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BUFFALO NEWS WATCHDOG

Flood of lawsuits claim N.Y. guards sexually abused inmates

Albion facility named most often in WNY cases

CHRIS BRAGG
Albany Bureau Chief

ALBANY – New York State is facing an onslaught of lawsuits accusing prison officers of sexually abus-

ing adult inmates, litigation allowed under a new one-year window for survivors to sue, regardless of when the abuse occurred. A single Manhattan-based law firm, Levy Konigsberg LLP, is handling more than 500 cases statewide, including nearly 150 cases filed or pending that claim abuse occurred

in Western New York prisons. Several other law firms also are handling a high volume of cases, and the total number likely runs into the thousands. Most of the Western New York cases claim sexual abuse occurred at Albion Correctional Facility in Orleans County, a medium-security fa-

cility for female prisoners. A number also were filed by former inmates at Lakeview Shock Incarceration Correctional Facility, a minimum-security boot camp-style prison in Chautauque County for young, nonviolent offenders. Levy Konigsberg's lead attorney on the prison sexual abuse cases, Anna

Kull, says the flood of cases has led to a "mind-blowing" revelation: that women who have never met, in prison years apart, are identifying the same assailant. According to court records, two corrections officers who have served

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THE UPSHOT

The U.S. regulates cars, radio and TV. Will AI be next?

IAN PRASAD PHILBRICK
New York Times

As increasingly sophisticated artificial intelligence systems with the potential to reshape society come online, many experts, lawmakers and even executives of top AI companies want the U.S. government to regulate the technology, and fast. "We should move quickly," Brad Smith, the president of Microsoft, which launched an AI-powered version of its search engine this year, said in May. "There's no time for waste or delay," Chuck Schumer, the Senate majority leader, has said. "Let's get ahead of this," said Sen. Mike Rounds, R-S.D. Yet history suggests that comprehensive federal regulation of advanced AI systems probably won't happen soon. Congress and federal agencies have often taken decades to enact rules governing revolutionary technologies, from electricity to cars. "The

general pattern is, it takes a while," said Matthew Mittelsteadt, a technologist who studies AI at George Mason University's Mercatus Center. In the 1800s, it took Congress more than half a century after the introduction of the first public, steam-powered train to give the government the power to set price rules for railroads, the first U.S. industry subject to federal regulation. In the 20th century, the bureaucracy slowly expanded to regulate radio, television and other technologies. And in the 21st century, lawmakers have struggled to safeguard digital data privacy. It's possible that policymakers will defy history. Members of Congress have worked furiously in recent months to understand and imagine ways to regulate AI, holding hearings and meeting privately with industry leaders and experts. Last month,

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BUFFALO NEXT: DEVELOPMENT

Construction across region impacted by stadium project



JOSHUA BESSEX, BUFFALO NEWS

Construction of the enormous new Highmark Stadium in Orchard Park is still in the early stages, but developers, contractors and construction firms are already watching their future project pipelines and needs with a wary eye.

Ralph Wilson Park, Amazon center also putting strain on labor, supplies

JONATHAN D. EPSTEIN
AND STEPHEN T. WATSON
News Staff Reporters

Stuart Harper and Howard Rich have worked hard for months to realize a shared vision for a new development project. Harper, president of Build Promise, and Rich, a volunteer and board member, want to create a shelter for men experiencing homelessness on the East Side campus of St. Luke's

Mission of Mercy. The project has received city approvals, and architects are completing their drawings and construction documents. The goal, Rich said during a recent site tour, is to be "ready in January, to start bidding and then put a shovel in the ground." "If there's anybody left who's not working on the stadium," Harper cautioned. Harper's remark, made partly in jest, may come true sooner than he thought. Developers, general contractors and construction firms are watching their future project pipelines and needs with a wary eye toward the

\$1.54 billion Buffalo Bills stadium. One of the biggest developments in this area in decades, construction of the enormous new Highmark Stadium in Orchard Park is still in the early site-clearing and preparation stages, with about 10% of the bids awarded. But it is expected to pick up steam in the coming months and will last for three years. In turn, that will put a major strain on the supply of labor, equipment and supplies in the region while also driving up prices. "We're just at the infancy of what I think will be a very, very busy time

