

# PREVENTING AND ADDRESSING SEXUAL ABUSE IN TRIBAL DETENTION FACILITIES

by Carrie Abner  
October, 2011

## A POLICY DEVELOPMENT GUIDE



A Force for Positive  
CHANGE

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# **PREVENTING & ADDRESSING SEXUAL ABUSE IN TRIBAL DETENTION FACILITIES: A POLICY DEVELOPMENT GUIDE**

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## Foreword

**O**n September 4, 2003, President George W. Bush signed into law the Prison Rape Elimination Act (PREA), the first ever federal legislation addressing the issue of sexual assault in correctional settings. Unfortunately, the name of the Act can be misleading—it is not just about prisons, and it is not just about rape. The Act addresses sexual abuse in all custodial corrections settings, including prisons, jails, police lock-ups, juvenile detention facilities, and community residential settings. Moreover, the Act addresses all types of sexual abuse in which an inmate, detainee, or resident is the victim, including abuse by fellow inmates/detainees/residents as well as sexual misconduct committed by a staff person.

The issue of corrections-based sexual assault is complex and has implications reaching far beyond correctional institutions. In developing the law, Congress found that “prison rape endangers the public safety by making brutalized inmates more likely to commit crimes when they are released—as 600,000 inmates are each year... [and that] victims of prison rape suffer severe physical and psychological effects that hinder their ability to integrate into the community and maintain stable employment upon their release from prison.”

This document seeks to provide guidance to administrators of tribal detention facilities on the key policy issues for the prevention, reduction, detection, and punishment of sexual abuse perpetrated on those under correctional supervision in Indian Country, including in jails, juvenile detention facilities, and police lock-ups.

Tribal detention professionals face a number of particular challenges: working with a range of criminal defendants/inmates, including violent and nonviolent, adults and juveniles, and men and women; working in facilities that are often underfunded, understaffed and overpopulated; balancing the equally important responsibilities of holding inmates accountable for their crimes and providing needed programs and services to promote their rehabilitation; managing potentially dangerous inmates in settings originally designed for individuals charged or convicted of lower-level offenses; and negotiating complex jurisdictional issues unique to Indian Country criminal justice systems. Without a doubt, working in tribal corrections is a highly stressful profession in which the stakes are incredibly high—for officers, for inmates, and for the community alike.

While at first glance it may appear that a policy development guide on preventing and addressing sexual violence adds to an already overwhelming set of tasks that tribal corrections professionals are to accomplish, the purpose of this guide is rather to demonstrate how administrators can build on existing efforts to protect the safety of inmates and facilities through the enhancement of policies and procedures for the prevention of and response to sexual abuse.

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<sup>1</sup> The Prison Rape Elimination Act of 2003 [PL-108.79, § 2.7] September 4, 2003.

## **The process of developing the guide**

In 2006, the Bureau of Justice Assistance (BJA) of the U.S. Department of Justice awarded the American Probation and Parole Association (APPA) with a cooperative agreement to develop guidance for tribal detention staff on implementing the provisions of PREA within their facilities. In this effort, APPA conducted a national request for information among correctional agencies in Indian Country, including facilities managed by the Bureau of Indian Affairs, through which project staff gathered information on existing policies and procedures related to sexual assault issues, as well as the need for additional information and training on the topic.

In addition, APPA conducted site visits to a variety of tribal detention facilities, including facilities operated by the U.S. Department of the Interior's Bureau of Indian Affairs, as well as those owned and operated by individual tribes. These site visits enabled project staff to more fully understand the vast number of challenges facing tribal detention agencies and staffs, as well as the rich resources of policies, procedures, and programs already established that can be built upon to further protect inmates against sexual abuse.

APPA established a working group comprised of representatives from a variety of tribal corrections agencies, as well as national experts on sexual assault victimization in Indian Country and PREA. The working group met over the course of two days in Lexington, Kentucky, during which time they identified a range of topics and issues to be covered in this policy guide, including an overview of sexual violence in correctional environments; sexual abuse prevention planning and response; data collection for incidents of sexual violence; legal considerations; and working with community partners to develop an effective prevention and response plan.

## **The purpose of the guide**

The purpose of this guide is to provide useful information to administrators of tribal jails, lock-ups, juvenile detention, and other correctional facilities, about corrections-based sexual abuse, the Prison Rape Elimination Act, and their role in addressing this issue through the development of appropriate policies and procedures. This guide is designed to assist administrators and executives of jails, detention facilities, and lock-ups in Indian Country as they review policies and procedures in an effort to safeguard detainees and inmates from sexual abuse. The guide provides background information on the problem of corrections-based sexual assault, the impact of sexual abuse victimization on inmate behavior, and the ways in which existing agency policies can be revised and enhanced to more effectively protect the safety and security of inmates, facilities, and staff.

Since the passage of PREA in 2003, there has been a significant amount of confusion and anxiety among correctional professionals nationwide on how the law will be implemented within corrections systems. In talking with a number of tribal detention staff and administrators, it is clear that many in Indian Country share that sense of confusion and anxiety. One of the most common requests

that APPA has received is for a “Model Policy” for tribal jail administrators that would highlight the key elements that should be incorporated into any agency policy to cover any PREA requirements. Unfortunately, there is no single “Model Policy,” nor could any single policy be effective for every tribal detention facility. Given the vast range of agency cultures that exist among tribal detention agencies and facilities, the differences in the operational methods among tribal jails, and the varying challenges facing individual tribes, no one “policy” template can meet the range of individual needs of detention agencies in Indian Country. Therefore, this guide has been developed to highlight the range of issues and concerns that are common among tribal detention facilities in enhancing efforts to prevent and respond to sexual violence, with illustrations of recommended strategies provided where appropriate. Section Four of the guide, in particular, provides a variety of specific policy recommendations based on the proposed National PREA Standards for Adult Prisons and Jails.

Furthermore, many of the principles inherent in PREA are frequently reflected in extant policies and procedures in jails across the country. That is to say that much of what is required by the law is already in place in most jurisdictions. As such, for the majority of tribal jail administrators, addressing PREA will not require developing a PREA policy from scratch. Rather, administrators should consider assessing the gaps in existing policies and procedures, and strengthen or revise those policies and procedures as appropriate.

This guide has been developed to assist tribal detention executives in assessing the facility’s existing policies and procedures to determine needed changes related to the prevention of and response to sexual abuse in jail settings. Many facilities may not have any reported incidents of sexual abuse or violence; this should not be considered an indication that existing policies and procedures are adequate. Rather, sexual abuse and misconduct unfortunately occur in nearly all facilities; however, research indicates that such abuses often go unreported. The lack of official reports of such incidents, therefore, more likely highlight the need for additional policies, procedures, and practices to promote and support the safety of inmates as well as staff members in reporting such abuses.

This guide should not be used in isolation. On the contrary, the guide is meant to be used as a companion piece to a variety of resources available through APPA, BJA, the National Institute of Corrections (NIC), and other agencies and organizations that have developed resources to assist correctional agencies in preventing and responding to corrections-based sexual abuse. Moreover, while the development and enhancement of policies and procedures should serve as the foundation of agency efforts to address the issue of sexual violence, training of staff is of equal importance. Through support from BJA, APPA has also developed a training curriculum on Preventing and Addressing Sexual Abuse in Tribal Detention Facilities: The Impact of the Prison Rape Elimination Act. This one-day training program (curriculum available online) is designed for delivery to front line staff and supervisors in tribal detention facilities (including jails, lock-ups, and other tribal correctional facilities) and should be used in tandem with this policy guide.



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# THE PRISON RAPE ELIMINATION ACT: IMPLICATIONS FOR INDIAN COUNTRY

## Introduction

In 2002, a male detention officer at a tribal juvenile facility in Montana raped a 17-year-old female inmate while he was supposed to be transporting her for medical treatment. Following an investigation into the event, it was discovered that the officer had a criminal record, but that an “appropriate background check” was not conducted prior to his hiring. The officer was later convicted for the crime (U.S. Department of the Interior, Office of Inspector General, 2004).

In 1997, a youth being held at an adult detention facility in Indian Country was raped by an inmate. According to a detention officer at the jail, “It was due to understaffing, and the guard was not certified. The boy was 13...the boy should not have been there,” (U.S. Department of the Interior, Office of Inspector General, 2004, p. 49). The youth was being held at the jail for social services.

In July 2010, a former corrections officer with the Bureau of Indian Affairs (BIA) pled guilty in federal court to sexual abuse of a ward. The officer served at a BIA detention facility in North Dakota, where he engaged in a sexual act with an inmate. The inmate’s cellmate reported the incident to authorities. The officer was sentenced to time served and 5 years of supervised release, including 5 months of home confinement. He will be required to register as a sex offender (U.S. Department of Justice, Office of U.S. Attorney Timothy Q. Purdon, 2010).

## Why discuss corrections-based sexual abuse now?

Recent incidents of sexual violence within America’s corrections systems have brought this matter to the foreground among public policymakers, researchers, and corrections professionals, resulting in growing attention to and activities surrounding the issue.

The 1996 Human Rights Watch Report, *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons*, revealed the extent of sexual assault of female inmates, predominantly by male correctional staff, in California, Georgia, Illinois, Michigan, New York, and the District of Columbia. This report fostered new discussions and actions to better prevent and address staff sexual misconduct in correctional

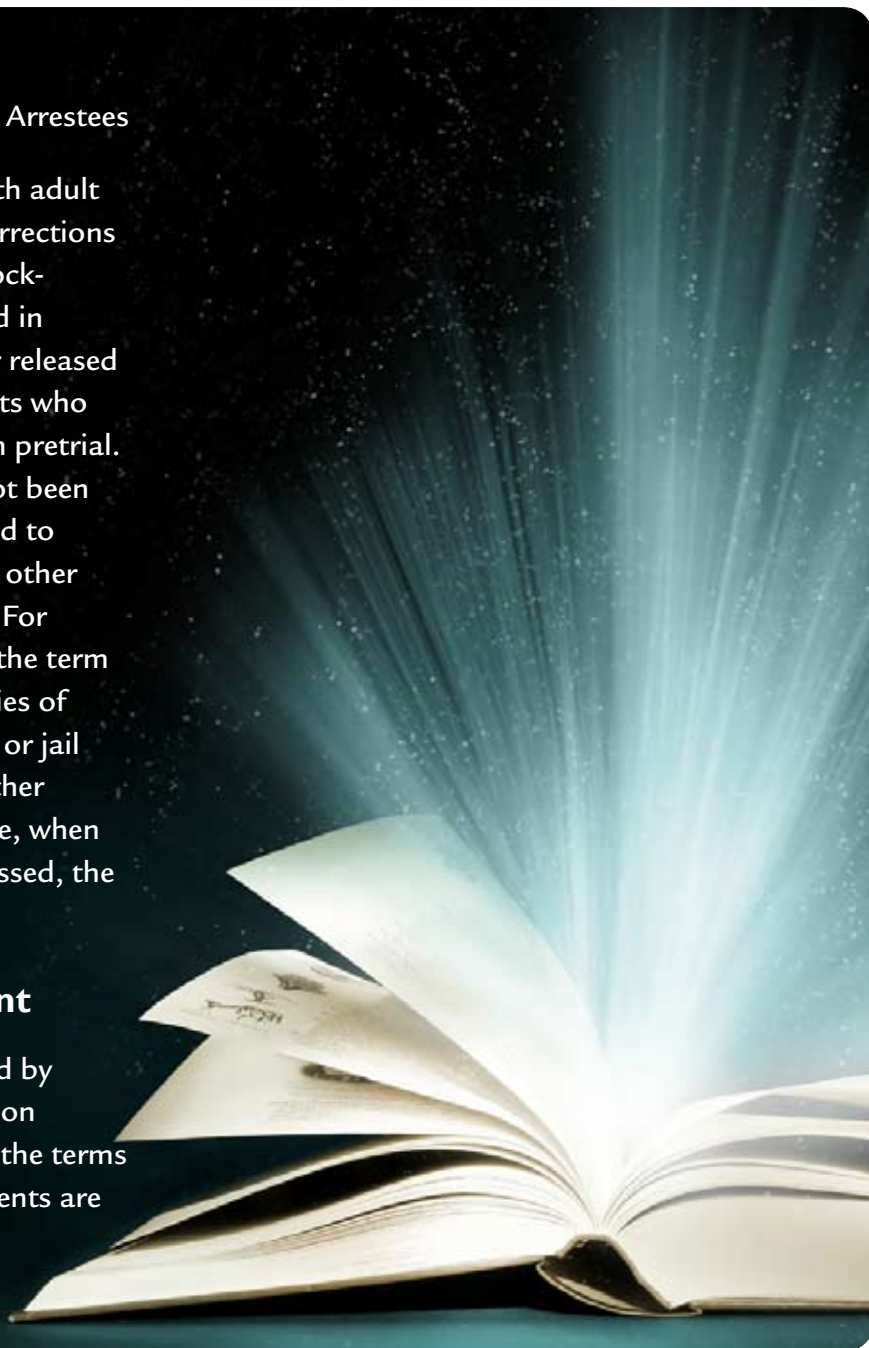
## FIGURE I

### Critical Terminology: Inmates, Detainees, and Arrestees

There are several categories of individuals, both adult and juvenile, who come in contact with the corrections field, including inmates in prisons, jails, and lock-up settings; juveniles adjudicated and confined in detention settings; offenders sentenced to—or released under—community supervision; and defendants who may be detained or released under supervision pretrial. It is important to note that those who have not been convicted of current charges are legally referred to as defendants, which distinguishes them from other inmates detained in correctional institutions. For ease of reference, however, in this document, the term inmate is used to refer generally to all categories of individuals who are in detained in a detention or jail facility, police lock-up or holding facility, or other custodial corrections environment. Meanwhile, when issues specific to pretrial defendants are discussed, the terms detainee or arrestee will be used.

### Correctional Setting or Environment

Given the breadth of the environments covered by PREA—prisons, jails, lock-ups, juvenile detention centers, and community corrections settings—the terms correctional settings or correctional environments are used to describe any or all of these.



## FIGURE 2

### The Prison Rape Elimination Act of 2003

The Prison Rape Elimination Act of 2003 (PREA) was passed by the U.S. Congress and signed into law by President George W. Bush on September 4, 2003, and supports the elimination, reduction, and prevention of sexual assault and rape within America's correctional settings. PREA applies to all federal, state, and local prisons; jails; police lock-ups; private institutional facilities; and community residential facilities.

PREA establishes a zero tolerance standard for the incidence of sexual assault in correctional facilities and makes the prevention of prison rape a top priority for all corrections systems. Through the Act, the Bureau of Justice Statistics is directed to carry out, on an annual basis, a comprehensive statistical review and analysis of the incidence and effects of prison rape in federal, state, county, and municipal prisons.

PREA further establishes a national clearinghouse for the provision of information, assistance, and training to federal, state, and local authorities responsible for the prevention, investigation, and punishment of prison rape, and authorizes the provision of grant funding to assist jurisdictions in protecting inmates and safeguarding communities against sexual assault in corrections systems.

The Act has also established the National Prison Rape Elimination Commission, comprising members appointed by Congress and the President. The Commission was charged with undertaking a comprehensive study of prison rape and its impacts on government institutions as well as on communities and social institutions. The Commission was also tasked with the development of recommended national standards to enhance the detection, prevention, reduction, and punishment of prison rape.

The Commission released its final report and recommended standards on June 23, 2009. Based on consideration and review of the Commission's recommended standards, the U.S. Attorney General released, for public review and comment, proposed National Standards to Prevent, Detect, and Respond to Prison Rape. Following a public comment period and subsequent revisions, the Department of Justice will publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison rape in 2011. Upon adoption, the standards will be applied immediately to the Federal Bureau of Prisons. In addition, PREA mandates a 5 percent reduction in federal grant funding designated for prisons in states that fail to adopt and comply with the standards. Further, the Act prohibits the receipt of any federal grants by penal accreditation organizations that fail to adopt accreditation standards for the detection, prevention, reduction, and punishment of prison rape.

facilities at the state and national levels. These and other incidents of staff sexual misconduct across the country prompted a series of lawsuits against state departments of corrections (DOCs).

These high-profile cases also spurred legislative action across the country to better prevent and respond to staff sexual misconduct. While only 16 states and the District of Columbia had laws in place prohibiting sexual misconduct with inmates in 1990, today all 50 states, the District of Columbia, Puerto Rico, and Guam have statutes criminalizing staff sexual misconduct (Smith and Yarussi, 2007).

More recently, the U.S. Congress passed the Prison Rape Elimination Act (PREA) of 2003, which supports the detection, prevention, reduction, and punishment of sexual assault, including abuse by correctional staff and by inmates, in federal, state, and local prisons, jails, lock-ups, private facilities, and community residential facilities. Passed unanimously by Congress and signed into law by President George W. Bush, PREA established a zero tolerance policy for sexual assault in America's correctional settings. Once fully implemented, PREA will:

- Establish national standards for the detection, reduction, prevention, and punishment of prison rape;
- Provide for data collection and information dissemination on the incidence of prison rape; and

- Provide training, technical assistance, and grant funding to assist states and localities to reduce and prevent the incidence of sexual violence.

Failure to implement the national standards, once they are fully developed, may result in a 5 percent reduction in federal funds for prison programs.

While legal and jurisdictional questions pertaining to the application of PREA to detention facilities in Indian Country remain, national standards to prevent, detect, and respond to prison rape will likely result in increased civil liabilities for correctional facilities—for native and non-native facilities, alike. With the enhancement of standard corrections practices that will occur through the implementation of PREA standards, detention facilities across the country will certainly be held to a higher legal standard for the prevention of and response to sexual abuse, and could potentially face increased civil penalties if they fail to do so.

Already, inmates in Indian Country benefit from the protections provided by the Indian Civil Rights Act (ICRA), which applies the 8th Amendment of the U.S. Constitution (preserving the right against cruel and unusual punishment) to tribal nations. More importantly, however, the premise behind the Prison Rape Elimination Act—providing a safe and secure environment in which those in correctional custody can serve their sentence—should serve as the foundation for any correctional setting. Much of the work that corrections professionals do—whether under the rubric of PREA or not—already contributes to the ultimate goal of the law.

