

**Written Statement of  
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For a Hearing on

**Sexual Assault in U.S. Prisons Two Decades After the Prison Rape  
Elimination Act**

United States Senate  
Committee on the Judiciary  
Subcommittee on Criminal Justice and Counterterrorism

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2:00 PM

226 Dirksen Senate Office Building  
Washington, D.C. 20510

Chairperson Booker, Ranking Member Cotton, and distinguished members of the Criminal Justice and Counterterrorism Subcommittee,

On behalf of Just Detention International, I am pleased to be here today to discuss the impact of the Prison Rape Elimination Act on sexual safety in our jails, prisons and juvenile facilities since the Prison Rape Elimination was passed in 2003, and since the National PREA Standards were issued in May of 2012.

Just Detention International is a health and human rights organization that seeks to end sexual abuse in all forms of detention. JDI was founded in 1980 by two formerly incarcerated survivors of custodial sexual abuse, and is the only organization in the U.S. – and the world – dedicated exclusively to ending sexual abuse behind bars. We hold government officials accountable for prisoner rape; challenge the attitudes and misperceptions that allow sexual abuse to flourish; and make sure that survivors get the help they need.

Sexual abuse in detention is absolutely preventable. Prisons and jails with committed leaders, strong policies, and sound practices can keep people safe.

We work with policymakers, advocates, and corrections officials to protect the basic human rights of people in detention, in the U.S. and globally. All of our work is informed by the wisdom and experiences of prisoner rape survivors. We go inside facilities every day to talk directly with incarcerated people and staff about what they really need to be safe.

When the government removes someone’s freedom, it takes on an absolute responsibility to keep that person safe. No matter what crime someone may have committed, rape is not part of the penalty.

## **THE PRISON RAPE ELIMINATION ACT**

The Prison Rape Elimination Act was co-sponsored by then-Senators Jeff Sessions and Ted Kennedy, passed by a unanimous Congress, and signed into law by President George W. Bush in 2003. PREA established a “zero-tolerance standard” for prison rape and required that a bi-partisan, nine-member National Prison Rape Elimination Commission (NPREC) be established to conduct “a comprehensive legal and factual study” of prison rape and to submit a report with recommended national standards to detect, prevent, reduce, and punish prison rape. The United States Attorney General was then required to consider the NPREC’s report and recommendations and issue a final rule adopting national standards to be implemented by local, state and federal detention facilities. PREA also requires ongoing data collection regarding prison rape.

To develop the national standards, the Attorney General established a PREA Working Group comprised of representatives from a wide range of DOJ components, including the Access to Justice Initiative, the Bureau of Prisons (including the National Institute of Corrections), the Civil Rights Division, the Executive Office for United States Attorneys, the Office of Legal Policy, the Office of Legislative Affairs, the Office of Justice Programs (including the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime), the Office on Violence Against Women, and the United States Marshals Service. The Working Group reviewed the NPREC's report and proposed standards, conducted listening sessions, and reviewed over 1,950 public comments submitted during the rulemaking process.

The Department of Justice issued the final National Standards to Prevent, Detect, and Respond to Prison Rape ("National PREA Standards") on May 17, 2012. The National Standards apply to facilities operated by, or on behalf of, State and local governments and the Department of Justice, and were immediately binding on the Federal Bureau of Prisons. To avoid losing five percent of certain federal grant funds, PREA requires states to annually either certify full compliance with the standards, or to issue an assurance that the state will use the specified grant funds to attain full compliance with the standards. PREA compliance is established when facilities pass a PREA audit by a DOJ-certified PREA auditor, and agencies must ensure that each of its facilities are audited once during every three-year audit cycle.

The Federal Bureau of Prisons and state corrections agencies have accepted the National Standards to Prevent, Detect, and Respond to Prison Rape, and have taken PREA implementation seriously. Only Utah has decided to forfeit their rights to five percent of certain federal funds by declining to either certify full compliance with the standards or to issue an assurance that the state will use the specified grant funds to attain full compliance with the standards.<sup>1</sup> However, even Utah has confirmed that they are working to comply with most of the National Standards.<sup>2</sup>

### **PREA Successes and Limitations**

Implementing the PREA Standards undoubtedly has a positive impact on prisoners' sexual safety. But implementing the standards alone is not enough. As the Department of Justice recognized in the preamble to the National PREA Standards, "[t]he success of the PREA

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<sup>1</sup> BJA State PREA Submissions, <https://www.bja.gov/state-PREA-submissions/>

<sup>2</sup> Utah has stated that it "fully supports the goal of eliminating rape within our correctional facilities," and that the state has "implemented many of the stated recommendations prior to the PREA's passage, and has now implemented the majority of them." Luke Ramseth, *Utah one of only two states not complying with federal prison-rape guidelines, DOJ says*, The Salt Lake Tribune, May 15, 2017.

standards in combating sexual abuse in confinement facilities will depend on effective agency and facility leadership, and the development of an agency culture that prioritizes efforts to combat sexual abuse. Effective leadership and culture cannot, of course, be directly mandated by rule. Yet implementation of the standards will help foster a change in culture by institutionalizing policies and practices that bring these concerns to the fore.” Culture change does not happen quickly.