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Murphy reveals details of his stroke in poignant new book

ALAN PERGAMENT
News TV Critic

Buffalo Bills radio play-by-play announcer John Murphy has broken his silence about the stroke he suffered last season and his hopes for the Bills and his recovery. In a book co-authored with Rochester sportswriter and author Scott Pitoniak, "If These Walls Could Talk: Stories from the Buffalo Bills Sideline, Locker Room and Press Box," Murphy gives a poignant, detailed

written play-by-play account of what prevented him from calling the highly anticipated Bills-Cincinnati Bengals game on Jan. 2, the regular season finale against New England and two play-off games. Chris Brown handled play-by-play on those games, and is starting the 2023 season in the booth as Murphy continues his recovery. Murphy concedes at the

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CONTINUED FROM THE COVER

Inmates

From A1

at Albion have been named as sexual abusers in multiple women’s lawsuits.

In addition, at least two women have filed lawsuits claiming abuse was committed by the same male officer at Lakeview.

“These women don’t know each other,” Kull said. “They have nothing in common other than having been incarcerated in the State of New York at some point in time. So we’re talking about legitimately systemic issues.”

Albion and other women’s prisons are heavily staffed by male guards. Most, but not all, of the Levy Konigsberg cases accuse a male corrections officer of sexually abusing a female prisoner.

The lawsuits, filed in the state Court of Claims, were enabled by the Adult Survivors Act, a law signed by Gov. Kathy Hochul in 2022. On Nov. 24, a one-year window opened during which survivors of sexual assault, who were over 18 when abuse occurred, could file civil lawsuits seeking monetary damages, even if the statute of limitations had expired.

The Court of Claims is the part of New York’s court system that handles claims against the state. If Court of Claims judges find negligence by the state Department of Corrections and Community Service (DOCCS) contributed to abuse, or cases are settled, taxpayers may face a substantial bill. Some claimants in individual cases are seeking \$25 million.

A DOCCS spokesman said Thursday that the agency does not comment on pending litigation.

“The safety and well-being of staff and incarcerated individuals is our top priority,” DOCCS spokesman Thomas Mailey said. “The Department has zero tolerance for sexual harassment or sexual violence within our facilities and anyone engaged in misconduct will be disciplined, and if warranted, incidents will be referred for outside prosecution.”

‘They were monsters’

The Buffalo News separately interviewed two Kull clients about lawsuits in which they accuse a former Albion correctional officer, David Stupnick of Medina, of abuse. Both grew emotional describing the traumas of life at the prison.

The women said they were unaware of each others’ accusations. Both were taken back to learn that in 2019, Stupnick was arrested for having illegal sexual relations with two other female Albion inmates.

In 2020, Stupnick was sentenced to a six-month jail term after pleading guilty to third-degree criminal sex act with an inmate. One of those relationships reportedly lasted for nearly two years, according to a pending 2020 federal lawsuit, which said that during the illegal relationship, Stupnick provided the inmate with money and contraband.

In one of the new lawsuits against New York, a woman accuses Stupnick of attacking her in the prison’s laundry room in 2018.



JOSHUA BESSEX, BUFFALO NEWS

Razor-wire lines the fencing at the Albion Correctional Facility in Orleans County, where a lawsuit claims a guard had “the power... to direct your life” and sexually abused female inmates.

Prior to the attack, according to the lawsuit, Stupnick had been “very flirtatious” with the prisoner and in front of other correction officers, asking the claimant why she was “playing hard to get” and telling her to “look him up when she was released from prison so that they could start dating.”

Guards had body cameras. But when cameras proved inconvenient, she said, guards switched them off.

Stationary cameras were positioned around the prison, but there were blind spots – including the laundry room where the woman was reportedly attacked. After her release from prison, the woman said she is managing, but that serious scars remain, including negative feelings toward men.

“I tried to put it on the back burner and start a new life – and it’s just been hard,” she said. “I’m still traumatized. I still have nightmares about it. I have severe anxiety about it and insomnia.”

