



PREA *Update*

Stop Prisoner Rape's Report on the Prison Rape Elimination Act

May 2005

On September 4, 2003 President Bush signed the first-ever federal law to address the problem of rape and sexual abuse behind bars in the United States. The Prison Rape Elimination Act (PREA) applies to all correctional and detention facilities, including federal, state, and local jails, prisons, police lock-ups, private facilities, and immigration detention centers. Among the most important provisions of PREA are:

- Establishing a zero-tolerance standard for sexual assaults of any kind within corrections systems;
- Mandating collection of national data on the incidence of prisoner rape;
- Providing funding for research and program development;
- Creating a federal commission to hold hearings and develop standards for states on how to address this problem;
- Creating a review panel to hold hearings to determine the best and worst performing detention facilities in the country.

Stop Prisoner Rape (SPR), a national human rights organization that seeks to end sexual violence in all forms of detention, celebrated the passage of this historic legislation. As the only organization in the country that works solely on this issue, SPR is closely monitoring PREA's implementation. This publication represents an analysis of the law's impact to date and highlights some areas of concern which, if addressed, will help to ensure PREA's success.

The National Prison Rape Elimination Commission

PREA created the National Prison Rape Elimination Commission whose mandate is to conduct a comprehensive study of sexual abuse in detention and to hold public hearings across the nation to receive testimony from experts, advocates, survivors of prisoner rape, and corrections officials. After this two-year process, the Commission must submit a report on its findings, including a recommended set of standards for the detection, prevention, reduction, and punishment of prisoner rape. All U.S. detention facilities will be required to comply with these standards or risk losing federal funds.

Under PREA, the Congressional and Presidential appointments to the Commission were to be made no later than 60 days after the bill was signed into law. Despite the fact that PREA was signed in early September of 2003, Commission appointments were not finalized until the spring of 2004 due to delays by the Bush administration.



Prisoner rape survivor Steve Babbert (left) and SPR Policy Associate Niaz Kasravi prior to Steve's testimony before the Commission.

The following nine members were appointed to the Commission:

Hon. Reggie B. Walton (Chair)
District Court Judge, Washington D.C.

James E. Aiken
Correctional Consultant

Jamie Fellner
Director, U.S. Program,
Human Rights Watch

John Kaneb
Chairman, President, and CEO,
H.P. Hood, Inc.

Pat Nolan
President, Justice Fellowship

Gustavus Adolphus Puryear, IV
Executive Vice President and
General Counsel, Corrections
Corporation of America

Brenda Smith
Associate Professor of Law,
Washington College of Law,
American University

Nicole Stelle-Garnett
Associate Professor of Law,
University of Notre Dame Law
School

Cindy Struckman-Johnson
Professor of Psychology,
University of South Dakota

SPR was pleased to see that several of the individuals chosen for the Commission have previously served as important allies and colleagues. Jamie Fellner and Pat Nolan are high-ranking staff members from organizations with a long history of successful advocacy on behalf of prisoners' human rights, including effective lobbying for PREA. John Kaneb, who has shown a personal commitment to this cause for years, also devoted significant energy to the law's passage. Academics Brenda Smith and Cindy Struckman-Johnson made sexual abuse behind bars a focus of their work when few others concerned

themselves with this problem. The vision that these Commissioners share - and the combined expertise in law, business, criminal justice, and research possessed by the group as a whole - represent key components of a powerful body.

Unfortunately, progress has been slow. In particular, staffing the Commission's Executive Director position has been fraught with problems. The Commission emphasized corrections qualifications in its job description and advertised the opening for only two weeks with limited circulation, resulting in a very small pool of applicants. Once hired, the first Executive Director as well as two of his staff members faced three-month delays in their security clearance from the Department of Justice. Then, citing personal reasons, the Executive Director resigned before any progress was made.

As a result of these obstacles, two hearing dates were tentatively scheduled and then canceled at the last minute. SPR was asked to invite several survivors to these hearings, many of whom were disheartened when the events were subsequently canceled. The first public event (which, according to the Commission, was technically not a hearing) was held on March 31, 2005 at the University of Notre Dame, nearly a year after the Commissioners' appointment.

A symposium on the implementation of PREA, organized by law students at the university, began the day at Notre Dame. SPR Executive Director Lara Stemple and TJ Parsell, President-elect of SPR's Board of Directors, who is also a survivor of prisoner rape and a consultant to the National Prison Rape Elimination Commission, were among those invited by the law school to speak.

