

NATIONAL
**PRISON
RAPE**
ELIMINATION
COMMISSION

REPORT

Folks: I have deleted a major portion of this document to reduce your workload (smile). If, however, you are really interested in reading the the original in its entirety then you may access it here: www.ncjrs.gov/pdffiles1/226680.pdf

NATIONAL PRISON RAPE ELIMINATION COMMISSION **REPORT**

JUNE 2009

Executive Summary

Rape is violent, destructive, and a crime—no less so when the victim is incarcerated. Until recently, however, the public viewed sexual abuse as an inevitable feature of confinement. Even as courts and human rights standards increasingly confirmed that prisoners have the same fundamental rights to safety, dignity, and justice as individuals living at liberty in the community, vulnerable men, women, and children continued to be sexually victimized by other prisoners and corrections staff. Tolerance of sexual abuse of prisoners in the government’s custody is totally incompatible with American values.

Congress affirmed the duty to protect incarcerated individuals from sexual abuse by unanimously enacting the Prison Rape Elimination Act of 2003. The Act called for the creation of a national Commission to study the causes and consequences of sexual abuse in confinement and to develop standards for correctional facilities nationwide that would set in motion a process once considered impossible: the elimination of prison rape.

This executive summary briefly discusses the Commission’s nine findings on the problems of sexual abuse in confinement and select policies and practices that must be mandatory everywhere to remedy these problems. It also covers recommendations about what leaders in government outside the corrections profession can do to support solutions. The findings are discussed in detail and thoroughly cited in the body of the report, where readers will also find information about all of the Commission’s standards. Full text of the standards is included as an appendix to the report.

In the years leading up to the passage of PREA and since then, corrections leaders and their staff have developed and implemented policies and practices to begin to prevent sexual abuse and also to better respond to victims and hold perpetrators accountable when prevention fails. They have been aided by a range of robust Federal initiatives, support from professional corrections associations, and advocates who have vocally condemned sexual abuse in confinement. The landscape is changing. Training curricula for corrections staff across the country now include information about sexual abuse in confinement and how to prevent it.

Sexual abuse is “not part of the penalty that criminal offenders pay for their offenses against society.”

—U.S. Supreme Court

Some agencies and facilities have formed sexual assault response teams to revolutionize their responses to sexual abuse. Despite these and other achievements, much remains to be done, especially in correctional environments in which efforts to address the problem of sexual abuse have been slow to start or have stalled. Protection from sexual abuse should not depend on where someone is incarcerated or supervised; it should be the baseline everywhere.

More than 7.3 million Americans are confined in U.S. correctional facilities or supervised in the community, at a cost of more than \$68 billion annually. Given our country's enormous investment in corrections, we should ensure that these environments are as safe and productive as they can be. Sexual abuse undermines those goals. It makes correctional environments more dangerous for staff as well as prisoners, consumes scarce resources, and undermines rehabilitation. It also carries the potential to devastate the lives of victims. The many interrelated consequences of sexual abuse for individuals and society are difficult to pinpoint and nearly impossible to quantify, but they are powerfully captured in individual accounts of abuse and its impact.

Former prisoner Necole Brown told the Commission, "I continue to contend with flashbacks of what this correctional officer did to me and the guilt, shame, and rage that comes with having been sexually violated for so many years. I felt lost for a very long time struggling with this. . . . I still struggle with the memories of this ordeal and take it out on friends and family who are trying to be there for me now."

Air Force veteran Tom Cahill, who was arrested and detained for just a single night in a San Antonio jail, recalled the lasting effects of being gang-raped and beaten by other inmates. "I've been hospitalized more times than I can count and I didn't pay for those hospitalizations, the tax payers paid. My career as a journalist and photographer was completely derailed. . . . For the past two decades, I've received a non-service connected security pension from the Veteran's Administration at the cost of about \$200,000 in connection with the only major trauma I've ever suffered, the rape."

Since forming, the Commission has convened public hearings and expert committees, conducted a needs assessment that involved site visits to 11 diverse correctional facilities, and thoroughly reviewed the relevant literature. Throughout the process, corrections leaders, survivors of sexual abuse, health care providers, researchers, legal experts, advocates, and academics shared their knowledge, experiences, and insights about why sexual abuse occurs, under what circumstances, and how to protect people.

The Commission used what it learned about the nature and causes of sexual abuse in correctional settings and its impact to develop mandatory standards to prevent, detect, and punish sexual abuse. Two 60-day periods of public comment were critical junctures in the creation of the

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standards. The Commission tailored the standards to reflect the full range of correctional environments across the country: adult prisons and jails; lockups and other short-term holding centers; facilities for juveniles; immigration detention sites; and probation, parole, and other forms of community corrections. Many standards reflect what corrections professionals recognize as good practices—and are already operational in some places—or are requirements under existing laws. If correctional agencies incur new costs to comply with the Commission’s standards, those costs are not substantial compared to what these agencies currently spend and are necessary to fulfill the requirements of PREA.

The Eighth Amendment of the U.S. Constitution forbids cruel and unusual punishment—a ban that requires corrections staff to take reasonable steps to protect individuals in their custody from sexual abuse whenever the threat is known or should have been apparent. In *Farmer v. Brennan*, the Supreme Court ruled unanimously that deliberate indifference to the substantial risk of sexual abuse violates an incarcerated individual’s rights under the Eighth Amendment. As the Court so aptly stated, sexual abuse is “not part of the penalty that criminal offenders pay for their offenses against society.”

FINDING 1

Protecting prisoners from sexual abuse remains a challenge in correctional facilities across the country. Too often, in what should be secure environments, men, women, and children are raped or abused by other incarcerated individuals and corrections staff.

Although the sexual abuse of prisoners is as old as prisons themselves, efforts to understand the scale and scope of the problem are relatively new. The first study specifically of prevalence—examining abuse in the Philadelphia jail system—was published in 1968. The most rigorous research produced since then—mainly of sexual abuse among incarcerated men—has yielded prevalence rates in the mid-to-high teens, but none of these are national studies.

With an explicit mandate from Congress under PREA, the Bureau of Justice Statistics (BJS) launched a groundbreaking effort to produce national incidence rates of sexual abuse by directly surveying prisoners. The survey results may not capture the full extent of the problem, but they confirm the urgent need for reform. The Commission recommends that BJS continue this important work and that Congress provide the necessary funding.

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A 2007 survey of State and Federal prisoners suggests that an estimated 60,500 individuals were sexually abused during the 12 months leading up to the survey.

The sexual abuse of prisoners is widespread, but rates vary across facilities—from a low of zero to a high of 15.7 percent.

BJS conducted the first wave of surveys in 2007 in a random sample of 146 State and Federal prisons and 282 local jails. A total of 63,817 incarcerated individuals completed surveys, providing the most comprehensive snapshot of sexual abuse in prisons and jails to date. Four-and-a-half percent of prisoners surveyed reported experiencing sexual abuse one or more times during the 12 months preceding the survey or over their term of incarceration if they had been confined in that facility for less than 12 months. Extrapolated to the national prison population, an estimated 60,500 State and Federal prisoners were sexually abused during that 12-month period.

Although sexual abuse of prisoners is widespread, rates vary across facilities. For example, 10 facilities had comparatively high rates, between 9.3 and 15.7 percent, whereas in six of the facilities no one reported abuse during that time period. More prisoners reported abuse by staff than abuse by other prisoners: 2.9 percent of respondents compared with about 2 percent. (Some prisoners reported abuse by other inmates and staff.)

The rate of sexual abuse in jails appears to be slightly lower: 3.2 percent of inmates surveyed reported that they had been sexually abused at least once during the prior 6 months or since they had been confined in that facility. Again, reports of abuse by staff were more common than reports of abuse by other incarcerated persons: 2 percent of respondents compared with 1.6 percent. BJS has not surveyed individuals in halfway houses, treatment facilities, and other community-based correctional settings or individuals on probation or parole.

As the Commission's report goes to press, BJS is conducting the first nationally representative survey of sexual abuse among adjudicated youth in residential juvenile facilities. In a preparatory pilot study, BJS interviewed 645 youth in nine facilities—sites that volunteered to participate in the pilot and were selected based on convenience. Nearly one out of every five youth surveyed (19.7 percent) reported at least one nonconsensual sexual contact during the preceding 12 months or since they had arrived at the facility. Youth were just as likely to report abuse by staff as they were to report nonconsensual sexual encounters with their peers in the facility. These preliminary results are not necessarily an indicator of rates nationally because more than a quarter of the youth interviewed had been adjudicated for perpetrating a sexual assault, compared to less than 10 percent of youth in residential placement nationally.

In conducting this research, BJS has taken advantage of evolving survey technology, using laptop computers with touch screens and an accompanying recorded narration to guide respondents—especially helpful for individuals with limited reading abilities. This method increases the likelihood of capturing experiences of sexual abuse among individuals who would be afraid or ashamed to identify as a victim in face-to-face interviews. Prisoners still must believe strangers' assurances of confidentiality,

however—a huge barrier for some—so the likelihood of underreporting still exists. Researchers also recognize that prevalence levels can be artificially elevated by false allegations. BJS designs its surveys to ask questions of prisoners in several different ways and also uses analytic tools to assess data for false reports.

FINDING 2

Sexual abuse is not an inevitable feature of incarceration. Leadership matters because corrections administrators can create a culture within facilities that promotes safety instead of one that tolerates abuse.

In 2006, the Urban Institute surveyed 45 State departments of corrections about their policies and practices on preventing sexual abuse and conducted in-depth case studies in several States. Not surprisingly, the surveys and case studies identified strong leadership as essential to creating the kind of institutional culture necessary to eliminate sexual abuse in correctional settings. The Commission has defined clear standards that corrections administrators can and must champion to prevent sexual abuse and make facilities safer for everyone—reforms in the underlying culture, hiring and promotion, and training and supervision that vanguard members of the profession are already implementing.

To begin with, every correctional agency must have a written policy mandating zero tolerance for all forms of sexual abuse in all settings, whether it is operated by the government or by a private company working under contract with the government. Although not mandated under the standards, collective bargaining agreements should feature an explicit commitment from unions and their members to support a zero-tolerance approach to sexual abuse. Without it, there is little common ground upon which to build when negotiating the many specific policies and procedures to prevent and respond to sexual abuse.

Ultimately, the culture of an institution is shaped by people not by policies. Leaders need the right staff to create a genuine culture of zero tolerance. In particular, administrators must thoroughly screen all new job applicants and make promotions contingent on a similarly careful review of each staff member's behavior on the job to prevent hiring, retaining, or promoting anyone who has engaged in sexual abuse. Conducting criminal background checks, making efforts to obtain relevant information from past employers to the extent permissible under law, and questioning applicants about past misconduct must be mandatory. Rigorous vetting is not enough, however. Correctional agencies urgently need support in

Leaders need the right staff to create a genuine culture of zero tolerance. Rigorous vetting is crucial; so are supporting and promoting staff that demonstrate commitment to preventing sexual abuse.