A second female former Albion inmate, who initially filed her lawsuit under the pseudonym “LK DOE 33,” accuses Stupnick of sexually abusing her at least twice in 2016.

The woman, whose name is Sierra Johnson, said in an interview that in the most serious of the attacks, Stupnick raped her.

Soon afterward, her prison cube was searched, and her belongings thrown on the floor. She was later put in solitary confinement. Those acts were a means of intimidation following the rape, she believes.

Johnson grew worried that she would be killed before she was able to leave prison.

“One of the realities of being the inmate is that these corrections officers can dictate your entire life,” she said. “They have the power to influence and direct your life, even when you’re sleeping. You don’t get a break. You don’t get any form of safety when that boundary is crossed, and when you become a victim. Because they were monsters.”



Johnson

And she said there was complicity among the guards.

“Even the women corrections officers, they would call us ‘whores,’ “ she said.

Johnson is a Native American woman from the Mohawk Nation at Akwesasne. She believes racism may have contributed to her being repeatedly targeted. Her lawsuit also accuses two other Albion corrections officers of abuse.

“I was constantly feeling like I was targeted or singled out,” she said. “My number one priority was to keep to myself, to try to be safe – and that didn’t work for me.”

After her release from prison, Johnson said she suffered post traumatic stress disorder. But she went to school to study mental illness and addiction and is now the addictions case manager at a holistic health and wellness program at Akwesasne.

“I tried to turn the things that have happened to me into something positive,” Johnson said. “Along with that comes standing up for myself – and also speaking up and breaking that silence.”

In a third recently filed lawsuit, Stupnick is accused on five occasions in 2018 and 2019 of illegal sexual contact with a female Albion inmate, including in the laundry room. That woman’s lawsuit was filed through a different law firm, Slater Slater Schulman.

Stupnick could not be reached for comment, and an attorney that represented Stupnick during his criminal case declined to comment.

Kull’s lawsuits claim negligence by New York on multiple fronts: That DOCCS management ignored ongoing abuse, did not properly vet officers before their hiring and that staff is not properly trained to flag abuse.

‘Own culpable conduct’

Attorney General Letitia James’ office is defending the state government against the lawsuits. One of the initial defenses offered by James’ office is that the “injuries or damages complained of were caused in whole or part by (the) Claimant’s own culpable conduct.”

James’ office has put forward that defense, though under state criminal

law, a sexual relationship between a corrections officer and inmate in prison is never considered legal under any circumstances.

That language about the claimants’ “culpable conduct” is standard in the office’s defense of other types of Court of Claims cases against New York, from auto accidents to injuries on state property. A spokesperson for the Attorney General’s Office noted that the office has a statutory obligation to defend the state in Court of Claims cases, and that if certain defenses are not asserted at a case’s onset, they cannot be raised later, nor pursued in discovery.

In court motions, James’ office has also repeatedly argued that reported victims should not be allowed to use pseudonyms to file lawsuits.

Many reported victims argue that publicly disclosing their names in court filings would cause emotional distress or embarrassment. But James’ office has argued that they have not adequately shown that disclosure of their names would cause psychological injury.

It is “difficult to envision a scenario in which there could be a greater public interest in full and complete disclosure,” according to the Attorney General’s Office legal motions, because the accusations involve “public institutions and state actors.”

In some instances, Court of Claims judges have agreed with James’ office, while in others, judges have allowed pseudonyms.

Terence Kindlon, an Albany attorney, represented a female Albion inmate in a major 2011 case, where the woman was identified by a pseudonym in court filings as “Anna O.”

Kindlon told The News he was surprised by the posture of James’ office, calling it “crazy beyond belief.”

“As a practical matter, it is crushingly embarrassing for many people to have been victim of a sexual assault,” Kindlon said.

More generally, Kull said, the Attorney General’s Office so far has sought to “knock out these claims in very procedural and technical ways,” making it “that much more difficult for these women to come forward and be successful.”

Past cases

Before the Adult Survivors Act, bringing a lawsuit against New York State was unrealistic for many inmates.

Once sexual abuse occurred, victims had only a brief window to sue the state before the statute of limitations arrived, Kull said. But behind bars, they feared retaliation.

