



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Robert Bentley  
Governor  
State Capitol  
600 Dexter Avenue  
Montgomery, AL 36130

**JAN 17 2014**

Re: Investigation of the Julia Tutwiler Prison for Women and Notice of Expanded Investigation

Dear Governor Bentley:

The Special Litigation Section of the Civil Rights Division has concluded its investigation of allegations of sexual abuse and sexual harassment at the Julia Tutwiler Prison for Women pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997. CRIPA authorizes the Department of Justice ("DOJ") to seek equitable relief where prison conditions violate the constitutional rights of prisoners in state correctional facilities. Consistent with the statutory requirements of CRIPA, we write to inform you of our findings, the facts supporting them, and the minimum remedial steps necessary to address the identified deficiencies. We conclude that the State of Alabama violates the Eighth Amendment of the United States Constitution by failing to protect women prisoners at Tutwiler from harm due to sexual abuse and harassment from correctional staff.

Tutwiler has a history of unabated staff-on-prisoner sexual abuse and harassment. The women at Tutwiler universally fear for their safety. They live in a sexualized environment with repeated and open sexual behavior, including: abusive sexual contact between staff and prisoners; sexualized activity, including a strip show condoned by staff; profane and unprofessional sexualized language and harassment; and deliberate cross-gender viewing of prisoners showering, urinating, and defecating. The inappropriate sexual behavior, including sexual abuse, continues, and is grossly underreported, due to insufficient staffing and supervision, inadequate policies and procedures, a heightened fear of retaliation, and an inadequate investigative process.

Officials at the Alabama Department of Corrections ("ADOC") and Tutwiler have failed to remedy the myriad systemic causes of harm to the women prisoners at Tutwiler despite repeated notification of the problems. ADOC and Tutwiler have demonstrated a clear deliberate indifference to the harm and substantial risk of harm to women prisoners. They have failed to take reasonable steps to protect people in their custody from the known and readily apparent threat of sexual abuse and sexual harassment. Officials have been on notice for over eighteen years of the risks to women prisoners and, for over eighteen years, have chosen to ignore them.

During the course of our investigation, we reviewed information suggesting that the systemic deficiencies at Tutwiler that facilitated staff sexual misconduct may also lead to excessive use of force, constitutionally inadequate conditions of confinement, constitutionally inadequate medical and mental health care, and discriminatory treatment based on national origin, sexual orientation, and gender identity. Therefore, in addition to informing you of our findings, this letter serves as notice of our intent to expand our investigation into these areas.<sup>1</sup>

Alabama Department of Corrections Commissioner Kim T. Thomas, Warden Bobby Barret, and Warden II Karla Jones have fully cooperated with our investigation. We recognize that Warden Barret has recently assumed the position, and was not present at the Facility when much of the alleged misconduct took place. We commend ADOC and Tutwiler leadership for recognizing the need for reform at Tutwiler, and appreciate their receptiveness to our suggestions for change thus far. We look forward to continuing to work cooperatively with all interested parties.

## I. Summary of Findings

We have made the following factual determinations:

- For nearly two decades, Tutwiler staff have harmed women in their care with impunity by sexually abusing and sexually harassing them.<sup>2</sup> Staff have raped,

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<sup>1</sup> Because our expanded investigation will evaluate Tutwiler's overall provision of medical and mental health care, we do not issue findings at this time with regard to our investigation into whether women who have alleged that they are subject to sexual abuse receive adequate medical and mental health care. This is, in part, due to the fact that the inquiries and remedies will overlap to such an extent that it will be more efficient to issue them all at once so that the state can implement broad based remedies in a coordinated fashion. In addition, our investigation of the medical and mental health system with regard to sexual abuse victims could not be completed satisfactorily because we were prevented from interviewing prisoners outside of the presence of counsel for the mental health provider. We trust that this dispute will be resolved by our next site visit.

<sup>2</sup> The terms sexual abuse, sexual harassment, and sexual misconduct have varied in definition depending on context. In this letter, we define the term sexual misconduct to include both sexual abuse and sexual harassment. For the terms sexual abuse and sexual harassment, we adopt the definitions set forth in the National Standards to Prevent, Detect, and Respond to Prison Rape, 28 C.F.R. § 115.6 (2012):

*Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer* includes any of the following acts, with or without consent of the inmate, detainee, or resident:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (4) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (5) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (6) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1)-(5) of this section;

- sodomized, fondled, and exposed themselves to prisoners. They have coerced prisoners to engage in oral sex. Staff engage in voyeurism, forcing women to disrobe and watching them while they use the shower and use the toilet. Staff sexually harass women, subjecting them to a daily barrage of sexually explicit verbal abuse.
- Tutwiler staff also harm women prisoners through a constant threat of sexual violence. Because women prisoners typically experience a high incidence of sexual victimization prior to incarceration, subjecting them to a constant fear of sexual abuse and repeated sexual harassment is particularly injurious. This risk is well known to correctional leadership and staff. The toxic, sexualized environment of Tutwiler, coupled with aggressive and threatening behavior by staff, increases emotional harm inflicted on prisoners and reinforces the cycle of abuse.
  - Tutwiler has a toxic, sexualized environment that permits staff sexual abuse and harassment.
    - Prisoners are compelled to submit to unlawful sexual advances to either obtain necessities, such as feminine hygiene products and laundry service, or to avoid punishment. Inconsistent application of facility rules and disciplinary sanctions causes many prisoners to believe that acceding to staff sexual abuse will engender improved treatment.
    - Tutwiler staff encourage and participate in sexual activities by and among prisoners.
  - Prison officials have failed to curb the sexual abuse and sexual harassment despite possessing actual knowledge of the harm, including a federal statistical analysis identifying sexual misconduct at Tutwiler as occurring at one of the highest rates in the country.

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(7) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee or resident, and

(8) Voyeurism by a staff member, contractor or volunteer.

*Voyeurism by a staff member, contractor, or volunteer* means an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

*Id.* Sexual harassment includes:

Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

*Id.*

- Prison officials discourage prisoner reporting of sexual abuse due to actual and perceived retaliation against individuals who make allegations. For example, immediately after making allegations, Tutwiler often places women in segregation and gives them lie detector tests. In some instances, reporting the sexual abuse of one staff member results in additional abuse from other staff members.
- When confronted with allegations of sexual abuse and harassment, Tutwiler fails to adequately respond or investigate. For example:
  - Sexual misconduct investigations are cursory and do not follow clear leads; and
  - Tutwiler does not properly discipline officers for substantiated sexual abuse.
- Systemic deficiencies at Tutwiler directly contribute to staff and prisoner sexual abuse and staff sexual harassment that injures prisoners, and creates a substantial risk of further harm. These systemic deficiencies include:
  - A lack of gender-responsive strategies in Tutwiler’s operational practices and internal policies that could address the sexual abuse and harassment at Tutwiler and remedy the sexualized environment;
  - Failure to adequately collect and analyze existing data to identify potential misconduct, thus subjecting women to continued sexual abuse and harassment that could have been prevented;
  - The complete absence of a grievance system, thus limiting alternative reporting options for women prisoners who fear retaliation for using the facility’s Prison Rape Elimination Act (“PREA”) hotline;
  - Dangerously low staffing levels, including a dearth of female officers, thus placing women prisoners at serious risk of harm from other prisoners and staff;
  - An architectural structure that is not suited for housing women offenders including a floor plan that affords little privacy to women prisoners to undress, shower, or use the toilet and numerous blind spots throughout the facility that allow sexual activity to occur undetected; and
  - A classification system that does not identify or protect potential victims from abuse, thus subjecting vulnerable prisoners to sexual and physical abuse.

These factual determinations provide us with reasonable cause to conclude that Tutwiler violates prisoners’ Eighth Amendment rights to be protected from harm, *Farmer v. Brennan*, 511 U.S. 825, 833 (1994), and serious risk of harm, *Helling v. McKinney*, 509 U.S. 25, 33-35 (1993), as well as the constitutional right to bodily privacy, *Fortner v. Thomas*, 983 F.2d 1024, 1029-30 (11th Cir. 1993).

## **II. Investigation**

On February 26, 2013, we notified you of our intent to conduct an investigation of the Julia Tutwiler Prison for Women in Wetumpka, Alabama, pursuant to CRIPA. Specifically, we notified you that we would focus our investigation on whether prisoners confined at Tutwiler are subject to sexual abuse by staff, and whether women who have alleged that they are subject to sexual abuse are provided with adequate medical and mental health care.

From April 1 to April 4, 2013, we conducted an on-site inspection at Tutwiler with an expert consultant in custodial sexual abuse and sexual harassment. During the inspection, we interviewed administrative staff, security staff, medical and mental health staff, facilities management staff, training staff, and prisoners. Additionally, we received and analyzed a broad array of documents, including policies and procedures, incident reports, investigative reports, disciplinary reports, logs, orientation materials, and staff training materials.

We also interviewed dozens of prisoners and received 233 letters from current Tutwiler prisoners –roughly a quarter of Tutwiler’s prison population at the time of our tour– detailing a variety of concerns including sexual abuse and harassment; unprofessional and profane language; dehumanizing behavior; and discriminatory treatment on the basis of national origin, gender identity, and sexual orientation or perceived sexual orientation. Prisoners also reported inadequate medical care; excessive use of force and threats of force; and inadequate access to clean clothes, uniforms, and hygiene products, including tampons and sanitary pads (especially for indigent prisoners).

We based the findings in this letter on each of these sources. Internal incident and investigation reports, external organizations’ reports, and interviews of current and former staff corroborate many prisoner allegations. Further, the internal corroboration of prisoner reports has been unprecedented: multiple women over the period of several years, with no opportunity or basis to collaborate, told a markedly similar story, often with similar details or repeat perpetrators. Thus, even assuming that an isolated prisoner allegation recounted in this letter is untrue, the extent of corroboration makes us confident in our conclusions.

In keeping with our pledge to be transparent and to provide technical assistance where appropriate, at the close of our site visit we conveyed our preliminary findings to ADOC and Tutwiler officials, including Commissioner Thomas, Warden Barret, and Warden II Jones. We thank Warden Barret and his staff, as well as ADOC’s officials and attorneys with whom we have worked, for their conduct throughout the course of the investigation.

## **III. Background**

Julia Tutwiler Prison for Women is a maximum-security prison in Wetumpka, Alabama. Opened in 1942, Tutwiler was originally designed to house 417 prisoners. As of April 4, 2013, however, the facility housed 928 prisoners, including 248 prisoners in the Annex. For nearly two decades, Tutwiler has had a sordid history of sexual abuse and harassment of prisoners that has included rape and pregnancies. Although officials have known since at least 1995 of the risks of sexual abuse and harassment that prisoners at Tutwiler face, ADOC and Tutwiler officials have failed to take reasonable steps to protect the women in their custody from these abuses.

This is not the first time that we have notified Tutwiler and ADOC of unconstitutional conditions of confinement at Tutwiler.<sup>3</sup> In 1995, we issued a findings letter detailing unconstitutional medical and mental health care treatment at Tutwiler. Although not a subject of the investigation, the 1995 letter also noted inappropriate sexual contact between prisoners and staff.<sup>4</sup> Specifically, we informed officials that “[o]ur penologist . . . received credible reports of sexual relations between inmates and staff,” and that the “offending staff members reportedly reward inmates with food, cosmetics, and money for their participation” in sexual activity with staff.<sup>5</sup> Eighteen years since notifying ADOC and Tutwiler officials of inappropriate sexual activity between staff and prisoners, problems in the area of sexual abuse and harassment have only worsened.

