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Washington's Invisible Epidemic of Sex Crimes

By Andy Mannix

Abstract: *Every year, an estimated 200,000 inmates fall victim to sexual misconduct in prisons, jails and juvenile facilities across the country. It's a familiar phenomenon portrayed in television and movies, but the realities of how this abuse takes place – and who perpetrates it – are vastly misunderstood.*

Research shows prison staff account for a significant amount of this misconduct. This has certainly been the case in Washington State, where an allegation of staff-perpetrated misconduct is made, on average, every 41 hours.

It's a complicated problem with no easy solution. In some cases examined in this story, the relationships appear to be willing; the inmate victims even claim to love the staff members. Others involve grisly allegations of coercion or forcible rape. This story also analyzes how infrequently prison investigators substantiate allegations, and what happens – or, as is more often the case, does not happen – when they reach police and prosecutors.

The purpose of this story is to educate readers by challenging conventional wisdom surrounding the nuanced and pervasive issue of prison sexual misconduct. I also hope to give a voice to Washington's inmates – those who, as consequence for their crimes, live invisible from the public eye, but are nonetheless deserving of justice and compassion, especially when they find themselves victims at the hands of those tasked with keeping them safe.

Part I: Staff sexual misconduct on the rise in Washington prisons

The investigation began with an anonymous letter: Theresa Nolte, a customer service worker at the print shop in Monroe Correctional Complex, appeared to have a strange relationship with an inmate clerk named Kelly Beard, a member of the prison's Aryan gang finishing up a 20-year murder sentence. Though Beard didn't work directly for Nolte, the two spent most of the day together, frequently huddled in whispered conversations.

Investigators quickly discovered Nolte and Beard were carrying on a sexual relationship. The two were even planning a life together after Beard's expected release the following year.

"Think of me waiting for you with my arms open wide and my heart overflowing with love for you," Nolte wrote in a letter to Beard, signed, "Lucy." "I love you with my heart, my body and my soul. I love the way I keep loving you, like a love I can't control."

In Washington, sexual encounters between prison staff and inmates violate state law and Department of Corrections policy. But that doesn't stop them from happening. Over the past six years, there have been more than 1,200 allegations of staff sexual misconduct – the equivalent of one every 41 hours –

according to data reviewed by The Seattle Times. The prison substantiates about one in 10 reports, meaning investigators find the allegation to have merit and the prison imposes some kind of discipline.

One 2014 federal study, which examined sexual misconduct in prisons nationwide from 2009-11, found Washington had a rate of reported allegations more than three times higher than that of New York.

Female staff make up the majority of perpetrators nationwide. The Washington Department of Corrections doesn't track suspect gender in all allegations, but about 80 percent of victims are male.

The numbers are climbing: total reported allegations went up 37 percent last year from 2012, according to corrections data. The number of investigations into staff sexual misconduct increased almost 400 percent from 2005 to 2013.

"I think when you see that number of allegations, you can't deny that there's still something going on," said Melissa Lee, attorney for Columbia Legal Services, which sued the Washington Department of Corrections for staff sexual abuse of inmates in 2007. "Until we reduce that number exponentially, the Department of Corrections has to keep working on this."

Part of the decade-long spike can be explained by new reporting mandates. In 2003, President George W. Bush signed the Prison Rape Elimination Act (PREA), a law designed to create better practices for policing sexual abuse in prisons and to implement new methods of data collection. As the law went into effect over subsequent years, prisons saw a jump in reports -- showing the problem of staff-perpetrated sexual misconduct is more common than previously realized.

"The fact that anybody's being raped at all should be cause for concern," said Paul Wright, former Washington inmate and now editor of Prison Legal News. "If it's not being tacitly condoned, its hard to explain: Why is this so prevalent?"

A troubled history

Prison officials don't deny Washington is a leader in reported allegations of staff sexual misconduct, but Beth Schubach, PREA coordinator for the Department of Corrections, said the numbers don't tell the whole story.

In recent years, the department has worked to reform its methods, and it's now more effective at investigating these incidents, Schubach said. She believes the high rate of reports is the result of the department purposely using broad definitions of what constitutes misconduct, diligent policing and creating an atmosphere in which offenders feel comfortable making complaints without fear of retaliation from staff or fellow prisoners.

