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Boys, Rape and Masculinity: Reclaiming Boys' Narratives of Sexual Violence in Custody

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**BOYS, RAPE, AND MASCULINITY:
RECLAIMING BOYS’ NARRATIVES OF
SEXUAL VIOLENCE IN CUSTODY***

BRENDA V. SMITH**

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** Professor of Law, American University Washington College of Law, and Director for The Project on Addressing Rape. This Article is the result of conversations with many colleagues over the years: Professor Cindy Struckman-Johnson and Professor Jamie Fellner with whom I served on the National Prison Rape Elimination Commission; Professor Janet Warren, Dr. Allen Beck, and Professor Kay Levine, researchers who have struggled with how to account for sexual abuse of men and boys in their research; and Deborah LaBelle, Professor Chiseche Mibenge, Professor Susana SaCouto, Professor Macarena Saez, Professor Lara Stemple, Professor Barbara Owen, Professor Sheryl Kubiak, Professor Kim Shayo Buchanan, and Dr. Thomas Barth, with whom I have presented about this work. This research would not have been possible without the support of Dean Claudio Grossman; my colleagues, Professor Ann Shalleck, Professor Susan Carle, Jaime Yarussi, and Professor Lori Brisbin; and the many dedicated Deans’ Fellows and research fellows who helped on this paper—Amy Dezimmer, Jordyn Coad, Emma Burgess Roy, Rebecca Heinsen, Tonya Davis, Takiya Wheeler, Iyana Smith, and Monique Nettleford-Bruce. Thanks as well to my Women, Crime and Law seminar students who for the past three years have helped me think though this “thick” and “slippery” project. Finally, thank you to Professor Tamar Birkhead, who invited me to participate in the Symposium, my generous co-presenters, and the wonderfully rigorous and patient editors of this symposium issue.

INTRODUCTION

Male-on-male rape in custodial settings is a significant problem, especially for boys in adult prisons and jails,¹ as illustrated by data collected by the U.S. Department of Justice (“DOJ”) that reveals a consistent pattern of male vulnerability to sexual abuse in custodial settings.² In fact, male vulnerability to sexual abuse in custody animated the passage of the Prison Rape Elimination Act (“PREA”) in 2003.³ However, as is so often the case with narratives that drive reform, stories are more layered than they initially appear.⁴ While the narrative that propelled the passage of PREA centered on male-on-male prisoner rape, data collection and research have begun to reveal much more complex stories of abuse of boys in custody.⁵ In particular, this data reveals a pattern of sexual abuse by female correctional staff that continues to confound policymakers, theorists, and the community at large.⁶

While I have previously explored this issue in *Uncomfortable Places, Close Spaces: Female Correctional Workers’ Sexual*

1. See generally HUMAN RIGHTS WATCH, NO ESCAPE: MALE RAPE IN U.S. PRISONS xvi (2001), available at <http://www.hrw.org/reports/2001/prison/report.html> (culminating three years of research into male prisoner-on-prisoner sexual abuse in prisons).

2. Compare ALLEN J. BECK & TIMOTHY A. HUGHES, BUREAU OF JUSTICE STATISTICS, NCJ 210333, PRISON RAPE ELIMINATION ACT OF 2003: SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES, 2004, at 5 (2005), available at <http://www.bjs.gov/content/pub/pdf/svrca04.pdf> (detailing 5,528 reported allegations of sexual victimization), with ALLEN J. BECK, RAMONA R. RANTALA & JESSICA REXROAT, BUREAU OF JUSTICE STATISTICS, NCJ 243904, SEXUAL VICTIMIZATION REPORTED BY ADULT CORRECTIONAL AUTHORITIES, 2009–2011, at 1 (2014), available at <http://www.bjs.gov/content/pub/pdf/svraca0911.pdf> (illustrating that the number of reported allegations reached 8,763).

3. Prison Rape Elimination Act, Pub. L. No. 108-79, 117 Stat. 972 (2003) (codified at 42 U.S.C. § 15601 (2012)). See generally HUMAN RIGHTS WATCH, *supra* note 1, at 12–13 (providing detailed recommendations for action by Congress).

4. See generally Jeffrey Toobin, *This Is My Jail*, NEW YORKER (Apr. 14, 2014), <http://www.newyorker.com/magazine/2014/04/14/this-is-my-jail> (describing one male inmate’s experience that included fathering five children with four different female guards).

5. See generally BARBARA OWEN ET AL., GENDERED VIOLENCE AND SAFETY: A CONTEXTUAL APPROACH TO IMPROVING SECURITY IN WOMEN’S FACILITIES, PART I (2008), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/225338.pdf> (discussing treatment of boys and how it differed in certain situations).

6. See generally Toobin, *supra* note 4 (detailing the numerous reasons female staff have given for initiating abuse, including desire for control, financial support, and emotional stability).

Interactions With Men and Boys in Custody,⁷ especially as it relates to men,⁸ that exploration was frankly unsatisfactory in its exploration of sexual abuse of boys in custody. In that article, I catalogued and described data relating to the sexual abuse of men in custody⁹ and acknowledged that the issues might be similar for boys, especially as they relate to society's view of the victimization of men.¹⁰ I could not, however, describe how female staff play a role in the victimization of boys: what it looks like; how the boys view these incidents; how the law treats them; and the implications for theories of gender and victimization. At that time, I had neither the particularized information, language, nor grounding in theory to describe the phenomena. Thus, this Symposium presented an opportunity to explore theories of masculinity¹¹ and vulnerability that I think will help untangle the complex narratives that exist when boys in custody are victimized by women.¹²

Part I of this Article discusses official data on the prevalence of sexual abuse of boys in custody drawn from the Bureau of Justice Statistics' ("BJS") reports over the past decade. Part I also includes preliminary information from a data set of "reported"¹³ cases of

7. Brenda V. Smith, *Uncomfortable Places, Close Spaces: Female Correctional Workers' Sexual Interactions with Men and Boys in Custody*, 59 UCLA L. REV. 1690 (2012).

8. See generally *id.* (detailing the problems of sexual abuse of men in custody).

9. *Id.* at 1712–15.

10. *Id.* at 1721–23.

11. See generally FRANK RUDY COOPER & ANN C. MCGINLEY, *MASCULINITIES AND THE LAW: A MULTIDIMENSIONAL APPROACH* (2012) (exploring legal scholarship, theories, and social constructs of masculinities); Frank Rudy Cooper & Ann C. McGinley, *Identities Cubed: Perspectives on Multidimensional Masculinities Theory*, 13 NEV. L.J. 326, 329 (2013) (explaining the origins and premises of masculinities theory).

12. See Martha L. Fineman, *Feminist Legal Theory*, 13 AM. U. J. GENDER SOC. POL'Y & L. 13, 19–20 (2005) (examining sexual abuse as a private, as opposed to public, problem); Martha L. Fineman, *Images of Mothers in Poverty Discourses*, 1991 DUKE L.J. 274, 289–90 (discussing patriarchy and motherhood).

13. See, e.g., Laura Burke, *A Woman's Touch*, TEX. OBSERVER (Sept. 1, 2010), <http://www.texasobserver.org/a-womans-touch/> (cataloging multiple cases of female correctional workers sexually abusing and having forced sex with male youth inmates); Elizabeth Harrington, *Ex-Employee at State Juvenile Detention Center Charged with Sexual Battery of a Minor Housed There*, W. PALM BEACH TV (Aug. 29, 2014), <http://www.wptv.com/news/region-okeechobee-county/employee-at-state-juvenile-detention-center-charged-with-sexual-battery-of-a-minor-housed-there> (describing the sexual battery of a seventeen-year-old male inmate by a thirty-one-year-old female Youth Care Worker); Nate Rau, *Sex Abuse Allegations Plague TN Juvenile Detention Center*, TENNESSEAN (Feb. 8, 2010), <http://archive.tennessean.com/article/20100207/NEWS0205/2070362/Sex-abuse-allegations-plague-TN-juvenile-detention-center> (detailing a case in which a female security guard at Woodland Hills Youth Development Center solicited oral sex from a fifteen-year-old male inmate).

sexual abuse of boys in custody who were victimized by female staff and describes the age, gender, and position of authority of perpetrators as well as the outcomes of their arrests.

Part II of this Article explores narratives about the sexual abuse of boys in prison. These narratives are drawn from data, popular culture, and the narratives of correctional authorities. Additionally, Part II describes how common narratives of masculinity, femininity, and feminism silence boys' stories of victimization, especially victimization by women. Furthermore, I emphasize that failures to acknowledge male vulnerability and female power in the correctional space harms boys while reinforcing patriarchal notions of women as less powerful than men, even in positions of power and authority. These notions dictate that males, regardless of age, have sexual agency while females, regardless of age, are persistent sexual objects lacking in sexual agency.

Part III of this Article discusses the legal and policy implications of failing to recognize boys' victimization. It provides recommendations for ways to address this gap in knowledge while focusing attention on the female victimization of boys in custody and the larger implications for victimization of boys by female authority figures outside of custodial spaces.

While the Article outlines a series of potential palliatives to address the problems it has identified in Part III, its primary purpose is to provide a complex and nuanced description of the problems. It identifies gaps in understanding, analysis, and response that have resulted because of our impoverished understandings of masculinity, feminism, and vulnerability.

It is important to note that although this Article focuses on boys, much of the literature about male victimization focuses on adult men and even that scholarship focuses on male-on-male victimization.¹⁴ This lack of scholarship and "thick description" presents significant hurdles in crafting, deploying, or developing theory to respond to the problem of abuse of boys by women. By thick description, I refer to a long line of scholars and thinkers beginning with Gilbert Ryle and including Robert Gordon, who championed particularized descriptions of activities or phenomena in order to illuminate hidden insights or tease out complex questions that needed study, resolution, or theoretical development.¹⁵ For Ryle, thick description involves

14. See, e.g., HUMAN RIGHTS WATCH, *supra* note 1, at xvi.

15. See JIMMY HOLLOWAY, BASIC CONCEPTS FOR QUALITATIVE RESEARCH 154 (1997) ("Thick description builds up a clear picture of the individuals and groups in the

interpretation of a behavior within the context of a setting and ascribing thoughts and intentionality to observed behavior.¹⁶ Unlike thin description, where an account of an event is diminished to its basic, superficial understanding, thick description involves a level of calculated foresight, derived from context and behavioral observation.¹⁷ Thick description is more than “amassing relevant detail. . . . [It is] to begin to interpret i[t]. . . . It is this interpretive characteristic of description rather than detail per se that makes it thick.”¹⁸ Thus, applying thick description adds the depth in research that is currently lacking in the popular understanding of victimization. I am deploying thick description of the phenomena in the hopes of engendering further examination, insights, and questions about boys’ victimization narratives and histories. To address that, I begin by discussing adult male victimization because it lays important foundational work in addressing the issues with boys and outlining

context of their culture and the setting in which they live. Thick description can be contrasted with thin description which is a superficial account and does not explore the underlying meaning of cultural members.”); Joseph G. Ponterotto, *Brief Note on the Origins, Evolution, and Meaning of the Qualitative Research Concept “Thick Description,”* 11 QUALITATIVE REP. 538, 541 (2006). See generally Robert W. Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 57, 125 (1984) (detailing the importance of thickly described accounts of law).

16. In describing the origins of thick description, Gilbert Ryle used the following example: “[A] single golfer, with six golf balls in front of him, hitting each of them, one after another, towards one and the same green. He then goes and collects the balls, comes back to where he was before, and does it again. What is he doing?” GILBERT RYLE, *Thinking and Reflecting*, in COLLECTED PAPERS VOLUME II 479, 488–89 (1990). Joseph G. Ponterotto comments:

The “thin” description of this behavior is that the golfer is repeatedly hitting a little round white object with a club like device toward a green. The “thick” description interprets the behavior within the context of the golf course and the game of golf, and ascribes thinking and intentionality to the observed behavior. In this case, the golfer is practicing approach shots on the green in anticipation of a future real golf match . . . with the hope that the practicing of approach shots at the present time will improve his approach shot skill in a real match at some time in the future. Thus for Ryle, “thick” description involves understanding and absorbing the context of the situation or behavior. It also involves ascribing present and future intentionality to the behavior.