In 2007, the DOJ’s Office of Justice Programs, Bureau of Justice Statistics (“BJS”) published a report revealing Tutwiler as the women’s prison with the highest rate of sexual assaults in the nation. The report ranked Tutwiler eleventh out of 146 prison facilities, including men’s facilities.<sup>6</sup> In 2013, BJS published an updated statistical report and Tutwiler remains one of the women’s facilities with a high rate of sexual abuse; in fact incidents of sexual misconduct have increased substantially since the release of the 2007 report.<sup>7</sup>

In May 2012, the Equal Justice Initiative (“EJI”), a Montgomery, Alabama based organization that provides legal representation to indigent defendants and prisoners, issued a public report detailing sexual violence at Tutwiler.<sup>8</sup> The report, *Investigation into Sexual Violence at Tutwiler Prison for Women*, detailed pervasive sexual misconduct at the Facility and confirmed that little had changed since BJS’s 2007 findings. Following an extensive investigation that included interviews with over fifty current and former prisoners, EJI found that corrections staff were raping, sexually assaulting, and sexually harassing prisoners. Additionally, EJI found that punitive responses to prisoners’ reports of sexual abuse created an atmosphere of intimidation and effectively silenced prisoners from reporting abuse. They also found that ADOC and Tutwiler officials underreported the number of sexual assaults at the facility. Finally, EJI found that Tutwiler’s continued failure to restrict male correctional officers’ ability to view naked prisoners had created an unnecessary risk of sexual misconduct.

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<sup>3</sup> *Notice of Findings from Investigation of Julia Tutwiler Prison for Women*, U.S. Dep’t of Justice, Civil Rights Division, Special Litigation Section, Mar. 27, 1995.

<sup>4</sup> *Id.* at 7.

<sup>5</sup> *Id.*

<sup>6</sup> ALLEN J. BECK, PH.D., PAIGE M. HARRISON, *SEXUAL VICTIMIZATION IN STATE AND FEDERAL PRISONS REPORTED BY INMATES 2007*, at 5 (Bureau of Justice Statistics 2007), *available at* <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1149>.

<sup>7</sup> ALLEN BECK, PH.D., MARCUS BERZOFSKY, DR.P.H., RACHEL CASPAR, CHRISTOPHER KREBS, PH.D., RTI INTERNATIONAL, *SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY INMATES 2011-12*, at 13 (Bureau of Justice Statistics 2013), *available at* <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4654>.

<sup>8</sup> EQUAL JUSTICE INITIATIVE INVESTIGATION INTO SEXUAL VIOLENCE AT TUTWILER PRISON FOR WOMEN (Equal Justice Initiative, May 22, 2012), *available at* <http://www.eji.org/node/637>.

Following the receipt of EJI's report, ADOC requested that the National Institute of Corrections ("NIC") review their operations with a specific focus on sexual misconduct. Engaging with NIC is a voluntary, largely policy-driven process that seeks to strengthen administrative systems.<sup>9</sup> On November 1, 2012, the NIC issued a technical assistance letter that identified deficiencies contributing to the sexualized environment at Tutwiler. The deficiencies included staff reluctance to report on the activity of their peers;<sup>10</sup> no commitment to gender-informed and gender-responsive strategies;<sup>11</sup> and a physical plant layout that is not conducive to "promoting privacy, safety and security."<sup>12</sup> In January 2013, ADOC announced an action plan to address deficiencies identified by NIC. These proposed changes included specific policy changes, increased training, a promise to seek an increased budget, and plans to recruit more women. However, as illustrated below, little appeared to have changed in practice when we were on-site in April 2013. Further, the Special Litigation Section's analysis revealed deeper and more expansive problems that Tutwiler must address in order to meet constitutional standards.

#### IV. Findings

We find that ADOC and Tutwiler violate prisoners' constitutional rights by violating their right to bodily safety and privacy and continuing to expose them to actual harm and the serious risk of harm from sexual abuse and harassment by correctional staff and other prisoners. Despite the various reports and investigative findings detailing unconstitutional treatment and the obvious defects in operational practices, ADOC and Tutwiler officials have simply failed to address these deficiencies and have remained deliberately indifferent to the constitutional harms to prisoners in their care. Given the dysfunctional systems in place at Tutwiler, the harm we find and describe in this letter is likely far deeper than documented and reported.

##### A. *Staff Sexual Abuse and Sexual Harassment Subjects Prisoners to Harm and the Serious Risk of Harm*

Tutwiler staff sexually abuse and sexually harass prisoners in their care in violation of the Eighth Amendment and constitutional right to privacy. Of the 233 prisoner letters we received, forty-four alleged pervasive sexual abuse and harassment. Throughout the course of our investigation, we received numerous reports of staff engaging in prohibited sexual contact with

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<sup>9</sup> SUSAN E. POOLE, JEFF SHORBA, DAVID M. MARCIAL, BIANCA HARRIS, ONSITE ASSESSMENT RE: CROSS-GENDER SUPERVISION IN CORRECTIONAL FACILITIES 2 (U.S. Dep't of Justice, Nat'l Inst. of Corr. Technical Assistance Report November 1, 2012) ("The assessment was not an audit, but rather an opportunity to document strengths, challenges and observations as it relates to sexual safety and gender informed practices."). Notably, the current CRIPA investigation conducted by the Special Litigation Section examines constitutional violations and related systemic deficiencies. Thus, the review and constitutional analysis conducted by the Special Litigation Section substantially differs from the assessment conducted by the NIC in methodology, scope, and inquiry.

<sup>10</sup> *Id.* at 15.

<sup>11</sup> *Id.* at 11.

<sup>12</sup> *Id.* at 8.

prisoners. At least thirty-six of the ninety-nine total employees were identified as having had sex with prisoners—approximately 36% of current staff. If we include staff that were identified for other forms of sexual abuse and sexual harassment, the number of staff involved in sexually inappropriate behavior nearly doubles. In some cases, prisoners describe the misconduct as non-consensual, unwelcome, and/or the result of physical force. In other cases, women describe their sexual contacts with staff as “consensual,” despite the fact that staff are prohibited from engaging in such contact under Alabama law, and despite the fact that women are compelled to submit to staff demands in order to obtain necessities or avoid punishment.

The literature shows that men and women respond differently to incarceration.<sup>13</sup> Women prisoners have a higher rate of prior victimization, sexual assault, and domestic violence. Many of these women also suffer from mental illness that is traceable to prior physical and/or sexual abuse.<sup>14</sup> This history makes women more vulnerable. As one prisoner explained, “victims of domestic violence are subjected to more abuse [and] victims of sexual violence - are subjected to more sexual abuse whether by implication or more bluntly ....” [sic]. In one illustrative example, in May 2011, a prisoner reported that Sergeant A touched her thigh, caressed her back, and entered a storage area where she was working. According to the prisoner, Sergeant A’s actions affected her particularly profoundly due to her prior victimization.<sup>15</sup> Studies have repeatedly shown that women with histories of being subjected to sexual abuse—including women in prison—are particularly traumatized by becoming a victim of or witnessing subsequent abuse.<sup>16</sup> These studies must be considered when evaluating the harm inflicted by Tutwiler staff’s actions.

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<sup>13</sup> BARBARA BLOOM, BARBARA OWEN, & STEPHANIE COVINGTON, NAT’L INST. OF CORR., GENDER-RESPONSIVE STRATEGIES: RESEARCH, PRACTICE, AND GUIDING PRINCIPLES FOR WOMEN OFFENDERS 64 (2002), *available at* <http://nicic.org/pubs/2003/018017.pdf> (“Research on female offenders has established conclusively that women enter the criminal justice system” in different ways as compared to male offenders.).

<sup>14</sup> A 2004 Bureau of Justice Statistics survey found that 42% of women prisoners reported that they had been sexually abused before their incarceration. National Standards to Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37106, 37131 (June 20, 2012) (codified in 28 C.F.R. §115.15 (2012)) (citing Bureau of Justice Statistics, unpublished data, *2004 Survey of Inmates in State and Federal Correctional Facilities* and *2002 Survey of Inmates in Local Jails*); *see also* BLOOM ET AL., *supra* note 13, at 64 (“According to the Bureau of Justice Statistics (1999a), nearly eight in ten female offenders with a mental illness reported having experienced prior physical or sexual abuse.”)

<sup>15</sup> In this example, ADOC concluded that Sergeant A was guilty of violating institutional policy on sexual harassment. Sergeant A’s actions actually constitute sexual abuse. *See supra* note 2.

<sup>16</sup> *See* OFFICE OF THE INSPECTOR GENERAL, U.S. DEP’T OF JUSTICE, THE DEPARTMENT OF JUSTICE’S EFFORTS TO PREVENT STAFF SEXUAL ABUSE OF FEDERAL INMATES 1 (2009) (“[B]ecause female prisoners in particular often have histories of being sexually abused, they are even more traumatized by further abuse inflicted by correctional staff while in custody”); Catherine C. Classen, Oxana Gronskaya Palesh, & Rashi Aggarwal, *Sexual Revictimization: A Review of the Empirical Literature*, 6 TRAUMA, VIOLENCE, & ABUSE 103, 117 (2005) (“There is considerable evidence that sexual revictimization is associated with more distress compared to one incident of sexual victimization . . . The general finding appears to be that women who are revictimized suffer more PTSD symptoms.”); Danielle Dirks, *Sexual Revictimization and Retraumatization of Women in Prison*, 32 WOMEN’S STUD. Q. 102, 102 (2004) (“For women with previous histories of abuse, prison life is apt to simulate the abuse dynamics already established in these women’s lives, thus perpetuating women’s further revictimization and retraumatization while serving time.”); BLOOM ET AL., *supra* note 13, at 37 (“In addition, standard policies and

### 1. Tutwiler Staff Members Are Harming Prisoners by Sexually Abusing Them

The Eighth Amendment's ban on cruel and unusual punishment requires that corrections officials not be deliberately indifferent to the risk of sexual abuse in prisons and jails. *Farmer*, 511 U.S. at 834 (noting that sexual abuse is not part of the penalty that criminal offenders pay for their offenses against society); *see also Boxer X v. Harris*, 437 F.3d 1107, 1111 (11th Cir. 2006) (noting that “[s]evere or repetitive sexual abuse of a prisoner by a prison official can violate the Eighth Amendment”)<sup>17</sup>; *Dixon v. Sutton*, No. 2:08-CV-745-WC, 2011 WL 1770295, \*14 (M.D. Ala. May 9, 2011) (citations omitted) (holding, in a case involving a woman prisoner at Tutwiler, that “[i]f an inmate is forced to perform oral sex, it is objectively harmful” under an Eighth Amendment analysis); *Women Prisoners of the District of Columbia Dep’t of Corr. v. District of Columbia*, 877 F. Supp. 634, 665 (D.D.C. 1994) (staff sexual assaults of women prisoners “unquestionably violate the Eighth Amendment”), *vacated and modified in part on other grounds*, 899 F. Supp. 659 (D.D.C. 1995), *vacated in part and remanded on other grounds*, 93 F.3d 910 (D.C. Cir. 1996).

The Eleventh Circuit also recognizes a prisoner's right to “bodily privacy” separate and apart from Eighth Amendment guarantees. *See Boxer X*, 437 F.3d at 1110 (holding that compelled masturbation in front of a woman corrections officer violated male prisoner's right to privacy); *see also Fortner*, 983 F.2d at 1027 (finding a privacy violation where women correctional officers “solicit[ed] ... [male prisoners] to masturbate and otherwise exhibit their genitals for the female officers' viewing”). Under the Fourth Amendment, a prisoner has the right “to shield . . . [her] unclothed figure from [the] view of strangers, and particularly strangers of the opposite sex.” *Byrd v. Maricopa Cnty. Sheriff's Dep't*, 629 F.3d 1135, 1141-43 (9th Cir. 2011) (quoting *York v. Story*, 324 F.2d 450, 455 (9th Cir. 1963)) (holding that a woman cadet touching a male pretrial detainee's genitals and buttocks during a pat down while the detainee was only wearing boxer shorts violated his right to privacy); *see also, e.g., Kent v. Johnson*, 821 F.2d 1220, 1226 (6th Cir. 1987) (noting that “there must be a fundamental constitutional right to be free from forced exposure of one's person to strangers of the opposite sex”). Moreover, corrections officials may not subject prisoners to invasive, demeaning, and humiliating treatment that is not justified by legitimate penological purposes. *See, e.g., Canedy v. Boardman*, 16 F.3d 183, 184-88 (7th Cir. 1994) (holding that an inmate was entitled to reasonable accommodation to prevent unnecessary observations of his naked body by female guards); *Lee v. Downs*, 641 F.2d

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procedures in correctional settings (e.g., searches, restraints, and isolation) can have profound effects on women with histories of trauma and abuse, and often act as triggers to retraumatize women who have post-traumatic stress disorder (PTSD).”).