## **Why should Indian Country jail professionals care about the PREA?**

One of the biggest challenges for incorporating the principles of PREA in the policy and practice of community corrections lies in the name of the law itself—the Prison Rape Elimination Act. Unfortunately, since its passage, PREA has been widely misunderstood as being relevant only to America’s prisons, with many jail and juvenile detention professionals wondering, “What does PREA have to do with me?” It is important to note, however, that PREA applies to all custodial corrections settings including prisons, jails, juvenile detention centers, police lock-ups, private facilities, and even community-based confinement facilities.

Moreover, the entire corrections field has an important role to play in ensuring the prevention of and response to corrections-based sexual assault as asserted in PREA. In developing the law, Congress found that “prison rape endangers the public safety by making brutalized inmates more likely to commit crimes when they are released—as 600,000 inmates are each year... [and that] victims of prison rape suffer severe physical and psychological effects that hinder their ability to integrate into the community and maintain stable employment upon their release” (PREA, 2003). Inmates who have been victimized while incarcerated bring the trauma of their assaults with them back to the community. If not properly addressed, their victimization may make it more difficult for them to transition back into community life successfully, leading to additional criminal behavior, re-arrest,

and re-incarceration, further contributing to the revolving door phenomenon that so commonly plagues our correctional systems.

Corrections-based sexual assault also poses a significant public health risk. According to the Bureau of Justice Statistics (BJS), 1.3 percent of inmates in local jails across the country in 2002 either had been infected with the human immunodeficiency virus (HIV) or had acquired immune deficiency syndrome (AIDS) (Maruschak, 2006). By contrast, the Centers for Disease Control reported that the rate of HIV infection among the U.S. household population at yearend 2006 was .45 percent (2008). In other words, jail inmates suffer from HIV/AIDS infection at a rate of nearly three times that of the general population.

The estimated prevalence of other communicable diseases, including sexually transmitted diseases, hepatitis B and C, and tuberculosis, is also significantly higher among American jail inmates than in the general U.S. population. According to the National Commission on Correctional Health Care, the estimated rate of inmates infected with hepatitis C in 1997 was between 9 and 10 times higher than the estimated rate of cases among the total U.S. population. Likewise, the prevalence of tuberculosis among inmates was estimated to be between 4 and 17 times higher than among the total U.S. population in 1996 (Hammett et al., 2002).

In addition to the risks posed by inmate-to-inmate sexual abuse, staff sexual misconduct has significant implications for corrections facilities. Staff sexual misconduct jeopardizes the safety of staff and inmates and erodes trust in and respect for the field of corrections (Smith and Yarussi, 2007). Correctional staff members who engage in sexual misconduct with inmates put the safety of their colleagues, other inmates, and the larger community at risk, in addition to harming the victim, by compromising the system of power and authority necessary to hold inmates accountable and to ensure public safety. Meanwhile, inappropriate relationships between staff and inmates delegitimize the work of corrections, putting undue strain on the already challenging task of promoting offender accountability and rehabilitation.

## **What is prison rape? Defining corrections-based sexual abuse**

There are a variety of definitions for corrections-based sexual assault. BJS defines a range of sexually abusive or violent acts in corrections settings that may occur between inmates or between inmates and corrections staff (Beck et al., 2010):

- Sexual victimization—all types of sexual activity, e.g., oral, anal, or vaginal penetration; hand jobs; touching of the inmate's buttocks, thighs, penis, breasts, or vagina in a sexual way; abusive sexual contacts; and both willing and unwilling sexual activity with staff.
- Nonconsensual sexual acts—unwanted contacts with another inmate or any contacts with staff that involved touching of the inmate's buttocks, thigh, penis, breasts, or vagina in a sexual way.

- Unwilling activity—incidents of unwanted sexual contacts with another inmate or staff.
- Willing activity—incidents of willing sexual contacts with staff. These contacts are characterized by the reporting inmates as willing; however, all sexual contacts between inmates and staff are legally nonconsensual.
- Staff sexual misconduct—includes all incidents of willing and unwilling sexual contact with facility staff and all incidents of sexual activity that involved oral, anal, vaginal penetration, hand jobs, blow jobs, and other sexual acts with facility staff (Beck et al., 2010, p. 7).

In January 2011, the U.S. Attorney General’s Office released a set of proposed National Standards to Prevent, Detect, and Respond to Prison Rape, which includes the following definitions of sexually abusive acts as they pertain to the proposed Standards for Adult Prisons and Jails.

Sexual abuse includes:

- (1) Sexual abuse by another inmate, detainee, or resident, and
- (2) Sexual abuse of an inmate by a staff member, contractor, or volunteer.

Sexual abuse by another inmate, detainee, or resident includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- (4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding incidents in which the intent of the sexual contact is solely to harm or debilitate rather than to sexually exploit.

Sexual abuse by a staff member, contractor, or volunteer includes

- (1) Sexual touching by a staff member, contractor, or volunteer;
- (2) Any attempted, threatened, or requested sexual touching by a staff member, contractor, or volunteer;
- (3) Indecent exposure by a staff member, contractor, or volunteer;
- (4) Voyeurism by a staff member, contractor, or volunteer.

Sexual touching by a staff member, contractor, or volunteer includes any of the following acts with or without consent;

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Penetration of the anal or genital opening of another person, however slight, by a hand,

finger, object, or other instrument; and

- (4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding incidents in which the intent to abuse, arouse, or gratify sexual desire.

Indecent exposure by a staff member, contractor, or volunteer means the display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate.

Sexual harassment includes:

- (1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and
- (2) Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

Voyeurism by a staff member, contractor, or volunteer means an invasion of an inmate's privacy by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions and distributing or publishing them.



# SEXUALITY, VIOLENCE, AND THE CORRECTIONAL ENVIRONMENT

Despite widespread public familiarity with the phenomenon of prison rape, the true extent of the problem is largely unknown. Previous studies on the incidence of sexual coercion and assault in prisons across the country have been largely inconclusive (Saum et al., 1995), ranging from less than 1 percent (Tewksbury, 1989) to as much as 22 percent (Struckman-Johnson et al., 1996) of inmates reporting being victimized during their incarceration.

As a direct result of the passage of PREA, the U.S. Department of Justice now collects data on the incidence of sexual violence in American correctional facilities, including jails in Indian Country. Results from a recent survey of inmates in federal, state, and local correctional facilities suggest that as many as 4.4 percent had experienced sexual abuse during their incarceration whether at the hands of other inmates or by correctional staff (Beck et al., 2010). See Figure 1 on page 18 for more information.

Measuring the incidence of sexual abuse among the general population is difficult, and additional challenges are added when determining its incidence within correctional environments. In order to better understand the obstacles inherent in studying the extent of corrections-based sexual assault, it is necessary to take a closer look at the sexual culture of correctional environments more generally. This section will provide an overview of sexuality and sexual violence in correctional contexts, the characteristics of victims of sexual abuse in correctional environments, and the implications of abuse for victims.

## Sexuality and sexual violence in correctional environments

Sexual assault is one of the least reported crimes in America. According to official statistics, fewer than 40 percent of all rapes and sexual assaults were reported to police in 2005 (Catalano, 2006). Research indicates that victims of rape and sexual assault in the community are reluctant to report these crimes to police due to shame and humiliation about the incident, fear that others (including family) will find out about the rape or assault, and/or fear that they will not be believed (Kilpatrick et al., 1992). As a result, measuring the prevalence of rape and sexual assault in the community is a difficult task.

### FIGURE 1

#### Key Facts: Sexual Victimization in U.S. Jails

As a direct result of the passage of the Prison Rape Elimination Act of 2003 (PREA), the Bureau of Justice Statistics (BJS), U.S. Department of Justice, was tasked with carrying out a comprehensive statistical review and analysis of the incidence and impacts of prison rape. In August 2010, BJS published *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008 – 09*, the results of a national survey of inmates in state and federal prisons, local jails, and a variety of special confinement facilities including correctional facilities in Indian Country. The survey was administered to 81,566 inmates ages 18 or older, including 32,029 inmates within state and federal prisons, 48,066 jail inmates, 957 detainees in Immigration and Customs Enforcement (ICE) facilities, 399 in U.S. military facilities, and 115 in Indian country jails. The survey enabled participants to report sexual victimization anonymously through an interactive computer-assisted questionnaire using audio instructions and a computer touch-screen to select responses. Following are some of the key findings from the survey (Beck et al., 2010).

- An estimated 3.1 percent of jail inmates reported experiencing at least one incident of sexual victimization by another inmate or facility staff within the last 12 months.
- Approximately 1.5 percent of jail inmates reported an incident that involved another inmate, while 2 percent of jail inmates reported having had sexual contact with a facility staff member. Of those inmates who reported experiencing staff sexual misconduct, at least half reported that they willingly engaged in the encounter with staff.
- Female jail inmates (3.1 percent) were twice as likely to report abuse by another inmate as were male jail inmates (1.3 percent).
- Male inmates in jails (2.1 percent) were more likely than female inmates (1.5 percent) to report sexual contact with facility staff.
- Approximately 64 percent of male victims of staff sexual misconduct in jails were victimized by female staff.
- Among male jail inmates who reported abuse by a fellow inmate, nearly 20 percent reported that they were victimized within 24 hours after admission.
- Nearly one-third of male victims of staff sexual misconduct in jails reported being victimized within 24 hours of their admission to the facility, as compared to only 4 percent of female victims of staff sexual misconduct in jails.

Likewise, experts suggest that discrepancies in the results of sexual assault prevalence studies in correctional environments likely stem from underreporting by victims, including both reporting of assaults to authorities as well as disclosure of sexual abuse for academic research purposes. While sexual assault victims in correctional environments face many of the same obstacles that prevent victims in the community from reporting, the harsh realities of the correctional—and particularly the custodial—environment may compound these reporting barriers. For instance, male inmates may be too ashamed to admit that they have been victimized, particularly in an environment often ruled by machismo and where physical strength means power. Victims may also fear reprisal attacks. Considering their status as inmates, lack of reporting may be additionally compounded by a fear that corrections officials will not believe their reports, nor act upon them appropriately.

Even anonymous reporting of corrections-based sexual assault for research purposes may be problematic, as disclosures of sexual abuse are influenced by the way in which questions are asked and by whom. For instance, surveys may be conducted in a written format and inmates who have limited reading or writing skills may, therefore, not answer questions accurately. Moreover, some inmates may be hesitant to disclose sexual abuse victimization during a face-to-face interview given the stigma and humiliation often associated with these types of assaults. As researchers studying the prevalence of corrections-based sexual assault have attested, “available statistics must be regarded as very conservative at best, since discovery and documentation of this behavior are compromised by the nature of prison conditions, inmate codes and subculture and staff attitudes,” (Cotton and Groth, 1982, p. 48).

Adding to this challenge is the nature of prison and jail sexuality itself. While sex among inmates is largely prohibited by correctional systems and sex between staff and inmates is prohibited by law in all 50 states, it has been well documented that sexual activity among inmates, and between staff and inmates, occurs within facilities. Not all sex among inmates and between staff and inmates

## FIGURE 2

### Incarceration in Indian Country: Key Statistics

- While Native Americans comprise only 1 percent of the total U.S. population, they represent 1.3 percent of those incarcerated across the country.
- The incarceration rate of Native Americans and Alaska Natives is 25 percent higher than the overall national incarceration rate.
- At mid-year 2009, a total of 2,176 Native Americans were confined in the nation’s 82 jails operating in Indian Country, including jails, detention centers, lock-ups and other confinement facilities.
- Approximately 37 percent of inmates in tribal jails are in custody for violent offenses, including domestic violence (12 percent) and simple/aggravated assault (15 percent), unspecified violent offenses (8 percent), and rape or sexual assault (2 percent) (Minton, 2011).

is the same, however. Recognizing the various manifestations of prison sex is critical to fully understanding the dynamics of corrections-based sexual assault.

### **Sexual activity among inmates**

Despite the fact that most prisons and jails prohibit inmates from engaging in sexual activities, sex among inmates is not uncommon. In fact, researchers have documented sexual activity among incarcerated individuals for decades (Fishman, 1934; Sykes, 1958; Kirkham, 1971; Lockwood, 1980; Wooden and Parker, 1982; Donaldson, 1993), and have analyzed the various reasons for which prisoners engage in sex as well as the different manifestations of sexual activity that occur, including the following:

- ***Consensual sex among inmates.*** Researchers and corrections professionals have long recognized that consensual sex occurs, even where prohibited, among inmates in jails and prisons. Inmates who are homosexual or bisexual may engage in sexual acts with other inmates of the same sex, just as they may in the community. Consensual sex may also occur between otherwise heterosexual inmates and inmates of the same sex, in a phenomenon researchers call “situational homosexuality.”
- ***Coercive sex among inmates.*** In addition to consensual sex, inmates may engage in sexual activity with other inmates through a variety of coercive means. Inmates may agree to engage in sex as a result of threats, intimidation, or bribery by another inmate. In other cases, inmates may resort to carrying out sexual acts with other inmates as a way to pay off debts for protection, for commissary items, or other goods or services. For instance, young inmates who are naïve to the ways of prison may accept “gifts” in the forms of snacks, protection, or friendship from a more seasoned inmate, only to face demands to repay the inmate for such gifts through sexual favors.

While the threat of physical violence is often used to coerce inmates into sexual activity, this is not always the case. As a result, incidents of coercive sex may not be properly identified as abuse. Discerning coercive sex from consensual sex is often difficult for corrections professionals, who may incorrectly assume that both parties are consenting to the activity. In addition, a victim of coercive sex may not sustain the types of physical injuries that are common in cases of violent sexual assault; he or she may not be identified as a victim of abuse by health care providers and others trained to detect signs of sexual assault. Inmates who have been subjected to coerced sex may not consider themselves to be sexual abuse victims given the lack of physical force used in the incident, but they may experience intense levels of shame and humiliation, as well as possible sexual identity crises, as a result of “consenting” to homosexual relations in these cases.

- ***Violent sexual assault among inmates.*** On the opposite extreme of the prison sex continuum from consensual sex is violent sexual assault, characterized by the use of physical force and/or violence against the victim. Violent sexual assault may occur between two inmates—the aggressor and the victim—or among multiple inmates, i.e., a gang rape. While victims of violent sexual assault may self-identify as either homosexual or

heterosexual, aggressors are typically heterosexual. Despite engaging in sexual relations with an individual of the same sex, an aggressor is often able to maintain his or her heterosexual status through the use of force. Heterosexual victims of violent prison sexual assault, however, are often referred to as “punks” or “turnouts” following an attack.

## THE CODE OF SILENCE

The “Code of Silence,” as it is commonly known, is an unspoken rule that exists among many corrections employees to maintain loyalty to one another in an environment that often pits corrections personnel against the inmate population, as well as against facility administrators. As a result, corrections personnel may refuse to report the unethical, even illegal, behaviors of their colleagues, including sexual misconduct. Moreover, given the “us against them” mentality that often fosters the development of a code of silence, corrections staff may view inmates as unworthy given their crimes and may therefore believe that any maltreatment they experience—either at the hands of other inmates or by corrections officers—is deserved.

Such a mentality puts the safety and security of the entire detention facility setting in danger while also jeopardizing the reputation and legitimacy of the entire corrections profession. Former Massachusetts Corrections Commissioner Kathleen Dennehy has argued, “Left unchecked and unchallenged, an established code of silence results in an increase in violence and in the dangerousness of our prisons.” She adds, “We know that many offenders go through life believing that the rules and laws do not apply to them. If the system in which they are incarcerated lacks integrity and moral order, their notions regarding law and order are reinforced,” (Dennehy and Nantel, 2006, p. 177).

Unfortunately, the code of silence undermines efforts to effectively address the issue of corrections-based sexual assault, as it encourages corrections professionals to turn a blind eye to sexual misconduct and abuse committed by staff and inmates alike. While not present in all correctional settings, the code remains a pervasive factor in a number of systems and facilities. While building and maintaining loyalty and camaraderie among staff is critical in such difficult workplaces as correctional settings, it must not come at the cost of providing a safe, secure environment in which inmates are able to live and successfully be rehabilitated.



## Sexual activity between corrections staff and inmates

In contrast to sexual behaviors among inmates in correctional settings, no sexual activity between staff and inmates can be considered consensual in nature. Rather, given the authority that corrections staff have over the inmates in custody, there is an unequal power dynamic that exists between the two parties. Inmates may feel powerless to deny a staff member’s flirtations or requests for an intimate relationship. On the other hand, an inmate may use a sexual relationship he or she has developed with a staff member in order to gain power or access to special privileges within the correctional environment, which may lead to such outcomes as the manipulation of compliance reports or the failure to act on violations. Because of the unequal power dynamics that exist between staff and inmates, sexual relationships that develop between the two parties put at grave risk the safety and security of the agency, facility, other staff members, and inmates. As a result, all 50 states, the District of Columbia, and the U.S. territories of Puerto Rico and Guam have developed and passed laws criminalizing sexual relations between corrections staff and inmates, otherwise known as staff sexual misconduct (SSM).

In addition to state laws prohibiting staff sexual misconduct, many corrections agencies have developed internal agency policies prohibiting conduct of a sexual nature between staff and inmates. These policies typically define prohibited behavior and relationships between staff and inmates, identify the requirements of staff to report existing abuses, and outline disciplinary measures, including termination, for staff determined to be engaged in misconduct.

### FIGURE 4

## DEFINING—AND CHANGING— AGENCY CULTURE

According to A.T. Wall, Director of the Rhode Island Department of Corrections, the culture of a correctional facility can be defined as the “way of life... [t]he sum of the attitudes or the norms, the values, the beliefs, of those people who live and work in it.” While all members of an organization contribute to agency culture, leadership plays, perhaps, the most critical role in determining the “way of life” in an agency.

Agency culture however, is not static. Rather, it evolves and changes over time with changes in leadership, staff, and inmate population. Agency cultures can also change with the insertion of new ideas by leaders who are passionate about making positive changes in their organizations. In testifying to the National Prison Rape Elimination Commission, Commissioner of the New York City Department of Corrections, Martin Horn, asserted that culture change “has to start at the top, and you have to talk about it. And if we don’t talk about it, the people under us won’t . . . culture is passed by word of mouth and by behavior. You have to walk the walk and talk the talk. You have to do it consistently.”