Ponterotto, *supra* note 15, at 539.

17. Ponterotto, *supra* note 15, at 540–42; see also Gordon, *supra* note 15, at 124–25 (using the term “thick description” with regard to “accounts of how law has been imbricated in and has helped to structure the most routine practices of social life”); John Henry Schlegel, *CLS Wasn’t Killed By a Question*, 58 ALA. L. REV. 967, 971–72 (2007) (“[T]hick description need[s] to be done on both sides of the intentionally collapsed divide between law and society.”).

18. THOMAS A. SCHWANDT, *THE SAGE DICTIONARY OF QUALITATIVE INQUIRY* 296 (3d ed. 2007).

the knowledge gap about male sexual victimization. It stands to reason that the implications and repercussions of sexual abuse of men are even further compounded because we are talking about boys who are not emotionally, cognitively, or behaviorally fully developed and able to define, acknowledge, and address their abuse or its future consequences.¹⁹

I. DATA AS A NARRATIVE: PREVALENCE OF SEXUAL ABUSE OF BOYS IN CUSTODY

A continuing feature of the examination of sexual abuse in custody has been data. That data has come from a variety of sources including advocacy organizations, government agencies, and researchers. That data has both elucidated and masked the problem of sexual abuse of boys in custody. In 2001, Human Rights Watch issued its report, *No Escape: Male Prisoner Rape*.²⁰ The report received a great deal of attention and generated passage of the Prison Rape Elimination Act of 2003 (“PREA”).²¹ PREA passed unanimously in both houses of Congress with the support of groups across the political spectrum, including evangelicals, civil rights groups, and human rights organizations.²² When initially introduced, PREA only addressed male-on-male prisoner rape²³ but was amended to include sexual abuse against all people in custody, including youth in custody.²⁴ The initial framing of PREA is important as it relates to common knowledge about the rape of men

19. See generally Zoë E. Peterson et al., *Prevalence and Consequences of Adult Sexual Assault of Men: Review of Empirical Findings and State of the Literature*, CLINICAL PSYCHOL. REV. 1, 18 (2011) (“Existing data suggest that many sexually victimized men experience adverse psychological, sexual interpersonal and physical consequences similar to those widely documented for female victims.”).

20. HUMAN RIGHTS WATCH, *supra* note 1, at v.

21. Prison Rape Elimination Act, Pub. L. No. 108-79, 117 Stat. 972 (2003) (codified at 42 U.S.C. § 15601 (2012)); *Prison Rape Reduction Act of 2003: Hearing on H.R. 1707 Before the Subcomm. on Crime, Terrorism, and Homeland Sec. of the H. Comm. on the Judiciary*, 108th Cong. 2 (2003) [hereinafter *Hearing*] (statement of Rep. Howard Coble, Chairman, H. Subcomm. on Crime, Terrorism, and Homeland Sec.).

22. NAT’L PRISON RAPE ELIMINATION COMM’N, FINAL REPORT 26 (2009) [hereinafter COMM’N REPORT].

23. See generally *Hearing*, *supra* note 21 (demonstrating that most of the survivors who testified at the hearing were male); Brenda V. Smith, *The Prison Rape Elimination Act: Implementation and Unresolved Issues*, CRIM. L. BRIEF, Spring 2008, at 10, 10 (discussing factors leading to the passage of the Act).

24. 42 U.S.C. §§ 15601–15602 (2012).

in custody.²⁵ First, the common perception was that inmate-on-inmate rape occurred primarily in adult male institutions.²⁶ Second, policymakers assumed that the problem of staff-on-inmate sexual abuse primarily involved male staff abusing female inmates.²⁷ The final assumption was that some groups were more vulnerable than others: racial and sexual minorities and young people incarcerated in adult facilities.²⁸ Many of these assumptions proved to be accurate,²⁹ but data from studies by the Bureau of Justice Statistics (“BJS”), required under PREA, revealed a more complex story of predation by female staff—especially at the expense of boys.³⁰

A. *Bureau of Justice Statistics Data on the Prevalence of Sexual Abuse of Youth in Custody*

Pursuant to PREA, BJS was required to collect data on the incidence and prevalence of sexual abuse in correctional facilities.³¹ BJS also provided demographic information on victims and perpetrators in most of its studies.³² In its 2004 report, correctional authorities reported that female staff members were named as perpetrators in 47% of allegations of staff sexual misconduct and 42% of allegations of staff sexual harassment.³³ The numbers were

25. See *Hearing, supra* note 21, at 1 (statement of Rep. Howard Coble, Chairman, H. Subcomm. on Crime, Terrorism, and Homeland Sec.) (discussing statistics on sexual assault of inmates).

26. See COMM’N REPORT, *supra* note 22, at 4.

27. See, e.g., *Hearing, supra* note 21, at 19 (discussing the problem of rape in prison as a problem that occurs exclusively in adult facilities as opposed to juvenile facilities).

28. See generally HUMAN RIGHTS WATCH, *supra* note 1, at 63–64 (describing characteristics that may make a prisoner more susceptible to abuse but concluding that every prisoner is at risk).

29. See, e.g., ALLEN J. BECK ET AL., BUREAU OF JUSTICE STATISTICS, NCJ 241399, SEXUAL VICTIMIZATION REPORTED BY FORMER STATE PRISONERS 6 (2012) [hereinafter BECK ET AL., 2012 PRISONER STATISTICS] (reporting a higher incident rate for inmates with certain characteristics); ALLEN BECK ET AL., BUREAU OF JUSTICE STATISTICS, NCJ 231169, SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY INMATES 5 (2010) [hereinafter BECK ET AL., 2010 PRISONER STATISTICS] (reporting higher rates of staff abuse among young and black victims).

30. See ALLEN J. BECK, PAIGE M. HARRISON & PAUL GUERINO, BUREAU OF JUSTICE STATISTICS, NCJ 228416, SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH, 2008–09, at 1 (2010), available at <http://www.bjs.gov/content/pub/pdf/svjfry09.pdf> (focusing on sexual victimization in juvenile facilities for the first time post-passage of PREA).

31. 42 U.S.C. § 15603(a) (2012).

32. See generally ALLEN J. BECK & TIMOTHY A. HUGHES, BUREAU OF JUSTICE STATISTICS, NCJ 210333, SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES, 2004 (2005), available at www.bjs.gov/content/pub/pdf/svrca04.pdf (an example of the standard BJS demographic data collected through inmate surveys).

33. *Id.* at 8.

approximately the same in the 2005 report in which correctional authorities reported that in prisons, female staff were involved in approximately 62% of all staff sexual misconduct and harassment.³⁴ In those early reports, girls and boys were equally victimized—51% and 49% respectively.³⁵ Over 80% of the youth victims were between the ages of sixteen and nineteen while about 14% were between the ages of thirteen and fifteen.³⁶ Male and female staff members were equally reported to be involved in incidents of staff sexual misconduct with youth in custody,³⁷ with age being the major difference between male and female staff perpetrators.³⁸ Over a third (35%) of female perpetrators were younger than twenty-four years old while only a fifth (19%) of male perpetrators were in that age range.³⁹ This data suggests that although these staff members tended to be younger, female staff were just as involved as their male counterparts in youth inmate sexual misconduct.⁴⁰

BJS developed and distributed an instrument to correctional authorities, the *Survey on Sexual Violence* (“SSV”), to collect this data. Surprisingly, the correctional authorities reported, via the SSV, these coercive staff and inmate interactions as “relationships.”⁴¹ For instance, in the first survey, *Section B: Staff Sexual Misconduct and Harassment*, BJS asked, “What was the nature of the incident?” The first option presented on the survey was “romantic relationship between youth and staff.”⁴² This language indicated a culture of acceptance toward seemingly consensual relationships.⁴³ After

34. ALLEN J. BECK & PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, NCJ 21466, *SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES*, 2005, at 9 (2006), available at <http://www.state.gov/documents/organization/150083.pdf>.

35. ALLEN J. BECK, DEVON B. ADAMS & PAUL GUERINO, BUREAU OF JUSTICE STATISTICS, NCJ 215337, *SEXUAL VIOLENCE REPORTED BY JUVENILE CORRECTIONAL AUTHORITIES*, 2005–06, at 4 (2006), available at <http://www.bjs.gov/content/pub/pdf/svrjca0506.pdf>.

36. *Id.*

37. *Id.* at 6.

38. *Id.*

39. *Id.*

40. *Id.*

41. See generally BUREAU OF JUSTICE STATISTICS, *SURVEY ON SEXUAL VIOLENCE INCIDENT FORM (JUVENILE) 3* (2005), available at http://www.bjs.gov/content/pub/pdf/ssvij_2005.pdf (including sexual relationships of a romantic nature between staff and inmates in a section titled, “Staff Misconduct and Harassment”).

42. *Id.*

43. Throughout this Article and earlier scholarship, I have referred to sexual conduct between adult prisoners and youth in custody as abuse, even when the subjects, correctional authorities, or researchers characterize the behavior as willing, consensual, or romantic. This characterization is not to deny inmates’ autonomy, see, e.g., Brenda V. Smith, *Sexual Abuse of Women in United States Prisons: A Modern Corollary of Slavery*,

significant critique from the field, BJS changed both the order and the language of the survey to give responding agencies the option of identifying a “sexual interaction between youth and staff that appear[ed] to be willing.”⁴⁴ This choice was the next-to-last choice on the survey for agency responders,⁴⁵ therefore providing other potential characterizations for these sexual interactions.

This characterization of sexual relationships is particularly important as we discuss youth. First, notions that sexual interactions between staff and inmates in custody could be “romantic” or “willing” ignore both the institutional and actual power that correctional authorities wield.⁴⁶ Second, every state has criminal laws prohibiting the sexual abuse of persons under custodial supervision, and only one state acknowledges the possibility that an inmate could consent to sex with a correctional staff person.⁴⁷ BJS sent the same survey to juvenile correctional authorities that it had sent to adult correctional authorities, characterizing sexual interactions with staff as “romantic.” In *Section B: Staff Sexual Misconduct and Harassment*, BJS asked juvenile correctional authorities, “[w]hat was the nature of the incident?” The first option presented on the survey was, “romantic relationship between youth and staff.”⁴⁸ Like adults, youth cannot consent to sex with staff members regardless of their perceptions of the nature of the relationship.⁴⁹ Additionally, state laws governing the age of consent make many of these sexual interactions criminal and subject to mandatory reporting to child abuse authorities.⁵⁰ The data revealed that this characterization was particularly problematic because boys’ sexual interactions with staff,

33 FORDHAM URB. L.J. 571, 581–82 (2006), but rather to draw a bright line about the nature of consent and willingness. In my view, consent exists only when it is freely given and not mediated by fear of retaliation, lack of power, or necessity. Given this rubric, relationships between correctional staff and inmates and youth are never consensual.

44. See BUREAU OF JUSTICE STATISTICS, SURVEY ON SEXUAL VIOLENCE INCIDENT FORM (JUVENILE), at 3 (2006), available at http://www.bjs.gov/content/pub/pdf/ssvij_2006.pdf.

45. *Id.*

46. See generally *Wood v. Beauclair*, 692 F.3d 1041 (9th Cir. 2012) (discussing an inmate’s romantic but nonsexual relationship with a guard).

47. NEV. REV. STAT. ANN. § 212.187 (West 2011); see THE PROJECT ON ADDRESSING PRISON RAPE, FIFTY-STATE SURVEY OF STATE CRIMINAL LAWS PROHIBITING THE SEXUAL ABUSE OF INDIVIDUALS IN CUSTODY 106–07 (2013), available at <http://www.wcl.american.edu/endsilence/documents/50StateSurvey-SSMLAWS2013Update.pdf>.