Direct supervision is the most effective mode of supervision for preventing sexual abuse and should be used wherever possible.

developing competitive compensation and benefits packages so that they can recruit and retain appropriate staff. Equally important, administrators should support and promote staff that demonstrate a commitment to preventing sexual abuse.

Even qualified individuals need training on sexual abuse to fulfill their job responsibilities. Only through training can staff understand the dynamics of sexual abuse in a correctional environment, be well informed about the agency's policies, and acquire the knowledge and skills necessary to protect prisoners from abuse and respond appropriately when abuse does occur. The Commission recognizes the corrections profession's investment to date in training staff and the fruits of those efforts. The Commission designed its standards to ensure that no facility is left behind and that training everywhere meets certain basic criteria. Additionally, the Commission recommends that the National Institute of Corrections continue the training and technical assistance it has provided in the years leading up to PREA and since then and that Congress provide funding for this purpose.

The corollary to staff training is a strong educational program for prisoners about their right to be safe and the facility's commitment to holding all perpetrators of sexual abuse—staff and inmates—accountable. Facilities must convey at least basic information during intake in languages and other formats accessible to all prisoners. Armed with this information, prisoners are better able to protect themselves and seek help from staff before abuse occurs.

Supervision is the core practice of any correctional agency, and it must be carried out in ways that protect individuals from sexual abuse. The Commission believes it is possible to meet this standard in any facility, regardless of design, through appropriate deployment of staff. Direct supervision, which features interaction between staff and prisoners, should be used wherever possible because it is the most effective mode of supervision for preventing sexual abuse and other types of violence and disorder. In addition, correctional facilities must assess, at least annually, the need for and feasibility of incorporating additional monitoring equipment. Technologies are not replacements for skilled and committed security officers, but they can greatly improve what good officers are able to accomplish. The Commission recommends that the National Institute of Corrections help correctional agencies advance their use of monitoring technologies and that Congress fund this assistance.

Cross-gender supervision is an area in which the Commission has set clear standards. Some of the widespread abuse that occurred in women's prisons across Michigan in the 1990s was facilitated by rules that required officers, including men, to meet a daily quota of pat-down searches for weapons, drugs, or other contraband. Physical searches are necessary security procedures. The potential for abuse is heightened, however, when

staff of the opposite gender conduct them. In the Commission's view, the risks are present whether the officers are female or male. Historically, few women worked in corrections, but this is rapidly changing.

The Commission understands that cross-gender supervision can have benefits for incarcerated persons and staff. The Commission's standard on this issue is not intended to discourage the practice generally or to reduce employment opportunities for men or women. However, strict limits on cross-gender searches and the viewing of prisoners of the opposite gender who are nude or performing bodily functions are necessary because of the inherently personal nature of such encounters. Court decisions have recognized that both male and female prisoners retain some rights to privacy, especially in searches of their bodies and in being observed in states of undress by staff of the opposite gender.

With proper leadership practices and clear policies, corrections administrators can foster a culture that promotes safety. The Commission's standards are intended to support these efforts. In addition, the Commission recommends that the Bureau of Justice Assistance continue to provide grants to diverse correctional agencies to support the development of innovative practices and programs and that Congress fund this important work as well as continued research by the National Institute of Justice on the nature of sexual abuse in correctional facilities.

FINDING 3

Certain individuals are more at risk of sexual abuse than others. Corrections administrators must routinely do more to identify those who are vulnerable and protect them in ways that do not leave them isolated and without access to rehabilitative programming.

Preventing sexual abuse depends in part on risk assessment. Unfortunately, knowledge in this area is still limited. Research to date has focused on vulnerability to abuse by other prisoners, rather than by staff, and on the risks for men and boys rather than for women and girls. This caveat aside, some risk factors do stand out.

Youth, small stature, and lack of experience in correctional facilities appear to increase the risk of sexual abuse by other prisoners. So does having a mental disability or serious mental illness. Research on sexual abuse in correctional facilities consistently documents the vulnerability of men and women with non-heterosexual orientations and transgender individuals. A 1982 study in a medium-security men's facility in California, for example, found the rate of abuse was much higher among gay prisoners (41 percent)

Evidence-based screening for risk of sexual abuse must become routine nationwide, replacing the subjective assessments that many facilities still rely on and filling a vacuum in facilities where no targeted risk assessments are conducted.

than heterosexual prisoners (9 percent). A history of sexual victimization, either in the community or in the facility in which the person is incarcerated, tends to make people more vulnerable to subsequent sexual abuse.

Unless facility managers and administrators take decisive steps to protect these individuals, they may be forced to live in close proximity or even in the same cell with potential assailants. When Alexis Giraldo was sentenced to serve time in the California correctional system, her male-to-female transgender identity and appearance as a woman triggered a recommendation to place her in a facility with higher concentrations of transgender prisoners, where she might be safer. Yet officials ignored the recommendation and sent her to Folsom Prison in 2006, where she was raped and beaten by two different cellmates.

Some correctional agencies, including the Federal Bureau of Prisons and the California Department of Corrections and Rehabilitation, now use written instruments to screen all incoming prisoners specifically for risk of sexual assault. Evidence-based screening must become routine nationwide, replacing the subjective assessments that many facilities still rely on and filling a vacuum in facilities where no targeted risk assessments are conducted. The Commission's standards in this area accelerate progress toward this goal by setting baseline requirements for when and how to screen prisoners for risk of being a victim or perpetrator of sexual abuse. To be effective, the results of these screenings must drive decisions about housing and programming. Courts have commented specifically on the obligation of correctional agencies to gather and use screening information to protect prisoners from abuse.

The Commission is concerned that correctional facilities may rely on protective custody and other forms of segregation (isolation or solitary confinement) as a default form of protection. And the Commission learned that desperate prisoners sometimes seek out segregation to escape attackers. Serving time under these conditions is exceptionally difficult and takes a toll on mental health, particularly if the victim has a prior history of mental illness. Segregation must be a last resort and interim measure only. The Commission also discourages the creation of specialized units for vulnerable groups and specifically prohibits housing prisoners based solely on their sexual orientation or gender identity because it can lead to demoralizing and dangerous labeling.

The Commission is also concerned about the effect of crowding on efforts to protect vulnerable prisoners from sexual abuse. Crowded facilities are harder to supervise, and crowding systemwide makes it difficult to carve out safe spaces for vulnerable prisoners that are less restrictive than segregation. When Timothy Taylor was incarcerated in a Michigan prison, internal assessments suggested that he was likely to be a target of sexual abuse because of his small size—he was five feet tall and 120 pounds—and diminished mental abilities, yet he was placed in a prison dormitory

to save bed space for new arrivals. Shortly thereafter, he was sexually assaulted by another prisoner.

According to the Bureau of Justice Statistics, 19 States and the Federal system were operating at more than 100 percent of their highest capacity in 2007. An equal number of States operated at somewhere between 90 and 99 percent of capacity. When facilities operate at or beyond capacity, prisoners also have fewer or no opportunities to participate in education, job training, and other programming. Idleness and the stress of living in crowded conditions often lead to conflict. Meaningful activities will not end sexual abuse, but they are part of the solution. It is critical that lawmakers tackle the problem of overcrowding. If facilities and entire systems are forced to operate beyond capacity and supervision is a pale shadow of what it must be, our best efforts to identify and protect vulnerable individuals will be stymied.

Classification has evolved from little more than ad hoc decisions to an increasingly objective, evidence-based process. Although knowledge about the risk factors associated with sexual abuse is far from complete, corrections administrators can identify and protect many vulnerable individuals from abuse.

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FINDING 4

Few correctional facilities are subject to the kind of rigorous internal monitoring and external oversight that would reveal why abuse occurs and how to prevent it. Dramatic reductions in sexual abuse depend on both.

The most effective prevention efforts are targeted interventions that reflect where, when, and under what conditions sexual abuse occurs. Sexual abuse incident reviews, as required under the Commission's standards, produce the kind of information administrators need to deploy staff wisely, safely manage high-risk areas, and develop more effective policies and procedures. A number of State departments of corrections already conduct some type of review.

Correctional agencies also must collect uniform data on these incidents, including at least the data necessary to answer all questions on the most recent version of the Bureau of Justice Statistics Survey on Sexual Violence. In aggregate form, the data can reveal important patterns and trends and must form the basis for corrective action plans that, along with the aggregated data, are released to the public. Transparency is essential.

Even the most rigorous internal monitoring, however, is no substitute for opening up correctional facilities to outside review. The Commission

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requires detailed, robust audits of its standards by independent auditors at least every 3 years. The auditor must be prequalified through the U.S. Department of Justice to perform audits competently and without bias. The Commission recommends that the National Institute of Corrections design and develop a national training program for auditors and that Congress provide funding specifically for this purpose.

The Commission also supports external oversight beyond the mandatory audits. In particular, the Commission endorses the American Bar Association’s 2006 resolution urging Federal, State, and territorial governments to establish independent public entities to regularly monitor and report on the conditions in correctional facilities operating within their jurisdiction. Oversight by inspectors general, ombudsmen, legislative committees, or other bodies would work hand-in-hand with regular audits of the Commission’s standards.

Courts provide a crucial role, especially when other modes of oversight fail. Civil court cases can spark reforms reaching far beyond the individual plaintiffs to protect other prisoners. The Commission is convinced that the Prison Litigation Reform Act (PLRA) that Congress enacted in 1996 has compromised the regulatory role of the courts and the ability of incarcerated victims of sexual abuse to seek justice in court. Under the PLRA, prisoners’ claims in court will be dismissed unless they have exhausted all “administrative remedies” available to them within the facility.

In testimony to a House Judiciary Subcommittee, Garrett Cunningham recalled, “At first, I didn’t dare tell anyone about the rape. . . . I would have had to file a first prison grievance within 15 days [to begin the process of exhausting the facility’s administrative remedies]. . . . Even if I had known, during those first 15 days, my only thoughts were about suicide and. . . how to get myself into a safe place. . . so I would not be raped again.” The Commission recommends that Congress amend two aspects of the PLRA for victims of sexual abuse: the requirement that prisoners exhaust all internal administrative remedies before their claims can proceed in court and the requirement to prove physical injury to receive compensatory damages, which fails to take into account the very real emotional and psychological injuries that often follow sexual assault. In the meantime, correctional agencies must deem that victims of sexual abuse have exhausted their administrative remedies within 90 days after the abuse is reported—or within 48 hours in emergency situations—regardless of who reports the incident and when it allegedly occurred.

Corrections administrators need robust mechanisms and systems to monitor their facilities, identify problems, and implement reforms. They must apply that discipline internally and accept it from outside. The very nature of correctional environments demands that the government and the public have multiple ways to watch over correctional settings and intervene when individuals are at risk.

FINDING 5

Many victims cannot safely and easily report sexual abuse, and those who speak out often do so to no avail. Reporting procedures must be improved to instill confidence and protect individuals from retaliation without relying on isolation. Investigations must be thorough and competent. Perpetrators must be held accountable through administrative sanctions and criminal prosecution.

