 percent (n=35) were between the ages of 31-40, 13 percent (n=26) were between the ages of 41 and 50, 5 percent (n=11) were 51 years of age or older and 29 percent (n=58) were unknown (See Table 3). In affirmative findings, staff offenders were 38 percent (n=18) between the ages of 21 and 30, 31 percent (n=15) were between the ages of 31 and 40, 29 percent (n=14) were between the ages of 41-50 and 2 percent (n=1) were 51 years of age or older (see Table 4).

The juveniles (n=202) listed as alleged victims were categorized by ages 10-11, 12-13, 14-15, 16-17 and unknown. For total allegations, ages 10-11

accounted for 1 percent (n=2) of the alleged victims, 7 percent (n=14) were ages 12-13, 40 percent (n=81) were ages 14-15, 45 percent (n=90) were ages 16-17 and 7 percent (n=15) were unknown (see Table 3). The ages of juveniles listed as victims in affirmative findings were 0 percent (n=0) for ages 10-11, 4 percent (n=2) for ages 12-13, 33 percent (n=16) for ages 14-15, 63 percent (n=30) for ages 16-17 (see Table 4).

**Table 3. Summary of Sex, Race, Age of Staff and Juveniles in all Allegations (n=202)**

<b>Variable</b>	<b>Frequency</b>	<b>Percentage</b>
<b>Sex of Staff</b>		
<b>Male</b>	<b>159</b>	<b>78.8</b>
<b>Female</b>	<b>42</b>	<b>20.8</b>
<b>Unknown</b>	<b>1</b>	<b>.4</b>
<b>Sex of Juvenile</b>		
<b>Male</b>	<b>101</b>	<b>50</b>
<b>Female</b>	<b>100</b>	<b>49.5</b>
<b>Unknown</b>	<b>1</b>	<b>1</b>
<b>Race of Staff</b>		
<b>African American</b>	<b>61</b>	<b>30</b>
<b>Hispanic</b>	<b>64</b>	<b>32</b>
<b>White</b>	<b>61</b>	<b>30</b>
<b>Unknown</b>	<b>16</b>	<b>8</b>
<b>Race of Juvenile</b>		
<b>African American</b>	<b>48</b>	<b>24</b>
<b>Hispanic</b>	<b>90</b>	<b>45</b>
<b>White</b>	<b>30</b>	<b>29</b>
<b>Unknown</b>	<b>4</b>	<b>2</b>
<b>Age of Staff</b>		
<b>21-30</b>	<b>72</b>	<b>36</b>
<b>31-40</b>	<b>35</b>	<b>17</b>
<b>41-50</b>	<b>26</b>	<b>13</b>
<b>51+</b>	<b>11</b>	<b>5</b>
<b>Unknown</b>	<b>58</b>	<b>29</b>
<b>Age of Juvenile</b>		
<b>10-11</b>	<b>2</b>	<b>1</b>
<b>12-13</b>	<b>14</b>	<b>7</b>
<b>14-15</b>	<b>81</b>	<b>40</b>
<b>16-17</b>	<b>90</b>	<b>45</b>
<b>Unknown</b>	<b>15</b>	<b>7</b>

