

Legal firm moves to force investigation of Tutwiler

A nonprofit legal firm says it will sue the Alabama Department of Corrections if the U.S. Department of Justice decides not to investigate allegations of sexual misconduct by correctional officers at the Julia Tutwiler Prison for Women.

The Montgomery-based Equal Justice Initiative released a report last month that found DOC employees had illegal sexual contact with dozens of women at the Wetumpka facility. The report also said the official responses to these reports of abuse have created an atmosphere of intimidation that discourages future complaints.

The EJI last month asked the U.S. Department of Justice to investigate the situation at the prison, which houses about 709 women in the closed-security portion, and an additional 236 in the medium-security annex building at the site. The Justice Department has said the request was received, but hasn't indicated whether there would be an investigation.

EJI Executive Director Bryan Stevenson said there are plans to bring multiple civil cases against the Department of Corrections if there is no federal investigation.

In an effort to address some of the problems at the facility, Prison

Commissioner Kim Thomas said he has asked the National Institute of Corrections to audit the prison, which involves touring the facility, talking with staff and inmates and reviewing internal policies, to help address the allegations.

"These are not issues unique to Alabama. It's a concern to every correctional administrator," Thomas said. "We're doing as much as we possibly can to combat this issue."

Thomas said he's reviewing the investigation process from start to finish, and will examine the policy of putting women in segregation and taking away privileges during an investigation.

The commissioner also asked two of his PREA coordinators, who are responsible for making sure the Department of Corrections is in compliance with the federal Prison Rape Elimination Act of 2003, to look at how investigations are conducted when abuse is reported.

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He also said they are continuing to make strides on hiring female correctional officers at Tutwiler. There are currently 65 male corrections staff members and 56 females. All three captains and the assistant warden are females, he said.

Stevenson said while the state is making progress these are the kinds of issues that “will not be solved simply with good intentions.”

He said the particular problems identified will need direct responses, such as putting a stop to placing women in segregation and taking away their privileges while complaints are investigated. Male guards should not have unlimited access to women in bathrooms and showers, he said.

Thomas said on a monthly basis, there are as many as 43 volunteer organizations and ministry groups that visit Tutwiler to provide support for inmates. He also said incarcerated women have access to telephones and the number for a hotline to the PREA coordinator in the downtown Montgomery office so they can directly report abuse or make a complaint.

“There are opportunities for inmates to come forward in a safe and comfortable environment to report abuse,” Thomas said. “We are not ashamed of our past response to substantiated complaints about our facilities.”

Stevenson said the problem isn't having someone to complain to, but rather the “punishment” that comes as a result of

making a complaint. He said as long as the policy exists, there is a disincentive to complain.

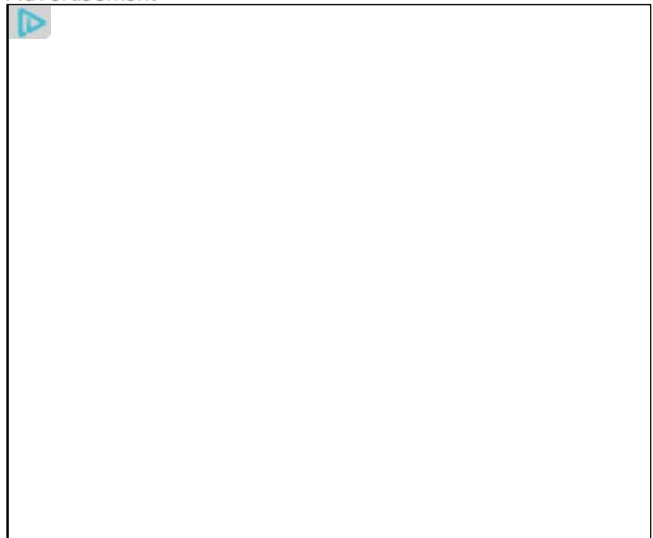
“This is not a situation where it's some deep, dark secret and any access to any person is a solution,” he said. “It's no different in prisons than in households where women and children are being abused. That doesn't mean there's no abuse if they don't tell someone who visits the house.”

Inmate survey findings

In 2007, the U.S. Department of Justice released a report, Sexual Victimization in State and Federal Prisons Reported by Inmates, that found Tutwiler was the women's prison with the highest number of incidents of non-consensual sexual acts per 1,000 inmates in the country.

Tutwiler ranked No. 11 on the list behind nine men's prisons and one mixed-gender prison, according to the report. The survey,

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expressed as a rate per 1,000 inmates, found that there were 304 incidents at Tutwiler, 189 of which were inmate on inmate and 115 of which were staff on inmate. At the time, there were 959 inmates in custody, and 228 were sampled.

The data is based on the National Inmate Survey, which was given to more than 23,000 inmates at 146 federal prisons in 2007.

