

Confronting America's Most Ignored Crime Problem: The Prison Rape Elimination Act of 2003

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Prisoner sexual assault has plagued American corrections since its infancy in the 19th century. Although the incidence of prisoner sexual assault is unknown, recent studies reliably suggest the problem is widespread, often affecting the most vulnerable prisoners. The mental health and public health consequences, both within institutions and the community, are complex and devastating, requiring comprehensive intervention and treatment. These crimes have been largely ignored by correctional managers, compromising the safety and security of correctional institutions. The Prison Rape Elimination Act of 2003 could play a vital role in managing a national scandal.

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The United States prides itself on the bulwark principles of freedom and equal justice under the rule of law. The founding fathers enshrined in the Bill of Rights specific guarantees for all citizens that have become the cornerstone of our constitutional system of justice. The innovative idea that the punishment should be proportional to the crime,¹ first heralded by Cesare Beccaria,² set the stage for penal and legislative reforms that radically altered the prevailing practice of capital punishment for a broad spectrum of crimes and replaced it with the penitentiary movement.

At the dawn of the 21st century, however, many who are incarcerated in American correctional institutions are poised on the brink of despair. Prisoner rape has become “an accepted fact of prison life,”³ “America’s most ignored crime problem,”⁴ which threatens the ability of local, state, and federal government to provide for the safe and humane treatment of the more than 2 million incarcerated in-

mates,⁵ in direct opposition to the Constitution’s Eighth Amendment guarantee against cruel and unusual punishment.

Following the publication by Human Rights Watch of the first national study of prisoner sexual assault in male correctional institutions⁶ in 2001, the cries for reform of this problem have become deafening. The national media have called for an end to the “cruel and usual punishment”⁷ of prison rape, stating that “America’s two million prison inmates have been lawfully deprived of their liberty, but they have not been sentenced to [the] physical and psychological abuse”⁸ of sexual assault. This national scandal has also drawn together a unique, bipartisan coalition of national legislators, social scientists, and religious, professional, and human rights organizations dedicated to alleviating this crisis through the passage of a historic piece of legislation, aptly entitled The Prison Rape Elimination Act of 2003.⁹ This article examines the incidence of prisoner sexual assault from the scant empirical data that exist and outlines its complex medical, psychological, social, and security consequences, initially presented by the author during a hearing before the United States Senate Committee on the Judiciary on July 31, 2002.¹⁰

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Epidemiology of Prisoner Sexual Assault in U.S. Correctional Institutions

The scourge of prisoner sexual assault was recognized early in the history of U.S. corrections when the Rev. Louis Dwight of the Boston Discipline Society condemned this “dreadful degradation” in 1826 (Ref. 11, p 27). Although most Americans know it is a problem, no national database reporting such incidents exists, and therefore the extent of prison sexual assault is not precisely known.^{12,13} In 35 years, there have been fewer than 20 published studies conducted in an attempt to obtain an accurate assessment of its epidemiology,^{14–33} only four of which have included data about women prisoners.^{28,31–33}

We do, however, have a reliable baseline of incidence data from three large-scale studies of Midwestern prison systems recently conducted by Cindy Struckman-Johnson and her colleagues.^{28,29,31} She found that:

22 to 25 percent of prisoners are the victims of sexual pressuring, attempted sexual assault, or completed rapes [Ref. 28, p 71];

1 (10%) in 10 prisoners is the victim of a completed rape at least one time during the course of his or her incarceration [Ref. 28, p 72]; and

two-thirds of those reporting sexual victimization have been victimized repeatedly—an average of nine times during their incarceration—with some male prisoners experiencing up to 100 incidents of sexual assault per year [Ref. 28, p 71].

Using these data, it is reasonable to assume that in states with larger, heterogeneous urban populations, the rates of sexual assault are even higher. This assumption is supported by the study of one California medium security prison that found that one (14%) in seven inmates reported being sexually victimized.²¹ In fact, many scholars agree with the admonishment of Cotton and Groth “that 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” (Ref. 34, p 48). One of the goals of the Act is to collect and validate scientifically the actual incidence of prisoner sexual assault in all correctional facilities nationwide.