<sup>17</sup> Although the *Boxer X* Court held that “a female prison guard's solicitation of a male prisoner's manual masturbation . . . does not present more than de minimis injury” and that “an injury can be ‘objectively, sufficiently serious [as required to establish a Eighth Amendment violation] only if there is more than a *de minimis* injury,” 437 F.3d at 1111 (citing *Johnson v. Breeden*, 280 F.3d 1308, 1321 (11th Cir. 2002), the viability of this holding in light of recent Supreme Court precedent is in doubt. *Boxer X* relied on *Johnson*, which involved an excessive force claim under the Eighth Amendment and the *de minimis* injury proposition set forth therein has since been overruled because the *de minimis* nature of an inmate's injuries is not dispositive of an Eighth Amendment claim. *Wilkins v. Gaddy*, 559 U.S. 34, 34 (2010) (reversing dismissal of “a prisoner's excessive force claim based entirely on . . . [a] determination that his injuries were ‘*de minimis*’” because such a holding “is at odds with” the Supreme Court's “direction to decide excessive force claims based on the nature of the force rather than the extent of the injury”).

1117, 1120 (4th Cir. 1981) (finding a privacy violation where male guards remained in the room and restrained a woman inmate while her underclothing was forcefully removed).

We found repeated documented instances of staff sexual abuse of Tutwiler prisoners over the last three years. Individual prisoner allegations have been corroborated by paternity tests, polygraph examinations, staff admissions, ADOC investigations, and internal corroboration from other prisoners with no opportunity to coordinate stories. The following are a few of the many instances of sexual abuse at Tutwiler:

- Several prisoners report that Officer B solicits and receives oral sex from prisoners in exchange for gifts or new uniforms and underwear. He has a reputation for being aggressive and threatening, and one prisoner described him as a “sexual predator.” In 2012 and 2013, several women reported that he touches prisoners inappropriately, licks his lips at them, and watches them shower at the Tutwiler Annex.
- More than one prisoner reported being sexually abused by Sergeant C in 2010 and 2011, including being forced to touch his penis and engaging in sex with him. Sergeant C, while denying some allegations, admitted kissing one prisoner on two separate occasions and receiving several sexually explicit letters from another prisoner that he did not report and allegedly destroyed.
- In late 2010, a prisoner reported that Officer D had exchanged sexually explicit letters with her and ultimately engaged in sexual intercourse with her while another prisoner stood watch. The prisoner submitted to a polygraph regarding these incidents and showed no signs of deception.
- In May 2010, Officer E raped a prisoner. In 2011, the prisoner gave birth to a child, and subsequent testing confirmed Officer E was the father. Officer E served 180 days in jail.<sup>18</sup>

A specific type of sexual abuse that occurs frequently at Tutwiler is male officers unnecessarily viewing prisoners who are naked or performing bodily functions. As discussed further below, Tutwiler provides no guidance on cross-gender viewing in showers and bathrooms, and male officers at Tutwiler have unrestricted access to shower and bathroom areas. Many of the showers are open at Tutwiler, without curtains or saloon doors, exposing the women prisoners’ naked bodies. During our April 2013 tour, we witnessed male officers entering bathroom and shower areas unannounced. The NIC also reported<sup>19</sup> similar violations to the unofficial policy requiring cross-gender officers to announce their presence before entering an

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<sup>18</sup> According to the statistical data provided, there was only one pregnancy at Tutwiler in the last three years. However, the inadequate investigative process (discussed below), and the notable discrepancies in the pregnancy data received, call this figure into doubt. Prison officials should examine the data to ensure that the pregnancies occurred outside of the facility and promptly address any discrepancies in the information discovered.

<sup>19</sup> ONSITE ASSESSMENT RE: CROSS-GENDER SUPERVISION IN CORRECTIONAL FACILITIES, *supra* note 9, at 9. NIC inspectors also witnessed male staff entering the shower and toilet areas without announcing himself.

area where prisoners are likely to be in a state of undress.<sup>20</sup> We received numerous reports from current and former prisoners that male officers enter these areas unannounced and linger—watching prisoners as they shower or engaging them in conversation.

Based on our expert consultant’s first-hand observations and other information we collected, we conclude:

- there is no privacy in the bathroom or showers;
- male officers come into the bathroom unannounced and carry on conversations while prisoners were on the toilet or in the shower;
- male officers make prisoners feel uncomfortable during count when they are in the showers. One prisoner noted: “I really don’t feel comfortable when a man comes in and yells count and stands at the shower door then later I feel as if he is disgusted with what he saw;”
- officers routinely come into the shower during count and tell the prisoners to reposition themselves to face the officers, causing the prisoners to expose their naked bodies. According to the prisoner, “[a]s tall as [the guards] are they should be able to count us by our hands, like the other officers does”; [sic]
- male officers sit in the cubes and watch prisoners shower; and
- male officers enter the shower throughout the evening presumably as a site check, but only when certain women are showering.

PREA limits cross-gender viewing of prisoners in shower and bathroom areas to exigent circumstances or when viewing is incidental to routine cell checks. *See* 28 C.F.R. § 115.15(d). Tutwiler officials stated that staff actions in the shower and bathroom areas were justified based on Tutwiler’s belief that sexual contact between prisoners occurs more often in the shower. Even assuming that Tutwiler staff based this belief on the statistical support in their incident reports, the circumstance is predictable and permanent and thus not exigent by definition.<sup>21</sup> Neither is deliberately scheduling prisoner count when prisoners are showering—an activity that frequently occurs at Tutwiler. According to one prisoner, some officers purposefully miscount so that they can stay in the shower longer. Prior to count, most institutions suspend movement, including shower time and restroom usage. According to Tutwiler’s institutional rules that prisoners receive upon intake, prisoners are required to “[s]it on [their] bed[s] and ... [W]ait until count is announced cleared by the dorm Officer of the Shift Commander” before resuming movement. However, in response to a prisoner’s complaint that a male officer was watching her in the shower, a Lieutenant replied, “counting the inmates in the shower was a part of [the]

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<sup>20</sup> While this requirement is not officially memorialized in Tutwiler policy, it is generally accepted correctional practice and required by the PREA regulations, 28 C.F.R. § 115.15 (2012).

<sup>21</sup> The National Standards to Prevent, Detect, and Respond to Prison Rape, 28 C.F.R. § 115.5 (2012), define exigent circumstances as “any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.”

Officer[’s] job and he is only doing his job not watching inmates.” This level of cross-gender viewing for an administrative purpose is unacceptable and constitutes sexual abuse. Further, it emboldens officers to engage in other sexual contact, thus placing prisoners at further risk of sexual abuse and sexual harassment.

In total, nearly twenty-five percent of the prisoner letters we received reported sexual abuse by staff. Fifteen percent of all prisoner letters received reported unrestricted viewing in the shower and bathroom area making them feel uncomfortable and concerned for their privacy. Twenty percent of ADOC’s own incident reports involved sexual abuse by staff. These examples show the pervasive sexual abuse of prisoners in a variety of ways, from voyeurism and sexual contact, to sexual intercourse, violating their right to privacy and the Eighth Amendment.

## 2. *Tutwiler Staff Members Sexually Harass Prisoners*

In addition to sexual abuse, we found documented instances of sexual harassment by male staff at Tutwiler. A malicious level of sexual harassment in a prison can violate contemporary standards of decency. *Women Prisoners*, 877 F. Supp. at 665. “There is a substantial risk of injury when officers make sexual remarks in an environment where sexual assaults of women prisoners by officers are well known and inadequately addressed.” *Id.* In other words, “vulgar comments” and “sexual remarks” must be evaluated in the context in which they occur: a prison environment with an extreme lack of privacy and pervasive sexual misconduct. *Id.* Repeated sexually explicit and threatening language, coupled with pervasive sexual misconduct, “mutually heighten the psychological injury of women prisoners.” *Id.* The health problems created by sexual harassment include significant depression, nausea, frequent headaches, insomnia, fatigue, anxiety, irritability, nervousness, and a loss of self-esteem. *Id.* As one Tutwiler prisoner explained: “[officers] call us bitches, stupid bitches, and hating ass bitches . . . Verbal abuse & mentally . . . I need to see mental health on occasions. My depression has gotten worse. This place . . . has stressed me out badly.”

Nearly fifteen percent of all the reports we reviewed, including those from former prisoners and ADOC’s own files, involved sexual harassment. Years of ignoring the issue of sexual misconduct at Tutwiler have emboldened its staff to continue to sexually harass women. As a result, unchecked sexual harassment at Tutwiler has often escalated to sexual abuse. Some examples of sexual harassment that occurred in 2012 and 2013 at Tutwiler include:

- Officer F sexualized a prisoner’s everyday water bottle by telling her that he “thought the water bottle would be too small for him and he liked being ‘fucked’ up the ass with bigger things.” When asked by an ADOC investigator, Officer F admitted to only discussing objects that could be turned into dildos or sexual tools. The ADOC investigator noted that the matter should be referred to ADOC officials to address the officer’s lack of professionalism and inappropriate sexual discussions with prisoners, but ADOC provided no evidence that any such follow-up occurred.
- Several women have complained that Steward G sexually harassed them. For example, in January 2012, a prisoner alleged that Steward G made sexual gestures, informed her of his home address, and informed her that he wanted to see her when she was released from Tutwiler. Steward G admitted to an ADOC investigator that

he had discussed where he lived and called another prisoner “too cute to be in prison,” yet investigators concluded that the allegation was unfounded. Later in 2012, Tutwiler discovered another prisoner had sent mail to Steward G’s personal post office box. Steward G resigned in April 2012.

- On May 23, 2011, a prisoner reported that Sergeant A was sexually harassing her. She reported that Sergeant A made her feel uncomfortable on several occasions, telling her that “she was fine, she had nice legs, that he likes medium build women” and making other sexual comments. She also reported that he took her ID card to obtain personal information about her and asked her whether she had a boyfriend. Sergeant A admitted to an ADOC investigator that he had looked up the prisoner’s personal information and sang sexually explicit rap songs around prisoners.

In total, fifty-five percent of the prisoner letters we received reported vile and degrading language directed at prisoners. Several women reported that an officer yelled at a prisoner to get her “cum sucking mouth over here.” Women reported being called “bitches,” “hoes,” and “crack whores” at a staggering rate.<sup>22</sup> The verbal abuse at Tutwiler is so pervasive that prisoners identified at least thirty-four officers who are verbally abusive and threatening. For example, several prisoners identified Officer I as verbally abusive and physically threatening. We received at least twenty prisoner letters identifying Officer I as one of the officers who verbally abuses prisoners the most. According to the letters we received, Officer I referred to women in the drug rehabilitation dorm as “dope whores,” told a prisoner who wanted to speak to him to “shut her ‘cum-catcher’” and to “get the fuck out of his face.”<sup>23</sup> Another prisoner reported that when Officer I is assigned to the medication line, she “skips [her] medication rather than be subjected to his abuse.” In one incident, when questioned about his vulgar language, Officer I admitted it, saying, “I talk to them how they talk to me.” As these examples illustrate, verbal abuse coupled with sexual, physical, and emotional abuse harms prisoners and places them at substantial risk of harm.

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<sup>22</sup> Although not a focus of our investigation, we received multiple reports of discriminatory treatment by Tutwiler staff of prisoners based on national origin, gender identity and sexual orientation. We have received reports of officers compelling Latina prisoners to solely speak English and threatening to discipline them if they spoke Spanish. According to one prisoner, when a Spanish-speaking prisoner asked her to fill out a sick call slip, Officer H would not allow it, stating that the prisoner needed to ask in English herself. As discussed further below, we also received reports of discriminatory treatment based on gender identity and known or perceived sexual orientation. Discriminating against prisoners is unconstitutional and further places the prisoners at risk of harm. *See also infra* Part VII.

<sup>23</sup> We also received information that Officer I is also physically threatening; one prisoner reported that he lifted her off the ground by her left arm and pinned her against the wall as he screamed in her face. *See also infra* Part VII.

