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KEEPING YOUTH SAFE WHILE IN CUSTODY: SEXUAL ASSAULT IN ADULT AND JUVENILE FACILITIES

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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KEEPING YOUTH SAFE WHILE IN CUSTODY: SEXUAL ASSAULT IN ADULT AND JUVENILE FACILITIES

TUESDAY, FEBRUARY 23, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 4:02 p.m., in room 2141, Rayburn House Office Building, the Honorable Robert C. "Bobby" Scott (Chairman of the Subcommittee) presiding.

Present: Representatives Scott, Conyers, Jackson Lee, Gohmert, and Goodlatte.

Staff Present: (Majority) Bobby Vassar, Subcommittee Chief Counsel; Jesselyn McCurdy, Counsel; Liliana Coronado, Fellow, Federal Public Defender Office Detailee; Veronica Eligan, Professional Staff Member; (Minority) Caroline Lynch, Counsel; and Kimani Little, Counsel.

Mr. SCOTT. Good afternoon. I would like to welcome you today to the Crime Subcommittee hearing on "Keeping Youth Safe While in Custody: Sexual Assault in Juvenile and Adult Facilities."

Traditionally, the juvenile justice system was designed to provide a therapeutic and rehabilitative environment for youthful offenders. Most juvenile justice facilities focus on rehabilitating youth so that they can return to their communities and lead productive lives. A young person may get involved in the juvenile justice system once or twice and then never return. But if a young person is sexually abused while in custody, he or she will suffer lifelong trauma from that abuse, which often results in mental illness, substance abuse, and a higher likelihood of involvement in the criminal justice and juvenile justice systems.

Every day there are approximately 93,000 youth confined in juvenile detention facilities in the United States. The government has an obligation to prevent any abuse of young people who come into its care and certainly to prevent sexual abuse. Preventing, detecting, and responding to sexual abuse of institutionalized youth demands age-appropriate interventions to assure that they are not sentenced to the lifelong consequences of that violence.

Currently, there is no comprehensive research on the characteristics of youth who are at greatest risk of being victims of sexual assault while in custody. However, we do know that young people

who have a history of abuse and are small in size, inexperienced with the justice system, and suffer from mental or physical disabilities are frequently more vulnerable to sexual assaults.

Indeed, some studies suggest that youth with a history of abuse and neglect may be extremely susceptible to subsequent abuse. Youth with history of childhood abuse and neglect often feel helpless against adults, particularly in an environment such as a juvenile detention center.

Also, housing youth who are inexperienced with older and more experienced juveniles can create a dangerous environment in detention centers. Rates of sexual abuse appear to be much higher for combined youth than they are for adult prisoners. According to a 2006 BJS report, young people in juvenile facilities are five times more likely to be sexually assaulted than adults in jails and prisons. Juveniles are more frequently victimized because they are poorly equipped to respond to sexual advances by older youth or adults.

In 2004, the U.S. Department of Justice began investigating conditions in a juvenile correctional facility in Plainfield, Indiana, based on reports of widespread physical and sexual violence. Investigators were taken aback by the age and size difference between many of the youth being sexually assaulted. Youth as old as 18 were assaulting or coercing children as young as 12. Some of these children weighed as little as 70 pounds, and some of the youth who were perpetrators of the abuse weighed as much as 100 pounds more than their victims.

Adult jails and prisons are especially difficult places for juveniles to survive safely, because many adult facilities fail to provide youth with basic services, such as family counseling, career training, and educational programming. While only 20 percent of youth in juvenile facilities are confined for violent offenses, nearly 50 percent of adult prisoners are violent offenders who are incarcerated for longer periods of time. Research consistently shows that younger prisoners who lack the experience and knowledge to deal with the volatile environment are at greater risk of being sexually abused while housed in prisons and jail.

In 2003, the Prison Rape Elimination Act was enacted, and it is one of the few Federal laws to address sexual violence in correctional and detention settings. This legislation was a bipartisan effort led by Senators Ted Kennedy in the Senate and Jeff Sessions in the Senate and Representatives Frank Wolf and myself in the House. As a result of PREA, the Bureau of Justice Statistics is now responsible for collecting data about the prevalence of sexual violence in adult correctional and juvenile detention facilities.

Last month, BJS released the first report based on a national survey of sex abuse in juvenile residential detention facilities. The report found that 12 percent of youths surveyed in State juvenile justice facilities reported sexual victimization by another youth or faculty staff over the past year. Approximately 10 percent of the youth surveyed reported incidents staff, and 2 percent reported incidents involving another resident. Over 90 percent of the youth in the surveyed facilities were male, and approximately 95 percent of all youth reporting staff sexual misconduct said that they had been victimized by a female staff person.

The survey identified 13 facilities that had a high rate of sexual victimization, including, unfortunately, two facilities in Virginia. And the survey also identified 11 facilities that had a low rate of victimization. The report concluded that smaller facilities and those that held youth for less than 5 months had the lowest rates of abuse.

This most recent report highlights how important it is for the standards that were proposed by the PREA Commission in June 2009 be adopted as soon as possible. Presently, the Department of Justice is in the process of reviewing the standards, and we hope the DOJ will make it a priority to adopt and implement the commission's recommendations to protect our young people from being victims of sexual abuse.

We have several witnesses who will testify during today's hearing and help us find solutions to the problem of young people being sexually assaulted while in custody.

And now it is my pleasure to recognize the acting Ranking Member of the Subcommittee and my colleague from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Well, thank you, Mr. Chairman.

This hearing is the most recent installment in a series of hearings that this Subcommittee has held on issues within the juvenile justice system. Today's hearing focuses on sexual assaults against juveniles who are incarcerated in juvenile and adult correctional facilities.

The majority called this hearing in response to a report on the subject that was recently released by the Bureau of Justice Statistics, or BJS, at the Department of Justice. The Department of Justice was required to publish the report by the Prison Rape Elimination Act of 2003. The act was passed for the purpose of developing national standards to prevent and detect incidents of sexual violence in correctional facilities and to make facilities more accountable for incidents of sexual assault in prison. The act was cosponsored by the gentleman from Virginia and Chairman of this Subcommittee, Mr. Scott.

The findings within the report are based on surveys of juvenile inmates from 195 facilities in all 50 States. The most eye-popping statistic is that 12 percent of incarcerated juveniles, or more than 3,200 young people, reported being raped or sexually abused in the past year by fellow inmates or prison staff. About 2.6 percent reported an incident involving another youth and the use of force, and 10.3 percent reported an incident involving facility staff.

Of the youth who reported an incident involving facility staff, about 4.3 percent of youth said they had sex or other sexual contact with facility staff as a result of force. The remaining 6.4 percent of youth reported sexual contact with staff without coercion.

In addition, 13 detention centers around the country were cited for having a high rate of sexual misconduct, where at least 20 percent of juveniles incarcerated there said they were assaulted.

This report is noteworthy, as it provides an authoritative and detailed snapshot of the problem of sexual abuse in State juvenile facilities. Of course, the administering of justice to juvenile offenders is largely the domain of the States, as there is no Federal juvenile justice system.

As officials have learned more about this problem, a number of States have implemented measures to attempt to reduce of instances of youth-on-youth and staff-on-youth sexual victimization. Mr. Gohmert, the Ranking Member's home State of Texas instituted a number of reforms. 13,500 cameras and video recording technology have been put in place, allowing the agency and Office of Inspector General to examine the times and locations where incidents are alleged to occur. Further, corrections staff have received training to better identify behaviors indicative of sexual misconduct. Most importantly, the State has also adopted a zero-tolerance rule for sexual victimization.

The Tennessee legislature is considering proposals to use outside specialists to interview juveniles about sexual abuse claims and to collect information for prosecution. In response to reports of sex abuse by staffers in juvenile facilities, at least one facility has installed cameras in all living units in the last 6 months to ensure children are safe.

States like my home State of Virginia and Louisiana are also considering legislative and executive solutions to this problem. I applaud the effort of these States to address this issue. I expect that other States will look to these approaches as they determine what measures to adopt to combat sexual assault in correctional facilities.

In conclusion, I would like to welcome the witnesses to today's hearing, and I look forward to their testimony.

And I yield back my time. Thank you, Mr. Chairman.

Mr. SCOTT. Thank you.

The gentleman from Michigan, the Chairman of the full Committee, Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Scott. And I am happy to see your colleague from Virginia with you as the temporary Ranking Member.

First of all, I want to congratulate you on your courage to bring forward for testimony the ugliest part of the incarceration system in America. What is going on is outrageous. And it is to your credit and the Committee's that you have brought this matter to light. There are no holds barred. We are going to change this not just at the Federal level, but we can be influential at the State level.

I am proud of a witness list that includes Troy Erik Isaac, who has a story to tell since he was 12 years old that is unbelievable, and Mrs. Grace Bauer, who is organizing our citizens throughout the country to do something about this. I am so glad both of them are witnesses here.

Now, the easiest thing to do is to get juveniles out from under the Prison Litigation Act, which, since 1996, has prevented us from getting to deal with this problem rather than helping us with it. And so I look forward to working with you and everyone on your Committee to that end.

I will ask unanimous consent to put my statement in the record and yield back.

[The prepared statement of Mr. Conyers follows:]

Statement of Chairman John Conyers, Jr. for the Hearing on Keeping Juveniles Safe While in Custody: Sexual Assault in Adult and Juvenile Facilities Before the Subcommittee on Crime, Terrorism, and Homeland Security

Tuesday, February 23, 2010, at 4:00 p.m.
2141 Rayburn House Office Building

The Prison Rape Elimination Act of 2003 was a bipartisan effort led by my colleague, Crime Subcommittee Chairman Bobby Scott, along with Congressman Frank Wolf, and Senators Ted Kennedy and Jeff Sessions.

Among the Act's critical provisions was a directive to the Department of Justice's Bureau of Justice Statistics to collect, review, and analyze data on the prevalence of sexual violence in correctional and detention facilities.

Last month, the Bureau released a very

distressing report that sheds light on the dangerous conditions that many juveniles held in correctional facilities experience, particularly in the area of sexual abuse.

In light of the findings of this report, I want to make a few observations about this serious problem.

First, children are particularly vulnerable to sexual assault in adult jails and prisons. Although young people are also being abused in juvenile institutions, the risk of sexual assault increases when children serve sentences in adult jails and prisons.

While the Juvenile Justice and Delinquency Prevention Act prohibits the incarceration of juveniles with adults – except in very limited circumstances – the Act does not apply to youth tried as adults.

As a result, approximately 200,000 youth are tried as adults each year.

In fact, some states, including Michigan, have no minimum age at which a youth can be tried as an adult. For example, children as young as 13 and 14 are housed with adults in some prisons.

In 2006, almost 8,500 youth under the age of 18 were confined with adults in jails and prisons on any given day. Two-thirds of these children are held in jails and the others are incarcerated in state and federal prisons.

And, the number of young people being held in adult jails is increasing. Between 1990 and 2004, the number of juveniles in adult jails increased by *208 percent.*

Second, youth incarcerated in adult jails and prisons are probably at the highest risk for sexual abuse while in confinement. According to the Bureau of Justice Statistics, almost eight percent of all victims in incidents of sexual violence perpetrated by prisoners in adult facilities during 2005 were under the age of 18.

While juveniles made up less than 1 percent of jail inmates in 2005, 21 percent were victims of inmate-perpetrated sexual violence in jails.

Rates of sexual abuse appear to be much higher for confined youth than they are for adult prisoners. According to the Bureau of Justice Statistics, the overall rate of sexual abuse of adults in jails and prisons was 2.91 per 1,000 incarcerated prisoners for 2006. The rate for juveniles in juvenile facilities was more than five times greater: 16.8 per 1,000.

Eighty percent of the 420 boys sentenced to life

without parole in Michigan, Illinois, and Missouri reported that, within the first year of their sentence, they had been sexually assaulted by at least one adult male prisoner.

As my third point, I would like to discuss what I believe is a very simple solution: we should stop sending children to adult jails and prisons.

It absolutely makes no sense to incarcerate children in dangerous adult jails and prisons, as these statistics establish.

Accordingly, I hope the Department of Justice will adopt the Prison Rape Elimination Commission's recommendation and keep youth under the age of 18 out of the general prison population.

Along these same lines, we need to examine the wisdom of prosecuting young people as adults.

Statistics show that most of the youth prosecuted in adult court are charged with non-violent offenses.

And, studies conclude that youth who are kept in the juvenile justice system are less likely to re-offend than young people who are transferred into the adult system.

Why do we continue to put these children's lives in jeopardy by sentencing them to prisons?

I look forward to hearing more about the recent Bureau of Justice Statistics report and how Congress can work with the Administration to adopt the Prison Rape Elimination Act Commissions' recommendations which will provide some meaningful solutions to problem of prison rape.

I thank Chairman Bobby Scott for holding this hearing and his leadership on this critical issue.

Mr. SCOTT. Thank you.

And I will ask our witnesses to come forward as they are being introduced.

Our first witness is Professor Brenda V. Smith, professor at American University's Washington College of Law, where she

teaches community and economic development law, legal ethics, and women in criminal law. She has served as a commissioner on the National Prison Rape Elimination Act Commission and is the project director and principal investigator for the Department of Justice's National Institute of Corrections Cooperative Agreement on Addressing Staff Sexual Misconduct with Offenders. She earned her Bachelor of Arts degree from Spelman College, her Juris Doctorate from Georgetown University Law Center.

Our second witness is Troy Erik Isaac. He was 12 years old when he was first sent to juvenile hall in California. As a young slender child, the larger boys immediately began to harass him. He was raped repeatedly and received no help from the staff at the facility. The abuse sent Troy into a cycle of imprisonment that lasted 22 years, accompanied by many more rapes and assaults. He left prison 2 years ago, vowing never to return. And he has cofounded a nonprofit organization in Los Angeles that conducts peer counseling and advocacy.

The third witness would be Mr. Bernard Warner, who is the chief deputy secretary for California Department of Corrections and Rehabilitation, Division of Juvenile Justice. He has 27 years of diverse nationwide experience with both adult and juvenile corrections. He has served in leadership positions in juvenile justice systems in Florida, Arizona, and Washington State. And he has developed a youth-centered vision for reform of the Department of Juvenile Justice. He received his Bachelor of Science degree with honors from Southern Illinois University.

Our next witness will be Sheriff Gabriel Morgan of my hometown, Newport News, Virginia. He is responsible for the daily custody and care of more than 620 prisoners. Prior to being elected sheriff, he served as the special agent in charge of the Virginia Department of Motor Vehicles Investigative Services. He served his country with over 21 years with the U.S. Army. He is a graduate of the University of the State of New York at Albany and the Army's Command and General Staff College. And I certainly want to welcome my hometown sheriff with us today.

The final witness will be Grace Bauer. She is leading a national caucus of parents who have children involved in the juvenile justice system. Several of the mothers she is working with had sons who committed suicide while in adult facilities. Since joining the Campaign for Youth Justice in 2008, she has worked to unite parents and allies with children involved in the adult criminal justice system.

Now, each of our witnesses' written statements will be entered into the record in its entirety, and I ask each witness to summarize your testimony in 5 minutes or less. And to help you with that time, there is a timing device in front of you that will begin green, will switch to yellow with 1 minute left, and when it turns red your 5 minutes have expired.

And we will begin with Professor Smith.

TESTIMONY OF BRENDA V. SMITH, PROFESSOR, WASHINGTON COLLEGE OF LAW, AMERICAN UNIVERSITY, WASHINGTON, DC

Ms. SMITH. Good afternoon, Chairman Conyers and Representative Scott, and also to the Ranking minority Member, Mr. Good-

latte. Thank you for inviting me here today to speak and for the opportunity to speak with other Members of the Subcommittee on Crime, Terrorism, and Homeland Security.

I think you can see from the introduction, the resume that you read that I lead a little bit of a double life. While I am professor at American University in the law school, I have been deeply involved and vested in issues related to sexual violence in custodial settings for well over 20 years, dating back to my work as lead counsel in *Women Prisoners v. The District of Columbia.* In 2003, I was appointed by then-House Minority Leader Pelosi to serve on the Prison Rape Elimination Commission. And I served in that capacity until August 2009, when the commission sunsetted.

Congressman Scott, I know that you are familiar with the previous trajectory given that you, along with Representative Wolf, were the primary sponsors in the House. That marvelous and incredibly successful effort built on the work of Chairman Conyers, who introduced the Custodial Sexual Abuse Act of 1998 in response to an earlier report by Human Rights Watch specifically addressing sexual abuse in custody. And I wanted to, sort of, acknowledge those efforts as well.

One of the many things that PREA did was that it created the commission. And so what I am going to do today is I am going to talk some about the commission process, I am going to talk about our findings. Second, I want to mention briefly the Bureau of Justice Statistics. And third, I want to talk about what I have learned with working with 12 juvenile justice agencies and provide a number of recommendations for moving forward.

First, thank you so much for, in your initial testimony, talking about the importance of DOJ moving forward quickly and expeditiously with consideration of the standards. The commission issued its standards on June 23rd of 2009. And, at this point, the Department of Justice is going through a very similar process to the process that we went through over the course of 5 years. We have actually talked to the Department and asked and sent, actually, correspondence to the Attorney General, asking that he expedite this process, particularly given the shocking statistics that recently we learned of from the BJS report.

In its study, one of the things that the commission found is that juveniles in confinement are much more likely than incarcerated adults to be sexually abused and that they are particularly at risk when confined with adults.

Additionally, one of the other findings that the commission found is that juvenile agencies are in increased need of training and education for staff and youth on addressing sexual violence in custody.

The commission also found, like in other settings, internal reporting procedures were barriers to addressing sexual abuse in custody. And that may in some way explain the significant disconnect between the statistics that youth reported, the incidents that youth reported, and the incidents that correctional authorities reported. The findings were about three times different.

One of the other things that we also found is that the developmental profile of youth means that youth must have access to family and legal representatives.

I think, Mr. Scott, you have already talked tremendously about youth imprisoned in adult settings. I think that one of the other important findings that the commission made was that youth convicted as adults and housed in adult facilities were at the greatest risk of sexual violence in custody. Again, referring to Congressman Conyers's home State, I would really recommend to the Committee the important work that Deborah LaBelle has done in terms of looking at the situation of youth housed as adults.

One of the things that I also want to talk about specifically with regard to our standards—I know that I only have a short period of time—is the piece related to the Prison Litigation Reform Act. One of the things that we have done in our standards is change the exhaustion requirement specifically for reporting these kinds of incidents but made a strong recommendation that PLRA be amended specifically to deal with these issues.

Finally, what I want to talk about, or I want to end my time talking about, is what we found when we worked with 12 jurisdictions. We learned that there is a different culture that exists in juvenile agencies and that juvenile agencies have different legal obligations, a lower obligation. They are not looking—they are not bound by the very strict requirements of cruel and unusual punishment, but really a lower standard of due process.

The most important finding that we made is that there is a very different level of knowledge on this issue and that, for the most part, juvenile agencies have really not taken on this issue. At the same time, we found that juvenile agencies were very concerned with addressing this issue, which seems to us to present a real opportunity here.

I see that I am running out of time, but what I want to do is I want to end with my recommendations and hopefully can talk a little bit more in the Q&A period. I have listed in my testimony about seven recommendations that I would hope that the Committee would look toward.

First, to support the enactment of the standards recommended by the National Prison Rape Elimination Commission and to push the Attorney General to move very quickly with that.

Second, to strengthen the ability of the Office of Juvenile Justice and Delinquency Prevention to address these issues as part of their compliance efforts by passing the juvenile justice reauthorization. Currently, the Senate bill offers the possibility of, for the first time, addressing dangerous conditions of confinement. And we believe that is appropriate and that it should also include provisions for independent monitoring.

We also believe that in whatever comes out of the standards that the Attorney General passes, that there should be specific funding for juvenile justice agencies. In the initial funding for PREA, most of that funding went to prisons; very little went to juvenile justice agencies or community corrections agencies.

We also believe that there needs to be additional data collection by BJS, which I understand is going to happen, specifically looking at juveniles in adult facilities.

I will end my testimony there, and I look forward to hearing back with other questions.

[The prepared statement of Ms. Smith follows:]

PREPARED STATEMENT OF BRENDA V. SMITH

United States House of Representatives

Committee on the Judiciary

Subcommittee on Crime, Terrorism, and Homeland Security

Testimony of Prof. Brenda V. Smith
American University, Washington College of Law

February 23, 2010

Hearing on
Keeping Youth Safe While in Custody: Sexual Assault in Adult and Juvenile Facilities

Hearing on Keeping Youth Safe While in Custody: Sexual Assault in Adult and Juvenile Facilities

Testimony of Prof. Brenda V. Smith

I. Introduction

Good afternoon Chairman Conyers and Representative Scott. Thank you for inviting me here today and for the opportunity to speak with the members of the Subcommittee on Crime, Terrorism and Homeland Security.

I am a Professor of Law at the American University Washington College of Law. In November, 2003, I was appointed by then House Minority Leader, Nancy Pelosi to serve on the National Prison Rape Elimination Commission. I served in that capacity until August 2009, when the commission "sunsetted" after having issued comprehensive standards to address sexual abuse of individuals in custodial settings – prisons, jails, juvenile detention facilities, community corrections and immigration detention settings. In addition to those roles, I have also directed the Project on Addressing Prison Rape at the Washington College of Law since 2000. That project was funded by the U.S. Department of Justice, National Institute of Corrections.

In 2003, the President signed the Prison Rape Elimination Act, or PREA, into law. The legislation created the Commission and charged the Commission with conducting the first national study of government policies and practices related to sexual abuse of individuals detained in our nation's prisons and jails as well as those under community supervision and held by juvenile justice agencies. Our mandate also required us to develop and propose national standards for the detection, prevention, reduction, and punishment of prison rape and other forms of sexual abuse.[1]

[1] *See generally*, THE PRISON RAPE ELIMINATION ACT OF 2003, Pub. L. 108-79. 4 Sept. 2003. Stat 117.972

On June 23, 2009, the Commission publicly released its report and standards.[2] Today, I would like to focus on the standards and findings related to juveniles—juveniles in detention, in the community and juveniles convicted and housed with adults.

First, I will discuss the findings of the Commission. Second, I will address the recent Bureau of Justice Statistics (BJS) juvenile data collections—both the collection of information from juvenile agencies and from youth themselves. Third, I will discuss what I have learned working with twelve juvenile agencies across the country to address the sexual abuse of youth in custody. Last, I will provide a number of recommendations for moving forward.

II. Findings of the National Prison Rape Elimination Commission

The Commission found that juveniles in confinement are much more likely than incarcerated adults to be sexually abused, and that they are particularly at risk when confined with adults. [3]

A. The Role of the State

The state has a particular interest in protecting those who are in custody from physical abuse, particularly sexual abuse. Given the different purposes for which youth are held away from their family-- rehabilitation and protection rather than punishment-- the state has an even greater responsibility for youth. The state stands in the place of parents, in parens patriae. That responsibility brings with it a particular responsibility for protecting

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[2] *See generally,* The National Prison Rape Elimination Commission. REPORT. Washington, DC. June 23, 2009 [hereinafter REPORT]; The National Prison Rape Elimination Commission. STANDARDS FOR THE PREVENTION, DETECTION, RESPONSE AND MONITORING OF SEXUAL ABUSE IN ADULT PRISONS AND JAILS. Washington, DC. June 23, 2009; The National Prison Rape Elimination Commission. STANDARDS FOR THE PREVENTION, DETECTION, RESPONSE AND MONITORING OF SEXUAL ABUSE IN LOCK-UPS. Washington, DC. June 23, 2009; The National Prison Rape Elimination Commission. STANDARDS FOR THE PREVENTION, DETECTION, RESPONSE AND MONITORING OF SEXUAL ABUSE IN COMMUNITY CORRECTIONS. Washington, DC. June 23, 2009; The National Prison Rape Elimination Commission. STANDARDS FOR THE PREVENTION, DETECTION, RESPONSE AND MONITORING OF SEXUAL ABUSE IN JUVENILE FACILITIES. Washington, DC. June 23, 2009.