Characteristics of Inmates Who Are Especially Vulnerable to Sexual Victimization

Although no inmate is immune from sexual victimization, empirical evidence demonstrates that

there are certain categories of male prisoners who are especially vulnerable: (1) the young and inexperienced; (2) the physically weak and small; (3) those suffering from mental illness or developmental disabilities; (4) those who are not “tough” or “street-wise”; (5) those who are not gang affiliated; (6) the homosexual, transgendered, or overtly effeminate; (7) those who have violated the “code of silence”; (8) those who are disliked by staff or other inmates; and (9) those who have been sexually assaulted.^{12–14,20,34–40,44} Race has also been identified as a factor contributing to prison rape in settings with high racial tension.^{16,20,21,37,41,42} It has been shown that targets of sexual aggression may act out violently themselves, making the transition from victim to aggressor in an effort to avoid further victimization,^{14,20,37,43} gain social status within the institution,⁴⁴ or seek revenge for having been victimized.^{34,35}

For female prisoners, particular characteristics do not play as large a role in determining who is targeted for sexual abuse, but first-time offenders, young women, and mentally disabled women are particularly vulnerable.^{45–49} Custodial sexual assault has received considerable attention,^{45–57} as it should, and many important steps have been initiated to rectify the problem. In the two largest empirically based studies that have been conducted,^{28,31} more incidents of sexual abuse were perpetrated by other female inmates than by male custodial staff. (In fact, these studies^{28,31} identified both male and female staff as responsible for between 20% and 50% of sexual victimization of female prisoners, depending on the institution). Such findings challenge traditionally held beliefs and reinforce the need to secure valid, empirically sound incidence data—a need that will be facilitated through passage of the Act.

The Complex and Devastating Consequences of Prisoner Sexual Assault

The consequences of being sexually assaulted are pervasive, devastating, and global—with profound physical, emotional, social, and spiritual components.^{12,13,34,35,58–63} The survivor of sexual assault has experienced a life-changing event that has a destructive and overwhelming impact.^{63,64} A victim may experience a lifetime of pain and suffering after only one event.⁶⁵ The effects of such victimization in prisons and jails have been shown to be even more debilitating because of the unique structure of incar-

ceration, which increases the impact on victims.^{6,13,36,62,66-69} Incarcerated victims are more often physically assaulted during attacks,^{6,28,29,31,62} and routinely experience a systematic, repetitive infliction of psychological trauma, fear, feelings of helplessness, and terror as the physical/sexual abuse continues.^{6,12,13,36,62,67-70} Male victims may be marked as “punks” and forced to endure years of sexual slavery and torture.^{6,21,36,62,69,70} The steps an inmate victim chooses to take in response to sexual assault (reporting the crime, seeking protective custody, engaging in protective pairing) will have a profound effect on his or her future while incarcerated.^{6,12,13,36,62,66}

Mental Health Sequelae

The mental health consequences of prisoner sexual assault are catastrophic. Male and female victims often experience posttraumatic stress disorder, anxiety, depression, and exacerbation of preexisting psychiatric disorders, and most victims are at risk of committing suicide to avoid the ongoing trauma.^{6,12,13,20,28,29,31,34-39,62,63,66} Suicide, which has been described as the “crisis behind bars,”⁷¹ is the most serious mental health concern after an inmate is sexually assaulted.⁶² The precise rate of jail suicide is controversial, with estimates ranging from 47 to 114 per 100,000 (a rate 9 to 14 times higher than in the general population).^{72,73} Depending on the authority, suicide is listed as either the leading cause of death in U.S. jails⁷⁴ or the second leading cause of death after illnesses/natural causes (excluding AIDS).⁷⁵ Suicide was listed as the third leading cause of death in prisons in 1999.⁷⁶ In California and Texas, the two largest state prison systems, in 1993 the rate of suicide per 100,000 inmates was 26.4 and 25, respectively—both rates approximately two times higher than in the general population.⁷⁷

This problem is even more acute when one recognizes that U.S. jails and prisons currently house more persons with mental illness than the nation’s psychiatric hospitals.^{78,79} Between 60,000 and 100,000 of the persons admitted to jail in the United States are mentally ill,⁸⁰ and at midyear 1998, there were an estimated 283,800 inmates with mental illness in U.S. jails and prisons, representing 16 percent of state prison and local jail inmates and 7 percent of federal inmates.⁸¹ Many of these individuals have also experienced prior physical and sexual abuse (9.5 to 18.7 percent of all inmates report prior physical

abuse, and 7 to 16 percent of inmates report prior sexual abuse).⁸² Prior sexual and physical abuse can exacerbate the traumatic experience of sexual assault and can complicate the victim’s recovery,^{58-60,62,69} particularly those with mental illness, who can be especially traumatized.^{36,62,66,69} Unfortunately, most correctional facilities are ill prepared to provide adequate, comprehensive services to victims,^{62,83-85} who often fail to disclose their victimization out of fear and humiliation.^{12,13,28,29,31,62,86}

Public Health Consequences

The public health consequences of prisoner sexual assault are equally overwhelming. To understand the scope of the problem, it is necessary to identify the current medical condition of America’s prisoners:

Of all U.S. inmates, 24,074 (2.2%) state inmates and 1,014 (0.8%) federal inmates were known to be infected with human immunodeficiency virus (HIV) on December 31, 2000,⁸⁷ with female prisoners being especially affected (3.6 percent versus 2.2 percent of males), representing an “epidemic behind the walls” (Ref. 88, p 77).