"I think, because of that confidence, you're going to get more people reporting suspicions, so your allegations are going to go up," she said.

Yet Washington wasn't always so attuned to this problem. In 1996, when a guard impregnated Heather Wells, an inmate at the Women's Correctional Center near Purdy, Washington was still among a minority of states with no law

against staff-inmate sex. What's more, the Department of Corrections had no policy directly addressing it.

"Nothing existed in writing," said Erik Bauer, a Tacoma-based attorney who represented Wells' in a lawsuit. "That's what was so shocking."

Wells, who was finishing a 15-year murder rap, claimed the guard, Michael Stevens, raped her four days before Christmas. Stevens contested the sex was consensual, and prosecutors declined to file charges.

In Wells' lawsuit against Stevens and the Department of Corrections, Bauer argued not only that Stevens forced Wells to have sex with him -- threatening punishment if she didn't cooperate -- but that the power imbalance between staff and inmate made consent impossible.

"These guards could go up to these gals and say, 'Do this,'" said Bauer. "And the gal's thinking, 'What if I don't? I could get reported, I could end up in the hole, I could lose my good time, I could lose my visitation.'"

The lawsuit settled out of court for \$150,000. In 1999, the Legislature passed a law making Washington the 39th state to criminalize staff-on-inmate sexual behavior. Meanwhile, Wells gave birth to her daughter while still in prison.

Gender disparities

In March 2011, a month after the anonymous tip, Monroe investigators confronted Theresa Nolte with one of the nine love letters discovered in Beard's cell. The handwriting matched Nolte's. The return address belonged to the wife of a friend of Beard's, another Monroe inmate and high-ranking member of the Bloods.

Upon seeing the letter, Nolte's demeanor abruptly changed, according to a summary of the interview. Silently, she clasped her hands together and stared at the note.

"No, I did not send those to him," she said.

Beard was also uncooperative when first approached by investigators. "The worst you can do is ship me out of here," he told them. And that wasn't so bad -- he was getting out next year anyway.

But in his third interview, Beard was more forthcoming. He admitted Nolte wrote the letters. He had come to know her while working in the prison's engraving shop, which occasionally brought him into her office, he said. One day, in December 2010, Nolte "outright told him she had feelings for him and wanted to spend the rest of her life with him." In the coming weeks, the two began finding time alone to kiss, and eventually engaged in sexual behavior.

"This occurred numerous times," said Beard. "I won't give you any more details than that."

He and Nolte were in love, he told investigators. He'd never testify against her. He wanted to know how long it would be until he could put her on the visitors' list.

From a legal standpoint, the gender of the perpetrator is insignificant. But studies show gender often changes the nature of the misconduct.

When the prison staffer is female, 84 percent of the time the relationship “appeared to be willing,” according to a recent Department of Justice study, which examined cases nationally from 2009-11.

“Some would call it romantic, others would not,” said Allen Beck, senior statistical advisor for the Bureau of Justice Statistics.

This is not in accord with male staff. The same study shows that in incidents committed by male staff, their partners only appeared to be willing 37 percent of the time.

The term “willing” is subjective. Brenda Smith, director of National Institute of Corrections Cooperative Agreement on Addressing Prison Rape, lamented the misconceptions about sexual misconduct involving female staff. Even if relationships appear to be willing, the victims often are coerced into the act, she said. Research has also found stigma makes it harder for men to admit being victims of sexual misconduct.

“Men are always perceived to be willing,” said Smith. “Men don’t get to call these sexual interactions not willing.”

Even when relationships are willing, they can still lead to other problematic behavior. Staff members have helped inmates commit crimes from behind bars, such as the recent scandal in Baltimore City Detention Center, in which members of the Black Guerilla Family gang recruited guards to help them smuggle drugs into the facility, which gang members then sold at high markup to other inmates. One high-ranking Black Guerilla member fathered children with four correctional officers while incarcerated; two tattooed his name on their bodies.

“It’s not like these are no-harm, no-foul situations,” said Smith.

‘Zero Tolerance’

PREA was supposed to put an end to this type of conduct. Indeed, the law called for a “zero-tolerance” policy on sexual misconduct in prisons.