## Who's at risk? The “typical” victim of corrections-based sexual abuse

While all inmates are at risk of sexual abuse and violence within correctional settings, research indicates that certain categories of inmates are victimized at higher rates (Beck et al., 2010; Hensley et al., 2005; Hensley et al., 2003; Dumond, 2000; Dumond, 2003). These include:

- Young inmates
- Inmates who are inexperienced, naïve, or lack “street sense”
- Mentally ill or developmentally challenged inmates
- Inmates who are not affiliated with a gang
- Gay, lesbian, bisexual, transsexual, or intersex (GLBTI) inmates
- First-time offenders
- Inmates convicted of sexually-based crimes
- “Snitches,” “rats,” and inmates who break the code of silence
- Inmates who have previously been victimized

A 2008-09 survey of inmates in federal and state prisons, jails, and other correctional facilities conducted by the Bureau of Justice Statistics (BJS) suggests that sexual orientation can be an important predictor of sexual victimization among inmates, with large disparities in victimization rates between heterosexual inmates and inmates with a sexual orientation other than heterosexual (including bisexual, homosexual, gay or lesbian, or other). Approximately 1.1 percent of heterosexual jail inmates reported inmate-on-inmate victimization, while 1.9 percent reported experiencing staff sexual misconduct. In contrast, among non-heterosexual jail inmates, 7.2 percent reported sexual abuse by another inmate and 3.5 percent reported victimization by staff (Beck et al, 2010).

Perhaps the most striking predictor of sexual abuse victimization in jails, however, is a history of prior sexual victimization, according to results from the BJS survey. Among jail inmates reporting sexual victimization before their current sentence, 7.4 percent reported being sexually assaulted by an inmate while incarcerated, and another 6.1 percent reported sexual activity with a staff member (Beck et al., 2010).


While understanding the types of inmates who may be at greater risk of sexual assault victimization is critical, it should also be noted that no one is immune to abuse. *Anyone can become a victim of sexual violence within a correctional environment.*

## Crime and victimization in Indian Country

According to the U.S. Census Bureau, Native Americans and Alaska Natives accounted for 1 percent of the total U.S. population in 2009 (2010). Despite comprising a small percentage of the overall

U.S. population, Native Americans experience a significant proportion of the nation’s violent crimes. Federal crime victimization statistics suggest that the rate of violent crime victimization among Native Americans between 1992 and 2001 was 2.5 times the national rate. In comparison to other ethnic/racial groups, Native Americans are victimized by violent crime at rates that are twice that of African Americans, 2.5 times that of Caucasians, and 4.5 times that for Asians (Perry, 2004).

Statistics for sexual assault victimization among Native Americans and Alaska Natives are equally



## FIGURE 5 The Daily Dozen

It is important to ensure that correctional employees maintain healthy professional boundaries with the inmates they supervise. The following self-check questions were designed to assist correctional staff in assessing their own behavior with inmates and identifying areas in which professional and ethical boundaries are at risk of being crossed.

- Do you look forward to seeing a particular offender when you come to work?
- Have you done anything with an offender that you would not want your family or your supervisor to know about?
- Would you be reluctant to have a co-worker observe your behavior for an entire day?
- Do you talk about your personal matters with offenders?
- Do you believe that you can ask an offender to do personal favors for you?
- Have you ever received personal advice from an offender?
- Have you said anything to an offender that you would not want tape recorded?
- Do you have thoughts or fantasies of touching a particular offender? Does this extend to planning how you can be alone with that offender?
- Do you think you have the right to touch an offender whenever and wherever you want to?
- Do you look forward to sharing good/bad news with a particular offender?
- Do you think offenders are not allowed to say “no” to you, no matter what you ask?
- Have you ever allowed an offender to talk to you about sexual experiences or sexual fantasies, or to tell sexual jokes in your presence? Have you ever shared these things with an offender?

**NOTE:**  
Teena Farmon, a former warden and a national expert on staff sexual misconduct initially developed this questionnaire for correctional staff to use as a daily self-test.

This checklist can be a helpful tool for detention officers in self-evaluating the manner in which they interact with inmates. Responses of “yes” to any of the above questions may indicate that an officer is at risk of crossing professional boundaries with an inmate.



alarming. National crime victimization data suggest that American Indians are twice as likely to experience sexual assault as compared to non-natives (Perry, 2004), and native women are particularly at risk of being sexually assaulted. Data indicate that indigenous women experience sexual violence at rates that are 2.5 times that of non-native women. It is estimated that more than one in three native women will be raped at some point in their lifetime (Amnesty International, 2007); although some studies suggest that an even greater percentage of Native American women may experience sexual violence (Malcoe and Duran, 2004). Given that prior sexual abuse is one of the primary predictors of corrections-based sexual abuse, women inmates in tribal jails may be particularly at risk of victimization during incarceration.

### **The impacts of sexual assault on victims**

Sexual abuse and violence have severe and long-lasting effects on victims, including physical, emotional, and behavioral consequences. Experiencing a sexual assault can be life-changing for an individual, and even a single event can result in a variety of immediate, short-term, and long-term effects on the victim (Dumond, 2006).

Studies have revealed a number of immediate, short-term, and long-term consequences of sexual assault victimization, although the majority of this research has focused primarily on female victims in the community. Immediately following an assault, victims often express feelings of loss of control. In addition, victims may experience physical pain and injuries, as well as an intense fear of further harm or death. Other symptoms often described by victims immediately following an attack include shock and disbelief.

Short-term effects of sexual assault may include a variety of psychological problems, including post-traumatic stress disorder (PTSD), rape trauma syndrome (RTS), anxiety, depression, and suicidal tendencies. Research indicates that a significant proportion of rape victims in the community experience PTSD as a result of their assaults, ranging from nearly one-third of victims (Kilpatrick et al., 1992) to as much as 49 percent (Littleton and Breitkopf, 2006). Typical symptoms exhibited by PTSD sufferers include chronic anxiety, depression, and flashbacks. In addition, contraction of HIV/AIDS, tuberculosis, hepatitis B and C, and other sexually transmitted infections (STIs), as well as pregnancy may result in the short term.

In the long-term, victims may abuse alcohol and other substances in an effort to forget the attack or to dull the emotional and physical impact of the rape. Victims may also exhibit sexually promiscuous behaviors following an attack, begin to victimize others, or become more violent or aggressive in their behavior (Dumond, 2006).

The following is a list of physical, emotional, and behavioral effects that are typical among sexual assault victims. Each individual deals with sexual assault victimization in his or her own way, and responses and coping strategies can vary widely depending on a range of variables, including the

age of a victim, the victim's gender, available support networks, a victim's relationship with the perpetrator, and the quality of responses by law enforcement, medical, and other community service providers. While the responses listed below represent typical reactions to sexual assault, they are not meant to be an exhaustive list of ways in which individuals may respond to an assault.

***Possible Physical Effects of Sexual Assault***

- Pain
- Injuries
- Nausea
- Vomiting
- Headaches
- Changes in sleep patterns
- Sudden sweating or heart palpitations

***Possible Emotional/Psychological Effects of Sexual Assault***

- Shock/denial
- Irritability/anger
- Depression
- Social withdrawal
- Numbing/apathy (detachment, loss of caring)
- Restricted affect (i.e., reduced ability to express emotions)
- Nightmares/flashbacks
- Difficulty concentrating
- Diminished interest in activities
- Loss of self-esteem
- Loss of security/loss of trust in others
- Guilt/shame/embarrassment
- Impaired memory
- Loss of appetite
- Suicidal thoughts
- Substance abuse
- Psychological disorders
- Sudden mood swings

- Feelings of helplessness and loss of control
- Feelings of extreme anger and hostility (particularly among male victims)
- Minimization of the assault
- Feelings of self-blame, guilt
- Feeling “dirty”

***Possible Behavioral Effects of Sexual Assault***

- Hypervigilance
- Insomnia
- Exaggerated startle response/jumpiness
- Panic attacks
- Eating disorders
- Self-mutilation
- Exaggerated feelings/responses to stimuli
- Increased use of violence and aggressive behavior

**The impact of corrections-based sexual abuse on victims**

Offenders are often viewed as unsympathetic individuals who, because of their crimes, deserve all aspects of their experiences under correctional supervision, even when they include abuse. In May 1994, the Boston Globe reported on a poll of 400 registered voters in Massachusetts in which half of the participants agreed that “society accepts prison rape as part of the price criminals pay for their wrongdoing” (Sennott, 1994).

For many correctional personnel, it may be difficult to recognize that inmates can also be victims. In reality, however, many criminal offenders have also been victimized at some point in their lives. According to BJS, 16 percent of jail inmates and probationers reported being abused prior to their current sentence (Harlow, 1999). The study further revealed that nearly half of the women in correctional populations and a tenth of the men report prior abuse.

For inmates under correctional supervision, the effects of a sexual assault often mirror those experienced by rape victims in the community. In many cases, however, the physical, social, emotional, and behavioral impacts of sexual assault can be exacerbated when the assault occurs within the correctional environment.

## FIGURE 6

### Post-Traumatic Stress Disorder and Rape Trauma Syndrome

While victims of sexual abuse respond in their own way to an assault, many victims develop post-traumatic stress disorder (PTSD), an anxiety disorder characterized by a series of symptoms following a highly traumatic event involving actual or threatened death or injury to themselves or others. Sufferers of PTSD may experience a sense of intense helplessness or fear, flashbacks, and nightmares. Some individuals with PTSD may also avoid stimuli associated with the trauma and may startle easily (Trauma Information Pages, 2008).

Other victims of sexual abuse and assault may develop Rape Trauma Syndrome (RTS), a variant of PTSD. Survivors of sexual assault who develop RTS typically go through two distinct phases. In the initial, or acute, phase, victims may display a range of emotions. He or she may cry, shout, laugh, or remain completely silent. Generally, victim responses during this phase can be categorized as either expressed or controlled.

Victims demonstrating the expressed style of response tend to display their emotions openly. They may appear agitated, talk a lot, cry or laugh, or exhibit a range of these behaviors. Individuals using the controlled style of response typically contain their emotions and may appear to be perfectly calm and composed, even numb. They may

### Physical impacts of corrections-based sexual abuse

The physical consequences of sexual assault victimization can be significantly more dangerous in an institutional setting. Inmates who experience sexual abuse are much more likely to be physically assaulted during attacks, and often experience multiple incidents of abuse (Dumond, 2006). According to a Human Rights Watch report, “rape in prison can be almost unimaginably vicious and brutal. Gang assaults are not uncommon, and victims may be left beaten, bloody and, in most extreme cases, dead” (Human Rights Watch, 2001, Rape Scenarios Section V, para. 2).

Inmate victims of sexual assault also have a heightened risk of contracting HIV/AIDS and other sexually transmitted infections as a result of their victimization. HIV/AIDS, hepatitis B and C, tuberculosis, and other communicable diseases are more prevalent among prison and jail populations than within the general public. This, added to the fact that inmate victims often experience multiple attacks by multiple perpetrators, increases the risk of inmate infection due to sexual assault (Robertson, 2003).

Women inmates victimized by male correctional staff have also been impregnated, creating a host of both physical and emotional concerns for the victim.

### Social impacts of corrections-based sexual abuse

Male victims of prison rape may suffer serious social stigmatization within the rigid hierarchy of the correctional environment. Heterosexual victims of prison rape are often deemed “punks” following a completed sexual assault, which compromises their sense of masculinity as well as their social standing within the institutional system.

Moreover, available options for recourse are limited and may be equally as damaging to the victim. Following an

attack, a victim may become aggressive, either against the perpetrator or against other inmates, in an attempt to regain his sense of masculinity and social standing. In doing so, however, he risks being penalized for violent behavior by correctional staff. Alternatively, the victim may choose to “hook up” with a sexual partner in exchange for protection against other inmates. While this type of behavior is usually adopted as a survival mechanism to avoid violent attacks from other inmates, it is often perceived as consensual in nature by correctional staff (Robertson, 2003). The victim’s perception of the relationship may also be skewed; entering into such protective partnerships may cause the victim to question his own sexuality and blame himself for the abuse.

For many inmates, reporting an assault to correctional staff may be the last resort in an effort to avoid further abuse, as this option can pose serious risks to the inmate’s safety and well-being. On one hand, those who report their victimization may face disbelief by authorities, compounding the shame and humiliation already endured as a result of the assault. On the other hand, should their reports be taken seriously and result in their placement in protective custody, they risk being labeled a “snitch” or “rat” by other inmates, the lowest ranking in the prison or jail social hierarchy. In addition, the victim may have few opportunities to engage in programs, services, and activities available to inmates in the general population; in effect, the victim may feel further victimized by a term of solitary confinement.

### **Emotional impacts of corrections-based sexual abuse**

All victims of sexual assault endure serious emotional consequences as a result of their abuse, but the emotional trauma experienced by an individual assaulted while under correctional supervision can be particularly intense. In confinement settings, such as prisons and jails, inmates may not be able to escape their attackers

seem detached and minimize both their emotions and the gravity of the incident.

Both styles of responses are normal and appropriate in the days immediately following an assault. Initially, victims may experience severe shock and disbelief that the abuse occurred. After the initial shock, victims may feel a range of emotions, including anger, humiliation, shame, sadness, or fear.

In the second, or reorganization, phase, victims of sexual assault learn to cope with their experiences through a variety of coping mechanisms, including minimization, dramatization, suppression, explanation, and flight. While the victim may still express many of the emotions displayed during the acute phase, he or she may be more willing to seek assistance in addressing the trauma (Rape Victim Advocates, 2008; RAINN, 2008).

While many victims of sexual abuse and assault may develop PTSD or RTS, it is imperative to understand that each individual deals with trauma in a unique way. No two victims will respond in the same way. While the symptoms and behaviors described above are typical among sexual assault victims, they are not exhaustive. Individuals may adopt different or additional responses and coping mechanisms than those listed above.

and often face multiple incidents of abuse. Furthermore, it is not uncommon for victims of sexual assault to report feeling a loss of control as a result of their victimization. This feeling can be compounded when it occurs within a correctional environment in which inmates have very limited control over their everyday lives; victims of corrections-based sexual abuse may experience a sexual assault as the complete loss of control over every aspect of their lives, including their own sexuality. As a result, victims endure a prolonged sense of fear, terror, and helplessness, which may exacerbate their trauma (Dumond, 2006).

Both male and female inmates report higher rates of prior physical and sexual abuse than individuals in the general U.S. population (Harlow, 1999). A significant proportion, between 25 and 39 percent, of women in particular report being sexually assaulted prior to their incarceration, and additional incidents of abuse may compound existing feelings of helplessness, loss of control, and lack of self-esteem. Research indicates that prior physical and sexual victimization can increase the severity of a victim's trauma and make recovery more difficult (Dumond and Dumond, 2002).

Meanwhile, male inmates who experience sexual assault at the hands of other men may experience extreme feelings of humiliation, shame, and loss of masculinity (Robertson, 2003). Male victims may question their own sexuality, particularly when the victim is young. Moreover, given the complex sense of shame that is typical in male rape, men are less likely to report their abuse (Pino and Meier, 1999). In cases in which men do report an attack, they are more likely to adopt a more controlled response in which they display limited emotion, leading authorities to underestimate the physical and emotional impact of their assault (Dumond and Dumond, 2002).

Victims of staff sexual misconduct may also experience an added sense of betrayal given that those individuals charged with their protection and supervision instead committed abuses against them. Staff sexual misconduct may also leave victims with few options, as their abusers may have the authority to provide inmates with particular privileges, including visitation rights and access to community programs and services. Victims may therefore be reluctant to deny advances or report abuses out of concern of losing valuable privileges. Further, victims may not report the abuse fearing that their word would not be believed against that of a staff person. As a result, victims may not receive needed services, and both their physical and emotional injuries may go unaddressed.

### **Behavioral impacts of corrections-based sexual abuse**

Studies indicate that violent victimization, including sexual abuse and assault, is linked to an increased likelihood of involvement in crime and deviance later in life. For instance, studies have found that victims of abuse and violence in childhood and adolescence were two to three times as likely to be arrested and to be involved in serious and/or violent offenses as an adult (Macmillan, 2001). Researchers have also suggested that victimization in adulthood can increase the chances of violent criminality. Peters and Peters (1998) note that up to 70 percent of female offenders have been victimized at some point in their lives. They go further to highlight suggestions linking violence

perpetrated against females to the growth of female involvement in violent crime. Others point out the long-lasting psychological and behavioral effects of male rape, including increased anger, violence, and hostility, common among male victims of sexual assault (Walker et al., 2005).

Some experts also suggest that increased violence and proclivity to reoffend may be among the long-term behavioral impacts of prison rape, although this theory has not yet been fully tested. According to the Bureau of Justice Statistics, 77 percent of male state prison inmates who reported being abused prior to their incarceration had been sentenced for a violent crime, compared to 61 percent of male inmates who reported no prior abuse. Likewise, 45 percent of female state inmates reporting prior abuse had served time for a violent offense, whereas only 29 percent of female inmates who had not been abused had been sentenced for violent crimes (Harlow, 1999).

Dumond notes the common tendency for targets of sexual aggression within prisons to act out violently as a strategy to avoid further victimization while incarcerated (2003). Likewise, Cotton and Groth (1982) offer that violence is often cyclical, with victims ultimately becoming victimizers themselves, suggesting heightened risks not only for fellow inmates within a correctional setting, but for the general public as well. These authors comment that, “Society then has a vested interest in this issue—some of the men in prison are so characterologically traumatized and angry that they retaliate when they return to the community by committing acts of physical and sexual violence” (Cotton and Groth, 1982, p. 50).