“If you’re incarcerated, and you have just been raped by a correctional officer, who has absolute authority over you, you’re going to be fearful to report something like that,” Kull said. “But the clock still ticked on their cases – which is incredibly unfair.”

In 2003, 15 current or former female inmates of New York prisons did file a federal lawsuit claiming they were subjected to sexual misconduct by corrections officers. Ten had served time at Albion. The lawsuits languished in court for years, however, and many ended up being dismissed over a procedural issue.

In 2012, “Anna O” did win a landmark judgment in a case centered on a rape committed by an Albion guard, and missed red flags.

A former Albion guard, Donald Lasker, had raped her in 2007. On a prior occasion, he reportedly had attempted to rape Anna, but was disrupted by a sergeant. At the time of the rape, Lasker was also under investigation for reportedly raping another female inmate.

Still, Lasker was not removed from active duty before “Anna O” was raped, nor was his access to female prisoners restricted, the Albany Times Union reported in 2012. After the rape, “Anna O” was placed in solitary confinement, according to Kindlon, her attorney.

Lasker later pleaded guilty to third-degree rape and official misconduct and was fired. He was sentenced to two months of weekends in jail.

New York State was ordered to pay the former Albion inmate \$605,000 by a Court of Claims judge, one of the largest judgments on record involving prison-abuse accusations, the Times Union reported.

‘A systemic problem’

Prisoner complaints rarely result in disciplinary action by DOCCS. One reason is that the victim of a sexual assault is often the sole witness. The reported victims have criminal records, and because they are incarcerated, their credibility is immediately questioned, Kull said. The incidents often occur in private enclosed places, where there are no cameras, Kull said.

In 2019, only 3.9% of sexual or abuse harassment accusations were deemed “substantiated,” or confirmed, by DOCCS’ Office of Special Investigations. Nearly 18% were deemed to be untrue, and for more than 72% of complaints, investigators said there was not enough evidence to decide. About 6% were ongoing.

But the avalanche of lawsuits has put a new spotlight on DOCCS’ practices.

“When you have this many women coming forward, you’re alleging that it’s a systemic problem,” Kull said. “You’re implicating everyone that’s in charge and responsible. Because if you have this many claims, how can you be running a secure and controlled environment?”

Regulate

From A1

President Biden announced voluntary safeguards agreed to by seven leading AI companies.

But AI also presents challenges that could make it even harder – and slower – to regulate than past technologies.

The hurdles

To regulate a new technology, Washington first has to try to understand it. “We need to get up to speed very quickly,” Sen. Martin Heinrich, D-N.M., who is part of a bipartisan working group on AI, said in a statement.

That typically happens faster when new technologies resemble older ones. Congress created the Federal Communications Commission in 1934, when television was still a nascent industry, and the FCC regulated it based on earlier rules for radio and telephones.

But AI, some advocates for regulation argue, combines the potential for privacy invasion, misinformation, hiring discrimination, labor disruptions, copyright infringement, electoral manipulation and weaponization by unfriendly governments in ways that have little precedent. That’s on top of some AI experts’ fears that a superintelligent machine might one day end humanity.

While many want fast action, it’s hard to regulate technology that’s evolving as quickly as AI. “I have no idea where we’ll be in two years,” said Dewey Murdick, who leads Georgetown University’s center for security and emerging technology.

Regulation also means minimizing potential risks while harnessing potential benefits, which for AI can range from drafting emails to advancing medicine. That’s a tricky balance to strike with a new technology. “Often, the benefits are just unanticipated,” said Susan Dudley, who directs George Washington University’s regulatory studies center. “And, of course, risks also can be unanticipated.”

Overregulation can quash innovation, Dudley added, driving industries overseas. It can also become a means for larger companies with the resources to lobby Congress to squeeze out less-established competitors.

Historically, regulation often happens gradually as a technology improves or an industry grows, as with cars and television. Sometimes it happens only after tragedy. When Congress passed, in 1906, the law that led to the creation of the Food and Drug Administration, it didn’t require safety studies before companies marketed new drugs. In 1937, an untested and poisonous liquid version of sulfanilamide, meant to treat bacterial infections, killed more than 100 people across 15 states. Congress strengthened the FDA’s regulatory powers the following year.