Even when prisoners are willing to report abuse, their accounts are not necessarily taken seriously and communicated to appropriate officials within the facility. “When I told one of the guards I trusted how tired I was of putting up with abuse [by other youth in a Hawaii facility], he told me to just ignore it,” Cyryna Pasion told the Commission. According to a 2007 survey of youth in custody by the Texas State Auditor’s Office, 65 percent of juveniles surveyed thought the grievance system did not work.

Changing that dynamic begins by providing easy ways for individuals to report sexual abuse they have experienced or know about, backed up by clear policies requiring staff and administrators to act on every allegation. Although some correctional systems and individual facilities have made great strides in this area in recent years, the Commission’s standards guarantee that all prisoners can easily report abuse, that staff are required to report abuse, and that reports are taken seriously in every facility across the country. A serious response to every report of sexual abuse is also the best way to handle any false allegations.

Victims and witnesses often are bullied into silence and harmed if they speak out. In a letter to the advocacy organization Just Detention International, one prisoner conveyed a chilling threat she received from the male officer who was abusing her: “Remember if you tell anyone anything, you’ll have to look over your shoulder for the rest of your life.” Efforts to promote reporting must be accompanied by policies and protocols to protect victims and witnesses from retaliation. And because some incarcerated individuals will never be comfortable reporting abuse internally, facilities must give prisoners the option of speaking confidentially with a crisis center or other outside agency.

Facilities have a duty to thoroughly investigate every allegation of sexual abuse without delay and to completion, regardless of whether or not the alleged victim cooperates with investigators. Six years after the passage of PREA, many statewide correctional systems and individual facilities now

We need to create correctional environments in which prisoners feel safe reporting sexual abuse and are confident that their allegations will be investigated.

Many individuals responsible for investigating allegations of sexual abuse lack the training to be effective. Unless investigations produce compelling evidence, corrections administrators cannot impose discipline, prosecutors will not indict, and juries will not convict abusers.

have policies, protocols, and trained staff in place to investigate allegations of sexual abuse. Yet there are still facilities—particularly those that confine juveniles, those under the umbrella of community corrections, and smaller jails—that lag behind in this crucial area. The Commission’s standard establishing the duty to investigate is followed by a detailed standard to ensure the quality of investigations. Unless investigations produce compelling evidence, corrections administrators cannot impose discipline, prosecutors will not indict, and juries will not convict abusers.

In particular, when the sexual abuse has occurred recently and the allegation is rape, facilities must offer female and male victims a forensic exam by a specially trained professional. An evaluation of sexual assault nurse examiner (SANE) programs published in 2003 by the National Institute of Justice found that they improve the quality of forensic evidence and increase the ability of law enforcement to collect information, file charges, and prosecute and convict perpetrators while also providing better emergency health care. Correctional facilities must also implement a protocol that dictates how to collect, maintain, and analyze physical evidence and that stipulates the responsibilities of the forensic examiner and other responders—drawing on “A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents” created by the Department of Justice in 2004 to improve investigations of sexual abuse in the community. To facilitate the implementation of this standard, the Commission recommends that the Department of Justice adapt the protocol specifically for use in correctional facilities nationwide.

The work of investigating sexual abuse in a correctional environment is complex, requiring skill and sensitivity. According to a report published in 2007 by the National Institute of Corrections, many sexual abuse investigators are so unfamiliar with the dynamics inside a correctional facility that they cannot operate effectively. Because the deficits in some jurisdictions are so great, the Commission’s standard in this area requires facilities to ensure that investigators are trained in up-to-date approaches and specifies certain minimum training requirements. And whenever correctional agencies outsource investigations to local law enforcement agencies, they must attempt to forge a memorandum of understanding with the agency specifying its role and responsibilities. Investigators do not work alone; any report of sexual abuse in a correctional facility must also trigger an immediate response from security staff; forensic, medical, and mental health care practitioners; and the head of the facility. To meet the needs of victims while conducting a thorough investigation, these professionals must coordinate their efforts.

No national data have been collected on how often correctional facilities investigate reported abuses, and there is no body of research describing the quality of those investigations. But correctional facilities

substantiate allegations of sexual abuse at very low rates. According to the Bureau of Justice Statistics, facilities substantiated just 17 percent of all allegations of sexual violence, misconduct, and harassment investigated in 2006. In 29 percent of the alleged incidents, investigators concluded that sexual abuse did not occur. But in the majority of allegations (55 percent) investigators could not determine whether or not the abuse occurred. Substantiation rates in some states are considerably lower than the rate nationally. Standards that mandate investigations and improve their quality should increase the proportion of allegations in which the finding is definitive and perpetrators can be held accountable.

Despite that fact that most incidents of sexual abuse constitute a crime in all 50 States and under Federal law, very few perpetrators of sexual abuse in correctional settings are prosecuted. Only a fraction of cases are referred to prosecutors, and the Commission repeatedly heard testimony that prosecutors decline most of these cases. Undoubtedly, some investigations do not produce evidence capable of supporting a successful prosecution. But other dynamics may be at play: some prosecutors may not view incarcerated individuals as members of the community and as deserving of their services as any other victim of crime.

Allegations of sexual abuse must also trigger an internal administrative investigation, and when the allegations are substantiated, the perpetrator must be disciplined. Until more cases are successfully prosecuted, many inmate and staff perpetrators of serious sexual abuse will be subject only to administrative discipline, making sanctions especially important. Individuals conducting administrative investigations must base their conclusions on what the “preponderance of the evidence” shows—a standard less stringent than that required to convict someone of a crime but adequate to protect individuals from being labeled as perpetrators and sanctioned internally without cause.

Sanctions must be fair, consistent, and sufficiently tough to deter abuse. It is crucial that labor and management reach agreements that allow reassigning officers during an investigation when safety is at issue and appropriate sanctions for staff perpetrators. Prisoners should never be punished for sexual contact with staff, even if the encounter was allegedly consensual. The power imbalance between staff and prisoners vitiates the possibility of meaningful consent, and the threat of punishment would deter prisoners from reporting sexual misconduct by staff.

Everyone who engages in sexual abuse in a correctional setting must be held accountable for their actions. There has been too little accountability for too long. The Commission’s standards in these areas encourage incarcerated individuals and staff to report abuse and require correctional facilities to protect those who speak out, conduct effective investigations, and ensure appropriate punishment.

Until more cases are successfully prosecuted, abusers will be subject only to administrative discipline, making it especially important for these sanctions to be fair and sufficiently tough to deter abuse.

FINDING 6

Victims are unlikely to receive the treatment and support known to minimize the trauma of abuse. Correctional facilities need to ensure immediate and ongoing access to medical and mental health care and supportive services.

As corrections administrators work to create a protective environment in the facilities they manage, they also have a legal duty to ensure that when systems fail and abuse occurs, victims have access to appropriate medical and mental health services. Healing from sexual abuse is difficult; without adequate treatment, recovery may never occur.

Although sexual abuse typically leaves few visible scars, most victims report persistent, if not lifelong, mental and physical repercussions. After Sunday Daskalea was abused on multiple occasions by staff and other inmates in the District of Columbia jail, she became crippled by fear and anxiety. She slept only during the day, afraid of what might happen to her at night. Even after being released, Daskalea suffered from insomnia, struggled with eating disorders, and spent months emotionally debilitated, withdrawn and depressed. At age 18, Chance Martin was sexually abused while incarcerated in the Lake County Jail in Crown Point, Indiana. “I’ve abused drugs and alcohol and tried to kill myself on the installment plan,” Martin told the Commission.

The psychological aftereffects of sexual abuse are well documented. They include posttraumatic stress disorder, anxiety disorders, fear of loud noises or sudden movements, panic attacks, and intense flashbacks to the traumatic event. Each of these consequences alone has the ability to re-traumatize victims for years. The trauma can also lead to serious medical conditions, including cardiovascular disease, ulcers, and a weakened immune system. Studies indicate that sexual abuse victims have poorer physical functioning in general and more physical ailments than non-abused individuals, even after controlling for emotional disturbances such as depression. In addition, many victims are physically injured during the course of a sexual assault. A study of incarcerated men showed that more than half of all sexual assaults resulted in physical injury. Moreover, the study found that internal injuries and being knocked unconscious were more common outcomes of sexual abuse than of other violent encounters in prison.

Exposure to HIV and other sexually transmitted infections are other potential consequences of sexual abuse. Michael Blucker tested negative for HIV when he was admitted to the Menard Correctional Center in Illinois, but approximately 1 year later, after being raped multiple times by

The psychological effects of sexual abuse can re-traumatize victims for years following an assault, and studies show that victims have more physical health problems than non-abused individuals.

other prisoners, he tested positive. According to testimony before the Commission, the Centers for Disease Control and Prevention (CDC) lacks data to assess the extent to which sex in correctional facilities, whether rape or consensual, contributes to the high prevalence of HIV in prisons and jails. One CDC study did find that individuals in confinement may contract HIV in a variety of ways, including sexual contact.

Because of the disproportionate representation of minority men and women in correctional settings, it is likely that the spread of these diseases in confinement would have an even greater impact in minority communities. As such, the Commission recommends that Congress provide funding to appropriate entities for research into whether consensual and/or non-consensual sexual activity in the correctional system plays a role in infecting populations outside of corrections with HIV/AIDS and other sexually transmitted infections.

It has been more than three decades since the Supreme Court established in *Estelle v. Gamble* that deliberate indifference to the health of prisoners is a form of cruel and unusual punishment. Since then, correctional agencies have struggled, and sometimes failed with tragic results, to meet the medical and mental health care needs of a large and often ill prisoner population. Correctional health care is underfunded nearly everywhere, and most facilities are in dire need of additional skilled and compassionate health care practitioners. Recently, independent researchers analyzed the Bureau of Justice Statistics' 2002 survey of jail inmates and 2004 survey of State and Federal prisoners and found that many prisoners with persistent problems had never been examined by a health care professional in the facility where they were incarcerated. The failing was much worse in jails than in prisons: 68 percent of jail inmates with medical problems reported never being examined, compared with 14 percent of Federal prisoners and 20 percent of State prisoners.

Given the potentially severe and long-lasting medical and mental health consequences of sexual abuse, facilities must ensure that victims have unimpeded access to emergency treatment and crisis intervention and to ongoing health care for as long as necessary—care that matches what is generally acceptable to medical and mental health care professionals. Because some victims feel pressure to conceal abuse, all health care practitioners must have the training to know when a prisoner's mental or physical health problems might indicate that abuse has occurred.

Health care practitioners working in correctional facilities, like all staff, have a duty to report any indications of sexual abuse and must alert prisoners about their duty before providing treatment. Confidential treatment is not in the best interest of the victim or the safety of the facility. At the same time, they must provide care regardless of whether the victim names the perpetrator. Without such a policy, sexual abuse victims may decide that the risk of retaliation is too great and choose not to seek treatment.

Correctional health care is underfunded nearly everywhere, and most facilities are in dire need of additional skilled and compassionate health care practitioners.

Victims are entitled to treatment whether or not they name the perpetrator of the abuse.

Because some victims will never feel comfortable or safe disclosing their experience of sexual abuse to a corrections employee, agencies must give prisoners information about how to contact victim advocates and other support services in the community—underscoring that their communications will be private and confidential to the extent permitted by law. Collaborations with community-based service providers can also increase the likelihood that victims of sexual abuse are supported as they transition from a correctional facility back to their home communities.