*B. Tutwiler's Toxic Sexualized Environment Permits Staff Sexual Abuse and Harassment*

The harm inflicted by Tutwiler staff on women prisoners did not arise in a vacuum. Instead, Tutwiler incubates a “sexualized environment” where “boundaries and expectations of behavior are not clear.” *See Women Prisoners*, 877 F. Supp. at 639. First, in order to obtain necessities and avoid punishment from guards, women at Tutwiler feel they must submit to guards’ sexual advances. Second, Tutwiler staff encourage and participate in sexual activities by and among prisoners. A flagrant disregard for routine, and even seemingly benign, rule infractions such as a failure to provide soap or allowing a prisoner’s relationship with another prisoner telegraphs to both staff and prisoners that boundaries are easily transgressed and ignored. The harm detailed in Part A of this letter occurred in the context of the sexualized environment that Tutwiler leadership allowed to develop and become part of Tutwiler’s entrenched culture.

*1. Prisoners Must Submit to Unlawful Sexual Advances to Obtain Necessities and Avoid Punishment*

In a custodial setting, staff holds the power and authority. According to our expert consultant, Tutwiler’s extremely restrictive and punitive environment forces women to submit to sexual demands as a means of navigating institutional landmines. Prisoner reports support this conclusion. As one woman explained: “if you exchange[] sexual favors you are treated better. If you don’t you are treated like crap.” We received thirty-seven reports from prisoners concerning the inconsistent application of prison rules at Tutwiler. According to the reports we received, rules often differ by shift, staff, and supervisor, and staff often threaten prisoners with disciplinary action and segregation. In order to find a safe balance, prisoners justify submission to sexual advances with staff in order to become one of “the favorites.”<sup>24</sup> According to one prisoner, “if you are not one of the favorites, you can be written up for petty offenses and may be given a maximum sentence.” According to another prisoner, officers “play and cut up with the younger inmates, that’s why there is all this sex going on in here these young officers think it’s a great playground for them.” [sic].

Prisoners often submit to sexual advances as the only means to secure assistance or protection. Our expert consultant observed inadequate and unhygienic supplies while at Tutwiler. Essential resources at Tutwiler, including feminine necessities such as tampons, maxi pads, and toilet tissue, are severely limited, which unnecessarily creates a black market for goods that the State is required to provide. Thirty-one percent of the correspondence we received reported a lack of basic hygiene and laundry services, especially for indigent prisoners.<sup>25</sup> Prisoners reported that hygiene products were not evenly distributed and alleged that staff either took supplies for themselves or provided additional supplies to their “favorites.” Several prisoners reported going two to three months without supplies, including feminine hygiene

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<sup>24</sup> *See* BRENDA V. SMITH & JAIME M. YARUSSI, BREAKING THE CODE OF SILENCE: CORRECTION OFFICERS’ HANDBOOK ON IDENTIFYING AND ADDRESSING SEXUAL MISCONDUCT 13 (Nat’l Inst. of Corr. 2007) (“What may appear to be consent or willingness to participate can often be a survival strategy or a response to prior or current victimization.”).

<sup>25</sup> *See also infra* Part VII.

products, and others reported having to borrow supplies. Prisoners also complained of inadequate laundry service, supplies, and unsanitary and undersupplied uniforms. Our onsite observations lend credence to these reports.

Feminine hygiene products and access to uniforms are necessities, not luxuries. The lack of protocols to ensure the dissemination of uniforms and feminine hygiene products means that prisoners must “borrow” or “barter” from other women or employees, which is often the first step toward an unwanted relationship or protective partnering, as sex is one form of currency. For example, uniforms are in high demand. Prisoners can either submit to sexual advances from an officer known to exchange a uniform for a sexual favor, submit to the sexual advances of another prisoner in exchange for a uniform, or purchase a uniform for five or ten dollars, depending on the seller. For many indigent prisoners spending money is not an option, and sex is therefore the only solution. Bartering for necessities is not an acceptable practice and places prisoners at Tutwiler at an even greater risk of sexual victimization and abuse from both staff and prisoners.

A few of the examples of protectionism and favoritism that we identified include:

- In July 2012, Prisoner 1 alleged that she witnessed Officer J engage in sexual discussions with Prisoner 2, and that Prisoner 2 told her that Officer J was interested in sexual contact with her but that “Tutwiler was too hot right now.” Prisoner 1 also alleged that Officer J allowed Prisoner 2 to bring coffee, sugar, and cream into the segregation unit, despite its prohibition.
- In April 2012, ADOC investigated Instructor K and found he acted inappropriately when he allowed prisoners access to his computer to send emails, letters to judges and the IRS, and work on their resumes. In exchange, women posed for photographs in underclothing and, in one instance, had sex with Instructor K while on parole. An ADOC investigation confirmed the presence of prisoners’ posed photographs on the Instructor K’s unapproved cell phone.
- A prisoner reported that Sergeant L is having a sexual relationship with at least three prisoners, and that he allegedly plays favorites by ignoring drug use and destroying discipline charges.
- In August 2011, a prisoner reported sexual contact between prisoners and officers in exchange for makeup, perfume, drugs and alcohol.

If actual physical force is not involved, it may be tempting to view sexual encounters as “consensual.” However, physical force need not be employed in order for women prisoners to be coerced into sexual contact. Therefore, “there is no such thing as ‘consensual’ sexual relationships between staff and [prisoners].”<sup>26</sup> Under Alabama law, it is a Class C felony for “any employee to engage in sexual conduct with a person who is in the custody of the

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<sup>26</sup> SUSAN W. MCCAMPBELL & ELIZABETH P. LAYMAN, TRAINING CURRICULUM FOR INVESTIGATING ALLEGATIONS OF STAFF SEXUAL MISCONDUCT WITH INMATES 7-8 (Center for Innovative Public Policies, Inc. 2000).

Department of Corrections, the Department of Youth Services, a sheriff, a county, or a municipality.” ALA. CODE § 14-11-31. Despite knowing this very fundamental premise and receiving training on the subject, Tutwiler staff continue to engage in inappropriate sexual contact with prisoners.

2. *Tutwiler Staff Encourage and Participate in Sexual Activities by and Among Prisoners*

Officers are placing prisoners at serious risk of sexual and physical abuse by encouraging and even participating in sexual activities by and between prisoners. Officers flagrantly encourage sexual relationships and create an environment that tolerates coercive sexual behavior. Promoting prisoner sexual activity ignores the reality that sexual activity amongst the prisoner population can be coercive, and that many prisoners have histories of predation and victimization. As discussed above, the lack of personal necessities available to prisoners causes many women to submit to sexual advances from others in order to get by; this coercion also exists when prisoners submit to sexual demands of other prisoners with more power and access.

In a particularly egregious example, staff’s encouragement of prisoner sexual activity appears to be at least partially motivated by voyeurism. Pursuant to a State investigation, it has been established that in December 2011, staff allowed, and in one case participated in, several sexually themed parties, including a strip show. Prisoners conducted several dorm contests and events, including a Christmas Eve “Victoria’s Secret Show,” where the prisoners made sexual apparel, dildos, and other sex toys. On New Year’s Eve, two male officers participated in a prisoner-led New Year’s Eve strip show, where one of the officers provided strobe lighting with his flashlight. Neither of the officers involved were assigned to work in the dorm in question on that evening, and both failed to provide a justification as to why they were present in the incorrect area.

Even when not actively participating in the sexual activity, staff permitting prisoners from different dorms and classification levels to engage freely with each other is a serious breach of security.<sup>27</sup> According to one prisoner, an officer in her dorm would allow prisoners from other dorms to enter and remain in her dorm if the prisoner was engaging in a sexual relationship with someone in her dorm. On the eve of our visit to Tutwiler in April 2013, officers orchestrated an “Easter Spoon Hunt” in this same dorm, where prisoners were required to search throughout the dorm for hidden spoons. Prisoners who found a spoon were then allowed to privately dine in the yard with their “girlfriend.” All eighty prisoners in the dorm were required to participate. These actions by officers disregard the fact that prisoner-on-prisoner sexual contact can be coercive.

Promoting prisoner sexual activity sends the message to staff and prisoners alike that following the rules is discretionary. Similar to engaging in inappropriate sexual behavior with prisoners, allowing prisoner-on-prisoner sexual activity to occur promotes the officer’s dominance over the Facility and becomes one more tool used by staff to manipulate and dominate prisoners.

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<sup>27</sup> Our initial review suggests that the classification system at Tutwiler does not in fact make housing assignments based on a complete analysis of these issues and how they affect prisoner safety. *See also infra* Part VII.

C. *ADOC and Tutwiler Officials are Deliberately Indifferent to the Constitutional Harms to Women Prisoners*

Tutwiler prison officials are aware of, and deliberately indifferent to, the substantial harm and serious risk of harm to its prison population due to sexual abuse and harassment and they have failed to take reasonable steps to prevent harm and risk of harm. *See Farmer*, 511 U.S. at 828. In determining whether conduct violates the deliberate indifference standard of the Eighth Amendment, the Eleventh Circuit requires: (1) facts presenting an objectively substantial risk to prisoners and awareness of these facts on the part of the officials charged with deliberate indifference; (2) that the officials drew the subjective inference from known facts that a substantial risk of serious harm existed; and (3) that the officials responded in an objectively unreasonable manner. *Doe v. Georgia Dep't of Corr.*, 248 F. App'x 67, 70 (11th Cir. 2007); *see also Cooper v. Rogers*, No. 2:11-CV-964-MEF, 2012 WL 2050577, at \*3 (M.D. Ala. June 6, 2012). The subjective component requires that the prison official “acted with a sufficiently culpable state of mind” while an objective component requires that “the alleged wrongdoing was objectively harmful enough to establish a constitutional violation.” *Hudson v. McMillian*, 503 U.S. 1, 8 (1992).

For over eighteen years, ADOC and Tutwiler officials have been aware of staff sexual misconduct at Tutwiler and have failed to implement the changes necessary to remedy this harm. Following the release of the 2007 BJS report, ADOC officials failed to implement operational practices to address the issue of sexual abuse at Tutwiler—no cameras were added or adjustments made to staffing or the physical plant. Instead, officials allow staff to continue to retaliate against women who make allegations relating to sexual misconduct, fail to adequately respond to or investigate allegations, and fail to properly discipline staff found to have engaged in sexual abuse or harassment. These actions and inactions, when combined with the various systemic deficiencies at Tutwiler, violate the law and foster an environment where additional sexual abuse can occur.

1. *Prisoners' Reports of Sexual Abuse Are Discouraged Due to Actual and Perceived Retaliation.*

Women feel retaliated against after making reports, through direct harassment, involuntary segregation, and having their credibility immediately questioned. This retaliation—real or perceived—discourages further reporting.

BJS reports in both 2007 and 2013 identified that sexual abuse at Tutwiler is underreported. Many prisoners confirmed this, citing fear of retaliation as a reason for not reporting sexual abuse and harassment. Prisoners have the right to report abuse without being subject to retaliation. *See Boxer X*, 437 F. 3d at 1112 (holding that a prisoner who was punished for complaining about officer abuse had grounds for a retaliation claim pursuant to §1983). However, prisoners universally fear reporting sexual abuse. EJI provided multiple examples of women who, after reporting sexual abuse, were placed in segregation with limited or no access to a telephone, visitors, or programs for an extended time period. Prison officials treated these women with the presumption that they were lying, subjecting them to polygraph examinations as a prerequisite to investigating the allegation. Staff verbally harassed them for reporting allegations of sexual abuse involving their colleagues. Women reported observing the

accused officers on duty even after they made their allegations, and never being informed of the outcome of their allegations.

The information we independently received supports the allegations made by EJI. For example:

- A prisoner attempted to report sexual harassment three times and was chastised, dismissed, and threatened with segregation. Warden M admonished the prisoner (erroneously) for confiding in her parents about being sexually harassed rather than using the PREA Hotline. She then reported the sexual harassment to a sergeant, who in turn referred her to a lieutenant. The lieutenant then threatened to put her in segregation.
- In February 2013, Officer O pulled a prisoner aside and told the prisoner to drop her complaint against Officer N or else Officer O would write the prisoner up next time she was late for pill call. The prisoner had complained about Officer N loudly and repeatedly mocking her for scratching her inner thigh due to a razor burn and causing other staff and prisoners to laugh at the prisoner. The ADOC investigator characterized Officer O as hostile and defensive during her interview. Despite this, there was no finding regarding Officer O's act of intimidating the prisoner to drop her complaint.
- Another prisoner reported that Officers F and P sexually harassed and threatened to physically assault her in retaliation for admitting to Tutwiler investigators in 2011 that she had a sexual relationship with Officer Q; Officer Q was terminated shortly thereafter. Specifically, Officers F and P have threatened to "whoop her ass" and called her a "piece of shit" for getting Officer Q fired. Officer A also repeatedly made sexually harassing statements to the prisoner. When Officer F was subsequently stationed in her dorm, the prisoner suffered a panic attack and feared for her safety. She left the dorm, met with a crisis counselor, explained that she was afraid of the officer because he had threatened to retaliate against her, and requested protective custody. Instead, the Lieutenant on duty sent her back to the dorm—where the officer who had threatened her remained on duty. Fearing sexual assault, this prisoner who has a history of self-injurious behavior, cut her arm because of the stress and was transferred to suicide watch. The matter was not investigated further.