Human Rights Watch, in a report on prisoner rape that contributed to the passage of PREA, also pointed out the dangerous impact that corrections-based sexual assault has on its victims and the potential implications for community safety. Following interviews with inmates during which the long-term behavioral impacts of prison rape were discussed, the authors conclude that sexual assault victimization can result in the heightened use of violence among inmates, both within the institution and in the community. “The anger, shame and violence sparked by prison rape—though it may originate in the correctional setting—is unlikely to remain locked in prison upon the inmate’s release” (Human Rights Watch, 2001, p. 120).

### **Creating a culture of zero tolerance in tribal detention facilities**

Primary among the purposes of the Prison Rape Elimination Act of 2003 is the establishment of a zero tolerance standard for the incidence of sexual assault in corrections settings. But what exactly does a zero tolerance standard mean for jails and detention facilities in Indian Country, and how can it be achieved?

In essence, a zero tolerance standard indicates that an agency will not tolerate sexual abuse of any kind within its environment and that it will take any necessary steps to ensure that incidents of sexual abuse are responded to appropriately. One of the many ways that correctional agencies

and facilities are working to fulfill a zero tolerance standard is through the development of policies and procedures that aim to protect inmates against sexual abuse and provide guidance for agency personnel on how to properly respond to incidents of assault if and when they occur.

Although these steps are important, achievement of a zero tolerance standard cannot be fulfilled through policies and procedures alone. Rather, all employees, volunteers, and contractors of an agency must contribute to a culture of zero tolerance for sexual abuse to achieve safety, security, and fairness for everyone involved.

What does this mean for tribal jail and juvenile detention administrators? It means that jail and detention administrators must:

- Establish clear policies and procedures pertaining to the prevention, detection, and response to sexual abuse, violence, and assault within the facility, including staff sexual misconduct;
- Ensure that all staff members are familiar with the policies and procedures in place to protect inmates from sexual abuse;
- Assure staff that policies on sexual abuse prevention and response will be strictly enforced;
- Provide staff members with adequate training that reinforces the policies and procedures on a regular basis;
- Set the standard for appropriate behavior within the workplace and lead by example;
- Develop an environment in which individuals (including inmates and staff members, alike) feel comfortable and safe reporting incidents of sexual abuse; and
- Hold those who perpetrate abuse accountable for their behavior, whether it is an inmate preying on other inmates or a staff member engaged in a sexual relationship with an inmate.

Creating a culture of zero tolerance also means informing inmates of their right to be protected against sexual abuse while under custody and that any incidents will be properly investigated and addressed.

## **Conclusion**

Sexual abuse and assault have serious and long-lasting effects for victims, both within correctional settings and upon the inmates' return to their communities. Victims of sexual violence within correctional environments often display many of the same responses to abuse as those common among victims in the community. It is important to note, however, that corrections-based sexual abuse can have distinct and, in some cases, more severe impacts on its victims, including heightened risks of the transmission of HIV/AIDS and other communicable diseases, increased use of violence during assaults, social risks of reporting abuse, fear associated with the inability to escape an abuser, and long-term risks of becoming violent following an attack.





# PREVENTING AND ADDRESSING SEXUAL ABUSE IN TRIBAL DETENTION FACILITIES

While incidents of sexual abuse in large, state prison systems provided the initial impetus for the passage of PREA, in the years since it has become increasingly evident that corrections-based sexual abuse affects a much broader array of correctional settings. Sexual abuse cases have been reported in nearly every type of detention or confinement facility—jails, juvenile facilities, police lockups and holding cells; community-based correctional facilities; and halfway houses—and at every jurisdictional size and level—state, county, municipal, and tribal.

Ensuring that tribal detention agencies are proactively addressing issues related to sexual violence within their facilities is therefore critical to the safety and security of tribal detention facilities, the staff and inmates within them, and to the communities they serve. However, it is important to acknowledge the unique challenges and opportunities that exist in Indian Country that may affect how the issue of corrections-based sexual abuse can and should be addressed.

## **Sexual violence in Indian Country**

Among the major challenges for tribal detention facilities in addressing corrections-based sexual abuse is the high rates of sexual violence in Native communities generally. While limited data exist on rates of sexual violence among Native men, research indicates that indigenous women experience the highest rates of violence among women of all ethnic groups in the United States (Bhungalia, 2001; Evans-Campbell, Lindhorst, Huang, and Walters, 2006). According to Sullivan (2007), Native women are 2.5 times more likely to be sexually assaulted than other women. Amnesty International estimates that 1 in 3 Native women will be raped at some point in her lifetime (2007). Further, rapes against women in Indian Country tend to be more severe, resulting in more physical force and injuries (Amnesty International, 2007).

Given that the highest indicator of risk for sexual abuse victimization, in general, and in correctional settings, in particular, is prior victimization, Native inmates may find themselves at particular risk of harm within correctional environments, including tribal detention facilities. As such, conducting intake screenings that include questions to help identify previous sexual assault victimization among incoming inmates could provide helpful information for making critical housing decisions.

## **The criminal justice response to sexual violence in Indian Country**

Despite the high rates of sexual violence that occur in Native communities, reporting of sexual assaults remains very low (Weaver, 2009). While sexual abuse and assault are highly underreported across the country, experts suggest that reporting of sexually-based crimes have particularly low reporting rates within tribal communities. These low reporting rates can be attributed to a variety of reasons, including social taboos against discussing sexuality and sexual violence, as well as historically poor criminal justice responses to sexual abuse in tribal jurisdictions.

What's more, the complex jurisdictional issues affecting criminal justice response in Indian Country have been widely acknowledged as an obstacle to addressing sexually-based offenses committed against Native people (Weaver, 2009; Amnesty International, 2007). Given the limitations in tribal authorities' abilities to charge and prosecute crimes, and the challenges for federal and/or state officials in responding to crimes in tribal jurisdictions (many of which are located in remote areas), it is not surprising that few sexual assault cases are investigated and ultimately prosecuted. Indeed, many victims choose not to report their crimes at all, believing that little to no criminal justice response would result.

## **Sexual assault forensic examinations**

A critical component to any first response to a sexual assault—and, ultimately, to an effective prosecution—is the collection of forensic evidence through a sexual assault forensic examination, often referred to as a “rape kit.” Such examinations are performed by health professionals specially trained in the collection of forensic evidence and examination of physical injuries following a sexual

assault. All victims of sexual violence should be provided with access to a sexual assault forensic examination free of charge, regardless of their decision to report the crime to authorities.

Increasingly, sexual assault forensic examinations are conducted by sexual assault nurse examiners (SANEs), registered nurses with specialized training and education in performing such exams. Specifically, SANEs have been trained to provide appropriate care to sexual assault patients, perform sexual assault forensic examinations, provide courtroom testimony, and exhibit compassion and sensitivity in working with victims.

Unfortunately, however, access to sexual assault forensic examiners, in general, and SANEs, in particular, is often a challenge to those living in remote tribal areas. In some cases, victims may have to travel hundreds of miles in order to have such an exam. Recent national efforts to address the lack of access to such crucial services for sexual assault victims in Indian Country are promising, including new Federal mandates for the development and implementation of standardized sexual assault response policies and procedures by Indian Health Services. (For more information, please see Figure 1.)

## **Access to victim services**

Yet another challenge for tribal jurisdictions is access to appropriate victim services for individuals who have been sexually assaulted. As discussed in previous sections, the impacts of sexual violence can be severe and long lasting for victims. Appropriate short- and long-term services are therefore important in order to help victims cope with the trauma of their victimization. Culturally appropriate support services for victims of sexual assault, including counseling services, peer support groups and traditional healers, can prove to be an essential element in a victim's ability to overcome their experience of abuse.

According to report by Amnesty International (2007), however, support services for victims of sexual assault in tribal communities, including services provided by Indian Health Services as well as Native-run shelters and advocacy services, remain insufficient to meet existing needs.

Agencies that provide medical and mental health care to sexual assault victims are frequently understaffed. Moreover, privately run shelters and advocacy agencies frequently rely on grant funding to keep their doors open, meaning that budgetary shortfalls can quickly end the provision of much needed services. In some instances, the closest victim services agency may be located hundreds of miles away, which poses a serious challenge for victims as they cope with the trauma of victimization.

## **Tribal detention programs**

In addition to a lack of access to appropriate services for victims of sexual assault within tribal jurisdictions, tribal detention programs and facilities face a number of factors that challenge the

## FIGURE I

### The Tribal Law and Order Act: Implications for the Prevention and Response to Corrections-based Sexual Abuse

With the passage of the Tribal Law and Order Act of 2010 (TLOA), the United States Congress took an important step in acknowledging the many challenges facing tribal justice systems in promoting public safety within their communities. Through TLOA, the Federal government sought to address such longstanding issues as the high rates of violent crimes in Indian Country, inadequate resources for tribal justice systems, and lack of alternatives to incarceration (U. S. Department of Justice, 2011b).

While the goal of TLOA is to strengthen tribal justice systems and collaborations between Federal, State, tribal and local governments related to criminal justice issues, there are a number of elements within the act that have a direct impact on efforts by tribal justice systems in preventing and addressing corrections-based sexual abuse, including the following:

- **Strengthens Federal Prosecution Obligations in Indian Country.** TLOA calls for the appointment of special qualified tribal prosecutors to assist in prosecuting Federal offenses committed in Indian Country, requires U.S. Attorney's offices to provide written notice to tribes regarding any prosecution declinations, and improves the coordination of Federal prosecution of tribal cases, thus reducing pressure on tribal courts to prosecute serious offenders on lesser charges through concurrent jurisdiction.
- **Provides Training and Technical Assistance to Tribal Justice Systems.** TLOA provides greater flexibility in the training mandates for tribal police officers, and maintains critical training and technical assistance programs for a tribal justice systems, including tribal courts and correctional programs.
- **Expedites Background Checks for Tribal Justice Officials.** TLOA requires that the Bureau of Indian Affairs to complete background checks for tribal law enforcement and corrections officials within 60 days of the receipt of the request, unless an adequate reason for a delay is provided. This mandate will assist tribal jail officials in ensuring adequate staffing levels within facilities by contributing to a more efficient hiring process.
- **Expands Alternatives to Incarceration.** TLOA provides much needed resources to assist tribal jurisdictions in the construction of multi-purpose criminal justice centers, jails, and alternatives to incarceration programs (e.g., probation, work-release, day reporting centers, etc.). The provision of these funds will not only enable tribes to meet existing detention needs through the construction of new facilities, but will also reduce overcrowding in tribal jails by enabling tribal justice systems to provide community-based justice services.
- **Enhances Information Sharing Capabilities.** TLOA provides access of tribal law enforcement agencies to the National Crime Information Center and other national criminal justice information databases, allowing for tribal justice agencies to retrieve and provide needed criminal justice information.
- **Increases Availability of Domestic and Sexual Violence Offense Training.** TLOA provides for enhanced training of tribal law enforcement officers on conducting proper interviews with victims of domestic and sexual violence, and in the collection, preservation, and presentation of evidence to increase the conviction rates for domestic and sexual violence crimes in Indian Country.
- **Mandates Sexual Assault Policies and Protocols.** TLOA requires the Indian Health Service, in coordination with other Federal agencies, to develop and implement standardized sexual assault policies and protocols for the IHS facilities to follow in the provision of care to domestic and sexual violence victims.

While TLOA does not specifically address corrections-based sexual abuse, several of its mandates will enable tribal detention administrators and their staff to better meet the existing needs in Indian Country jails, lock-ups, and other confinement settings, thereby reducing all forms of violence, including sexual violence, within tribal detention facilities. The full text of the Tribal Law and Order Act of 2010 can be accessed at <http://www.tribaljusticeandsafety.gov/tloa>.

## FIGURE 2

### The National Resource Center for the Elimination of Prison Rape

Through funding from the U.S. Department of Justice, Bureau of Justice Assistance (BJA), the National Council on Crime and Delinquency has launched the National Resource Center for the Elimination of Prison Rape (the Center). The Center will serve as the national source for online and direct support, training, technical assistance, and research to assist adult and juvenile corrections, detention, and law enforcement professionals in their ongoing work to eliminate sexual assault in confinement.

For more information about the National Resource Center for the Elimination of Prison Rape, please visit the National Council on Crime and Delinquency Web site: [www.nccd-crc.org/nccd/initiatives/prea.html](http://www.nccd-crc.org/nccd/initiatives/prea.html).

ability to effectively prevent and address corrections-based sexual abuse. Primary among such concerns is the physical state of some tribal detention facilities, many of which are older facilities with antiquated designs that are insufficient to properly supervise inmates and residents. In 2004, approximately one-third of all detention facilities in Indian Country were 30 years old or older, while another 28 percent were between 20 and 30 years old, as noted by the Department of the Interior. In addition, many of these

facilities have design features that are not conducive to adequate observation of inmates (e.g., heavy metal cell doors with small windows that limit visibility; corridors and other areas without adequate security camera coverage, etc). A lack of juvenile facilities has also resulted in the housing of juvenile offenders in adult facilities, which can pose a high risk for sexual assault victimization (U.S. Department of the Interior, 2004).

New funding from the U.S. Department of Justice for the construction of tribal jails and criminal justice facilities has made significant progress in recent years in improving the state of tribal detention facilities across the country. According to the BJS, 11 facilities permanently closed between 2004 and 2009, with a total of 21 new facilities constructed in Indian Country during this timeframe (Minton, 2011). More facilities, however, remain in need of improvements.

Moreover, many detention facilities in Indian Country experience regular overcrowding. In 2004, more than half of all detention facility staff reported that their facilities were habitually overcrowded. This statistic has not improved dramatically in the years since, with nearly half of the 80 detention facilities in Indian Country reporting that they were operating above rated capacity on the most crowded day in June 2009. Of these facilities 13 jails reported operating at more than 50 percent over rated capacity (Minton, 2011).

In some cases, detention facilities operating above capacity have to use floor mats to accommodate the numbers of inmates being housed, common areas and recreational facilities may be used as bunk areas, and restroom facilities may be inadequate to meet existing needs. With lack of adequate space and accommodations for inmates, the risk of violence (including sexual violence)

increases dramatically, putting the safety and security of both inmates and personnel alike in jeopardy. The addition of new funding for the construction of new tribal justice centers, tribal jails, and alternatives to incarceration programs provided through the Tribal Law and Order Act of 2010, however, is a positive development which may alleviate the chronic problem of overcrowded jails in Indian Country. (For more information, see Figure 1 on page 37.)

Another problem frequently cited by tribal detention administrators is inadequate staffing levels, due to funding shortfalls and difficulties in recruitment and retention, among other issues. In 2004, the Department of the Interior found that 79 percent of Bureau of Indian Affairs detention facilities fell below the minimum staffing levels on a regular basis (2004).

Moreover, not all tribal detention staff received adequate training and certification. For instance, the Department of the Interior found that only 52 percent of detention officers had received detention officer training in 2004, and in some cases officers had worked for up to 12 years without attending the Bureau of Indian Affairs Indian Police Academy, mandated within the first 12 months of services (DOI, 2004). By 2009, however, this statistic had improved, with BJS finding that 79 percent of detention officers had received basic detention officer certification, with another 84 percent having received 40 hours of in-service training (Minton, 2011).

Detention facilities in Indian Country are also hampered by a lack of critical criminal justice information needed to make housing decisions within the facility and other important decisions to ensure the safety of the facility. While tribal law enforcement and detention staff may be aware of the criminal history of an individual within a given tribal jurisdiction, until recently, little information was available to tribal governments on crimes committed by that individual in other tribal jurisdictions or on non-Native lands.

Knowing the criminal history of an inmate is an essential element of the intake assessment process, and can be critical to making appropriate housing determinations. For instance, inmates with a history of committing sexually-based offenses should not be housed with an inmate with a history

## FIGURE 3

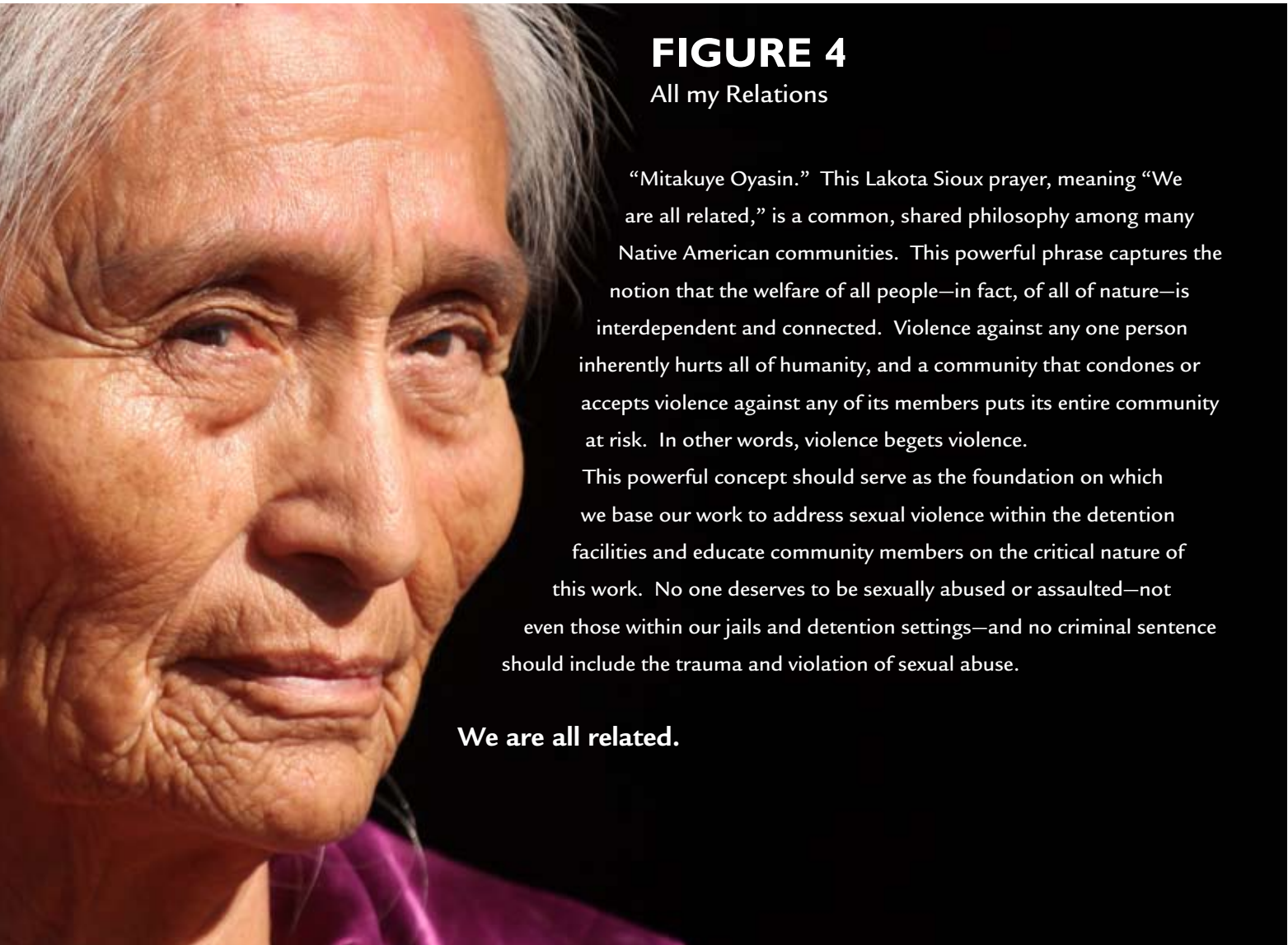
### Additional Resources

Undertaking an effort to enhance the prevention and response to sexual abuse within a detention setting can be an overwhelming endeavor. Fortunately, however, there are a number of training and technical assistance resources that are available to detention agencies nationwide, including facilities in Indian Country.