For some victims of sexual abuse, cost may be a barrier to treatment. In the majority of States, legislatures have passed laws authorizing correctional agencies to charge prisoners for medical care—fees as little as \$5 that are beyond the means of many prisoners. Under the Commission’s standards, agencies must provide emergency care to victims of sexual abuse free of charge. Additionally, the Commission encourages correctional systems to define common and persistent aftereffects of sexual abuse as chronic conditions and to exempt them from fees.

Financial barriers to treatment come in other forms, as well. Guidelines for distributing funds provided under the Victims of Crime Act (VOCA) prohibit serving any incarcerated persons, including victims of sexual abuse. Similarly, grants administered under the Violence Against Women Act (VAWA) cannot be used to assist anyone convicted of domestic or dating violence, sexual assault, or stalking. All survivors of sexual abuse need and deserve treatment and support services. The Commission recommends that the VOCA grant guidelines be changed and that Congress amend VAWA.

Unimpeded access to treatment by qualified medical and mental health care practitioners and collaboration with outside providers are critical to ensuring that victims of sexual abuse can begin to heal.

FINDING 7

Juveniles in confinement are much more likely than incarcerated adults to be sexually abused, and they are particularly at risk when confined with adults. To be effective, sexual abuse prevention, investigation, and treatment must be tailored to the developmental capacities and needs of youth.

A daily snapshot of juveniles in custody in 2006 showed that approximately 93,000 youth were confined in juvenile residential facilities in the United States and more than half of them were 16 years or younger. Preventing, detecting, and responding to sexual abuse in

these facilities demands age-appropriate interventions. The Commission's set of standards for juvenile facilities parallels those for adult prisons and jails, with modifications to reflect the developmental capacities and needs of youth.

When the State exercises custodial authority over children, "its responsibility to act in the place of parents (*in loco parentis*) obliges it to take special care." Youth may pass through the justice system once or twice, never to return. Yet if they are sexually abused, they may live with lifelong consequences that can include persistent mental illness and tendencies toward substance abuse and criminality. Juvenile justice agencies thus have a responsibility and a challenge: prevent sexual abuse now, or risk long-term consequences for victims.

Rates of sexual abuse appear to be much higher for confined youth than they are for adult prisoners. According to the Bureau of Justice Statistics (BJS), the rate of sexual abuse in adult facilities, based only on substantiated allegations captured in facility records, was 2.91 per 1,000 incarcerated prisoners in 2006. The parallel rate in juvenile facilities was more than five times greater: 16.8 per 1,000. The actual extent of sexual abuse in residential facilities is still unknown. BJS is currently conducting the first nationally representative survey of confined youth.

Juveniles are ill-equipped to respond to sexual advances by older, more experienced youth or adult caretakers. Based on reports of rampant physical violence and sexual abuse in a juvenile correctional facility in Plainfield, Indiana, the U.S. Department of Justice began investigating conditions of confinement in 2004. Investigators were shocked by the age and size disparity between many of the youth involved. Youth as old as 18 were assaulting or coercing children as young as 12; children weighing as little as 70 pounds were sexually abused by youth outweighing them by 100 pounds.

Simply being female is a risk factor. Girls are disproportionately represented among sexual abuse victims. According to data collected by BJS in 2005–2006, 36 percent of all victims in substantiated incidents of sexual violence were female, even though girls represented only 15 percent of confined youth in 2006. And they are much more at risk of abuse by staff than by their peers. Pervasive misconduct at a residential facility for girls in Chalkville, Alabama, beginning in 1994 and continuing through 2001, led 49 girls to bring charges that male staff had fondled, raped, and sexually harassed them. Abusive behavior is not limited to male staff. In 2005, the Department of Justice found that numerous female staff in an Oklahoma juvenile facility for boys had sexual relations with the youth under their care.

Youth are also vulnerable to sexual victimization while under juvenile justice supervision in the community. Nearly half (48 percent) of the more than 1.1 million youth who received some juvenile court sanction in 2005 were placed under the supervision of State, local, or county probation

Youth who are sexually abused may live with lifelong consequences that can include persistent mental illness and tendencies toward substance abuse and criminality.

Simply being female is a risk factor: girls are over represented among young victims of sexual abuse.

officers or counselors. A 50-year-old man who had served as a youth probation officer for 11 years with the Oregon Youth Authority was convicted of sexually abusing boys in his care, including a 14-year-old mentally disabled boy with attention deficit/hyperactivity disorder. Victims and their families had complained for years about this officer, but officials took no action.

Staff training and supervision are crucial. Staff need to understand the distinctive nature of sexual abuse involving children and teens and its potential consequences. Their responsibilities—including a duty to report any information about abuse—must be clear, and they must be informed that they will be held accountable for their actions and omissions. Administrators must uphold these policies and ensure that every report of abuse is promptly investigated.

Although research has yet to pinpoint the characteristics of youth who are at greatest risk of being victimized or perpetrating sexual abuse in juvenile facilities, many of the factors associated with vulnerability to sexual abuse among adults also appear to place juveniles at risk. In addition to screening all youth, facilities can take a simple step to protect youth from sexual abuse: encourage all residents during intake to tell staff if they fear being abused. This message, combined with affirmative statements about the facility's commitment to safety and zero tolerance of sexual abuse, makes it more likely that vulnerable youth will seek protection when they need it—before an assault occurs. Youth may be segregated only as a last resort and for short periods of time when less restrictive measures are inadequate to keep them safe.

Reducing sexual abuse also requires creating conditions that encourage youth to report abuse. Internal reporting procedures must be simple and secure; victims and witnesses must have unimpeded access to their families, attorneys, or other legal representatives; and facilities must provide parents and lawyers with information about the rights of residents and internal grievance procedures. Because many youth fail to recognize certain coercive and harmful behaviors as “abuse,” juvenile facilities must improve sexual education programs and sexual abuse prevention curricula.

Youth who perpetrate sexual violence in juvenile facilities present a challenge for facility administrators who must apply developmentally appropriate interventions. They may need treatment as much as, or more than, punishment. Studies have shown that youth who commit sexual offenses typically have a history of severe family problems. Correctional medical and mental health practitioners must be trained to recognize the signs of sexual abuse and to provide age-appropriate treatment. And because young victims may lack the confidence to seek help from corrections staff, they must have access to victim advocates in the community to ensure that they are not left without support and treatment.

More than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse.

According to BJS, 7.7 percent of all victims in substantiated incidents of violence perpetrated by prisoners in adult facilities in 2005 were under the age of 18. Data collected by BJS in 2006 show that on any given day, almost 8,500 youth under the age of 18 are confined with adults in prisons and jails. Civil rights attorney Deborah LaBelle told the Commission that 80 percent of the 420 boys sentenced to life without parole in Michigan, Illinois, and Missouri reported that, within the first year of their sentence, they had been sexually assaulted by at least one adult male prisoner. Because of the extreme risk of sexual victimization for youth in adult facilities, the Commission urges that individuals under the age of 18 be held separately from the general population.

The Commission's inquiry into the sexual abuse of youth in juvenile justice and adult corrections has revealed disturbing information about its prevalence, gravity, and consequences. Hope lies in the fact that necessary precautions and remedies are clear and rehabilitation remains a guiding principle in the field of juvenile justice.

FINDING 8

Individuals under correctional supervision in the community, who outnumber prisoners by more than two to one, are at risk of sexual abuse. The nature and consequences of the abuse are no less severe, and it jeopardizes the likelihood of their successful reentry.

By the end of 2007, there were more than 5.1 million adults under correctional supervision in the community, either on probation or parole, and the numbers are growing. They too are at risk of sexual abuse. As both Federal and State governments attempt to reduce incarceration costs in the face of looming deficits, the number of individuals under some form of community supervision—before, after, or in lieu of confinement—is likely to rise. Despite the number of individuals under supervision in the community, there is a lack of research on this population, and responses to PREA have been slow to take root in this area of corrections. The Commission has developed a full set of standards governing community corrections.

Community corrections encompasses a diverse array of agencies, facilities, and supervision structures on the Federal, State, and local levels. Supervision can occur in halfway houses, prerelease centers, treatment facilities, and other residential settings. Nonresidential supervision can include probation, parole, pretrial supervision, court-mandated substance abuse treatment, court diversionary programs, day-reporting centers,

Community corrections agencies, just like prisons and jails, have a special responsibility to protect the individuals they supervise from sexual abuse.

Drawing and maintaining boundaries is a challenge even for community corrections staff with the best intentions, and the autonomous nature of their work makes it easier to conceal sexual misconduct.

community service programs, probation before judgment, furloughs, electronic monitoring, and home detention.

As in other correctional settings, courts have found that sexual abuse in community corrections violates the Eighth Amendment of the U.S. Constitution prohibiting cruel and unusual punishment. As a result, community corrections agencies, like prisons and jails, have a special responsibility to protect the people they supervise. Courts also have determined that the authority staff have over the individuals they monitor makes a truly consensual sexual relationship impossible. Community corrections agencies are accountable for sexual abuse incidents, regardless of whether the circumstances in which the abuse occurred were under the direct control of the agency or a separate organization working under contract with the agency. Anyone in a supervisory position can be held liable for abuse. For example, in *Smith v. Cochran*, Pamela Smith was in jail but participating in a work release program. Her supervisor on the job sexually assaulted her, and the court ruled that important “penological responsibilities” had been delegated to him.

Although individuals under correctional supervision in the community may experience sexual abuse at the hands of other supervisees, the dynamics of supervision make them particularly vulnerable to abuse by staff. Coercion and threats carry great weight because individuals under supervision are typically desperate to avoid being incarcerated. Staff also have virtually unlimited access to the individuals they supervise, sometimes in private and intimate settings. In Ramsey County, Minnesota, for example, a male community corrections officer visiting a former prisoner’s apartment to discuss her failure in a drug treatment program instead requested and had sex with her.

The diverse roles and obligations of staff present risks. They operate as enforcement officers in the interest of public safety and also function as counselors and social workers. Drawing and maintaining boundaries is a challenge even for staff with the best intentions. Moreover, because community corrections staff operate with significantly less direct supervision than their counterparts in secure facilities, it is easier for them to conceal sexual misconduct. Clear policies rooted in an ethic of zero tolerance for sexual abuse coupled with good training can mitigate these dangers by giving staff the direction, knowledge, and skills they need to maintain appropriate relationships with the individuals they supervise. Of course, preventing sexual abuse begins with hiring the right staff.

Although community corrections agencies face significant challenges in preventing abuse, they may have advantages in responding to victims. By definition, community corrections agencies tend to have access to skilled professionals and other resources that are beyond the reach of many secure correctional facilities, especially prisons sited in remote locations. For example, coordinated sexual assault response teams,

widely recognized as an optimal way to respond to incidents of sexual abuse, exist in many communities and may be available to partner with local correctional agencies. Partnerships with victim advocates and counselors in the community also ensure that people under correctional supervision are able to disclose abuse and receive treatment confidentially, if they so choose. Some individuals under supervision will disclose abuse that occurred while they were incarcerated. Agencies must report past abuse to the facilities where the abuse occurred. This is necessary to trigger an investigation and also to improve the accuracy of facility records and provide insights on reasons incarcerated victims of sexual abuse remain silent.