When the Commission gathered in the afternoon for its public event, the following panel members addressed the Commission:

Steve Babbert

Prisoner rape survivor

Robert Beckman

Prosecuting Attorney, LePorte County, Indiana

Dave Donahue

Indiana Department of Corrections

Jeffrey Schwartz

Founder and CEO, LETRA, Inc.

Nancy Zang

Michigan Department of Corrections

Survivor Steve Babbert, whose participation was arranged by SPR, provided some balance to the corrections-heavy make-up of the group. He spoke frankly about being forced to develop a female persona while enduring repeated rape in Ohio prisons. Babbert was warmly thanked by Commission Chair Judge Reggie Walton for sharing his painful story. Commissioner Pat Nolan singled out Babbert's common-sense suggestion for helping a rape victim too afraid to reveal his abuse - "just grant him a cell change, no questions asked" - as worthy of serious consideration.

SPR commends the Commission for including a survivor in its first public event and encourages it to continue this practice. In order to create a comprehensive set of standards for eliminating prisoner rape, the Commission should ensure that future hearings include a wide and diverse range of perspectives from researchers, academics, corrections professionals, advocates, and survivors.

The delays in the initial appointments and the staffing obstacles faced by the Commission have put it behind schedule. SPR urges the Commission to aggressively recruit a dynamic, results-oriented Executive Director and look beyond the corrections field for candidates. To ensure that the Commission fully carries out its important mandate, its life should be extended beyond the two years called for in the law. With this extension,

SPR is optimistic that the Commission has the potential to take significant strides toward combating sexual abuse behind bars. ■



The Bureau of Justice Statistics

PREA requires that the Bureau of Justice Statistics (BJS) collect, review, and analyze the incidence of prisoner rape. To meet its mandate, BJS has undertaken several new endeavors.

Inmate Survey

A victim self-report survey using the Audio Computer Assisted Survey Instrument (ACASI) method is being developed to be administered to inmates in ten percent of detention facilities in every state. In an effort to address concerns about varying literacy rates for inmates, these surveys will prompt inmates to read the questions on a computer screen while hearing them read aloud through headphones. The instrument will be available in English and Spanish.

BJS invited high-level correctional officials, researchers, and advocacy groups to participate in a series of two-day workshops to discuss its

research initiatives, including the ACASI survey. At these workshops, SPR and the one or two other advocacy groups in attendance were outnumbered tenfold or more by corrections officials.

To be sure, BJS faces the difficult challenge of balancing the concerns of corrections officials about facility disruption and the like with the need to conduct a rigorous inquiry on a massive scale. At the workshops, some of the correctional officials expressed real concern about prisoner rape while others expressed irritation with the law's provisions.

Nevertheless, SPR maintained a firm stance on several important issues related to the research. Early on, SPR pressed for the use of frank, commonly used sexual terms (e.g., "blow job" instead of "oral sex" or "fellatio") in the survey instrument so that inmates understand the questions. SPR also urged BJS to consider expanding the time allotted for each survey beyond the 10 to 15 minutes originally planned, since the shame and pain surrounding the subject matter make it hard for victims to divulge abuse quickly. Another vital component for ensuring accuracy of the data is the inmates' belief in the confidentiality of the survey. SPR believes that inmates will only answer truthfully if they know their answers are strictly confidential.

BJS took concrete steps in response to SPR's arguments. They have employed frank language, expanded the time allotted, and implemented steps to reassure respondents of confidentiality.

Another example of competing interests arose during a recent BJS workshop in which some corrections officials pressed for the inclusion of new survey questions that ask inmates whether they have made false reports about sexual abuse. SPR argued that questions which probe about wrongdoings might backfire, causing inmates to doubt whether it is in their interest to participate fully in the sur-

vey. It might also set a counterproductive tone outside of the survey experience, sending the message that victims who choose to tell officials about abuse will be viewed with suspicion. SPR considers it a victory that the corrections officials who recommended the questions about false reporting eventually agreed to withdraw the suggestion in the face of these arguments.¹

Once the survey instrument is complete, the adult self-reports will be tested in the fall of 2005, with the nationwide survey slated to begin in earnest in the summer of 2006. A juvenile survey will be field-tested in late 2005, with nationwide implementation scheduled for late 2006.

Administrative Records Survey

BJS has asked juvenile and adult correctional facilities to provide data on *reported* incidents of prisoner rape contained in their administrative records. The Federal Bureau of Prisons and five states (Arizona, California, Illinois, Maine, and West Virginia) missed target dates for submitting these reports. BJS will release the nationwide results from a wide range of facilities on June 30, 2005.

