

**The Cost of Bad Apples: Recovery for Sexual-Assault Victims against Public Employers
Post-*Sterry***

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In tort law, the doctrine of vicarious liability provides that an employer can be held liable for the torts committed by their [employees](#). This doctrine has not always extended to government employers, conflicting with the doctrine of sovereign [immunity](#). The Federal Tort Claims Act, for example, explicitly immunizes federal employers from vicarious liability for many intentional torts committed by their employees.¹

Minnesota State Tort Claims Act (MSTCA)

The state legislature passed the Minnesota State Tort Claims Act (MSTCA) to protect its citizens from wrongful acts committed by government employees. The MSTCA provides:

The state will pay compensation for injury or loss or property or personal injury or death caused by an act or omission of an employee of the state while acting within the **scope of office or employment** . . . under circumstances where the state, if a private person, would be liable to the claimant whether arising out of a governmental or proprietary function.²

Sterry v. Minnesota Dept. of Corrections

In *Sterry*, Plaintiff was incarcerated at Moose Lake facility and was subject to a pattern of sexual harassment under corrections employee Youngberg.³ In April 2018, while working in the kitchen under Youngberg’s supervision, Sterry was ordered into the supply room to “conduct inventory.”⁴ Sterry was then sexually assaulted by Youngberg, who threatened to have Sterry

¹ 28 U.S.C. §§ 1346, 2671-2680.

² 28 U.S.C. § 2680(h).

³ *Sterry v. Minnesota Dep't of Corr.*, 8 N.W.3d 224, 228 (Minn. 2024).

⁴ *Id.* at 229.

punished if he reported the incident.⁵ In 2021, Sterry brought suit against the Minnesota Department of Corrections for vicarious liability for Youngberg’s conduct.⁶

The district court dismissed the claim for a failure to state a claim upon which relief could be granted, reasoning that the department was immune from suit because the MSTCA’s definition of scope of employment “effectively sever[ed] the State’s liability from Officer Youngberg’s sexual contact with Sterry.”⁷

The Minnesota Court of Appeals reversed, and the Minnesota Supreme Court affirmed the reversal.⁸ The Minnesota Supreme Court held that the “scope of...employment” in the statute was consistent with the common law and vicarious liability in the private employment context.⁹ The Court reasoned that the plain text of the statute was clear and found that the inclusion of “if a private person” in the statute showed that the legislature intended for this law to be consistent with the common law for vicarious liability.¹⁰

The common law for private employers in Minnesota is that an employee’s intentional tort must (1) “be related to the duties of the employee;” and (2) “occur within work-related limits of time and place.”¹¹ Whether or not an intentional tort is “related to the duties of the employee” presents a “question of fact whether the employee’s acts were foreseeable, related to, and connected with acts otherwise within the scope of his employment.”¹²

The question presented in *Sterry*, then, was whether or not the sexual assault occurred within the scope of employment, according to the standard above. The Court found that the

⁵ *Id.*

⁶ *Id.*

⁷ *Sterry v. Minnesota Dep’t of Corr.*, 986 N.W.2d 715, 718 (Minn. Ct. App. 2023).

⁸ *Sterry v. Minnesota Dep’t of Corr.*, 8 N.W.3d 224, 236 (Minn. 2024); *See also Sterry v. Minnesota Dep’t of Corr.*, 986 N.W.2d 715, 718 (Minn. Ct. App. 2023).

⁹ *Id.* at 234.

¹⁰ *Id.* at 233.

¹¹ *Fahrendorff ex rel. Fahrendorff v. N. Homes, Inc.*, 597 N.W.2d 905, 910 (Minn. 1999).

¹² *Id.* at 911.

complaint, which detailed how the victim was ordered into the supply room, was sufficient to survive a motion to dismiss.¹³

Implications for School Districts and Prisons

School teachers are government employees, and therefore, this case puts school districts on notice that they may be held liable for intentional torts committed by their [teachers](#). School districts that the [Municipal Torts Act](#) governs will be liable as well due to the “scope of employment” being borrowed from the MSTCA. The *Sterry* decision has already been cited in such an instance.¹⁴ This decision will help victims of sexual assault at the hands of school employees seek civil relief. The Department of Education has estimated that 9.6% of K-12 students in the United States had experienced either verbal, visual, or physical misconduct at some point in their education.¹⁵ In a study consisting of 6,632 participants, 11.7% reported sexual comments, and less than 1% reported other forms of sexual misconduct.¹⁶ Unfortunately, many instances of sexual misconduct in schools go unreported due to fear and [confusion](#). The lack of reporting tends to also be more prevalent among [male victims](#). Females are more likely to be victims than males, and Black/Latino [students](#) are more likely to be targeted than white students. Sexual assault in all contexts cost Minnesota almost \$8 billion in 2005, with the largest [cost](#) attributed to the pain, suffering, and quality of life losses to the victims and their families. Victims of sexual misconduct from teachers often deal with depression, PTSD, flashbacks, and substance abuse as [a result](#).

¹³ *Sterry v. Minnesota Dep't of Corr.*, 8 N.W.3d 224, 236 (Minn. 2024).

¹⁴ *Doe v. Special Sch. Dist. No. 6, S. St. Paul Pub. Sch.*, No. A22-1736, 2023 WL 4695939, at *1 (Minn. Ct. App. July 24, 2023).

¹⁵ JEGLIC EL ET AL., *THE NATURE AND SCOPE OF EDUCATOR MISCONDUCT IN K-12. SEX ABUSE* 188-213 (2023).

¹⁶ *Id.*

This decision will also allow prisoners who are victims of sexual assault to seek relief against the Minnesota Department of Corrections. The Prison Rape Elimination Act ([PREA](#)) was passed more than 20 years ago, which created a channel for reporting instances of sexual misconduct. In the PREA report of 2021, there were 157 sexual harassment and abuse allegations reported, and 41 of those allegations were deemed to be [substantiated](#). Furthermore, 46 of those allegations were staff-on-incarcerated persons, 25 of which were found to be [substantiated](#). Prison staff often use work assignments to lure and assault [prisoners](#). Black men are overrepresented in our prison system, with 1 in 3 Black men being incarcerated in their lifetime, making them more likely to face sexual violence in [prison](#). Once released, many prisoners return to the community where they committed their crimes, and such communities tend to have higher rates of [drug use](#). Therefore, when prisoners are subjected to sexual assault, they leave prison with elevated needs in a challenging environment. Mental health and drug use have both been found to be leading causes of [recidivism](#).

Conclusion

In conclusion, this interpretation of the MSTCA makes it clear that public employers will be held liable for the torts committed by their agents in the scope of their employment. This plaintiff-friendly interpretation will further incentivize public employers to hire, train, and monitor their employees in a fashion that prevents these types of incidents from occurring. This understanding will enable victims to pursue compensation from the government for its failure to address the previously mentioned issues. Both students and prisoners are subjected to power imbalances by the staff supervising them. The law must seek to provide relief to victims against public employers for assaults that stem from the power granted to them by the nature of their employment. There is still room for growth in this area of law, especially when it comes to

“grooming,” in that educators assaulting students off-campus and not during school hours may not be deemed within the scope of their employment.¹⁷

¹⁷ Doe v. Special Sch. Dist. No. 6, S. St. Paul Pub. Sch., No. A22-1736, 2023 WL 4695939, at *1 (Minn. Ct. App. July 24, 2023).