[3] *See,* REPORT *supra note* 2 at 140.

youth from abuse. Numerous court decisions and studies have found that youth are particularly vulnerable because of their youth and different cognitive development than adults.[4] Developmentally, teens and preteens are even less able to cope with sexualized coercion from older youth or staff.[5] The different space that youth inhabit vis-à-vis authority is recognized in numerous laws – child exploitation, statutory rape, mandatory reporting, and greater constitutional protections for youth.

B. Findings Related to Issues in Addressing Sexual Violence in Juvenile Agencies

In its study, the Commission found that juvenile agencies need increased training and education for staff and youth on addressing sexual violence in custody.[6] The Commission also found that, like other settings, internal reporting procedures were barriers to addressing abuse in custody.[7] Given the developmental profile for youth, the Commission found that youth must have access to family and legal representatives and that agencies need to develop investigative techniques suited to juvenile victims.[8] The Commission also noted that ongoing medical and mental health care were essential for addressing trauma for youth in custody.[9]

C. Youth Imprisoned in Adult Settings

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[4] *Id* at 142-143; *See also*, *Roper v. Simmons*, 543 U.S. 551, 570 (2005) (banning death penalty for youth who committed crime before the age of 18); Steinberg, L., & Cauffman, E.. *A developmental perspective on serious juvenile crime: When should juveniles be treated as adults?* FEDERAL PROBATION, *63*, 52–57 (1999); Woolard, J. L., & Reppucci, N. D.. *Researching juveniles' capacities as defendants*. In T. Grisso & R. G. Schwartz (Eds.), YOUTH ON TRIAL: DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE. Chicago: University of Chicago Press (2000); Berliner, L., & Conte, J. R.. *The process of victimization: The victim's perspective*. CHILD ABUSE AND NEGLECT, *14*(1), 29–40 (1990).

[5] *Id* at 142.; *see also*, Schlozman, B. J. Letter to Mitch Daniels, Governor, Indiana, Regarding Investigation of the Plainfield Juvenile Correctional Facility, Indiana (September 9, 2005); Restated and Amended Consolidated Complaint, *Byrd v. Alabama Department of Youth Services* (N.D. Ala. Aug.14, 2003)(No 01433-LSC); *State Department of Health & Rehabilitative Services v. Whaley*, 531 So.2d 723, 724 (Fla. Dist. Ct. App. 1988).

[6] *See*, REPORT *supra note* 2 at 151.

[7] *Id.*

[8] *Id.*

[9] *Id* at 153-154

The Commission made a particular finding about youth convicted as adults and housed in adult facilities. The Commission found that these youth were at the highest risk for sexual abuse.[10] While only twenty percent of juveniles housed as adults are there for a violent crime, fifty percent of adults are incarcerated for violent crimes.[11] This, along with the fact that most of these youth have no prior exposure to the adult correctional environment, makes adult prisons very difficult for youth to navigate and puts them at an increased risk for sexual abuse.[12] Because of these risks, the Commission recommended that individuals below the age of 18 who have been sentenced as adults be housed separately from general adult population.[13]

D. Youth in Community Corrections Settings

Finally, the Commission found that youth in community settings are also at risk for sexual abuse.[14] The Commission feels that in order to address sexual abuse of youth in community custodial settings there needs to be increased supervision of staff, additional training on healthy boundaries and viable investigations into reports of sexual abuse.[15] Approximately half of adjudicated youth are under community supervision; however, data on the prevalence of sexual abuse in these settings is non-existent. I will discuss the lack of data more fully later in my presentation.

III. The Bureau of Justice Statistics Data Collections of Youth in Custody

Under PREA, the Bureau of Justice Statistics must collect facility level data on the prevalence of sexual abuse in custody. In order to collect that data, BJS collected several

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[10] *Id* at 156

[11] *Id; See also*, Bishop, D. M. *Juvenile offenders in the adult criminal justice system.* In M. Tonry (Ed.), CRIME AND JUSTICE (Vol. 27). Chicago: University of Chicago Press (2000).

[12] *Id.*

[13] *Id* at 157.

[14] *Id at* 158; *See also*, Saker, A. "Teens' abuser gets locked up for life." THE OREGONIAN (October 14, 2005).

[15] *Id* at 158-159.

types of information. First, BJS collected information from correctional authorities and then it collected information from youth in custody.

A. The Perspective of Correctional Administrators

Looking at reports by correctional authorities, from 2004-2006, BJS found that juvenile facilities reported the highest rates of alleged sexual violence—nearly three times the rate in state prison systems.[16] This was not a surprising result given the vulnerability of youth and the mandatory reporting requirements for reports of abuse involving youth.

BJS has consistently found more than 2,000 allegations of sexual violence were reported each year, with state run facilities reporting the highest numbers (four to six times the rate of local and private facilities).[17] Additionally, BJS found that nearly two-thirds of all substantiated incidents that correctional authorities reported were youth-on-youth sexual violence.[18]

B. The Perspectives of Youth

The most startling data collected by BJS came from the youth themselves. The Bureau of Justice Statistics collected data from youth in the years 2008 and 2009. In its report, *Sexual Victimization in Juvenile Facilities Reported by Youth*,[19] youth reported rates well beyond those reported by correctional authorities. Twelve percent of youth in state juvenile facilities and large non-state facilities reported sexual abuse by another youth and 10.3% reported an incident involving a staff member. These numbers are very large

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[16] *See generally*, Beck, Allen and Timothy Hughes. THE PRISON RAPE ELIMINATION ACT OF 2003: SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES, 2004, Washington, DC. July 2005 [hereinafter SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES, 2004]; Beck, Allen, Devon Adams and Paul Guerino. THE PRISON RAPE ELIMINATION ACT OF 2003: SEXUAL VIOLENCE REPORTED BY JUVENILE CORRECTIONAL AUTHORITIES, 2005-06, Washington, DC. July 2008[hereinafter SEXUAL VIOLENCE REPORTED BY JUVENILE CORRECTIONAL AUTHORITIES, 2005-06].

[17] *See*, SEXUAL VIOLENCE REPORTED BY JUVENILE CORRECTIONAL AUTHORITIES, 2005-06 *supra note* 14 at 2.

[18] *Id* at 4.

[19] *See generally*, Beck, Allen, Paige Harrison and Paul Guerino. SPECIAL REPORT: SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH, Washington, DC; January 2010 [hereinafter SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH].

but not totally surprising given what we know about reporting sexual abuse. Even in the community, sexual abuse is extremely under-reported. We know the same is true in the adult settings and it is safe to make the assumption it is true for juveniles.

One of the most surprising findings is that female staff accounted for 95% of the staff sexual abuse incidents.[20] This is not surprising given that 92% of youth in custody are male.[21] However, in 2008, only 42% of staff in juvenile facilities under state jurisdiction was female.[22] This result is consistent with adult data collections[23] This is data that requires additional attention especially given the commission's recommendations regarding limitations on cross gender supervision.

C. Concerns Raised about the BJS Findings

There have been a number of states that have questioned BJS' most recent report; raising concerns about flawed methodology and the likelihood of youth lying about abuse. However, in my experience, these numbers are probably underestimated and are conservative estimates. Even if these numbers were cut in half (6% and 5% respectively) they are still almost double what juvenile correctional authorities reported at three percent. This is a significant difference and one that signals, that there needs to be more training and education for staff and youth as well as improved reporting structures within juvenile agencies.

D. What BJS Needs to Explore Further

1. Consensual Sex

[20] *Id* at 13.
[21] *Id*
[22] *Id*
[23] *See,* Beck, Allen, Paige Harrison and Carolyn Adams. THE PRISON RAPE ELIMINATION ACT OF 2003: SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES, 2006, Washington, DC. August 2007 at 7.

First, a major area of concern with juveniles in custodial settings is consensual sexual contact. Developmental information shows that on both a behavioral and cognitive level, the time at which many of these youth are in custodial settings is also the time when sexual development is taking place and begin explore and experiment with sexuality. However, the BJS data does not address consensual sexual contact between youth.

While it is understood that there are both legal and policy prohibitions on sexual contact between youth of certain ages, in or out of custodial settings, there is some benefit to knowing what consensual sex between youth in custody looks like so that we can better talk to youth about appropriate boundaries, healthy expressions of sexuality and safe choices when dealing with sex. Let me clarify however, I am not by any means proposing teaching sexual education to youth in custody. However, findings show that youth in custody, by and large, have victimization histories. This being the case, they do not always understand that saying no is an option and may agree to sex for a number of reasons—including coerced and/ or strategic sex (sex for protection, sex for trade etc.). This being the case, we should have mechanisms in place to talk to youth in custodial settings about healthy choices when dealing with sexual decision-making.

2. Data on Youth Housed in Adult Facilities

Second, there is little data on juveniles housed in adult facilities. To date, there is no prevalence data on this specific group. We know, however, they are one of the most vulnerable populations currently in custody. Based on what we know about the profile of a victim of sexual abuse in custody -- people who are young, small in stature and new to the prison/ criminal justice system are most vulnerable. This while not a fool-proof profile, it can describe many of the youth currently housed with adults.

While the numbers of youth sexually abused in adult facilities may have been captured by the reports of adults in custodial settings, without knowing their specific prevalence rates, it is very difficult to develop methodologies to keep them safe while in custody. Prevalence rates would let us know things such as where abuse happened, who is most at

risk, who likely predators may be, how often youth report these incidents, how these incidents are investigated and if there are sanctions—either criminal or administrative. By and large this would help us to determine classification tools specifically for youth in adult facilities, develop investigative tools, develop supervision models specific to youth housed with adults, develop training for staff and youth on preventing and addressing sexual abuse and overall the best methodology for keeping these youth safe from sexual abuse.

3. Youth in Community Corrections Settings

Lastly, there absolutely needs to be more information about the prevalence of sexual abuse of juveniles held in community custodial settings. Juvenile community settings cover any custodial setting that is not secure detention—it can include electronic home monitoring, group homes, boot camps, residential treatment facilities, day reporting, probation and the like. Arguably, in these settings, staff has more access to youth in private settings such as their homes or schools, yet there is no data about the prevalence of sexual abuse in juvenile community custodial settings. As I described with juveniles in adult facilities, prevalence data would serve many purposes in addressing sexual abuse of youth in community custodial settings. The community setting is unique in nature and function, as such sexual abuse of youth in these settings presents itself in a unique way—be it youth-on-youth or staff sexual misconduct. That being said, the only way we will be able to address the unique needs of community juvenile corrections is to know and understand sexual abuse in these settings. Collecting prevalence data in these settings is a major stepping stone to that understanding.

IV. Experience Working with Juvenile Justice Agencies

Beginning in 2005, the Project on Addressing Prison Rape at the Washington College of Law has worked with twelve juvenile agencies—both state departments of juvenile justice and state juvenile community correctional agencies-- on addressing and investigating allegations of sexual abuse of youth in custody.

We have learned a number of important things from working with these agencies.

- There is a different culture that exists in juvenile agencies – rehabilitation discourse
- Juvenile agencies have different legal obligations – due process not cruel and unusual punishment
- There is a different level of knowledge on this issue -- very little information in juvenile agencies
- There is a different culture among youth advocates for addressing sexual abuse of youth in custody – focused on DMC not on this issues
- Juvenile agencies really do care about youth in their custody – for most part take parens patriae seriously

However, juvenile agencies have a number of barriers that are unlike those in other correctional settings.

- There is little integration of adolescent development training into daily activities – supervision, discipline, programming
- There is a lack of knowledge about how PREA relates to juvenile agencies – act framed as prisons and they did not received BJA money
- Juvenile agencies have very complicated relationships with outside agencies – Child protective services, courts, advocacy

In addition, there are a number of hot button issues that juvenile agencies have brought up in training sessions that relate to addressing sexual abuse of youth in their settings. These issues include:

- Addressing adolescent development and sexuality
- What to do about false reporting—is it an issue?
- Cross gender supervision
- Consensual sexual activity between youth
- Age disparity between youth housed together
- Co-ed facilities

- No-touch policies
- Addressing PREA in community versus detention settings

It seems that the barriers and issues out number the advantages that juvenile agencies bring to the table in addressing sexual abuse in their agencies. However, I believe with additional resources for juvenile agencies, they can and are willing to address issues of sexual abuse in their settings.

V. Recommendations for Moving Forward

I hope I have given you a useful overview of both the current status of findings regarding sexual abuse in juvenile settings as well as some of the barriers. It is important to remedy the barriers in order to move forward and reduce sexual abuse of youth in custody. To that end, I would recommend the following:

1. Support the enactment of the standards recommended by NPREC for addressing sexual violence in youth facilities.
2. Strengthen the ability of OJJDP to address these issues as part of their compliance efforts.
3. Provide funding for development of specialized training for juvenile justice agencies
4. Data collections for prevalence of sexual abuse of juveniles in adult facilities as well as for juveniles supervised in the community
5. Development of appropriate classification tools for youth in custody
6. Special attention to the needs of sexual minorities in juvenile settings
7. Development of models for juvenile agencies to work with advocates for youth in the community
8. Build the capacity of juvenile justice agencies to address adolescent development and sexuality.

Conclusion

Based on my work over the course of over 20 years, first as an advocates for people in custody, then as Project Director of a national effort to address sexual abuse in custody and finally as a Commissioner serving for 5 years on the National Prison Rape Elimination Commission, I feel strongly that juvenile agencies have a unique ability and responsibility to address sexual abuse in their settings. However, in order to do that, the issue of sexual abuse in custody has to be a priority for juvenile justice agencies. That means they have to be held accountable for protecting youth in their custody. At the same time, they need to have support for those efforts. Addressing sexual violence in custody has to be on their agenda along with reducing the numbers of children in custody, reducing disproportionate minority contact and other important indicators of a constitutional and caring system of custody for youth. I would recommend additional funding for OJJDP to improve practice in this area. That being said, juvenile and community corrections agencies received the fewest resources under PREA. In order for juvenile and adult agencies who house juveniles to appropriately address sexual abuse of youth in their custody they will need additional resources to detect, address and respond to sexual abuse of youth in custody.

Thank you again for inviting me to be here today and for the opportunity to speak to our proposed standards and our key findings and recommendations.

Mr. SCOTT. Thank you.
Mr. Isaac?

TESTIMONY OF TROY ERIK ISAAC, PRESIDENT, HANDS ON ADVOCACY GROUP, NORTH HOLLYWOOD, CA

Mr. ISAAC. Good afternoon to Mr. Chairman and to the Committee. My name is Troy Erik Isaac.

When I was 12 years old, I entered into juvenile hall for nonviolent crimes: vandalism; you know, this one girl told me at a Shakey's Pizza Parlor that my sister wasn't an actress, so I threw salad on her and ended up going into juvenile hall.

When I entered into juvenile hall, it was very scary. When I was on the streets of Burbank, California, I thought that I was tough. I thought that I was, like, the big person. But then when they opened those doors and I walked in there, I was hit full-blown with a dose of reality. Staff members ridiculed me. Staff members said, "You know, you look like you are a sissy. You look like you are feminine." And although I was feminine, although I carried the characteristics of my mother, that was disrespectful.

It would have been nice if he could have gave me a heads-up and he could have advised me that what you are getting yourself into is going to be really bad for you, and you can go here to a safer haven where you won't be subjected to abuse, assault, and rape.

I entered into the juvenile system, and there was gangs there. One particular gang was the Pasadena Devil Lanes, and they are very known in Los Angeles.

So the same things the staff members saw in me the inmates saw in me. So they forced me to oral copulate them in the shower area. Staff members were around; oftentimes they turned their back. I didn't feel encouraged to go to staff members. The same ridicule that the inmates were giving me the staff was giving me. So I had to figure out, what am I going to do? I started mutilating myself, cutting on my wrists, telling staff members that I was suicidal just to go to isolation. They would put me into isolation. I would be by myself, but it was very depressing.

And that oftentimes happens to young people when they go into juvenile systems and they don't know what it is about. And that is what PREA is about. PREA would advise young people, "This is what is going on. If you feel uncomfortable, this is where you can go for help."

Nurses also are available to give crisis intervention and help young people. When you are young and when you are going in the prison system, no one wants to be considered a snitch. "If you are a snitch, well, you know what? We are just going to beat you up. You are not supposed to tell on us." And that is what happens oftentimes in juvenile hall.

So if you have PREA, if you have training—staff have to get hands-on training to deal with people and help people.

I went to the California Youth Authority, where I was raped repeatedly. No one was there to help me. No one gave me anything. And I was raped over and over and over again. That continued into the adult correctional facilities, where a guy would say, "Move into my cell. Go to committee, tell committee to move you into my cell." I would do such, and after that I am repeatedly raped, over and

over again. And after I get out, the staff member says, "I would have never put you in there if it was up to me." Well, if PREA is enacted, it would be up to him. He would be able to say, "I am going to move you. I want to take care of you. I want to get you to a safer haven." And that is what PREA does.

There with so much disrespect and hate in prisons coming from staff on inmates, inmates on staff. And I want to add to this that staff members, as well, get raped. At 20 years old, when I was at Vacaville State Prison, a medical technical assistant was knocked unconscious and raped. So rape is very here and very in your face. It happens to young people, it happens to old people, and it happens to staff.

I am now the president of Hands On Advocacy Group. And I work with young people, I work with old people, I work with disability, homelessness in LA County. And I would love this Committee to urge Mr. Holder to implement PREA. And if we need to tweak it, we need to tweak it. But we need to keep everything adopted to move forward to help people.

Thank you so much for listening to my story. Thank you.

[The prepared statement of Mr. Isaac follows:]

PREPARED STATEMENT OF TROY ERIK ISAAC

Testimony of Troy Erik Isaac

Prepared for the United States House of Representatives,
Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security

Hearing on Keeping Youth Safe While in Custody: Sexual Assault in Adult and Juvenile Facilities

February 23, 2010

Good afternoon, and thank you Mr. Chairman and members of the committee for holding this hearing and for inviting me to testify. I am 36 years old, and have spent most of the past 24 years in California corrections facilities.

I first went into a juvenile facility when I was 12 years old. I was sent to the reception center after an altercation I had with other kids in my neighborhood. I didn't know my sexual orientation, but I knew that I was different. Almost immediately, other boys began to harass me. After a couple of days, one boy forced me to have oral sex with him in the shower area. He said to me, 'Your name is gonna be Baby Romeo and I'm Big Romeo.' He claimed that he would protect me from others, but he didn't. Soon after that, I was raped by another older boy.

After both rapes, I didn't know who to go to. I was scared to tell anyone because I didn't know if I would get killed or beaten up. I didn't know if staff members would take me seriously. No one informed me that this was how the facility ran.

I realized I needed to figure out what to do to protect myself and keep myself safe. Guards knew what was happening and looked the other way; I was too afraid to fight back. So I started telling staff members that I was suicidal; I would cut my wrists -- anything to get out of that situation and get into isolation. I found myself in situations I could not handle. People would take advantage of me and I just didn't know how to get help.

Being attacked and not receiving support from the adults in charge turned my world upside down. It's a traumatizing experience for someone that is young. I take that with me wherever I go.

That trauma sent me into a cycle of imprisonment – I kept being sent to juvenile hall, and later to prisons, where I continued to be assaulted and abused. I have spent most of my life in prison – never for anything violent. When I was released two years ago, I committed to staying out of prison. I started a community service organization, Hands On Advocacy Group. I provide peer counseling and crisis support, and I talk with young people about my experience and what they can learn from it.

The recent government report shows that this abuse is still happening. In my experience, juvenile facilities don't try hard enough to prevent this, and they do not like to deal with it when it happens. There were no preventative measures in place when I was assaulted.

When I was first locked up, when I was first raped, I was a terrified 12 year old boy. I had never been violent, and I was different – I was skinny and effeminate. Everything about me made clear that I was a likely target, but the guards never considered my vulnerability in deciding where to house me. Never was I provided with the protection that I clearly needed.

Having been incarcerated – and sexually assaulted – in both youth and adult facilities, I have seen how things are similar and how they are different. Vulnerable inmates are vulnerable wherever they are, and those protections are needed everywhere. Young inmates, in particular, need extra attention.

Officials should be careful in their decisions about housing and program assignments. A slight, first time offender should not be placed with a larger, older inmate who is serving many years for violent crimes. Youth and other vulnerable inmates should not be punished with isolation.

Juvenile detention is supposed to help young people to improve themselves, offering them support so that they can return to society and not be re-incarcerated. Allowing youth behind bars to be raped completely contradicts this mission.

Juvenile detention authorities need to take special care in screening employees and educating youth about their right to be free of abuse.

Despite my experiences, I am hopeful. The standards developed by the National Prison Rape Elimination Commission would provide protections that can make things better. One of the things that would have made me safer is a vulnerability assessment, like what is included in both the juvenile standards and in the adult prison and jails standards.

The standards also mandate that officials encourage youth to report abuse, respond with investigations and discipline of perpetrators, and provide proper after-care care for youth who are assaulted; including age-appropriate mental health treatment.

I hope that Congress encourages the Attorney General to act quickly and enact the national standards drafted by the National Prison Rape Elimination Commission. The sooner that these basic measures are put into place, the sooner we can finally end the sexual abuse of youth in detention.

Thank you again for addressing this problem and for allowing me to share my story.

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Mr. SCOTT. Thank you.

We are going to have votes in a few minutes, so we are going to have to break. But let's continue with the testimony. I think we can take at least the next one, maybe two.

TESTIMONY OF BERNARD WARNER, CHIEF DEPUTY SECRETARY FOR JUVENILE JUSTICE, DEPARTMENT OF CORRECTIONS AND REHABILITATION, DIVISION OF JUVENILE JUSTICE, SACRAMENTO, CA

Mr. WARNER. Thank you. Chairman Scott, Chairman Conyers, Ranking Minority Member Goodlatte, thank you for the opportunity to speak this afternoon about the important issue of keeping youth safe in juvenile facilities.

Clearly, a report released 2 months ago by the Bureau of Justice Statistics on sexual victimization in juvenile facilities has cast a bright light on the vulnerability of youth in our care. While there were alarming rates noted in many facilities, the truth is any sexual assault is unacceptable.

As chief deputy of California Division of Juvenile Justice, I am responsible for approximately 3,000 juvenile offenders between the ages of 12 and 24 on parole and housed in five large institutions. The State juvenile justice system in California is reserved for the highest-risk, highest-need youth who cannot be managed at a local level. Over 95 percent are in for serious violent crimes, and many have significant mental health and substance abuse issues. There is no greater responsibility I have than to keep youth and staff safe in our facilities.

In California, the juvenile justice system is part of the adult correction system, who also operates the largest prison in the country. In both juvenile and adult corrections, we have taken the Prison Rape Elimination Act very seriously and were early implementers of policies and procedures to ensure every effort was made to eliminate victimization.