Because of actions like these, prisoners at Tutwiler are afraid to report sexual misconduct fearing retaliation by staff. Failing to address underreporting of sexual abuse and sexual harassment allows abuses to continue.

## 2. *Tutwiler Fails to Respond Reasonably Upon Discovering Abuses*

Even when Tutwiler receives or identifies allegations of sexual abuse, staff does not respond reasonably to the reports. Staff discredit reports of sexual abuse and harassment if prisoners do not immediately report the abuse. When Tutwiler does investigate, its review of sexual abuse allegations is marginal at best. Investigations and Intelligence Division investigators rely heavily on polygraph results in conducting their investigations and fail to

follow logical leads that may further advance their review of the prisoner allegations. Finally, inadequate or inconsistent discipline of officers who have committed sexual abuse sends a message that Tutwiler tolerates misconduct and fails to deter future violations.

*a. Inadequate Investigations*

The Investigations and Intelligence Division conducts investigations at Tutwiler. Investigators are obligated to gather and preserve evidence (including available electronic monitoring data), and interview witnesses, victims, and suspected perpetrators.<sup>28</sup> Tutwiler does not do this. Investigators often fail to use basic investigative tools and techniques, such as witness interviews or record reviews, and instead close investigations prematurely based on limited information. For example, investigations have been closed solely because: both parties to a sexual relationship—an officer and a prisoner—denied a sexual relationship; a prisoner-victim reported in an interview that the “matter [was] squashed” and that she “does not have anything against [Officer R];” and because a prisoner-victim became uncooperative and argumentative after recounting an earlier allegation in an interview. Similarly, investigations are frequently closed as “unfounded” if a reporting prisoner has a mental illness. In these and other cases, investigators fail to seek out potential witnesses or check verifiable facts, including prisoner accounts and movement records. Simply because a prisoner cannot or will not cooperate with an investigation into an allegation of sexual misconduct does not mean that ADOC cannot conduct a thorough investigation of the underlying allegation. The requirement for cooperation by a particular prisoner is especially improper considering many complaints about sexual abuse are made anonymously or by a third party.

Investigators also rely heavily—and often exclusively—on prisoner polygraph examinations in sexual abuse and harassment investigations. Using polygraphs in this manner is highly questionable. PREA prohibits compelled polygraphs as a prerequisite to investigations,<sup>29</sup> and the Preamble sheds further light on the limits to their use. The Preamble recognizes that “polygraph examinations are imperfect assessors of credibility,”<sup>30</sup> yet did not want to ban polygraphs “to victims who request them.”<sup>31</sup> At Tutwiler, however, prisoners perceive that they are compelled to submit to polygraphs, and it is unclear whether any prisoner would feel able to refuse a polygraph. Even if polygraphs were to be used in a non-coercive manner, they cannot be the sole investigative tool. Yet we reviewed several investigative summaries where allegations of inappropriate sexual behavior were determined to be “unfounded” simply because a prisoner failed a polygraph, or because an accused employee refused to submit to a polygraph. Additionally, an investigation often stops if a prisoner’s results come back as “deceptive,” despite other investigative avenues available to evaluate the allegations.

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<sup>28</sup> 28 C.F.R. § 115.71(c) (2012).

<sup>29</sup> 28 C.F.R. § 115.71(e) (2012).

<sup>30</sup> 77 Fed. Reg. 119 at 37171.

<sup>31</sup> *Id.*

Additionally, ADOC and Tutwiler senior management are apparently not reviewing the investigative reports for quality assurance. Tutwiler must improve supervision of its investigators and implement a process to review all investigations—regardless of whether they result in sustained violations. Without these measures, prisoners remain in jeopardy because senior administrators are unable to identify and correct actual and potential patterns or trends of sexual misconduct.

*b. Officers are Not Properly Disciplined for Sexual Abuses*

The long and unabated history of staff sexual abuse and harassment is facilitated by a disciplinary system that fails to substantiate the conduct of, and discipline, sexual predators. As discussed below, Tutwiler fails to adequately manage and analyze existing data to identify potential sexual misconduct and problematic staff behavior. As a result, officers who are identified in several prisoners' allegations are not flagged for further review and are less likely to be disciplined and prevented from further abuse. After the prisoners who file those reports see the officers remain on the unit, they decide that reporting is futile.

ADOC provided seven records, for the period 2011 through March 2013, of employees who were separated from the organization for conduct related to sexual abuse or harassment. Of the seven employee separation records produced, one officer resigned, two officers resigned in lieu of termination, and four officers were terminated, two of whom were subsequently reinstated to their jobs via the appeal process. Allowing officers to resign in lieu of termination or reinstating officers who engaged in sexual misconduct sends a message to prisoners and staff that sexual misconduct will be tolerated.

These seven records do not capture the true extent of officers involved in sexual abuse allegations. For example, ADOC reported, as required by law, to the District Attorney of the 19<sup>th</sup> Judicial Circuit the names of individuals who were being investigated for various allegations of criminal conduct, including custodial sexual misconduct. The forms reporting this data for 2011 to 2013 included seventeen unique names that were referred for potential sexual misconduct. Even seventeen officers is an understated number; our review of data provided by Tutwiler, and letters and interviews with prisoners, lead us to conclude that Tutwiler vastly understates the number of officers involved in sexual abuse.

ADOC and Tutwiler do not effectively maintain the names and assignments of officers who are charged either with rule violations or suspended or reassigned pending investigations, or the outcome(s) of the investigation. This is a compelling reason for a centralized database that includes an early warning system. As noted elsewhere in this report, several Tutwiler employees involved in sexual misconduct remained on the job, and were ultimately terminated for these offenses. Until Tutwiler holds officers uniformly accountable for their actions, the prevalence of sexual abuse at Tutwiler will continue unabated, and women will continue to be harmed.

3. *Systemic Deficiencies at Tutwiler Directly Contribute to the Sexual Abuse and Sexual Misconduct of Women Prisoners and Create Harm and a Substantial Risk of Further Harm*

Our investigation revealed serious systemic deficiencies in Tutwiler’s operations that directly contribute to the sexual abuse and harassment at Tutwiler and create a substantial risk of further harm if not remedied. As discussed below, Tutwiler’s failure to adopt gender-responsive strategies is one of the factors that has resulted in the sexualized environment that continues to harm the prisoners in its care. Tutwiler has failed to provide sufficient operational guidance to prevent sexual abuse and harassment, including guidance on cross-gender viewing. Tutwiler has also failed to collect and analyze existing data to identify potential misconduct and does not have a system in place to identify problem employees evidencing sexually inappropriate behavior. Tutwiler’s attempts to prevent staff sexual abuses are severely hampered by not having a grievance system in place that would allow prisoners to report concerns that could flag inappropriate sexualized behavior by staff or sexualized activity within the institution. Although ADOC has a system in place to respond to reports of sexual abuse and sexual misconduct, the system at Tutwiler is compromised. Women prisoners are afraid of reporting incidents of sexual abuse and harassment, and staff is not reporting allegations either. Catastrophically low staffing and supervision levels impact not only the reporting of, but also the identification of sexual abuse, allowing opportunities for abuse to occur undetected. Tutwiler has no proactive plan to increase staffing ratios based upon an adequate staffing analysis. The Facility has no cameras, is an architectural structure ill suited for housing women, and has an inadequate classification system that puts vulnerable prisoners at increased risk.

*a. Tutwiler Lacks Gender-Responsive Policies and Procedures To Prevent Sexual Abuse and Harassment*

Clear, gender-responsive policies and procedures are essential to protecting prisoners from sexual abuse and harassment. Gender-responsive policies, programs, and procedures are those that reflect empirical and gender based differences.<sup>32</sup> Being gender-responsive means creating an environment that is grounded in research and theory that acknowledges women’s pathways into the criminal justice system and addresses issues such as abuse, violence, family relationships, substance abuse, and co-occurring disorders.<sup>33</sup> Developing a gender-responsive approach to managing women offenders at Tutwiler is critical to addressing decades of sexual abuse and harassment at the Facility. It requires a fundamental understanding and appreciation, by prison officials and staff, for gender differences among the offender population—an understanding particularly true for male correctional officers assigned to male prisons but who work overtime at Tutwiler. There is a correlation between improved behavioral outcomes for women offenders and providing a safe and supportive setting for supervision.<sup>34</sup>

Tutwiler officials are well aware of the concept of gender-responsive strategies. In 2010, approximately twenty Tutwiler officials attended a NIC training that addressed gender-responsive strategies to managing women offenders. Despite Warden II Jones’ attendance at the training, Tutwiler officials have yet to embrace gender-responsive strategies to manage the institution, or incorporate the strategies into their operational policies, practices, and

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<sup>32</sup> BLOOM ET AL., *supra* note 13, at 5.

<sup>33</sup> *Id.* at Xvi.

<sup>34</sup> *Id.* at 81.

procedures. Had Tutwiler adopted these strategies, a number of the harms identified in our investigation could have been avoided.

For example, as previously discussed, Tutwiler provides no guidance on cross-gender viewing in showers and bathrooms, and male officers at Tutwiler have unrestricted access to shower and bathroom areas. Although officers are reportedly told, via an unofficial policy, to announce their presence prior to entering the shower and bathroom areas, this requirement is often not complied with or enforced. In another example, Tutwiler could have developed a policy regarding gender-responsive management of the prisoner population, including ensuring basic sanitation necessities. As discussed above, the scarcity of these necessities leads to sexual abuse. Finally, Tutwiler's prisoner handbook fails to inform prisoners of their right to be free of sexual abuse, does not provide definitions of sexual abuse or sexual misconduct, or information about how to report sexual abuse or sexual misconduct. While we appreciate that Tutwiler provides an orientation for incoming prisoners, it is unclear why this or similar information is not included in the prisoner handbook.<sup>35</sup> If prisoners are unaware of their rights and the methods by which they can report abuse, it is more likely for abuse to go undetected by facility leadership.

Successful incorporation of gender-responsive strategies into Tutwiler's operations and practices also requires prison officials to review existing policies that may have a harmful effect on women offenders. The only staff policy directly addressing sexual abuse prevention is Standard Operating Procedure ("SOP") 15-39, entitled "Prison Rape Elimination Act." Presumably, Tutwiler intended SOP 15-39 to mirror the requirements of PREA.<sup>36</sup> While attempting to draft policies incorporating PREA's requirements is commendable, SOP 15-39 does not succeed in capturing even a portion of the PREA requirements.<sup>37</sup> Instead, Tutwiler's most recent revision to SOP 15-39, dated June 29, 2012, is an abridged version of the Department of Justice's May 17, 2012 press release *summarizing* the goals of the standards, not detailing the standards themselves. Rather than incorporate language directly from the PREA regulations into its policy, Tutwiler officials merely pulled language from the DOJ press release, manipulating the text to their liking. For example, when transferring the list of requirements

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<sup>35</sup> Moreover, Tutwiler must ensure that non-English speaking prisoners receive the orientation in their native language to ensure understanding of sexual safety issues in prison and reporting incidents of sexual abuse or misconduct. During our tour we spoke with a prisoner whose native language was Spanish who reported that she did not receive orientation in Spanish. Although she could say a few words in English, it was clear that she was not proficient. *See also infra* Part VII.