The mission of community corrections is centered on helping offenders establish productive and law-abiding lives. Protecting them from sexual abuse and helping victims recover from past abuses is an essential part of that mission.

FINDING 9

A large and growing number of detained immigrants are at risk of sexual abuse. Their heightened vulnerability and unusual circumstances require special interventions.

Preventing, detecting, and responding to sexual abuse of immigrants in custody require special measures not included in the Commission's standards for correctional facilities. These measures are contained in a set of supplemental standards that apply to any facility that houses individuals detained solely because their right to remain in the United States is in question. The Commission's work in this area advances efforts by U.S. Immigration and Customs Enforcement (ICE) to protect detainees from sexual abuse.

In the 15 years from 1994 to 2009, the number of immigrants held in detention pending a judicial decision about their legal right to remain in the United States increased nearly 400 percent. For the 2009 fiscal year, ICE has budgeted enough money to detain 33,400 people on any given night and more than 400,000 people over the course of the year. The population of immigration detainees includes adults, thousands of "unaccompanied" children, and whole families confined together.

The prevalence of sexual abuse among immigration detainees is unknown and has yet to receive the attention and research it merits, but accounts of abuse by other detainees and staff have been coming to light for more than 20 years. Many factors—personal and circumstantial, alone or in combination—make immigration detainees especially vulnerable to

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The fear of deportation
is a tool in the hands
of abusive officers,
both to coerce sex and
to silence victims.

sexual abuse. One of the most pervasive factors is social isolation. Individuals are often confined far from family or friends and may not speak the language of other detainees or staff. Those who have already suffered terrifying experiences in their home countries or in the United States can be almost defenseless by the time they are detained and may even expect to be abused.

Preventing abuse requires precautions beyond those mandated for other prisoners. In particular, when immigration detainees are confined in ordinary prisons, jails, and lockups—a common practice—they must be housed apart from the general population, but they should not be placed in segregation. Depending on the conditions in protective custody cells and units, the experience can enhance the feeling of aloneness already common among immigration detainees and lead to depression and other problems.

Families who are in ICE custody are currently detained in several facilities in the United States. Stays are not always brief: women with children, including babies and toddlers, may be detained for days, weeks, or even months. In testimony before a congressional subcommittee on immigration, Texas Representative Sheila Jackson noted that families in these facilities often are “deprived of the right to live as a family unit, denied adequate medical and mental health care, and face overly harsh disciplinary tactics.” Facilities face the challenge of protecting residents of all ages from sexual abuse while also preserving family unity. One specific challenge is ensuring that both adults and children can report sexual abuse in a confidential manner, which is especially important for situations in which children are at risk of abuse within the family unit.

Because immigration detainees are confined by the agency with the power to deport them, officers have an astounding degree of leverage—especially when detainees are not well informed of their rights and lack access to legal counsel. The Commission learned that officers have propositioned women whose cases they control, telling them that if they want to be released they need to comply with their sexual demands. The fear of deportation cannot be overstated and also functions to silence many individuals who are sexually abused. Those brave enough to speak out may face retaliation. After women detainees at the Krome immigration detention facility in Miami reported sexual abuse by staff, several of them wrote, “We are afraid. . . each time one of us is interviewed by investigating officers. . . . [S]ome of the women who have given statements have either been transferred or deported to their countries.” Transfers can completely derail the complaint process, which has lasting consequences for victims who may be eligible for a special visa to remain in the United States. When staff cannot protect victims and witnesses in the facility where the abuse occurred, ICE must consider releasing and monitoring them in the community during the course of the investigation.

There also are institutional barriers that block or discourage victims and witnesses from reporting abuse. Grievance procedures can seem impossibly complex, especially for detainees who speak languages other than English or Spanish. A 2006 audit by the U.S. Department of Homeland Security's Office of the Inspector General revealed that detainees often do not receive information on reporting abuse and other grievances in a language they can understand.

Although detainees have periodic contact with immigration judges, those judges have no jurisdiction over the conditions of their detention. Even advocacy groups in the local community may lack the language skills and cultural competency to assist them. Detainees need access to outside entities able and authorized to receive and respond to reports of sexual abuse. Specifically, facilities must provide immigration detainees with access to telephones with free, preprogrammed numbers to ICE's Office for Civil Rights and Civil Liberties and to the Department of Homeland Security's Office of the Inspector General. They also must have access to telephones to contact diplomatic or consular personnel from their countries of citizenship, along with a list of those phone numbers.

Detainees who are victims of sexual abuse also need a lifeline to outside organizations with experience counseling immigrant victims of crime and assurances that their communications with outside advocates are confidential to the extent permitted by law. At the same time, facilities must still ensure that their own staff have the training to respond in culturally appropriate ways to sexual abuse.

Protection for all immigration detainees and services for victims of sexual abuse are not what they should be. And little is known about this fast-growing area of confinement, one in which preventing, detecting, and responding to sexual abuse is especially challenging.

The Commission sunsets 60 days following the submission of its report and standards to Congress, the President, the Attorney General, and other Federal and State officials. The real work of implementation begins then, particularly on the part of the Attorney General and his staff. Within a year of receiving the Commission's report and standards, the Attorney General is required to promulgate national standards for the detection, prevention, reduction, and punishment of detention facility sexual abuse.

The Commission recommends that the Attorney General establish a PREA Advisory Committee pursuant to the Federal Advisory Committee Act of 1972. The purpose of the Advisory Committee is to assist the Attorney General with the promulgation of the PREA standards and thereafter assess their implementation and propose amendments as needed to increase their efficacy. The Commission also recommends that the Attorney

More than other incarcerated victims of sexual abuse, immigration detainees depend on outside entities for help—from consulates to counselors who specialize in assisting immigrant victims of crime.

The Commission has seen ideas transformed into actions that have the potential to improve safety. This is just the beginning.

General create a full-time Special Assistant for PREA within the Office of the Deputy Attorney General. The Special Assistant would have primary responsibility for ensuring the implementation of the standards as central to the national effort of eliminating prison rape.

PREA represents a sea change in public consciousness and in national commitment to protecting individuals under correctional supervision from sexual abuse. Already, the Commission has seen ideas transformed into actions that by all accounts have the potential to improve safety. This is just the beginning. When the Attorney General issues mandatory standards, they will accelerate the pace of reform and ensure that the same fundamental protections are available in every correctional and detention setting. Our obligations, both moral and legal, require nothing less.

PART I

UNDERSTANDING AND PREVENTING SEXUAL ABUSE

A Problem that Must Be Solved

Across the country, corrections officials are confronting the problem of sexual abuse in the facilities they manage. The sexual abuse of prisoners is as old as prisons themselves, but recognition of the duty to protect incarcerated individuals from harm codified in law, human rights documents, and professional standards is a relatively recent development.¹ Historically, prisons and jails were conceived of and used solely as holding places.² Although self-improvement and rehabilitation became a goal in theory, by the end of the 18th century, filthy living conditions, ongoing criminality, and sexual predation prevailed.³ Prominent English prison reformer Elizabeth Gurney Fry wrote in 1813 of guards treating the women’s ward of London’s Newgate Prison like a brothel.⁴ In 1826, in one of the first published mentions of prison rape in the United States, the Reverend Louis Dwight, prison reformer and founder of the Prison Discipline Society of Boston, wrote that “boys [were] prostituted to the lust of old convicts” in institutions from Massachusetts to Georgia.⁵

For more than a century, such protests fell on deaf ears, and the sexual abuse of prisoners remained largely hidden and unexamined.⁶ Most victims were silent, in many cases fearing retaliation and knowing that authorities were unlikely to believe or help them—or even to record their reports. The lack of reliable data made the problem even more opaque and subject to denial.

T.J. Parsell is among countless individuals who were sexually abused in America’s prisons and jails before the problem was widely recognized or well understood. Parsell was 17 in 1978 when he was sentenced to serve 4 years in an adult prison in Michigan for robbing a Fotomat with a toy gun. In testimony before the National Prison Rape Elimination Commission years later, Parsell recalled, “[I] didn’t last 24 hours before an inmate spiked my drink with Thorazine and then ordered me down to his dorm. . . . [They] nearly suffocated me as they shoved my head into a pillow to muffle my screams. . . . One of them grabbed my hair. . . . and pulled my head down while the others took turns sodomizing me. . . . They were unmoved by my crying.”⁷

After the rape, Parsell was “too afraid to come forward, even to see a doctor.”⁸ He told the Commission he felt the assailants “had stolen my manhood, my identity, and part of my soul.” This was only the beginning of continued violent abuse. “Being gang raped in prison has scarred me in ways that can’t be seen or imagined. . . . I’ve undergone years of therapy to get where I am, but I still don’t sleep well at night. I start up at the slightest noise. And as a gay man, I blamed myself for many years. You’re degraded so much in there that after a while you start to believe it.”

Once stories like Parsell’s began to surface, they came in waves. Incarcerated men, women, and youth who had suffered sexual abuse by other incarcerated individuals or corrections staff began talking about their experiences. Their accounts prompted research, legal challenges, advocacy, development of human rights frameworks addressing custodial rape, creation of new protocols and prevention efforts by corrections administrators and staff, and new legislation that in combination increasingly shed light on the pervasiveness and nature of the problem. We now know that sexual abuse while incarcerated has devastating effects on prisoners and serious repercussions for their families, correctional facilities, and the public at large.⁹ We also know that some prisoners are more at

“Being gang raped in prison has scarred me in ways that can’t be seen or imagined. . . . I’ve undergone years of therapy to get where I am, but I still don’t sleep well at night. I start up at the slightest noise. And as a gay man, I blamed myself for many years. You’re degraded so much in there that after a while you start to believe it.”

risk of being sexually abused than others. Being young and incarcerated for the first time—like Parsell when he entered prison—puts a person at higher risk of victimization. So does being gay. And there are other risk factors. Screening and classification systems, when used

consistently, can help identify vulnerable individuals so that facilities can plan housing and services to lessen the risk of sexual abuse. These systems need refinement, along with many other practices that reduce sexual abuse in correctional facilities. Solutions are being designed and implemented, although much work remains to be done.

Passage of the Prison Rape Elimination Act of 2003 ushered in a new era of rigorous national data collection and analysis to add to our knowledge of the nature and scope of the problem.¹⁰ Estimates of the annual incidence rates of sexual abuse in America’s prisons, jails, and residential juvenile facilities are now available to complement more focused and in-depth studies of specific facilities or systems.¹¹ The data may not capture the full extent of the problem, but they confirm its scale and the urgent need for reform.