The National PREA Standards are designed to provide a sound framework for culture change by strengthening almost every aspect of correctional operations. The National Standards address supervision, searches, screening and classification, hiring, facility upgrades, evidence protocols, investigations, employee training, inmate education, reporting, access to outside support services, medical and mental health care, agency protection duties, retaliation, discipline, and data collection.

Measuring PREA’s success is difficult due to inadequate data collection and unreliable PREA audits, as discussed below. But there are signs of progress. State and federal prisons have implemented “zero tolerance” policies concerning sexual abuse that inform corrections practices. Staff and volunteers receive regular training on custodial sexual abuse and their duties under PREA, and people in custody receive education on their right to be free from sexual abuse and how to report abuse. Improvements to inmate screening and classification have focused on protecting inmates from sexual abuse from other incarcerated people. Agencies and facilities provide multiple ways for people to report sexual abuse internally, and provide access to an entity external to the agency that is able to receive reports. Barriers to reporting have been removed, such as time limits for filing reports or requirements that reports conform to a specific format. And agencies have strengthened their response to reports of sexual abuse, to include providing medical and mental health care to survivors of sexual abuse.

And yet, despite these measures, people continue to endure sexual abuse in custody, and we must do more to eliminate prison rape. Efforts should focus on staff reporting and identifying red flags that can lead to sexual abuse, detecting unreported sexual abuse, eliminating actual and perceived retaliation, conducting thorough administrative investigations, and ensuring that incarcerated survivors have access to meaningful emotional support services.

## **Reporting**

Despite having access to various reporting methods, people in custody remain reluctant to report sexual abuse for numerous reasons. Incarcerated people fear that they won’t be believed or that they will be disciplined, that they will face retaliation from staff or other incarcerated individuals, that their housing placements will be disrupted, or that lackluster investigations will fail to substantiate their reports or not be conducted at all.

Staff rarely have to resort to violence to sexually abuse people in their custody. In all prisons, staff have near absolute power over every aspect of their prisoners' lives, and prisoners do not have the option of not complying with staff directives. Staff have the power and authority to impose disciplinary sanctions that can impact an incarcerated person's release date, place them in segregated housing, restrict access to programs, deny family visitation or access to phones, confiscate property – the list goes on. In contrast, people in custody have no power or authority. Prisoners can't refuse to follow orders without repercussions. They can't physically fight back against illegal orders without being charged with assault. They can't avoid encounters with certain staff, and they can't walk away or otherwise remove themselves from abusive or potentially dangerous situations. Accordingly, incarcerated people often have no choice but to submit to staff sexual abuse.

The same power dynamics that cause incarcerated people to submit to sexual abuse also prevent incarcerated people from reporting abuse. Incarcerated people may doubt that a report will be believed because there are often no external signs of injury or struggle. They may fear that, even if they can establish that sexual contact occurred, they will be accused of "asking for it" or "consenting" to the abuse simply because they didn't say "no" or otherwise resist.

In addition, staff commonly ensure inmates' silence by providing inmates they abuse with contraband – not in "exchange" for sex, but to ensure their silence about the abuse. Incarcerated people can be punished for possessing seemingly innocuous items like fast food, candy or gum. Worse, they can face additional charges for possessing "hard" contraband such as drugs or cell phones. Even when staff provide non-contraband items such as sneakers, tampons and other hygiene items that are expensive in prisons, or put money in commissary accounts, or offer special "privileges" like access to special programs, additional recreation time, or lax rule enforcement, incarcerated people recognize that they can be blamed or accused of seeking these items or benefits in exchange for sex. But the playing field is far from level in these exchanges. Introducing contraband in connection with sexual abuse can also create pressure from other incarcerated people on the person experiencing abuse not to report the abuse, to ensure that they also have access to the contraband items, which are often shared or sold to others.

Even absent these immediate and specific disincentives to reporting, incarcerated people fear retaliation that can occur through official channels, such as changes in familiar housing units or even transfers to completely different facilities. Actions such as these can appear to be legitimate correctional decisions, yet can be done for retaliatory reasons. Even when there is no actual retaliatory intent for these actions, incarcerated people commonly experience them as retaliatory. Some facilities even have written policies or practices of placing people who report abuse in restrictive housing units "for their own protection." The classification may be listed as "administrative seg" or "protective custody," but the physical conditions are identical to those in

disciplinary segregation. Incarcerated people also fear retaliation from staff members other than the person who abused them, even if the abusive staff is placed on leave or terminated.