SPR expects these rates to be low for two reasons. First of all, most victims of rape behind bars never report their victimization to staff, fearing that their reports will not be taken seriously or that they will be forced into segregation as the only solution to their assault, enduring extreme isolation in addition to coping with the aftermath of rape. Others do not report because they fear retaliation from their abuser. Secondly, administrative records about prisoner rape often are poorly kept. In California, for example, records do not track sexual assault, providing only categories such as "general assault" and "other," offering little insight into the actual number of sexual assaults that have been reported.

Historically, data on the incidence of

prisoner rape in official records has been drastically lower than the rates found by more objective outside researchers who survey the inmates themselves. SPR anticipates that the results from this undertaking will be no different.

Other Surveys

BJS is evaluating the use of two sets of written "pen and paper" questionnaires. The first is an exit questionnaire to be administered to inmates who are due to be released from local jails. The second set will be distributed to inmates who, because of special housing or other constraints, cannot be reached with the ACASI instrument.

ACASI will also be used for a different survey of parolees. Unlike the ACASI survey described above, which asks about abuse at one facility, this survey will attempt to gauge parolees' broader incarceration experience at a range of facilities. And, because the parolee is no longer in the detention environment, the hope is that participants will feel more comfortable revealing their experiences.

SPR commends BJS for its thorough, well-organized, and timely efforts to fulfill its PREA mandate. The topic of prisoner rape was new to the agency, and the staff has shown a willingness to learn from a wide range of players. After listening carefully to sometimes conflicting perspectives, BJS seems to make reasoned decisions designed to achieve the most scientifically accurate results. The agency has demonstrated a commitment to putting the full weight of its research expertise behind studying this serious problem.²

■

The National Institute of Justice

The Attorney General is authorized to provide grants to states and other research institutions to study prisoner rape. The National Institute of Justice (NIJ) has been tasked with awarding a series of these grants. To begin with, because existing research on prisoner rape uses varying definitions and methodologies, NIJ published a literature review, "Prison Rape: A Critical Review of the Literature."

In addition, four important topics for research were identified for which NIJ solicited research proposals. These areas include: identification of prevention programs, creation of risk assessment tools, the impact of victimization on inmates, and the impact of victimization on treatment of HIV/AIDS and other sexually transmitted diseases. Four awards totaling \$1.4 million were made in 2004 to study two of the focus areas: identification of prevention programs and risk assessment. NIJ plans to release more requests for the remaining two topics, as well as others it deems important.

Finally, because of concerns about the protection of human subjects, NIJ organized a meeting in 2004 for experts in corrections, sexual violence, and human subjects research to develop a set of protocols for institutional review boards and researchers. ■

The Bureau of Justice Assistance

PREA also authorizes the Attorney General to make grants through the Bureau of Justice Assistance (BJA) to states for training, personnel, technical assistance, data collection, and equipment. BJA designed and admin-

istered the 2004 "Protecting Inmates and Safeguarding Communities Discretionary Grant Program,"³ which awards 16 matching fund grants of varying amounts to states across the nation. Texas, Iowa, Michigan, New Jersey, and Washington were awarded the largest grants, receiving \$1 million each.

BJA moved quickly to undertake its grant-making duties under PREA. However, only 16 state Departments of Corrections competed for the grants, with some states citing prohibitively tight deadlines as their reason for failing to apply. Some states that did apply had unsatisfactory proposals, and BJA worked with those states to ensure that their final submissions were adequately revised. SPR encourages states to closely monitor proposal deadlines and to seek assistance from BJA when needed. PREA research funds will be used most effectively when a robust set of proposals are available for consideration.

Both state Departments of Corrections and BJA must be careful to allocate sufficient funds not only to research, but also toward putting into practice existing measures to help combat the problem of prisoner rape. A tremendous amount of funding has already gone into the research to be conducted by BJS and NIJ. And while the research results will surely inform future responses to the problem of prisoner rape, there are many simple and cost-effective measures to address prisoner rape which states can implement *now*.

Relatively simple undertakings include pairing cellmates according to risk for sexual abuse, creating inmate handbooks on the problem, and revising grievance procedures. SPR is working with California and Washington (through the Washington Coalition of Sexual Assault Programs) on concrete projects to address prisoner rape. ■

National Institute of Corrections

PREA requires that the National Institute of Corrections (NIC) take on three general tasks: provide training and education on prisoner rape to officials and institutions in all levels of government; serve as a national clearinghouse for all PREA-related information; and submit an annual report to Congress and the Director of Human Services on DOJ activities regarding PREA.⁴

NIC has contracted the bulk of this work to the Moss Group, a consulting firm. Headed by Andie Moss, a previous NIC employee with extensive experience addressing sexual misconduct by corrections staff, the Moss Group created a team of 22 advisors to assist in its PREA undertakings. SPR was unsuccessful in its attempts to lobby for the inclusion of a survivor of prisoner rape in the Moss Group's team. However, survivor input has been sought for some of the specific projects described below.