Since its passage 12 years ago, however, advocates for prison reform have criticized PREA for not actually mandating harsher punishments. And while it serves as a data-collection mechanism, the numbers are self reported by prisons, and only 5 percent of federal funding is tied to meeting PREA regulations at all. Last year, Washington was among 42 states that didn’t comply by the May deadline, instead providing a letter assurance they would be up to standards soon. None lost that funding.

“It’s a relatively toothless piece of law,” said Lee. “It’s not really enforceable, and it doesn’t really penalize states for failing to comply in a meaningful way.”

However flawed, PREA does provide some means of measuring these incidents that did not previously exist, and in turn it has illuminated how frequently these incidents take place inside the supposedly secure walls of prisons and jails.

Four years after Bush signed PREA, Lee and Columbia Legal Services represented female inmates in the class-action lawsuit against the Washington

Department of Corrections, alleging a culture of staff sexual misconduct and inadequate investigations. Five women claimed they were abused multiple times.

“For decades, the staff at Purdy used to look at it as like having sex with the prisoners was just a job perk,” said Wright. “It’s like overtime.”

The case settled for \$1 million. Lee, who helped monitor abuse allegations for three years as part of the settlement, said the department has stepped up its policing of these incidents since the lawsuit. As a result, the investigations have started earlier, more women appear comfortable making allegations and abuse in most cases has been less severe.

But the problem is not solved, and the number of allegations has gone up. At the time the suit was filed, there had been 41 allegations in the prior four years at the women’s facility in Pierce County. From 2011 to 2014, there were 95.

“Sexual misconduct in prisons is a huge problem,” said Lee. “It’s not going away. Our lawsuit didn’t solve it.”

Moving forward, Schubach said the Department of Corrections will continue to crack down on misconduct within its prisons’ walls.

She points to the strict investigative process as an illustration of how seriously her staff takes this problem. Every single allegation, no matter how severe or inane, is now subjected to formal investigation. Independent investigators examine the facts of each case, instead of prison guards who already work at the facility and could potentially harbor bias against an inmate. Administrators like Schubach then make disciplinary decisions at the administrative level. Allegations of retaliation from staff or fellow inmate are promptly investigated.

“I think we’re being very progressive and also very comprehensive in what we’re doing,” she said. “This agency sees that by addressing violence overall, as well as sexual violence, we’re making not only our prisons and our facilities safer – offenders are safer, staff are safer.”

While acknowledging allegations are on the rise, Schubach said the system in place is working. It won’t happen overnight, but she believes the numbers will soon reflect the department’s progress.

“Our allegations are rising, and that’s actually what we expected to see,” she said. “I think 2015 they’ll start to level off. I hope.”

Charges declined

After Beard admitted to the affair, investigators called Nolte for a second interview. But she never showed. Nolte phoned in sick, and a few days later resigned from her job at the prison.

Monroe turned the case over to police, but more than a year later, when the prison was getting ready to release Beard, detectives had yet to interview her. In his paperwork, Beard cited his new address as a house a few miles from the prison on Stanton Street. Investigators recognized it as the return address on a recent letter to Beard. It was a love letter from Nolte.

A few days later, on Halloween, a Monroe police detective traveled to the address to find Nolte, but instead a friend answered the door. Nolte didn't live here, she told the officers.

It would be nearly two more years before they finally tracked her down. Monroe Detective Spencer Robinson found her at a Boeing office building in South Seattle, where she worked.

Robinson asked if Nolte was still living with Beard.

"No," she replied.

"Was Kelly living with you?"

"I think I want an attorney."

Robinson brought her back to Snohomish County, and Nolte met with a public defender. After about 15 minutes, the attorney emerged to tell Robinson Nolte would not be answering any more questions. The jail booked her on suspicion of having a sexual relationship with Beard while she worked at Monroe.

But the jail cut her loose.

Despite Beard's statement, witness accounts and the love letters, prosecutors declined to file any charges.

Part II: Even when caught, prison staff rarely prosecuted for misconduct

In early 2013, Alicia Packer was in a bad way: bankruptcy, lawsuits from creditors, a repossessed truck. Now her marriage was falling apart.