And following Mr. Isaac, it is clear that I am presenting an environment which is much different and much more reformed than his experience in our system. Key strategies such as employee training, offender education, and appropriate classification of youth have, I believe, had a significant impact on reducing victimization. We have established pilot sites that work with Just Detention International for independent review of our compliance with PREA policies and practices.

As a result of a consent decree signed 5 years ago, DJJ has implemented many reforms to improve safety of our youth: better staffing, smaller living units, enhanced training in trauma informed care, specialized programs for those with mental health issues, and engaging families. All have contributed to improvements and cultural change that has reduced victimization.

Our facility in the Los Angeles area, which has housed the most violent gang-entrenched youth in any correctional environment, actually was listed as a facility with a low rate of victimization. Some of this is attributed to the reforms that I previously mentioned.

In addition to representing California, I am also the current president of the professional association of State agency juvenile directors called the Council of Juvenile Correctional Administrators. Approximately 90 percent of the States in the country work with this association. Our mission is to educate and train State directors on evidence-based practices and promising programs, building tools for practitioners that are grounded in research and data that result in positive outcomes for youth, staff, and families.

Last month, CJCA convened a panel of State directors, including those leading facilities highlighted as worst in the BJS report, to talk and strategize about ways to eliminate sexual violence in facilities. All the directors from the nearly 25 States present agreed that the most effective way to prevent sexual victimization is to ensure youths' safety—from all risks and dangers posed by facility life. Standards defining policies and procedures specific to sexual victimization alone will fall short of ending abuse in our facilities unless we change the culture.

There needs to be a broader focus and support for creating an environment that is safe for youth, establishing a culture that appropriately defines boundaries between staff and youth under our care. How we make decisions as to where youth are housed, what programs and services we provide for them, and the expectations for staff to appropriately engage youth is critical in ending victimization in our facilities.

As individual States and as a national association, we are committed to working with Federal partners to reduce and eliminate sexual violence in facilities. We participated in the Department of Justice listening sessions. We were able to inform them on feedback in terms of their proposed standards for juvenile facilities. We are looking at a standard-by-standard comment and review that will strengthen those standards and, ultimately, effectively change the victimization of youth in facilities. Although there is some concern about the fiscal impact of implementing the standards, we also understand you cannot put a price on preventing victimization.

As we look toward solutions to improve the safety of youth in our care, we look to the Office of Juvenile Justice and Delinquency Prevention for resources to support technical assistance. The development and implementation of best practices which support staff training, youth assessments, and programs designed to improve the climate in detention facilities is critical for long-term improvements in the juvenile justice system. While progress has been made, certainly the BJS study demonstrates unacceptable failure throughout the country.

In addition, tools that measure change must also be available to all the jurisdictions so agencies can benchmark progress or identify barriers to safe facilities. CJCA is currently working with OJJDP to develop existing performance-based standards that will allow for a continuous improvement process and more effectively show data that reflects concerns around victimization in our facility.

Thank you for the opportunity to testify.

[The prepared statement of Mr. Warner follows:]

PREPARED STATEMENT OF BERNARD WARNER

Keeping Youth Safe While in Custody

Testimony submitted by Bernard Warner, chief deputy of the California Division of Juvenile Justice, and president of the Council of Juvenile Correctional Administrators (CJCA) Feb. 22, 2010 before the US House Judiciary Sub Committee on Crime,

Chairman Scott, Chairman Conyers, Ranking Member Gohmert, and all members of the Crime Subcommittee - thank you for the opportunity to speak this afternoon about the important issue of keeping youth safe in juvenile facilities. Clearly, the report released two months ago by the Bureau of Justice Statistics (BJS) on sexual victimization in juvenile facilities has cast a bright light on the vulnerability of youth in our care. While there were alarming rates noted in many juvenile facilities, the truth is any sexual assault is unacceptable.

My name is Bernard Warner and I am the chief deputy of the California Division of Juvenile Justice (DJJ) where I am responsible for approximately 3,000 juvenile offenders ages 12 – 24, on parole and housed in five large institutions, with a budget of approximately 400 million dollars and over 2,000 staff. The state juvenile justice system in California is reserved for the highest risk, highest need youth in the state that cannot be managed at a local level. Over 95% are committed for serious violent crimes, and many have significant mental health and substance abuse issues. There is no greater responsibility I have than to keep youth and staff safe in our facilities.

In California, the state juvenile justice system is part of the California Department of Corrections and Rehabilitation, which also operates the largest prison system in the country. In both the juvenile and adult corrections, we have taken the Prison Rape Elimination Act very seriously and were early implementers of policies and procedures to ensure every effort was made to eliminate victimization. Key strategies such as employee training, offender education and appropriate classification of youth has, I believe, had a significant impact in reducing sexual victimization. We have also established pilot facilities that work with Just Detention International for independent review of our compliance with PREA policies and practices.

As result of a consent decree signed five years ago, DJJ has implemented many reforms to improve the safety of our youth. Better staffing, smaller living unit sizes, enhanced training in trauma informed care, specialized programs for those with mental health issues, engaging families —all have contributed to improvements and cultural change that has reduced victimization. Our facility in the Los Angeles area, which has housed the most violent, gang entrenched youth in any correctional environment, actually was listed as a facility with a low

rate of sexual victimization. Some of this can be attributed to our reforms to end violence.

In addition to representing the California Division of Juvenile Justice, I am also here as the current president of the professional association of state agency juvenile directors called the Council of Juvenile Correctional Administrators (CJCA.). Approximately 90% of states participate in the work of this association.

CJCA's mission is to improve juvenile correctional services so youth leave state custody with the skills and services they need to succeed in the community. CJCA works to achieve that goal by:

- Educating and training state directors on evidence-based practices and promising programs;
- Building tools for practitioners that are grounded in research and data and when implemented, result in positive outcomes for youths, staff and families.

Last month, CJCA convened a panel of state directors, including those leading facilities highlighted as "worst" in the BJS report, to talk and strategize about ways to eliminate sexual violence in facilities. All of the directors from the nearly 25 states present agreed that the most effective way to prevent sexual victimization is to ensure youths' safety – from all risks and dangers posed by facility life. Standards defining policies and procedures specific to sexual victimization alone will fall short of ending abuse in our facilities. There needs to be a broader focus on and support for creating an environment that is safe for youth, and establishing a culture that appropriately defines boundaries between staff and those under our care. How we make decisions as to where youth are housed, what programs and services we provide for them and the expectations for staff to appropriately engage youth, is critical to ending victimization in our facilities.

As individual states and as a national association, we are committed to working with federal partners to reduce and eliminate sexual violence in facilities. Several of us were invited by the Department of Justice, Office of Deputy Attorney General to participate in Listening Sessions and offered additional feedback on the Prison Rape Eliminate Act Commission standards for juvenile facilities. CJCA is preparing a standard-by-standard comment and review for the DAG office that will strengthen the standards to more effectively meet the goal of zero-tolerance for sexual victimization and add data to drive changes in practice and monitor continued safety in facilities. Although there is a concern about the fiscal impact on implementing the standards, we also understand you cannot put a price on preventing victimization.

As we look toward solutions to improving the safety of youth in our care, we look to the Office of Juvenile Justice and Delinquency Prevention for resources to support technical assistance. The development and implementation of "best practices" which support staff training, youth assessments, and programs designed to improve the climate in detention facilities, is critical for long term improvements in the juvenile justice system. While progress has been made, certainly the BJS study demonstrates unacceptable failure throughout the country.

In addition, tools that measure change must be available for all jurisdictions so agencies can benchmark progress or identify barriers to safe facilities. CJCA is currently working with OJJDP to build on existing Performance Based Standards identify to provide a continuous self-improvement process that can be integrated into facility and agency operations and sustain positive change. The BJS report has clearly highlighted this need to better track data, be transparent and hold the system accountable.

Thank you for the opportunity to testify.

Mr. SCOTT. Thank you very much.

Sheriff Morgan?

TESTIMONY OF GABRIEL A. MORGAN, SHERIFF, NEWPORT NEWS, VA

Sheriff MORGAN. Good afternoon, Members of Congress, especially Congressman Bobby Scott, who has been a lone voice in the wilderness as it relates to juvenile justice. I thank you for your efforts.

I am here today to add my voice to the overwhelming body of work that states that incarcerating juveniles in adult facilities is dangerous and the practice is counterproductive in reducing crime.

The number of youth held in adult jails on a daily basis exceeds 7,500, and the number of youth processed as an adult is approximately 200,000. In a 2007 study commissioned by the Campaign for Justice, entitled, "To Punish a Few, Too Many Youth Caught in the Net of Adult Prosecution," that study found that two-thirds of approximately 200,000 were subject to pretrial detention in adult facilities. What that basically means is that we have so many youths that go into pretrial, and they are subject to pretty hard circumstances.

The study also discovered that as many as one-half of the youth prosecuted in the adult system do not receive adult court conviction. So, although they are going into pretrial, they are not really being convicted. And they are suffering while being in adult facilities.

Most youth who were not convicted as an adult spent approximately a month in an adult facility. And fewer than 25 percent of the convictions in adult court resulted in a prison sentence. The majority of youth sentenced to probation or given a juvenile sanction were held in pretrial. When you look at that, you want to say, what did we really accomplish by putting them in an adult facility?

In the late 1800's, Illinois instituted a juvenile court system that subsequently served as a model throughout the United States. The institution of a juvenile court system was designed to protect the welfare and rehabilitation of youthful offenders. This system created the specialized detention center, training schools, and the youth centers apart from adult offenders and facilities. Their aims were to provide a structured, rehabilitative environment in which the education, psychological, and vocational needs of the youthful offender could be addressed.

Starting about 1987, juvenile crime started to escalate and continued on that trajectory until 1996. It should be noted that the juvenile crime rate has receded. However, a growing perception exists that the juvenile justice system is ineffective and we need to treat juveniles as adults.

Nothing could be further from the truth. It is my observation, and most of the empirical data supports, minors are granted special civil rights to education, training, medical and emotional care that are unique to children. These rights are extremely difficult to enforce in an adult jail facility. An adult jail facility lacks the resources, specialized staffing, and the physical plant to deliver required services.

Youthful offenders often present behavior problems when they are placed in general population. These same juveniles are more likely to be victims of brutal crimes that may include sexual assault. Again, our ability to effectively manage the juvenile safety is tenuous at best. Most of the time, we are forced to put them in protective custody or some sort of administrative segregation for their own protection. This amounts to additional punishment inasmuch as juveniles are in isolation cells for the majority of the day.

These findings and many cited in my written submission begs the question, is this a violation of the Eighth Amendment of our Constitution? Further, as a civilized body, are we guaranteeing the provisions of the 14th Amendment due process and equal protection clause?

In my submission, there is a story about overcrowding in my facility and the fact that mental health and the inability to deal with that population and what occurred. The tragedy that occurred basically prompted something to happen. What we heard from Mr. Isaac also says that tragedy occurs daily. Many juveniles have fallen through the cracks.

In my State, at the age of 14 a juvenile can be subjected to adult jails. As a criminal justice practitioner, I must also caution of unintended consequences of good-meaning laws. Please do not saddle us with unfunded mandates that would impossible to accomplish without additional resources.

Politicians talk about getting tough on crime. We really need to look at being focused more on prevention, rehabilitation, and reintegration. We cannot afford to continue in the manner that we have been going over the last 30 years, as it results to juvenile justice. We are wasting human capital, along with money that could provide greater return on our investment. Prevention is cheaper than correction.

Thank you for allowing me this time.

[The prepared statement of Sheriff Morgan follows:]

PREPARED STATEMENT OF GABRIEL A. MORGAN

"Keeping Youth Safe While in Custody: Sexual Assault in Adult and Juvenile Facilities."

Gabriel A. Morgan
Sheriff

February 23, 2010

Good afternoon members of Congress. It is with great humility that I accept Chairman Conyers' invitation to testify at this hearing of the Subcommittee on Crime, Terrorism, and Homeland Security on the issue of "Keeping Youth Safe While in Custody: Sexual Assault in Adult and Juvenile Facilities."

I am here today to add my voice to an overwhelming body of work that states that incarcerating juveniles in adult facilities is dangerous and the practice is counterproductive in reducing crime.

The number of youth held in adult jails on a daily basis exceeds 7,500; and the number of youth prosecuted as an adult is approximately 200,000. In a 2007 study commissioned by the Campaign for Justice, Jolanta Juszkiewicz, Ph.D., authored, "To Punish a Few: Too Many Youth Caught in the Net of Adult Prosecution." Dr. Juszkiewicz found that two-thirds of that approximately 200,000 were subject to pre-trial detention in adult facilities. Moreover, Dr. Juszkiewicz discovered:

1. If detained pre-trial, two-thirds of the youth in adult systems were held in adult jails.
2. As many as one-half of the youth prosecuted in the adult system do not receive an adult court conviction.
3. Most youth who were not convicted as adults spent more than one month in an adult jail.
4. Fewer than 25% of convictions in adult court result in a prison sentence.
5. The majority of youth sentenced to probation or given a juvenile sanction were held pre-trial in an adult jail.

In the late 1800s, Illinois instituted a juvenile court system that subsequently served as the model throughout the United States. The institution of a juvenile court system was designed to protect the welfare and rehabilitation of youthful offenders. This system created specialized detention centers, training schools, and youth centers apart from adult offenders and facilities. Their aims were to provide a structured, rehabilitative environment in which the educational, psychological, and vocational needs of youthful offenders could be addressed. Starting about 1987 juvenile crime started to escalate and continued on that trajectory until 1996. It should be noted that the juvenile crime rate has receded. However, a growing perception exists that the juvenile justice system is ineffective and a need to treat juveniles as adults is the answer. Nothing could be further from the truth. It is my observation and most of the empirical data supports:

Minors are granted special civil rights to education, training, medical, and emotional care that are unique to children. These rights are extremely difficult to enforce in an adult jail facility. An adult jail facility lacks the resources, specialized staffing, and the physical plant to deliver the required services.

Youthful offenders often present behavior problems when placed in general population. These same juveniles are more likely to be victims of brutal crimes that may include sexual assaults. Again, our ability to effectively manage the juvenile's safety is tenuous at best. Most of the time we are forced to put them in protective custody or in some form of administrative segregation for their own protection. This amounts to an additional punishment, inasmuch, as the juvenile is in an isolation cell for the majority of the day.

These findings and many cited in my written submission begs the question; is this a violation of the Eight Amendment of our Constitution. Further, as a civilized body are we guaranteeing the provisions of the Fourteenth Amendment due process and equal protection clause.

Upon taking office, I was faced with an overcrowded jail that the National Institute of Corrections called a "ticking time bomb." I had over 700 inmates in a facility that was designed for 248. Every time a juvenile was transferred to my custody it was a nightmare. For the protection of the juvenile, I had to move adult prisoners into already overcrowded blocks, further creating an added danger to the adult inmate and the correctional staff.

This situation was further complicated by the fact that almost 30% of the adults in my facility suffered from some form of mental illness. I lacked the professional staff to adequately deal with this population. Our Community Services Board would evaluate the most outrageous behavior. Despite my constant request for additional funding, my request was denied until there was a tragedy. After a brave deputy by the name of Brian Dodge was critically injured, losing one of his eyes at the hands of an inmate suffering from mental illness, I was able to secure a grant to address this problem.

It took Corporal Dodge's injury for something to be done. There are plenty of juveniles who have fallen victim in adult facilities. In my state of Virginia a juvenile can be tried as an adult at the age of 14 and they are subject to the same facility as an adult offender.

As a criminal justice practitioner, I must also caution of the unintended consequences of good meaning laws. Please do not saddle us with unfounded mandates that would be impossible to accomplish without additional resources. We do our best with the limited resources that are given to us by state and local government. However, since the mid 1980s politicians seeking election or re-election have held the criminal justice system hostage to sound bites. Politicians talk about getting tough on crime and they pass many draconian laws without regard to the data and evidence-based practices. As a practitioner and a taxpayer, I would submit that we must be smarter on crime. We must begin to focus more on prevention, rehabilitation, and reintegration. We cannot afford to continue in this manner. We are wasting human capital along with monies that could provide greater returns on our investment.

Prevention is always cheaper than correction. It is time to do what was started in the late 1800s in Illinois. It is time to ensure a juvenile court system is designed to protect the welfare and rehabilitation of youthful offenders. We desperately need a system that will recognize that 99% of these juveniles will return to communities; and it is up to us to decide how they will return.

Thank you for allowing me to be here today and to add my voice in support of America's children.

Allen J. Beck & Paige M. Harrison, Bureau of Justice Statistics, Sexual Victimization in Local Jails Reported by inmates, 2007 (2008)

Allen J. Beck & Paige M. Harrison, Bureau of Justice Statistics, Sexual Victimization in State and Federal Prisons Reported by inmates, 2007 (2008)

A Campaign for Youth Justice Report, (2007). Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America.

Austin, J., Johnson, K., & Gregoriou, M. (2000). *Juveniles in Adult Prisons and Jails.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

Bishop, D., Frazier, C., Lanza-Kaduce, L., & White, H. (1996). The Transfer of Juveniles to Criminal Court: Does It Make a Difference? *Crime and Delinquency.*

Delguzzi, K. (1996, April 30). Prison Security Went Awry: Youth Killed When Adults Entered Cellblock. *Cincinnati Enquirer.*

Fagan, J. (1996). The Comparative Impacts of Juvenile vs. Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders. *Law and Policy.*

Fagan, J., Forst, M., & Vivona, T.S. (1989). Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy. *Juvenile and Family Court Journal.*

Fixing a Broken System: A Review of the OJJDP Mandates. Hearing before the Subcommittee on Youth Violence of the Senate Committee on the Judiciary, 105th Cong., 1st sess. (1997) (testimony of Shay Bilchik, Administrator, OJJDP)

Flaherty, M.G. (1980). An Assessment of the National Incidence of Juvenile Suicide in Adult Jails, Lockups, and Juvenile Detention Centers. The University of Illinois, Urbana-Champaign.

Greene, R., & Dougherty, G. (2001, March 19). Kids in Prison: Young Inmates Report Highest Rate of Assault. *The Miami Herald.*

Juszkiewicz, J. (2000). Youth Crime/Adult Time: Is Justice Served? Prepared by Pretrial Services Resource Center for *Building Blocks for Youth.*

Juvenile and Offenders and Victims: 1999 National Report. (1999). Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

Lyons, D.C. (1997, June 12). Teenage Rapist Dies in Prison. *Ft. Lauderdale Sun Sentinel,* p. 3B.

Myers, D. (1999, doctoral dissertation). Excluding Violent Youths from Juvenile Court: The Effectiveness of Legislative Waiver. University of Maryland, Baltimore.

Winner, L., Lanza-Kaduce, L., Bishop, D., and Frazier, C. (1997). The Transfer of Juveniles to Criminal Court: Reexamining Recidivism Over the Long Term. *Crime and Delinquency,* 43: 548-563.

Mr. SCOTT. Thank you.

As indicated, we have a series of five votes that will take at least a half an hour. We will get back as soon as we can. The Committee stands in recess.

[Recess.]

Mr. SCOTT. The Subcommittee will now come to order. We have been joined by the Ranking Member, Judge Gohmert from Texas, and the next witness to testify is Ms. Bauer.

TESTIMONY OF GRACE BAUER, CAMPAIGN FOR YOUTH VIOLENCE, WASHINGTON, DC

MS. BAUER. Afternoon, Chairman Scott and Committee Members. I am a parent of a child who has been involved with both the juvenile and adult criminal justice system. I work with the Campaign for Youth Justice in D.C., organizing families whose sons and daughters have gone through these systems as well. I would like to thank you and everyone here today for focusing on an issue of critical importance that for decades has been ignored or treated with sneers and ignorance. It is only through the hard work of many in this room that this issue is discussed at all.

We have seen the statistics. Within the past year over 13 percent of youth in juvenile facilities reported sexual victimization by either staff or other youth. In addition, these abuses extends to youth who are prosecuted in the adult criminal justice system. Although the BJS study saddens me; it is not a surprise.

As you listen today to what have become the nightmares of my life in the past 9 years, I ask that you hear the voices of the parents and children who are not here before you today.

In 2001, my 13-year-old son, who weighed 90 pounds soaking wet, was sentenced to 5 years in the Department of Corrections' custody in Louisiana. I believed that the system would care for my son and get him back on the right track. Unfortunately, I could not have been more wrong. In 1998, The New York Times referred to the facility where my son was held as a place that many legal experts say is the worst in the Nation.

He had to fight for food and do without when his size failed to hold off other children who were suffering from malnutrition and desperation.

Many times we traveled 5½ hours only to be told our son was denied visitors that day or was in the infirmary. The times that we did see him we saw the evidence of the physical abuse he was enduring day after day, mostly at the hands of poorly trained and underpaid staff. We saw, on a regular basis, black eyes, burst eardrums, broken jaws, and broken arms.

After his release, my son was diagnosed with post traumatic stress disorder and the emotional toll on him and our family can only be described as complete hell. I wish that I could say that what happened to my son was a rarity or that we have moved past that and these things are no longer happening to children. Let me be very loud and very clear when I say that over the past 9 years, not 1 week has gone by that I do not hear similar pleas and cries for help from other parents just like myself in very similar situations.

Consider a 13-year-old boy who gets put into a cell with an older, bigger youth and is brutally raped while prison guards stand outside the cell and place bets on who is going to win the battle. Or a 14-year old girl who is physically and sexually assaulted by her father and runs away to live on the street, then is picked up and locked up and repeatedly raped by those in authority. And this time she has nowhere to run to. Or a mother who cannot approach her own son without alerting him that she is coming because he may have a panic attack or strike out in blind fear that he is being attacked again.

What I hate most is that, after all of this time, I still don't have any answers for the families that I talk to. Many administrators and other State government authorities continue to doubt the repeated findings of sexual assaults in their facilities and cannot accept the overwhelming evidence that this exists.

No one deserves to be violated, and the repeated stories show that what we can expect of State juvenile system authorities when it comes to protecting our children, even with a mandate to keep them safe. While I do not fault individuals who believe they are acting in a child's best interest, the blame I do feel is directed at those who have heard my story, my son's story and the stories of other families, and failed to act on those experiences.

Therefore, in closing I echo The Washington Post editorial printed this weekend and call on Congress to reauthorize the Juvenile Justice and Delinquency Prevention Act, which would provide protections to youth in both juvenile and adult facilities.

I also call on the Department of Justice to fully implement the recommendations of the National Prison Rape Elimination Commission.

Every day that passes without these policies in place, countless numbers of children suffer. And if the statistics in the BJS report are not enough, I ask you to consider that one of these children who were beaten, raped, and assaulted are the child's picture that you hold in your wallet.

Try to understand the fear that you would have for your loved ones in similar situations and imagine, too, the helplessness of having no way to stop or even address that kind of sickening violence.

If these were your children, we would not continue to hold hearings, create commissions, or issue more reports. Instead, we would do what is right and take action immediately to protect our future and the lives of our children.

Thank you so much for your time.

Mr. SCOTT. Thank you Mrs. Bauer.