Duty to Protect

The Eighth Amendment of the U.S. Constitution forbids cruel and unusual punishment—a ban that requires corrections staff to protect incarcerated individuals from sexual abuse whenever the threat is known.¹² Facilities that fail to implement adequate protective measures risk exposure to civil lawsuits from current and former prisoners and the U.S. Department of Justice. However, this was not always the case. Historically, incarcerated individuals found courts unwilling to intercede on their behalf. In 1809, for example, a court rejected a habeas corpus petition on the grounds that it was not appropriate “to interfere with the jailer in the exercise of the discretion vested in him, as to the security of prisoners.”¹³ In the majority of decisions through the mid-20th century, judges agreed that it was not their function to supervise the discipline and treatment of incarcerated individuals.¹⁴ The Supreme Court ended this hands-off approach with its 1974 decision in *Wolff v. McDonnell*, in which the Court stated: “There is no iron curtain drawn between the Constitution and the prisons of this country.”¹⁵

In the wake of *Wolff v. McDonnell*, certain aspects of prisoner rights have become clear. For example, in the 1994 case *Farmer v. Brennan*, a transgender woman alleged that corrections officials failed to protect her from repeated sexual assaults. The Supreme Court ruled unanimously that deliberate indifference to the substantial risk of sexual abuse violates incarcerated individuals’ rights under the Eighth

“There is no iron curtain drawn between the Constitution and the prisons of this country.”

Amendment and that courts have an active, supervisory role in ensuring prisoners’ safety. The court made clear that officials have a duty to protect prisoners because, “having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course.”¹⁶ Furthermore, being violently assaulted in a correctional facility is simply “not part of the penalty that criminal offenders pay for their offenses against society.”¹⁷

Jurisdictions cannot use insufficient funding as an excuse for failing to ensure the constitutional rights of incarcerated individuals. The Federal courts have long rejected such arguments.¹⁸ Regardless of funding, States and the Federal Government must provide minimum conditions of confinement to incarcerated persons to avoid the Constitution’s prohibition against cruel and unusual punishment.¹⁹

With these decisions, courts have underscored their crucial role in protecting the rights of incarcerated individuals. The Supreme Court specifically emphasized the need for judicial oversight, noting that “judicial intervention is *indispensable* if constitutional dictates—not to

Regardless of funding, States and the Federal Government must provide minimum conditions of confinement to incarcerated persons to avoid the Constitution’s prohibition against cruel and unusual punishment.

mention considerations of basic humanity—are to be observed in the prisons.”²⁰ Courts will intervene in instances in which facilities tolerate unconstitutional conditions. In discussing

this oversight function, the Seventh Circuit observed that “[j]udges are not wardens, but we must act as wardens to the limited extent that unconstitutional prison conditions force us to intervene when those responsible for the conditions have failed to act.”²¹

Against the Law

After conviction for a drug offense, Marilyn Shirley was placed in a Federal facility in Fort Worth, Texas, for women in need of specialized medical and mental health services.²² One night in March 2000, a senior prison official, who was the only officer on duty at the time, awakened Shirley. He ordered her from her room and took her to the officers’ station. There, he made a call asking for a signal if the supervisor approached the camp. After he hung up the phone, he began kissing and groping Shirley and pushed her into a supply room. “The more that I begged and pleaded for him to stop, the more violent he became,” she told the Commission.²³ “He tried to force me to perform oral sex on him.” As she resisted, he became increasingly brutal, throwing her against the wall and slamming her head against it repeatedly. He then violently raped her, all the while warning that if she ever talked about it, no one would believe her.

The assault ended only when the officer received a signal over the radio that someone was approaching. After the attack, he continued to harass and threaten her. In her testimony, she recounted, “[I] stayed silent for 7 months, having nowhere to hide. I went to sleep every night not knowing if [he] was going to order me out [to] the officer’s station again.”²⁴ She was terrified about what would happen if she reported the assault, only informing the camp administrator on the day of her release months later.

Years after she was raped, Marilyn Shirley still experienced paralyzing panic attacks and intense nightmares. Fear continued to dominate her life, and she took five different medications to treat her conditions. “I see his face everywhere. Every day I relive this rape,” she told the Commission.²⁵

Incarcerated women have always been vulnerable to sexual coercion and abuse.²⁶ For example, in the mid-1800s, the Indiana State Prison ran a “prostitution service” for male guards using female prisoners.²⁷ Efforts to protect and better serve female prisoners began with a movement in the early 1800s to create separate prisons for women. It wasn’t until 1834 that prisons began to house women separately, and it took

another four decades, until 1873, before the first women's facility was constructed and staffed entirely by women.²⁸ Same-sex staff for women remained the norm until the latter half of the 20th century, when women successfully challenged their exclusion from staff positions in men's prisons.²⁹ This in turn created opportunities for men to once again enter women's institutions as workers.³⁰ Cross-gender supervision remains a concern in women's prisons and has become a concern in facilities for men as well, as female staff make up an increasingly large proportion of the workforce.³¹

The officer who attacked Shirley was ultimately convicted and sentenced to 12-and-a-half years in prison. However, many incidences of sexual abuse by staff or prisoners are never prosecuted. For most of this Nation's history, no criminal laws specifically prohibited corrections staff from sexually abusing incarcerated individuals.³² Even as late as 1990, the majority of States and the Federal Government did not have such laws.³³ Today in all 50 States, it is a crime for facility staff to engage in any sexual conduct with individuals in custody; similarly, laws prohibit such conduct among staff working for the Federal Bureau of Prisons.³⁴ These laws are essential, but unfortunately, not all explicitly cover staff working in halfway houses and other community-based correctional settings. As of January 2008, eight States did not have laws covering sexual abuse in community corrections.

Successfully prosecuting these cases remains difficult, and sentences tend to be lenient compared to penalties for sexual abuse committed in other settings.³⁵ In three States, sex with a prisoner is still a misdemeanor, not a felony, for corrections staff.³⁶ Prisoners who commit sexual offenses are rarely prosecuted.³⁷ More often they receive administrative sanctions, such as increased custody status or loss of parole.

“The more that I begged and pleaded for him to stop, the more violent he became,” Marilyn Shirley told the Commission. “He tried to force me to perform oral sex on him.” As she resisted, the prison official became increasingly brutal, throwing her against the wall and slamming her head against it repeatedly. He then violently raped her, all the while warning that if she ever talked about it, no one would believe her.

Beginning to Count

How common is sexual abuse in American correctional settings? Historical accounts describe sexual abuse as a feature of incarceration from the beginning, but our knowledge about the prevalence of these incidents, even today, is extremely limited.³⁸ Only anecdotal reports of sexual abuse existed until the mid-20th century, when Alan Davis conducted his groundbreaking study of sexual abuse in

the Philadelphia jail system.³⁹ Released in 1968 and based on in-person interviews with more than 3,300 prisoners and 562 staff members during a 2-year period, this comprehensive study estimated that at least 3 percent of the 60,000 individuals in Philadelphia jails were sexually victimized annually, which translates into at least 2,000 incidents of sexual abuse in 12 months. Two-thirds of the reported incidents were completed rapes. Young, slightly built prisoners seemed to be at extreme risk. Davis was careful to point out that the actual prevalence was probably much higher because many victims were reluctant to report their experiences.

Most subsequent studies have yielded considerably higher prevalence rates, depending on the target population and the amount of time assessed. A 1982 study in a medium-security men’s facility in California, which housed individuals at high risk of abuse in single cells (gay men, mentally ill prisoners, and other high-risk prisoners), found that 14 percent of randomly selected prisoners reported through an anonymous questionnaire that they had been sexually victimized.⁴⁰ Rates for gay prisoners (41 percent) were much higher than rates for heterosexual prisoners in the facility (9 percent). A 1996 study, also using anonymous questionnaires, surveyed prisoners and

Only anecdotal reports of sexual abuse existed until the mid-20th century, when Alan Davis conducted his groundbreaking study of sexual abuse in the Philadelphia jail system.

staff in the State prison system in Nebraska.⁴¹ Of the 528 men and women prisoners who returned completed surveys, 20 percent reported being pressured or forced to have sexual contact

at least once while incarcerated in a Nebraska State facility. In facilities for men, the incident rate was 22 percent. Prisoners reported that staff were the perpetrators in 18 percent of the incidents. The 264 corrections staff responding to the survey estimated a sexual abuse rate of 15 percent in the State’s prison system.

To date, most of the research on prevalence has focused on incarcerated men; only a few studies have assessed rates among incarcerated women. One such study, conducted in 2002, investigated rates of sexual abuse at three Midwestern prisons for women, each housing maximum-, medium-, and minimum-security prisoners.⁴² The researchers asked women about experiences of sexual abuse during the entire time they had been incarcerated in that facility. The rate of sexual abuse in one facility—described as a “rough prison”—was 19 percent.⁴³ Many respondents in this facility “cited problems with inadequate surveillance, predatory staff, non-caring and unresponsive staff, and policies that protected rather than punished staff and inmate sexual predators.” Two other facilities had rates of 6 and 8 percent. A little more than half of the reported perpetrators were staff. Only about one-third of the victims reported the incidents to prison officials. Victims who did not report explained that they feared retaliation and that no one would believe them.

More recently, a study conducted from March 2005 to June 2006 of 436 women in a large southern prison found that 17 percent reported experiencing some type of sexual victimization while incarcerated, ranging from penetration, attempted penetration, and sexual touching to sexual abuse without physical contact; 3 percent reported completed rape.⁴⁴

Understanding the Numbers

Different estimates of prevalence are partly the result of researchers using different definitions of sexual abuse.⁴⁵ Some studies count only completed acts of nonconsensual sex that involve penetration; others include a wider range of acts, including coercion or sexual pressure, sexualized touching, voyeurism, and exposure.⁴⁶ The methods researchers use to estimate the prevalence of sexual abuse incidents also have a major impact on their findings.⁴⁷ Many studies of sexual abuse in prison involve interviews with individual prisoners. Because sexual abuse is a sensitive topic for women and men, and the stigma associated with being a victim is real, individuals may hesitate to report incidents and details in a face-to-face interview.⁴⁸ Men may be especially reluctant to report sex with other men, even when it involves forced sex, for fear they will appear weak and helpless; heterosexual men in particular may be concerned about being perceived as gay.⁴⁹

Having prisoners report anonymously on survey forms about sexual abuse addresses some of these concerns, but using written forms has drawbacks as well.⁵⁰ Literacy rates are often lower among incarcerated persons; some respondents may refuse to participate because they cannot read the survey.⁵¹ Requesting help to fill out a written survey negates the privacy of the information, again leading to reluctance to report sexual abuse.⁵² And many prisoners find it hard to trust promises of confidentiality and anonymity in an environment characterized by a lack of privacy and loss of control.

Recent research studies have begun to take advantage of evolving technology, using laptop computers with touch screens and an accompanying recorded narration to guide people through surveys.⁵³ This method mitigates concerns about reading level and privacy. Respondents still must believe strangers' assurances of confidentiality, however, so the likelihood of underreporting remains.