“Generally speaking, Congress is a more reactive institution,” said Jonathan Lewallen, a University of Tampa political scientist. The counterexamples tend to involve technologies that the government effectively built itself, like nuclear power development, which Congress regulated in 1946, one year after the first atomic bombs were detonated.

“Before we seek to regulate, we have to understand why we are regulating,”

said Rep. Jay Obernolte, R-Calif., who has a master’s degree in AI. “Only when you understand that purpose can you craft a regulatory framework that achieves that purpose.”

Brain drain

Even so, lawmakers say they’re making strides. “I actually have been very impressed with my colleagues’ efforts to educate themselves,” Obernolte said. “Things are moving, by congressional standards, extremely quickly.”

Regulation advocates broadly agree. “Congress is taking the issue really seriously,” said Camille Carlton of the Center for Humane Technology, a nonprofit that regularly meets with lawmakers.

But in recent decades, Congress has changed in ways that could impede translating studiousness into legislation. For much of the 20th century, the leadership and staff of congressional committees dedicated to specific policy areas – from agriculture to veterans’ affairs – served as a kind of institutional brain trust, shepherding legislation and often becoming policy experts in their own right. That started to change in 1995, when Republicans led by Newt Gingrich took control of the House and slashed government budgets. Committee staffs stagnated, and some of the committees’ power to shape policy devolved to party leaders.

“Congress doesn’t have the kind of analytic tools that it used to,” said Daniel Carpenter, a Harvard professor who studies regulation.

For now, AI policy remains notably bipartisan. “These regulatory issues we’re grappling with are not partisan issues, by and large,” said Obernolte,

who helped draft a bipartisan bill that would give researchers tools to experiment with AI technologies.

But partisan infighting has already helped snarl regulation of social media, an effort that also began with bipartisan support. And even if lawmakers agreed on a comprehensive AI bill tomorrow, next year’s elections and competing legislative priorities – like funding the government and, perhaps, impeaching Biden – could consume their time and attention.

A Department of Information?

If federal regulation of AI did emerge, what might it look like?

Some experts say a range of federal agencies already have regulatory powers that cover aspects of AI. The Federal Trade Commission could use its existing antitrust powers to prevent larger AI companies from dominating smaller ones. The FDA has already authorized hundreds of AI-enabled medical devices. And piecemeal, AI-specific regulations could trickle out from such agencies within a year or two, experts said.

Still, drawing up rules agency by agency has downsides. Mittelsteadt called it “the too-many-cooks-in-the-kitchen problem, where every regulator is trying to regulate the same thing.” Similarly, state and local governments sometimes regulate technologies before the federal government, such as with cars and digital privacy. The result can be contradictions for companies and headaches for courts.

But some aspects of AI may not fall under any existing federal agency’s ju-

risdiction – so some advocates want Congress to create a new one. One possibility is an FDA-like agency: Outside experts would test AI models under development, and companies would need federal approval before releasing them. Call it a “Department of Information,” Murdick said.

But creating a new agency would take time – perhaps a decade or more, experts guessed. And there’s no guarantee it would work. Miserly funding could render it toothless. AI companies could claim its powers were unconstitutionally overbroad, or consumer advocates could deem them insufficient. The result could be a prolonged court fight or even a push to deregulate the industry.

Rather than a one-agency-fits-all approach, Obernolte envisions rules that accrete as Congress enacts successive laws in coming years. “It would be naive to believe that Congress is going to be able to pass one bill – the AI Act, or whatever you want to call it – and have the problem be completely solved,” he said.

Heinrich said in his statement, “This will need to be a continuous process as these technologies evolve.” Last month, the House and Senate separately passed several provisions about how the Defense Department should approach AI technology. But it is not yet clear which provisions will become law, and none would regulate the industry itself.

Some experts aren’t opposed to regulating AI one bill at a time. But they’re anxious about any delays in passing them. “There is, I think, a greater hurdle the longer that we wait,” Carlton said. “We’re concerned that the momentum might fizzle.”