[The prepared statement of Ms. Bauer follows:]

PREPARED STATEMENT OF GRACE BAUER

Grace Bauer, Parent, and Organizer of Families of Incarcerated Children
Campaign for Youth Justice

Testimony before the House Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security

Hearing on "Keeping Youth Safe While in Custody –
Sexual Assault in Adult and Juvenile Facilities"

February 23, 2010

Good afternoon Chairman Scott, Ranking Member Gohmert, and other members of the Subcommittee and thank you for having me here to testify. I would like to thank you - and everyone here today - for focusing on an issue of critical importance that for decades was ignored and treated with sneers and ignorance.

My name is Grace Bauer and I am the parent of a youth who has been involved with both the juvenile and the adult criminal justice system. I also work with the Campaign for Youth Justice organizing parents who have had their sons and daughters go through these systems. The Campaign is a national organization working to end the practice of prosecuting youth in adult court and to promote more effective approaches in the juvenile justice system as an effective alternative for these youth.

As a parent of a young man who has been involved in the system, I unfortunately know better than most that individuals who are incarcerated are not valued - no matter that those incarcerated in America number, shamefully, in the millions and their families who love and care for them number in the tens of millions. It is only through the hard work of many, such as the members of the National Prisoner Rape Elimination Commission (NPREC) and the Members of Congress who worked to pass the Prison Rape Elimination Act, as well as national non-profit organizations such as Just Detention that this work is discussed at all.

As you know, the recently released BJS study found that - within the past year - over 13 percent of youth in juvenile facilities reported sexual victimization by either staff or other youth in the facility. In addition, we know that this abuse extends to youth who are prosecuted in the adult criminal justice system. The NPREC found that "more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse" and recommended that youth be housed separately from adults.

Although this study saddened me, as an advocate and organizer of the families of incarcerated children it certainly didn't surprise to me. As you listen today to what have become the nightmares of my life in the past nine years, I ask that you hear the voices of the parents and their children that can't be here today.

In 2001, my 13 year old son - who weighed 90 pounds soaking wet - was adjudicated delinquent and sentenced to five years in a Department of Corrections facility. My son's crime was stealing a stereo out of a truck with two other boys. At the time, I believed the promises of the probation officer and staff at the juvenile justice department that they would care for my son and get him back on the right track through a program called STOP. I also never asked for an attorney for my son after the probation officer told me an attorney would just stand in the way of my son getting the help the state could provide. I believed my son would have access to treatment to help him deal with the issues he faced.

Unfortunately, I could not have been more wrong. In 1998, *The New York Times* referred to the facility my son was held as a place "so rife with brutality, cronyism and neglect that many legal experts say it is the worst in the nation." My 13 year old boy had to fight for food and do without when his size failed to hold off other kids suffering from malnutrition and desperation. The education he needed - along with the other nearly 400 kids - consisted of a few worksheets, no certified teachers, and school hours filled not with instruction, but with military like exercises done in the heat of the south's brutal summers. The mental health care the family court judge ordered was non-existent (although it is difficult to see how one could get meaningful mental health treatment in a facility where children live with filth, neglect and rampant abuse). I eventually learned that the STOP program, which the probation offices said would help, had a 70% recidivism rate.

All of this happened five and half hours away from where we lived and many times we traveled all five and half of those hours only to be told our son was denied visitors that day or that he was in the infirmary and we would not be able to see him. The times we did see him, we saw the evidence of the physical abuse he was enduring day after day, mostly at the hands of poorly paid and under trained staff. Black eyes, broken teeth, burst ear drums, broken jaws, broken arms were the daily circumstances of these young people; 140 kids a month were being treated for serious injuries. It wasn't until I saw the evidence of an assault on my son's body that I sought the advice of an attorney. By then it was too late. The state now controlled every aspect of my son's life and I had no say in his treatment or care, nor did I have any power to stop the abuse and neglect of my son. All these years later and hundreds of similar experiences recounted to me by other parents, I still cringe at the level of my ignorance and how little the system people told us.

The emotional toll on my son and so many others like him can't be measured by statistics. Shortly after being released my son was diagnosed with Post Traumatic Stress Disorder. The consequences of that abuse and neglect have had a substantial impact on his life and still today affect both his emotional health and his future. The emotional toll on my family and the families of other children can only be described as complete hell.

I wish I could say that what happened to my son was a rarity or that we have come so far in the last nine years that these things don't happen to children anymore. Let me be loud and clear, there is not one week that goes by in the last nine years that I haven't heard the pain and pleas of other parents in the same or similar situations: The 13-year-old boy who gets put into a cell with an older, bigger youth and is brutally raped while prison guards stand outside the cell and take bets on which child will be the rapist (the "winner") and which will be the raped. The 14-year-old girl who suffers a life of physical and sexual assault at the hands of her father and begins leading a life on the streets. After she is locked up, another set of authority figures repeatedly rape her with no where to run this time. The mother who can't approach her son without alerting him she is coming because, if he doesn't know she's coming, he may have a panic attack or strike out in blind fear of another attack.

What I hate most is after all this time I still don't have good answers for these families any more than anyone had an answer for me. We do nothing to protect those behind bars and instead assume that this is part of the punishment they deserve. No one deserves to be violated but it is even more heinous when it happens at the hands of those with a mandate to keep our children safe. I ask that you consider how we could expect an already vulnerable group of children to live through such violence and neglect all within plain sight of authority and to somehow emerge on the other side as a well adjusted person ready to return and give back to our society. I believe this is why we - as a country - have outrageously high recidivism rates.

Until the NPREC hearings I wondered if this nation had the courage or the political will to look beyond media hype and the political grandstanding on being tough on crime to get to the heart of what happens to millions that belong the next generation of Americans. Fortunately, we have individuals that are tough, but also smart about what the criminal and juvenile justice systems are incapable of doing for us as a society. These individuals are unafraid to go beyond the rhetoric and see the horrendous damage done to those who are the most vulnerable and most unrepresented in this country.

After years of documented cases of sexual assault to children in juvenile facilities, I find it appalling that state administrators still doubt the outcomes of such studies and reports. Many administrators and other state government authorities continue to doubt the repeated findings of sexual assault in their facilities and can't accept the overwhelming evidence that it exists. For me, this means that we must recognize what we can expect of state juvenile justice authorities when it comes to protecting our children and the answer falls extremely short of our expectations.

The family court judge in my son's case believed he had no alternative to sending my son away to a state facility and some practitioners believed they were sending children to facilities that would improve their lives and help them succeed. I don't blame these people for doing what they believed to be right. Instead, the blame I have felt is directed at those who have heard my son's experience and the experience of other families and their children and failed to act.

Therefore, in closing, I echo *The Washington Post* editorial printed this weekend and call on Congress to reauthorize the Juvenile Justice and Delinquency Prevention Act, which would provide protections to youth in both juvenile and adult facilities. I also call on the Department of

Justice to fully implement the recommendations of the National Prison Rape Elimination Commission.

Every day that passes without these policies in place, countless numbers of children suffer. And if the statistics in the BJS reports are not enough, I ask you to consider one of these children, who have been beaten, assaulted and raped with no recourse or power to stop it, what if that child was the child's picture you carry in your pocketbook or wallet? Try for just a few moments to understand the fear you would have for your loved one in a similar situation. Imagine too the complete helplessness of having no way to stop the sickening violence or even having a way in which to address it.

Perhaps then we would not continue to hold hearings, create another commission or issue more reports. Instead, I believe if these were your children, we would do what is right and take action immediately to protect our future and the lives of all of our children.

Thank you for your time and for your efforts on behalf of those whose voices you may never hear.

ATTACHMENT

The Washington Post

Locked up and vulnerable

Sunday, February 21, 2010; A18

TROY ERIK ISAAC was 12 years old and one week into a court-ordered detention for vandalism when he was sexually assaulted by an older, bigger boy. It w ould not be the last time. "I was effeminate, thin and looked vulnerable," he says now, 24 years after the fact. "Nobody tells you when you go in, 'You better be careful.' "

Mr. Isaac, who described himself as a "troubled child," spent the better part of his life in juvenile and adult correctional centers and says that he was raped or sexually abused numerous times. He will tell his story Tuesday to a House panel chaired by Rep. Robert C. Scott (D-Va.).

Mr. Isaac is not alone. A recent study by the Justice Department reported that roughly 12 percent of minors suffered some form of sexual abuse while in custody, including abuse by staff members. Mr. Scott should pay particular attention to two centers in his home state that were identified as having among the highest rates of sexual abuse in the country: the Culpeper Juvenile Correctional Center in Culpeper County and the Bon Air Juvenile Correctional Center, just outside Richmond. Backbone Mountain Youth Center in Western Maryland was also among the institutions with the highest rate of abuse.

Mr. Scott's hearing helps to keep attention on the problem of sexual abuse of juvenile offenders. But in many ways t his problem is already well-known and understood. What is needed is action. Members of Congress should move from talking about the problem to implementing solutions. They could start by reauthorizing the Juvenile Justice Delinquency and Prevention Act, which requires, among other things, that juveniles and adults be kept apart while awaiting trial or serving sentences. The bill was passed by the Senate Judiciary Committee but has yet to be voted on by the full Senate or considered in the House.

The Justice Department must implement the reforms recommended last summer by

Advertisement

The Washington Post

Locked up and vulnerable

the National Prison Rape Elimination Commission. The department will probably miss a June 2010 deadline by which it was supposed to have determined which recommendations to adopt. Corrections officials say that they want to eliminate all manner of sexual abuse in their facilities but argue that they do not have the money to fund all reforms.

These concerns must be taken seriously, especially in these difficult budgetary times, but they cannot be used as an excuse to block progress. After all, it does not cost a cent for the director of a facility to let it be known that sexual abuse by staff or offenders will not be tolerated. It does not cost a cent, but it could save a child from the horrors that Mr. Isaac describes.

Advertisement

Mr. SCOTT. I would like to move to questions from our panel under the 5-minute rule. I will start with Mr. Isaac. You can tell me about the Hands-on Advocacy organization.

Mr. ISAAC. Yes, Hands-on Advocacy Group was started about a year and a half ago. I started when I got out of prison. I was an independent advocate. So I wanted to give back to the very community that I took away from. So I went out just looking for people who needed help.

It got bigger. So Priscilla, she has a not-for-profit and she is a community education-based not-for-profit and she came to me and said, You know, you need to have more people to help you, because you are out there just doing it by yourself. So I deal with police. I deal with disabilities. I deal with people who are homeless. I deal with real estate brokers to have them open up their houses so they can get people off the streets, and we get them on general relief and get them on SSI, and I have attorneys that help me with that. So she said, Why don't you partner with me?

So what we did was doing business as a DBA, and we did a partnership agreement and we got everything legal and notarized. And I am with her, but I am in charge of Hands-on Advocacy Group. And she sits with me as my chief financial officer. And we are doing grants this year. And we plan on hiring staff this year because we are going to be covering so many areas in the city of Los Angeles.

Mr. SCOTT. Thank you. Ms. Bauer, you made complaints to various officials. What happened after you made complaints? What was the response?

Ms. BAUER. I tried to report it to the juvenile facilities where my son was, but I kept getting shifted from one person to another over a 3-month period. So I eventually wrote a letter to Secretary Stalder, the Department of Corrections head in Louisiana at that point, and I got a form letter back. And that was all that was ever done to address the assault of my son.

Mr. SCOTT. Mrs. Smith, what is the status of the PREA recommendations?

Ms. SMITH. The current status is that the Department of Justice is going through a process where they have a working group. The working group has had listening sessions really going over much of the same territory that we have already trod for 5 years. My understanding is that in the next month or so, they will be putting our standards out for formal comment again, and that they actually are not anticipating that a final rule will issue from the Department of Justice before 2011.

Mr. SCOTT. Are the recommendations published so that corrections officials know what the recommendations are?

Ms. SMITH. Absolutely. We did an excellent report which is available on the Web site and we did a great release. And so what those proposed standards that also are in adult, juvenile, community corrections, immigration detention facilities, are available. And as you have heard a number of these jurisdictions are early adopters.

Mr. SCOTT. Sheriff Morgan, have they made the recommendations to local sheriffs?

Sheriff MORGAN. Yes, they have. And Congressman, I believe that at this point, the National Sheriffs Association came back with

some comments or recommendations. And I think those were already taken under consideration. So I will tell you that my facility was also surveyed, and I think they did a wonderful job.

Mr. SCOTT. Do you see any problem implementing any of the recommendations?

Sheriff MORGAN. Personally? No.

Mr. SCOTT. Are there costs associated with those recommendations?

Sheriff MORGAN. There could be some costs associated with it and we are waiting for some interpretation to really understand where the funding would be, if it is interpreted one way versus the other. And I think we are waiting on an answer from them on that now.

Mr. SCOTT. I have other questions. We will have a second round. Judge Gohmert.

Mr. GOHMERT. Thank you, Chairman. And I do apologize for going late. It seems we scheduled so many things, but I reviewed the material last night and I appreciate so much your participation.

I was curious, Professor Smith, in juvenile facilities where cameras and electronic monitoring are available, are there different rates of reporting sexual abuse?

Ms. SMITH. I think one of the things that is excellent about your question is you talk about one of the actual standards that we recommended, and one of those standards is specifically that agencies look at how cameras or video monitoring might help.

I actually don't have the information on whether it is different or not, but my—what I have heard is that they are a great help. At the same time, one of our other commissioners said that a camera never stopped anybody from going over the fence. And so it is very important that that camera also be connected with staff training and also accountability as well.

And so we think that they are an important tool, but we also think that they have to be integrated with the change in practices and culture by staff.

Mr. GOHMERT. Thank you, Professor.

Sheriff, that leads to another question to you. You know, one of the things that we read is that there is a high percentage of reported sexual incidents involving female correctional officers and male inmates. How difficult is it to ensure—or can you ensure that there are just male guards over male inmates?

Sheriff MORGAN. How difficult it is? I will tell you that it is not difficult by practice, but it may be discriminatory by law. And because of that, females are afforded the same rights as male correctional individuals, and they work all the jobs and they are interchangeable.

So there is a law issue that we would have to overcome. And then there is also the question about ratio of staff. Right now females are an ever-increasing number in the correctional field and, as a result, you would have to designate positions male-only to be able to achieve your goal.

Mr. GOHMERT. Do you think it is a goal worth achieving?

Sheriff MORGAN. No. I believe that a correctional officer is a correctional officer, whether it be male or female.

Mr. GOHMERT. But you are familiar with the high percentage of female sexual interaction with male inmates, right?

Sheriff MORGAN. I am. But again it goes back to training. It goes back to supervision. It goes back to leadership from the top and involvement. We have good and bad in every profession. And to penalize females per se from the ability to move up and to move throughout the ranks——

Mr. GOHMERT. Well, you couldn't penalize them from being able to move up. I mean, that would be grossly unfair.

Sheriff MORGAN. Most places we have more men than women incarcerated, so they would be limited.

Mr. GOHMERT. And you don't want to encourage bringing in more female inmates. I am being facetious, of course.

Let me ask, Mr. Warner, as a result of your studies, what would you hold up or recommend as the most model facility you have encountered?

Mr. WARNER. Well, I don't know if I could name a specific facility, but I could describe the culture within that facility. And in your State of Texas, Cherie Townsend, who has taken over the Texas Youth Commission, is doing a great job in reforming that system. It is, as the sheriff said, about training staff and about leadership in facilities and with the zero tolerance against victimization. It is training. It is identifying vulnerable youth in our systems so that we can provide appropriate supervision for them and minimize victimization. I think that it is really around accountability of staff and making sure that they are doing their job.

So I think it is really a series of tools. It is around the culture of our facilities. And in se facilities with low rates of victimization, there is strong leadership that says—that really dictates boundaries between staff and youth in our care. And those facilities with high rates of victimization, those boundaries have dissipated, unfortunately, and youth have been exploited.

Mr. GOHMERT. Do you see cameras as being important in that?

Mr. WARNER. I think cameras help. What I would not want is for staff to rely too much on cameras and believe that they don't have to be out. What we know is that communication is critical; That you need to engage with youth and you need to develop trust with youth in our care. So additional cameras is helpful, but not as avoidance of paying attention to staff behavior in facilities.

Ms. SMITH. Mr. Gohmert?

Mr. GOHMERT. Yes, ma'am.

Ms. SMITH. I would actually like to pipe in about something. You actually asked a question related to cross-gender supervision. And I recognize that that has been a standard that has been quite controversial that the commission has recommended. And I want to say that the commission did not come to recommend that standard lightly. But since we are talking about juvenile justice, I think that one of the things that we have to be very clear is that the legal basis for same-sex supervision in juvenile settings is quite different than that in adult settings. In fact, case law is exceedingly clear that you can have gender-specific supervision in juvenile facilities because you are concerned about the rehabilitation of youth.

Mr. GOHMERT. Because that really should be the number one consideration.

Ms. SMITH. Exactly. And all of the decisions that have specifically talked about that have been very specific to say that you could have same-sex supervision for both males and females. And so I want to make sure that that is in the record. And I would be happy to provide authority for that as well.

Mr. GOHMERT. I very much appreciate you coming back in. Thank you.

Thank you, Mr. Chairman, I realize my time has expired. Thank you.

Mr. SCOTT. The gentlewoman from Texas.

Ms. JACKSON LEE. I thank the Chairman. I can't imagine a more important hearing. This is devastating, but it is important. I don't know—frustrated by talking about cameras to try to control human behavior in attacking the most vulnerable. I just wish that there was some moral compass that people would know: Let me stop.

Professor Smith, tell me, is this an epidemic? What has your research found as relates to these incidences? And let me—being Open Records Act, I come from the State of Texas and I know that they had to be part of your research. We had a very unfortunate period of time of abuse in our juvenile justice system. And I should take away the word "justice." So tell me how expensive, how far-reaching, how much of an epidemic is this? How much of an outcry should be made on this

Ms. SMITH. I think that the fact that you are holding a hearing and the fact that it is so open speaks to how serious this problem is. It is a long-standing problem. It was a problem—I mean it has been a problem ever since we have had prisons. And I think one of the things that was referenced earlier is that this body's attempt to deal with this problem has been long-standing and actually goes back at least 10 years when Congressman Conyers introduced the Custodial Sexual Abuse Act.

One of the things that I also wanted to take the opportunity to say—and actually I talked to a number of people in the audience—while these numbers that the Bureau of Justice statistics has come forth with are shocking, the fact is, what do we know about sexual abuse in the community? One, we know that it is significantly underreported. The people who the BJS have are the people who actually stepped up and said something. What you can be sure of is that those numbers are actually higher. And so to the extent that you talk about that it is an epidemic, I think that what it is, it is a feature of our correctional——

Ms. JACKSON LEE. I am sorry that I was delayed and missed your testimony, but would you recommend total elimination of juveniles in our adult system, in the Federal system?

Ms. SMITH. Absolutely. Absolutely. In fact, one of the recommendations in the commission's report is that juveniles who are under 18 should not be housed as adults. And one of the things that I also have to really sort of put a plug in because I am a resident of the District of Columbia, one of the things that you know is that the standards will be applicable to the Federal Bureau of Prisons, and so obviously this will have a huge impact on Federal know prisoners but it will also have a huge impact on District of Columbia prisoners who, unlike any other community in this coun-

try, are housed in Bureau of Prison facilities all around the country.

Ms. JACKSON LEE. And you have a lot of juveniles because this is a city.

Ms. SMITH. Absolutely. And in fact there are District of Columbia juveniles incarcerated in facilities as far away as North Dakota.

Ms. JACKSON LEE. Let me ask Troy, let me thank you for your courage. And I want to go to Grace as well and express my concern for these children. And you are how old, Troy?

Mr. ISAAC. I am 36 now.

Ms. JACKSON LEE. This happened to you when?

Mr. ISAAC. This happened from the ages of 12 to 18 in youth, and then from the ages probably about 20 to maybe 30 or so in adult correctional facilities. So it has been a long period of time.

Ms. JACKSON LEE. We should be grateful for your willingness, your sanity, and sanctity. And I know that you are working on this issue. Give us your bottom line. If we had to run out right now and do something, what would you tell us to do? What would be the first thing we needed to rush to do?

Mr. ISAAC. As it relates to youth, young people, there has to be a hands-on approach when they walk through the door. They have to be advised of their rights. They have to understand what they are getting themselves into, and they have to be given a vulnerable assessment format where basically you ask them questions, and their answers to those questions, you are able to better place them in the juvenile system, versus sending them out to a general population yard where they could be assaulted, beaten and raped like I was. So if you give someone a choice, then they will be better off.

Ms. JACKSON LEE. Did you ever go to your custodian, is there anybody you thought you could go to?

Mr. ISAAC. At the time I was growing up, absolutely not. Because the same staff members that I needed to trust in disrespected me, ridiculed me by the way that I looked, by the way that I talked. There were times when Black fellow inmates would tell me, You sound like you're White. Whatever that means. I am just talking like I talk.

Ms. JACKSON LEE. Where were you incarcerated?

Mr. ISAAC. In California, I was in Central Juvenile Hall. I was in Los Padrinos Juvenile Hall, I was in the California Youth Authority Francine Nellis School, O.H. Close in Ventura. And the adults, I have been in every major—like Pelican Bay State Prison, Corcoran State Prison.

Ms. JACKSON LEE. It is an epidemic everywhere that you went?

Mr. ISAAC. Everywhere that I went, except the California Correctional Institution. If I had to pick a prison, that is one prison in California that I would pick because they have exceptional staff.

Ms. JACKSON LEE. We are glad that you don't have to pick it again.

Could I get Grace, what would be the first thing you would want this Committee to do, the first thing in terms of the crisis that your son experienced?

Ms. BAUER. Pass the Juvenile Justice Delinquency and Prevention Act. Get those protections in place as soon as you possibly can and pass the PREA recommendations and get them into place. We

have to move somewhere. We just cannot continue to sit on the fence.

Ms. JACKSON LEE. Well, let me thank all of you, all the witnesses that I did not get a chance to pose questions to you, read some of your testimony. Let me thank the Chairman and the Subcommittee Ranking Member for something that should set all of our hair on fire and should cause us to move with swift and immediate speed. Thank you. I yield back.

Mr. SCOTT. Thank you.

Professor Smith, there are several—in the BJS survey there were several facilities that scored very poorly on this issue; unfortunately, two of them in my home State of Virginia. What is being done to—what has been their response and what is being done?

Ms. SMITH. Well, one of the features of the act—I want to make sure that I get it right—is an institutional review panel. And my information is that if they are in that high number, then they actually have had to appear before the institutional review panel. And I believe that sort of the transcripts of that appearance should be available. So I think on that level, that is what is happening with them.

I think on the other level, and certainly something that the act tried to do and that the standards tried to do is to sort of shine the light, to put some sunshine on it, and then have some accountability in the same way that you are trying to bring some accountability here, to have that accountability locally.

In terms of litigation, which it seems to me where I wear my other hat as a litigator, I think I might be writing up a complaint at this time if I were in that position. But I think it is very difficult for people to take action in that way because of significant hurdles that the Prison Litigation Reform Act represents.

Mr. SCOTT. You mentioned one hurdle and that is exhaustion, which is totally inappropriate for a juvenile to have to exhaust all administrative remedies. There are other hurdles like physical injury. What impact does that provision have?

Ms. SMITH. I think one of the things that is very interesting is the information in the BJS report where they talk specifically about whether these assaults resulted in physical injury. Given that and given what the PLRA said, even those these are individuals who experienced sexual abuse, if there was no obvious physical injury they would not have their day in court. I think that that is really, really problematic.

Mr. SCOTT. Is there any justification for juveniles to be under the Prison Litigation Reform Act to begin with?