This policy guide is accompanied by a training curriculum designed to provide tribal detention officers with the information and skills needed to more effectively prevent and respond to sexual abuse. This training curriculum package, “Preventing and Addressing Sexual Abuse in Tribal Detention Facilities: The Impact of the Prison Rape Elimination Act,” includes an instructor’s guide, participant manual, and presentation slides. The full package of training materials can be downloaded from the APPA website: <http://tinyurl.com/preaindian>.

Additional resources are listed on page 42.

of sexual abuse victimization. Moreover, access to criminal databases can also be an important tool in the hiring of detention staff. Until recently, however, tribal governments had very limited access to criminal justice information sharing systems, including the Federal Bureau of Investigation’s National Criminal Information Center. With the passage of the Tribal Law and Order Act of 2010 (see Figure 1 on page 37), tribal law enforcement agencies now have access to national criminal justice databases, which should help improve their abilities to make their facilities—and those residing within them—safer and more secure.



## FIGURE 4

### All my Relations

“Mitakuye Oyasin.” This Lakota Sioux prayer, meaning “We are all related,” is a common, shared philosophy among many Native American communities. This powerful phrase captures the notion that the welfare of all people—in fact, of all of nature—is interdependent and connected. Violence against any one person inherently hurts all of humanity, and a community that condones or accepts violence against any of its members puts its entire community at risk. In other words, violence begets violence.

This powerful concept should serve as the foundation on which we base our work to address sexual violence within the detention facilities and educate community members on the critical nature of this work. No one deserves to be sexually abused or assaulted—not even those within our jails and detention settings—and no criminal sentence should include the trauma and violation of sexual abuse.

**We are all related.**



## Conclusion

Clearly, there are a number of unique challenges facing tribal detention officials in addressing the issue of corrections-based sexual abuse. High rates of sexual victimization in Indian Country; limitations to the effective criminal justice response to sexual offenses; and aging, overcrowded, and understaffed detention facilities contribute to the complexity of this issue in tribal jurisdictions. However, there are a number of resources and tools that are available to assist tribal detention officials. New resources authorized by the Tribal Law and Order Act of 2010 are a positive development in efforts to strengthen all components of tribal justice, including making detention facilities safer and more secure. Training and technical assistance resources on preventing and responding to corrections-based sexual abuse are widely available, thanks to the Bureau of Justice Assistance, the National Institute of Corrections, and private organizations dedicated to meeting the training needs of practitioners across the country. Perhaps most important, however, is the prevailing notion among Native communities that we are all connected through our humanity—that violence against one harms us all. This concept can serve as a powerful guide in any efforts to safeguard facilities against the threat of sexual violence.

# RESOURCES

Addressing Sexual Violence in Prisons: A National Snapshot of Approaches and Highlights of Innovative Strategies  
[www.urban.org/UploadedPDF/411367\\_psv\\_programs.pdf](http://www.urban.org/UploadedPDF/411367_psv_programs.pdf)

Data Collections for the Prison Rape Elimination Act of 2003  
<http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=20>

## **PREA Statute:**

[www.wcl.american.edu/nic/Articles\\_Publications/Prison\\_Rape\\_Elimination\\_Act\\_of\\_2003.pdf?rd=1](http://www.wcl.american.edu/nic/Articles_Publications/Prison_Rape_Elimination_Act_of_2003.pdf?rd=1)

To order the 5-part DVD “Facing Prison Rape and Responding to Prison Rape”: Contact the National Institute of Corrections Information Center at [www.nicic.org](http://www.nicic.org), or by calling 1-800-877-1461.

To order copies of the PREA Standards and the report of the Prison Rape Elimination Commission:  
Go to [www.ncjrs.gov](http://www.ncjrs.gov) and order the following documents by the given numbers:

- NCJ 226680 – National Prison Rape Elimination Commission Final Report
- NCJ 226681 – National Prison Rape Elimination Commission Final Report – Executive Summary
- NCJ 226682 – National Prison Rape Elimination Commission Standards – Adult Prisons and Jails
- NCJ 226685 – National Prison Rape Elimination Commission Standards – Lock-ups
- NCJ 226684 – National Prison Rape Elimination Commission Standards – Juvenile Facilities
- NCJ 226683 – National Prison Rape Elimination Commission Standards – Community Corrections

## **Reports/Articles:**

Breaking the Code of Silence, website of the Washington College of Law, The American University  
[www.wcl.american.edu/nic](http://www.wcl.american.edu/nic)

Commission on Accreditation for Law Enforcement Agencies, Inc., Standards for Law Enforcement Agencies: The Standards Manual of the Law Enforcement Agency Accreditation Program, Fourth Edition, November 2001, Fairfax, Virginia. [www.calea.org](http://www.calea.org) Chapter 71, Prisoner Transportation, Chapter 72, Holding Facility.

Confronting Confinement: A Report of the Commission on Safety and Abuse in America’s Prisons  
[www.prisoncommission.org/report.asp](http://www.prisoncommission.org/report.asp)

Deer, Sarah and Maureen L. White Eagle. “Tribal Legal Code Resource: Sexual Assault and Stalking Laws Guide for Drafting or Revising Victim-Centered Tribal Laws Against Sexual Assault and Stalking”. *Tribal Law and Policy Institute*. June 2008.

Jails in Indian Country, 2008. <http://www.bjs.gov/index.cfm?ty=tp&tid=142> Document # NCJ 228271.

Jordan, Andrew, Marcia Morgan and Michael McCampbell, “The Prison Rape Elimination Act: What Police Chiefs Need to Know”, Police Chief Magazine, *International Association of Chiefs of Police*, vol. 73, no. 4, April 2006.  
[http://policechiefmagazine.org/magazine/index.cfm?fuseaction=display\\_arch&article\\_id=864&issue\\_id=42006](http://policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=864&issue_id=42006)

McCampbell, Michael S., “Prison Rape Elimination Act: Impact on Police Chiefs of the Prison Rape Elimination Act,” Subject to Debate, *Police Executive Research Forum*, September 2005, Vol. 19, No. 9, page 5  
<http://www.policeforum.org/library/subject-to-debate-archives/2005/STDSept2005.pdf>

Susan W. McCampbell and Larry S. Fischer, Staff Sexual Misconduct with Inmates: Policy Development Guide for Sheriffs and Jail Administrators, National Institute of Corrections, August 2002.  
<http://static.nicic.gov/Library/017925.pdf>

McC Campbell, Susan W. and Elizabeth P. Layman, "Investigating Allegations of Staff Sexual Misconduct with Inmates: Myths and Realities."

[www.wcl.american.edu/nic/Articles\\_Publications/Investigating\\_Allegation\\_of\\_staff\\_Sexual\\_Misconduct.pdf?rd=1](http://www.wcl.american.edu/nic/Articles_Publications/Investigating_Allegation_of_staff_Sexual_Misconduct.pdf?rd=1)

Sexual Violence Reported by Correctional Authorities, 2004

<http://bjs.ojp.usdoj.gov/content/pub/pdf/svrca04.pdf>

Sexual Violence Reported by Correctional Authorities, 2005

[www.wcl.american.edu/nic/documents/BeckandHarrison\\_BJSReport2005\\_000.pdf?rd=1](http://www.wcl.american.edu/nic/documents/BeckandHarrison_BJSReport2005_000.pdf?rd=1)

Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09.

<http://bjs.ojp.usdoj.gov/content/pub/pdf/svpjri0809.pdf>

Simonian, Nairi M. and Brenda V. Smith. "Integrity in Jail Operations: Addressing Employee/ Offender Relationships." *American Jails*. July/August 2006: 9-19.

[www.wcl.american.edu/nic/documents/AJA\\_Final.pdf?rd=1](http://www.wcl.american.edu/nic/documents/AJA_Final.pdf?rd=1)

Staff Perspectives: Sexual Violence in Adult Prisons and Jails: Trends from Focus Group Interviews <http://nicic.org/Downloads/PDF/Library/021619.pdf>

United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance. "Mental Health Problems of Prison and Jail Inmates" Revised December 14, 2006. NCJ 213600.

## Websites:

Tribal Law and Policy Institute – [www.tribal-institute.org](http://www.tribal-institute.org)

Tribal Law Journal – <http://tlj.unm.edu/>

Bureau of Justice Assistance – [www.ojp.usdoj.gov/BJA](http://www.ojp.usdoj.gov/BJA)

Bureau of Justice Statistics - <http://bjs.ojp.usdoj.gov/>

National Institute of Corrections - [www.nicic.org](http://www.nicic.org)

Prison Rape Elimination Commission [www.nprec.us](http://www.nprec.us) – this includes the current proposed National Standards prior to approval by the U.S. Attorney General.

Just Detention International – <http://justdetention.org/>

National Criminal Justice Resource Service – [www.ncjrs.gov](http://www.ncjrs.gov)

## Training Materials – more available on the following websites:

- [www.wcl.american.edu/nic/training.cfm](http://www.wcl.american.edu/nic/training.cfm)
- [www.nicic.org](http://www.nicic.org)
- [www.cipp.org](http://www.cipp.org)
- [www.tribal-institute.org](http://www.tribal-institute.org)
- [www.appa-net.org](http://www.appa-net.org)

# PUTTING PREA INTO PRACTICE: GUIDELINES FOR POLICY DEVELOPMENT

As a result of the Prison Rape Elimination Act of 2003, the U.S. Attorney General’s Office was tasked with establishing national standards for the prevention, detection, and response to sexual abuse in correctional facilities. On February 3, 2011, the U.S. Department of Justice published a proposed rule consisting of National Standards to Prevent, Detect, and Respond to Prison Rape for public comment. Following the public comment period and revisions, the final rule, including the National Standards, are anticipated for release by the end of 2011.

The following guidelines have been developed to assist administrators of tribal jails, detention centers, police lock-ups, and other correctional facilities in determining an agency’s need for new or revised policies in response to PREA. These statements are based on the proposed National Standards to Prevent, Detect, and Respond to Prison Rape, Subpart A—Standards for Adult Prisons and Jails. The following guidelines reflect the requirements of the proposed standards, even incorporating the precise language of the standards when appropriate, and have been organized in accordance to the proposed standards.

## Prevention Planning

1. The agency has a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and that outlines the agency’s approach to preventing, detecting, and

responding to such conduct.

2. The agency's policy clearly identifies who is covered by any policies related to sexual abuse, staff sexual misconduct, and sexual harassment, (e.g., security staff, administrative staff, volunteers, contractors, etc.).
3. The agency's policy defines specific behaviors between inmates and staff and between inmates regarding sexual contact, sexual assault, and sexual harassment. Definitions provided in the agency's policy are consistent with definitions provided by the proposed National Standards to Prevent, Detect, and Respond to Prison Rape, and those used by the Bureau of Justice Statistics to collect information on sexual victimization in prisons and jails.
4. The agency's policy prohibits acts of sexual misconduct and abuse that are criminal in nature, including acts that are prohibited by federal law (under 18 U.S.C. § 1151 of the Major Crimes Act), relevant state laws (in P.L. 280 states), and tribal codes. Additionally, the agency's policy defines specific acts that are prohibited by policy, but that do not violate criminal law (e.g., romantic correspondence between staff and inmate).
5. The agency's policy clearly articulates that the agency will investigate all allegations of sexual abuse, staff sexual misconduct, and sexual harassment.
6. The agency's policy reflects that any private agencies or other entities (including government agencies) with which the agency has a contractual relationship for the confinement of inmates will be required to comply with the agency's policy (or policies) on sexual abuse, staff sexual misconduct, and sexual harassment. Further, the agency's policy clearly outlines the process for monitoring the contracting agency's compliance with all policies related to sexual abuse, staff sexual misconduct, and sexual harassment.
7. The agency has policies and protocols in place to ensure adequate levels of staffing and other security measures (i.e., cameras, video monitoring, etc.) to protect inmates against sexual abuse, and the agency has established a plan to reassess relevant staffing levels and other security measures on an annual basis to maintain appropriate security measures for the prevention of sexual abuse, misconduct, and harassment.
8. Agency policy prohibits facility staff from conducting cross-gender strip searches or visual body cavity searches, except in cases of emergency or when performed by medical practitioners. Agency policy also requires that staff document any cross-gender strip searches that are conducted.
9. The agency's policy requires that inmates must be able to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in the case of emergency, by accident, or when such viewing is incidental to routine cell checks.

10. The agency's policy addresses the identification and treatment of transgender inmates. Specifically, the agency's policy prohibits the examination of a transgender inmate to determine the inmate's genital status, unless the inmate's genital status is unknown, and requires that any such examinations be conducted in private by a medical practitioner.
11. The agency has policies, protocols, and trainings in place that provide instruction to security staff in conducting cross-gender pat-down searches and searches of transgender inmates in a manner that is professional and respectful, and in the least intrusive manner possible, consistent with security needs.
12. The agency has protocols in place that allow for the exemption of inmates who have suffered documented cross-gender sexual abuse while incarcerated from receiving cross-gender pat-down searches.
13. The agency has established policies and protocols to accommodate inmates who are deaf, disabled, or have language barriers that may prevent them from reporting sexual abuse or harassment directly to staff or through other established reporting mechanisms without relying on inmate interpreters.
14. The agency has established protocols to verbally communicate all information regarding sexual abuse policies, including instructions for reporting sexual abuse and harassment, to inmates who have limited reading skills or are visually impaired.
15. The agency's policy prohibits the hiring or promotion of any individual who has engaged in sexual abuse in a correctional or other institutional setting, who has been convicted of sexually violent crimes in the community, or who has been civilly or administratively adjudicated for such activity.
16. The agency's policy requires that criminal background checks and contacts with prior institutional employers are completed prior to hiring new employees, and that criminal background checks—or other suitable checks—of current employees are conducted every five years. Unless prohibited by law, agency policy requires that information on substantiated allegations of sexual abuse involving a former employee must be shared when requested by an institutional employer to which the former employee has applied for employment.
17. The agency's designs for new or upgraded facilities take into account the effect of building design, acquisition, expansion or modification on the ability to protect inmates against sexual abuse, and consider how such technologies as video monitoring systems, cameras, electronic surveillance systems, or other monitoring technologies can contribute to the protection of inmates against sexual abuse.

## **Responsive Planning**

18. The agency's policy clearly articulates that all allegations of sexual abuse, sexual harassment, and staff sexual misconduct will be fully investigated.

## FIGURE I

### Tips for Policy Development and Implementation

It is one thing to develop an agency policy for the prevention and response to sexual abuse in detention facilities, but it is another thing entirely to implement such policies in a comprehensive and effective way. To do so requires careful forethought and planning throughout the process. The following tips have been identified to assist agency administrators in successfully developing and implementing effective policies in their own facilities and are based on feedback and lessons learned from tribal corrections agencies that have already gone through the process of developing and implementing policies related to the prevention of and responses to sexual abuse cases.

- Take an inventory of existing policies and procedures. Many of the policy recommendations in this guide are probably already present in the policies and procedures that are currently in place in tribal detention facilities. In many cases, policies and procedures may only need to be modified to conform to the National PREA Standards.
- Consider developing a team to review and provide recommendations for changes to the policies and procedures. Including agency staff members from all levels of responsibility in a team approach to review existing policies and procedures and recommend areas for new policies can be an effective way to determine how current policies and procedures may differ from actual practice, and to identify ways in which new policies should be shaped to be more effective. Additionally, consider taking advantage of community resources and partners that may influence the development of new policies related to sexual abuse prevention and response. Victim advocacy groups and law enforcement agencies, as well as medical and mental health treatment professionals may be able to provide critical information that can assist agencies as they develop or revise policies and procedures related to sexual abuse. Moreover, including these important partners will assist in building the relationships necessary to effectively respond to any future incidents of sexual abuse.
- Develop a roll-out strategy for the development and implementation of policies and practices related to sexual abuse prevention and response. It is advisable that new policies are in place before training for staff, volunteers, and inmates is undertaken. Agency administrators and other executives should fully understand new policies and procedures prior to their implementation and to the delivery of training on policies and procedures to staff, volunteers, and inmates. Policies and procedures should be reassessed regularly and revised as needed to ensure their effectiveness in accomplishing the ultimate goal of improving agency capacity to prevent and respond effectively to incidents of sexual abuse.