<sup>36</sup> On September 4, 2003, Congress passed the Prison Rape Elimination Act to establish a zero-tolerance standard for the incidence of rape in prisons across the United States and to increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison rape. Prison Rape Elimination Act of 2003, 42 U.S.C. § 15601 (2003). On May 16, 2012, the Attorney General issued a final rule establishing national standards for the detection, prevention, and punishment of prison rape. 42 U.S.C. § 15607. Any correctional accreditation organization seeking federal grants must conform to the national standards on sexual abuse proscribed by the final rule. 42 U.S.C. § 15608. While the Special Litigation Section of the Civil Rights Division does not have the authority to enforce PREA, the National Standards to Prevent, Detect, and Respond to Prison Rape, 28 C.F.R. § 115 (2012), serve as a strong remedial point of reference.

<sup>37</sup> We recognize that ADOC sent staff to training regarding PREA, with a focus on gender-informed strategies, but any knowledge gained from this training is not evident at Tutwiler. This failure is likely due, in part, to the systemic deficiencies and inadequate correctional practices discussed throughout.

outlined in the press release, Tutwiler officials deleted the term “among other things,” converting the summary list of examples to a finite list of requirements. To be clear, an institution need not have a policy that explicitly parrots all of PREA’s requirements word for word. However, Tutwiler’s policy fails to provide guidance and specificity and fails to set forth standards for staff, contractors, and volunteers.

In addition to having imprecise definitions, Tutwiler’s SOP 15-39 lacks specificity in terms of required actions of staff in providing support to victims of sexual abuse. For example, pursuant to policy, Tutwiler staff must “provide access to victim advocates from rape crisis centers for emotional support services related to sexual abuse.” There is no direction, however, on how this should be accomplished, whom employees should contact, or within what time frame the victim advocates should be contacted.

Moreover, Tutwiler’s SOP 15-39 provides no guidance on cross-gender viewing in showers and bathrooms. Tutwiler has given its officers unrestricted access to shower and bathroom areas without any guidance on the appropriateness of the intrusion. Although we were told that male officers are required to announce their presence prior to entering the shower and bathroom areas, this practice is not codified in any institutional policy. The only language we could find in the policies produced by Tutwiler related to cross-gender viewing in showers and bathroom only governed prisoners housed in Dorms D and H, the special housing dorms at the Facility. As discussed above, Tutwiler’s failure to amend its policy to address cross-gender viewing in shower and bathroom areas has caused significant harm to women prisoners who report being sexually harassed by officers while in these private areas.

Finally, SOP 15-39 is similarly silent on the management of lesbian, gay, bisexual, transgender, and intersex (“LGBTI”), and gender nonconforming prisoners. Without adequate education of and direction to staff, LGBTI and gender nonconforming prisoners at Tutwiler are at a disproportionately increased risk for sexual abuse, discrimination, and harassment. During the course of the investigation, we have become increasingly concerned about the treatment of LGBTI and gender nonconforming prisoners beyond policy issues. Staff indicated discomfort when using these terms, and internal documents reduce regulatory requirements regarding LGBTI and gender nonconforming prisoners to the shorthand “those with non-traditional sexual identities.” In addition to containing normative language, this shorthand exhibits a lack of education regarding gender identity, separate and apart from sexual orientation. Further, the one report we have regarding treatment of a gender nonconforming prisoner warns that the lack of policies and direction will cause grave harm to any gender nonconforming prisoner who enters Tutwiler. In 2009, an intersex prisoner was repeatedly humiliated and degraded by a multitude of Tutwiler staff who entered his cell in segregation merely to look at his genitals. Tutwiler refused to allow the prisoner to shower alone, which forced him to make informal arrangements with prison cleaning crews to shower at night. This intersex prisoner remains in ADOC’s system. We expressed our concern regarding his treatment to ADOC general counsel and were informed that the issue had been remedied and he is now allowed to shower in private.<sup>38</sup>

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<sup>38</sup> See also *infra* Part VII.

Perhaps recognizing the insufficiency of their current policies, Tutwiler leadership noted that the Facility was waiting for the passage of amendments to Section 454 of the Alabama Administrative Code (Inmate Sexual Offenses and Custodial Sexual Misconduct) before updating its own policies. However, it is simply unacceptable to wait for these revisions before addressing any of the sexual safety issues at Tutwiler—as one Tutwiler official admitted. The minimal changes to SOP 15-39 made in 2012 are insufficient to remedy the widespread and pervasive sexual abuse and harassment at Tutwiler. Further, given Tutwiler’s extensive history of sexual abuse and harassment, ADOC officials must take a more proactive approach in ensuring sexual safety at Tutwiler, including advising on Tutwiler’s sexual abuse prevention policies.

We recognize the increasing attention ADOC officials are giving Tutwiler. We were pleased to learn that Commissioner Thomas has visited the Facility on several occasions, including a visit with the PREA Coordinator assigned to Tutwiler, and that Commissioner Thomas has encouraged the PREA Coordinators to conduct unannounced visits during the day and at off hours. However, given the severity of the problems at Tutwiler, ADOC officials should be more engaged in the review of the operational practices of Tutwiler, rather than leaving this critical work to the Facility.

Tutwiler’s failure to develop gender-responsive practices has facilitated and allowed years of continued sexual abuse and harassment. Attending NIC training is an important first step, but more is needed. Tutwiler must adopt the principles in terms of recruitment, management services, and the full range of behavior management to ensure women’s safety. Tutwiler’s failure to adopt these strategies illustrates a deliberate indifference to the needs of this prison population.

*b. Tutwiler Fails To Adequately Manage and Analyze Existing Data To Identify Potential Sexual Misconduct and Problem Staff Behavior*

Data management is critically important to identify and prevent sexual misconduct in an institutional setting. The importance of data collection, analysis, and management is not lost on ADOC, as it relies heavily on data for its monthly and annual statistical reports. Tutwiler collects data, but fails to manage, analyze, or effectively use the information.

ADOC and Tutwiler officials provided us with two separate databases that documented sexual abuse allegations at Tutwiler. We received a log of sexual misconduct incidents maintained by ADOC’s PREA Coordinator, and a general incident report log maintained by Tutwiler that tracked the level of disorder in the Facility, such as prisoner violence, contraband, and sexual abuse.

Tutwiler officials should be reviewing its general incident report logs for activity that suggests or implies sexual undertones. For example, there are a large number of disciplinary write-ups involving prisoners who are classified as being in an “unauthorized area.” Based on our review of the investigations conducted, the investigator never questioned how or why the prisoner was in an unauthorized area. The prevalence and types of contraband found is another infraction recorded in incident reports that should be examined for a potential connection to

sexual activity. The prisoners who hosted the New Years Eve strip show with sex toys and lingerie could not have done so without contraband, either provided by or tacitly permitted by staff. Indeed, many prisoners reported that staff bring items such as food, cosmetics, and drugs to their “favorites.” Staff bringing in items that are identified as contraband is a potential indicator of the existence or risk of inappropriate sexual behavior. Thus, a closer examination of the incidents occurring within the Facility could shed light on some of the contributing factors to sexual abuse and harassment at Tutwiler.

Alarming, we found serious discrepancies between the information maintained by Tutwiler in its incident report log related to allegations of sexual misconduct, and the sexual abuse log maintained by ADOC’s PREA Coordinator. According to our review, there were at least sixteen reports of sexual abuse missing from Tutwiler’s incident report log. In addition, the general incident report log contained over 113 incidents labeled “pending.” When we inquired about, and were provided, the investigations labeled “pending,” we found thirty-eight reports alleging a range of sexually inappropriate behavior by staff and prisoners including allegations of rape, sexual touching, cross-gender viewing, and sexual harassment. Of those, twenty-five involved allegations of staff sexual misconduct.<sup>39</sup> Many of the incidents had been “pending” for a substantial period of time, and there was no clear indication that further action was being taken that would cause the investigation to be taken out of a pending status.

In addition, the practice of labeling incidents as “pending” without providing any underlying information as to the allegation is particularly troubling because it may lead to underreporting of sexual misconduct statistics. For example, prison officials reviewing the incident report log would erroneously believe that there were no allegations of staff sexual misconduct in 2012. The discrepancies in the collection and management of this data make it difficult for prison officials to assess the prevalence and severity of sexual abuse and harassment at Tutwiler. We encountered this same difficulty when we requested investigations related to sexual abuse and harassment in March 2013. While on our tour, we obtained ADOC’s PREA log and the Tutwiler general log, which listed investigations related to sexual abuse and harassment that ADOC had not previously produced to us. While we understand supplementing discovery requests as information becomes known, the late production of over fifty responsive investigative reports, only in response to a follow-up inquiry from us, suggests mismanagement and a serious deficiency in Tutwiler’s data management system. Because of these deficiencies, the efficacy of the incident report log as a repository of incidents that occurred at Tutwiler is compromised.

Moreover, titles given to incidents are also important for tracking purposes and by mislabeling or not labeling the incidents, the offense data could be skewed. Multiple reports that discussed sexual misconduct in the text of the report were simply labeled “employee misconduct.” In one example, a complaint from a prisoner regarding an officer touching her lower back in a manner that caused her to become uncomfortable was entitled “possible false

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<sup>39</sup> It bears noting that it was only after we employed substantial effort to resolve these discrepancies that we were able to gather a comprehensive sample of investigations related to alleged staff sexual misconduct and reach the conclusions regarding investigations. Given our difficulties in reconciling conflicting data to identify relevant documents, the substantial time it took ADOC to locate and produce the supplemental documents, and the differing scope of NIC’s analysis, it is not surprising that the NIC offered a somewhat different review of Tutwiler’s investigations.

inmate complaint” and dismissed with no follow-up. If Tutwiler were to do a quick search of the complaints entitled “possible employee sexual misconduct,” the results would far under-represent the number of actual complaints.

Properly tracking and analyzing the information contained in the data Tutwiler collects could help identify and track staff behavior that might indicate staff sexual abuse and harassment. For example, an early warning system is a database management tool designated to identify potentially problematic behavior, allow early intervention to correct misconduct, and assist in identifying deficiencies in supervision, management, and policies. Such a system would allow prison officials to track allegations of sexual abuse and harassment and to intervene before boundaries are crossed and prisoners harmed. Had a system been in place, ADOC might have been able to intervene with officers and employees whose names are associated with multiple sexual misconduct or harassment allegations, PREA hotline calls, complaints, use of force allegations, or alleged criminal activity. One officer, for example, was named in at least four allegations of sexual misconduct in 2012. While the allegations may be unfounded, the fact that an employee is implicated in several allegations of inappropriate sexual conduct should warrant further review by Tutwiler officials. We also learned of a Sergeant who had a restraining order against him for domestic violence and battery. This same Sergeant was later caught receiving oral sex from a prisoner. An employee with this background should not be assigned to work in a woman’s facility.

The lack of a data management system has allowed Tutwiler officials to willfully blind themselves to the repeated and serious incidents of sexual abuse and harassment. Tutwiler officials must actively review and analyze their existing data for trends that suggest or identify patterns of sexual abuse and harassment.

### *c. Non-existent Grievance Procedures*

The lack of a grievance system severely undermines prison officials’ ability to identify and prevent sexual abuse and harassment. Although ADOC has advised us that they are developing a grievance program, the failure to have one contributed directly to the harms discussed. We received 233 letters from prisoners raising a variety of concerns including sexual abuse by staff and prisoner-on-prisoner sexual conduct. These letters reported officers notorious for abusive or threatening behavior, officers who would view prisoners in the shower during count, and officers who had special relationships with prisoners. These letters also reported on other conditions at the Facility that were troubling, including allegations of discrimination based on national origin, gender identity, sexual orientation and of physical force.<sup>40</sup> The sheer volume of letters received suggests that prisoners at Tutwiler have a lot to say, but not many avenues to be heard. For example, over half of the reports of sexual harassment we received were undocumented in ADOC’s files. If Tutwiler had even a small percentage of the information provided in the 233 letters, they would be much more equipped to identify and prevent abusive behavior.

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<sup>40</sup> During our review of documents produced by ADOC, we were alarmed by the frequency by which physical force was used at Tutwiler and are concerned that the levels of force used are the result of insufficient administrative safeguards, understaffed and overwhelmed officers, and poor investigations. *See also infra* Part VII.