Ms. SMITH. The reality is there is not any justification for anybody to be under the Prison Litigation Reform Act. But since you have asked the question about juveniles, given what we know about juveniles cognitively, it is very difficult for them to meet those time frames. It is very difficult for adults to meet it and certainly juveniles wouldn't be able to.

Mr. SCOTT. Several people have mentioned the Juvenile Justice Delinquency Prevention Act. Mr. Isaac, what should we do in that act to improve the situation?

Mr. ISAAC. Well, of course, Mr. Chairman, in relationship to victimization, we know that age certainly IS the indicator of vulner-

ability. California is one of the few jurisdictions in the country that have youth up to the age of 24, young adults in our juvenile system. But we do separate those youth under 18 from those youth over 18. I think the provisions in the Juvenile Justice Delinquency Prevention Act certainly enhance our ability to protect the vulnerabilities of youth in our care.

Mr. SCOTT. Are there any changes we need to make in the act as we reauthorize it?

Mr. ISAAC. Well, I think——

Mr. SCOTT. I mean it has protections now. If we reauthorize, it gives us opportunity to improve it. Are there any improvements that you would want to suggest?

Mr. ISAAC. I think that there is a general interest in moving forward with reauthorization and working with what is currently provided for in the act. I look at it more broadly in terms of the State's interest and continuing to work with OJJDP and developing promising programs, and, really as I talked about, changing the culture in our facilities. So enhancing beyond the protections, just the opportunity to improve practices would be tremendous asset.

Mr. SCOTT. And Professor Smith, just to change the subject a little bit, and we can come back to this. Is there any concern about the allegations being lost in "he said, she said," and whether or not the allegations are actually accurate?

Ms. SMITH. Absolutely. Certainly one of the other standards that we have is a standard related to investigations. Again, a very rich source of information is the BJS report where actually you have an incredible large number of unsubstantiated and unfounded claims, which means that investigative procedures are just not really that strong. We believe very strongly that there should be training and that there should be specific evidence protocols, so on and so forth, to enhance the ability to get to the truth and to also substantiate those things.

Mr. SCOTT. And you wanted to say something about JJDPA?

Ms. SMITH. I did. Not being a shy person at all, I actually had some suggestions about what you might do to improve the act. Certainly I talked a bit about it in my testimony.

In the Senate bill, there is a provision that for the first time allows the agency to look at dangerous practices. And certainly before, you did not look at conditions of confinement. And I think that that is really useful for the Office of Juvenile Justice and Delinquency Prevention to do. And so sexual misconduct and sexual abuse would be a part of that.

I think another piece that is very important is to have independent monitoring. Currently, most of the monitoring that Juvenile Justice—that OJJDP does is through a compliance monitor system. One of the recommendations, strong recommendations of the act, is independent monitoring, independent audits. And I think that that would be very instrumental and a very important piece for the reauthorization.

And I think the third thing would be to give OJJDP some money. Because the fact is that one of the things that we saw in just the response to the Prison Rape Elimination Act, that they were not one of the agencies that received funding under the act. That money went to the Bureau of Justice Assistance, and, as a result,

juvenile justice agencies did not get the same kinds of support and resources to even begin thinking about implementing the standards. And I think that they need their own money and the ability to send that money out to do technical assistance and training because they are familiar with those communities and where that money would be best spent.

Mr. SCOTT. Thank you. The gentleman from Texas.

Mr. GOHMERT. Just briefly. You mentioned some great recommendations, Professor Smith. Are you familiar with the overall recommendations of the commission—well, I am sure you are. You helped on that. Are you familiar with any estimates on the cost, overall, if all of the recommendations were implemented?

Ms. SMITH. You know, that is very interesting, the cost issue. Currently, there is a study that is being funded, and I believe that Booz Allen Hamilton, is doing that study, and I was very interested to hear Ms. Bauer talk about what happened and that she wrote a letter to Richard Stalder and did not get a response. He is one of the people who is consulting on that study.

Mr. GOHMERT. We better run that down then.

Ms. SMITH. Anyway, I guess one of the things that I would say is that the commission takes the position that in looking at costs, that different jurisdictions are going to be at different places. And so places like Virginia, or Texas, or California, who have made a significant investment in running safe and secure facilities aren't going to have the same costs as someone else who has not really been doing anything, has been waiting for the standards to come down, and saying then I will comply.

I think the commission's position is that the cost of running constitutional and safe facilities shouldn't be lumped onto the cost of complying with the standards. There are some things that you should be doing in any event to run a safe and secure environment.

We also believe that the costs of not running constitutional facilities should be a part of that study. So the amount of money that people have to pay to settle litigation—for example Michigan, who had to pay $100 million to settle staff sexual misconduct litigation. So that is what I would say about the cost, that there is a certain complexity to it.

Mr. GOHMERT. But cost assessments do help. Obviously you can't put a value on the kind of hell that Mr. Isaac went through. You cannot put a price on that.

Ms. SMITH. Exactly.

Mr. GOHMERT. But at the same time, this Committee is not an Appropriations Committee. And the appropriators always look at what do you get the greatest return for, on which investment. So it is one of the things that we do have to inquire about.

Ms. Bauer, I have not asked you a question earlier, and understanding what Professor Smith is talking about, you have had such tremendous experience, unfortunately unpleasant, but we hear from jails and prisons saying the cost of just putting one inmate per cell is just so high. From what you have seen from all of your experience, if there were one thing that could really make more difference than anything else, do you have any recommendation like that?

Ms. BAUER. I do indeed, and I thank you for asking me that question. It is clear in my written testimony, but not so in my oral testimony, that my son was in jail for stealing a $170 stereo out of a pickup truck with two other boys and got 5 years in a Louisiana State training institute at that time. When we talk about cost, the damage that has been done is immeasurable to his life and to lots of others, as you have said. But had my son gotten grief counseling, it would have cost approximately $28 per session. I did not know that at the time. He lost his grandmother and if he had gotten grief counseling at $28 per session for a 6-month period, compared to $120,000 a year that it cost to house him in the Tallulah facility, what do you think? And now the State has housed him for 5 years in the State of Louisiana in an adult facility. So the cost to taxpayers for my son could have been much cheaper in the beginning than it has been in the end. When we lock up nonviolent offenders in these situations we are cutting off our nose to spite our faces in terms of cost, and it is time that we had that culture shift, and it is time that people woke up and realized that there is a major problem in this country with over-incarcerating individuals because they are poor or mentally ill.

Mr. GOHMERT. Thank you. Thank you all.

Mr. SCOTT. I would like to thank our witnesses for your testimony today. We will follow up with the Department of Justice on the status of the recommendations.

And other Members may have additional written questions which we will forward to you and ask that you answer promptly as you can so the answers may be made a part the record. The hearing record will be remain open for 1 week for the submission of additional materials. And without objection, the Subcommittee stands adjourned.

[Whereupon, at 6:25 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

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SENIOR WHIP
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CONGRESSWOMAN SHEILA JACKSON LEE,

OF TEXAS

COMMITTEE ON THE JUDICAIRY

SUBCOMMITTEE ON CRIME, TERRORISM, AND

HOMELAND SECURITY

Hearing on Keeping Youth Safe While in Custody – Sexual Assault in Adult and Juvenile Facilities

2141 Rayburn House Office Building

February 23, 2010, 4:00pm

STATEMENT

First and foremost I would like to thank Chairman Scott and the ranking member, Mr. Gohmert, for holding today's hearing on how we

can keep our youth safe from sexual assault while in custody. I would also like to thank the distinguished witnesses for taking the time to come in this afternoon and share their insight, experiences, and expertise with us.

- Brenda Smith, Professor at American University's Washington College of Law and Commissioner of the National Prison Rape Elimination Commission
- Troy Erik Isaac, survivor of sexual assault in a juvenile facility in California when he was 12 years old
- Grace Bauer, Campaign for Youth Justice
- Gabriel Morgan, Sherriff from Newport News, VA
- Bernard Warner, Chief Deputy Secretary for Juvenile Justice Department of Corrections and Rehabilitation Division of Juvenile Justice, Sacramento, CA

The sexual assault taking place in detention and correctional facilities in our Nation is completely unacceptable. While the inmates in prison and detention facilities are there because of their own wrongdoings, it is

completely inhumane and un-American to turn a blind eye while these criminal acts happen to these inmates.

Not doing anything about the sexual assault that is rampant in our Nation's juvenile facilities completely undermines the rehabilitative purpose of these facilities. Historically, the juvenile justice system was designed to provide a therapeutic and rehabilitative environment for youthful offenders. Studies show that young boys and girls who have suffered abuse suffer long-term consequences, and tend to self medicate with drugs and alcohol, develop mental illness, and foster violent tendencies. These are the very factors that all too often pave the way for a juvenile to end up in the juvenile justice system. Imagine the physical and emotional damage done to a youth who, once becoming part of the juvenile system, suffers similar and sometimes more severe types of sexual abuse. Such a youth offender might leave the juvenile system more damaged than they were upon entering the system.

I feel that the first step to reducing the sexual assault against youth taking place in detention facilities is to reduce the flow of individuals going into these facilities in the first place – especially our youth. In my home state of Texas, we feel the impact of juvenile crime and incarceration in more ways than one. Not only do we suffer the loss of life and slashed potential of our youth, but it costs a whopping $56,000 to incarcerate a juvenile, while educating a pupil in public schools costs the state a mere $7,136. I have long been a supporter of efforts to work with our youth who are engaged in violent juvenile crimes. In doing so, I have proposed amendments that would have redirected funds from prison construction programs to youth mentoring and delinquency programs, recognizing that violent crimes by juvenile take place largely right after the end of the school day.

The recent studied released by the Department of Justice's Bureau of Justice Statistics bears some alarming statistics about the rate at which juvenile offenders in prison facilities, whether they are juvenile facilities or adult facilities, are being sexually assaulted and victimized. It states

that 12% of youth inmates – that is 3,220 youth nationwide – reported sexual victimization by either another youth or facility staff within the last year. Of that 12%, over 10% reported that they were assaulted by facility staff. I would assume that in actuality, the percentage has the potential to be much higher. Many youth may be fearful or reporting abuse by the very facilities staff they have to answer to every day.

This information is especially alarming because the role of a juvenile facility when exercising custodial control over these youth is to act in the place of the parents and exercise special care. Reports of this type of sexual assault show that we are failing in our roles as custodians. Also, many of the youth offenders in these facilities are "status offenders" – meaning they ended up detained due to non-violent issues such as truancy, curfew violations, or running away from home. Status offenders are especially at risk because of their inexperience with the juvenile justice system and its more violent offenders.

In my home state of Texas, sexual assault of juvenile offenders is a huge problem. The Texas Department of Criminal Justice, the 3rd largest in the Nation behind California and the Federal Bureau of Prisons, has one of the highest rates of reported sexual assault incidents – almost twice the national average. In 2007, reporters in Texas discovered that more than 750 juvenile detainees had alleged sexual abuse by facilities staff. Some of those who alleged abuse attempted to seek justice. However, because of delays in reporting and lack of physical evidence and witnesses, not a single employee of the State of Texas Youth Commission was sent to prison for raping these children.

The Texas Safe Prison Program was implemented to help prevent offender sexual abuse by educating inmates and correctional staff on the importance of detecting and reporting sexual assaults. They utilize methods of peer education in order to create an environment for friendly to reporting abuse and standing up as a witness of abuse.

Today, it is my hope that the testimony presented will shed further light on the findings of the Bureau of Justice Statistics study. I also hope that we will hear some recommendations for how we, as lawmakers, can do better to help rid our Nation's detention and correctional facilities of this problem. The youth are our future, and when they suffer a misstep and end up a part of the juvenile justice system, it is our duty to help them regain their place in the real world. It is our duty to rear them in a positive direction so that they may become contributors to society. We are doing a disservice to our youth and to the future of our Nation when we allow detestable acts such as sexual assault to take place.

Again, I'd like to thank today's witness for their testimony. Mr. Chairman, thank you and I yield back the remainder of my time.

Testimony of Just Detention International
For the House Committee on the Judiciary
Subcommittee on Crime, Terrorism and Homeland Security
February 23, 2010

Just Detention International (JDI) thanks the Subcommittee on Crime, Terrorism and Homeland Security for holding this important hearing on sexual violence perpetrated against youth in detention. Recent government reports have shown clearly that detained youth, whether housed in juvenile facilities or with adults, are at serious risk of sexual abuse – often at the hands of corrections officials.

JDI is an international human rights organization whose mission is to combat sexual violence in all forms of detention. JDI led a diverse coalition of advocates who worked closely with politicians on both sides of the aisle to help secure the passage of the U.S. Prison Rape Elimination Act (PREA) in 2003. Since then, JDI has led the call for the law's meaningful implementation at the federal, state, and local levels.

Thanks to the strong leadership of PREA's sponsors – House Crime Subcommittee Chairperson Bobby Scott, Representative Frank Wolf, Senator Jeff Sessions and the late Senator Edward Kennedy – sexual violence in adult prisons and jails is finally beginning to be recognized as a serious human rights crisis. The recent report by the Bureau of Justice Statistics, which prompted this hearing, makes clear that juvenile facilities also are exceptionally dangerous.

I. Sexual Violence Against Youth in Detention

In its recent survey of youth in juvenile detention, the Bureau of Justice Statistics (BJS) found that a shocking 12.1 percent – almost one in eight – of youth reported being abused

at their current facility in the past year alone.[1] In the worst facilities, the rate was as high as 30 percent.[2] Among youth who previously had been sexually assaulted at another corrections facility, an unconscionable two-thirds reported also having been victimized at their current facility within the past year.[3]

A 2005 BJS study of sexual abuse reported in adult prisons and jails found that young inmates were at heightened risk for abuse in these facilities as well.[4] Although the Juvenile Justice and Delinquency Prevention Act prohibits detaining juveniles with adults except in very limited circumstances,[5] this protection does not apply to youth who are prosecuted as adults.[6] With these alarming data in mind, it is clear that use of the adult criminal justice system to prosecute juveniles should be minimized.

Survivors of sexual violence in detention who wish to file a formal complaint face multiple serious barriers, including fear of stigma and further assaults. Young survivors face additional obstacles, such as a relative lack of experience in corrections settings and a common fear of adult authority figures. The BJS survey found that the vast majority of perpetrators in youth facilities were staff members whose job is to keep youth safe.[7] Such blatant abuse of power further discourages reporting, and underscores the difficulty detained youth face when seeking to identify safe ways to report abuse. Moreover,

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[1] ALAN BECK, PAIGE HARRISON & PAUL GUERINO, BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTER BY YOUTH 2008-2009 1 (2010).
[2] *Id.* at 1.
[3] *Id.* at 11.
[4] ALLEN J. BECK & PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES, 2005 (2006).
[5] 42 U.S.C. § 5633 (a) (13), (14). State delinquency agencies that fail to comply with this and other requirements within the Juvenile Justice and Delinquency Prevention Act will lose their federal funding.
[6] Three states consider 16 year olds to be adults as a matter of law; 10 states define 17 year olds as adults, and all states have provisions within their criminal justice laws allowing for youth who commit certain crimes and/or have prior contacts with the juvenile and criminal justice systems to be treated as adults. *See* Christopher Hartney, National Council on Crime and Delinquency, Fact Sheet, Youth Under Age 18 in the Adult Criminal Justice System (2006).
[7] BECK, HARRISON & GUERINO, *supra* note 3, at 1.

detainees in juvenile facilities are often afforded less access to legal resources than inmates in adult facilities.[8]

Youth in detention who have previously been abused are more than twice as likely to be sexually abused while incarcerated.[9] In girls' facilities, youth known to have a history of prostitution are chief targets for abuse by staff perpetrators.[10] Boys were most often abused by female staff. Staff sexual abuse is greatly facilitated by the U.S. policy of allowing officers of the opposite sex to work in all areas of a detention center[11] -- a policy that violates international human rights standards and is banned in most developed nations.

Like in adult prisons and jails, predators in juvenile facilities disproportionately target youth who are lesbian, gay, bisexual, transgender or questioning (LGBTQ).[12] In particular, transgender girls are often tormented by constant sexual harassment, as they tend to be placed in boys' facilities, in accordance with their birth gender.

II. Increasing Safety for Incarcerated Youth through the PREA Standards

The BJS report confirms what JDI has long known: young detainees constitute an especially vulnerable population needing special protections. As the National Prison Rape Elimination Commission explained in its final report, "juveniles are not yet fully developed physically, cognitively, socially, and emotionally and are ill-equipped to respond to sexual advances and protect themselves."[13]

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[8] *See, e.g., Alexander s. v. Boyd,* 876 F. Supp. 773, 790 (D.S.C. 1995) (holding that juvenile detainees had no constitutional right to a law library).
[9] BECK, HARRISON & GUERINO, *supra* note 3, at 1.
[10] HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION (ACLU), CUSTODY AND CONTROL: CONDITIONS OF CONFINEMENT IN NEW YORK'S JUVENILES PRISONS FOR GIRLS 63-64 (2005).
[11] *Id.* at 63-71.
[12] *Id.* at 1. For more information about the severe danger of sexual abuse facing LGBTQ detainees, *see* JDI Fact Sheet, LGBTQ Detainees Chief Targets for Sexual Abuse in Detention (October 2007).
[13] National Prison Rape Elimination Commission, Final Report at142-43.

In accordance with its mandate under PREA, the bipartisan Commission developed national standards to prevent, detect, respond, and monitor sexual violence in detention. Recognizing the unique dynamics of different types of facilities, the Commission developed separate sets of standards for adult prisons and jails, juvenile facilities, lock-ups, and community corrections as well as supplemental standards for facilities housing immigration detainees.

The Commission's standards were the product of five years of hearings, deliberation, and review. They address core prison management issues that directly affect the levels of sexual abuse in a facility, such as staff training, inmate education, housing, and investigations in the aftermath of an assault.

If enacted, specific provisions in the Commission's standards could help eliminate the disturbing trends identified by BJS. For example, the BJS survey showed that staff-on-inmate abuse is particularly common in youth facilities; the Commission's standards mandate that staff receive appropriate training about the problem of sexual violence and their role in preventing it; disciplinary sanctions for abusive staff, including the possibility of termination and criminal prosecution; and limitations on staff ability to view detainees of the opposite sex while they are undressed. Basic privacy measures regarding cross-gender supervision are particularly important for youth, who are still developing physically and emotionally. Likewise, the BJS surveys identified non-heterosexual youth as particularly vulnerable; the standards require that sexual orientation and gender identity be taken into account when making housing and programmatic decisions, but not be used to punish a vulnerable individual.

These recommended standards represent a compromise, balancing the rights of inmates with security interests and other concerns of corrections agencies. Nevertheless, if fully approved and implemented, they will significantly lower the rate of sexual abuse in detention and improve the response in the aftermath of an assault.

III. The Attorney General's Review of the Standards

The standards are now with U.S. Attorney General Eric Holder, who by law has until June 23, 2010 to codify final standards based on the Commission's recommendations. Once his final rule is issued, the standards will become federal regulation and will be immediately binding on all federal facilities; other detention systems in the U.S will have one year to certify their compliance, or they will lose a portion of their federal corrections-related funding.

These standards have the potential to save tens of thousands of people from the devastation of rape every year. Nonetheless, it is already clear that Holder will not meet his deadline. The Department of Justice has convened an internal PREA Working Group to review the standards, and the Working Group coordinators have projected that their work may not be completed until 2011. Congress should urge Attorney General Holder and the PREA Working Group to ratify strong standards without undue delay by deferring to the expertise that informed the Commission's standards.

A significant part of the delay appears to be in response to the claims of opponents of PREA that coming into compliance with the new standards will be too costly. Some argue that they represent an "unfunded mandate" and at times go so far as to suggest that it is too expensive to end prisoner rape. In response, the Attorney General has commissioned a cost projection study to produce an estimate of how much it will cost

to implement the standards. This study is not a cost-benefit analysis; it will be based on estimated expenses provided by corrections administrators who have agreed to participate. Preliminary data are due to be released in the spring of 2010 and the final results in the fall of 2010.

With a focus exclusively on cost – irrespective of savings and other benefits to states, agencies, prisoners, and the community – this study will provide, at best, a distorted picture of the standards' economic impact. Moreover, by relying exclusively on the projections of corrections administrators, officials who oppose the standards or who are seeking to bolster corrections appropriations will have a clear incentive to inflate their estimated expenses. Beyond the questionable utility and accuracy of such a study, it dangerously encourages a narrative focused on cost rather than on safety. Cost should be one factor among many when the Attorney General issues the final standards; it should not obscure the responsibility of corrections agencies to provide safe custodial settings nor the devastating impact of sexual abuse in detention on inmates, families, and the community.

In reality, facilities that have basic policies and practices in place to protect people in their charge, as they are legally required to do regardless of PREA, will not incur substantial costs by complying with the standards. JDI is working with three jurisdictions – the California Department of Corrections and Rehabilitation (including its Division of Juvenile Justice), the Oregon Department of Corrections, and the Macomb County Sheriff's Office in Michigan – to establish low and no-cost ways of coming into full compliance. By repurposing staff and other resources, and by utilizing expertise available in the community, each of these cash-strapped agencies have discovered that not only can

they meet the standards' requirements, but doing so has enormous benefits for the safety of staff and inmates alike.

III. Conclusion

Sexual violence in detention is not inevitable; it is the result of poor corrections management, bad policies, and dangerous practices. The national standards mandated by the Prison Rape Elimination Act, currently before Attorney General Holder, have the potential finally to help end this type of violence. As such, they constitute a once-in-a-lifetime opportunity for U.S. corrections reform. JDI urges Congress to demand that the Attorney General ratify strong standards, without undue delay. Every day without them is another day in which youth and other vulnerable inmates endure sexual abuse.

The Washington Post

Justice study tracks rape, sexual abuse of juvenile inmates

By Carrie Johnson
Washington Post Staff Writer
Friday, January 8, 2010; A05

The Justice Department reported Thursday that 12 percent of incarcerated juveniles, or more than 3,200 young people, had been raped or sexually abused in the past year by fellow inmates or prison staff, quantifying for the first time a problem that has long troubled lawmakers and human rights advocates.

The report comes as those advocates say that the Obama administration is moving too slowly on reforms that would reduce rape in U.S. prisons and as corrections officials are pressing Justice to overhaul reform proposals it is reviewing.

Four former commissioners on a blue-ribbon prison rape panel that spent years studying the issue say they fear that authorities are deferring to concerns by corrections officials that reforms would cost too much, while not focusing enough on prison safety and the effects of abuse on inmates.

The study by the department's Bureau of Justice Statistics reported a "very high rate of staff sexual misconduct" against juvenile inmates. It cited two facilities in Virginia and one in Maryland, among others.

"These figures are appalling," said Pat Nolan, president of Justice Fellowship, a group that advocates for prison reform. "We stripped a prisoner of their ability to defend themselves. They can't control where they go; they can't control whether the shower has a light bulb in it."

The report, based on surveys from 195 facilities in all 50 states and the District, is the first of its kind. Rates varied among the institutions, but at 13 detention facilities, nearly one out of t hree juveniles said they had been victims of some type of sexual abuse. National attention has turned increasingly to sexual assault within American prisons, which house more than 7 million inmates and cost $68 billion a year to operate. Other federal studies, which have been criticized by prison administrators, suggest that

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The Washington Post

Justice study tracks rape, sexual abuse of juvenile inmates

60,500 adults are victims of rape or sexual misconduct in prisons each year.