Of all jail inmates, 8,615 (1.7%) were known to be HIV positive as of midyear 1999 (Ref. 89, p 1).

The known rate of HIV infection among inmates is undoubtedly an underestimate, because testing is voluntary in many states, and many HIV-infected inmates who have not progressed to full blown AIDS can remain asymptomatic and be unaware of their status (Ref. 90, p 1).

There were 5,528 confirmed AIDS cases in U.S. prisons at year-end 2000 (Ref. 87, p 1) and 3,081 jail inmates were confirmed to have AIDS in U.S. jails as of midyear 1999 (Ref. 89, p 1). The AIDS prevalence rate among inmates is five times higher than among the total U.S. population (Ref. 91).

AIDS accounted for 10.1 percent ($n = 324$) of all inmate deaths in adult state and federal prisons in 1999 (Ref. 76).

Among recently released inmates in 1997, there were 465,000 cases of sexually transmitted disease (Ref. 84, p 4).

There were 1,400 cases of active tuberculosis (4% of the U.S. burden) in American correctional inmates in 1997 (Ref. 92), a diagnosis that often goes unrecognized in correctional settings (Ref. 93, p 705).

In the U.S. jail population, 22 to 39 percent of incarcerated persons manifest evidence of prior hepatitis A infection (Ref. 94, p 2).

Current or chronic hepatitis B was reported in 155,000 released inmates in 1997 (Ref. 83), and chronic hepatitis B infection was diagnosed in 1.0 to 3.7 percent of prison inmates, two to six times the national prevalence rate of 0.5 percent (Ref. 84).

Of the inmates released from U.S. jails and prisons in 1997, 1.3 to 1.4 million were infected with hepatitis C (Ref. 85, p 2), with 30 to 40 percent of the current inmates potentially infected (Ref. 95, p 1004).

With an estimated 12.6 million admissions and releases from U.S. jails and 625,000 admissions and

606,000 releases from state and federal prisons annually,^{5,85,92,96,97} the potential spread of these diseases, both within the prison population and into the general community, becomes ominous to consider. In addition to the possibility of exposure to disease, female inmates have been impregnated as a result of staff sexual misconduct.⁴⁸⁻⁵³ Some of these women have then been subjected to inappropriate segregation and denial of adequate health care services.^{49-53,55,56}

Intervention and Treatment in Sexual Victimization Incidents

The potential for serious, even lethal, injury of sexual assault victims, especially in incarceration settings, necessitates that the first priority be to treat any physical injury and to minimize the potential physical and psychological sequelae, which may be life threatening (HIV, AIDS, suicide). This requires specific interventions at four key phases: (1) immediately on disclosure of the assault; (2) within 72 hours after the assault; (3) in the short term; and (4) in the long term.^{12,13,34-62} Several models are worthy of note and should be consulted: the San Francisco Jail Crisis Intervention Protocol,⁹⁸ which has been reproduced in several publications^{35,36}; the Federal Bureau of Prisons protocol PS 5324.04 Sexual Abuse/Assault Prevention and Intervention Programs⁹⁹; the Standards of the National Commission of Correctional Health Care, notably Standard P-57 Sexual Assault¹⁰⁰; the Massachusetts Department of Correction protocol 103 DOC 520 Inmate Sexual Assault Response Plan¹⁰¹; and the procedures outlined by Dumond and Dumond (Ref. 62, notably Tables 5.1 and 5.2).

Knowledge of the Deleterious Effect of Prisoner Sexual Assault

The mission of America's correctional institutions is to provide for the care, custody, and control of those individuals committed to their supervision. Prisoner sexual assault destabilizes the safety and security of America's jails and prisons. For more than 25 years it has been recognized as a contributing factor in prison homicides, violence against inmates, and staff, and institutional insurrections and riots.^{18,23-25,102,103} Administrative and programmatic solutions, focusing on prevention, intervention, and prosecution, have long been recommended by au-

thorities, yet not implemented by the responsible officials.^{12,13,34-36,62,63,104,105} Strategies such as increasing surveillance of critical areas in the institution, improved classification procedures to identify potential victims and aggressors, adequate medical and mental health treatment for victims, and isolation and prosecution of offenders, have been proposed for over 20 years.^{6,12-14,21,23-25,34-36,62} Despite this, too many U.S. correctional officials have shown either ignorance of, misunderstanding of, or, most alarmingly, deliberate indifference toward this crisis.^{6,104,106}

In effect, prison administrators have been largely unaccountable for the prison sexual assaults committed under their watch.^{6,14,21,36,40,106} Some analysts have even suggested that prison sexual assaults have been used as a management tool to maintain order—a perverse and unacceptable practice, typified by the case of the “Booty Bandit,” an inmate allegedly used by correctional officers at the Corcoran State Prison in California to rape, torture, and abuse troublesome inmates.^{107,108}