19. The agency's policy describes how investigations into the allegations of sexual abuse will be investigated, including: who has the authority to initiate an investigation and who will conduct the investigation (agency staff investigators or outside law enforcement/investigators), investigative timeframes, and how and to whom the results of such investigations will be made available. When sexual abuse investigations are conducted by agency staff, policy directives follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.
20. If investigations are conducted by agency staff, agency protocols for sexual abuse investigations are consistent with the 2004 U.S. Department of Justice, Office on Violence Against Women publication A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents, subsequent updated editions, or other comprehensive and authoritative protocols.
21. The agency's policy requires that all victims of sexual abuse have access to forensic medical exams conducted by qualified medical practitioners without financial cost to the victim, when appropriate medically and for purposes of evidence collection. The agency's policy further requires that all victims of sexual abuse be offered the services of a qualified staff person or community-based victim advocate qualified to provide services to sexual abuse victims, to provide support and guidance throughout the investigative process.
22. The agency's policy identifies any outside entities with which the agency has formulated a contractual or partnership relationship for the purpose of receiving reports of sexual abuse, investigating allegations of sexual abuse, providing services to inmates who have been sexually victimized, or providing other related services. Policy further outlines the responsibilities of both the agency and the outside entity under the contract or partnership agreement.

## Training and Education

23. The agency's policy requires that all employees who have contact with inmates receive training on sexual abuse, staff sexual misconduct, and sexual harassment prevention and response. Policy requires the agency to provide employee training on the following related topics upon employment and through annual refresher training:
  - The agency's zero tolerance policy;
  - Staff responsibilities and requirements under agency sexual abuse, staff sexual misconduct, and sexual harassment prevention, detection, reporting, and response policies and protocols;
  - The rights of inmates to remain free of sexual abuse and harassment;



- The rights of inmates and staff to remain free from retaliation for reporting sexual abuse, staff sexual misconduct, and sexual harassment;
  - The dynamics of sexual abuse in custodial settings;
  - The common reactions of sexual abuse victims;
  - How to detect and respond to signs of potential or actual sexual abuse, staff sexual misconduct, and sexual harassment; and
  - Strategies to avoid engaging in inappropriate relationships with inmates.
24. The agency's policy requires that all volunteers and contractors who have contact with inmates receive training on their responsibilities under the agency's policies and protocols related to the prevention, detection, and response to sexual abuse, staff sexual misconduct, and sexual harassment, including the agency's zero tolerance policy and reporting requirements and protocols for incidents of sexual abuse or harassment.
25. Inmates are informed of their right to remain free from sexual abuse, staff sexual misconduct, and sexual harassment upon intake at a facility. Inmates are notified during the intake process of the agency's zero tolerance policy, as well as the process and requirements of inmates to report incidents or suspicions of sexual abuse, staff sexual misconduct, or sexual harassment.
26. The agency's policy requires additional inmate education to be provided to inmates within 30 days of intake. Follow up inmate education should address the rights of inmates to be free from sexual abuse during incarceration, rights to remain free of retaliation for reporting sexual abuse or harassment, and the agency's policies and protocols regarding response to sexual abuse, staff sexual misconduct, and sexual harassment.
27. The agency's policy requires that inmate education is provided in formats that are accessible to inmates who have language barriers (including inmates with limited English proficiency) or who are deaf, visually impaired, or are otherwise disabled, and to inmates with limited reading skills.
28. The agency's policy requires that key information is made available to inmates regarding the prevention, detection, and response to sexual abuse, staff sexual misconduct, and sexual harassment through such means as posters, brochures, inmate handbooks, or other formats.
29. The agency's policy requires that any agency staff members who conduct sexual abuse

investigations receive specialized training in conducting sexual abuse investigations in confinement settings. Specialized training for staff members who conduct sexual abuse investigations shall address techniques for interviewing sexual abuse victims, the use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecutorial review. (For more information on Miranda and Garrity, see Figure 2 on page 51.)

30. The agency's policy requires that any full- and part-time medical and mental health care practitioners who work regularly within its facilities have been trained on the following topics:
  - How to detect and assess signs of sexual abuse;
  - How to preserve physical evidence of sexual abuse;
  - How to respond effectively and professionally to victims of sexual abuse; and,
  - How and to whom to report allegations or suspicions of sexual abuse.
31. The agency's policy requires that any medical staff members employed by the agency who conduct forensic examinations receive appropriate training to conduct such examinations.

### **Screening for Risk of Sexual Victimization and Abusiveness**

32. The agency's policy and protocols require that inmates are screened during the intake and initial classification process to assess their risk of being sexually abused or being sexually abusive toward other inmates during incarceration, using an objective screening instrument. The initial classification should be conducted within 30 days of an inmate's incarceration.
33. The instrument used by agency staff to screen inmates for risk of sexual victimization should consider, at a minimum:
  - Whether the inmate has a mental, physical, or developmental disability;
  - The age of the inmate, including whether the inmate is a juvenile;
  - The physical build or stature of the inmate;
  - Whether the inmate has been previously incarcerated;
  - Whether the inmate's criminal history is exclusively non-violent;
  - Whether the inmate has any prior convictions for sexual offenses, including those against an adult or child;
  - Whether the inmate is gay, lesbian, bisexual, transgender, or intersex;
  - Whether the inmate has previously experienced sexual victimization;
  - The inmate's own perception of vulnerability; and

## FIGURE 2

### *Miranda vs. Garrity*: Understanding Employee Rights and Protections During an Investigation

As one former investigator for a county sheriff's department has recognized, there are two types of employees in a detention setting—those who have BEEN the subject of an investigation and those who WILL BE the subject of an investigation. As jail administrators are well aware, allegations against facility staff are not uncommon. Conducting investigations into staff conduct (or misconduct) can be a complex process, and it is therefore critical to be well informed and familiar with the investigative process before an allegation is made. It is also important to be familiar with the rights and protections afforded by federal law to those who may become the subject of an administrative and/or criminal investigation.

Correctional line staff are often unfamiliar with the investigative process, which can result in undue stress and fear when an investigation is underway. It is important to educate staff members at all levels about how investigations are conducted within the agency, what to expect if they become the subject of an investigation, and what their rights and responsibilities are concerning investigations. Knowing the process helps to dispel misconceptions and fear, and supports better cooperation and communication.

Once it is determined that an investigation is warranted and formally opened, subjects should be notified that they are under investigation. The best practice is to notify subjects in writing.

During questioning by investigators, individuals have certain rights guaranteed by the Indian Civil Rights Act. These include the right to due process of law, and the right to be free from making incriminating statements that can be used to convict the individual in a court of law.

Two significant U.S. Supreme Court decisions interpreted the U.S. Constitution Bill of Rights, Fifth Amendment. The Indian Civil Rights Act extends the same protections to Native Americans:

*Miranda v. Arizona*, 384 U.S. 436 (1966). This case provides a guarantee to the right to counsel, and the right to NOT make incriminating statements without legal

representation. *Miranda* applies when an investigation involves allegations that can lead to criminal prosecution.

*Garrity v. New Jersey*, 385 U.S. 493 (1967). This case established that an employee cannot be compelled to make an incriminating statement or action that can be used in a criminal prosecution. Under *Garrity*, employees can be forced to make a statement to investigators under the threat of being fired for failure to make a statement; however, anything that is disclosed in such a statement cannot be used in criminal prosecution. It can be used in an administrative action for violating policy and procedure. An employer does have the right to fire an employee if they refuse to make a statement, or if they knowingly make an untrue statement.

Other rights that are afforded individuals under investigation include:

- **Time frames.** Most agencies include time frames for completing internal investigations. For agencies with such a time frame, subjects of an investigation have the right to know what that time frame is and to request information if that time frame passes without the completion of the investigation. There are circumstances which give an agency the right to extend the time frame for completing an investigation; however, the subject of such an investigation has the right to know what those circumstances may be.
- **Due Process.** Subjects of investigations have the right to be heard in their own defense; however, this may differ in form from agency to agency. Some agencies allow for legal representation during an administrative investigation. Further, if employees are under a collective bargaining agreement, this may determine the rights of an employee during investigations and administrative proceedings.
- **Outcome.** Subjects of an investigation have the right to be notified in writing of the findings of the completed investigation. The right to appeal an outcome may vary however, depending on the agency.

- Whether the inmate is being detained solely on civil immigration charges.
34. The instrument used by agency staff to screen for risk of sexual abusiveness should consider, at a minimum, prior convictions for violent offenses and history of prior institutional violence or sexual abuse.
  35. The agency's policy requires that inmates be re-screened as warranted by a referral, request, or following an incident of sexual victimization.
  36. The agency's policy addresses privacy concerns and restrictions on the dissemination of information obtained from inmates using the sexual victimization and abusiveness screening instruments.
  37. The agency's policy provides for the use of the screening results to inform pertinent decisions related to housing, bed, work, education, and other program assignments. The goal of such decisions should be to keep separate those inmates with a high risk of victimization from inmates with a high risk of those being sexually abusive. All such decisions should be made on an individualized basis.
  38. The agency's policy requires that decisions pertaining to the placement, housing, and programming decisions for transgender and intersex inmates be made on a case-by-case basis with the ultimate goal of ensuring an inmate's health and safety, as well as pertinent management and security concerns for the facility.
  39. The agency's policy and protocols require that placement and programming assignments be reassessed regularly, or at least twice annually, to review any threats to the safety and well-being of inmates.
  40. The agency's protocols reserve the use of protective custody or involuntary segregated housing for inmates at high risk of sexual victimization only after all other available options have been assessed. Segregated housing should only be used as a temporary measure until an alternative means of separation from likely abusers can be arranged. Inmates placed in segregated housing for protective purposes should be allowed continued access to programs, education, and work opportunities to the extent possible.

## Reporting

41. The agency's policy provides multiple channels for inmates to privately report sexual abuse, staff sexual misconduct, sexual harassment, retaliation by other inmates or staff for reporting such incidents or suspicions, and staff neglect or violations of responsibilities that may have contributed to an incident of sexual abuse. Among reporting channels made available to inmates, when possible, at least one should be an outside government entity that is not affiliated with the agency or that operates independently from agency leadership and that can receive and immediately forward inmate reports of sexual abuse and harassment to agency officials.
42. The agency's policy provides for the acceptance of reports verbally, in writing, anonymously, and from third parties. Policy requires that any verbal reports of sexual abuse, staff sexual harassment, and sexual harassment be promptly documented.
43. The agency's policy requires staff to report all known and suspected incidents of sexual abuse, staff sexual misconduct, and sexual harassment of inmates, and provides a method for staff to privately report such incidents.
44. The agency's policy addresses the process for inmate submission of grievances, including those for sexual abuse, staff sexual misconduct, and sexual harassment. The agency's policy and protocols specify when and how such grievances should be submitted, provides for extensions of grievance submission deadlines in cases involving extenuating circumstances, outlines the process and timeframe for responding to such grievances, and addresses the process for appealing administrative responses to inmate grievances.
45. The agency's policy and protocols authorize inmates who have experienced sexual abuse while incarcerated to access outside victim advocates for emotional support services related to their victimization. The agency makes inmates aware of such resources by providing mailing addresses and telephone numbers, including any available toll-free hotline numbers of tribal, local, state, or national victim advocacy or rape crisis organizations, and the agency enables reasonable communication between inmates and these organizations, as confidentially as possible, consistent with agency security needs. The agency informs inmates, prior to providing access to these resources, of the extent to which such communications will be monitored.
46. The agency's policy allows for the receipt of third-party reports of sexual abuse, staff sexual misconduct, and sexual harassment and requires the agency to distribute information publicly on the process for third-party reporting of known or suspected incidents on behalf of an inmate.

## Official Response Following an Inmate Report

47. The agency's policy mandates that all staff immediately report, in accordance with agency policy, any knowledge, suspicion, or information regarding an incident of sexual abuse; staff sexual misconduct that occurred within an institutional setting; retaliation against inmates or staff who reported such abuse; and any staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse or retaliation.
48. The agency's policy prohibits the sharing or dissemination of information pertaining to a report of sexual abuse, staff sexual misconduct, or sexual harassment to anyone other than those who need to know, as specified in agency policy and/or protocols, to make relevant decisions related to treatment, investigation, or other security and management issues.
49. Unless precluded by federal, state, or tribal code, the agency's policy mandates any medical and mental health practitioners who work within the agency to report sexual abuse, staff sexual misconduct, and sexual harassment, and requires medical and mental health practitioners to inform inmates of their responsibility to report at the initiation of services.
50. The agency's policy requires agency staff to report any incidents of sexual victimization of an inmate who is under the age of 18 or who is considered a vulnerable adult under a state, local, or tribal vulnerable persons statute to the designated state or local services agency under applicable mandatory reporting requirements, in accordance with state law and/or tribal code.
51. The agency's policy requires that all allegations of sexual abuse, staff sexual misconduct, and sexual harassment, including third-party and anonymous reports, be reported to the facility's designated investigators.
52. The agency's policy mandates that an allegation that an inmate was sexually abused while confined in another facility must be reported in writing to the facility or agency where the alleged abuse occurred, and the policy outlines the process for such notifications.
53. The agency's policy and protocols provide clear instructions for agency staff on first responder duties following an incident of sexual abuse, including such duties as:
  - Separating the alleged victim and abuser;
  - Sealing and preserving any crime scene; and,
  - Requesting the victim not to take any actions that could destroy physical evidence, including washing, brushing teeth, changing clothes, urinating or defecating, smoking, drinking, or eating.

54. The agency's policy and protocols addresses measures that will be taken to protect inmates and staff who report sexual abuse, staff sexual misconduct, or sexual harassment, from retaliation by other inmates or staff. The agency's policy strictly prohibits retaliation by staff and inmates against those who report abuse.

## Investigations

55. The agency's policy requires that all allegations of sexual abuse, staff sexual misconduct, and sexual harassment be investigated promptly, thoroughly, and objectively, using investigators who have received specialized training in sexual abuse investigations.
56. Agencies that conduct investigations into allegations of sexual abuse, using designated agency staff investigators, establish protocols for carrying out sexual abuse investigations. These protocols should include information on how to gather and preserve direct and circumstantial evidence; interview alleged victims, suspected perpetrators, and witnesses; and review prior complaints and reports of sexual abuse involving the suspected perpetrator.
57. The agency's policy and protocols address the separate processes for conducting administrative and criminal investigations, including mandatory qualifications for investigators to conduct administrative vs. criminal investigations, legal requirements related to investigative interviews (i.e., Miranda and Garrity), standard of proof requirements for administrative vs. criminal investigations, documentation requirements for administrative vs. criminal investigations, and the process for conducting dual-track investigations (administrative and criminal). (For more information on Miranda and Garrity, see Figure 1 in this section.)
58. The agency's policy mandates that all substantiated allegations of conduct that appear to be criminal must be referred for prosecution.
59. The agency's policy addresses the retention of all records pertaining to an alleged abuser who is incarcerated or employed by the agency.
60. When outside agencies conduct investigations into allegations of sexual abuse, staff sexual misconduct, or sexual harassment that occur within an agency or facility, the agency's policy mandates that agency staff will cooperate fully with outside investigators.
61. The agency's policy requires that, following an investigation into an inmate's allegations of sexual abuse, agency staff inform the inmate as to the outcome and determination of the investigation.
62. The agency's policy requires that, following an inmate's allegation of staff sexual misconduct, the inmate be informed as to the changes in the posting, placement, employment status, or criminal status of the staff person alleged to have committed sexual abuse within the agency, unless the allegation is found to be unfounded.

## Discipline

63. The agency's policy identifies the disciplinary sanctions up to and including termination for staff members who violate agency sexual abuse, staff sexual misconduct, and sexual harassment policies. Termination should be the presumptive disciplinary sanction for staff who have engaged in sexual touching of inmates.
64. The agency's policy requires that all terminations for violations of agency sexual abuse, staff sexual misconduct, or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, be reported to law enforcement agencies (unless such activity was not criminal in nature) and to any relevant licensing bodies.
65. The agency's policy identifies the disciplinary sanctions for inmate-on-inmate abuse, following an administrative finding that an inmate engaged in sexual abuse or a criminal finding of guilt for inmate-on-inmate sexual abuse, in accordance with the agency's formal disciplinary process. Disciplinary measures for inmate sexual contact with staff should only be invoked upon a finding that the staff member did not consent to such contact.

## Medical and Mental Care

66. The agency's policy requires staff to inquire about prior sexual victimization and abusiveness with inmates during the intake and classification process.
67. The agency's policy requires that, following any inmate disclosure of prior sexual victimization during the intake or classification process (whether it occurred within an institutional setting or within the community), staff offer the disclosing inmate a follow-up reception with a medical or mental health practitioner within 14 days of the disclosure.
68. The agency's policy requires that information related to sexual victimization or abusiveness that occurred within an institutional setting be strictly limited to medical and mental health practitioners and other designated staff in accordance with federal and state (in P.L. 280 jurisdictions) law and tribal codes, to inform treatment plans, and security and management decisions such as housing, bed, work, education, and program assignments.
69. The agency's policy requires that inmate victims of sexual abuse receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment, and that treatment services will be provided to victims at no cost to them.
70. The agency's policy requires that, if no qualified medical or mental health practitioners are on duty, security staff first responders take preliminary steps to protect a victim following a report of recent abuse and to notify the appropriate medical and mental health practitioners.



71. The agency's policy requires that inmates who are victims of sexual abuse while incarcerated are provided timely information about, and access to, all pregnancy-related medical services that are lawful in the community, as well as any sexually transmitted infections prophylaxis, where appropriate.
72. The agency's policy requires that medical and mental health evaluation and treatment are provided on an ongoing basis to inmates who have been victimized by sexual abuse during the present term of incarceration including, when necessary, referrals for continued care following the inmate's transfer to—or placement in—other facilities, or following their release from custody.
73. The agency's policy requires that a mental health evaluation be conducted with any known inmate abuser within 60 days of learning of such abuse history and provide treatment when deemed appropriate by qualified mental health practitioners.
74. The agency's policy requires that inmate victims of sexually abusive vaginal penetration during their incarceration are offered pregnancy tests and, if pregnancy results, timely information about and access to all pregnancy-related medical services that are lawful in the community.