She confided her woes to an inmate at Monroe Correctional Complex, where Packer worked as a supervisor in the clothing room. Before long, the two were passing love notes and stealing away into backrooms to kiss and, on several occasions, have sex, according to records of the investigation. Packer also smuggled contraband into the prison for the inmate, including a porno movie, a cell phone and an ounce of marijuana for him to sell to fellow convicts.

In March of that year, another inmate tipped one of Packer's coworkers off to the affair, and investigators confronted Packer.

"I'm glad that today is happening," she wrote in a confession. "I wanted out of my situation, but I was worried that he would be upset with me if I stopped bringing stuff in."

Under a 1999 law, sexual relationships between staff and inmate are illegal in Washington, even if they appear to be willing. But Packer's case never saw a courtroom. Police investigated, but the Snohomish County Attorney's Office didn't charge her. She resigned from her job and faced no legal repercussions for the sexual relationship or contraband smuggling.

Packer's is not an isolated incident. Since 2012, the year the Department of Corrections began tracking referrals to law enforcement, there have been 546 allegations of staff sexual misconduct in Washington prisons, according data from the prison system. Only 20 have been sent to law enforcement, records obtained late April show. As of that time, police or prosecutors had declined 11

cases, two defendants pleaded to lower charges and seven cases were still pending. None had led to conviction.

It's not just female prison workers. Reports of staff sexual misconduct are common in Washington; there's an allegation, on average, every 41 hours, according to data reviewed by The Times.

In the rare cases in which staff members have been convicted under the law, called custodial sexual misconduct, the penalties often are minor. Eddie Garbitt, a kitchen supervisor accused of several incidents of sexual misconduct with different female inmates in 2006, served one year in prison. Tony Mikelson, who was accused of forcibly raping a female inmate in a supply closet, spent less than three months in jail. A cook named Jonathan Ryan Clapper was accused of forcing a female inmate to perform oral sex on him in 2008; he served five months in Pierce County Jail.

"Look at it this way: if it was prisoners raping guards, do you think it would be the same response?" said Paul Wright, a former inmate at Monroe. "That's the only question you have to ask yourself."

Most cases never make it to police

Beth Schubach, Prison Rape Elimination Act coordinator for the Department of Corrections, attributes the low police referral rate to a broad definition of sexual misconduct, designed to cast a wide net on potential abusers. Some allegations investigated don't actually involve physical contact, therefore wouldn't be against the law, she said.

In one case reviewed by The Times, a guard placed a banana near his groin and an inmate pretended to masturbate it (the officer told investigators it was a joke a gone awry). In another, a guard gave an inmate photographs of overweight naked women, but there was no physical relationship (another bad joke, the guard claimed). Both incidents broke corrections policy, but neither warranted a referral to law enforcement.

"Anything that could be considered a crime will get referred," said Schubach.

But part of the low referral rate also can be explained by a low percentage of substantiated cases. The data show only about 11 percent of allegations are found to have merit by prison investigators. More commonly, the cases are ruled unfounded, or there isn't enough evidence to prove wrongdoing.

This is disturbing, said Melissa Lee, attorney for Columbia Legal Services, who monitored cases from 2010 to 2013 as part of a class-action settlement against the Department of Corrections.

"I've looked at many investigations where I would have come up with a different conclusion," she said.

The cases often come down to an inmate's word against the staffer's, said Scott Moriarity, a Tacoma-based attorney who represented the inmate in her civil suit against Garbitt.

When the prisoner first made the allegations, investigators didn't take her seriously, said Moriarty. It wasn't until the inmate mailed her semen-stained

clothing – a match to Garbitt’s DNA -- to a family lawyer that prison officials gave the accusations credence.

Clapper’s case played out similarly. In July 2008, the guard caught an inmate stealing from a canteen cart, according to court records. She begged him not to report her. Clapper began kissing her, unzipped his pants and pushed her head to his penis, according to records. “You’re going to give me a blowjob,” he said.

Afterward, she found semen on her camisole, and hid it under the bed in her cell. She mailed it to her mother, who gave it to an attorney. The DNA on the stain was a match for Clapper.

But cases involving DNA samples are uncommon, and “if it comes down to credibility, absent DNA, it’s kind of obvious which way [investigators] are going to go,” said Moriarty.

Among the cases that are substantiated, the prison system refers 13 percent to law enforcement, according to the Department of Corrections.