For example, the general incident report log identified four officers whose involvement in incidents at Tutwiler far exceeded those of their peers. Of the four outliers, Officer S was involved in thirty-eight incidents, Officer T in twenty-seven, and Officers U and D in nineteen each. Had a grievance system been in place, Tutwiler officials would have known the following about these outliers:

- All four officers are known by prisoners for their use of profane and degrading language when speaking with prisoners.
- Prisoners report that two of the four officers, Officers U and D, are physically abusive and sexually inappropriate. Prisoners report that Officers U and D enter the shower areas unannounced and watch the women as they shower during count. Prisoners reported that Officer D refers to the women in the drug and alcohol rehabilitation unit as “dope whores,” and discriminates against Caucasian prisoners. One prisoner alleged that she reported Officer U to investigators for violating the prison’s unofficial policy requiring that male officers announce their presence before entering an area where prisoners are likely to be in a state of undress, but did not know whether anything was done.
- Officer T has an alleged violent history at Tutwiler. Several women reported that he has physically assaulted them. One prisoner alleged that Officer T grabbed her by the throat and threw her in the dorm when she approached him about a telephone dispute. Another prisoner alleged that Officer T and another officer slammed a prisoner on a desk, spat in her face, and threw her to the ground. While she was on the ground, Officer T reportedly handcuffed the prisoner and jerked her up from the ground by her bra, causing it to tear. Yet another prisoner reported that Officer T watched as another officer slammed a prisoner against the shower wall, hitting her head against the shower grills, and cutting her lip.

The lack of a grievance system places prisoners in harm’s way; not only are prison officials limiting prisoners’ ability to report allegations, they are also ignoring a key source of critical information necessary to identify and discipline staff and prisoners engaging in sexual misconduct. Had there been a grievance system, Tutwiler officials could have known about many of these same issues and responded to them in a timely manner. *See* Section (B)(1)(c), *supra*.

*d. Tutwiler is Dangerously Understaffed*

Tutwiler fails to provide adequate supervision of its prisoners in violation of the Eighth Amendment. *See Laube v. Haley*, 234 F. Supp. 2d 1227, 1244-46 (M.D. Ala. 2002) (“the combination of substantial overcrowding and significantly inadequate supervision in open dorms” at Tutwiler violates the Eighth Amendment right to protection from violence); *see also Krein v. Norris*, 309 F.3d 487, 489-91 (8th Cir. 2002) (evidence that officials provided only one guard for three barracks housing 150 inmates, and did not change staffing even though one of the barracks was known to be extremely violent, supported an Eighth Amendment claim). Roughly ninety-nine officers manage a prison population of over 900 women spread across fifteen housing units. In addition to the housing units, officers are required to secure the Kitchen, the

Medical Unit, the Educational Building, the Chapel, Laundry, Central Waiting, the external perimeters, and manage prisoner movement. According to our assessment of staffing patterns, Tutwiler assigns, on average, twenty-four officers to the day shift, with ten of those officers assigned to various posts throughout the Facility.<sup>41</sup> This leaves only fourteen officers assigned to supervise and manage the prison population. In the evenings, the numbers are even lower: fifteen officers are assigned to Tutwiler, with five assigned throughout the Facility, leaving only ten officers to supervise over 900 women. While there are no national staff/prisoner ratio requirements, these figures are abysmal. According to the United States' expert's analysis of Tutwiler, it is impossible for ten officers to adequately maintain order and security in Tutwiler.

Staffing shortages have plagued ADOC's management of Tutwiler for over a decade. In 2002, fifteen prisoners housed at Tutwiler, the Edwina Mitchell Work Release Center, and the Birmingham Work Release Center sued ADOC officials alleging unconstitutional conditions based on the operations of the facilities. Specifically, the plaintiffs alleged, and the court agreed, that the facilities were overcrowded and understaffed and, as a result, placed prisoners at serious risk of harm. *Laube*, 234 F. Supp. 2d at 1230. The district court conducted a staffing analysis of Tutwiler and found that at the time of the litigation, Tutwiler housed "1,017 inmates with a total security staff of 92" and relied heavily on overtime employees to supplement the rest. *Id.* at 1233. This led to a ratio of officer to prisoner population that was dangerously low, with one officer assigned to supervise 228 prisoners. *Id.* While the staffing figures at Tutwiler are not as bad as they were in 2002, they remain dangerously low. Low staff assignment, coupled with officers absconding from their post to engage in sexually inappropriate behavior, places prisoners at serious risk of harm, especially when housed in an open dorm. *See id.* at 1232-33 (finding the open dorm system "while acceptable, still raises significant safety issues" regarding officer visibility and disruptive behavior due to idleness).

Many of the prisoners are acutely aware of Tutwiler's staffing needs and take advantage of the shortages, to the detriment of the prisoner population. Prisoner sexual activity is prevalent throughout Tutwiler, occurring at all hours of the day. According to the United States' expert consultant's review of incident reports, approximately 44% of prisoner-on-prisoner sexual contact occurs in the showers, 21% outside of the buildings, and 12% in the dorms. Sexual activity that occurs in the dorms is in plain view and takes place during the daytime hours—indicative of a facility stretched thin on staff and lacking supervision. According to Tutwiler's Incident Report Log, in 2012, there were at least 30 reported incidents of prisoner-on-prisoner sexual contact and 74 incidents of prisoner-on-prisoner physical assaults. Given the discrepancies in the data produced by Tutwiler officials, we project this figure to be larger than reported. According to BJS's report on sexual violence for 2011-2012, despite a slip in the rankings, Tutwiler remains one of the top four women's facilities for sexual violence.

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<sup>41</sup> ADOC and Tutwiler officials have not conducted a staffing analysis to determine staffing needs and projections. Staffing deficiencies likely have broad consequences in permitting a range of unlawful and unconstitutional conduct. *See also infra* Part VII. In order to assess the severity of the staffing issues, our expert prepared a staffing plan based on the employee roster produced by ADOC. In order to assess the accuracy of the staffing plan prepared by our expert, we reviewed staffing patterns over a three-day period for March, April, and May excluding weekends and holidays. This examination revealed only slight deviations from the expert's staffing plan. Oddly, according to the roster produced, there were no officers assigned to the Annex where approximately 248 prisoners reside. It is difficult to believe that Tutwiler would not assign officer(s) to supervise the Annex, but the roster did not reflect this.

Data derived from the employee roster illustrates the severity of the staffing problem. For example, that one officer is assigned to supervise 153 prisoners in a single dorm, or 135 prisoners spread across two dorms, places prisoners at risk of serious harm. These numbers are dangerously low for a facility of this size. Even with the dorms visible from the corridor, blind spots still exist within the Facility, which prisoners can manipulate. To be effective, open dorm housing requires direct supervision. It is impossible to believe that prisoners can be protected from harm when one officer is assigned to supervise multiple dorms. Dorm F, for example, was the dorm where prisoners organized several sex parties in December 2011 without officer intervention. Had there been more supervision, Tutwiler might have been able to disband the sex parties before the culminating New Years Eve strip show. As noted, the staffing patterns in Dorm A, which houses the unclassified prisoner population, are particularly troubling and date as far back as 2002. *See Laube*, 234 F. Supp at 1234 (finding “understaffing poses a special danger in the intake dorm [at Tutwiler] . . . because it has both a unique physical structure and an unclassified inmate population”). Currently, the officer assigned to Dorm A is also required to supervise Dorm E. Thus, at numerous points throughout the day, these housing units are unattended. Given these staffing statistics, it is clear how prisoners are able to organize sex parties, strip shows, and engage in sexual activity in their housing units during the day.

Moreover, ADOC simply does not employ enough women officers at Tutwiler to meet its operational needs while protecting the rights of prisoners. The dearth of women officers at Tutwiler results in an inability to conduct specific rounds in all units, such as entering the bathroom and shower areas, and provides an opportunity for sexual abuse by staff and other prisoners. The opportunity for cross-gender viewing of nude or potentially nude women by male officers in the bathroom and shower areas increases where there are insufficient numbers of women officers assigned to supervise housing units. ADOC and Tutwiler officials are aware of the problem and recognize the need to hire additional women officers, but have taken little action to address this concern. Difficulty in recruitment may be related to a number of factors, including the physical standards set by the Alabama Peace Officer Standards and Training Commission (which have not been validated for a corrections environment),<sup>42</sup> mandatory overtime, and Tutwiler’s current 12-hour shift requirement. The 12-hour shift requirement poses a considerable barrier in hiring those with children who are attempting to accommodate child-care needs; those challenges may fall particularly harshly on women. While ADOC and Tutwiler officials recognize a need for improved staffing, remediation is slow and not innovative. ADOC and Tutwiler officials appear to have resigned themselves to the limitations of recruiting and are “making do.” Given the severity of the staff sexual abuse and harassment allegations at Tutwiler, it is important for ADOC to take a more proactive approach in addressing the barriers to the recruitment and retention of women officers—including addressing the physical exam.<sup>43</sup>

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<sup>42</sup> The Alabama Peace Officer Standards and Training Commission originally developed Alabama’s physical standards to reflect law enforcement duties. While applied to correctional officers, it is our understanding that the test has not been validated for corrections. The test involves pushing, climbing, window entry, balance, weight drag, timed push-ups, timed sit-ups, and a 1.5 mile run. None of the components of the test are gender-normed.

<sup>43</sup> To the extent that the State’s physical test disproportionately screen out female candidates, its use by the ADOC may violate Title VII’s prohibition on sex discrimination. 42 U.S.C. § 2000e-6.

During two unannounced visits to the Facility on July 15, 2012 and August 7, 2012, ADOC's Regional PREA coordinator, Sergeant Melissa Crawford, made the following observations about staffing at Tutwiler:

- Not enough women officers assigned to the Dorm A night shift and only two women officers were assigned to dorms;
- Male officers assigned to Dorm C are susceptible to increased allegations of abuse—sexual or physical—due to the dorm's proximity to the Chapel (the Chapel is an unmonitored location where several sexual encounters have allegedly occurred). There were also two male officers assigned to the Mental Health Unit;
- A high number of male officers from other ADOC correctional facilities are working overtime at Tutwiler;
- The remodeled bathrooms require officers to enter the shower area for count; and
- No supervisors roved the halls or dorms. According to Sergeant Crawford, "officers complained about not getting breaks" and "never [being] checked on by a supervisor" when on post.

The lack of women officers assigned to Dorm A is extremely troubling because young or new prisoners in the intake dorm are particularly vulnerable to inappropriate sexual advances by staff. Similarly troublesome is assignment of male officers to the Mental Health Unit. This Unit is secluded from the main hallway and has several single cells. The layout of the Unit may foster sexual misconduct and subject extremely vulnerable prisoners to sexual abuse. As discussed above, investigators consider a prisoner's mental health when investigating allegations of sexual abuse and have closed investigations solely based on that factor. Finally, the lack of supervisors roving the Facility during the night shift is concerning. Supervisors should be checking on their officers to make sure that the officers are at their assigned posts and are not engaging in sexually inappropriate behavior.

*e. Tutwiler Fails to take Necessary Measures to Address an Architectural Structure that is Ill-Suited for Protecting Women Prisoners from Sexual Abuse and Harassment*

The physical plant conditions at Tutwiler create increased risks that place women at risk of harm because Tutwiler does nothing to address them. According to the NIC's report, "the current design layout and population levels of the facility are not conducive to managing a female population. The physical plant layout is not conducive to reinforcing privacy, safety and security protocols of an inmate population and more specifically, the female offender."<sup>44</sup> While a long-term solution may be to consider a new physical plant for housing women offenders in Alabama, as long Tutwiler is still used, ADOC can and must address these limitations through other means.

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<sup>44</sup> ONSITE ASSESSMENT RE: CROSS-GENDER SUPERVISION IN CORRECTIONAL FACILITIES, *supra* note 9, at 8.

For example, Tutwiler has blind spots throughout the Facility, including in the laundry room and in the death row unit. We have reviewed several accounts of sexual activity occurring in these areas. Tutwiler is fully aware of these risks. In one incident in 2011, an officer admitted to kissing a prisoner on death row on two separate occasions. The prisoner reported that after the officer delivered her mail he kissed her, touched her, and placed her hand on his penis. Tutwiler investigated the matter, but did not find enough evidence to present the incident to a grand jury. According to the investigatory report, Tutwiler took no further administrative action. The officer has since resigned. Despite their knowledge of the challenges associated with death row housing, Tutwiler has not taken any action to minimize the risk.<sup>45</sup> One potential action would be to add cameras and increased staffing to monitor these areas. Yet ADOC has not conducted a physical plant or vulnerability assessment of Tutwiler to determine which areas facilitate sexual violence and where Tutwiler should install cameras. Tutwiler only has three cameras in the entire Facility, which is simply not enough to capture the actions of prisoners and staff or to deter abusive behavior. Given the age of the Facility, it will require considerable resources not only to install the cameras, but also to establish a control center and hire more staff to monitor the cameras.