**Table 4. Summary of Sex, Race and Age of Staff and Juveniles in Affirmative Findings (n=48)**

<b>Variable</b>	<b>Frequency</b>	<b>Percentage</b>
<b>Sex of Staff</b>		
<b>Male</b>	<b>31</b>	<b>65</b>
<b>Female</b>	<b>17</b>	<b>35</b>
<b>Sex of Juvenile</b>		
<b>Male</b>	<b>23</b>	<b>48</b>
<b>Female</b>	<b>25</b>	<b>52</b>
<b>Race of Staff</b>		
<b>African American</b>	<b>20</b>	<b>42</b>
<b>Hispanic</b>	<b>15</b>	<b>31</b>
<b>White</b>	<b>13</b>	<b>27</b>
<b>Race of Juvenile</b>		
<b>African American</b>	<b>14</b>	<b>29</b>
<b>Hispanic</b>	<b>22</b>	<b>46</b>
<b>White</b>	<b>12</b>	<b>25</b>
<b>Age of Staff</b>		
<b>21-30</b>	<b>18</b>	<b>38</b>
<b>31-40</b>	<b>15</b>	<b>31</b>
<b>41-50</b>	<b>14</b>	<b>29</b>
<b>51+</b>	<b>1</b>	<b>2</b>
<b>Age of Juvenile</b>		
<b>10-11</b>	<b>0</b>	<b>0</b>
<b>12-13</b>	<b>2</b>	<b>4</b>
<b>14-15</b>	<b>16</b>	<b>33</b>
<b>16-17</b>	<b>30</b>	<b>63</b>

### **Illustrative Cases**

TJPC investigators have investigated numerous allegations of staff sexual misconduct within the last decade. The following investigations summaries are

examples of cases investigated by TJPC. Each case is categorized under one of the seven spaces on the continuum.

*Sexual Innuendo:* In 2004, a detention officer at a juvenile boot camp wrote letters to a juvenile after she was released from the program. The staff member, who was 39 years old, wrote in his letters to the 16-year-old statements such as “I love you” and “I adore you”. The staff rationalized that he was writing the juvenile letters because he wanted to help her with her Spanish.

*Sexually Explicit Requests:* In 2006, a detention officer in a secure post adjudication facility took a juvenile to an isolated classroom in the facility and turned out the lights. The detention officer asked the juvenile to remove his pants. According to the juvenile, he refused to remove his pants and the detention officer turned the lights back on and allowed him to leave. There were no other residents or staff present at the time this alleged incident occurred. The disposition of the case was “unable to determine” based on the fact that there were no witnesses to corroborate or refute the allegation. Although evidence did not exist to make an affirmative finding, the assigned investigator suspected that the alleged incident did occur.

*Sexual Gestures and Voyeuristic Behavior:* In 2004, a drill instructor in a secure post adjudication program encouraged male juvenile residents to masturbate in his presence. In addition, he instructed the juveniles to show him the semen when they had finished masturbating. There was overwhelming evidence to confirm that the drill instructor actually choreographed scenarios in which juvenile were

made to stand heel to toe while completely naked. The offender in this case was ultimately prosecuted for Sexual Performance by a Child.

*Inappropriate Searches:* In 2004, six students at a juvenile justice alternative education program (JJAEP) reported that a teacher's assistant at the facility touched them on the breast during standard searches conducted upon their arrival at the (JJAEP). The teacher's assistant reportedly put her hand under the brazier of the six female students. The teacher's assistant admitted to the alleged incidents. However, she indicated that she conducted searches in that manner because she was not properly trained how to conduct a proper search.

*Inappropriate Touching:* In 2004, a drill instructor at a secure post adjudication program reportedly kissed a female resident and touched her vagina. The female resident indicated that she had two different encounters in which the drill instructor ensured that the two of them were in a secluded area. Despite no witnesses to the actual incidents, other female residents noticed that the drill instructor frequently selected the victim in the case to assist him on work details. No other female residents were allowed to assist on the work details, giving the impression that the drill instructor sought to isolate the juvenile. Many female residents noticed that the drill instructor often touched female residents when talking to them. In addition, he engages in playful activities with the victims by tickling them and engaging in playful banter.

*Sexual Intercourse and Oral Sex:* In 2004, a male juvenile detention officer was observed engaged in sexual intercourse with a female resident in a secure pre adjudication facility. An 11 year old resident of the facility observed the staff

offender and the juvenile victim having sex in the resident's cell. The male staff later confessed to law enforcement that he did have sex with the female resident.

In 2004, a female juvenile probation officer was reportedly engaged in an inappropriate relationship with a probationer from her caseload. By the time the incident was reported, the probationer's term of probation had expired and he had turned 17. Upon investigation, it was learned that the probation officer was involved in a sexual relationship with the boy while he was on her probation caseload. Evidence of this sexual relationship was solidified when it was verified that a child was born of that relationship while the probationer was on the probation officer's caseload.