48. See BUREAU OF JUSTICE STATISTICS, *supra* note 41, at 3.

49. See *Wood*, 692 F.3d at 1050–51.

50. THE PROJECT ON ADDRESSING PRISON RAPE, *supra* note 47, at 11, 39–43, 96–97, 140.

as I will discuss below, were more often than not characterized as “romantic” or “willing.”⁵¹

In 2010 and 2013 respectively, BJS released studies of Sexual Violence Reported by Youth.⁵² Using an Audio Computer Assisted Survey Instrument (“ACASI”), BJS asked youth to answer questions about their victimization in custody.⁵³ In the first report, *Sexual Violence Reported by Youth in 2008*, 12.5% of youth reported sexual abuse, with about 8% of those youth reporting that facility staff abused them.⁵⁴ Unlike the earlier reports from correctional authorities, naturally unlikely to highlight sexual abuse by their own staff members, that identified youth-on-youth abuse as the major cause for abuse of youth in custody, this survey of youth identified staff as the primary perpetrators of the abuse they experienced in custody. In fact, female staff emerged as the primary perpetrators of staff sexual misconduct, with 89.1% of youth reporting staff sexual abuse by a female perpetrator.⁵⁵ Another 3% of youth were boys reporting both male and female staff victimization.⁵⁶ Thus, although female staff made up 42% of staff in juvenile facilities, about 95% of all youth reporting staff sexual misconduct said they were victimized by female staff.⁵⁷

Data gathered in 2012 revealed the same pattern with slightly lower rates of occurrence.⁵⁸ About 10% of all youth in state and large non-state facilities reported sexual abuse in custody.⁵⁹ Of those youth, roughly 9.5% reported abuse by a staff member.⁶⁰ Of that number, an astounding 92.4% indicated that they were abused by female staff.⁶¹ As in the 2008 survey, boys represented 91% of adjudicated youth in the survey; female staff only comprised 42% of staff in the facilities sampled.⁶² So while boys were not overrepresented relative to their

51. See *infra* notes 96–105.

52. See generally BECK ET AL., *supra* note 30, at 2 (explaining ACASI system).

53. *Id.*

54. *Id.* at 1.

55. ALLEN J. BECK ET AL., BUREAU OF JUSTICE STATISTICS, NCJ 241708, SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH, 2012, at 5 (2013), available at <http://www.bjs.gov/content/pub/pdf/svjfry12.pdf>.

56. BECK ET AL., *supra* note 35, at 1.

57. *Id.*

58. See generally BECK ET AL., *supra* note 55, at 10 (reflecting similar numbers to the 2008–2009 study).

59. *Id.* at 9.

60. *Id.* at 23.

61. *Id.* (reporting that among the estimated 1,390 youths who reported victimization by staff, 89% were males reporting sexual activity with female staff and 3% were males reporting sexual activity with both male and female staff).

62. BECK ET AL., *supra* note 30, at 13.

numbers in juvenile custodial setting, female staff members were overrepresented in their involvement as perpetrators.

According to BJS, youth who reported sexual misconduct described more than one incident of misconduct, with one in five reporting more than eleven incidents of staff sexual abuse.⁶³ These incidents were often accompanied by physical force or threats (20%), offers of protection (12%), and drugs and alcohol (22%).⁶⁴ Almost 40% of youth said that staff initiated the sexual contact, another 17% of youth said that they themselves were the initiators, and almost 50% of youth said that at various times it was a mixture of both.⁶⁵ Like the 2008 report, the youth victims were, for the most part, between the ages of thirteen and nineteen, with the majority being between seventeen and nineteen years old (16.7%).⁶⁶ Staff's sexual interactions with youth were part of a larger course of conduct that included sharing personal information, communicating via phone and letter, and staying in contact with the youth while staff was not working.⁶⁷ In describing the sexual interactions with staff, youth framed them as purely sexual (46%), "friends with benefits" (40%), and as "really car[ing] about each other" (14%).⁶⁸

B. *Implications of the Bureau of Justice Statistics Data*

At face value, the BJS data describes an environment where sexual interactions between female staff and boys are common and appear to be sought out by both. Some of this relates to the demographics of juvenile settings where female staff members are often close in age to their male wards.⁶⁹ Additionally, just as the numbers of female staff in adult corrections are increasing,⁷⁰ the same is true in juvenile corrections because women tend to be better

63. *See id.* at 24.

64. *Id.*

65. *Id.* at 25.

66. *Id.* at 20 (showing the breakout of ages and rates from BJS as follows: fifteen and younger (7.6%); sixteen-year-olds (8.8%); seventeen-year-olds (9.7%); and eighteen and older (10.7%)).

67. *Id.* at 25.

68. *Id.*

69. *See generally* Written Testimony of Mary L. Livers, Deputy Sec'y, La. Office of Juvenile Justice, to Review Panel on Prison Rape, Office of Justice Programs, U.S. Dep't of Justice 1–2 (Jan. 9, 2014) [hereinafter Livers Testimony], available at <http://ojp.gov/reviewpanel/pdfs/WrittenTestimonyofMaryLivers.pdf> (discussing her experience as a field administrator); *see also* Smith, *supra* note 7, at 1714–15 (discussing the nature of inmate sexual attraction to correctional staff).

70. Brenda V. Smith & Melissa C. Loomis, *After Dothard: Female Correctional Workers and the Challenge to Employment Law*, 8 FLA. INT'L U. L. REV. 469, 473 (2013).

educated,⁷¹ less likely to have criminal convictions,⁷² and more likely to be able to pass a drug test,⁷³ all of which give females an advantage over male applicants for correctional positions.⁷⁴ Another demographic factor is that while men in corrections are largely married or partnered, women in corrections are often single, divorced, or never married.⁷⁵

Concerned about the problem of female staff involvement in abuse of youth in custody, the Institutional Review Panel, a body created by PREA to conduct oversight of and fact finding about the jurisdictions with the highest and lowest rates of sexual victimization in custody,⁷⁶ offered its views in a hearing in 2010⁷⁷:

In the absence of additional research, the Panel has heard two competing narratives that try to make sense of the data. One narrative is that sophisticated older youth manipulate young, vulnerable female staff into emotional relationships that evolve into sexual ones. The other narrative is that female staff members who are unable for a variety of reasons to build satisfying personal relationships with men gravitate, by design or by default, to juvenile facilities, where they find young men who are only too ready under the circumstances to enter into relationships with them that have a sexual component. Only additional research would show whether either of these competing narratives has any merit. Designing prevention strategies and providing effective staff training depend on solid research that sheds light on the underlying dynamics of the sexual encounters between female staff and male youth offenders.⁷⁸

Remarkably, neither of the narratives offered by the review panel envision boys as harmed by these interactions with female staff.⁷⁹

71. *Id.* at 471.

72. *Id.*

73. *Id.*

74. *Id.*; see also SYLVIA RIVERA LAW PROJECT, "IT'S WAR IN HERE": A REPORT ON THE TREATMENT OF TRANSGENDER AND INTERSEX PEOPLE IN NEW YORK STATE MEN'S PRISONS 9-11 (2007), available at <http://srlp.org/files/warinhere.pdf> (examining challenges faced by transgender inmates in men's prisons).

75. Smith & Loomis, *supra* note 70, at 496.

76. See generally 42 U.S.C. § 15602 (2012) (laying out the general purposes of the law).

77. See generally REVIEW PANEL ON PRISON RAPE, U.S. DEP'T OF JUSTICE, REPORT ON SEXUAL VICTIMIZATION IN JUVENILE CORRECTIONAL FACILITIES (2010), available at http://ojp.gov/reviewpanel/pdfs/panel_report_101014.pdf (summarizing the main points of the hearing).

78. *Id.* at 35.

79. See *id.*

Indeed, according to the narrative of the review panel, boys are “sophisticated” and staff members are “vulnerable.”⁸⁰ Alternatively, staff are incapable of finding adult men in the community and the youth in custody are “only too ready” to accommodate female staff.⁸¹

This former view of boys as “predatory” and “willing” prevailed in a more recent hearing held in January 2014 to “shed light” on the problem of female staff sexual abuse of boys in custody.⁸² Four sets of narratives emerged from that hearing: (1) “the mother, sister, friend” narrative;⁸³ (2) the “body by Fisher, mind by Mattel”⁸⁴ or “developmental vulnerability” narrative; (3) the complex, long-term sexual trauma of boys beginning in childhood narrative;⁸⁵ and (4) the female authority and power narrative.⁸⁶ As I explore below, these narratives prevail in discourse and description about sexual abuse of boys in custody by female authority figures. These narratives each have elements that are more or less helpful in describing and building theory about developing approaches to abuse of boys in custody by female correctional employees.

80. *Id.*

81. *Id.*

82. See generally *Hearings on Sexual Victimization in Certain U.S. Prisons, Jails and Juvenile Correctional Facilities*, OFF. JUST. PROGRAMS, http://ojp.gov/reviewpanel/transcripts_0108_2014.htm#Jan9Juvenile (last visited May 6, 2015) (providing links to testimony of several experts in this field)

83. See Livers Testimony, *supra* note 69, at 1–2.

84. See *Hearings on Sexual Victimization in U.S. Prisons, Jails, and Juvenile Correctional Facilities Before the Review Panel on Prison Rape*, U.S. Dep’t of Justice 443 (2014) [hereinafter *Review Panel on Prison Rape Hearings*], available at http://ojp.gov/reviewpanel/pdfs/transcript_01_09_2014.pdf (referencing “your body’s by Fisher, but your mind’s by Mattel,” from the song *Harold Melvin and the Blue Notes, I Should Be Your Lover* (Valley Vue Records 1991)). This reference is to Fisher Body, an automobile coachbuilder now part of General Motors. “Body by Fisher” was one of the advertising slogans used by General Motors. Mattel is an American toy company and produces several products, including the famous Barbie doll. The implication is that Fisher bodies are well made and strong while Mattel toys are made of plastic, easy to break, and perishable. I also used this reference in my testimony before the Review Panel on Prison Rape to describe boys’ physical maturity and the juxtaposition of their cognitive and emotional maturity, see *Review Panel on Prison Rape Hearings, supra*, at 443, in order to counter persistent statements that while the boys were sixteen or seventeen, they looked like they were twenty-four or twenty-five, *id.* at 412. Several witnesses and commissioners made this statement to excuse or explain sexual contact between female staff and boys in custody. *Id.* at 420.

85. See generally Decca Aitkenhead, *Chris Brown: It Was the Biggest Wake-Up Call*, *GUARDIAN* (Oct. 4, 2013, 3:00 PM), <http://www.theguardian.com/music/2013/oct/04/chris-brown-rihanna-interview-x> (discussing musician Chris Brown’s upbringing).

86. See *Review Panel on Prison Rape Hearings, supra* note 84, at 430; Smith, *supra* note 7, at 1690; see also Kim Shayo Buchanan, *Engendering Rape*, 59 *UCLA L. REV.* 1630, 1630 (2012) (discussing studies showing that women are the main perpetrators of sexual abuse in prison).

II. COMPETING NARRATIVES OF SEXUAL ABUSE OF BOYS

Stereotypical notions of masculinity are imbedded in articulations of sexual abuse of boys in custody. The first notion is that boys should be perceived as men and are therefore powerful; always in control; and always desire sex.⁸⁷ Implicit in these views is that women are always feminine; are thus less powerful than men, even male children; lack control; and are objects of sexuality.⁸⁸ From their earliest moments and continuing through their transitions in life, boys are groomed to be “real men”; this is implied and articulated in their clothing, toys, books, and recreational pursuits.⁸⁹ Obviously, the same is true for women and has been a target of feminist critique for centuries.⁹⁰ Critiques of masculinity, however, are much more recent.⁹¹ In most cultures, masculinity and sexual prowess are cultivated even in little boys.⁹² It is no surprise then that women who have greater authority, either by virtue of their age, position, or relationship to a boy, are rarely prosecuted or held responsible for sexual abuse because they lack authority as sexual agents in the gendered dichotomy of masculinity and femininity.⁹³ Women may also be held responsible to a lesser extent because feminism has

87. Smith, *supra* note 7, at 1721–23.

88. See, e.g., Bell Hooks, *Understanding Patriarchy*, NO BORDERS: LOUISVILLE'S RADICAL LENDING LIBR. 1, <http://imagineborders.org/pdf/zines/UnderstandingPatriarchy.pdf> (last visited Oct. 31, 2014).