In another example, women prisoners at Tutwiler have complained about the lack of privacy to undress, shower, or use the bathroom. The design of the bathrooms allows for blind spots and makes it difficult for officers to observe activities without entering the bathroom. Moreover, the bathrooms that were redesigned to accommodate prisoners with disabilities now afford prisoners with even less privacy since they are open to officers and other prisoners. Tutwiler could have focused on sexual safety and developed improvements for privacy in toileting, showering, and undressing while maintaining security and accommodating prisoners with disabilities, rather than rely on unrestricted cross-gender viewing. Tutwiler officials are fully aware of the risk of abuse associated with unrestricted cross-gender viewing in showers and bathrooms, yet they continue to permit the practice as a means of curbing prisoner sexual activity. Although the majority of prisoner sexual activity occurs in the showers, the lack of supervision and the paucity of women officers assigned to Tutwiler means this level of intrusion, in addition to being a constitutional violation itself, is ripe for further abuse. Tutwiler officials have failed to identify alternatives to patrolling these areas without undermining prisoner privacy. For example, saloon doors would allow officers to see the prisoners' feet and heads—enough to determine whether any misconduct is occurring in the showers.

*f. Tutwiler's Classification System is Unable to Protect Potential Victims From Abuse*

Tutwiler's classification and risk assessment process does not adequately identify potential predators and potential victims. *Marsh v. Butler Cnty., Ala.*, 268 F.3d 1014 (11th Cir. 2001) (lack of classification and risk assessment system constitutes deliberate indifference where inmates were harmed by other inmates because housing assignments did not account for the risk violent prisoners posed); *Jensen v. Clarke*, 94 F.3d 1191 (8th Cir. 1996) (failure to account for size, age, or length of sentence of inmates entering facility in determining appropriate housing assignment may amount to deliberate indifference). Although ADOC's Director of Treatment has updated a risk assessment tool to identify sexual predators and victims, at the time of our

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<sup>45</sup> *Id.*

visit, ADOC had not conferred with any Tutwiler classification, security, mental health, or medical staff regarding the tool, and Tutwiler was not using it. Without the ability to identify sexual predators, Tutwiler cannot appropriately manage their behavior, thus exposing women to harm. Furthermore, Tutwiler has no systems in place that would enable re-classification of women who may be identified as sexual predators as a result of actions in the Facility. With the exception of the women housed in the specialized units, including segregation and death row, there is only one classification level: general population. Thus, Tutwiler disperses vulnerable populations amongst the various units, thereby subjecting them to risk of harm.

Perhaps most alarmingly, Tutwiler has no pre-classification screening. When women first arrive at Tutwiler, they are housed in Dorm A, where they undergo several medical and mental health screenings and a classification analysis. Prisoners spend anywhere from three to four weeks waiting for a housing assignment, with the delay in placement purportedly related to the receipt of medical results. Many of these prisoners arrive at Tutwiler from other facilities without critical documents, including medical and mental health files. Accordingly, Tutwiler is blindly housing prisoners in the same dormitory without an adequate assessment of risk, thus placing the prisoners at serious risk of harm.

## **V. Conclusion**

Tutwiler violates the constitutional rights of its prisoners, resulting in harm and risk of harm, due to staff-on-prisoner and prisoner-on-prisoner sexual abuse and harassment. The Facility's leadership has been well aware of the multitude of structural problems that allow this abuse and harassment to continue unabated. Tutwiler has not only failed to implement the recommendations provided by the NIC and the EJI, Tutwiler has also failed to proactively address the harm by conducting a PREA assessment to determine compliance and to identify remediation. Staff and prisoners continue to engage in overt and inappropriate sexual behavior at Tutwiler, most recently within days of our arrival. This behavior is indicative of the need for critical institutional reforms that will not only address the underlining causes of the harm, but also identify and implement sustainable reforms. To this end, ADOC must take on an active role in monitoring the changes made at Tutwiler. It is no longer enough to delegate the changes to the Tutwiler officials without expansive oversight.

ADOC and Tutwiler remain deliberately indifferent to the serious and significant need to protect women prisoners at Tutwiler from sexual assault, abuse, and harassment. Without putting reforms in place in a timely fashion and addressing understaffing and employee turnover, Tutwiler will continue to violate the constitutional rights of its prisoners due to the harm and substantial risk of harm from sexual abuse and harassment.

## **VI. Minimal Remedial Measures**

In order to rectify the deficiencies identified in this findings letter, Tutwiler should implement, at a minimum, the following remedial measures:<sup>46</sup>

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<sup>46</sup> Implementation of these policies shall not be delayed by proposed amendments to the Alabama Administrative Code.

1. PREA Standards

- a. ADOC and Tutwiler shall comply with all provisions of the National Standards to Prevent, Detect, and Respond to Prison Rape as promulgated by the United States Department of Justice in 28 C.F.R. §115.

2. Reporting and Retaliation

- a. ADOC and Tutwiler shall provide multiple internal methods for prisoners to privately report sexual abuse and sexual harassment. The agency shall also provide at least one way for residents to report abuse or harassment to a public or private entity or office that is not part of the agency and that is able to receive and immediately forward resident reports of sexual abuse and sexual harassment to agency officials, allowing the resident to remain anonymous upon request.
- b. ADOC and Tutwiler shall protect all prisoners who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other prisoners or staff, and shall designate which staff members or departments are charged with monitoring retaliation.
- c. ADOC and Tutwiler shall provide a method for staff to privately report sexual abuse and sexual harassment of prisoners.

3. Investigations

- a. ADOC and Tutwiler shall ensure that an administrative and/or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.
- b. ADOC and Tutwiler shall prepare a written report of its investigative findings for each investigation.
- c. ADOC and Tutwiler shall establish guidelines for timely and thorough investigations and develop a process for monitoring those timelines. Investigations shall not solely rely on polygraph examinations and Tutwiler shall not require a prisoner to submit to a polygraph examination as a condition for proceeding with an investigation.
- d. ADOC shall ensure that all allegations of sexual abuse or sexual harassment are properly labeled and tracked.

4. Policies and Procedures

- a. ADOC and Tutwiler shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining their approach to preventing, detecting, and responding to misconduct.

- b. ADOC and Tutwiler shall develop and implement a detailed policy on prevention, detection, reporting, and investigation of sexual abuse, including prisoner-on-prisoner and staff-on-prisoner sexual abuse.
- c. ADOC and Tutwiler shall develop a written, institution specific plan to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership, including timelines and lists of whom staff should contact in specific situations.
- d. ADOC and Tutwiler shall implement policies and procedures that enable prisoners to shower, use the bathroom, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia. Policies and procedures shall require staff of the opposite gender to announce their presence when entering a prisoner-housing unit.
- e. ADOC and Tutwiler shall implement policies and procedures regarding the management of LGBTI and gender nonconforming prisoners.
- f. ADOC and Tutwiler shall ensure that all newly admitted prisoners receive information in their native language, through a prisoner handbook and, at the discretion of ADOC and Tutwiler, an orientation video, regarding the following: facility rules and regulations; definitions of sexual abuse and sexual harassment; how to report misconduct; how to report sexual abuse and sexual harassment; the process for accessing medical and mental health care; the disciplinary process; and how to access the grievance process once it is developed.

## 5. Use of Data

- a. ADOC and Tutwiler shall collect, consolidate, analyze, track and otherwise use its data, including incident reports and grievances, to identify sexual abuse and sexual harassment and problematic staff behavior.

## 6. Grievances

- a. ADOC and Tutwiler shall develop and implement an adequate grievance process.
- b. ADOC and Tutwiler shall ensure that a prisoner who alleges sexual abuse or sexual harassment may submit a grievance without submitting it to a staff member who is the subject of the complaint, and the grievance is not referred to a staff member who is the subject of the complaint.

## 7. Staffing

- a. ADOC and Tutwiler shall ensure that Tutwiler develop, implement, and document a staffing plan, based on gender-responsive principles, that provides for adequate levels of staffing, and, where applicable, real-time video monitoring, to protect prisoners against sexual abuse.
- b. ADOC and Tutwiler shall develop a plan to recruit additional women correctional officers at Tutwiler.
- c. Tutwiler shall establish a policy to ensure that any employee, contractor or volunteer who is suspected of sexual abuse or sexual harassment does not interact with prisoners until an investigation is concluded.
- d. ADOC and Tutwiler shall provide appropriate orientation, basic, and in-service training to all employees who may have contact with prisoners. All modules must include gender-responsive strategies and strategies related to the management of LGBTI and gender nonconforming prisoners.

#### 8. Architectural Structure

- a. ADOC and Tutwiler shall address architectural features that contribute to a lack of privacy for prisoners while showering or using the bathroom and conduct an assessment to identify physical plant vulnerabilities, including blind-spots within the facility, that could contribute to sexual misconduct.

#### 9. Classification

- a. ADOC and Tutwiler shall implement a gender-normed classification system specific to women prisoners at Tutwiler.
- b. ADOC and Tutwiler shall implement a risk assessment process that adequately identifies potential predators and victims.

### **VII. Notice of Expanded Investigation**

As noted throughout this letter, information we have received compels us to expand our investigation. Therefore, this letter also serves to inform you that, pursuant to our authority under CRIPA, we are expanding our investigation to evaluate allegations regarding excessive use of force, constitutionally inadequate conditions of confinement, constitutionally inadequate medical and mental health care, and discriminatory treatment on the basis of national origin, sex, sexual orientation, gender identity, and gender nonconformity.

While we have gathered a substantial amount of information about policies and practices that affect prisoners at Tutwiler, and have commented on some of our concerns in this letter, we have not reached any conclusions about the subject matter of the expanded investigation. During the course of our expanded investigation, we will consider all relevant information, and, where

appropriate, will offer recommendations on ways to improve prison conditions. If we find no systemic constitutional violations, we will notify you that we are closing the investigation.

On the other hand, if we find violations, we will inform you of the findings and attempt to work with ADOC to remedy any violations. In addition, we will identify any financial, technical, or other assistance the United States may be able to provide to assist ADOC in correcting the identified deficiencies. In our many years of enforcing CRIPA, the good faith cooperation we receive from state or local jurisdictions frequently enables us to resolve our claims without resort to contested litigation.

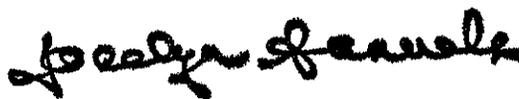
We encourage ADOC to continue to cooperate with our investigation and can assure you that we will seek to minimize any potential disruption our investigation may have on Tutwiler's operations. We hope to work collaboratively with ADOC to efficiently and expeditiously collect the information we need. We commend Commissioner Thomas and his staff for the cooperation they have already shown us and their receptivity to our concerns. Now that we are expanding our investigation, we look forward to continuing to work with ADOC and Tutwiler in a collaborative manner.

Please note that this Findings Letter is a public document. It will be posted on the Civil Rights Division's website.

We are obligated to advise you that, in the event that we are unable to reach a resolution regarding our concerns with regard to sexual abuse, the Attorney General may initiate a lawsuit pursuant to CRIPA to correct deficiencies of the kind identified in this letter anytime following the date that is 49 days after appropriate officials have been notified of them. 42 U.S.C. § 1997b(a)(1).

We would prefer, however, to resolve this matter by working cooperatively with you. The lawyers assigned to this investigation will be contacting ADOC to discuss this matter in further detail. If you have any questions regarding this letter, please call Jonathan M. Smith, Chief of the Civil Rights Division's Special Litigation Section, at (202) 514-5393.

Sincerely,

A handwritten signature in black ink, appearing to read "Jocelyn Samuels". The signature is fluid and cursive, written in a professional style.

Jocelyn Samuels  
Acting Assistant Attorney General

cc: Kim Thomas  
Commissioner  
Alabama Department of Corrections