This is considerably lower than the national average. According to the federal 2009-11 study, about 46 percent of substantiated staff cases in prisons and jails were referred for prosecution; however, only about 1 percent led to convictions.

“The fact that Washington DOC has a lower prosecution referral rate is deeply troubling,” said Jesse Lerner-Kinglake, spokesman for human rights organization Just Detention International. “When corrections facilities fail to hold abusive staff accountable -- by letting them stay on the job, allowing them to resign, etc. -- they are tacitly endorsing criminal behavior.”

For prosecutors, a steep hill to climb

The day Packer resigned from her job, Monroe police dispatched officer Tim Walker to the prison. He noted several places in Packer’s unit where two people could sneak away from sight. Walker couldn’t find a single camera in the building, according to his report.

Next, he traveled to Packer’s home. The officer read Packer her rights, but she declined to be interviewed.

With no statement from Packer, police turned the case over the Snohomish County Attorney’s office, and the prosecutor didn’t file charges.

Packer wouldn’t talk for this story, other than to criticize the staff culture at Monroe, saying none of her coworkers confronted her about their suspicions before reporting her.

“You have all these people that are just looking to stab each other in the back,” she said. “It’s a terrible place.”

Packer’s case illustrates the barriers prosecutors face with reports of staff sexual misconduct.

In the rare instances the cases make it that far, it’s very difficult to get a conviction, said Adam Cornell, Snohomish County deputy prosecuting attorney.

By their nature, most of these crimes occur behind closed doors, so witnesses are scarce, said Cornell. And even if the victim gives prison

investigators a statement, such as in Packer's case, prosecutors can't use it as evidence unless the inmate is willing to be cross-examined in court. This also proves difficult, said Cornell, due to the victim stigma, and in cases in which inmates appear to be a willing participant in the act.

"If I don't believe I can prove it, I can't charge it," said Cornell. "And there's a big difference between believing something happened and being able to prove it to a jury."

Cornell emphasized that successful prosecution isn't impossible, and that even if the victim claims to be willing, his office still considers it an act of sexual assault.

"I want to be clear: that doesn't mean that we don't charge those cases," he said. "But the prosecutor and law enforcement face significant challenges."

Sources:

People

Alicia Packer – former employee at Monroe Corrections Complex; alleged perpetrator of staff sexual misconduct

Melissa Lee -- Attorney for Columbia Legal Services

Paul Wright -- Former Washington inmate; editor of Prison Legal News

Beth Schubach – Prison Rape Elimination Act coordinator for the Washington Department of Corrections

Jeremy Barclay – Spokesman for Washington Department of Corrections

Maria Peterson – Washington Department of Corrections

Heather Songer – Pierce County Attorneys Office

Erik Bauer – Attorney

Paul Moriarity – Attorney

Allen Beck -- Senior statistical advisor for the Bureau of Justice Statistics

Brenda Smith -- Director of National Institute of Corrections Cooperative Agreement on Addressing Prison Rape

Jesse Lerner-Kinglake -- Spokesman for Just Detention International

Adam Cornell -- Snohomish County deputy prosecuting attorney

Theresa Nolte – Former WADOC employee

Data/public records

Dataset: Allegations of sexual misconduct; received through public disclosure request 12/22/2014

Dataset: Law and Licensing Entity Referrals; received through a public disclosure request 4/27/2015

Dataset: Disciplinary records for substantiated cases of sexual misconduct by staff from Monroe Correctional Complex; received through a public disclosure request in three installments beginning 11/13/2014

Beck, Allen. "Survey Of Sexual Violence In Adult Correctional Facilities, 2009–11 - Statistical Tables." (2014). Digital.

Warner, Bernard. "Prison Rape Elimination Act Report, (WADOC)." (2014)

"Prison Rape Elimination Act | The National PREA Resource Center." Prison Rape Elimination Act | The National PREA Resource Center. Web.

Clark, Brenda. "Anti-Fraternization Polices and Their Utility in Preventing Staff Sexual Abuse in Custody." (2013). Digital.

Clark, Brenda. "After Dothard: Female Correctional Workers and the Challenge to Employment Law." (2013). Print.

The Seattle Times Archives

Various criminal complaints and police reports