89. See generally Carol Christ, *Patriarchy As a System of Male Dominance Created at the Intersection of the Control of Women, Private Property and War*, FEMINISM & RELIGION (Feb. 18, 2013), <http://feminismandreligion.com/2013/02/18/patriarchy-as-an-integral-system-of-male-dominance-created-at-the-intersection-of-the-control-of-women-private-property-and-war-part-1-by-carol-p-christ/> (arguing that patriarchy is more complex than solely male dominance).

90. See generally Jim Taylor, *The Disturbing Sexualization of Really Young Girls*, HUFFINGTON POST (Oct. 9, 2012), http://www.huffingtonpost.com/dr-jim-taylor/the-disturbing-sexualization_b_1948451.html (cataloging studies and materials that show the problems with society sexualizing females at a young age).

91. See generally Roseanne Mandziuk, *Necessary Vigilance: Feminist Critiques of Masculinity*, 17 CRITICAL STUD. MEDIA COMM. 1 (2000) (discussing the meaning of masculinity through a feminist lens).

92. See, e.g., *Machismo Sexual Identity*, STAN. U., http://web.stanford.edu/group/womenscourage/Repro_Latin/ekobash_HIVmachismo_Latin.html (last visited Oct. 31, 2014).

93. See, e.g., Laura Barnhardt, *Social Worker, 27, Acquitted in Sexual Assault of Teen Inmate*, BALT. SUN (Nov. 28, 2002), http://articles.baltimoresun.com/2002-11-28/news/0211280238_1_social-worker-teen-stress (describing the sexual assault of a fifteen-year-old inmate by a twenty-seven-year-old social worker; the defendant was acquitted at trial after her defense attorney argued that the youth raped and brutalized the older woman).

carved out an exception⁹⁴ for women as perpetrators of sexual violence.⁹⁵

A. *Mother-Sister-Friend: Female Sex Offenders in Custodial Settings*

The idea that women can do no harm stems from the myth that women are not physically aggressive by nature, as their role is to resist sexual activity and not to initiate it.⁹⁶ The public and policymakers still question whether women have the strength or ability to physically force sexual contact upon a man.⁹⁷ These beliefs are reflected in the testimony of Dr. Mary Livers, the President of the Association of Women Executives in Corrections and the head of the Louisiana Department of Juvenile Justice:

Today's female staff in juvenile facilities face a professional challenge that is not necessarily shared by their male counterparts. Female staff is often looked to by youth as "mother" or "sister" figures resulting in a unique relationship between the youth and staff. Female staff must find a way to remain effective, approachable, and compassionate without blurring professional boundaries. The female staff member must find a way to "carry" themselves in a way that portrays confidence and maturity, and communicate a clear message that they are there to perform a job of keeping youth safe physically, sexually and emotionally.⁹⁸

This characterization of perceptions of female staff in juvenile facilities as "mother" or "sister" figures, while appealing, is only part of the story and has to be seen in concert with other research that describes a more predatory and disturbing set of behaviors by female authority figures.

In 2009, Professor Kay Levine did an "exploratory study" of women who seduce adolescent boys.⁹⁹ In that study Professor Levine

94. See generally Anne K. Peters, Book Review, 9 CRIME & SOC. JUST. 86 (1978) (reviewing CAROL SMART, WOMEN, CRIME AND CRIMINOLOGY: A FEMINIST CRITIQUE (1976)) (arguing that studies have neglected women in the area of deviance).

95. See *id.* at 87.

96. See generally SEXUALLY AGGRESSIVE WOMEN: CURRENT PERSPECTIVES AND CONTROVERSIES (Peter B. Anderson & Cindy Struckman-Johnson eds., 1998) (discussing contemporary views on female sexuality).

97. *Id.* at 80.

98. See Livers Testimony, *supra* note 69, at 1–2; Zusha Elinson, *Juveniles Sexually Abused by Staffers at Correctional Facilities*, WALL ST. J. (Jan. 1, 2015), <http://www.wsj.com/articles/juveniles-sexually-abused-by-staffers-at-corrections-facilities-1420160340>.

99. Professor Levine's study was exploratory because although there have been many stories of female-perpetrated statutory rape in the news, there have been few large-scale

found that female sex offenders span a wide range of ages, from adolescents to seniors.¹⁰⁰ Some had sex with youth at the direction of men—more often than not, the youth involved were girls in those situations.¹⁰¹ Professor Levine found that the female subjects abused children they knew rather than strangers and rarely resorted to violence.¹⁰² Rather, they exploited their relationships with the child, grooming them in implicitly coercive conditions rather than resorting to outright violence. When found out, they typically admitted to having sex with the youth.¹⁰³ Interestingly, there was little public disapprobation as compared to male sex offenders.¹⁰⁴ Female sex offenders were often seen as troubled, sad, depressed, or in love either with the child or the person who directed them to have sex with the child.¹⁰⁵ They were rarely prosecuted, and, if prosecuted, they pled to lesser offenses and generally received probation or some other type of community supervision.¹⁰⁶ They were also less likely to be required to register as sex offenders.¹⁰⁷ And even when they did have to register, they were not perceived to be as dangerous as male sex offenders.¹⁰⁸

Like Professor Levine, I was interested in further exploring the dynamics of sexual abuse committed by female perpetrators, albeit in the correctional space. Without knowing of Levine's study, I conducted a rudimentary study looking primarily at cases reported in news outlets involving female correctional staff who had been involved with men and boys in custody.¹⁰⁹ The study was a cross-sectional, quantitative analysis with data collected through public news sources across the United States, including both major networks and smaller local outlets. Since the study was largely exploratory, we used convenience sampling to yield a large sample size of cases that were already readily available online. We conducted broad searches of

studies. See Kay Levine, *When Gender Meets Sex: An Exploratory Study of Women Who Seduce Adolescent Boys*, 15 WM. & MARY L. REV. 361, 362 (2009).

100. *Id.*

101. *Id.* at 367.

102. *See id.*

103. *Id.* at 365.

104. *Id.* at 374.

105. *Id.* at 394–95.

106. See The Project on Addressing Prison Rape, Correctional Staff Sex Offender Project 160–80 (Sept. 15, 2013) (unpublished report) (on file with the North Carolina Law Review).

107. *See id.* at 7.

108. See *Hot For Teacher 2010: The 42 Sexiest Female Sex Offenders*, COED (Oct. 26 2010), <http://coed.com/2010/10/26/hot-for-teacher-2010-the-40-sexiest-female-sex-offenders/>.

109. See The Project on Addressing Prison Rape, *supra* note 106, at 316–32.

various news outlets and search engines to gather many incidents of relationships. Then, we conducted further investigation into each individual case to produce as much information on a given relationship as possible. The dataset contains numerous variables, starting with when the relations began and continuing all the way through to the outcome of any criminal charges, if applicable.¹¹⁰ By putting together a large dataset with many variables, the study intended to look at various aspects as to why these relationships happened, how and where they happened, and what resulted when the relationship was discovered.

Looking at 114 reported cases from 1990 to 2013, the study found statistics that were quite similar to Professor Levine's.¹¹¹ The age range for the female correctional workers in the reported cases was nineteen to forty-five years old, younger than Professor Levine's cohort.¹¹² The age of the youth in the reported cases was as young as fifteen years old,¹¹³ but the majority of youth were between sixteen and eighteen years old.¹¹⁴ The conduct that occurred in the correctional cases included oral sex,¹¹⁵ vaginal intercourse,¹¹⁶ transmission of sexually transmitted infections to multiple youth in the same facility,¹¹⁷ tattooing the victim's name on the staff member's breast,¹¹⁸ helping youth escape,¹¹⁹ and conceiving a child with the

110. *See id.* at 55–75, 118–38.

111. *Compare id.* (compiling data on sex-related charges), with Levine, *supra* note 99, at 368 (describing a data set of statutory rapes in prison).

112. *See* The Project on Addressing Prison Rape, *supra* note 106, at 244–52 (noting that in twenty-seven cases the ages of the perpetrators were unreported). Because the newspapers did not provide information about the race of the staff or youth, I could not draw any conclusions about race. *See* Levine, *supra* note 99, at 367.

113. *See* The Project on Addressing Prison Rape, *supra* note 106, at 6.

114. *Id.* at 253–61; *see, e.g.*, Donna J. Miller, *Joaneen Graham Guilty of Sexual Conduct with Teen Inmates*, CLEVELAND.COM (Mar. 24, 2009, 7:06 AM), http://blog.cleveland.com/metro/2009/03/joaneen_graham_guilty_of_sexua.html (describing an eighteen-year-old male inmate and victim of sexual abuse).

115. *See* The Project on Addressing Prison Rape, *supra* note 106, at 76–96.

116. *Id.*; *see, e.g.*, Burke, *supra* note 13 (discussing sexual intercourse between an eighteen-year-old male inmate and a female penitentiary officer at a juvenile correctional facility in Texas).

117. *See, e.g.*, Rau, *supra* note 13 (discussing a female correctional officer who transmitted chlamydia to a seventeen-year-old inmate).

118. Jamal Thalji, *Woman Guilty of Sex with Teen Inmate*, ST. PETERSBURG TIMES (Sept. 15, 1999), <http://www.psychsearch.net/pdf/11101999.pdf>; *see* The Project on Addressing Prison Rape, *supra* note 106, at 196.

119. *See* The Project on Addressing Prison Rape, *supra* note 106, at 103, 105–07, 109, 119, 124; *see, e.g.*, Nick Madigan, *Counselor Is Charged: Youth Worker Helped Lover, 17, Flee Detention Center Outing, Police Say*, BALTIMORE SUN (Oct. 2, 2009), http://articles.baltimoresun.com/2009-10-02/news/0910010086_1_greenfield-maryland-state-police-baltimore-county (discussing a female correctional officer who drove a

youth.¹²⁰ Most of these cases resulted in probation,¹²¹ termination from the job,¹²² or community supervision.¹²³ Though rare, several female staff were imprisoned¹²⁴ and required to register as sex offenders.¹²⁵

The important commonality between Professor Levine's exploratory study and mine is that female authority figures appeared to have sought out relationships with boys.¹²⁶ An important difference between my study and Professor Levine's study is that while she examined the role of female authority figures in perpetrating sexual assault, her data was ultimately limited and did not focus on coercive spaces like correctional facilities.¹²⁷ My study emphasizes that, while boys may engage in these relationships, female staff members in the custodial setting are opportunistic—grooming youth with sexual favors, privileges, food, clothing, and access to alcohol and drugs.¹²⁸ Though there are consequences for this behavior, the societal outrage and disapproval is missing from the dialogue. I seek to distance this study from the current narrative, which centers on the personal,

getaway car and provided housing for an escaped juvenile inmate with whom she had a sexual relationship).

120. See The Project on Addressing Prison Rape, *supra* note 106, at 191; see, e.g., Melody McDonald, *Ex-Juvenile Probation Officer Indicted*, HOUS. CHRON. (Feb. 13, 2004), <http://www.chron.com/news/houston-texas/article/Ex-juvenile-probation-officer-indicted-1976054.php> (discussing a female correctional officer who gave birth to a child fathered by a sixteen-year-old inmate under supervision).

121. See The Project on Addressing Prison Rape, *supra* note 106, at 160–80; Burke, *supra* note 13 (discussing two female correctional officers in Texas who received probation for sexual abuse of juvenile inmates).

122. See The Project on Addressing Prison Rape, *supra* note 106, at 160–80; see, e.g., Carrie Johnson, *Fired Guard Accepts Plea Deal in Sex Case*, ST. PETERSBURG TIMES (July 18, 2002), http://www.sptimes.com/2002/07/18/Citrus/Fired_guard_accepts_p.shtml (discussing female correctional officer who was fired for sexual relationship with three juvenile inmates).