In 2004, a male detention officer met a juvenile female prostitute after she was detained in the facility. The male detention officer agreed to pay the female resident for sex after her release from the facility. Ultimately, he met the juvenile at a hotel and paid for sex on at least two separate occasions. When the incidents occurred, he was aware that she was a probationer and a minor.

In 2006, a female juvenile detention officer developed an inappropriate relationship with a male resident in a pre-adjudication facility. It appears that, initially, the relationship was limited to inappropriate conversations and favoritism while the resident was in the facility. The female detention officer continued the relationship after the juvenile was released and placed on Intensive Supervision Probation. Investigation revealed that the female detention officer escalated the relationship and began visiting the juvenile at his mother's home. In

addition to consuming alcohol with the juvenile victim, the female detention officer confessed to having sexual intercourse with the boy in his home.

In 2006, a male juvenile probation officer contacted a male probationer at the probationer's home. He identified himself as a friend of a friend. It was reported that the juvenile probation officer picked up the male probationer later that evening in his personal vehicle. The male probation officer was dressed as a woman when he picked up the probationer. The probationer was driven to a grocery store parking lot where the juvenile probation officer performed oral sex on the probationer. The probationer reported that he did not know that the person that picked him up from his home was actually a man until the alleged sexual act occurred. One of the alarming aspects of this incident was that the probationer did not know the probation officer. The probationer was on a different juvenile probation officer's caseload. It appears that the staff offender in this case randomly selected this probationer for victimization. It is likely that the staff offender observed the probationer reporting to his assigned probation officer since the assigned juvenile probation officer and the perpetrator worked on the same unit. It is also conceivable that the perpetrator developed a fixation, accessed the perpetrator's contact information in the department database, and followed through by initiating contact with the victim for the purpose of victimizing the probationer.

*Rape:* In 2004, a detention officer in a secure post adjudication program reportedly sexually assaulted a juvenile in the presence of nine juvenile residents. The detention officer reportedly held the juvenile down while he pulled down the

juvenile's pants and boxers and inserted a pencil approximately one inch into the juvenile's rectum.

### **A Continuum of Coercion**

The continuum category "sexual innuendo" accounted for 26 percent (n=53) of the total allegations of staff sexual misconduct. "Sexually explicit requests" made up 5.5 percent (n=11), "sexual gestures and voyeuristic behavior" were 9 percent (n=18), "inappropriate searches" were 6.5 percent (n=13), "inappropriate touching" totaled 36 percent (n=73), "sexual intercourse and oral sex" totaled 10 percent (n=20) and "rape" accounted for 7 percent (n=14) of the total allegations of staff sexual misconduct (see Table 5). Of the affirmative findings, 27 percent (n=13) were "sexual innuendo", 0 percent (n=0) affirmative findings were made for "sexually explicit requests", 10 percent (n=5) were for "sexual gestures and voyeuristic behavior", 21 percent (n=10) were for inappropriate searches, 17 percent (n=8) were for "inappropriate touching", 21 percent (n=10) were for "sexual intercourse and oral sex" and 4 percent (n=2) were for "rape" (see Table 6).

**Table 5. Frequencies of Staff Sexual Misconduct by Continuum Category for all Allegations (n=202)**

<b>Continuum Category</b>	<b>Frequency</b>	<b>Percentage</b>
<b>Sexual Innuendo</b>	<b>53</b>	<b>26</b>
<b>Sexually Explicit Requests</b>	<b>11</b>	<b>5.5</b>
<b>Sexual Gestures and Voyeuristic Behavior</b>	<b>18</b>	<b>9</b>
<b>Inappropriate Searches</b>	<b>13</b>	<b>6.5</b>
<b>Inappropriate Touching</b>	<b>73</b>	<b>36</b>
<b>Sexual Intercourse and Oral Sex</b>	<b>20</b>	<b>10</b>
<b>Rape</b>	<b>14</b>	<b>7</b>