Prosecution concerns

One of EJI's concerns was that the six employees who were charged with custodial sexual misconduct in a two-year period were, in most cases, pled down to lesser charges. Court records show three of the defendants pled guilty to custodial sexual misconduct, one pled guilty to third-degree assault and two pled guilty to harassing communications, which is defined as striking, shoving, kicking or touching an individual, or using abusive or obscene language.

Rodney Arbuthnot of Natchez, Miss., served six months in jail for pleading guilty to custodial sexual misconduct after a DNA test proved he had impregnated Monica Washington, who was incarcerated at the facility, said Charlotte Morrison, a senior attorney with EJI.

Stevenson said Arbuthnot could have been charged with rape because consent doesn't play a role when the victim is incarcerated; it's illegal no matter what. He said the DNA

evidence makes it a clear-cut case.

Kristy Peoples, the assistant district attorney in Elmore County who prosecuted Arbuthnot, said corrections officers can be charged with rape, but in most instances when an employee commits an offense, the charge is custodial sexual misconduct.

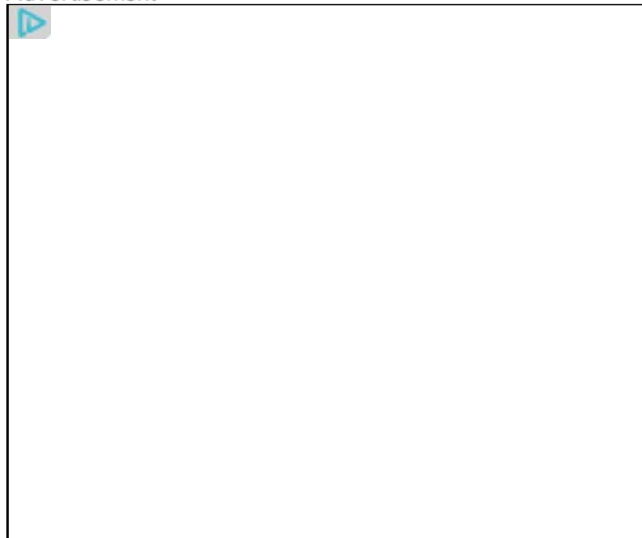
"Because of his position with the DOC and being an employee as a correctional officer, he was indicted on custodial sexual misconduct," Peoples said.

Elmore County District Attorney Randall Houston said the attorneys rely on the internal investigation conducted by the Department of Corrections when an employee is prosecuted.

He said the prosecution depends on the facts of the case and whether they believe the witness is credible. Unless they go to trial, the attorneys don't talk to the victims or witnesses.

"We handle over 1,000 felony cases a year,

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and don't have the resources. We have to rely on what our investigators give us," he said.

Stevenson said the fact that six corrections officers were referred for criminal prosecution over the course of two years means there is a serious structural problem at the prison.

"I would think someone that holds the public's trust — who is paid by the people of Alabama — would be held to a higher standard," Stevenson said. "They are making a decision not to pursue a rape charge, and we think that's unfortunate."

Houston said rapes and sexual misconduct happen in and out of prison every day all over this state and all over the country. He said he doesn't see a pattern at Tutwiler.

"(Correctional officers) are losing their jobs and status in the community. It's not a free ride," Houston said. "The fact that they're charged with it means a lot in terms of being and living in our society."

None of the three individuals who pled guilty to custodial sexual misconduct were on the National Sex Offender Registry.


Morrison said individuals who are convicted of custodial sexual misconduct or custodial sexual abuse are required to register as sex offenders.

She said Alabama's Sex Offender Registration and Community Notification Act is among the strictest in nation.

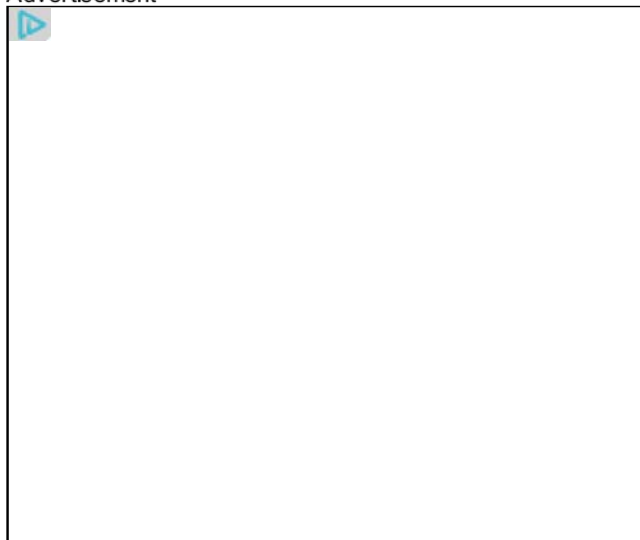
Morrison said she doesn't know why the three correctional officers convicted of custodial sexual misconduct weren't registered.

The Alabama Department of Public Safety is responsible for listing the offenders after they've registered.



 The EJI's Bryan Stevenson plans to file civil cases against the state Department of Corrections if there is no federal inquiry. Zoom

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