123. See The Project on Addressing Prison Rape, *supra* note 106, at 160–80.

124. *Id.*; see, e.g., Gary Hunter, *Guards Rape of Prisoners Rampant, No Solution in Sight*, 17 PRISON LEGAL NEWS 1, 3 (Aug. 2006), available at <https://www.prisonlegalnews.org/media/issues/08pln06.pdf> (discussing a female correctional officer who pled guilty to unlawful sexual conduct with an incarcerated youth and was sentenced to three years in prison).

125. See The Project on Addressing Prison Rape, *supra* note 106, at 7; see, e.g., Miller, *supra* note 114 (describing the sex-offender registration of a female correctional officer after conviction of sexual battery and assault against a juvenile inmate).

126. Levine, *supra* note 99, at 362.

127. See *id.*

128. See The Project on Addressing Prison Rape, *supra* note 106, at 280–88; see, e.g., Christine Clarridge, *Corrections Officer Pleads to Sexual Misconduct*, SEATTLE TIMES (June 8, 2007), http://seattletimes.com/html/localnews/2003739281_jailguard08m.html (discussing female correctional officer who provided food and candy in exchange for sex with juvenile inmates).

emotional, or psychological point of view of the woman and less on the explicit abuse of power used to exploit youths' masculinity.¹²⁹ Like the female perpetrators in Levine's study, female staff members who have engaged in predatory behavior are not treated in the same way as similarly situated men.

This difference in treatment between male and female perpetrators reflects a society that does not view these predatory incidents as seriously as those involving female youth at the hands of male perpetrators. There is abundant literature and research on abuse of boys and girls by male authority figures.¹³⁰ There is little on abuse of either boys or girls by female authority figures, giving credence to the prevailing narrative that women are simply not capable of predatory sexual behavior. Women are not seen as threats but rather as sexual objects and caretakers—misguided actors in a position where their actual agency and power as correctional officers is mitigated and mediated by their gender, thus insulating them from the kinds of punishment men receive as autonomous, motivated sexual actors.¹³¹ Indeed, female perpetrators continue to be seen as confidants and lovers rather than as abusive authority figures. Ultimately, it is clear that the idea of male victims, even boy victims, is hard to reconcile with deeply held perceptions of masculinity. Authors Turchik and Edwards explain how male rape myths support society's denial of sexual exploitation of young men by women:

[M]ale rape myths are prevalent because of gender stereotypes and social norms regarding masculinity and male sexuality. . . . These norms specify that men are expected to live up to the heterosexual masculine ideal . . . and possess traits such as toughness, independence, aggressiveness, and dominance. . . . Socially constructed notions of masculinity are not consistent with constructions of the rape victim as feminine,

129. Levine, *supra* note 99, at 362–63.

130. See, e.g., Associated Press, *Boy Scouts to Release Sex Abuse Allegation Files After Order from California Supreme Court*, HUFFINGTON POST (Jan. 8, 2013, 5:31 PM), http://www.huffingtonpost.com/2013/01/08/boy-scouts-sex-abuse-files_n_2434936.html; Bill Chappell, *Penn State Abuse Scandal: A Guide and Timeline*, NPR (June 21, 2012, 6:01 PM), <http://www.npr.org/2011/11/08/142111804/penn-state-abuse-scandal-a-guide-and-timeline>; Laurie Goodstein, *The Predator Priest Who Got Away*, N.Y. TIMES (Mar. 24, 2012), http://www.nytimes.com/interactive/2010/03/25/world/europe/20100325-priestabuse-timeline.html?_r=0.

131. See Lara Stemple & Ilan H. Meyer, *The Sexual Victimization of Men in America: New Data Challenge Old Assumptions*, 104 FRAMING HEALTH MATTERS 19, 25 (2014) (arguing for a shift past the male-perpetrator and female-victim paradigm because it perpetuates problematic stereotypes that interferes with the discussion of abuse).

weak, and defenseless. . . . Thus . . . “real men” cannot be rape victims.¹³²

Even in the community at large, sexual abuse of men was unaddressed until recently, and even then it was addressed as men as victims of other men, not women.¹³³ Resources to address sexual abuse and victimization have largely been directed to women, contemplating male perpetrators.¹³⁴ Ideas about masculinity were embedded in laws that, only recently, eliminated the penetration requirement for rape¹³⁵ or only defined rape as an offense that occurred to women.¹³⁶ It was not even until the second reauthorization of the Violence Against Women Act (“VAWA”) that men were recognized as victims and eligible for services.¹³⁷ Additionally, as of mid-2014, there were only a handful of resources specifically catering to men¹³⁸ and nothing that specifically addresses the sexual victimization of boys by female authority figures that are not family members and occurred after young adolescence.¹³⁹ This further confirms the narrative that female authority figures are not predatory and the actions they take against boys are not seen as harmful.

132. Jessica A. Turchik & Katie M. Edwards, *Myths About Male Rape: A Literature Review*, 13 PSYCHOL. MEN & MASCULINITY 211, 213 (2012) (citations omitted).

133. See generally Matthew Hay Brown, *Breaking the Silence: Men Who Are Sexually Assaulted in the Military*, BALT. SUN (Dec. 14, 2013), <http://data.baltimoresun.com/military-sexual-assaults/> (discussing male sexual assault offenders and victims in the military).

134. See Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902, 1910 (codified as amended in scattered sections of 42 U.S.C. § 3796gg).

135. See Kay L. Levine, *No Penis, No Problem*, 33 FORDHAM URB. L.J. 357, 361–62 (2005) (discussing California statutory rape law that specified victims as female until amended in 1993); BRENDA V. SMITH & JAIME M. YARUSSI, THE PROJECT ON ADDRESSING PRISON RAPE, LEGAL RESPONSES TO SEXUAL VIOLENCE IN CUSTODY: STATE CRIMINAL LAW PROHIBITING STAFF SEXUAL ABUSE OF INDIVIDUALS UNDER CUSTODIAL SUPERVISION 9 (2009), available at http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1259&context=facsch_lawrev.

136. See, e.g., GA. CODE ANN. § 16-6-1 (2011); MD. CODE ANN., CRIM. LAW §§ 3-303, 3-304 (LexisNexis 2011); MISS. CODE ANN. § 97-3-71 (West 2011); see also Bennett Capers, *Real Rape Too*, 99 CALIF. L. REV. 1259, 1265 (2011) (arguing that legislators should broaden the definition of rape to include male victims).

137. See Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1491 (codified as amended in scattered sections of 26 U.S.C.); Donna Coker, *Roll Back “Prison Nation,”* C.U.N.Y. L. REV. DIGITAL (Dec. 18, 2014), available at <http://www.cunylawreview.org/vawa-20-roll-back-prison-nation/>.

138. See Coker, *supra* note 137.

139. See *id.*

B. “*Body by Fisher, Mind by Mattel*” or the *Developmental Theory*

A second common refrain during the Review Panel of Prison Rape hearing was that even though the boys in custody were sixteen, they really looked like they were twenty-four or twenty-five.¹⁴⁰ Dr. Reginald Wilkinson, the retired director of the Ohio Department of Rehabilitation and Correction and the chair of the Commission, stated, “[S]ome of these juveniles don’t even look like juveniles. Not to excuse the behavior of the staff in these cases, but I think they can be very persuasive and actually prepare a situation that will get a staff person in trouble at times.”¹⁴¹ Dr. Mary Livers made the same comment, stating that “juveniles incarcerated . . . look like they’re thirty or twenty-five, maybe close to twenty-one,” referring to the deceptive physical maturity of some juveniles.¹⁴² In my testimony, expressing concern with these comments, I reflected on the saying “[b]ody by Fisher, [m]ind by Mattel.”¹⁴³ What I tried to convey was that even though boys in custody may be physically mature and sturdy, developmentally they are still fragile and immature emotionally, cognitively, and behaviorally.¹⁴⁴

The most recent literature on neuroscience supports this notion.¹⁴⁵ The teenage brain and the adult brain are different.¹⁴⁶ The teenage brain has a fully developed language and spatial ability and these attributes can easily be perceived as mature in a youth.¹⁴⁷

140. See, e.g., *Review Panel on Prison Rape Hearings*, *supra* note 84, at 420 (indicating that a staff person might be unprepared for, or persuaded by, the mature appearance of a juvenile and that this might contribute to the incidents of staff misconduct).

141. *Id.* at 412.

142. *Id.* at 420.

143. *Id.* at 443; see *supra* text accompanying note 84.

144. See *Review Panel on Prison Rape Hearings*, *supra* note 84, at 420; Rebecca Campbell, *The Neurobiology of Sexual Assault: Implications for First Responders in Law Enforcement, Prosecution, and Victim Advocacy*, NAT’L INST. JUST. (Dec. 3, 2012), <http://nij.gov/multimedia/presenter/presenter-campbell/Pages/presenter-campbell-transcript.aspx> (describing the effects of hormone fluctuation on brain function); PROJECT ON ADDRESSING PRISON RAPE, PRE-TRAINING CHECKLIST: RESPONDING TO SEXUAL ABUSE OF YOUTH IN CUSTODY: RESPONDING TO THE NEEDS OF BOYS, GIRLS, AND GENDER NON-CONFORMING YOUTH 6 (Apr. 2014), available at <https://www.wcl.american.edu/endsilence/documents/JuvenileGRSPreTrainingChecklist.pdf>; *supra* text accompanying note 84.

145. See Nicole M. Strang, Jason M. Chein & Laurence Steinberg, *The Value of the Dual Systems Model of Adolescent Risk-Taking*, 7 FRONTIERS IN HUM. NEUROSCIENCE 223, 223 (2013) (describing cognitive changes in developing adolescents and how these changes may detrimentally affect adolescents).

146. See *id.* at 224.

147. See PROJECT ON ADDRESSING PRISON RAPE, TRAINING CURRICULUM: RESPONDING TO SEXUAL ABUSE OF YOUTH IN CUSTODY: RESPONDING TO THE NEEDS OF BOYS, GIRLS, AND GENDER NON-CONFORMING YOUTH 73 (Feb. 2014), available at

However, the prefrontal cortex—the area of the brain that regulates emotion, decision-making, risk assessment, and rational decision—is still developing; it is not fully connected to the limbic system, which mediates impulsivity and risk taking.¹⁴⁸ These connections are not fully complete until the mid-twenties.¹⁴⁹

By age fifteen, most boys are at the peak of their physical growth.¹⁵⁰ This is especially true for black boys, who are overrepresented in the juvenile justice system.¹⁵¹ Black boys tend to mature physically earlier than their Latino and White counterparts.¹⁵² At the same time that this physical and sexual development is occurring, these youth are mentally still immature and impulsive.¹⁵³ They have not developed the judgmental capabilities that will occur in their twenties.¹⁵⁴ They may also suffer from language or other impairments that make it difficult for them to process information, to explain how they feel, or to reason, understand, or indicate their unwillingness to engage in sex with staff.¹⁵⁵

At the same time, boys are meeting other cognitive, behavioral and emotional developmental milestones and performing the tasks of adolescence. These include a desire to be independent, to test limits and break rules, and a preoccupation with feelings of sexuality and love.¹⁵⁶ Puberty is a time that affects more than sex hormones—the

<https://www.wcl.american.edu/endsilence/documents/FINALFacilitatorsGuideGRSJuvenile.pdf>.

148. See Campbell, *supra* note 144 (describing the functions of the prefrontal cortex and limbic system); PROJECT ON ADDRESSING PRISON RAPE, *supra* note 147, at 6 (“The areas of the brain that regulate emotion, decision making, risk assessment, and rational decision making do not develop until adulthood.”).

149. See PROJECT ON ADDRESSING PRISON RAPE, *supra* note 147, at 71 (demonstrating the increase in white matter in the brain from age five to age twenty).

150. See *Growth and Your Thirteen to Eighteen Year Old*, KIDSHEALTH, http://kidshealth.org/parent/growth/growth/growth_13_to_18.html (last visited on Oct. 31, 2014) (“By age sixteen, most boys have stopped growing, but their muscles will continue to develop.”).