**Table 6. Frequencies of Staff Sexual Misconduct by Continuum Category for Affirmative Findings (n=48)**

<b>Continuum Category</b>	<b>Frequency</b>	<b>Percentage</b>
<b>Sexual Innuendo</b>	<b>13</b>	<b>27</b>
<b>Sexually Explicit Requests</b>	<b>0</b>	<b>0</b>
<b>Sexual Gestures and Voyeuristic Behavior</b>	<b>5</b>	<b>10</b>
<b>Inappropriate Searches</b>	<b>10</b>	<b>21</b>
<b>Inappropriate Touching</b>	<b>8</b>	<b>17</b>
<b>Sexual Intercourse and Oral Sex</b>	<b>10</b>	<b>21</b>
<b>Rape</b>	<b>2</b>	<b>4</b>

### **Interpreting Exploratory Data**

The Texas Juvenile Probation Commission is heavily reliant on self reporting from the departments, programs and facilities that it regulates. Despite mechanisms developed to facilitate reporting from parents, conscientious juvenile justice professionals and the community, the potential for the filtering of allegations to be handled “in-house” by administrators exists. The number of

allegations reported to TJPC may represent a small percentage of the actual incidents. Several factors support this possibility. Preliminary data obtained in the Bureau of Justice Statistics study of sexual violence suggest that juvenile victimization may be significantly higher than in adult institutions (BJS, 2004). In addition, it was discerned through investigation that several staff perpetrators victimized more than one resident. These allegations were frequently reported with one victim. However, investigations frequently revealed that there were other victims that had not previously come forward with allegations. A contemporary juvenile justice example became apparent when confirmed cases of sexual abuse committed by two staff at the West Texas State School in Pyote, Texas were disclosed to the general public in February of 2007 (Blakeslee, 2007). Each of the staff offenders victimized more than one juvenile. Many of the juvenile victims did not make allegations initially for fear of retaliation. The extent of the victimization wasn't known until the law enforcement investigation in 2005 (Swanson, 2007).

An adult case, *Thomas v. Galveston County* (1997), is another example of multiple incarcerated victims. In this case, a male correctional officer, was alleged to have sexually assaulted a female inmate several times in a five month period. Investigation revealed that the male correctional officer had sexually assaulted several other female residents. However, none of the female inmate victims reported the abuses.

The recognition of a distinct power differential between the correctional officer and inmate is frequently mentioned in civil litigation and criminal cases in the adult system. In *Scott v. Moore* (1997), the power differential was discussed:

The issue concerns the realities of human nature in situations where one individual occupies a position of substantial authority relative to another. The situations or, more accurately, relationships are myriad: supervisor to employee, military officer to soldier, guard to pretrial detainee. Whatever the relationship, it is abundantly clear that our society is beginning to recognize these as potentially volatile situations.

It would appear that the juvenile victims detained, adjudicated and placed in departments, programs and facilities are, at least, equally susceptible to the power differential. In addition, a compelling argument may be made for increased susceptibility of juveniles in pre-adjudication and post-adjudication facilities based on the fact that their disciplinary status may be heavily influenced by individual staff. Disciplinary reports or write ups often weigh heavily in judges decision to release the juvenile from detention or their eligibility for release from a post-adjudication program based on successful completion.

## VI. DISCUSSION

This master's thesis is an exploratory study of the incidence and nature of staff sexual misconduct in juvenile justice departments, programs and facilities in Texas. Access to each allegation and the ensuing investigation for a three year period provides significant insight into the various types of allegations of staff sexual misconduct. However, these cases are only the reported cases of allegations of staff sexual misconduct.