In July, Michigan agreed to pay $100 million to settle a long-running lawsuit by women prisoners who said they were raped by state prison guards during the 1990s, and similar cases are proceeding in courts around the country.

Nearly seven years ago, Congress passed a law designed to reduce prison rape, establishing a commission to develop standards for state and federal prison leaders. Lawmakers said funding could be cut for prisons that failed to comply with the guidelines.

After more than four years of study, the commission issued its standards in June, triggering a one-year deadline for the Justice Department to put its stamp of approval on the guidelines. Now, more than six months later, the department is waiting on the results of a $1 million study on cost by consulting firm Booz Allen Hamilton, and people briefed on the process say it could be the end of 2011 before senior leaders finalize the measures.

Former commissioners, in interviews, expressed concern that the Justice Department might be scrapping r ecommendations that already were the product of compromise by the panel.

Hannah August, a spokeswoman for the Justice Department, said that lawyers there are "working diligently" and planning sessions to reach out to victims, corrections officials and interest groups in the coming weeks.

"We're working hard on this -- it's just an ambitious date," she said of the June deadline. "I would characterize this as a priority of ours. It's a time-consuming process that needs to get done right."

The disagreement appears to center on three issues, according to three people following the process: whether prison systems should be subject to independent audits every three years t hat would assess their compliance; whether guards and staff members of the opposite sex should be prevented from monitoring inmates in bathrooms, showers and other sensitive locations; and whether the reforms involve a

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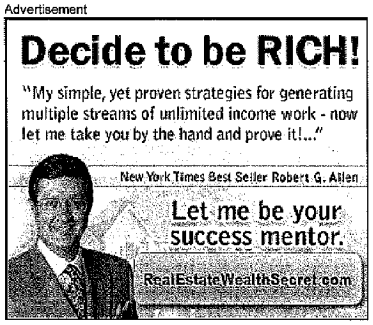

The Washington Post

Justice study tracks rape, sexual abuse of juvenile inmates

"substantial" expense to prison operators.

"Congress did not intend to permit facilities . . . that had done a poor job of protecting inmates to plead expense as an excuse for failing to improve their performance," said Jamie Fellner, a panel member and senior counsel at Human Rights Watch, who sent a letter to Attorney General Eric H. Holder Jr. this week expressing her concern.

John Ozmint, director of the South Carolina Department of Corrections, said the prison rape commission operated with "flawed" statistics and a "one-s ided" understanding of the pressures and legal obligations of state corrections administrators. In an interview, Ozmint said that he and most of his colleagues had put in place new training and reporting requirements for allegations of sexual misconduct. Several of the recommendations, he said, including the one suggesting pat-downs only by guards of the same gender as inmates, posed problems under employment laws and union contracts.

"Ninety-two percent of my inmates are men," Ozmint said. "Forty-four percent of my work force are women. How do I avoid cross-gender supervision and even cross-gender searching of those inmates?"

The Association of State Correctional Administrators will share its concerns with the Justice Department in a session next month, co-executive director George Camp said. California and Oregon have agreed to put into place the commission's recommendations, advocates say.

Among the sites mentioned in the new study where youths reported high rates of abuse were the Culpeper Juvenile Correctional Center in Fauquier County; t he Bon Air Juvenile Correctional Center in suburban Richmond; and the Backbone Mountain Youth Center in Swanton, Md.

Bruce Twyman, a spokesman for the Virginia Department of Juvenile Justice, expressed concerns about the methodology of the study but said officials were taking it seriously.

"We certainly agree that sexual victimization is an issue that needs to be addressed in the state of Virginia as well as the nation," Twyman said. Over the p

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Justice study tracks rape, sexual abuse of juvenile inmates

ast 18 months, Virginia has increased staff training and upgraded video surveillance in juvenile facilities, he added.

In Maryland, a spokesman for the Department of Juvenile Services said the department "has not had any substantiated complaints for sexual misconduct at the facility in Swanton and has had only one allegation made there" since 2007. The department also announced a review.

Lovisa Stannow, executive director of Just Detention International, which works to prevent prison sexual abuse, said the study reflecting that juveniles may be abused at three times the rate of adults underscores the need for quick action.

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Records reveal problems in L.A. County juvenile probation office

At least 11 officers responsible for supervising youths in the juvenile justice system have been convicted of crimes or disciplined for inappropriate conduct involving probationers, a Times investigation finds.

By Molly Hennessy-Fiske and Richard Winton

February 21, 2010

At least 11 Los Angeles County juvenile probation officers have been convicted of crimes or disciplined in recent years for inappropriate conduct involving current or former probationers, including several cases of molesting or beating youths in their care, a Times investigation has found.

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Additionally, two other officers are the focus of internal affairs investigations for allegedly having sex with probationers.

The Times identified the cases through court documents, law enforcement records and department sources. Probation officials said they were prohibited by law from discussing the details of officers' misconduct.

Among the incidents:

* A probation officer had sex with three youths in the detention hall where she worked -- in laundry, supply and interview rooms. She was sentenced last year to four years in prison after pleading guilty to five counts of felony sexual abuse.

* A probation officer caught on tape beating a youth in a juvenile hall recreation room was convicted last year of battery and sentenced to 24 months' probation.

* A probation officer was sentenced to a year in jail last year for directing five teenagers under her care to beat another youngster who she mistakenly believed had stolen her cellphone.

Los Angeles County probation officers are responsible for protecting 3,000 youths in 21 halls and camps, one of the nation's largest juvenile justice systems.

The department, with an annual budget of about $700 million, has been the subject of federal investigations in recent years for failing to prevent, report and document child abuse.

The Times examined records from the last four years -- a period during which county officials hired

Robert Taylor to head the agency with the mandate of reforming the department, including providing better oversight of officers. At the time he took over, the department was struggling with violence in its halls and camps and persistent criticism that it was doing little to help the juvenile offenders in its care.

Probation officials have sustained 102 allegations of officer misconduct involving youths at the county's halls and camps over the last three years, according to a department source who asked not to be identified because he was not authorized to release the information publicly. The source said many of the sustained cases involved complaints of excessive force. Department officials did not disclose how many officers were involved in misconduct or the extent of any discipline.

Taylor retired Feb. 5. Former Ventura County probation chief Cal Remington was appointed as acting chief to assess the department before the new chief, Alameda County probation chief Donald H. Blevins, takes over April 19.

During his tenure, Taylor said he tried to be more proactive than his predecessors, coordinating undercover internal investigations with the Los Angeles County Sheriff's Department.

For example, he said a probation sting with sheriff's deputies at Central Juvenile Hall in 2008 led to the arrest of a probation officer suspected of dealing marijuana to youths. The officer was fired, but has not been criminally charged, according to county officials.

"Unfortunately, we have people who fail to meet expectations and when they do, we deal with them with a disciplinary system that is swift and sure and produces the desired outcome," Taylor said. He said he did not consider the current personnel problems any worse than what other large law enforcement agencies face.

Taylor acknowledged at least one effort to monitor staff and probationers has fallen short: Many of the more than 600 security cameras at county detention halls and camps are broken. Last month, county supervisors approved spending $1.2 million to determine how best to replace some cameras and other security equipment at a juvenile camp and three halls.

Many critics say poor oversight has hampered the department's efforts to identify abusive staff.

Two years ago, federal investigators found that the department failed to investigate and document officer abuses, including excessive use of force on probationers.

The department has eight internal affairs investigators to review hundreds of complaints leveled against 6,200 probation officers each year, including about 2,900 sworn officers working with juveniles. By contrast, the Los Angeles Police Department has 271 internal affairs investigators for 9,900 sworn officers; the Los Angeles County Sheriff's Department has about 30 internal affairs investigators for about 10,000 sworn officers.

A 15-member probation commission appointed by county supervisors is supposed to monitor the department and advise the probation chief. Commissioners can ask the probation chief to investigate alleged misconduct, and if probation officials fail to take action, they can bring complaints to county supervisors. But they rarely do and have never forced the department to disclose probation personnel records, said commission President Don Meredith, a retired Glendale police lieutenant.

"When we bring it up, they say they can't discuss it with us because it's internal matters, confidential," Commissioner Jo Kaplan said of the alleged misconduct. "We have no oversight."

Teachers who work at probation camps and halls are required by law to report suspected abuse but often don't because they are afraid of the consequences, said Mark Lewis, president of the teachers union, the Los Angeles County Education Assn. "There is this belief that if I report something or file a child abuse report against a probation officer, that probation is not going to come when I need them . . . or they're going to set me up," Lewis said. "So there is a tendency not to report."

Even if someone wanted to report misconduct, they may have found it difficult: The phone number on websites and signs posted in the halls and camps for the Probation Department's ombudsman was inoperable until three weeks ago, when a spokeswoman responding to calls from The Times said an "urgent work order" had been submitted to repair it.

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Former Probation Officer Kimberly Hald, 37, describes herself as a "soccer mom" who made some bad decisions during a difficult time in her life. Prosecutors say she's a predator who had sex with three teenage boys -- ages 16 to 18 -- at a detention hall for more than a year.

Starting in August 2006, Hald had sexual encounters with the teenagers at Central Juvenile Hall where she worked as a probation officer, according to court records. She bought her victims' silence with treats, including hall passes, food from home and cellphone access, the records show.

Hald became infatuated with the probationers, prosecutors said, sending them letters with provocative photos of herself. She even got a tattoo with the initials of one of the youths.

Hald was caught when one of the youths resisted her advances in a hallway, a scuffle ensued, and he reported her, according to prosecutors. Even after she was arrested and suspended from her probation job, Hald continued to visit the youth at the jail and gave him money. She was later convicted of sexual abuse and sentenced to four years in prison.

Taylor said it would have been difficult to catch Hald because she was well-educated and showed no signs of misconduct. "She was a married mother of three children with advanced college degrees," he said.

Hald declined to be interviewed. But in a letter sent from prison in response to an inquiry from The Times, she blamed her problems on a troubled marriage and expressed remorse. "I did not take the probation job seriously," she wrote.

"I was vulnerable due to a very bad domestic violence situation, and I let myself be carried away by the endless compliments and flattery of the young men," Hald wrote. "Bottom line, I had a consensual relationship with a young man who was 17 and I stupidly thought I was in love with. Everything else I did was completely inappropriate, unethical and extremely unprofessional."

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Ademole Turner's career as a probation officer ended when a surveillance camera captured him hitting a boy in the face.

Video footage from the July 20, 2007, encounter in the recreation room at Los Padrinos Juvenile Hall shows the former college football star hitting a 16-year-old boy in the face, throwing him to the floor and kicking him at least once, prosecutors said.

The confrontation began when the boy approached another youth and asked about his gang affiliation, authorities said. Turner, 32, immediately interceded and struck the teenager. The youth had a bloody nose and bruised face, prosecutors said.

Downey police called to investigate Turner screened the tape and gave it to prosecutors, who charged Turner with assault by an officer, assault likely to cause great bodily injury, child abuse, corporal injury to a child and attempting to dissuade a witness from reporting.

Turner pleaded no contest to misdemeanor battery last year as part of a plea deal. He was sentenced to 24 months' probation and 50 hours' community service. A father of three, he quit his probation job and was teaching math and coaching football at a high school in Gardena.

Turner's attorney, Charles J. McLurkin, said there were "extenuating circumstances" that led to the beating, noting that his client was not properly trained to supervise violent youths.

"This is an issue of the training the county did not provide," McLurkin said.

Probation Department spokeswoman Kerri Webb disputed that allegation, saying that all probation officials are trained consistent with state standards.

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When Probation Officer Diane Buchanan couldn't find her cellphone, she was convinced one of the boys she supervised at Barry J. Nidorf Juvenile Hall in Sylmar had stolen it, prosecutors said.

Court records tell how Buchanan, 39, first strip-searched the youths. Failing to find the phone, she questioned them.

Racial tensions had been simmering for weeks between black and Latino youths at the facility, the youths testified. One of the black youths alleged that a Latino detainee, Miguel Jimenez, had stolen the phone and flushed it down a toilet.

Buchanan believed him and started planning her revenge, prosecutors said.

On her way to Jimenez's cell, she approached a group of youths and told them she would unlock Jimenez's cell, then let them run past her to beat him up, according to court testimony.

"She told us to go in there and get him for the phone," one of the youths told investigators. "If I didn't do it, I was going to be with him."

Five youths attacked Jimenez, beating and kicking him as he lay on the floor. Jimenez, then 17, was in detention for vandalism. He cowered as the youths laughed and beat him, according to court records. He said Buchanan, who he called "Miss B," refused to intervene.

Buchanan left after a few minutes, locking the door and leaving Jimenez with numerous bumps and scrapes. He was not allowed to see a doctor until the next day, when another probation officer noticed his injuries and persuaded him to report the attack.

Buchanan later found her cellphone -- in the parking lot. A grand jury charged Buchanan with child abuse. In May, she was convicted and sentenced to a year in jail.

Jimenez was being held at North County jail last week on assault charges and could not be reached for comment. But his brother Jorge Jimenez, 26, of Los Angeles said Jimenez was still upset about the beating.

"He feels betrayed," Jorge Jimenez said. "He was at a place where he was supposed to be rehabilitated, and instead this happened."

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The Rape of American Prisoners

By David Kaiser, Lovisa Stannow

Summary Report for Administrative Review
by Tish Elliott-Wilkins
Texas Youth Commission, Office of the General Counsel, 14 pp. (2005)

Report of Investigation
by Brian Burzynski
Texas Department of Public Safety, Texas Ranger Division, redacted version, 229 pp. (2005)

Sexual Victimization in Juvenile Facilities Reported by Youth, 2008–09
by Allen J. Beck, Paige M. Harrison, and Paul Guerino
Bureau of Justice Statistics, 49 pp. (2010)

Sexual Victimization in State and Federal Prisons Reported by Inmates, 2007
by Allen J. Beck and Paige M. Harrison
Bureau of Justice Statistics, 48 pp. (2007)

Sexual Victimization in Local Jails Reported by Inmates, 2007
by Allen J. Beck and Paige M. Harrison
Bureau of Justice Statistics, 43 pp. (2008)

National Prison Rape Elimination Commission Report
National Prison Rape Elimination Commission, 259 pp. (2009)

Adults who want to have sex with children sometimes look for jobs that will make it easy. They want authority over kids, but no very onerous supervision; they also want positions that will make them seem more trustworthy than their potential accusers. Such considerations have infamously led quite a few pedophiles to sully the priesthood over the years, but the priesthood isn't for everyone. For some people, moral authority comes less naturally than blunter, more violent kinds.

Ray Brookins worked for the Texas Youth Commission (TYC), the state's juvenile detention agency. In October 2003, he was hired as head of security at the West Texas State School in Pyote. Like most TYC facilities, it's a remote place. The land is flat to the horizon, scattered with slowly bobbing oil derricks, and always windy. It's a long way from the families of most kids confined there, who tend to be urban and poor; a long way from any social services, or even the police. It must have seemed perfect to Brookins—and also to John Paul Hernandez, who was hired as the school's principal around the same time. Almost immediately, Brookins

started pulling students out of their dorms at night, long after curfew, and bringing them to the administration building. When asked why, he said it was for cleaning.[1]

In fact, according to official charges, for sixteen months Brookins and Hernandez molested the children in their care: in offices and conference rooms, in dorms and darkened broom closets and, at night, out in the desert. The boys tried to tell members of the staff they trusted; they also tried, both by letter and through the school's grievance system, to tell TYC officials in Austin. They did so knowing that they might be retaliated against physically, and worse, knowing that if Brookins caught them complaining he could and would extend their confinement,[2] and keep on abusing them.[3] They did so because they were desperate. But they were ignored by the authorities who should have intervened: both those running the school and those running the Texas Youth Commission.[4] Nor did other officials of the TYC who were informed by school staff about molestation take action.

Finally, in late February 2005, a few of the boys approached a volunteer math tutor named Marc Slattery. Something "icky" was going on, they said. Slattery knew it would be futile to go to school authorities—his parents, also volunteers, had previously told the superintendent of their own suspicions, and were "brow beat" for making allegations without proof[5]—so the next morning he called the Texas Rangers.[6] A sergeant named Brian Burzynski made the ninety-minute drive from his office in Fort Stockton that afternoon. "I saw kids with fear in their eyes," he testified later, "kids who knew they were trapped in an institution where the system would not respond to their cries for help."[7]

Slattery had only reported complaints against Brookins, not against Hernandez, but talking to the boys, Burzynski quickly realized that the principal was also a suspect. (Hernandez, it seems, was less of a bully than Brookins. When a boy resisted Brookins's advances in 2004, he was shackled in an isolation cell for thirteen hours.[8] Hernandez preferred to cajole students into sex with offers of chocolate cake, or help getting into college, or a place to stay after they were released.[9]) The two men were suspended and their homes searched—at which point it was discovered that Brookins was living on school grounds with a sixteen-year -old, who was keeping some of Brookins's "vast quantity of pornographic materials" under his bed.[10] Suspected semen samples were taken from the carpet, furniture, and walls of Brookins's office. He quickly resigned. In April, Hernandez was told he would be fired, whereupon he too resigned.

When the TYC received Burzynski's findings, it launched its own investigation. The internal report this produced was deeply flawed. Investigators didn't interview or blame senior administrators in Austin, though many of them had seen the warning signs and explicit claims of abuse at Pyote. But agency officials saw how damning the story was. Neither their report nor Burzynski's was made public.[11]

The Rangers forwarded Burzynski's report to Randall Reynolds, the local district attorney, but he did nothing. Even though it's a crime in all fifty states for corrections staff to have sex with inmates of any age, prosecutors rarely bring charges in such cases. For a time, from the TYC's perspective, the problem seemed to go away. The agency suspended Lemuel "Chip" Harrison, the superintendent of the school, for ninety days after concluding its investigation—he had ignored complaints about Brookins and Hernandez from many members of the staff—but then it promoted him, making him director of juvenile corrections. Brookins found a job at a

hotel in Austin, and Hernandez, astonishingly, became principal of a charter school in Midland.

Rumors have a way of spreading, though, however slowly. Eventually some reporters started digging, and on February 16, 2007, Nate Blakeslee broke the story in *The Texas Observer*. Doug Swanson followed three days later in *The Dallas Morning News*, starting an extraordinary run of investigative reporting in that paper: forty articles on abuse and mismanagement in the TYC by the end of March 2007, and to date more than seventy.[12] Pyote was only the beginning. The TYC's culture was thoroughly corrupt: rot had spread to all thirteen of its facilities.

Since January 2000, it turned out, juvenile inmates had filed more than 750 complaints of sexual misconduct by staff. Even that number was generally thought to underrepresent the true extent of such abuse, because most children were too afraid to report it: TYC staff commonly had their favorite inmates beat up those who complained. And even when they did file grievances, the kids knew it was unlikely to do them much good. Reports were frequently sabotaged, evidence routinely destroyed.[13]

In the same six-year period, ninety-two TYC staff had been disciplined or fired for sexual contact with inmates, which can be a felony. (One wonders just how blatant they must have been.) But again, as children's advocate Isela Gutierrez put it, "local prosecutors don't consider these kids to be their constituents."[14] Although five of the ninety-two were "convicted of lesser charges related to sexual misconduct," all received probation or had their cases deferred. Not one agency employee in those six years was sent to prison for sexually abusing a confined child.[15] And despite fierce public outrage at the scandal, neither Brookins nor Hernandez has yet faced trial. In the face of overwhelming evidence, but with recent history making their convictions unlikely, both claim innocence.

Texas is hardly the only state with a troubled juvenile justice system. In 2004, the Department of Justice investigated a facility in Plainfield, Indiana, where kids sexually abused each other so often and in such numbers that staff created flow charts to track the incidents. The victims were frequently as young as twelve or thirteen; investigators found "youths weighing under seventy pounds who engaged in sexual acts with youths who weighed as much as 100 pounds more than them."[16] A youth probation officer in Oregon was arrested the same year on more than seventy counts of sex crimes against children, and one of his victims hanged himself.[17] In Florida in 2005, corrections officers housed a severely disabled fifteen-year-old boy whose IQ was 32 with a seventeen-year-old sex offender, giving the seventeen-year-old the job of bathing him and changing his diaper. Instead, the seventeen-year-old raped him repeatedly.[18]

The list of such stories goes on and on. After each of them was made public, it was possible for officials to contend that they reflected anomalous failings of a particular facility or system. But a report just issued on January 7 by the Bureau of Justice Statistics (BJS) should change that. Mandated by the Prison Rape Elimination Act of 2003 (PREA), and easily the largest and most authoritative study of the issue ever conducted, it makes clear that the crisis of sexual abuse in juvenile detention is nationwide.

Across the country, 12.1 percent of kids questioned in the BJS survey said that they'd been sexually abused at their current facility during the preceding year. That's nearly one in eight, or approximately 3,220, out of the 26,550 who were eligible to participate. The survey, however, was only given at large facilities that held young people who had been "adjudicated"—i.e., found by a court to have committed an offense—for at least ninety days, which is more restrictive than it may sound. In total, according to the most recent data, there are nearly 93,000 kids in juvenile detention on any given day.[19] Although we can't assume that 12.1 percent of the larger number were sexually abused—many kids not covered by the survey are held for short periods of time, or in small facilities where rates of abuse are somewhat lower—we can say confidently that the BJS's 3,220 figure represents only a small fraction of the children sexually abused in detention every year.

What sort of kids get locked up in the first place? Only 34 percent of those in juvenile detention are there for violent crimes. (More than 200,000 youth are also tried as adults in the US every year, and on any given day approximately 8,500 kids under eighteen are confined in adult prisons and jails. Although probably at greater risk of sexual abuse than any other detained population, they haven't yet been surveyed by the BJS.) According to the National Prison Rape Elimination Commission, which was itself created by PREA, more than 20 percent of those in juvenile detention were confined for technical offenses such as violating probation, or for "status offenses" like missing curfews, truancy, or running away—often from violence and abuse at home. ("These kids have been raped their whole lives," said a former officer from the TYC's Brownwood unit.[20]) Many suffer from mental illness, substance abuse, and learning disabilities.

Fully 80 percent of the sexual abuse reported in the study was committed not by other inmates, but by staff. And surprisingly, 95 percent of the youth making such allegations said that they were victimized by female staff. Sixty-four percent of them reported at least one incident of sexual contact with staff in which no force or explicit coercion was used. Staff caught having sex with inmates often claim it's consensual. But staff have enormous control over inmates' lives. They can give inmates privileges, such as extra food or clothing or the opportunity to wash, and they can punish them: everything from beatings to solitary confinement to extended detention. The notion of a truly consensual relationship in such circumstances is grotesque even when the inmate is not a child.

Nationally, however, fewer than half of the corrections officials whose sexual abuse of juveniles is confirmed are referred for prosecution, and almost none are seriously punished. A quarter of all known staff predators in state youth facilities are allowed to keep their positions.[21]

The biggest risk factor found in the study was prior abuse. Some 65 percent of kids who had been sexually assaulted at another corrections facility were also assaulted at their current one. In prison culture, even in juvenile detention, after an inmate is raped for the first time he is considered "turned out," and fair game for further abuse.[22] Eighty-one percent of juveniles sexually abused by other inmates were victimized more than once, and 32 percent more than ten times. Forty-two percent were assaulted by more than one person. Of those victimized by staff, 88 percent had been abused repeatedly, 27 percent more than ten times, and 33 percent by more than one facility employee. Those who responded to the survey had been in their facilities for an average of 6.3 months.