In light of all of these barriers to reporting, it is remarkable that any incarcerated person ever reports abuse at all. Relying on the person who experiences sexual abuse, regardless of how many avenues to report exist, places an incredible burden on a person who has already endured so much, and has so much to lose.

But facilities do not have to rely on reports from traumatized and vulnerable survivors of sexual abuse. When sexual abuse comes to light, line staff often admit that they had concerns or suspicions that something was happening, or that in hindsight, certain actions should have been interpreted as red flags. Staff should have the same variety of reporting methods to report that sexual abuse may be occurring as is available to incarcerated people. The PREA Standards require staff to report any knowledge, suspicion or information that sexual abuse may be occurring – yet they rarely do. Often, staff share the concerns of incarcerated people – that nothing will occur if they report to address or investigate the abuse, or that they will face retaliation from their colleagues or leadership for making a report.

Investigative staff have the ability to identify and investigate suspected sexual abuse without receiving reports of the abuse, or even if the person experiencing the abuse denies that it is occurring. Investigators do not have to rely on staff or inmate reports to discover contraband, and they cannot rely on victims who have been incapacitated or who have died as a result of physical abuse to investigate the incident. Those same investigative skills should be used to uncover sexual abuse.

## **Investigations**

When sexual abuse is reported, facilities often fail to conduct adequate investigations due to flawed credibility determinations, overly narrow investigations, and use of an improper burden of proof. Incarcerated people are often not viewed as credible, simply due to their status as an inmate. Investigations often fail to consider the effects of trauma on survivors, and how trauma can affect the ability to accurately report facts in a linear manner, or the inability to recall certain details. Survivors also may not make a report immediately after the abuse, instead taking time to process their abuse and decide whether and how to report. Investigators often mistake symptoms of trauma with signs of deception.

Administrative investigations into sexual abuse should use the preponderance of the evidence standard to determine whether an allegation is substantiated. Instead, they commonly use the much higher beyond a reasonable doubt standard used for criminal cases. As a result, very few sexual abuse allegations are substantiated.

## **Support for Survivors**

Incarcerated sexual abuse survivors are uniquely isolated. They have no control over their surroundings, are often subjected to continued contact with perpetrators, and face retaliation if they try to get help. The very conditions of incarceration — such as lack of privacy and invasive bodily searches — exacerbate the effects of trauma. Yet prison mental health staff rarely have experience working with sexual abuse survivors and, even if they did, prisoners do not generally qualify for mental health services unless they have a diagnosis of severe mental illness. Sessions with facility medical and mental health staff are not fully confidential and prisoners' phone calls, letters, emails, and in-person visits are recorded or monitored, preventing confidential communications with anyone other than attorneys.

Recognizing this dynamic, the National PREA Standards require correctional facilities to provide incarcerated survivors of sexual abuse with access to outside victim advocates for emotional support services, and to enter into memoranda of understanding with community service providers to do so, or document their efforts. The standard reflects the understanding that access to outside support is crucial for incarcerated survivors of sexual abuse. Prisoners may be reluctant to seek emotional support from staff who work within a facility — including facility medical and mental health staff — and facilities may lack resources to provide counseling services. Survivors benefit most from discussing issues related to sexual abuse confidentially, with a trained, community-based victim advocate. However, the standard also recognizes that providers are not available to provide these services in all communities. Even when they are available, community providers may be unwilling to work with incarcerated survivors, or may lack capacity or resources to extend services to people in custody.

The bipartisan Sexual Abuse Services in Detention Act, S. 1422, led by Senators Cornyn and Schatz, is being introduced in the House of Representatives today, led by Congresswoman Kamlager-Dove and Congressman Armstrong. This bill would fund emotional support services for incarcerated survivors, including telephone hotline services and crisis intervention services; fund training for correctional agencies, facilities and staff to help them better provide emotional support services for incarcerated survivors; and create a national resource center to provide guidance, training and best practices on emotional support services for incarcerated survivors. The bill would help ensure that incarcerated survivors receive the support they need to heal from the trauma of custodial sexual abuse.

## **Measuring PREA's Impact**

Preliminary data and PREA audit reports do not yet provide meaningful assessments of whether prisoner sexual abuse is diminishing. In July 2018, the Department of Justice's Bureau of Justice

Statistics released a report on sexual victimization between 2012 and 2015 as reported by correctional facilities. The report represents the first set of data collected since the National PREA Standards were issued in 2012. The BJS Report shows that sexual victimization reports nearly tripled between 2011 and 2015, from 8,768 to 24,661. However, this increase in reports of abuse was expected to occur after the National PREA Standards were issued. The PREA Standards are designed to increase prisoners' willingness and ability to report sexual abuse by providing inmates with education on sexual victimization, reducing the likelihood of retaliation against prisoners who report abuse, and providing enhanced mechanisms for reporting sexual abuse. The increase in reports, therefore, does not likely represent an increase in actual incidents of sexual abuse, but rather prisoners' increased willingness to report abuses. Future sexual victimization reports will allow for more meaningful conclusions to be drawn concerning the rate of custodial sexual abuse.