Although underreporting may be a large source of the problem, the Commission recognizes that false allegations may also create inaccuracies in prevalence levels.⁵⁴ Prisoners have been known to fabricate accounts of sexual abuse as a means to achieve some other purpose, such as a change in housing or to manipulate other prisoners or staff. The Bureau of Justice Statistics (BJS) and other researchers design surveys to ask questions

of prisoners in several different ways, and they also use analytic tools to assess data for false reports. Moreover, because an anonymous survey captures neither the identity of the reporter nor the accused, there would appear to be little motivation to fabricate accounts in this context, except perhaps to damage the overall reputation of the correctional facility. The extent to which empirical studies of sexual abuse among prisoners unwittingly capture some number of false reports deserves further research.

The First National Incidence Rates

In the Prison Rape Elimination Act, Congress stated that existing data about sexual abuse in correctional facilities was not sufficient to understand the scope of the problem and respond appropriately.⁵⁵ In particular, the Act called for new research to provide national incidence rates.⁵⁶ Congress tasked the Bureau of Justice Statistics (BJS) with collecting and reporting those data. BJS launched a groundbreaking effort to discover how many prisoners each year are victims of sexual abuse by other prisoners and by staff as well as the nature of that abuse.

In 2007, BJS surveyed incarcerated men and women in a random sample of 146 State and Federal prisons and 282 local jails across the United States, using audio computer-assisted self-interviews. A total of 63,817 incarcerated individuals completed surveys that formed the basis of the study: 23,398 in State and Federal prisons and 40,419 in local jails. Respondents in prison were asked about incidents of sexual abuse during the 12 months prior to the interview; those who had been incarcerated at that facility for less than 12 months were asked about their experiences since arriving. The average time of incarceration among respondents in prison was 8.5 months. Respondents in jails were asked about sexual abuse incidents during the 6 months prior to the interview or since admission if they had been confined in that facility for less than 6 months. The average time of incarceration among respondents in jail was 2.6 months. All respondents used a touch screen to respond to a questionnaire accompanied by audio instructions delivered through headphones.⁵⁷

The national scope of these surveys yields the most comprehensive snapshot of sexual abuse in prisons and jails yet available. The data confirm that sexual abuse of prisoners is widespread, with great variation in rates of abuse across facilities, and reveal the presence of force, coercion, and physical injury to incarcerated victims.

In prisons in 2007, 4.5 percent of respondents reported experiencing sexual abuse one or more times during the 12 months preceding the survey.⁵⁸ Extrapolated to the national prison population, an estimated 60,500 State and Federal prisoners were sexually abused during that 12-month period. Ten of the facilities in the sample had comparatively high prevalence rates,

between 9.3 percent and 15.7 percent. At the other extreme, in six of the facilities sampled, no respondents reported having been sexually abused during this time frame. About 2 percent of all respondents reported incidents in which the perpetrator was another prisoner; 2.9 percent reported incidents perpetrated by corrections staff. (Some respondents had been abused by both staff and other prisoners.) In cases involving staff, a majority of the victims reported sexual activity beyond being touched in a sexual way.

In jails, 3.2 percent of respondents reported that they had been sexually abused at least once during the prior 6 months or since they had been in that facility. Among those surveyed, 1.6 percent reported abuse by another inmate, and 2 percent reported incidents perpetrated by staff.⁵⁹ Published reports on the survey of jail inmates include more detailed information than reports on the survey of State and Federal prisoners.

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In jails, sexual abuse perpetrated by other inmates typically occurred in victims' cells or rooms, whereas incidents involving staff as perpetrators were most likely to occur in unobserved areas, such as closets, offices, or locked rooms. Approximately 20 percent of all victims said that they had been physically injured during the course of the abuse; most of those (85 percent) reported sustaining at least one serious injury. Women were more likely than men to be sexually victimized (5 percent compared with 3 percent). Rates were higher among younger inmates: 4.6 percent among respondents 18 to 24 years old, compared with 2.4 percent among respondents 25 years and older. Nearly a fifth (18.5 percent) of inmates who identified as homosexual and 9.8 percent who identified as bisexual or "other orientation" reported being sexually victimized, compared with 2.7 percent of heterosexual inmates.

Until recently, what we knew about prevalence rates among incarcerated youth came mainly from facility records of investigated and substantiated allegations of sexual abuse. These records do not reflect incidents that were never reported, those for which an investigation was never conducted even if a report was made, and those for which there was not enough evidence to substantiate a claim. When allegations of sexual abuse are reported to corrections staff and recorded, those allegations, as well as the official responses, become a part of the facility's administrative records. Substantiated incidents are those for which an investigation was conducted and a finding of sexual abuse recorded. Reporting and record-keeping policies vary greatly across facilities. For example, some facilities record and maintain all allegations of abuse, whereas others only keep data on incidents in which officials substantiated the allegations.

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Based on administrative records, youth are at especially high risk of sexual abuse, whether they are confined with other youth or incarcerated with adults. As reported by correctional facilities to BJS, the rate of sexual abuse in adult facilities—based only on allegations reported to correctional authorities and recorded in administrative records—was 2.91 per 1,000 incarcerated prisoners in 2006, across those facilities responding.⁶⁰ In contrast, the rate in residential juvenile facilities—also reported by BJS and based on administrative records—was more than five times greater: 16.8 per 1,000 in 2006.⁶¹ Some of this difference may be due to laws that mandate adult caregivers to report child abuse and laws specifying that all sexual contacts with youth under a certain age are nonconsensual.⁶² Boys were the victims in nearly two-thirds of substantiated incidents, but girls were overrepresented. Thirty-six percent of all victims in substantiated incidents across the facilities responding were girls, even though girls represented only 15 percent of youth in residential placement in 2006.⁶³

Youth confined with adults also are at high risk of sexual abuse. In 2005, for example, individuals under the age of 18 made up less than 1 percent of all inmates in U.S. jails.⁶⁴ Yet 21 percent of all victims of substantiated incidents of sexual abuse involving jail inmates that year were under the age of 18.⁶⁵

At the time of this report, BJS is conducting the first nationally representative survey of sexual abuse among adjudicated youth in residential juvenile facilities. In a pilot study to prepare for the national survey, BJS interviewed 645 youth in nine facilities. Almost all the youth surveyed were male (90 percent) and 15 years or older (91 percent). The facilities housed youth with fairly serious histories: more than a quarter of the youth interviewed had been adjudicated for perpetrating a sexual assault, compared to less than 10 percent of youth in residential placement nationally. Facilities volunteered to participate in the pilot and were selected based on convenience.

In this study, nearly one out of every five youth surveyed—19.7 percent—reported at least one nonconsensual sexual contact during the preceding 12 months or since they had arrived at the facility if they had been there less than 12 months.⁶⁶ Nonconsensual experiences included sex in return for offers of favors or protection (8.7 percent), sex due to pressure or force other than physical force (8.8 percent), and sex with physical force or the threat of physical force (6.4 percent).

Any sexual contact with staff was considered to be nonconsensual and is therefore included in the 19.7 percent. Sexual contact with other youth reported as consensual is not included. Staff were just as likely as youth to be the perpetrators of nonconsensual sexual abuse. Notably, 7.8 percent of all youth interviewed reported sexual contacts with staff that involved physical

force or the threat of force; some other type of force or pressure; or sex in return for money, protection, favors, or other kinds of special treatment.⁶⁷

In addition to directly surveying individuals confined in adult and juvenile facilities annually, BJS will continue to collect and review administrative records. Although administrative records can only hint at the actual rates of sexual abuse—at least for now—they have important information to convey. There is evidence, for example, of a 21 percent increase in allegations of sexual abuse comparing administrative records from 2003 (when Congress passed PREA) and 2006.⁶⁸ Rather than signaling an increase in actual abuse, the rise may indicate that prisoners are more confident reporting sexual abuse when it does occur, that facilities are keeping better records, or both.

Regular review of administrative records nationally can illuminate who reports abuse, characteristics of perpetrators in these cases, circumstances surrounding reported incidents, and how facilities respond to reports of sexual abuse—in particular, what disciplinary or legal sanctions facilities impose on perpetrators and what treatment is provided to victims.⁶⁹ In the future, BJS also will examine whether certain characteristics of facilities, such as size, security level, crowding, staff ratios, staff demographics, and assaults on staff, are associated with higher rates of sexual abuse.⁷⁰

The research by BJS, especially the surveys of incarcerated individuals, offers perhaps the most convincing data so far that some level of sexual abuse is a reality in the vast majority of America's prisons and jails. Important and uninvestigated areas remain: lockups, community corrections settings, detention centers for immigrants, tribal detention facilities operated by the Bureau of Indian Affairs, and those run by the military. The prevalence and scope of sexual abuse in these arenas are virtually unknown.

Facing the Numbers

Even conservative estimates of rates of sexual abuse translate into high numbers of victims each year in America's vast correctional system.⁷¹ In just two decades—between 1987 and 2007—America's incarcerated population nearly tripled. At the end of 2007, the daily population of U.S. prisons, jails, and juvenile facilities totaled approximately 2.4 million people.⁷² That figure only hints at the millions of people who cycle through these facilities over the course of a year. And it does not count individuals in pretrial detention, on probation, on parole, or under some other form of correctional supervision in the community.⁷³ By the end of 2007, there were more than 5.1 million adults on probation or parole—about one in every 45 adults in the United States.⁷⁴ Seventy percent of the adult corrections population is under community corrections supervision, and the numbers are growing.⁷⁵

Dramatic increases in the prisoner population over the past 20 years are due more to legislative changes than to increases in crime rates.⁷⁶ The “war on drugs” that began in the 1980s and continued over the last two decades resulted in new policies requiring incarceration for drug-related offenses that previously involved primarily probation or diversion. Coupled with mandatory-minimum

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sentences, many more people were incarcerated and for longer periods of time. The “three-strikes” laws, introduced in 1993, mandated sentences from 15 years to life in prison for persons convicted of three

crimes.⁷⁷ As of 2008, nearly half of the States had some form of a “three-strikes” law, although the criteria for applying the law vary across jurisdictions.⁷⁸ In some jurisdictions, all three crimes must be felonies or violent felonies for the three strikes to count. Other jurisdictions include minor crimes, even misdemeanors, in the calculation, adding to the rapid growth in incarceration.

