



OLR RESEARCH REPORT

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NATIONAL PRISON RAPE ELIMINATION COMMISSION

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You asked for a summary of the National Prison Rape Elimination Commission's report.

SUMMARY

Congress created the National Prison Rape Elimination Commission to study the causes and consequences of sexual abuse in prison and develop standards to eliminate prison rape. The commission held public meetings to take testimony and convened committees of experts to help develop standards. The commission submitted its report in June 2009 to the President, Congress, the attorney general, the secretary of health and human services, and other federal and state officials. It sunset on August 22, 2009.

In its report, the commission made the following nine findings.

1. Protecting prisoners from sexual abuse remains a challenge in prisons across the country.
2. Sexual abuse is not an inevitable feature of prison and corrections administrators can create a culture that promotes safety.
3. Certain individuals are more at risk of sexual abuse than others. Corrections officials must do more to identify vulnerable inmates, protect them, avoid isolating them, and provide access to rehabilitative programs.

4. Dramatic reductions in sexual abuse depend on rigorous internal monitoring and external oversight.
5. Reporting procedures must instill confidence in victims and protect them from retaliation. Investigations must be thorough and competent. Perpetrators must be held accountable through administrative sanctions and criminal prosecution.
6. Prisons must ensure immediate and ongoing access to medical and mental health care and supportive services for victims.
7. Confined juveniles are much more likely to be sexually abused than adults. They are particularly at risk when confined with adults. Prevention, investigation, and treatment must be tailored to the developmental capacities and needs of youth.
8. Individuals supervised in the community are also at risk of sexual abuse. The consequences of sexual abuse of these individuals is no less severe and it jeopardizes their successful reentry into the community.
9. Detained immigrants have a heightened vulnerability and their unusual circumstances require special interventions to protect them.

The commission recommended detailed standards to reduce sexual abuse of offenders in adult prisons and jails, juvenile detention facilities, facilities housing immigration detainees, lock-ups, and community corrections. The sections below highlight the commission's findings and recommendations. A full copy of the report is available at: <http://www.cybercemetery.unt.edu/archive/nprec/20090820154816/http://nprec.us/publication/>

SCOPE OF THE PROBLEM

The commission found that efforts to understand the scope of sexual abuse in prison are relatively recent and recommended additional research. The commission cited a study by the Bureau of Justice Statistics (BJS) showing that:

- 4.5% of 63,817 prisoners responding to the survey of state and federal prisons and jails experienced sexual abuse at least once in the previous 12 months or within a shorter period if their prison terms were less than 12 months;

- extrapolated to the national prison population, an estimated 60,500 state and federal prisoners were sexually abused during the 12-month period; and
- more prisoners reported abuse by staff than other prisoners.

CREATING A CULTURE THAT PROMOTES SAFETY

The commission found that strong leadership is essential to creating the institutional culture needed to eliminate sexual abuse in prisons. It reached the following conclusions.

- Prison administrators must champion clear standards to reform the underlying culture.
- A written zero tolerance policy must apply to all forms of sexual abuse in all settings. Unions and their members should explicitly agree through collective bargaining to the zero tolerance approach.
- Administrators must support and promote staff with a commitment to preventing sexual abuse. They must thoroughly screen new job applicants and carefully review staff member's behavior when considering promotions.
- Competitive compensation and benefit packages are needed to recruit and retain appropriate staff.
- Facilities must train staff to understand the dynamics of sexual abuse in prison, inform them of policies, and give them the knowledge and skills to protect prisoners and respond to incidents.
- Facilities must (1) give prisoners basic information at intake in languages they can understand and (2) provide a strong educational program for prisoners about their right to be safe and the facility's commitment to holding perpetrators accountable.
- Facilities must use direct supervision with interaction between staff and prisoners wherever possible. They must assess, at least annually, the need for and feasibility of adding monitoring equipment.

- Facilities must have clear standards on cross-gender supervision with strict limits on (1) cross-gender searches and (2) viewing prisoners of the opposite gender who are nude or performing bodily functions.

IDENTIFYING VULNERABLE INMATES

The commission found that research on risk assessment is limited but it does identify risk factors such as youth, small stature, lack of prison experience, mental disability or serious mental illness, non-heterosexual orientation, transgender status, and history of sexual victimization. The commission recommended the following.

- Corrections officials must conduct evidence-based screening for inmates at risk of being a victim or perpetrator. Screening must determine an inmate's housing and programming.
- Segregating vulnerable inmates must be a last resort and interim measure. Using special units for vulnerable groups and specific housing based on sexual orientation or gender identity is discouraged.
- Prison overcrowding is concerning because it is harder to supervise prisoners and create safe spaces in crowded facilities; they provide fewer opportunities for education, job training, and programs; and the idleness and stress of crowded facilities can lead to conflict.

INTERNAL MONITORING AND EXTERNAL OVERSIGHT

The commission found that the most effective prevention efforts are targeted interventions based on when, where, and under what conditions sexual abuse occurs. It also found that the nature of prisons demands that government and the public have multiple ways to watch oversee prisons and intervene when individuals are at risk. The commission recommended the following.

- Prisons must use incident reviews to collect the information needed to effectively deploy staff, safely manage high-risk areas, and develop policies and procedures. Uniform incident data can reveal patterns and trends to use as a basis for action plans. Transparency is essential and the aggregate data and plans must be released to the public.

- Auditors pre-qualified through the U.S. Department of Justice must conduct detailed, robust independent audits of these standards every three years.
- Governments should create independent public entities to regularly monitor and report on prison conditions such as an inspector general, ombudsman, or legislative committee.
- The federal Prison Litigation Reform Act (PREA) has compromised the courts' regulatory role and victims' ability of to seek justice. Congress should amend PREA's requirements for (1) exhausting administrative remedies before going to court and (2) proof of physical injury for awarding compensatory damages for sexual abuse victims.