151. See Frank Biro, *Punishing Puberty: The Perils of Pauline*, NAT’L JUV. DEFENDER CENTER (Oct. 25, 2014), <http://njdc.info/wp-content/uploads/2014/10/Punishing-Puberty-Biro-Presentation.pdf> (evaluating data from the Herman-Giddens study on pubertal maturation); see also Patti Neighmond, *Like Girls, Boys Are Entering Puberty Earlier*, NPR (Dec. 24, 2012), <http://www.wbur.org/npr.167735056/like-girls-boys-are-entering-puberty-earlier?ft=3&f=167735056> (discussing with Herman-Giddens her study and her observation of gender and racial differences in pubertal maturation).

152. See Neighmond, *supra* note 151.

153. *Id.*

154. See Strang et al., *supra* note 145, at 223 (analyzing the differences between development of the “cognitive control system” and the “socioemotional, incentive processing system” during adolescence).

155. See *id.* at 224 (discussing increased risk-taking behavior during adolescence).

156. See PROJECT ON ADDRESSING PRISON RAPE, *supra* note 147, at 76–77.

ability to have an erection and to ejaculate—puberty is also a time that youth are easily aroused by reward and sensation.¹⁵⁷ In a normal set of circumstances where boys are in the community, parents could mediate and set limits to address this thrill-seeking and impulsive behavior. Yet for boys in the juvenile justice system, they are meeting these milestones in custody. Moreover, although many adolescents are developing along this “normal” path, youth who are in contact with the juvenile justice system, especially boys, often have a delayed developmental trajectory due to the victimization histories.¹⁵⁸ When youths have experienced trauma, such as physical abuse, sexual abuse, death or absence of a parent, or separation from family during childhood or adolescence, then normal development is delayed.¹⁵⁹ Factors such as duration and frequency of this abuse can determine the level of impact.¹⁶⁰ In essence, many of the youth in the juvenile justice system have missed normal cognitive development because they were maltreated and experienced trauma.¹⁶¹ These developmental impediments further exacerbate the already significant difference between boys’ physical and cognitive maturity.

Taking this information into consideration—boys’ past experiences of trauma, their separation from their families, their age during detention, and their mismatched cognitive, emotional, sexual, and physical development—juvenile detention creates significant vulnerability to and opportunity for sexual abuse. Therefore, boys who are developmentally on target, interested in sex, and able to complete the sexual act may be particularly opportunistic in a correctional environment. They may act opportunistically because pursuing or engaging in prohibited sexual behaviors meets their need for sex, is a high-risk and high-reward behavior, and gives them important status among their peers.¹⁶² Even amidst the notions of sexual conquest in masculinity, past studies conducted by Robert Johnson and Diane Shrier have documented that 73% of sampled male adolescents who were assaulted rated the immediate impacts as

157. *See id.* at 76–77.

158. *See id.* at 79–81.

159. *See* THE PROJECT ON ADDRESSING PRISON RAPE, NATIONAL TRAINING CURRICULUM: ADDRESSING SEXUAL ABUSE OF YOUTH IN CUSTODY, MODULE 4, at 36, available at http://www.wcl.american.edu/endsilence/juvenile_training.cfm; CIVIC RESEARCH INST., ADOLESCENT SEXUAL DEVELOPMENT AND SEXUALITY: ASSESSMENT AND INTERVENTIONS 3-3 (Donna Gaffney et al. eds., 2003), available at <http://www.wcl.american.edu/endsilence/documents/Module4HandoutsGRSJuvvenile.pdf>.

160. CIVIC RESEARCH INST., *supra* note 159, at 3-3 to 3-5.

161. *See id.*

162. *See generally* BECK ET AL., *supra* note 30 (noting the statistical likelihood of abuse in the correctional context).

harmful and over 50% reported negative effects over a long period of time.¹⁶³

C. Exposure to Complex Early Childhood Trauma

There is a mythology about the innocence of childhood. The reality is that humans come into the world wired to seek pleasure. Being held, touched, or stroked is soothing to infants and brings pleasure; it is a physiological response.¹⁶⁴ Baby boys can have erections.¹⁶⁵ Both boys and girls learn to touch themselves and to give themselves pleasure as they explore their bodies.¹⁶⁶ This is normal behavior for both girls and boys.¹⁶⁷ Sadly, unwanted sexual experiences happen frequently to both girls and boys. The American Academy of Pediatrics suggests that parents and caregivers should begin to educate children about sexuality during early childhood.¹⁶⁸ Child abuse prevention experts suggests that teaching kids about “good touch” and “bad touch” and that they have the right to refuse to be touched is essential to protecting them from predation.¹⁶⁹ Yet often this knowledge does not penetrate into the mainstream, and parents, caregivers, and other individuals with whom children come into contact can either intentionally or unintentionally expose children to information and experiences that are at best confusing and inappropriate and at worst traumatic, making these youth more vulnerable to trauma.

The wide range of sexual behavior that children experience from birth can be healthy if explained and mediated by family, teachers,

163. Robert L. Johnson & Diane Shrier, *Past Sexual Victimization by Females of Male Patients in an Adolescent Medicine Clinic Population*, 144 AM. J. PSYCHIATRY 650, 651 (1987).

164. See Katherine Harmon, *How Important Is Physical Contact with Your Infant?*, SCI. AM. (May 6, 2010), <http://www.scientificamerican.com/article/infant-touch/>.

165. See JOAN LIEBMANN-SMITH & JACQUELINE EGAN, *BABY BODY SIGNS* 195 (2010).

166. See generally Hiyam Shamo'on, *Early Childhood Masturbation*, 39 JORDAN MED. J. 23 (2005), available at <https://journals.ju.edu.jo/JMJ/article/viewFile/1174/1165> (reporting results of a study showing that masturbation “is not an uncommon behavior in young children”).

167. See *id.* at 25.

168. Am. Acad. of Pediatrics, *Sexuality Education for Children and Adolescents*, 108 PEDIATRICS 498, 501 (2001), available at <http://pediatrics.aappublications.org/content/108/2/498.full.pdf+html>.

169. See generally Campbell, *supra* note 144 (explaining lessons that childcare experts should impart to children).

and health professionals.¹⁷⁰ Unfortunately, that is often not the experience for boys in the juvenile justice system.¹⁷¹ They have contact with the system exactly because they are often untethered from family and community.¹⁷² This untethering can be the result of parental absence, poverty, or the degradation of community institutions because of disinvestment in communities.¹⁷³ Whatever the reason, boys are vulnerable and experience trauma because of this lack of support and engagement. This untethering affects boys more severely than girls because there is not enough of a cultural space in which to consider male victimization.

Consider an interview that Chris Brown, an R&B performer, gave to *The Guardian* that illustrates this point. *The Guardian* reported as follows:

He lost his virginity when he was eight years old, to a local girl who was 14 or 15. Seriously? “Yeah, really. Uh-huh.” He grins and chuckles. “It’s different in the country.” Brown grew up with a great gang of boy cousins, and they watched so much porn that he was raring to go. “By that point, we were already kind of like hot to trot, you know what I’m saying? Like, girls, we weren’t afraid to talk to them; I wasn’t afraid. So, at eight, being able to do it, it kind of preps you for the long run, so you can be a beast at it. You can be the best at it.”¹⁷⁴

Brown’s interview reveals that lessons in masculinity begin at a very young age and can encourage an aspect of comparative conquest with other males. More importantly, Brown frames his sexual experience positively, as preparing him for a healthy sex life. In fact, if Brown’s account is accurate, he was sexually assaulted by another youth who, if prosecuted at the time, would have been guilty of sexual abuse of a child under fifteen, a crime for which she would be liable for up to twelve months confinement, a \$2,500 fine, or both under the current

170. See Am. Acad. of Pediatrics, *supra* note 168, at 498 (“Children and adolescents need accurate and comprehensive education about sexuality to practice healthy sexual behavior as adults.”).

171. See BECK ET AL., 2012 PRISONER STATISTICS, *supra* note 29, at 20–23; BECK ET AL., *supra* note 30, at 3 tbl.1.

172. See MICHAEL SHADER, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, RISK FACTORS FOR DELINQUENCY: AN OVERVIEW 6–7 (2004), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/frd030127.pdf>.

173. See *id.* at 4.

174. Aitkenhead, *supra* note 85.

statute.¹⁷⁵ His cousins, depending on their age, could also have been charged with abuse.¹⁷⁶

Brown's sexual experience and history suggest that society does not even have a space to name the conduct abusive. If the gender was changed, and Brown had been a girl, and he had sex with a fifteen-year-old boy, there is no question that we would view that account very differently.¹⁷⁷ Thus, neither society nor the child has the opportunity to consider or even acknowledge the potentially traumatic repercussions of these events when boys are taught to boast about such experiences rather than to examine or acknowledge their potential for abuse.

Lil' Wayne, a rapper, also gave a narrative about having an older girl perform oral sex on him when he was eleven, in front of a group of older boys and men.¹⁷⁸ Like Chris Brown's experience, Lil' Wayne is reporting conduct that is illegal and, if he had been female rather than male, would have released society's strongest sanctions and disapprobation. Because he was male, he was required to frame it as a badge of honor, as an accomplishment rather than an event that may have felt confusing, embarrassing, and terrifying.

The point is that responsible adults—family, teachers, and health professionals—in their respective communities can mediate the wide range of sexual behavior or stimuli that children experience from birth in a way that is developmentally appropriate, assuming that they are not the locus of abuse.¹⁷⁹ The acts that Chris Brown and Lil' Wayne described do not fall in the categories of: (1) healthy sexual behavior; (2) behavior mediated or explained by responsible adults; and (3) age or developmentally appropriate behavior.

Unfortunately, the experiences that Chris Brown and Lil' Wayne describe are not uncommon. They are not healthy sexual experiences. They illustrate the reality of many boys' lives: exposure to sexual materials and ideas long before they are able to understand the

175. VA. CODE ANN. § 18.2-67.4:2, -11 (2014).

176. VA. CODE ANN. § 18.2-67.10(6)(b)–(d) (defining “sexual abuse” to include an act by any person who forces sexual conduct between two other people or facilitates sexual conduct with a person under the age of thirteen).

177. See generally Michelle Davies & Paul Rogers, *Perceptions of Male Victims in Depicted Sexual Assaults: A Review of the Literature*, 11 *AGGRESSION & VIOLENT BEHAV.* 367 (2006) (summarizing the literature surrounding the differing perceptions of male victims and child victims).

178. See Samhita, *When Men Are Sexually Assaulted Let's Call It What It Is: Rape*, *FEMINISTING* (Apr. 14, 2009), http://feministing.com/2009/04/14/when_men_are_sexually_assualte/comment-page-1/.

179. See *Am. Acad. of Pediatrics*, *supra* note 168, at 501.

information or the feelings or the emotions they engender; absence of parents; and sexual interactions long before they are legally able to have them.¹⁸⁰

The narratives also raise important questions of parental engagement. The lack of parental involvement and supervision that these stories suggest is another indicator of trauma. As stated earlier, untethered family and community contribute to the number of boys in the juvenile justice system.¹⁸¹ Whether it is parental absence, poverty, or the degradation of community institutions, boys are vulnerable and experience trauma because of this lack of support and engagement.¹⁸²

An important case, *In re D.B.*,¹⁸³ illustrates the reality of sexual experimentation among youth and the reality of the lack of parental supervision. In that case, D.B., a twelve-year-old boy, was charged with nine counts of rape for having sex with two other boys, A.W., who was twelve, and M.G., who was eleven.¹⁸⁴ The sex occurred in the basement of D.B.'s home while D.B.'s parents were at home. The victims alleged that D.B. always initiated the sexual conduct¹⁸⁵ and that he used some combination of bribery (video games) and force to get the younger boy, M.G., to engage in sexual behavior.¹⁸⁶ After a bench trial, the court found that no forcible sex had occurred.¹⁸⁷ Still, D.B. was convicted of violating the statute for having sex with a child under thirteen years of age.¹⁸⁸ D.B.'s finding of delinquency was ultimately overturned because the Supreme Court of Ohio found that the statute was unconstitutional as applied to him, a young person who was twelve years old at the time of incident.¹⁸⁹ Because he was of the age that the statute aimed to protect, he could not be found guilty

180. See *supra* notes 138–44 and accompanying text.

181. See SHADER, *supra* note 172, at 4.

182. See *id.* There is emerging research and advocacy on the role of building parental efficacy to prevent and remedy delinquent behavior. This research holds great promise in increasing parents' fluency in addressing their children's risk and trauma. See, e.g., STRATEGIES FOR YOUTH, <http://strategiesforyouth.org> (last visited Jan. 21, 2015).