A 2001 National Study on Prisoner Sexual Assault

The first national survey on prisoner sexual assault was conducted in all 50 state departments of correction and the Federal Bureau of Prisons by Human Rights Watch in 2001⁶ and confirmed that most correctional authorities deny the existence of prisoner sexual assault. Effective management can be implemented only by using accurate data. Yet only 23 of 46 corrections departments reported that they maintain distinct statistical information on inmate sexual assault, and no state-reported data are collected, consistent with the large sample surveys of Midwestern prisons. Despite universal consensus that correctional staff training is vital to addressing prison rape,^{6,12-15,20,21,23-25,34-36,62,63,102-105,109-112} only six state correctional departments (Arkansas, Illinois, Massachusetts, New Hampshire, North Carolina, and Virginia) and the Federal Bureau of Prisons currently provide staff with such training.⁶ Criminal prosecution is almost nonexistent in cases of prisoner sexual assault.^{6,12,13,36,62,104} American correctional systems have considerably improved with professionalization. Nevertheless, the largest correctional accreditation agency, the American Correctional Association, did not promulgate standards mandating training on sexual assault until August 2002 and announced six

new standards (Standards 03-01 to 03-06)¹¹³ on screening, investigation, and treating inmate victims of sexual assault in January 2003, partly in response to national concerns.

The Prison Rape Elimination Act of 2003: Response to a National Scandal

The Act provides a tangible, comprehensive strategy to address the complex challenges posed by prisoner sexual assault. With accurate incidence data, correctional administrators can make rational decisions about staff deployment, inmate placement, and resource allocation, thereby improving the safety and security of America's institutions of confinement. This is a crisis that can be resolved without significant monetary expenditures. The Act's emphasis on visibility and accountability will be highly effective, as it mandates collection and maintenance of accurate information by correctional institutions and provides for careful scrutiny of each facility's prison rape abatement practices. Prison officials with poor responses will be held accountable for their inaction and indifference. The National Prison Rape Elimination Commission will also play a key role by developing reasonable standards in areas such as staff training, record keeping, and protection for whistleblowers. Correctional staff will operate in accordance with the highest ethical and professional standards, and comprehensive treatment for inmate victims will begin to heal the devastating impact of sexual assault.

In the only case of prisoner sexual assault brought before the United States Supreme Court, *Farmer v. Brennan*,¹¹⁴ a concurring opinion by Justice Blackmun stated that prison officials have an "affirmative duty under the Constitution to provide for the safety of inmates" and asserted that "being violently assaulted in prison is simply not part of the penalty."¹¹⁴ Unfortunately, we are still turning a "blind eye"¹¹⁵ to one of the most pervasive and devastating abuses that has been allowed to continue in our country, as the Act has yet to be implemented. (The Act was passed unanimously by both houses of Congress and was signed by the President on September 4, 2003.) Prisoner sexual assault destroys human dignity, contributes to the spread of disease, and perpetuates violence both inside and outside prison walls.

Unfortunately, prison rape has often been accepted as an inevitable consequence of incarceration. The Prison Rape Elimination Act of 2003 will help alleviate the agony of numerous prisoners, many of

whom are the most vulnerable and who have suffered in silence. We have the technology and means to resolve this problem, but we have lacked the political will to implement a remedy. If America expects to continue to be the beacon of law and justice, we must take every step to end this cruel abuse.

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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, (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 (a) SHORT TITLE.â€”This Act may be cited as the â€”Prison Rape Elimination Act of 2003â€”TM. (b) TABLE OF CONTENTS.â€”The table of contents of this Act is as follows: Sec. 1. Short title; table of contents.Â (6) Prison rape often goes unreported, and inmate victims often receive inadequate treatment for the severe physical and psychological effects of sexual assaultâ€”if they receive treatment at all. (7) HIV and AIDS are major public health problems within Americaâ€”s correctional facilities. In 2000, 25,088 inmates in Federal and State prisons were known to be infected with HIV/AIDS.Â (8) Prison rape endangers the public safety by making brutalized inmates more likely to commit crimes when they are releasedâ€”as 600,000 inmates are each year. Pursuant to the Prison Rape Elimination Act of 2003 (PREA), the Department of Justice released proposed standards to combat sexual assault in confinement. As seen in the legislative history of PREA, the impetus for the legislation was the male experience of rape during incarceration, leaving out women prisonersâ€” particular needs. The experience of sexual abuse and rape while imprisoned is different for women than it is for men. Unlike men who are more frequently abused by other inmates, women are more likely to be subject to abuse from a member of the prison staff than from another inmate. The