Kraska and Kappeler's study of police sexual violence revealed an element that may be extended beyond policing to juvenile justice. "The police possess exceptional access to women, often in situations with little or no direct accountability" (Kraska and Kappeler, 1995, p. 107). Juvenile justice professionals also have exceptional access to juveniles and significant authority to influence sanctions, including prolonging secure placement of a juvenile. As an example, thousands of youths committed to the Texas Youth Commission will be interviewed to determine whether their sentences were lengthened in retaliation for the filing of grievances. The special master appointed by Governor Rick Perry to oversee the investigation of the Texas Youth Commission indicated that "...93 percent of all inmate sentences were extended and should be reviewed for fairness" (Copelin, 2007, p. A1).

TJPC currently employs four investigators to investigate every reported allegation of abuse, neglect and exploitation. The investigators employed by TJPC conduct administrative investigations and have no authority to conduct criminal investigations. Although TJPC investigators provide all information to law enforcement and local prosecutors, evidence suggests that criminal investigations are frequently not conducted. Approximately 1/3 of cases in which TJPC investigators made affirmative findings were investigated criminally. Based on the fact that departments, programs and facilities are county operated, local prosecutors are responsible for conducting criminal prosecutions. Less than 1/4 of cases in which TJPC has made an affirmative finding through administrative investigation have actually been prosecuted. Although criminal code exists under the Texas Penal Code, Section 39.04, prohibiting sexual contact between corrections officers and incarcerated persons, it is apparent that local law enforcement and local prosecutors are not aggressively pursuing criminal action against perpetrators of staff sexual misconduct in juvenile facilities.

It appears that there may, in fact, be different types of staff perpetrators of staff sexual misconduct. Kraska and Kappeler used the term “situational opportunity” (Kraska and Kappeler, 1995, p. 107) as a common element on the police sexual violence continuum. Although it appears that many staff perpetrators may be situational opportunists, there are also staff that demonstrate behaviors that are more calculated. Pedophiles are tempted by the availability of children. In addition, they typically have a positive perception of criminal justice (Holmes, 2002). It would stand to reason that pedophiles may be drawn to

juvenile justice. Grooming behaviors indicative of pedophilic tendencies were apparent in some reported cases of staff sexual misconduct.

### **Policy Implications**

Research has demonstrated that most pedophiles incarcerated for their crimes have reported being sexually abused as children (Holmes & Holmes, 2002). The victimization of some juveniles during their involvement in the juvenile justice system may serve to create future sex offenders if the aforementioned research is accurate. It is of the utmost importance that juvenile justice administrators take all necessary steps to eliminate staff sexual misconduct from juvenile justice departments, programs and facilities. The protection of incarcerated persons from cruel and unusual punishment is afforded by the Eighth Amendment requires that administrators make every effort to protect incarcerated persons. Because the framers of the Constitution believed that the treatment of incarcerated persons was a reflection of the condition of our society, juvenile justice policy makers and administrators must attack the scourge of staff sexual misconduct. People are not convicted or adjudicated for crimes and sentenced or committed to be raped or sexually abused. They are convicted or adjudicated and sentenced or committed to prison and juvenile facilities with the understanding that their loss of freedom is the punishment. An adjudication and stipulation of community supervision limiting freedom within the community is the

punishment. Rape and various other types of sexual abuse are not part of the punishment.

Unfortunately, it appears that many in society and some employed within the juvenile justice profession are ambivalent. “If you can’t do the time, don’t do the crime” is a cliché often regurgitated by the unsympathetic. However, even absent sympathy for the juvenile offender, one must consider what ambivalence and permissiveness toward this issue says about the condition of the system of juvenile justice in Texas. Are we as a society bound by the rule of law? Doesn’t that law apply to those responsible for protecting and rehabilitating our juveniles? Are we bound to be civil and humane to our children?

It is imperative that the culture of juvenile justice in Texas embrace the ideal that staff sexual involvement with juveniles is never acceptable, regardless of age of consent or perceived consent. The power differential is too great for consent to exist. The permanent damage to the mental health of the juvenile is evident in sexual abuse literature.