REPORTING PROCEDURES, INVESTIGATIONS, ADMINISTRATIVE SANCTIONS, AND CRIMINAL PROSECUTION

The commission cited a BJS study of prison sexual violence, misconduct, and harassment investigations in 2006 that found that 17% of allegations were substantiated; sexual abuse did not occur in 29% of the alleged incidents; and investigations could not determine whether abuse occurred for 55% of the allegations. The commission recommended the following.

- Prisons must improve reporting procedures to instill confidence in victims and protect them from retaliation. Prisons must provide easy ways to report abuse. Staff must also report abuse.
- Since some will never feel comfortable reporting abuse internally, inmates must have an option to speak confidentially to a crisis center or outside agency.
- Specially trained professionals must conduct forensic exams of victims to improve health care and the quality of evidence available to investigators.
- Prisons must adopt a protocol on collecting, maintaining, and analyzing physical evidence and set the responsibilities of the forensic examiner and other responders.
- Facilities must ensure that investigators receive up-to-date training that meets minimum requirements.

- An abuse report must trigger an immediate response from security staff; forensic, medical, and mental health practitioners; and the facility head.
- Staff must thoroughly investigate every allegation without delay and complete the investigation regardless of whether the alleged victim cooperates. Administrators must base their conclusions on the preponderance of the evidence and impose fair, consistent, and tough sanctions on perpetrators to deter abuse.
- Labor and management must agree to reassign officers during an investigation when safety is an issue and set appropriate sanctions for staff perpetrators.
- Prisoners should not be punished for sexual contact with staff, even if it is consensual, because the power imbalance between them limits meaningful consent and the threat of punishment deters inmates from reporting staff misconduct.

MEDICAL AND MENTAL HEALTH CARE AND SUPPORTIVE SERVICES

The commission found that sexual abuse victims report persistent mental and physical repercussions. Psychological after-effects include post-traumatic stress disorder, anxiety disorders, fear of loud noises or sudden movements, panic attacks, and intense flashbacks. Trauma can lead to serious medical conditions including cardiovascular disease, ulcers, and a weakened immune system. Victims may also be exposed to HIV and other sexually transmitted diseases. The commission recommended the following.

- Victims must have unimpeded access to emergency treatment, crisis intervention, and on-going health care according to what is generally acceptable to medical and mental health professionals.
- Practitioners must be trained to recognize when a mental or physical problem might indicate abuse. They have a duty to report abuse and must inform prisoners of this duty. But practitioners must provide care whether the victim names the perpetrator or not because fear of retaliation may lead victims to avoid treatment.
- Since some victims may not feel comfortable discussing abuse with a prison employee, prisons must provide victims with information on how to contact victim advocates and community support services. These communications must be private and confidential to the extent permitted by law.

- Agencies must provide emergency care to victims free of charge and exempt treatment for common and persistent after-effects from any fees.

JUVENILES

The commission found that incarcerated juveniles are much more likely to be sexually abused than adults in prison and they are particularly at risk when confined with adults. A BJS study found that the sex abuse rate in adult facilities based on substantiated allegations was 2.91 incidents per 1,000 inmates in 2006 but in juvenile facilities it was 16.8 per 1,000. The commission recommended the following.

- The same policies to combat abuse apply to juvenile facilities, but they must be tailored to the developmental capacities and needs of youth.
- Staff must understand the nature of abuse involving children and its consequences.
- Victims and witnesses must have unimpeded access to their families, attorneys, or legal representatives.
- Facilities must give parents and lawyers information about the rights of residents and the internal grievance procedures.
- Facilities must improve sexual education and sexual abuse prevention programs.
- Facilities must apply developmentally appropriate interventions for youth perpetrators, who may need treatment as well as punishment.
- Medical and mental health staff must be trained to recognize the signs of abuse and provide age-appropriate treatment.
- Individuals under age 18 should be held separately from the general population.

OFFENDERS IN THE COMMUNITY

The commission found that individuals supervised in the community are at risk of abuse and abuse can jeopardize an offender's successful reentry into the community. It found that (1) individuals under

supervision are particularly vulnerable to abuse by staff because they are trying to avoid incarceration and coercion and threats by staff can carry great weight; (2) staff have virtually unlimited access to the individuals they supervise, sometimes in private settings; and (3) staff have diverse roles and obligations as enforcement officers, counselors, and social workers.

The commission recommended policies similar to those for prisons, including staff training; clear policies; zero tolerance for abuse; hiring the right staff; and improving reporting, investigations, and facility records.

DETAINED IMMIGRANTS

The commission found that detained immigrants have a heightened vulnerability for a number of reasons. For example, they may not speak the language of staff or other detainees, may have suffered terrifying experiences in their home country or the United States, and may not be well informed of their rights. In addition, grievance procedures can seem complex, officers have a great degree of leverage because they can deport detainees, and immigration judges have no jurisdiction over detention conditions.

The commission recommended the following.

- General population prisons must hold detained immigrants separately but not in segregation.
- When families are in custody, facilities must protect all members from abuse while also preserving family unity. All family members must be able to report abuse in a confidential manner, which is especially important if children are at risk of abuse within the family unit.
- If staff cannot protect victims and witnesses, Immigrations and Customs Enforcement (ICE) must consider monitoring them in the community during an investigation.
- Detainees need access to outside agencies who can receive and respond to reports of abuse. They must have access to phones with free, preprogrammed numbers to ICE's Office for Civil Rights and Civil Liberties and the Department of Homeland Security's Office of the Inspector General. They must also have phone access to diplomatic or consular personnel from their countries.
- Staff must be trained to respond in a culturally appropriate way.

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