Just as the BJS report on sexual abuse in juvenile detention facilities shows that problems like the ones at Pyote aren't limited to Texas, two previous BJS reports, on the incidence of sexual abuse in adult prisons and jails, show that abuses in juvenile detention are only a small part of a much larger human rights problem in this country. Published in December 2007 and June 2008, these were extensive studies: they surveyed a combined total of 63,817 inmates in 392 different facilities.

Sexual abuse in detention is difficult to measure. Prisoners sometimes make false allegations, but sometimes, knowing that true confidentiality is almost nonexistent behind bars and fearing retaliation, they decide not to disclose abuse. Although those who responded to the BJS surveys remained anonymous, it seems likely, on balance, that the studies underestimate the incidence of prisoner rape.[23] But even taken at face value, they reveal much more systemic abuse than has been generally recognized or admitted.

Using a snapshot technique—surveying a random sample[24] of those incarcerated on a given day and then extrapolating only from those numbers—the BJS found that 4.5 percent of the nation's prisoners, i.e., inmates who have been convicted of felonies and sentenced to more than a year, had been sexually abused in the facilities at which they answered the questionnaire during the preceding year: approximately 60,500 people. Moreover, 3.2 percent of jail inmates—i.e., people who were awaiting trial or serving short sentences—had been sexually abused in their facilities over the preceding six months, meaning an estimated total, out of those jailed on the day of the survey, of 24,700 nationwide.[25]

Both studies divide these reports of abuse in two different ways. They ask whether the perpetrator was another inmate or one of the facility's staff. And they differentiate between willing and unwilling sexual contact with staff, although recognizing that it is always illegal for staff to have sex with inmates. Similarly, they distinguish between "abusive sexual contact" from other inmates, or unwanted sexual touching, and what most people would call rape. The results are summarized in Tables 1 and 2. Overall, the more severe forms of abuse outnumber the lesser ones in both surveys. And the reported perpetrators in both jails and prisons, as in juvenile detention, are more often staff than inmates.

The prison survey estimates not only the number of people abused, but the instances of abuse. In our opinion, the BJS's methodology here undercounts the true number. Inmates who said they had been sexually abused were asked how many times. Their options were 1, 2, 3–10, and 11 times or more; that answers of "3–10" were assigned a value of 5, and "11 or more" a value of 12. We know of no reason to think that answers of "3–10" should be skewed so far toward the low end of the range, however—and inmates are sometimes raped many more than twelve times. Bryson Martel, for example:

> When I went to prison, I was twenty-eight years old, I weighed 123 pounds, and I was scared to death.... [Later] I had to list all the inmates who sexually assaulted me, and I came up with 27 names. Sometimes just one inmate assaulted me, and sometimes they attacked me in groups. It went on almost every day for the nine months I spent in that facility.

Because of these attacks, Martel contracted HIV. "You never heal emotionally," he said.[26]

Methodology aside, though, this question about frequency was an important one to ask, precisely because rape in prison is so often serial, and so often gang rape.[27] The BJS estimates that there were 165,400 instances of sexual abuse in state and federal prisons over the period of its study, an average of about two and a half for every victim. Had it made a similar estimate on the basis of data from its youth study using the same method, it would have found that juvenile victims were abused an average of six times each. Especially when thinking about the effects on a child, it's awful to realize that these numbers are probably too low.

What little attention the BJS reports on adult victims have received in the press has so far mostly been devoted to the prison study, not the one on jails. On June 23, 2009, the day the National Prison Rape Elimination Commission released its report, both *The New York Times* and *The Washington Post* ran editorials praising it, and both referred to the 60,500 number as if that represented the yearly national total for all inmates.[28] However, we believe that these papers missed the true implication of the BJS reports, and that the jail study is the more important of the two.

This is partly because the study of jails answers more questions, and does more to help us understand the dynamics of sexual abuse in detention—beginning with the racial dynamics.[29] Of white jail inmates, 1.8 percent reported sexual abuse by another inmate, whereas 1.3 percent of black inmates did. But when considering staff-on-inmate abuse, the situation is reversed. 1.5 percent of white inmates reported such incidents, but 2.1 percent of black inmates did. Overall, a black inmate is more likely to suffer sexual abuse in detention than a white one, 3.2 percent to 2.9 percent. The study did not report the race of perpetrators.[30]

Advocates have long known that victims of sexual abuse in detention tend to be those perceived as unable to defend themselves, and the jail study confirms this. Women were more likely to report abuse than men.[31] Younger inmates are more likely to be abused than older ones, gay inmates much more than straight ones, and people who had been abused at a previous facility most of all. (See **Table 3** for more detail.) Those targeted for abuse are also likely to be vulnerable in ways the BJS did not address in this report. Often they have mental disabilities or mental illness,[32] they are disproportionately likely to be first-time and nonviolent offenders,[33] and most simply, they are likely to be small.[34]

Nearly 62 percent of all reported incidents of staff sexual misconduct involved female staff and male inmates. Female staff were involved in 48 percent of staff-on-inmate abuse in which the inmates were unwilling participants. The rates at which female staff seem to abuse male inmates, in jails and in juvenile detention, clearly warrant further study. Of the women in jail, 3.7 percent reported inmate-on-inmate sexual abuse; 1.3 percent of men did. Does this mean that women are more likely to abuse each other behind bars than men, or that they're more willing to admit abuse? We don't know—but if they're simply more willing to admit abuse, then the BJS findings on men may have to be multiplied dramatically.

There is another, starker reason why the jail study is the most important. Jail is where most inmates get raped. On first glance at the reports it doesn't look this way. But—and this is what the press seems to have missed—because the BJS numbers come from snapshot surveys, they represent only a fraction of those incarcerated every year. People move in and out of jail

very quickly. The number of annual jail admissions is approximately seventeen times higher than the jail population on any given day.[35]

To get the real number of those sexually abused in jails over the course of a year, however, we can't simply multiply 24,700 by seventeen. Many people go to jail repeatedly over the course of a year; the number of people who go to jail every year is quite different from the number of admissions. Surprisingly, no official statistics are kept on the number of people jailed annually.[36] We've heard a very well-informed but off-the-record estimate that it is approximately nine times as large as the daily jail population, but we can't yet be confident about that.

Even if we could, though, we still couldn't just multiply 24,700 by nine. Further complicating the matter, snapshot techniques like the BJS's will disproportionately count those with longer sentences. If Joe is jailed for one week and Bill for two, Bill is twice as likely to be in jail on the day of the survey. Presumably, the longer you spend in jail, the more chance you have of being raped there. But even that is not as simple as it seems. Because those raped behind bars tend to fit such an identifiable profile—to be young, small, mentally ill, etc.—they are quickly recognized as potential victims. Very likely, they will be raped soon after the gate closes behind them, and repeatedly after that. The chance of being raped after a week in jail is likely not so different from the chance of being raped after a month. Probably more significant (at least, statistically) is the difference in the number of times an inmate is likely to be raped.

What is the right multiple—are five, six, seven times 24,700 people molested and raped in jail every year? We don't know yet, but we hope to soon. PREA requires the BJS to conduct its surveys annually. The BJS has revised its questionnaire to ask those who report abuse how long after they were jailed the first incident took place; it is also collecting data on the number of people jailed every year and the lengths of time they serve. Together, this new information should lead to much better estimates.

We do know already that all the BJS numbers published so far, which add up to almost 90,000, represent only a small portion of those sexually abused in detention every year. And that is without even considering immigration detention, or our vast system of halfway houses, rehab centers, and other community corrections facilities. Nor does it include Native American tribal detention facilities operated by the Bureau of Indian Affairs or corrections facilities in the territories.

In 1994, in *Farmer* v. *Brennan*, the Supreme Court angrily declared that "having stripped [inmates] of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course." Rape, wrote Justice David Souter, is "simply not 'part of the penalty'" we impose in our society.[37] But for many hundreds of thousands of men, women, and children, whether they were convicted of felonies or misdemeanors or simply awaiting trial, it has been. Most often, their assailants have been the very agents of the government who were charged with protecting them.

Beyond the physical injuries often sustained during an assault,[38] and beyond the devastating, lifelong psychological damage inflicted on survivors, rape in prison spreads diseases, including HIV.[39] Of all inmates, 95 percent are eventually released[40]—more than 1.5

million every year carrying infectious diseases, many of them sexually communicable[41]—and they carry their trauma and their illnesses with them, back to their families and their communities.

Prisoner rape is one of this country's most widespread human rights problems, and arguably its most neglected. Frustratingly, heartbreakingly—but also hopefully—if only we had the political will, we could almost completely eliminate it.

In the second part of this essay we will discuss the National Prison Rape Elimination Commission's report, which analyzes the dynamics and consequences of prisoner rape, shows how sexual abuse can be and in many cases already is being prevented in detention facilities across the country, and proposes standards for its prevention, detection, and response. Those standards are now with US Attorney General Eric Holder, who by law has until June 23, 2010, to review them before issuing them formally, following which they will become nationally binding. We will discuss the attorney general's troubling review process, the opposition of some corrections officials to the commission's standards, and why some important corrections leaders are so resistant to change.

—February 10, 2010

Notes

[11]Nate Blakeslee, "Hidden in Plain Sight," *The Texas Observer*, February 23, 2007 (published on the Web on February 16). This was the first story in the press about the troubles at Pyote, and is probably still the single best account of them.

[12]"At TYC, an inmate's length of stay is determined by a complex and controversial program known as Resocialization,...[which] is composed of specific academic, behavioral, and therapeutic objectives. Each category has numbered steps, known as phases, that the offender must reach.... Inmates have complained that TYC guards often retaliate against them by lodging disciplinary actions that cause phase setbacks." (Holly Becka and Gregg Jones, "Length of Stay Fluid for Many TYC Inmates," *The Dallas Morning News*, March 24, 2007.) At Pyote, more advanced phases also meant greater privileges: access to "hygiene items," for example (Burzynski, *Report of Investigation*, p. 52).

[13]After Burzynski began his investigation, the school superintendent determined that at least 25 students had been kept at the facility without adequate cause. (*Report of Investigation*, p. 63). Brookins also seems to have pursued at least one student after his release from juvenile detention. (*Report of Investigation*, pp. 73–74.)

[14]Nate Blakeslee, "New Evidence of Altered Documents in TYC Coverup," *The Texas Observer*, March 11, 2007. See also Blakeslee, "Hidden in Plain Sight."

[15]Tish Elliott-Wilkins, *Summary Report for Administrative Review*, p. 6.

[16]The Texas Rangers Division is a law enforcement agency with statewide jurisdiction; typically, Rangers become involved in cases that local authorities are unwilling or unable to handle properly.

[7]Emily Ramshaw, "Lawmakers Lambaste TYC Board for Failing to Act," *The Dallas Morning News*, March 8, 2007.

[8]Burzynski, *Report on Investigation*, p. 7. TYC policy states that when students are placed in shackles, administrators must reiterate their approval every thirty minutes; Brookins, however, "told security staff not to bother him about the situation until the next morning."

[9]Burzynski, *Report on Investigation*, pp. 32 and 36.

[10]"Accused TYC Official Lived with Boy," *The Dallas Morning News*, March 8, 2007. Both Brookins and the boy denied that they were having a sexual relationship.

[11]The TYC did, however, send a copy of the report to its board of directors; and it later turned out that Governor Rick Perry's office had been warned about sexual abuse in the TYC by multiple sources. See Ramshaw, "Lawmakers Lambaste TYC Board for Failing to Act"; Nate Blakeslee, "Sins of Commission," *Texas Monthly, May 2007;* and Doug J. Swanson and Steve McGonigle, "Mistakes, Mismanagement Wrecked TYC," *The Dallas Morning News*, May 13, 2007.

[12]For an index of these, see **www.shron.wordpress.com/texas-youth-commission-scandal/**. The paper also put a number of video interviews on its Web site, available at **www.dallasnews.com/s/dws/photography/2007/tyc/**.

[13]See Gregg Jones, Holly Becka, and Doug J. Swanson, "TYC Facilities Ruled by Fear," *The Dallas Morning News*, March 18, 2007:

> Brenda Faulk, 45, a correctional officer at [the Crockett State School] from 1997 until 2005, said it was common for documentation of abuses—broken bones, black eyes, concussions—to go missing. Photographs of injuries would vanish from infirmary files. Logbook pages would disappear.

See also Christy Hoppe and Doug J. Swanson, "TYC Sex Assaults Ignored," *The Dallas Morning News*, March 5, 2007. In 2006, the Department of Justice investigated the TYC's Evins Regional Juvenile Center and found that "Evins fails to adequately protect the youths in its care from youth and staff violence"; incidents of staff-on-youth violence were often recorded by the facility's security cameras, but according to its own investigator, "in about two-thirds of the cases, the video of an incident has been deleted before he is able to secure a copy for his investigation." (Wan J. Kim, "Letter to Rick Perry, Governor, Texas, Regarding Investigation of the Evins Regional Juvenile Center, Edinburg, Texas," March 15, 2007, available at **www.justice.gov/crt/split/documents/evins_findlet_3-15-07.pdf**.)

[14]See Blakeslee, "Hidden in Plain Sight."

[15]See Doug J. Swanson, "Sex Abuse Reported at Youth Jail," *The Dallas Morning News*, February 18, 2007.

[16]See Bradley J. Schlozman, "Letter to Mitch Daniels, Governor, Indiana, Regarding Investigation of the Plainfield Juvenile Correctional Facility, Indiana," September 9, 2005,

available at **www.justice.gov/crt/split/documents/split_indiana_plainfield_juv_findlet_9-9-05.pdf**.

[17]See "Teens' Abuser Gets Locked Up for Life," *The Oregonian*, October 14, 2005.

[18]See "Herald Watchdog: Juvenile Justice: State Put Disabled Boy in Sex Offender's Care," *Miami Herald*, October 20, 2005.

[19]See **www.ojjdp.ncjrs.gov/ojstatbb/ezacjrp**.

[20]See Doug J. Swanson, "Sex Abuse Alleged at 2nd Youth Jail," *The Dallas Morning News*, March 2, 2007. The article goes on to say that most inmates in Texas juvenile facilities "don't have criminal records because they are adjudicated as delinquent in a civil hearing and committed to TYC for open-ended periods.... About 60 percent of them come from low-income homes. More than half have families with criminal histories, and 36 percent had a childhood history of abuse or neglect. Some 80 percent have IQs below the mean score of 100."

[21]See "Sexual Violence Reported by Juvenile Correctional Authorities, 2005–06," Bureau of Justice Statistics, available at **www.bjs.ojp.usdoj.gov/content/pub/pdf/svrjca0506.pdf**.

[22]See *National Prison Rape Elimination Commission Report*, p. 71.

[23]This opinion is shared by the National Prison Rape Elimination Commission: see its report, pp. 1, 39, and 40. The commissioners were commenting on adults, but children may be even more likely to underreport abuse.

[24]In the prison study, however, "the size measures for [state] facilities housing female inmates were doubled to ensure a sufficient number of women to allow for meaningful analyses of sexual victimization by gender." And inmates younger than 18 were excluded from the surveys of adult facilities.

[25]Prison inmates had been in their current facilities for an average of 8.5 months prior to taking the survey; jail inmates had been in theirs for an average of 2.6 months.

[26]See **www.justdetention.org/en/action_updates/AU1009_web.pdf**.

[27]According to the jail study, 20 percent of incidents of staff-on-inmate sexual abuse involved more than one perpetrator, and 33 percent of inmate-on-inmate incidents did.

[28]"Rape in Prison," *TheNew York Times*, June 23, 2009, and "A Prison Nightmare: A Federal Commission Offers Useful Standards for Preventing Sexual Abuse Behind Bars," *The Washington Post*, June 23, 2009.

[29]It is impossible to understand life behind bars without considering racial dynamics—and above all, the unconscionable demographic composition of those we incarcerate in this country. For more on this, see David Cole's excellent article in these pages, "**Can Our Shameful Prisons Be Reformed?**," *The New York Review*, November 19, 2009.

[30]Since some inmates report abuse by other inmates and by staff, the percentages given do not amount to the totals. 3.2 percent of Hispanic inmates reported sexual abuse in jail; of those who said their race was "other," which includes American Indians, Native Hawaiians, and other Pacific Islanders, 4.1 percent did; and 4.2 percent of inmates who are two or more races (excluding those of Hispanic or Latino origin) reported abuse.

[31]"The number of incarcerated adult women increased by 757 percent from 1977 to 2007." (*National Prison Rape Elimination Commission Report*, p. 44.) And many of these women have been raped before going to prison. In the Washington Corrections Center for Women, for example, "more than 85 percent of women in the facility had reported a history of past sexual abuse." (*Report*, p. 63.) "Studies found that from 31 to 59 percent of incarcerated women reported being sexually abused as children, and 23 to 53 percent reported experiencing sexual abuse as adults." (*Report*, p. 71.)

[32]*National Prison Rape Elimination Commission Report*, p. 7. Robert Dumond, a researcher and clinician who is an expert on sexual abuse in detention, told the commission:

> Jails and prisons in the United States have become the de facto psychiatric facilities of the twenty-first century," housing more mentally ill individuals than public and private psychological facilities combined. The data back up this assertion: a survey of prisoners in 2006 suggests that more than half of all individuals incarcerated in State prisons suffer from some form of mental health problem and that the rate in local jails is even higher. (*Report*, p. 73.)

[33]"More than half of all newly incarcerated individuals between 1985 and 2000 were imprisoned for nonviolent drug or property offenses." (*National Prison Rape Elimination Commission Report*, p. 44.)

[34]See David Kaiser, "**A Letter on Rape in Prisons**," *The New York Review*, May 10, 2007.

[35]See Todd D. Minton and William J. Sabol, *Jail Inmates at Midyear 2007* (Bureau of Justice Statistics, 2008), p. 2; available at **www.bjs.ojp.usdoj.gov/content/pub/pdf/jim07.pdf**. Local jails made an estimated 13 million admissions during the twelve months ending June 29, 2007; the jailed inmate population on that day was 780,581. The same logic applies to the prison survey results, but there is much less turnover in the prison population. It also applies, more forcefully, to the results of the juvenile detention survey.

[36]Neither do there seem to be good statistics on the annual number of admissions to prison. We do know that as of June 30, 2008, counting both prisons and jails, the US incarcerates about 2.4 million people on any given day. (See Bureau of Justice Statistics, "Jail Inmates at Midyear 2008—Statistical Tables," available at **www.ojp.usdoj.gov/bjs/pub/pdf/jim08st.pdf**. See also Heather C. West and William J. Sabol, *Prison Inmates at Midyear 2008—Statistical Tables*, Bureau of Justice Statistics, available at **www.ojp.usdoj.gov/bjs/contentpub/pdf/pim08st.pdf**.) This is more than any other country in the world, either on a per capita basis or in absolute numbers. Including those in immigration and youth detention and those supervised in the community (in halfway houses and rehabilitation centers, on probation or parole), more than 7.3 million people are in

the corrections system on any given day. The cost to the country is more than $68 billion every year. (See *National Prison Rape Elimination Commission Report*, p. 2.)

[137]*Farmer* v. *Brennan*, 511 US 825 (1994).

[138]According to the jail study, approximately 20 percent of those sexually abused also suffered other physical injuries in the process; approximately 85 percent of that number suffered at least one serious injury, including knife and stab wounds, broken bones, rectal tearing, chipped or knocked-out teeth, internal injuries, and being knocked unconscious.

[139]"In 2005–2006, 21,980 State and Federal prisoners were HIV positive or living with AIDS. Researchers believe the prevalence of hepatitis C in correctional facilities is dramatically higher, based on [the] number of prisoners with a history of injecting illegal drugs prior to incarceration.... The incidence of HIV in certain populations outside correctional systems is likely attributable in part to [sexual] activity within correctional systems. Because of the disproportionate representation of minority men and women in correctional settings it is likely that the spread of these diseases in confinement will have an even greater impact on minority men, women, and children and their communities." (*National Prison Rape Elimination Commission Report*, pp. 129–130). The commissioners seem to be saying here, as delicately as they can, that they suspect prisoner rape has contributed to the way HIV infection in this country has shifted demographically: i.e., to the way AIDS has changed from being a predominantly gay disease to a predominantly black one.

[140]*National Prison Rape Elimination Commission Report*, p. 26.

[141]*National Prison Rape Elimination Commission Report*, p. 134.

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Study: Youths sexually abused in juvenile prisons

Updated 1/7/2010 9:45 PM

By Martha T. Moore, USA TODAY

More than 12% of youths in juvenile prisons are sexually abused while in custody there, according to a Justice Department study out Thursday, and the vast majority of cases involve female staff and boys under their supervision.

In the worst facilities surveyed — in Indiana, Maryland, North Carolina and Texas — more than 30% of youths reported they had been sexually victimized. The study, the first of its kind, shows a rate of sexual assault more than seven times higher than that indicated by a 2008 Justice Department report that collected sexual abuse claims to juvenile facility administrators. It is also higher than a similar study of adult prisons because of the "very high rate of staff sexual misconduct," said Allen Beck, who directed the survey for the Bureau of Justice Statistics.

The survey of 9,198 youths ages 13 to 21 — all in custody by order of a juvenile court — included methods to eliminate interviews considered unreliable. The survey covered 195 facilities, at least one in each state. Approximately 26,550 juveniles — 91% of them boys — are held in more than 500 such facilities around the country.

REPORT: Ohio guard dies after horseplay with teen

The survey showed that 10.3% of youths reported the sexual contact was with staff, compared with 2.6% who reported sexual victimization by other youths. In nearly half the incidents with staff, youths reported having sexual contact as a result of force.

The study sets a wider definition of sexual contact than rape, Beck said. Nonetheless, "these are all things that in the outside world would be considered violent or, by definition in law, they are illegal," he said.

Sexual victimization of youths in custody "is one of those hidden closets of the system," said Bart Lubow, director of the juvenile justice and strategy group for the Annie E. Casey Foundation, which advocates for children. The rates at the worst f acilities are "so high they're stunning," he said. "I am, on the other hand, never surprised as people peel the layers of the youth corrections onion and expose more and more things that make you cry."

Linda McFarlane of Just Detention International, an advocacy group focused on eliminating sexual abuse in prison, called the highest rates of abuse "shocking beyond belief."

"The incredibly high rates of staff misconduct is shocking and disturbing," McFarlane said. "We just need to do a better job with training and recruitment and hiring and supervision."

The survey showed that gay youths reported higher levels of sexual abuse from other juveniles, and so did youths who had been abused before coming to the facility.

That makes the survey valuable for juvenile facilities other than the type covered in the survey, she said. "While we can't say we know what's happening in, say, the smaller group-home settings … we can look at the information in this report and use it to protect those (particularly vulnerable) kids."

In Maryland, where 36% of youths surveyed at Backbone Mountain Youth Center said they had been victimized, the state Department of Juvenile Services

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said in a statement Thursday there will be an independent investigation by the state human resources and health agencies.

At Pendleton Juvenile Correctional Facility in Indiana, which also had among the highest rates of abuse in the study, four female guards were suspended a month ago after a report of sexual abuse, said Edwin Buss, state corrections commissioner.

Indiana officials say their own surveys show a much lower rate of sexual victimization.