A paradigm shift in juvenile justice is required to change the overall culture of juvenile justice. The mindset amongst juvenile justice professionals that staff sexual misconduct allegations are often fabricated must be impacted to the extent that every allegation is taken seriously. One necessary step to effect the aforementioned change is the implementation of a standardized requirement for local jurisdictions to create a clear and firm zero tolerance policy as required by the Prison Rape Elimination Act of 2003. The absence of such a policy may create the impression amongst some juvenile justice professionals of unspoken

permissiveness. A firm zero tolerance policy should simply state that any romantic involvement with any juvenile is prohibited and will be prosecuted, without exception.

Consideration should be given to the expansion of the list of prohibitive criminal histories, regardless of elapsed time since conviction. The current standard disqualifies an applicant with a felony conviction within ten years of the date of the application for certification with TJPC. Should all convicted felons or persons convicted and sentenced to state prisons be prohibited from obtaining certification? The current climate of juvenile justice in Texas would indicate that policy makers and legislators expect prohibition of any convicted felon from employment in the system. Although standards prohibit certification of an individual registered as a sex offender, the effectiveness and reliability of sex offender registration programs in other states is not known.

Currently, criminal investigations of staff sexual misconduct are conducted by the local law enforcement agencies with geographic jurisdiction over the departments, programs, or facilities from which the allegation originates. Resource considerations and lack of adequate training specific to the investigation of staff sexual misconduct may contribute to inconsistent criminal investigations. TJPC should recommend legislation to amend Article 2.12 of the Texas Code of Criminal Procedure to allow for Texas Juvenile Probation Commission investigators to become peace officers. TJPC investigators are experienced in investigating allegations of staff sexual misconduct. As an employment requirement, TJPC investigators all have previous experience as juvenile

probation officers or juvenile detention officers in local departments and facilities. Because of this experience, they have valuable insight and experience that is often valuable when conducting investigations.

The low percentage of prosecutions of perpetrators of staff sexual misconduct requires that significant changes be considered by policy makers and legislators. Local prosecutors that purposefully delay prosecutions of these cases must be held to a high level of accountability. One possible solution to facilitate more effective prosecution is the introduction of legislation to enable juvenile justice, including local jurisdictions under the authority of the TJPC, to benefit from the resources of the Special Prosecution Unit. The unit is under the authority of the Office of the Governor and is funded to assist local prosecutors to prosecute crimes (including staff sexual misconduct) committed within the institutions of the Texas Department of Criminal Justice. Those resources should be made available to juvenile justice.

The void in existing literature specific to staff sexual misconduct in juvenile justice indicates the need for further research of the issue. On a national level, a pending report of administrative records of sexual violence in juvenile justice for 2005 is to be compiled and disseminated by the Bureau of Justice Statistics. However, the availability of this report originally scheduled for the Fall of 2006 has been delayed again. Once released, the report should provide more definitive statistical information. The 2005 report on sexual violence in adult corrections completed by the Bureau of Justice Statistics was released in July of

2006 (BJS, 2005). Juvenile justice must not remain an afterthought when researching staff sexual misconduct.

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Women Prisoners v. District of Columbia 877 F. Supp. 634 (1994)

## VITA

Robert Kevin DuBose was born in Hondo, Texas on August 23, 1970, the son of Howard and Linda DuBose of Devine, Texas. After completing his work at Natalia High School in Natalia, Texas, in 1988, he entered Midwestern State University in Wichita Falls, Texas. He earned his Bachelor of Science in Criminal Justice in 1992 and began his career in juvenile justice with the Wichita County Juvenile Probation Department in 1993. In 1998, he served as a Senior District Parole Officer for the Texas Department of Criminal Justice in the Wichita Falls District Parole Office. In 1999, he began his employment with the Texas Juvenile Probation Commission. In the summer of 2000, he entered the Graduate College of Southwest Texas State University. In 2003, he was deployed with the United States Naval Reserve for Operation Enduring Freedom and Operation Iraqi Freedom. He resumed his graduate studies at Texas State University-San Marcos in September of 2004.

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