PREA audits should also provide insight into PREA Implementation and the prevalence of sexual abuse. But they don't. Initial problems with the PREA auditing system and resulting audit reports have made it impossible to determine whether facilities are in fact properly implementing the PREA Standards. Correctional agencies must ensure that each of its facilities is audited once during every three-year audit cycle.

PREA audit reports are not consistently reliable. Many audit reports have been superficial and fail to provide meaningful information about whether a facility is complying with the PREA Standards. Still other audits have reached clearly erroneous conclusions regarding PREA compliance, and facilities rarely fail PREA audits. Indeed, the Federal Correctional Institution in Dublin, California passed a PREA audit while in the midst of the now well-publicized staff sexual abuse scandals. The Department of Justice has strengthened key components of the auditing system, however, and audit reports are becoming more meaningful.

Advocates and correctional officials must recognize the limitations of PREA audits as they relate to facility practices and actual sexual safety. First, every PREA audit must be critically evaluated and not simply accepted as accurate. Second, even facilities that receive passing audits based on verifiable implementation of the PREA Standards can have problems with prisoner sexual safety – even problems that violate prisoners' constitutional rights. The Department of Justice emphasized that “(t)he standards are not intended to define the contours of constitutionally required conditions of confinement. Accordingly, compliance with the standards does not establish a safe harbor with regard to otherwise constitutionally deficient conditions involving inmate sexual abuse.”



## CONCLUSION

Despite PREA's improvements in the sexual safety of people in our nation's prisons and jails, we are still falling short. Just Detention International supports the following measures to bring us closer to PREA's goal of eliminating sexual abuse behind bars:

### **Consistent and Robust Federal Funding**

Correctional agencies undeniably face harsh fiscal realities. Congress was acutely aware of these circumstances in passing PREA, and authorized the Attorney General to provide grants to States help ensure "that budgetary circumstances (such as reduced State and local spending on prisons) do not compromise efforts to protect inmates (particularly from prison rape)."<sup>3</sup> Grant funds were intended "for personnel, training, technical assistance, data collection, and equipment to prevent and prosecute prisoner rape."<sup>4</sup> States that have received federal grant funds have been able to receive meaningful assistance for specific areas of PREA implementation. However, PREA authorized appropriations for grant funding only through 2010.<sup>5</sup> Now, these funds must be appropriated annually in the federal budget, and sufficient funding is not always available for assistance to the field.

Grant funds should be reliably available through DOJ components including the Office of Justice Programs, the Office on Violence Against Women, the Office for Victims of Crimes, and any other relevant components. Sufficient funds should be assured annually until PREA audits can establish that facilities are successfully implementing the PREA Standards.

In addition, separate funding for the Bureau of Justice Statistics is needed to collect and analyze data related to the prevalence of sexual abuse in detention.

Congress should also increase appropriations for PREA, which have remained at \$15.5 million for the last six years. While DOJ leverages these funds as best they can to support states, much more is needed. Having such a modest appropriation forces DOJ to curtail certain crucial PREA implementation efforts to support others.

### **The Sexual Abuse Services in Detention Act**

We urge Congress to pass the Sexual Abuse Services in Detention Act, led by Senators John Cornyn (R-TX) and Brian Schatz (D-HI) in the Senate and Representatives Sydney

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<sup>3</sup> 34 U.S.C. 30305(a).

<sup>4</sup> *Id.*

<sup>5</sup> 34 U.S.C. 30305(g)(1). ("There are authorized to be appropriated for grants under this section \$40,000,000 for each of fiscal years 2004 through 2010.").

Kamlager-Dove (D-CA) and Kelly Armstrong (R-ND) in the House, to ensure that when incarcerated people suffer sexual abuse, they have the support they need to heal from the trauma.

### **Support Robust PREA Audits**

We recommend that Congress explore alternate mechanisms for assigning DOJ certified PREA auditors to corrections agencies. Under the current process, corrections facilities and departments either release a request for proposals through their procurement process or participate as part of a consortium of states that audit each other. The procurement process means that audit quality is often sacrificed for the sake of lowering costs. It also means that there is rarely, if ever, a budget for a thorough and meaningful correction action period and process, as the standards intend. Developing a new process for auditor selection that does not rely on a procurement process that means a contract often goes to the lowest bidder will achieve more robust and higher quality audits.

Once again, thank you for inviting me to contribute to this important hearing. We are grateful that this Committee is committed to addressing the problem of sexual abuse in detention and welcome the opportunity to work together to achieve the promise of PREA.