## **Data Collection and Review**

75. The agency's policy requires for the collection of data on every allegation of sexual abuse at facilities under its control using a standardized instrument and set of definitions.
76. The agency's policy requires the aggregation of incident-based sexual abuse data on a regular basis, or at least annually.
77. The agency's policy requires that the incident-based data collected must include, at a minimum, the data necessary to answer questions from the most recent version of the Survey of Sexual Violence conducted by the U.S. Department of Justice's Bureau of Justice Statistics.
78. The agency's policy requires that incident-based and aggregated data will be obtained from every private facility with which it contracts for the confinement of its inmates.
79. The agency's policy requires the review of data collected and aggregated in order to assess and improve the effectiveness of its sexual abuse prevention, detection, response policies, practices, and training, including: identifying problem areas; taking corrective action on an ongoing basis; and preparing an annual report of its finding and corrective actions for each facility and the agency as a whole.
80. The agency's policy requires that sexual abuse data is maintained for at least 10 years after the date of its initial collection, unless federal, state (in P.L. 280 states), or tribal code requires otherwise.

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# PRISON RAPE ELIMINATION ACT

## Full Text Of The Law

117 STAT. 972 PUBLIC LAW 108-79-SEPT. 4, 2003

Sept. 4, 2003 [So 1435] Prison Rape Elimination Act of 2003.

Public Law 108-79

108th Congress An Act

To provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION I. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.-This Act may be cited as the "Prison Rape Elimination Act of 2003".

(b) TABLE OF CONTENTS.-The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Purposes.

Sec. 4. National prison rape statistics, data, and research.

Sec. 5. Prison rape prevention and prosecution.

Sec. 6. Grants to protect inmates and safeguard communities.

Sec. 7. National Prison Rape Reduction Commission.

Sec. 8. Adoption and effect of national standards.

Sec. 9. Requirement that accreditation organizations adopt accreditation standards.

Sec. 10. Definitions.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) 2,100,146 persons were incarcerated in the United States at the end of 2001: 1,324,465 in Federal and State prisons and 631,240 in county and local jails. In 1999, there were more than 10,000,000 separate admissions to and

discharges from prisons and jails.

(2) Insufficient research has been conducted and insufficient data reported on the extent of prison rape. However, experts have conservatively estimated that at least 13 percent of the inmates in the United States have been sexually assaulted in prison. Many inmates have suffered repeated assaults. Under this estimate, nearly 200,000 inmates now incarcerated have been or will be the victims of prison rape. The total number of inmates who have been sexually assaulted in the past 20 years likely exceeds 1,000,000.

(3) Inmates with mental illness are at increased risk of sexual victimization. America's jails and prisons house more mentally ill individuals than all of the Nation's psychiatric hospitals combined. As many as 16 percent of inmates in State prisons and jails, and 7 percent of Federal inmates, suffer from mental illness.

(4) Young first-time offenders are at increased risk of sexual victimization. Juveniles are 5 times more likely to be sexually assaulted in adult rather than juvenile facilities -often within the first 48 hours of incarceration.

(5) Most prison staff are not adequately trained or prepared to prevent, report, or treat inmate sexual assaults.

(6) Prison rape often goes unreported, and inmate victims often receive inadequate treatment for the severe physical and psychological effects of sexual assault -if they receive treatment at all.

(7) HIV and AIDS are major public health problems within America's correctional facilities. In 2000, 25,088 inmates in Federal and State prisons were known to be infected with HIV/AIDS. In 2000, HIV/AIDS accounted for more than 6 percent of all deaths in Federal and State prisons. Infection rates for other sexually transmitted diseases, tuberculosis, and hepatitis B and C are also far greater for prisoners than for the American population as a whole. Prison rape

undermines the public health by contributing to the spread of these diseases, and often giving a potential death sentence to its victims.

(8) Prison rape endangers the public safety by making brutalized inmates more likely to commit crimes when they are released -as 600,000 inmates are each year.

(9) The frequently interracial character of prison sexual assaults significantly exacerbates interracial tensions, both within prison and, upon release of perpetrators and victims from prison, in the community at large.

(10) Prison rape increases the level of homicides and other violence against inmates and staff, and the risk of insurrections and riots.

(11) Victims of prison rape suffer severe physical and psychological effects that hinder their ability to integrate into the community and maintain stable employment upon their release from prison. They are thus more likely to become homeless and/or require government assistance.

(12) Members of the public and government officials are largely unaware of the epidemic character of prison rape and the day-to-day horror experienced by victimized inmates.

(13) The high incidence of sexual assault within prisons involves actual and potential violations of the United States Constitution. In *Farmer v. Brennan*, 511 U.S. 825 (1994), the Supreme Court ruled that deliberate indifference to the substantial risk of sexual assault violates prisoner s' rights under the Cruel and Unusual Punishments Clause of the Eighth Amendment. The Eighth Amendment rights of State and local prisoners are protected through the Due Process Clause of the Fourteenth Amendment. Pursuant to the power of Congress under Section Five of the Fourteenth Amendment, Congress may take action to enforce those rights in States where officials have demonstrated such indifference. States that do not take basic steps to abate prison rape by adopting standards that do not generate significant additional expenditures demonstrate such indifference. Therefore, such States are not entitled to the same level of Federal benefits as other States.

(14) The high incidence of prison rape undermines the effectiveness and efficiency of United States Government expenditures through grant programs such as those dealing with health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison construction, maintenance, and operation; race relations; poverty; unemployment and homelessness. The effectiveness and efficiency of these federally funded grant programs are compromised by the failure of State officials to adopt policies and procedures that reduce the incidence of prison rape in that the high incidence of prison rape: -

(A) increases the costs incurred by Federal, State, and local jurisdictions to administer their prison systems;

(B) increases the levels of violence, directed at inmates and at staff, within prisons;

(C) increases health care expenditures, both inside and outside of prison systems, and reduces the effectiveness of disease prevention programs by substantially increasing the incidence and spread of HIV, AIDS, tuberculosis, hepatitis B and C, and other diseases;

(D) increases mental health care expenditures, both inside and outside of prison systems, by substantially increasing the rate of post-traumatic stress disorder, depression, suicide, and the exacerbation of existing mental illnesses among current and former inmates;

(E) increases the risks of recidivism, civil strife, and violent crime by individuals who have been brutalized by prison rape; and

(F) increases the level of interracial tensions and strife within prisons and, upon release of perpetrators and victims, in the community at large.

(15) The high incidence of prison rape has a significant effect on interstate commerce because it increases substantially -

(A) the costs incurred by Federal, State, and local jurisdictions to administer their prison systems;

(B) the incidence and spread of HIV, AIDS, tuberculosis, hepatitis B and C, and other diseases, contributing to increased health and medical expenditures throughout the Nation;

(C) the rate of post-traumatic stress disorder, depression, suicide, and the exacerbation of existing mental illnesses among current and former inmates, contributing to increased health and medical expenditures throughout the Nation; and (D) the risk of recidivism, civil strife, and violent crime by individuals who have been brutalized by prison rape.

SEC. 3. PURPOSES.

The purposes of this Act are to -

- (1) establish a zero -tolerance standard for the incidence of prison rape in prisons in the United States;
- (2) make the prevention of prison rape a top priority in each prison system;
- (3) develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape;
- (4) increase the available data and information on the incidence of prison rape, consequently improving the management and administration of correctional facilities;
- (5) standardize the definitions used for collecting data on the incidence of prison rape;
- (6) increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison rape;
- (7) protect the Eighth Amendment rights of Federal, State, and local prisoners;
- (8) increase the efficiency and effectiveness of Federal expenditures through grant programs such as those dealing with health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison construction, maintenance, and operation; race relations; poverty; unemployment; and homelessness; and .
- (9) reduce the costs that prison rape imposes on interstate commerce.

SEC. 4.

ANNUAL COMPREHENSIVE STATISTICAL REVIEW- .

(1) IN GENERAL-The Bureau of Justice Statistics of the Department of Justice (in this section referred to as the "Bureau") shall carry out, for each calendar year, a comprehensive statistical review and analysis of the incidence

and effects of prison rape. The statistical review and analysis shall include, but not be limited to the identification of the common characteristics of

(A) both victims and perpetrators of prison rape; and (B) prisons and prison systems with a high incidence of prison rape

(2) CONSIDERATIONS -In carrying out paragraph (1), the Bureau shall consider

(A) how rape should be defined for the purposes of the statistical review and analysis;

(B) how the Bureau should collect information about staff-on-inmate sexual assault;

(C) how the Bureau should collect information beyond inmate self-reports of prison rape;

(D) how the Bureau should adjust the data in order to account for differences among prisons as required by subsection (c)(3);

(E) the categorization of prisons as required by sub section(c) (4) and

(F) whether a preliminary study of prison rape should be conducted to inform the methodology of the comprehensive statistical review.

(3) SOLICITATION OF VIEWS-The Bureau of Justice Statistics shall solicit views from representatives of the following:State departments of correction; county and municipal jails; juvenile correctional facilities; former inmates; victim advocates; researchers; and other experts in the area of sexual assault.

(4) SAMPLING TECHNIQUES-The review and analysis under paragraph (1) shall be based on a random sample, or other scientifically appropriate sample, of not less than 10 percent of all Federal, State, and county prisons, and a representative sample of municipal prisons. The selection shall include at least one prison from each State. The selection of facilities for sampling shall be made at the latest practicable date prior to conducting the surveys and shall not be disclosed to any facility or prison system official prior to the time period studied in the survey. Selection of a facility for sampling

during any year and shall not preclude its selection for sampling in any subsequent surveys.

(5) SURVEYS-In carrying out the review and analysis under paragraph (1), the Bureau shall, in addition to such other methods as the Bureau considers appropriate, use surveys and other statistical studies of current and former inmates from a sample of Federal, State, county, and municipal prisons. The Bureau shall ensure the confidentiality of each survey participant.

(6) PARTICIPATION IN SURVEY-Federal, State, or local officials or facility administrators that receive a request from the Bureau under subsection (a)(4) or (5) will be required to participate in the national survey and provide access to any inmates under their legal custody.

(b) REVIEW PANEL ON PRISON RAPE.

ESTABLISHMENT-To assist the Bureau in carrying out the review and analysis under subsection (a), there is established, within the Department of Justice, the Review Panel on Prison Rape (in this section referred to as the "Panel").

(2) MEMBERSHIP.

(A) COMPOSITION-The Panel shall be composed of 3 members, each of whom shall be appointed by the Attorney General, in consultation with the Secretary of Health and Human Services.

(B) QUALIFICATIONS-Members of the Panel shall be selected from among individuals with knowledge or expertise in matters to be studied by the Panel.

(3) PUBLIC HEARINGS.

IN GENERAL.-The duty of the Panel shall be to carry out, for each calendar year, public hearings concerning the operation of the three prisons with the highest incidence of prison rape and the two prisons with the lowest incidence of prison rape in each category of facilities identified under subsection (c) (4). The Panel shall hold a separate hearing regarding the three Federal or State prisons with the highest incidence of prison rape. The purpose of these hearings shall be to collect evidence to aid in the identification of common characteristics of both victims and perpetrators of prison

rape, and the identification of common characteristics of prisons and prison systems with a high incidence of prison rape, and the identification of common characteristics of prisons and prison systems that appear to have been successful in deterring prison rape.

(B) TESTIMONY AT HEARINGS.

(i) PUBLIC OFFICIALS-In carrying out the hearings required under subparagraph (A), the Panel shall request the public testimony of Federal, State, and local officials (and organizations that represent such officials), including the warden or director of each prison, who bears responsibility for the prevention, detection, and punishment of prison rape at each entity, and the head of the prison system encompassing such prison.

(ii) VICTIMS.-The Panel may request the testimony of prison rape victims, organizations representing such victims, and other appropriate individuals and organizations.

(C) SUBPOENAS.

(i) ISSUANCE-The Panel may issue subpoenas for the attendance of witnesses and the production of written or other matter.

(ii) ENFORCEMENT-In the case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

(c) REPORTS.

(1) IN GENERAL-Not later than June 30 of each year The Attorney General shall submit a report on the activities of the Bureau and the Review Panel, with respect to prison rape, for the preceding calendar year to -(A) Congress; and (B) the Secretary of Health and Human Services.

(2). CONTENTS-The report required under paragraph (1) shall include

(A) with respect to the effects of prison rape, statistical, sociological, and psychological data;

(B) with respect to the incidence of prison rape

(i) statistical data aggregated at the Federal, State, prison



system, and prison levels;

(ii) a listing of those institutions in the representative sample, separated into each category identified under subsection (c)(4) and ranked according to the incidence of prison rape in each institution; and

(iii) an identification of those institutions in the representative sample that appear to have been successful in deterring prison rape; and

(C) a listing of any prisons in the representative sample that did not cooperate with the survey conducted pursuant to section 4.

(3) DATA ADJUSTMENTS-In preparing the information specified in paragraph (2), the Attorney General shall use established statistical methods to adjust the data as necessary to . account for differences among institutions in the representative sample, which are not related to the detection, prevention, reduction and punishment of prison rape, or which are outside the control of the State, prison, or prison system, in order to provide an accurate comparison among prisons. Such differences may include the mission, security level, size, and jurisdiction under which the prison operates. For each such adjustment made, the Attorney General shall identify and explain such adjustment in the report.

(4) CATEGORIZATION OF PRISONS-The report shall divide the prisons surveyed into three categories. One category shall be composed of all Federal and State prisons. The other two categories shall be defined by the Attorney General in order to compare similar institutions.

(d) CONTRACTS AND GRANTS-In carrying out its duties under this section, the Attorney General may -

(1) provide grants for research through the National Institute of Justice; and

(2) contract with or provide grants to any other entity the Attorney General deems appropriate.

(e) AUTHORIZATION OF APPROPRIATIONS.-There are authorized to be appropriated \$15,000,000 for each of fiscal years 2004 through 2010 to carry out this section.

## SEC. 5. PRISON RAPE PREVENTION AND PROSECUTION

### (a) INFORMATION AND ASSISTANCE.

(1) NATIONAL CLEARINGHOUSE-There is established within the National Institute of Corrections a national clearinghouse for the provision of information and assistance to Federal, State, and local authorities responsible for the prevention, investigation, and punishment of instances of prison rape.

(2) TRAINING AND EDUCATION-The National Institute of Corrections shall conduct periodic training and education programs for Federal, State, and local authorities responsible for the prevention, investigation, and punishment of instances of prison rape.

### (b) REPORTS.

(1) IN GENERAL-Not later than September 30 of each year, the National Institute of Corrections shall submit a report to Congress and the Secretary of Health and Human Services. This report shall be available to the Director of the Bureau of Justice Statistics.

(2) CONTENTS-The report required under paragraph (1) shall summarize the activities of the Department of Justice regarding prison rape abatement for the preceding calendar year.

(c) AUTHORIZATION OF APPROPRIATIONS-There are authorized to be appropriated \$5,000,000 for each of fiscal years 2004 through 2010 to carry out this section.

## SEC. 6. GRANTS TO PROTECT INMATES AND SAFEGUARD COMMUNITIES.

(a) GRANTS AUTHORIZED-From amounts made available for grants under this section, the Attorney General shall make grants to States to assist those States in ensuring that budgetary circumstances (such as reduced State and local spending on prisons) do not compromise efforts to protect inmates (particularly from prison rape) and to safeguard the communities to which inmates return. The purpose of grants under this section shall be to provide funds for personnel, training, technical assistance, data collection, and equipment to prevent and prosecute prisoner rape.

(b) USE OF GRANT AMOUNTS-Amounts received by a grantee under this section may be used by the grantee, directly or through subgrants, only for one or more of the following activities:

(1) PROTECTING INMATES-Protecting inmates by-

(A) undertaking efforts to more effectively prevent prison rape;

(B) investigating incidents of prison rape; or

(C) prosecuting incidents of prison rape.

(2) SAFEGUARDING COMMUNITIES.-Safeguarding

communities by- (A) making available, to officials of State and local governments who are considering reductions to prison budgets, training and technical assistance in successful

methods for moderating the growth of prison populations without compromising public safety, including successful

methods used by other jurisdictions; (B) developing and utilizing analyses of prison populations and risk

assessment instruments that will improve State and local governments understanding of risks to the community regarding release of inmates in the prison population; (C)

preparing maps demonstrating the concentration, on a community by-community basis, of inmates who have been released, to facilitate the efficient and effective -

(i) deployment of law enforcement resources (including probation and parole resources); and

(ii) delivery of services (such as job training and substance abuse treatment) to those released inmates; (D) promoting

collaborative efforts, among officials of State and local governments and leaders of appropriate communities, to understand and address the effects on a community of the

presence of a disproportionate number of released inmates in that community; or

(E) developing policies and programs that reduce spending on prisons by effectively reducing rates of parole and probation revocation without compromising public safety.

(c) GRANT REQUIREMENTS.

(1) PERIOD-A grant under this section shall be made for a period of not more than 2 years.

(2) MAXIMUM- The amount of a grant under this section may not exceed \$1,000,000.

(3) MATCHING-The Federal share of a grant under this section may not exceed 50 percent of the total costs of the project described in the application submitted under subsection (d) for the fiscal year for which the grant was made under this section.

(d) APPLICATIONS.

(1) IN GENERAL-To request a grant under this section, the chief executive of a State shall submit an application to the Attorney General at such time, in such manner, and accompanied by such information as the Attorney General may require.

(2) CONTENTS -Each application required by paragraph (1) shall-

(A) include the certification of the chief executive that the State receiving such grant -

(i) has adopted all national prison rape standards that, as of the date on which the application was submitted, have been promulgated under this Act; and (j) will consider adopting all national prison rape standards that are promulgated under this Act after such date;

(B) specify with particularity the preventative, prosecutorial, or administrative activities to be undertaken by the State with the amounts received under the grant; and (C) in the case of an application for a grant for one or more activities specified in paragraph (2) of subsection (b)-

(1) review the extent of the budgetary circumstances affecting the State generally and describe how those circumstances relate to the State's prisons;

(ii) describe the rate of growth of the State's prison population over the preceding 10 years and explain why the State may have difficulty sustaining that rate of growth; and

(iii) explain the extent to which officials (including law enforcement officials) of State and local governments and victims of crime will be consulted regarding decisions whether, or how, to moderate the growth of the State's

prison population.

(e) REPORTS BY GRANTEE.