Along with the rapidly increasing number of people incarcerated, the demographics of those individuals have changed in ways that have flooded facilities with individuals who are especially vulnerable to sexual abuse. The number of incarcerated adult women increased by 757 percent from 1977 to 2007.⁷⁹ Legislative changes in 45 States since 1992 also made it easier to incarcerate juveniles with adults.⁸⁰ Between 1990 and 2004, the number of juveniles sentenced to adult jails and prisons increased 208 percent; some jurisdictions incarcerate youth under the age of 16 with adults.⁸¹ The types of crimes for which people are incarcerated have changed as well; more than half of all newly incarcerated individuals between 1985 and 2000 were imprisoned for nonviolent drug or property offenses.⁸²

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Hard to Heal

Although sexual abuse typically leaves few visible scars, most victims report persistent, if not lifelong, mental and physical repercussions. Sexual abuse experienced in any environment commonly invokes shock, numbness, withdrawal, and denial.⁸⁴ Almost all victims of an invasive or violent sexual assault develop some symptoms of posttraumatic stress disorder (PTSD) in the weeks after the

attack.⁸⁵ These include numbing, intrusive thoughts, nightmares, insomnia, flashbacks during which the victim vividly re-experiences the event, outbursts of anger or irritability, and panic attacks.⁸⁶ For some victims, PTSD symptoms resolve several months after the incident; for others, PTSD becomes chronic. Victims with long-term PTSD are more likely to develop other mental health problems as well.⁸⁷

Victims of sexual abuse often struggle with long-lasting effects, including anxiety, a sense of alienation and isolation, mistrust of others, hostility, depression, and helplessness.⁸⁸ Thoughts of suicide are common. In non-correctional settings, one-third to one-half of rape victims consider suicide; between 17 and 19 percent actually attempt suicide.⁸⁹

The closed nature of correctional facilities can lead to especially devastating effects for sexual abuse victims. In confinement, victims cannot hide from or escape their perpetrators; they are trapped with their assailant unless corrections officials intervene.⁹⁰ The constant threat of subsequent abuse and physical proximity to danger are likely to increase the risk of developing PTSD and

other aftereffects.⁹¹ The consequences of sexual abuse may be worse for those who are young, have a past history of sexual abuse, or have a preexisting

mental illness.⁹² Victims cannot easily avail themselves of support networks and resources available outside prison walls, and truly confidential counseling in corrections is virtually nonexistent. These conditions exacerbate post-trauma responses and may prevent healing and recovery. In her testimony before the Commission, Necole Brown described her symptoms after repeated sexual victimization while in prison: “I continue to contend with flashbacks of what this correctional officer did to me and the guilt, shame, and rage that comes with having been sexually violated for so many years. I felt lost for a very long time, struggling with this. . . . I still struggle with memories of this ordeal and take it out on friends and family who are trying to be there for me now.”⁹³

For some victims, the trauma of sexual abuse has physical manifestations. Sexual assault is strongly associated with chronic medical conditions, such as insomnia, fatigue, chronic pain, nausea, ulcers, and disturbed sleeping and eating patterns.⁹⁴ Almost all victims of forced penetration also experience some type of physical injury, such as soreness, bruising, bleeding, or lacerations.⁹⁵ Some victims are brutally attacked and sustain severe physical injuries, including concussions, broken bones, and deep lacerations. The physical brutality may be even more extreme when there are multiple perpetrators working together.⁹⁶ Exposure to the HIV virus and other sexually transmitted diseases is another potential consequence of sexual abuse, one that may not be evident immediately

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following an assault. Testimony from prison rape survivors who became HIV-positive after being raped illustrates the potential lifelong repercussions of being sexually victimized while incarcerated.⁹⁷

In 1994, Keith DeBlasio was sentenced to 5 years in a minimum-security Federal prison for fraud.⁹⁸ He was later transferred to a high-security facility in Milan, Michigan, and placed in a dormitory with about

150 inmates, dozens of blind spots, and only one officer on duty at any given time. “It was here,” DeBlasio testified “that I was sexually assaulted by the same assailant more times than I can even count.”⁹⁹ The

An officer at the Tucker Women’s Unit in Arkansas raped Laura Berry in 1993. When she informed the officer that she thought she might be pregnant, he forced her to drink quinine and turpentine in an attempt to cause an abortion.

sexual abuse began when the assailant moved into DeBlasio’s dormitory after spending 3 days in segregation for “brutally assaulting another inmate in a stairwell. . . . There were numerous assaults and a long period of ongoing abuse, especially after prison officials moved my assailant into the same cubicle with me as my bunk mate. I couldn’t defend myself because he had fellow gang members standing watch.”

Eventually, DeBlasio became ill. After repeated requests to medical staff for an HIV test, he was tested and diagnosed as HIV-positive.¹⁰⁰ DeBlasio testified that he later learned that “prison officials knew the assailant was emotionally disturbed, on psychotropic medications, a repeat predator with serious mental problems, and yet they did nothing to protect me. . . . I was a nonviolent offender, but I was given a life sentence. I was repeatedly denied protection from a known predator with HIV.”

Sexual assaults by men against women prisoners also carry the risk of pregnancy, another long-term consequence that may not be detected until weeks or months after the assault.¹⁰¹ Fear of retaliation, threats from the perpetrator, and fear of punishment may keep incarcerated women victims from seeking pregnancy testing or medical care once they realize that they are pregnant. The case of *Berry v. Oswalt* highlights these risks.¹⁰² An officer at the Tucker Women’s Unit in Arkansas raped Laura Berry in 1993. When she informed the officer that she thought she might be pregnant, he forced her to drink quinine and turpentine in an attempt to cause an abortion. When the threat of pregnancy persisted, the officer told Berry to conceal the pregnancy and blame someone else if questioned. The court awarded Berry \$80,000 in compensation for the assault and subsequent abuse she endured.

Far-Reaching Consequences

Sexual abuse damages individual prisoners, often in lasting ways, but the harm does not end there. U.S. correctional facilities release millions of people every year.¹⁰³ Individuals suffering from the psychological and physical effects of sexual abuse carry those effects home with them. Many victims require ongoing medical and mental health care, increasing the burden on already struggling public health care systems.¹⁰⁴ Individuals dealing with the consequences of sexual abuse may find it difficult to reintegrate into society, relate to their families, and rebuild their lives. Some self-medicate with alcohol and drugs to escape emotional or physical suffering.¹⁰⁵ Some turn back to crime, become homeless, or reenter the criminal justice system.¹⁰⁶

Taxpayers bear much of the cost associated with the thousands of sexual assaults in corrections, as illustrated by the testimony of Tom Cahill, an Air Force veteran. Cahill told the Commission about his arrest and subsequent detention for civil disobedience during a labor strike at a factory in 1967. As he entered a crowded holding cell in a San Antonio jail, one prisoner yelled, “fresh meat!”¹⁰⁷ After lights out, “Six or seven men beat me and raped [me] while another two dozen just looked away. I remember being bounced off the walls and the floor and a bunk. . . . [I]t went on and on and on. . . . [O]ne of my cellmates told me later that the guards lied and told them I was a child molester. . . . After I was released from jail, I tried to live a normal life, but the rape haunted me. . . . I was diagnosed with post-traumatic stress disorder.”

Cahill estimates that “that one day I spent in jail has cost the Government and the taxpayers at least \$300,000,” explaining, “I’ve been hospitalized more times than I can count and I didn’t pay for those hospitalizations, the tax payers paid. My career as a journalist and photographer was completely derailed. . . . For the past two decades, I’ve received a non-service connected security pension from the Veterans’ Administration at the cost of about \$200,000 in connection with the only major trauma I’ve ever suffered, the rape.”¹⁰⁸

Sexual abuse of prisoners also places great strains on correctional facilities. As Congress stressed in its PREA findings, sexual abuse in correctional settings “increases the costs incurred by Federal, State, and local jurisdictions to administer. . . prison systems.”¹⁰⁹ These costs, affecting operations ranging from health care to housing, are extremely hard to quantify.¹¹⁰ For example, victims suffering from the

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effects of sexual abuse may repeatedly seek counseling or medical care, or break rules in an attempt to escape a perpetrator, whether or not they disclose the abuse. Although the dollar amounts may be elusive, the impact is clear: facilities rife with sexual abuse cannot function effectively.

The sexual abuse of prisoners undermines the very purpose of corrections in America. It is an offense against the victim, an affront to the interests and values of civil society, and a violation of the highest order of American legal jurisprudence, which forbids the “unnecessary and wanton infliction of pain” upon prisoners by corrections officials or by other prisoners.¹¹¹

Answering the Call

Protecting prisoners from sexual abuse is, without a doubt, an enormously daunting challenge for all involved. The reasons are many and are discussed throughout this report. They include gaps in understanding of the problem due to underreporting and a lack of research, insufficient resources for responses to sexual abuse, the challenges of training a vast workforce and enhancing safety in outdated facilities, intricacies of dealing with vulnerable populations, and many more. Despite these complicated factors, a growing and diverse group of individuals, governmental entities, and nongovernmental organizations have worked to answer the call, coming together to confront powerfully this once hidden and unexamined problem.

Prior to PREA, there was no national understanding of the scope of the problem, nor were there coordinated efforts to address it. Yet promising work was taking place,

The landscape is changing. Reporting hotlines and zero-tolerance posters are becoming commonplace. Some agencies and facilities have revolutionized their responses to sexual abuse, instituting sexual assault response teams and organizing in-house multidisciplinary committees to address PREA.

paving the way for subsequent PREA efforts. Beginning in the 1990s, civil rights litigation drew the attention of the corrections field and the public to the issue of staff sexual misconduct.¹¹² In response, organizations and individuals began to acknowledge and address

the problem. In 1996, the National Institute of Corrections (NIC) began providing technical assistance and training across the Nation, helping correctional systems focus on effective management to stop staff sexual misconduct, rather than reactive, crisis-driven policymaking.¹¹³ In the years leading up to and just after PREA, well-respected professional organizations—the American Correctional Association, the American Jail Association, the American Probation and Parole Association, the Association of

State Correctional Administrators, and the National Sheriffs' Association—adopted resolutions strongly condemning staff sexual misconduct.¹¹⁴

Human rights, faith-based, and prison rape advocacy organizations raised their voices condemning sexual abuse in confinement, creating the consensus necessary to pass national legislation.¹¹⁵ PREA's goal is zero tolerance for sexual abuse in correctional settings. The Act proposes to accomplish this through a number of tools, including data collection, research, grants and technical assistance to States to improve their practices, development of national standards, and the reduction of funding to States that fail to comply with the standards.¹¹⁶ PREA's passage underscores the scope and gravity of the problem—confirmed by the best and most recent data—and signals that Congress is committed to ending sexual abuse in American corrections.¹¹⁷

Already, much work has been done in the wake of PREA. BJS has conducted groundbreaking surveys and published other research findings on the nature and scope of the problem. NIC continues to provide technical assistance and training around the country—every State has received assistance in this area. The National Institute of Justice has funded research on issues surrounding sexual abuse in correctional facilities that promises to deepen our understanding of the best ways to prevent sexual abuse and respond to victims and perpetrators when prevention fails. Professional organizations, including those already mentioned and the International Community Corrections Association, have led significant PREA initiatives, workshops, and trainings. And the Bureau of Justice Assistance has distributed grants to 34 States and one territory, funding that has been used in a variety of innovative ways. The Commission recommends that these important Federal initiatives continue.

In short, the landscape is changing. Reporting hotlines and zero-tolerance posters are becoming commonplace. Some agencies and facilities have revolutionized their responses to sexual abuse, instituting sexual assault response teams and organizing in-house multidisciplinary committees to address PREA. Training on PREA is an expected part of curricula for corrections staff nationwide. (See the PREA Initiatives appendix for a sample.) Though the challenge is great, these promising developments mean that pleas for protection and justice by the likes of Elizabeth Gurney Fry and Reverend Louis Dwight no longer fall on deaf ears. The Nation is poised to answer the call to eliminate prison rape.

The chapters that follow discuss a crucial mechanism for eliminating prison rape—national standards developed by the Commission to prevent and detect sexual abuse in every correctional setting and to hold accountable those who perpetrate and permit this abuse.