183. *In re D.B.*, 2011-Ohio-2671, 950 N.E.2d 528.

184. *Id.* ¶ 2.

185. *Id.* ¶ 5.

186. *Id.*

187. *Id.* ¶ 8

188. *Id.* ¶¶ 8–9 (committing D.B. to the Department of Youth Services for a minimum of five years up to age twenty-one; the court later suspended the commitment and placed D.B. on probation for an indefinite period of time and ordered D.B. to attend counseling and group therapy).

189. *Id.* ¶ 24.

of a violation of the statute simply for engaging in sex with other youth also under the age limit for the statute.¹⁹⁰

These narratives illustrate that youth engage in a great deal of sexual experimentation. That experimentation includes viewing sexually explicit materials, sex with peers, sex with older youth, and sex with adults, as the BJS statistics indicate¹⁹¹ and as the news stories we have collected reveal.¹⁹² This early-in-life sexual experimentation can contribute to early childhood trauma.¹⁹³ That trauma can make youth more vulnerable to depression and aggression and make them more susceptible to sexual abuse and exploitation.¹⁹⁴

Much of the existing literature on childhood sexual abuse addresses the experience of girls,¹⁹⁵ though an emerging body of literature has begun to address the experiences of sexually abused boys.¹⁹⁶ One of the seminal articles addressing the lack of attention to sexual abuse of boys, *See No Evil, Hear No Evil, Speak No Evil*,¹⁹⁷ explores why few adult men who experienced sexual abuse as children seek help from mental health professionals about difficulties related to the abuse they experienced.¹⁹⁸ While acknowledging that the rate of childhood sexual abuse for females is higher than that for men, the authors found that the incidence of childhood sexual abuse for men was higher than statistical data suggested and that it is “underreported and under-identified.”¹⁹⁹ There are complex reasons for the underreporting and under identification, some of which originate from boys’ perceptions of the harm and others that bear directly on notions of masculinity. The overwhelming body of

190. *See id.*

191. *See* BECK ET AL., *supra* note 30, at 1–3.

192. *See supra* text accompanying notes 89, 105–23.

193. *See generally* David Finkelhor & Angela Browne, *The Traumatic Impact of Child Sexual Abuse: A Conceptualization*, 55 AM. J. ORTHOPSYCHIATRY 530 (1985) (developing a model revealing four distinct types of trauma—traumatic sexualization, betrayal, powerlessness, and stigmatization—stemming from child sexual abuse).

194. *See id.* at 534–36.

195. *See, e.g.*, John N. Briere & Diana M. Elliott, *Immediate and Long-Term Impacts of Child Sexual Abuse*, 4 SEXUAL ABUSE CHILD. 54, 60 (1994); Finkelhor & Browne, *supra* note 193, at 534–35; Guy R. Holmes, Liz Offen & Glenn Waller, *See No Evil, Hear No Evil, Speak No Evil: Why Do Relatively Few Male Victims of Childhood Sexual Abuse Receive Help for Abuse-Related Issues in Adulthood?*, 17 CLINICAL PSYCHOL. REV. 69, 70 (1997).

196. *See* Terry Diamanduros et al., *Theoretical Perspectives of Male Sexual Abuse: Conceptualization of a Case Study*, 21 J. CHILD SEXUAL ABUSE 131, 131–32 (2012); Bessel A. van der Kolk, *The Neurobiology of Childhood Trauma and Abuse*, 12 CHILD & ADOLESC. PSYCHIATRIC CLINICS N. AM. 293, 293–95 (2003).

197. Holmes et al., *supra* note 195, at 69.

198. *Id.*

199. *Id.* at 71.

literature is that male victims of childhood sexual abuse are reluctant to report their abuse.²⁰⁰ Among the reasons for failure to disclose are: (1) being a part of the abuser's secrecy strategy (e.g., being either rewarded or threatened in order to keep the conduct secret); (2) not defining their childhood experiences as abusive; and (3) not recognizing negative impacts associated with the abuse.²⁰¹ For boys, "a sexual experience with an adult may be culturally defined (by society, his friends, and the boy himself) as an early introduction to sexual prowess and 'manhood.'"²⁰² Additionally, unless the abuse involves another male, "[m]ale sexual socialization tends to encourage males to define sexual experiences as desirable."²⁰³ Indeed, the authors found that, unless sexual coercion was involved, male victims of sexual abuse by females did not report the experience as traumatic.²⁰⁴ Even when the sex involved anal penetration by older boys, boys tended to minimize the abuse and call it experimentation or horseplay.²⁰⁵ And because males can become aroused or even ejaculate as a result of the abuse, they may feel complicit or confused about whether they invited or secretly desired the abusive conduct.²⁰⁶ For these reasons, boys are less likely to report their victimization or even realize that they have been victimized. This lack of reporting and recognition is enmeshed with notions of masculinity.

This lack of reporting and tendency for male victims of childhood sexual abuse to reframe their victimization also has clinical consequences. Taking as a given that boys are perceived as being less vulnerable to abuse, their failure to report or view their victimization—especially by women—as abuse, means that often helping professionals, teachers, psychologists, and mental health professionals do not ask boys if they have been victimized.²⁰⁷ Additionally, given that the literature suggests that much of the victimization of boys occurs in institutional settings by helping

200. *Id.* at 75.

201. *Id.*

202. *Id.* at 76.

203. *Id.*

204. *Id.*

205. *Id.* (describing a thirty-nine-year-old man who described being repeatedly anally penetrated by older boys as a child as "horseplay").

206. *Id.*

207. *Id.* at 84 ("It is clear that male victims of childhood sexual abuse have benefitted from society's greater awareness of the general problem of sexual abuse. However, it is also clear that the social construction of the problem of sexual abuse of males has lagged behind the process for female victims. The feminist sponsorship of the movement to increase awareness of sexual violence and abuse focused attention on male perpetrators and female victims.").

professionals, there is added reluctance to inquire or believe boys' reports of victimization, especially if those reports involve female perpetrators.²⁰⁸

Knowing that boys are less likely to recognize or report victimization or to be believed when they do report it—even serious victimization involving other males—it is not surprising that they do not acknowledge their victimization by women.²⁰⁹ Indeed, for boys, disclosure may appear to be less harmful and traumatic than the challenge to their masculinity.²¹⁰ This fear is likely to be even more at play in adolescence.²¹¹ This failure to identify the harm means that boys and their caregivers do not have access to or avail themselves of mental health interventions in the same way that girls do when they have been sexually abused.²¹² Consequently, harms experienced by male victims of childhood sexual abuse fester over long periods of time and can become more acute.²¹³

In assessing the harm that childhood sexual abuse causes, gender is only one of the factors.²¹⁴ Social support, developmental maturity, age, and personality all have an impact on how individuals respond to childhood sexual abuse.²¹⁵ Notwithstanding these mediating factors, childhood sexual abuse can have both short- and long-term impacts.²¹⁶ The short-term effects include fear, anxiety, shame, self-worth problems, anger, aggression, suicidal ideation, depression, homophobic reactions, and confusion over sexual identity.²¹⁷ Longer-term consequences include drug and alcohol problems, sexual dysfunction—including compulsive sexual behavior—relationship problems, dissociation, hypermasculinity, criminal behavior, and shame.²¹⁸

208. *Id.* at 77. According to Holmes, 40% of all male victims reported childhood sexual abuse by a woman. *See id.* When the article was written almost ten years ago, those numbers seemed quite high, but given what we know about sexual abuse of boys in custody, *see supra* Part I.B., it was quite prescient.

209. Holmes et al., *supra* note 195, at 77.

210. *Id.*

211. *Id.* at 78.

212. *Id.* at 79.

213. *Id.* at 77.

214. *Id.* at 72 (noting that the majority of studies on the effect of childhood sexual abuse have focused on its impact on females).

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.* at 72–73.

D. Female Authority and Power

Disentangling these complex strands of victimization and gender is difficult. The analysis is difficult because we have grafted vulnerability into almost every sexual interaction that women have, regardless of their role in it. So, in women's sexual interactions with boys, even though they have all the indicia of power—age, authority, weapons, and control over access to food, clothing, and communication—media, law enforcement, and the public still frame these women as vulnerable victims.²¹⁹

1. The Perfection Trap

Yet this characterization seems to run contrary to other narratives of feminism and equality. Stated simply, can women seek equality in opportunity, access, and authority but then seek to avoid or escape accountability for the consequences of exercising that power in ways that are harmful? I think not.

Feminists want women to hold positions of power and because of this construct them as not only capable, but also superior.²²⁰ And that superiority is generally framed as moral superiority; that is, women can be in these positions that have challenged men ethically and morally because they would never betray their feminine persona of a motherly or sisterly nonviolent caretaker by adopting violent, predatory behaviors.²²¹ Though there is some data that suggests that women are more likely to make more ethical decisions,²²² that does not mean that they are not just as capable of committing harm.²²³ This dichotomy in feminism is well documented²²⁴ and very much at play in analyzing the role of female staff in the sexual abuse of boys in custody. How does one square the maternal, sisterly, friendly, appropriate correctional staff person with the unprofessional, predatory, “turnt up,” “turnt out” female correctional worker who we

219. See *supra* Part II.A.

220. See Smith, *supra* note 7, at 1698.

221. *Id.* (“Not only did th[is] . . . frame female correctional workers as industrious and appropriate, they also constructed male officers and male inmates as predatory and female inmates as weak and vulnerable, thus framing female correctional workers as not only just like men in terms of work performance, but surpassing men in morality and self-control.”).

222. See, e.g., Andrew Sikula, Sr. & Adelmiro D. Costa, *Are Women More Ethical than Men?*, 13 J. BUS. ETHICS 859, 859 (1994); Richard D. White, Jr., *Are Women More Ethical? Recent Findings on the Effects of Gender upon Moral Development*, 9 J. PUB. ADMIN. RES. & THEORY 459, 467–68 (1999).

223. See Cindi May, *When Men Are Less Moral than Women*, SCI. AM. (June 19, 2012), <http://www.scientificamerican.com/article/when-men-are-less-moral-than-woman/>.

224. See Levine, *supra* note 99, at 362; Smith, *supra* note 7, at 1711–25.

see in the media narratives?²²⁵ They are one and the same—like men, women have the capacity for good and evil, perfection and imperfection. Women’s worthiness to hold positions of authority should not depend on their perfection or incorruptibility.²²⁶

The importance of perfection or incorruptibility has been critical to struggles of disadvantaged and disenfranchised groups. In the Montgomery Bus Boycott, Rosa Parks, a well-respected seamstress and matron, was the face of integrating public accommodations rather than Claudette Colvin, an unmarried teen mother.²²⁷ In struggles to integrate schools or industries, whether with women, people of color, or any “other” category than male, perfection is a prerequisite.²²⁸ In struggles for LGBT rights, marriage equality has taken center stage while the right to sexual expression has been largely silenced.²²⁹ In order to advance the cause of domestic violence, the perfect victim must never fight back, have a substance-abuse problem, criminal conviction, or be a less than perfect mother.²³⁰ She can never contemplate remaining with her abusive boyfriend or husband, and to secure support for her cause, she should be gender conforming, not lesbian, gay, bisexual, or transgender.²³¹ As these exemplars suggest, in any group there is great diversity, and requiring perfection as the metric for access or benefit is ill conceived and unrealistic. Additionally, it is not the standard that the presumed majority—white men—adopt.²³²

2. (Re)Defining Rape

A central pillar of feminist theory is that men rape.²³³ And that is certainly true, but it is just as true that women rape, though we have

225. See Toobin, *supra* note 4.

226. See Smith, *supra* note 7, at 1737.

227. See Margot Adler, *Before Rosa Parks, There Was Claudette Colvin*, NPR (Mar. 15, 2009, 12:46 PM), <http://www.npr.org/templates/story/story.php?storyId=101719889>.