Video Series

A major NIC project has been the production of a video series on prisoner rape. "Facing Prison Rape" was completed in 2004 and distributed to corrections officials throughout the nation. SPR provided early recommendations on content and facilitated the inclusion of a prisoner rape survivor in the video. In SPR's assessment, the video does a good job of sensitizing corrections officials to a topic that has long been taboo. "Responding to Prisoner Rape," the second part of the series, focuses on systematic prevention and management strategies to address prisoner rape.

Currently, the NIC is producing three orientation videos for both male and female inmates. Commissioner Brenda Smith, survivor TJ Parsell, several corrections officials, and SPR

staff were invited to review scripts for these videos.

For the male video, SPR suggested a "know your rights" approach. As opposed to telling inmates what will happen when a rape is reported, the video might instead explain what should happen, thereby empowering survivors to understand the safeguards to which they are entitled. SPR also cautioned against multiple warnings about punishment for false reporting, so that survivors will not fear coming forward just because a rape cannot be proven with certainty. The video should also refrain from repeat descriptions of sexual abuse as "uncommon," an inaccurate description of the reality in many facilities.

NIC has been balanced and responsive to SPR's concerns, and the final script is currently under revision. Another video in production will address female inmates, and SPR is helping to identify a woman survivor to participate.

Other Activities

NIC conducted a series of regional meetings for executive leaders and invited corrections officials, Commission members, and SPR. NIC also held a series of focus group meetings at four national correctional conferences. SPR traveled to Chicago, Portland, and Phoenix to participate in the various forums coordinated by NIC.

In addition, a 3-hour videoconference titled, "How PREA Affects You," reached thousands of viewers and 400 sites via the Internet. In early 2005, NIC conducted an excellent six-hour internet broadcast training program called, "Assessing Your Agency's Response to Prison Sexual Assault." This broadcast included a particularly strong segment on responding appropriately to the abuse of gay male inmates.

NIC developed and distributed a

PREA "tool kit" with videos, a power point presentation, and other reference materials. The kit can be requested from NIC, and its website offers videos for download and links to a range of PREA materials.⁵ Finally, NIC is collecting data on staff perspectives and providing on-site technical assistance.

SPR applauds NIC for its early and effective undertaking of the many tasks assigned to it by PREA. SPR

also commends NIC for recognizing that the expertise it developed in staff sexual misconduct does not apply perfectly to inmate-on-inmate abuse and for working to supplement its knowledge accordingly. NIC has a range of additional training projects in the pipeline, and SPR is optimistic that NIC will seek continued and consistent input from survivors and others concerned with the human rights of prisoners in the course of its important work. ■

CONCLUSION

SPR considers the passage of PREA a major milestone in the fight to end sexual violence behind bars. Many government agencies have responded with the highest level of professionalism to the opportunities and challenges that accompany PREA. As the research studies roll out, as the new training tools are used in detention facilities, and as corrections officials implement new policies in response to the law, hundreds and thousands

more will be given the opportunity to address a problem that has been all but ignored for far too long. SPR will continue to monitor the implementation of PREA and to press for changes that respect the fundamental human rights to which all people are entitled. ■



SPR Executive Director Lara Stemple speaking at a Notre Dame symposium on PREA implementation.

NOTES:


¹ As one SPR supporter quipped, "It's called the Prison Rape Elimination Act, not the False Report Elimination Act."

² To read a status report on BJS data collection and view draft surveys, go to:
<http://www.ojp.usdoj.gov/bjs/abstract/dcprea03.htm>

³ To view the grant application, go to: <http://www.ojp.usdoj.gov/BJA/grant/04PrisonRape.pdf>

⁴ A copy of the first NIC report to Congress can be found at: http://www.nicic.org/WebGateway_54.htm

⁵ To obtain these materials, please visit: http://www.nicic.org/WebGateway_54.htm



**“It felt good to address
the Commission. Finally, there
are people who want to
hear what happened to me.
They believed me.”**

- Prisoner rape survivor
Steve Babbert



safety, dignity, and human rights for all

Stop Prisoner Rape

3325 Wilshire Blvd., Suite 340 • Los Angeles, CA 90010
(213) 384-1400 • www.spr.org