



The Prison Rape Elimination Act

THIS LEGISLATION, *will provide a chance to gain a full picture of how widespread this abuse is and offer incentives for correctional facilities to finally address it. For too long prison rape has been ignored. It is time to bring attention to this issue.*

— Representative
Frank R. Wolf (R-VA)¹

THE PRISON RAPE Elimination Act (PREA), passed unanimously by Congress and signed into law by President Bush in 2003, is the first federal civil law to address sexual violence behind bars. PREA's requirements apply to all detention facilities, including federal and state prisons, jails, police lock-ups, private facilities, and immigration detention centers.²

PREA states that sexual assault in detention can constitute a violation of the Eighth Amendment of the U.S. Constitution and requires that facilities adopt a zero-tolerance approach to this form of abuse.³ The law calls for the development of national standards addressing prisoner rape, the gathering of nationwide statistics about the problem, the provision of grants to states to combat it, and the creation of a review panel to hold annual public hearings with the best and the worst performing corrections facilities.⁴

PREA's key provisions include:

1. Comprehensive Study and Issuance of National Standards: PREA created the National Prison Rape Elimination Commission (NPREC), a bipartisan federal commission that is charged with carrying out a comprehensive study of sexual abuse in detention and with developing national standards addressing prisoner rape.⁵ To inform its work, the NPREC held public hearings across the country and convened expert committees on each of the subject areas addressed in the standards. JDI provided expert analysis and survivor testimony

at the NPREC hearings, had representatives on each of the expert committees, and participated in the public comment period for the draft standards.

The NPREC's report and national standards are expected to be released in June 2009. Attorney General Holder will have one year to promulgate the standards, after which they will become binding for all detention facilities. Those that fail to comply with the standards will lose a portion of their corrections-related federal funding.

2. Annual Statistical Review: The Bureau of Justice Statistics (BJS) is charged with collecting, reviewing, and analyzing the prevalence of sexual violence in detention. Since 2004, the BJS has compiled an annual review of administrative records on the incidence of sexual violence reported to corrections authorities.⁶ To supplement the limited data available from reported incidents, in 2007 the BJS began conducting annual surveys directly with inmates about sexual victimization at their current facilities. The BJS released its first two reports from these surveys, covering prisons and jails, in December 2007 and June 2008 respectively, documenting systemic and widespread sexual victimization across the country.⁷

3. Assistance, Research, and Grants: PREA provides resources for corrections agencies that seek to educate themselves about prisoner rape and to take action to better prevent this type of abuse. The law authorizes the Attorney General, through the Bureau of Justice Assistance, to provide states with

grants for training, personnel, technical assistance, data, and equipment. PREA further requires the National Institute of Corrections (NIC) to establish a clearinghouse of information.⁸ Finally, the National Institute of Justice (NIJ) — the research, development, and evaluation arm of the Department of Justice — provides grants for research on prisoner rape, encouraging academics and research-based agencies to expand further the breadth of knowledge regarding the prevalence of sexual violence in detention, vulnerable populations, and best practices for prevention and response efforts.⁹

4. Review Panel: One of the entities created by PREA is the Department of Justice’s Review Panel on Prison Rape. The Review Panel is charged with holding annual hearings that focus on the three facilities with the highest incidence of sexual violence and the two facilities with the lowest incidence, as

determined by the abovementioned BJS inmate surveys.¹⁰ The hearings seek to identify common characteristics among corrections systems where sexual violence is prevalent and among those that have been successful in deterring this type of abuse. In 2008, the Review Panel held its first round of hearings and issued two reports, one for prisons and one for jails.¹¹

The passage of the Prison Rape Elimination Act (PREA) was a vitally important advance in the effort to end sexual violence behind bars, and the first five years of PREA implementation have brought significant attention to this type of abuse. However, much remains to be done to prevent prisoner rape, to ensure that incarcerated survivors are treated with dignity in the aftermath of an assault, and to make certain that corrections officials take full responsibility for the sexual violence that occurs on their watch.

Endnotes

- 1 *The Prison Rape Reduction Act of 2002: Hearing on S. 2619 Before the Senate Committee on the Judiciary*, 107th Cong. (2002) (statement of the Honorable Frank R. Wolf).
- 2 42 U.S.C. § 15609 (7).
- 3 42 U.S.C. §§ 15601(13), 15602(1).
- 4 42 U.S.C. § 15602.
- 5 42 U.S.C. § 15606, 15607
- 6 All BJS reports are available on its webpage at <http://www.ojp.usdoj.gov/bjs/pubalp2.htm> (last visited Jan. 22, 2009). For the most recent reports of reported sexual violence, see ALLEN J. BECK, DEVON B. ADAMS & PAUL GUERINO, BUREAU OF JUSTICE STATISTICS, SEXUAL VIOLENCE REPORTED BY JUVENILE CORRECTIONAL AUTHORITIES, 2005-2006 (2008) (estimating that youth filed more than 2,000 reports of sexual victimization per year in 2005 and in 2006); ALLEN J. BECK, PAIGE M. HARRISON, & DEVON B. ADAMS, BUREAU OF JUSTICE STATISTICS, SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES, 2006 (2007) (determining that the number of sexual abuse reports filed in adult facilities in 2006 was 6,528).
- 7 ALLEN J. BECK & PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN LOCAL JAILS REPORTED BY INMATES, 2007 (2008) (estimating that nearly 25,000 inmates were sexually abused at the county jail in the past six months); ALLEN J. BECK & PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN STATE AND FEDERAL PRISONS REPORTED BY INMATES, 2007 (2007) (estimating that 4.5 percent, or 60,500 state and federal prisoners, were sexually abused at their current facility in the past year).
- 8 The clearinghouse is on-line at <http://www.nicic.org/PREA> (last visited Jan. 22, 2009).
- 9 National Institute of Justice Staff, NIJ’s Response to the Prison Rape Elimination Act (Feb. 2006), available at <http://www.ncjrs.gov/pdffiles1/nij/213137.pdf> (last visited Jan. 22, 2009).
- 10 42 U.S.C. § 15603
- 11 The Review Panel on Prison Rape, Report on Rape in Jails in the U.S. (2008), available on-line at http://www.ojp.usdoj.gov/reviewpanel/pdfs/prea_finalreport_081229.pdf (last visited Jan. 22, 2009); The Review Panel on Prison Rape, Report on Rape in State and Federal Prisons in the U.S. (2008), available on-line at http://www.ojp.usdoj.gov/reviewpanel/pdfs/prea_finalreport_080924.pdf (last visited Jan. 22, 2009).

About Just Detention International (JDI)

Just Detention International (JDI) is a human rights organization that seeks to end sexual abuse in all forms of detention.

All of JDI’s work takes place within the framework of international human rights laws and norms. The sexual assault of detainees, whether committed by corrections staff or by inmates, is a crime and is recognized internationally as a form of torture.

JDI has three core goals for its work: to ensure government accountability for prisoner rape; to transform ill-informed public attitudes about sexual violence in detention; and to promote access to resources for those who have survived this form of abuse.

JDI is concerned about the safety and well-being of all detainees, including those held in adult prisons and jails, juvenile facilities, immigration detention centers, and police lock-ups, whether run by government agencies or by private corporations on behalf of the government.

When the government takes away someone’s freedom, it incurs a responsibility to protect that person’s safety. All inmates have the right to be treated with dignity. No matter what crime someone has committed, sexual violence must never be part of the penalty.

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