228. See, e.g., *Brown v. Bd. of Educ.*, 349 U.S. 294 (1959) (exemplifying the struggle to racially integrate schools).

229. Cf. NANCY D. POLIKOFF, *BEYOND (STRAIGHT AND GAY) MARRIAGE: VALUING ALL FAMILIES UNDER THE LAW* 11 (2009) (describing efforts to broaden narrow definitions of family and marriage).

230. See Brenda V. Smith, *Battering, Forgiveness, and Redemption*, 11 AM. U. J. GENDER SOC. POL’Y & L. 921, 925–26 (2003).

231. See Elizabeth MacDowell, *Theorizing from Particularity: Perpetrators and Intersectional Theory on Domestic Violence*, 16 J. GENDER RACE & JUST. 531, 542–47 (2013).

232. See *id.* at 547.

233. See generally *Feminist Perspectives on Rape*, STAN. ENCYCLOPEDIA OF PHIL. (Aug. 14, 2013), <http://plato.stanford.edu/entries/feminism-rape/> (“Rape is committed

difficulty calling it rape because we have never perceived women as having sexual agency—another contradiction of feminism—to rape.²³⁴ We have always conceived of rape as penetrative sex with men in the dominant position and women as receptive.²³⁵ For example, not until 2012 did the FBI change the definition of rape to extend to the rape of males.²³⁶ In some states, there is still language in statutes that “genders” sexual assault.²³⁷

In a recent article, Cathy Young addressed the statistical differences between the rape and sexual assault statistics collected and reported by the Center for Disease Control (“CDC”) and those reported by the Department of Justice.²³⁸ Young found that the CDC’s methodology focused on the inability to give consent in an attempt to quantify and capture acquaintance rape, which is perceived primarily as a problem women experience.²³⁹ Young suggested that questions about forced sexual contact or forced penetration would more accurately account for men’s experiences.²⁴⁰ For example, in the CDC study only 1.7% of men classified themselves as victims of rape, but an additional 7% of men, however, stated that they were “made to penetrate,” give oral sex, or receive unwanted oral sex.²⁴¹ In the CDC study, these behaviors were not classified as rape but as “other sexual violence.”²⁴² Another indicator that the methodology or questions may have affected the result was the CDC’s finding that men accounted for a third of the victims of “sexual coercion,” which was defined as “being pressured into sexual activity by psychological means: lies or false promises, threats to end a

overwhelmingly by men and boys, usually against women and girls, and sometimes against other men and boys.”).

234. *See id.*

235. *See id.* (“Rape is committed overwhelmingly by men and boys, usually against women and girls For the most part, this [encyclopedia] entry will assume male perpetrators and female victims.”).

236. FBI, FREQUENTLY ASKED QUESTIONS ABOUT THE CHANGE IN THE UCR DEFINITION OF RAPE (2014), available at <http://www.fbi.gov/about-us/cjis/ucr/recent-program-updates/new-rape-definition-frequently-asked-questions>.

237. *See, e.g.*, MISS. CODE ANN. § 97-3-71 (2011) (detailing assault with intent to ravish, recognizing the act of any person in ‘ravishing’ a virgin (‘chaste’) female).

238. Cathy Young, *The CDC’s Rape Numbers Are Misleading*, TIME (Sept. 17, 2014), <http://time.com/3393442/cdc-rape-numbers/> (“The CDC study—the second in two years—seems to support a radical feminist narrative that has been gaining mainstream attention recently: that modern America is a “rape culture” saturated with misogynistic violence.”); *see also* Stemple & Meyer, *supra* note 131, at 19 (examining studies showing high rates of male sexual victimization).

239. *See* Young, *supra* note 238.

240. *Id.*

241. *Id.*

242. *Id.*

relationship or spread negative gossip, or making repeated requests for sex and expressing unhappiness at being turned down.”²⁴³

The CDC’s statistics are consistent with early research conducted by Cindy Struckman-Johnson on the sexual assault experiences of male students.²⁴⁴ Struckman-Johnson found that girls forced boys to have sex by: making threats to spread rumors about their masculinity; refusing to take no for an answer; making sexual contact with the boys by disrobing and rubbing themselves against the boys; or using emotional means—crying, showing up uninvited, and talking to boys’ friends.²⁴⁵ Young concluded that “if the CDC figures are to be taken at face value, then we must also conclude that, far from being a product of patriarchal violence against women, ‘rape culture’ is a two-way street, with plenty of female perpetrators and male victims.”²⁴⁶ We must regard sexual violence as a reciprocal problem and acknowledge that “women are human beings with the capacity for aggression and wrongdoing—including sexual assault.”²⁴⁷

Struckman-Johnson and Young’s studies reveal that women, even young women, have the potential for sexual aggression. Rather than being simply targets or victims, girls have the potential to be abusers or perpetrators. These studies validate that women have and use a full range of tools at their disposal, including those that exploit young men’s views of their masculinity or fears that others will question their masculinity, to persuade or coerce sex. Likewise, we must accept that female correctional officers have and use similar tools and are as likely as male officers in positions of power to make poor decisions and to abuse that power. This is especially true in the absence of education, training, and supervision for staff and youth that acknowledges that abuse can and does occur between female staff and boys under their supervision.

III. PROTECTING BOYS IN CUSTODY FROM ABUSE

As the discussion above reveals, there are a number of gaps in knowledge, theory, and practice for boys who are sexually abused, especially those in custodial settings who are abused by women.

243. *Id.*

244. See generally Cindy Struckman-Johnson, David Struckman-Johnson & Peter B. Anderson, *Tactics of Sexual Coercion: When Men and Women Won’t Take No for an Answer*, 40 J. SEX RES. 76 (2003) (describing a study on sexual contacts among university students).

245. See *id.* at 77, 81–84.

246. Young, *supra* note 238.

247. *Id.*

Having done a “thick description” of the phenomena or problems and identified competing narratives, I now offer a thinner prescription that begins to remedy the problem of abusive sexual contacts between female correctional staff and boys in custody. That prescription includes: (1) quantitative and qualitative research on sexual abuse involving female authority figures;²⁴⁸ (2) education and training of youth, parents, caregivers, and custodians about sexual abuse perpetrated by authority figures including female authority figures;²⁴⁹ (3) training for boys about healthy adolescent development, masculinity, and sexuality to help them better discuss, identify, and understand that they can be victims of sexual abuse;²⁵⁰ (4) further study of how sexual abuse manifests itself towards boys by women and how to report and respond to sexual abuse if it does happen;²⁵¹ (5) training for correctional staff on youth development and the impact of trauma on cognitive, emotional, physical, and sexual development;²⁵² (6) staff training on sexual abuse of youth in custody including abuse of boys;²⁵³ (7) reform of law and policy that diminishes female staff responsibility for abuse in custody and appropriate sanctions for sexual abuse committed by female staff;²⁵⁴ (8) fuller exploration of the public-health consequence of sexual abuse of boys in custody;²⁵⁵ and (9) access for men and boys to survivor services comparable to those that women receive.²⁵⁶

Any one of the prescriptions that I have suggested could be the subject of a separate article, and I hope they will be because the need for rigorous scholarship, theorizing, and critique in this area is great and dire. Each of the prescriptions identifies a gap in theory and practice that has consequences for the boy victim-female perpetrator dyad and for the institutions where they are held and work. These gaps also affect individuals beyond the boy victims, perpetrators, and correctional institutions. They have significant public-health consequences related to injury prevention, trauma, and even potential disease prevention. I hesitate to even introduce the “contagion” argument because it reinforces the “otherness” and danger of correctional settings. The reality is that institutions are porous. Boys

248. *See supra* Part I.A.

249. *See supra* Part II.A.

250. *See supra* Part II.B.

251. *See id.*

252. *See supra* Part II.C.

253. *See supra* Part II.A.

254. *See id.*

255. *See supra* Part II.B.

256. *See supra* Part I.B.

in custody and female correctional workers are sons, daughters, mothers, and fathers in the community. This porosity means that harm that occurs in institutions is rarely contained and affects the integrity of our communities and the quality of our relationships with each other.

CONCLUSION

The prescriptions above are ambitious but, in the end, achievable. In fact, I see them as relatively easy “gets” or gains in this area. There are specific tasks associated with them and they lend themselves to either quantitative or qualitative evaluation. The more difficult issue is the persistent problem of theorizing femininity and masculinity.²⁵⁷ Culturally and politically, there are deep investments in particular views of femininity and masculinity that feel threatened by more contingent and flexible articulations of men’s and women’s capacities and vulnerabilities.²⁵⁸ It is these efforts to grasp slippery concepts of the contours of masculinity and femininity that, in my view, hold the greatest promise in providing strong and durable

257. See generally COOPER & MCGINLEY, *supra* note 11 (collecting a series of essays dealing with masculinity in a multidimensional perspective, masculinity as heroism, segregation in masculine spaces, and global models of masculinity); JANET HALLEY, *SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM* (2008) (summarizing competing theories of sexuality that have emerged from the Left); CAROLE VANCE, *PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY* (1993) (presenting a series of papers from the 1982 Scholar and Feminist Conference regarding female sexuality).

258. See Mary Anne Franks, *What's Left of Pleasure? A Book Review of Janet Halley's Split Decisions: How and Why to Take a Break from Feminism*, 30 HARVARD J.L. & GENDER 257, 257 (2007) (book review), for an evaluation of Janet Halley’s “hedonics of critique,” a theoretical approach that prioritizes the celebration of pleasure over harm—harm that Halley claims feminism has not only unduly emphasized but has in many cases created in and for women. This review suggests that this hedonics of critique ignores harm, especially sexual harm, in favor of a quasi-Foucauldian imperative to enjoy. See *id.* at 263; see also COOPER & MCGINLEY, *supra* note 11, at 329 (exploring the origins and premises of masculinities theory); Fineman, *Feminist Legal Theory*, *supra* note 12, at 19–20 (examining sexual abuse as a private as opposed to public problem); HALLEY, *supra* note 257, at 3–5 (summarizing competing theories of sexuality that have emerged from the Left); VANCE, *supra* note 257 (presenting a series of papers from the 1982 Scholar and Feminist Conference regarding female sexuality). All of these works are important to developing this area of law. Janet Halley and Martha Fineman are charting new territory with their respective feminist theories. Halley has tried to carve out a space for pleasure, joy, and transgression in feminism harkening to early work by Carole Vance, see HALLEY, *supra* note 257, at 387, while Fineman focused on universal human vulnerability as a space for equality, see generally Martha Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J.L. & FEMINISM 1 (2008) (developing the concept of vulnerability in order to argue for a more responsive state and a more egalitarian society). Frank Rudy Cooper and Ann McGinley are likewise theorizing more space for different conceptions of masculinity. See COOPER & MCGINLEY, *supra* note 11, at 329.

solutions to abuse of boys by women. That is because they illuminate other spaces and opportunities for being male or female aided in no small part by emerging scholarship that acknowledges the experience of lesbian, gay, bisexual, and transgender individuals.²⁵⁹

In the end, I hope that these emerging theories provide the theoretical underpinnings and girders to address the problem at the center of this Article: unacknowledged, unrecognized, and unremedied trauma that boys sexually victimized by female correctional workers experience. I hope these theories shift the conversation on this issue from one where boys “always want sex” to one where we make sure boys understand that sex, even when developmentally appropriate, freely given, and legally permissible, is not something that makes them more or less a man. Finally, these theories may hold the potential of giving men access to vulnerability and women access to the responsibilities of power.

259. See POLIKOFF, *supra* note 229, at 11–12.