(1) IN GENERAL-The Attorney General shall require each grantee to submit, not later than 90 days after the end of the period for which the grant was made under this section, a report on the activities carried out under the grant. The report shall identify and describe those activities and shall contain an evaluation of the effect of those activities on-

(A) the number of incidents of prison rape, and the grantee's response to such incidents; and

(B) the safety of the prisons, and the safety of the communities in which released inmates are present.

(2) DISSEMINATION-The Attorney General shall ensure that each report submitted under paragraph (1) is made available under the national clearinghouse established under section 5.

(f) STATE DEFINED-In this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(g) AUTHORIZATION OF APPROPRIATIONS.

(1) IN GENERAL-There are authorized to be appropriated for grants under this section \$40,000,000 for each of fiscal years 2004 through 2010.

(2) LIMITATION-Of amounts made available for grants under this section, not less than 50 percent shall be available only for activities specified in paragraph (1) of subsection (b).

SEC. 7. NATIONAL PRISON RAPE REDUCTION COMMISSION.

(a) ESTABLISHMENT-There is established a commission to be known as the National Prison Rape Reduction Commission (in this section referred to as the "Commission").

(b) MEMBERS.

(1) IN GENERAL-The Commission shall be composed of 9 members, of whom

(A) 3 shall be appointed by the President;

(B) 2 shall be appointed by the Speaker of the House of Representatives, unless the Speaker is of the same party as the President, in which case 1 shall be appointed by

the Speaker of the House of Representatives and 1 shall be appointed by the minority leader of the House of Representatives;

(C) 1 shall be appointed by the minority leader of the House of Representatives (in addition to any appointment made under subparagraph (B));

(D) 2 shall be appointed by the majority leader of the Senate, unless the majority leader is of the same party as the President, in which case 1 shall be appointed by the majority leader of the Senate and 1 shall be appointed by the minority leader of the Senate; and

(E) 1 member appointed by the minority leader of the Senate (in addition to any appointment made under subparagraph D.

(2) PERSONS ELIGIBLE-Each member of the Commission shall be an individual who has knowledge or expertise in matters to be studied by the Commission.

(3) CONSULTATION REQUIRED -The President, the Speaker and minority leader of the House of Representatives, and the majority leader and minority leader of the Senate shall consult with one another prior to the appointment of the members of the Commission to achieve, to the maximum extent possible, fair and equitable representation of various points of view with respect to the matters to be studied by the Commission.

(4) TERM-Each member shall be appointed for the life of the Commission.

(5) TIME FOR INITIAL APPOINTMENT-The appointment of the members shall be made not later than 60 days after the date of enactment of this Act.

(6) VACANCIES-A vacancy in the Commission shall be filled in the manner in which the original appointment was made, and shall be made not later than 60 days after the date on which the vacancy occurred.

(c) OPERATION.

(1) CHAIRPERSON-Not later than 15 days after appointments of all the members are made, the President shall appoint a chairperson for the Commission from among its members.

(2) MEETINGS-The Commission shall meet at the call of the

chairperson. The initial meeting of the Commission shall take place not later than 30 days after the initial appointment of the members is completed.

(3) QUORUM-A majority of the members of the Commission shall constitute a quorum to conduct business, but the Commission may establish a lesser quorum for conducting hearings scheduled by the Commission.

(4) RULES-The Commission may establish by majority vote any other rules for the conduct of Commission business, if such rules are not inconsistent with this Act or other applicable law.

(d) COMPREHENSIVE STUDY OF THE IMPACTS OF PRISON RAPE.

(1) IN GENERAL-The Commission shall carry out a comprehensive legal and factual study of the penalological, physical, mental, medical, social, and economic impacts of prison rape in the United States on

(A) Federal, State, and local governments; and

(B) communities and social institutions generally, including individuals, families, and businesses within such communities and social institutions.

(2) MATTERS INCLUDED-The study under paragraph (1) shall include

(A) a review of existing Federal, State, and local government policies and practices with respect to the prevention, detection, and punishment of prison rape;

(B) an assessment of the relationship between prison rape and prison conditions, and of existing monitoring, regulatory, and enforcement practices that are intended to address any such relationship;

(C) an assessment of pathological or social causes of prison rape;

(D) an assessment of the extent to which the incidence of prison rape contributes to the spread of sexually transmitted diseases and to the transmission of HIV;

(E) an assessment of the characteristics of inmates most likely to commit prison rape and the effectiveness of various types of treatment or programs to reduce such likelihood;

(F) an assessment of the characteristics of inmates most likely to be victims of prison rape and the effectiveness of various types of treatment or programs to reduce such likelihood;

(G) an assessment of the impacts of prison rape on individuals, families, social institutions and the economy generally, including an assessment of the extent to which the incidence of prison rape contributes to recidivism and to increased incidence of sexual assault;

(H) an examination of the feasibility and cost of conducting surveillance, undercover activities, or both, to reduce the incidence of prison rape;

(I) an assessment of the safety and security of prison facilities and the relationship of prison facility construction and design to the incidence of prison rape;

(J) an assessment of the feasibility and cost of any particular proposals for prison reform;

(K) an identification of the need for additional scientific and social science research on the prevalence of prison rape in Federal, State, and local prisons;

(L) an assessment of the general relationship between prison rape and prison violence;

(M) an assessment of the relationship between prison rape and levels of training, supervision, and discipline of prison staff; and

(N) an assessment of existing Federal and State systems for reporting incidents of prison rape, including an assessment of whether existing systems provide an adequate assurance of confidentiality, impartiality and the absence of reprisal.

(3) REPORT.

(A) DISTRIBUTION-Not later than 2 years after the date of the initial meeting of the Commission, the Commission shall submit a report on the study carried out under this subsection to-

(i) the President;

(ii) the Congress;

(iii) the Attorney General;

- (iv) the Secretary of Health and Human Services;
- (v) the Director of the Federal Bureau of Prisons;
- (vi) the chief executive of each State; and
- (vii) the head of the department of corrections of each State.

(B) CONTENTS-The report under subparagraph (A) shall include

- (i) the findings and conclusions of the Commission;
- (ii) recommended national standards for reducing prison rape;
- (iii) recommended protocols for preserving evidence and treating victims of prison rape; and
- (iv) a summary of the materials relied on by the Commission in the preparation of the report.

(e) RECOMMENDATIONS.

(1) IN GENERAL-In conjunction with the report submitted under subsection (d)(3), the Commission shall provide the Attorney General and the Secretary of Health and Human Services with recommended national standards for enhancing the detection, prevention, reduction, and punishment of prison rape.

(2) MATTERS INCLUDED-The information provided under paragraph (1) shall include recommended national standards relating to

- (A) the classification and assignment of prisoners, using proven standardized instruments and protocols, in a manner that limits the occurrence of prison rape;
- (B) the investigation and resolution of rape complaints by responsible prison authorities, local and State police, and Federal and State prosecution authorities;
- (C) the preservation of physical and testimonial evidence for use in an investigation of the circumstances relating to the rape;
- (D) acute-term trauma care for rape victims, including standards relating to
  - (i) the manner and extent of physical examination and treatment to be provided to any rape victim; and
  - (ii) the manner and extent of any psychological examination, psychiatric care, medication, and mental health

counseling to be provided to any rape victim;

(E) referrals for long-term continuity of care for rape victims;

(F) educational and medical testing measures for reducing the incidence of HIV transmission due to prison rape;

(G) post-rape prophylactic medical measures for reducing the incidence of transmission of sexual diseases;

(H) the training of correctional staff sufficient to ensure that they understand and appreciate the significance of prison rape and the necessity of its eradication;

(I) the timely and comprehensive investigation of staff sexual misconduct involving rape or other sexual assault on inmates;

(J) ensuring the confidentiality of prison rape complaints and protecting inmates who make complaints of prison rape;

(K) creating a system for reporting incidents of prison rape that will ensure the confidentiality of prison rape complaints, protect inmates who make prison rape complaints from retaliation, and assure the impartial resolution of prison rape complaints;

(L) data collection and reporting of

- (i) prison rape;
- (ii) prison staff sexual misconduct; and
- (iii) the resolution of prison rape complaints by prison officials and Federal, State, and local investigation and prosecution authorities; and

(M) such other matters as may reasonably be related to the detection, prevention, reduction, and punishment of prison rape.

(3) LIMITATION -The Commission shall not propose a recommended standard that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities.

(D) CONSULTATION WITH ACCREDITATION

ORGANIZATION.-In developing recommended national standards for enhancing the detection, prevention, reduction, and punishment of prison rape, the Commission shall consider any standards that have already been developed,

or are being developed simultaneously to the deliberations of the Commission. The Commission shall consult with accreditation organizations responsible for the accreditation of Federal, State, local or private prisons, that have developed or are currently developing standards related to prison rape. The Commission will also consult with national associations representing the corrections profession that have developed or are currently developing standards related to prison rape.

(g) HEARINGS.

(1) IN GENERAL-The Commission shall hold public hearings. The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out its duties under this section.

(2) WITNESS EXPENSE-Witnesses requested to appear before the Commission shall be paid the same fees as are paid to witnesses under section 1821 of title 28, United States Code. The per diem and mileage allowances for witnesses shall be paid from funds appropriated to the Commission.

(h) INFORMATION FROM FEDERAL OR STATE AGENCIES-The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out its duties under this section. The Commission may request the head of any State or local department or agency to furnish such information to the Commission.

(i) PERSONNEL MATTERS.

(1) TRAVEL EXPENSE-The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of service for the Commission.

(2) DETAIL OF FEDERAL EMPLOYEES With the affirmative vote of 2/3 of the Commission, any Federal Government employee, with the approval of the head of the appropriate

Federal agency, may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status, benefits, or privileges.

(3) PROCUREMENT OF TEMPORARY AND

INTERMITTENT SERVICE - Upon the request of the Commission, the Attorney General shall provide reasonable and appropriate office space, supplies, and administrative assistance.

(j) CONTRACTS FOR RESEARCH.

(1) NATIONAL INSTITUTE OF JUSTICE-With a affirmative vote, the Commission may select nongovernmental researchers and experts to assist the Commission in carrying out its duties under this Act. The National Institute of Justice shall contract with the researchers and experts selected by the Commission to provide funding in exchange for their services.

(2) OTHER ORGANIZATIONS-Nothing in this subsection shall be construed to limit the ability of the Commission to enter into contracts with other entities or organizations for research necessary to carry out the duties of the Commission under this section.

(k) SUBPOENAS.

(1) ISSUANCE-The Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter.

(2) ENFORCEMENT-In the case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

(3) CONFIDENTIALITY OF DOCUMENTARY

EVIDENCE.-Documents provided to the Commission pursuant to a subpoena issued under this subsection shall not be released publicly without the affirmative vote of the Commission.

(l) AUTHORIZATION OF APPROPRIATIONS.-There are authorized to be appropriated such sums as may be necessary to carry out this section.

(m) TERMINATION.~The Commission shall terminate on the date that is 60 days after the date on which the

Commission submits the reports required by this section..

(n) EXEMPTION.-The Commission shall be exempt from the Federal Advisory Committee Act.

SEC. 8. ADOPTION AND EFFECT OF NATIONAL STANDARDS. (a) PUBLICATION OF PROPOSED STANDARDS.

(1) FINAL RULE-Not later than 1 year after receiving the report specified in section 7(d)(3), the Attorney General shall publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison rape.

(2) INDEPENDENT JUDGMENT-The standards referred to in paragraph (1) shall be based upon the independent judgment of the Attorney General, after giving due consideration to the recommended national standards provided by the Commission under section 7(e), and being informed by such data, opinions, and proposals that the Attorney General determines to be appropriate to consider.

(3) LIMITATION.-The Attorney General shall not establish a national standard under this section that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities.

The Attorney General may, however, provide a list of improvements for consideration by correctional facilities.

(4) TRANSMISSION TO STATES-Within 90 days of publishing the final rule under paragraph (1), the Attorney General shall transmit the national standards adopted under such paragraph to the chief executive of each State, the head of the department of corrections of each State, and to the appropriate authorities in those units of local government who oversee operations in one or more prisons.

(b) APPLICABILITY TO FEDERAL BUREAU OF PRISONS-The national standards referred to in subsection (a) shall apply to the Federal Bureau of Prisons immediately upon adoption of the final rule under subsection (a)(4).

(c) ELIGIBILITY FOR FEDERAL FUNDS.

(1) COVERED PROGRAMS.

(A) IN GENERAL-For purposes of this subsection, a

grant program is covered by this subsection if, and only if-

(i) the program is carried out by or under the authority of the Attorney General; and

(ii) the program may provide amounts to States for prison purposes.

(B) LIST-For each fiscal year, the Attorney General shall prepare a list identifying each program that meets the criteria of subparagraph (A) and provide that list to each State.

(2) ADOPTION OF NATIONAL STANDARDS-For each fiscal year, any amount that a State would otherwise receive for prison purposes for that fiscal year under a grant program covered by this subsection shall be reduced by 5 percent, unless the chief executive of the State submits to the Attorney General

(A) a certification that the State has adopted, and is in full compliance with, the national standards described in section 8(a); or

(B) an assurance that not less than 5 percent of such amount shall be used only for the purpose of enabling the State to adopt, and achieve full compliance with, those national standards, so as to ensure that a certification under subparagraph (A) may be submitted in future years.

(3) REPORT ON NONCOMPLIANCE-Not later than September 30 of each year, the Attorney General shall publish a report listing each grantee that is not in compliance with the national standards adopted pursuant to section 8(a).

(4) COOPERATION WITH SURVEY-For each fiscal year, any amount that a State receives for that fiscal year under a grant program covered by this subsection shall not be used for prison purposes (and shall be returned to the grant program if no other authorized use is available), unless the chief executive of the State submits to the Attorney General a certification that neither the State, nor any political subdivision or unit of local government within the State, is listed in a report issued by the Attorney General pursuant to section 4(c)(2)(C).

(5) REDISTRIBUTION OF AMOUNTS-Amounts under a grant program not granted by reason of a reduction under

paragraph (2), or returned by reason of the prohibition in paragraph (4), shall be granted to one or more entities not subject to such reduction or such prohibition, subject to the other laws governing that program.

(6) IMPLEMENTATION-The Attorney General shall establish procedures to implement this subsection, including procedures for effectively applying this subsection to discretionary grant programs.

(7) EFFECTIVE DATE.

(A) REQUIREMENT OF ADOPTION OF

STANDARDS-The first grants to which paragraph (2) applies are grants for the second fiscal year beginning after the date on which the national standards under section 8(a) are finalized.

(B) REQUIREMENT FOR COOPERATION-The first grants to which paragraph (4) applies are grants for the fiscal year beginning after the date of the enactment of this Act.

SEC. 9. REQUIREMENT THAT ACCREDITATION ORGANIZATIONS ADOPT ACCREDITATION STANDARDS.

(a) ELIGIBILITY FOR FEDERAL GRANTS-Notwithstanding any other provision of law, an organization responsible for the accreditation of Federal, State, local, or private prisons, jails, or other penal facilities may not receive any new Federal grants during any period in which such organization fails to meet any of the requirements of subsection (b).

(b) REQUIREMENTS-To be eligible to receive Federal grant an accreditation organization referred to in subsection (a) must meet the following requirements:

(1) At all times after 90 days after the date of enactment of this Act, the organization shall have in effect, for each facility that it is responsible for accrediting, accreditation standards for the detection, prevention, reduction, and punishment of prison rape.

(2) At all times after 1 year after the date of the adoption of the final rule under section 8(a)(4), the organization shall, in addition to any other such standards that it may promulgate relevant to the detection, prevention, reduction, and punishment of prison rape, adopt accreditation standards

consistent with the national standards adopted pursuant to such final rule.

SEC. 10. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) CARNAL KNOWLEDGE-The term “carnal knowledge” means contact between the penis and the vulva or the penis and the anus, including penetration of any sort, however slight .

(2) INMATE-The term “inmate” means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

(3) JAIL-The term “jail” means a confinement facility of a Federal, State, or local law enforcement agency to hold-

(A) persons pending adjudication of criminal charges;

(B) persons committed to confinement after adjudication of criminal charges for sentences of 1 year or less.

(4) HIV-The term “HIV” means the human immunodeficiency virus.

(5) ORAL SODOMY-The term “oral sodomy” means contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus.

(6) POLICE LOCKUP-The term “police lockup” means a temporary holding facility of a Federal, State, or local law enforcement agency to hold-

(A) inmates pending bail or transport to jail;

(B) inebriates until ready for release; or

(C) juveniles pending parental custody or shelter placement.

(7) PRISON-The term “prison” means any confinement facility, of a Federal, State, or local government, whether administered by such government or by a private organization on behalf of such government, and includes-

(A) any local jail or police lockup; and

(B) any juvenile facility used for the custody or care of juvenile inmates.

(8) PRISON RAPE-The term “prison rape” includes the rape of an inmate in the actual or constructive control of prison officials.



(9) RAPE-The term “rape” means-

(A) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person, forcibly or against that person’s will;

(B) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person not forcibly or against the person’s will, where the victim is incapable of giving consent because of his or her youth or his or her temporary or permanent mental or physical incapacity; or

(C) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person achieved through the exploitation of the fear or threat of physical violence or bodily injury.

(10) SEXUAL ASSAULT WITH AN OBJECT-The term “sexual assault with an object” means the use of any hand, finger, object, or other instrument to penetrate, however slightly, the genital or anal opening of the body of another person.

(11) SEXUAL FONDLING-The term “sexual fondling” means the touching of the private body parts of another person (including the genitalia, anus, groin, breast, inner thigh, or buttocks) for the purpose of sexual gratification.

(12) EXCLUSIONS-The terms and conditions described in paragraphs (9) and (10) shall not apply to-- (A) custodial or medical personnel gathering physical evidence, or engaged in other legitimate medical treatment, in the course of investigating prison rape;

(B) the use of a health care provider’s hands or fingers or the use of medical devices in the course of appropriate medical treatment unrelated to prison rape; or

(C) the use of a health care provider’s hands or fingers and the use of instruments to perform body cavity searches in order to maintain security and safety within the prison or detention facility, provided that the search is conducted in a manner consistent with constitutional requirements.

Approved September 4, 2003.

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