"We're not denying that this happens," said Amanda Copeland, executive director of research and technology for the state Corrections Department. "We would be foolish to say that it never happens. We're just questioning the extent to which it's being reported" by the Justice Department. But the survey "gives us something to work with. Whether we agree with the percentages or the ratings or not, we recognize that we have issues and we need to address them, and we're taking steps to do so."

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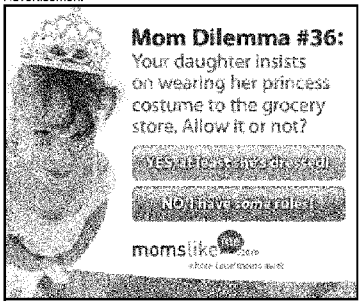

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U.S. Department of Justice
Office of Justice Programs

Bureau of Justice Statistics
Status Report

June 2009, NCJ 227377

Prison Rape Elimination Act of 2003

PREA Data Collection Activities, 2009

The Prison Rape Elimination Act of 2003 (PREA) (P.L. 108-79) requires the Bureau of Justice Statistics (BJS) to *carry out, for each calendar year, a comprehensive statistical review and analysis of the incidence and effects of prison rape*. The Act further specifies that the review and analysis *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*. Nearly 8,700 facilities nationwide are covered by the Act. BJS has developed a multiple-measure, multiple-mode data collection strategy to fully implement requirements under PREA.

Data collection activities during 2008 and 2009

Survey on Sexual Violence (SSV) in Correctional Facilities collects data annually on the incidence of sexual violence in adult and juvenile correctional facilities. This administrative records collection was first conducted in 2004 and was the first in a series of planned data collections to fully implement the mandates contained in the Prison Rape Elimination Act of 2003. The survey includes measures of four different types of sexual violence, and it is administered to a sample of at least 10% of the nearly 8,700 correctional facilities covered under the Act. Additional detail is collected on the characteristics of substantiated incidents of sexual violence. Data were collected in 2004, 2005, 2006, and 2007. The 2008 SSV is in progress.

The administrative records surveys provide a basis for the annual statistical review required under the Act. The surveys include all federal and state prison systems and facilities operated by the U.S. Armed Services (in the continental U.S.) and U.S. Immigration and Customs Enforcement. The surveys also include representative samples of jail jurisdictions, privately operated adult prisons and jails, and jails in Indian country. Overall, the SSV includes facilities housing nearly 2 million inmates, or more than 80% of all inmates held in adult facilities in 2007.

- All state and federal prison systems, all military facilities, and all sampled public and private jail facilities (542) responded to the survey. Eight of 50 facilities housing adults in Indian country and 1 of 13 facilities operated by U.S. Immigration and Customs Enforcement refused or did not respond to repeated requests. Results of the 2007 survey are expected to be released in August 2009.

- The administrative records surveys also include all state juvenile correctional systems and a representative sample of locally and privately operated juvenile facilities. As enumerated in the 2006 Juvenile Residential Facility Census, there were 3,025 non-tribal facilities. The 2007 SSV included all state facilities (501) and a sample of 330 local or private facilities. All state systems and the District of Columbia responded to the survey; two local or private facilities refused or did not respond to repeated requests.

- The 2008 SSV juvenile collection is currently in the field. Detailed information on substantiated incidents collected in 2007 and 2008 will be combined and issued in a separate report.

National Inmate Survey (NIS) gathers data on the incidence of sexual assault in correctional facilities. Data are collected directly from inmates in a private setting using Audio Computer-Assisted Self Interview (ACASI) technology with a laptop touchscreen and an audio feed to maximize inmate confidentiality and minimize literacy issues.

- Between October 2008 and January 2009, BJS completed the second annual NIS in 167 state and federal prisons. A total of 29,900 inmates participated in the survey, yielding a response rate of 71%.

- The 2008 NIS was designed in accordance with the requirement that BJS draw a random sample of not less than 10% of prison facilities. All of the sampled prison facilities (171) participated in the survey, except four that were determined to be ineligible.

- In 2008 BJS expanded NIS to include facilities operated by U.S. Immigration and Customs Enforcement, facilities operated by the U.S. Armed Services, and jails in Indian country. The 2008 NIS was also modified to provide more in-depth data on the number of incidents, the timing of sexual victimization after entry to the facility, and the relationship of inmate victimization to pat downs and strip searches by staff.

- In October 2009 BJS expects to release the report entitled *Sexual Victimization in State and Federal Prisons as Reported by Inmates, 2008*, which will provide rankings of prison facilities as required under the Act.

- Data collection in 330 randomly selected public and privately operated jails is in progress. Collection activities will be completed by September 2009. Jail rankings are expected to be released by March 2010.

Former Prisoner Survey (FPS) will provide a national estimate of the incidence of sexual victimization based on reports of former state prison inmates. Parole offices from across the nation were sampled, and a selection of former inmates under active parole supervision were interviewed using ACASI technology. The survey collects data on the totality of the prior term of incarceration, including any time in a local jail, state prison, or community correctional facility prior to final discharge.

- Between January and November 2008, BJS completed the FPS in a sample of 285 parole offices with nearly 18,000 former inmates.

- The dataset is being cleaned and weighted, with delivery of a final file in August 2009. Results are expected to be released by January 2010.

National Survey of Youth in Custody (NSYC) will provide facility-level estimates of youth reporting sexual victimization in juvenile facilities, as required under the Prison Rape Elimination Act of 2003. The NSYC includes a sample of state facilities and large locally or privately operated facilities housing adjudicated youth. After obtaining either individual parental consent or *in loco parentis* from the facility, a sample of youth in each selected facility was interviewed in a private setting using ACASI.

- The NSYC includes about 10,400 adjudicated youth in a sample of 168 state-operated facilities and 29 large non-state facilities with an average daily population of 150 or more youth during 2005. Data collection began in June 2008 and was completed in April 2009.

- In April 2009 BJS held a national workshop in Washington, DC, to discuss the NSYC data collection experience, the multiple measures of sexual violence, and different approaches for ranking facilities. Attendees of the day-long workshop included state juvenile correctional administrators, BJS statisticians, and staff from WESTAT, Inc., the NSYC data collection agent.

- The final dataset is being cleaned and weighted, with delivery anticipated in July 2009. Facility rankings will be released in a report by December 2009.

Clinical Indicators of Sexual Violence in Custody (CISVC) is a BJS collaboration with the National Institute of Justice and the Centers for Disease Control and Prevention to conduct a feasibility study using medical indicators and medical surveillance methodologies. The study will measure the incidence and prevalence of sexual assault in correctional facilities.

- The CISVC is designed to be conducted in the health care section of each participating correctional facility. Medical staff will complete a one-page surveillance form for adult male inmates who either make an allegation of sexual violence or display any of five clinical conditions (i.e., rectal bleeding; rectal or anal tears or fissures; bruises, scratches, or abrasions on buttocks; genital bruising; or nipple injuries).

- In April 2009 the Office of Management and Budget (OMB) approved the 12-month feasibility study. Recruitment of 25 prisons and 10 jails is underway, with data collection to begin in January 2010.

Released Reports

Sexual Victimization in Local Jails Reported by Inmates, 2007, NCJ 221946 <http://www.ojp.usdoj.gov/bjs/abstract/svljri07.htm>.

Sexual Violence Reported by Juvenile Correctional Authorities, 2005-2006, NCJ 215337 <http://www.ojp.usdoj.gov/bjs/abstract/svrjca0506.htm>.

Sexual Victimization in State and Federal Prisons as Reported by Inmates, 2007, NCJ 219414 <http://www.ojp.usdoj.gov/bjs/abstract/svsfpri07.htm>.

Sexual Violence Reported by Correctional Authorities, 2006, NCJ 218914 <http://www.ojp.usdoj.gov/bjs/abstract/svrca06.htm>.

Sexual Violence Reported by Correctional Authorities, 2005, NCJ 214646 <http://www.ojp.usdoj.gov/bjs/abstract/svrca05.htm>.

Sexual Violence Reported by Correctional Authorities, 2004, NCJ 210333 <http://www.ojp.usdoj.gov/bjs/abstract/svrca04.htm>.

U.S. House Of Representatives Holds Hearing On Sexual Violence In Youth Detention Facilities

Prison Abuse Remedies Act Would Give Victims Access To Justice, Says ACLU

FOR IMMEDIATE RELEASE
February 23, 2010

CONTACT: Claire O'Brien, (202) 675-2312; media@dcaclu.org

WASHINGTON – The House Subcommittee on Crime, Terrorism, and Homeland Security will hold a hearing today on preventing sexual assault in adult and juvenile detention facilities. The hearing comes on the heels of a report released last month by the Justice Department's Bureau of Justice Statistics (BJS), which revealed shockingly high rates of sexual abuse among youths in custody.

The American Civil Liberties Union urges members of Congress to support H.R. 4335, the Prison Abuse Remedies Act of 2009 (PARA), which removes barriers to justice for victims of sexual and other abuses in prison, jail and juvenile detention put in place by the Prison Litigation Reform Act (PLRA). The ACLU also calls on the Justice Department to finalize the standards recommended in June 2009 by a national bipartisan commission authorized by the Prison Rape Elimination Act (PREA) to end sexual abuse behind bars.

"For too long, the Prison Litigation Reform Act has stood in the way of justice for victims of sexual abuse in detention," said Laura Murphy, Director of the ACLU Washington Legislative Office. "By undermining the power of federal courts to hold prisons, jails and juvenile detention centers responsible for abuse, this bill has allowed abuse to go unchecked. Nothing could be more important to ensuring the safety of children behind bars than restoring their constitutional right to bring their abusers to justice in court. The Prison Abuse Remedies Act is the way to do it."

The BJS report found that an estimated 12 percent of youths in detention reported being sexually abused one or more times within the past year, with the majority of those assaults committed by a facility staff member. Under PLRA, victims of such abuse are effectively prevented from seeking justice and protection from the federal courts. Although the PLRA was originally intended to reduce frivolous lawsuits in federal court, certain provisions of the law are instead used to deny justice to victims of rape, assault, religious rights violations and other serious abuses. PARA would protect detained juveniles by exempting children under the age of 18 from the nearly insurmountable legal and procedural hurdles created by the PLRA.

"Youth in prison are particularly vulnerable because the Prison Litigation Reform Act virtually immunizes prison officials from accountability to the Constitution and federal law," said Amy Fettig, staff attorney with the ACLU National Prison Project. "Many youth either do not know of or do not understand the grievance systems in their facilities, and many more fear retaliation for filing grievances. As a result, the PLRA effectively bars most incarcerated youths and their parents from being able to address unlawful conditions of confinement. Congress needs to pass the Prison Abuse Remedies Act to protect incarcerated kids from otherwise unchecked abuse."

<over>

The ACLU has long opposed several provisions of the PLRA, including requiring prisoners to exhaust the internal complaint process of their correctional institution before filing a lawsuit, because prison officials, who are usually the defendants in prisoner suits, have every incentive to ensure that these processes are nearly impossible to navigate. As a result, many grievance systems in correctional facilities have become a game of "gotcha," with impossibly short deadlines and no exceptions for prisoners who are minors, ill, hospitalized, traumatized or incapacitated.

The PLRA also bars monetary damages for mental or emotional distress in the absence of physical injury. As a result, even intentional violations of the right to freedom of religion, free speech and due process go uncompensated and violators go unpunished because the injury involved was not "physical." Some courts have even interpreted PLRA to bar claims of serious sexual abuse simply because no "physical injury" was alleged by the prisoner. By exempting children under the age of 18 from the PLRA, PARA will allow youthful offenders to pursue justice for abuse they may suffer while incarcerated.

In addition to the need for Congress to pass the PARA, the Justice Department must finalize the standards recommended in June 2009 by the national bipartisan commission authorized by the PREA and aimed at ending sexual abuse behind bars. The PREA Commission standards represent the first national effort to eradicate the epidemic of rape and sexual violence behind bars in this country. The standards establish that sexual abuse is not an inevitable aspect of incarceration, but a preventable problem that can be addressed through sound policies, staff training, adequate housing, serious investigation, prisoner education and appropriate medical and mental health care. The PREA Commission has also recognized that reforming PLRA plays a key role in eliminating sexual abuse in U.S. prisons, jails and youth detention centers.

"It's crucial that Congress pass the Prison Abuse Remedies Act and that the Department of Justice finalize the PREA Commission standards as quickly as possible," said Jennifer Bellamy, ACLU Legislative Counsel. "Our country now incarcerates approximately 2.3 million Americans in increasingly abusive conditions of confinement. Our prisoners, especially incarcerated youth, cannot continue to be further shackled when it comes to their legal rights."

More information on PLRA is available at:
www.aclu.org/prison/restrict/32803res20071115.html

The Bureau of Justice Statistics report is available at:
http://bjs.ojp.usdoj.gov/content/pub/pdf/svjfry09.pdf

# # #

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The Rape of American Prisoners
by David Kaiser & Lovisa Stannow

The New York Review of Books
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The Rape of American Prisoners

David Kaiser and Lovisa Stannow

Adults who want to have sex with children sometimes look for jobs that will make it easy. They want authority over kids, but no very onerous supervision; they also want positions that will make them seem more trustworthy than their potential accusers. Such considerations have infamously led quite a few pedophiles to sully the priesthood over the years, but the priesthood isn't for everyone. For some people, moral authority comes less naturally than blunter, more violent kinds.

Ray Brookins worked for the Texas Youth Commission (TYC), the state's juvenile detention agency. In October 2003, he was hired as head of security at the West Texas State School in Pyote. Like most TYC facilities, it's a remote place. The land is flat to the horizon, scattered with slowly bobbing oil derricks, and always windy. It's a long way from the families of most kids confined there, who tend to be urban and poor; a long way from any social services, or even the police. It must have seemed perfect to Brookins—and also to John Paul Hernandez, who was hired as the school's principal around the same time. Almost immediately, Brookins started pulling students out of their dorms at night, long after curfew, and bringing them to the administration building. When asked why, he said it was for cleaning.[1]

James Stanton

Troy Erik Isaac, who was raped repeatedly by fellow inmates at a California juvenile facility, where he was sent for vandalism at the age of twelve. He spent the next two decades in and out of prison; he now works as a peer counselor and speaks to young people about his experience.

DOCUMENTS DRAWN ON FOR THIS ARTICLE

Summary Report for Administrative Review
by Trish Elliott-Wilkins.
Texas Youth Commission, Office of the General Counsel,
14 pp. (2005)

Report of Investigation
by Brian Burzynski.
Texas Department of Public Safety, Texas Ranger Division,
redacted version, 229 pp. (2005)

Sexual Victimization in Juvenile Facilities Reported by Youth, 2008–09
by Allen J. Beck, Paige M. Harrison, and Paul Guerino.
Bureau of Justice Statistics,
49 pp. (2010)

Sexual Victimization in State and Federal Prisons Reported by Inmates, 2007
by Allen J. Beck and Paige M. Harrison.
Bureau of Justice Statistics,
48 pp. (2007)

Sexual Victimization in Local Jails Reported by Inmates, 2007
by Allen J. Beck and Paige M. Harrison,
Bureau of Justice Statistics,
43 pp. (2008)

National Prison Rape Elimination Commission Report
National Prison Rape Elimination Commission, 259 pp. (2009)

Links to all cited documents are listed in the Web version of this article at www.nybooks.com.

In fact, according to official charges, for sixteen months Brookins and Hernandez molested the children in their care: in offices and conference rooms, in dorms and darkened broom closets and, at night, out in the desert. The boys tried to tell members of the staff they trusted; they also tried, both by letter and through the school's grievance system, to tell TYC officials in Austin. They did so knowing that they might be retaliated against physically, and worse, knowing that if Brookins caught them complaining he could and would extend their confinement, and keep on abusing them. They did so because they were desperate. But they were ignored by the authorities who should have intervened: both those running the school and those running the Texas Youth Commission. Nor did other officials of the TYC who were informed by school staff about molestation take action.

Finally, in late February 2005, a few of the boys approached a volunteer math tutor named Marc Slattery. Something "icky" was going on, they said. Slattery knew it would be futile to go to school authorities—his parents, also volunteers, had previously told the superintendent of their own suspicions, and were "brow beat" for making allegations without proof—so the next morning he called the Texas Rangers. A sergeant named Brian Burzynski made the ninety-minute drive from his office in Fort Stockton that afternoon. "I saw kids with fear in their eyes," he testified later, "kids who knew they were trapped in an institution where the system would not respond to their cries for help."

Slattery had only reported complaints against Brookins, not against Hernandez, but talking to the boys, Burzynski quickly realized that the principal was also a suspect. (Hernandez, it seems, was less of a bully than Brookins. When a boy resisted Brookins's advances in 2004, he was shackled in an isolation cell for thirteen hours. Hernandez preferred to cajole students into sex with offers of chocolate cake, or help getting into college, or a place to stay after they were released.) The two men were suspended and their homes searched—at which point it was discovered that Brookins was living on school grounds with a sixteen-year-old, who was keeping some of Brookins's "vast quantity of pornographic materials" under his bed. Suspected semen samples were taken from the carpet, furniture, and walls of Brookins's office. He quickly resigned. In April, Hernandez was told he would be fired, whereupon he too resigned.

When the TYC received Burzynski's findings, it launched its own investigation. The internal report this produced was deeply flawed. Investigators didn't interview or blame senior administrators in Austin, though many of them had seen the warning signs and explicit claims of abuse at Pyote. But agency officials saw how damning the story was. Neither their report nor Burzynski's was made public.

The Rangers forwarded Burzynski's report to Randall Reynolds, the local district attorney, but he did nothing. Even though it's a crime in all fifty states for corrections staff to have sex with inmates of any age, prosecutors rarely bring charges in such cases. For a time, from the TYC's perspective, the problem seemed to go away. The agency suspended Lemuel "Chip" Harrison, the superintendent of the school, for ninety days after concluding its investigation—he had ignored complaints about Brookins and Hernandez from many members of the staff—but then it promoted him, making him director of juvenile corrections. Brookins found a job at a hotel in Austin, and Hernandez, astonishingly, became principal of a charter school in Midland.

Rumors have a way of spreading, though, however slowly. Eventually some reporters started digging, and on February 16, 2007, Nate Blakeslee broke the story in *The Texas Observer*. Doug Swanson followed three days later in *The Dallas Morning News*, starting an extraordinary run of investigative reporting in that paper: forty articles on abuse and mismanagement in the TYC by the end of March 2007, and to date more than seventy. Pyote was only the beginning. The TYC's culture was thoroughly corrupt: rot had spread to all thirteen of its facilities.

Since January 2000, it turned out, juvenile inmates had filed more than 750 complaints of sexual misconduct by staff. Even that number was generally thought to underrepresent the true extent of such abuse, because most children were too afraid to report it: TYC staff commonly had their favorite inmates beat up those who complained. And even when they did file grievances, the kids knew it was unlikely to do them much good. Reports were frequently sabotaged, evidence routinely destroyed.

In the same six-year period, ninety-two TYC staff had been disciplined or fired for sexual contact with inmates, which can be a felony. (One wonders just how blatant they must have been.) But again, as children's advocate Isela Gutierrez put it, "local prosecutors don't consider these kids to be their constituents." Although five of the ninety-two were "convicted of lesser charges related to sexual misconduct," all received probation or had their cases deferred. Not one agency employee in those six years was sent to prison for sexually abusing a confined child. And despite fierce public outrage at the scandal, neither Brookins nor Hernandez has yet faced trial. In the face of overwhelming evidence, but with recent history making their convictions unlikely, both claim innocence.

Texas is hardly the only state with a troubled juvenile justice system. In 2004, the Department of Justice investigated a facility in Plainfield, Indiana,

[1] Nate Blakeslee, "Hidden in Plain Sight," *The Texas Observer*, February 23, 2007 (published on the Web on February 16, 2007). This was the first story in the press about the troubles at Pyote, and is probably still the single best account of them. Other footnotes substantiating the facts reported here and providing further details and explanations appear in the Web version of this article at www.nybooks.com.

where kids sexually abused each other so often and in such numbers that staff created flow charts to track the incidents. The victims were frequently as young as twelve or thirteen; investigators found "youths weighing under seventy pounds who engaged in sexual acts with youths who weighed as much as 100 pounds more than them." A youth probation officer in Oregon was arrested the same year on more than seventy counts of sex crimes against children, and one of his victims hanged himself. In Florida in 2005, corrections officers housed a severely disabled fifteen-year-old boy whose IQ was 32 with a seventeen-year-old sex offender, giving the seventeen-year-old the job of bathing him and changing his diaper. Instead, the seventeen-year-old raped him repeatedly.

The list of such stories goes on and on. After each of them was made public, it was possible for officials to contend that they reflected anomalous failings of a particular facility or system. But a report just issued on January 7 by the Bureau of Justice Statistics (BJS) should change that. Mandated by the Prison Rape Elimination Act of 2003 (PREA), and easily the largest and most authoritative study of the issue ever conducted, it makes clear that the crisis of sexual abuse in juvenile detention is nationwide.

Across the country, 12.1 percent of kids questioned in the BJS survey said that they'd been sexually abused at their current facility during the preceding year. That's nearly one in eight, or approximately 3,220, out of the 26,550 who were eligible to participate. The survey, however, was only given at large facilities that held young people who had been "adjudicated"—i.e., found by a court to have committed an offense—for at least ninety days, which is more restrictive than it may sound. In total, according to the most recent data, there are nearly 93,000 kids in juvenile detention on any given day. Although we can't assume that 12.1 percent of the larger number were sexually abused—many kids not covered by the survey are held for short periods of time, or in small facilities where rates of abuse are somewhat lower—we can say confidently that the BJS's 3,220 figure represents only a small fraction of the children sexually abused in detention every year.

What sort of kids get locked up in the first place? Only 34 percent of those in juvenile detention are there for violent crimes. (More than 200,000 youth are also tried as adults in the US every year, and on any given day approximately 8,500 kids under eighteen are confined in adult prisons and jails. Although probably at greater risk of sexual abuse than any other detained population, they haven't yet been surveyed by the BJS.) According to the National Prison Rape Elimination Commission, which was itself created by PREA, more than 20 percent of those in juvenile detention were confined for technical offenses such as violating probation, or for "status offenses" like missing curfews, truancy, or running away—often from violence and abuse at home. ("These kids have been raped their whole lives," said a former officer from the TYC's Brownwood unit.) Many suffer from mental illness, substance abuse, and learning disabilities.

Fully 80 percent of the sexual abuse reported in the study was committed not by other inmates but by staff. And surprisingly, 95 percent of the youth making such allegations said that they were victimized by female staff. Sixty-four percent of them reported at least one incident of sexual contact with staff in which no force or explicit coercion was used. Staff caught having sex with inmates often claim it's consensual. But staff have enormous control over inmates' lives. They can give inmates privileges, such as extra food or clothing or the opportunity to wash, and they can punish them: everything from beatings to solitary confinement to extended detention. The notion of a truly consensual relationship in such circumstances is grotesque even when the inmate is not a child.

Nationally, however, fewer than half of the corrections officials whose sexual abuse of juveniles is confirmed are referred for prosecution, and almost none are seriously punished. A quarter of all known staff predators in state youth facilities are allowed to keep their positions.

The biggest risk factor found in the study was prior abuse. Some 65 percent of kids who had been sexually assaulted at another corrections facility were also assaulted at their current one. In prison culture, even in juvenile detention, after an inmate is raped for the first time he is considered "turned out," and fair game for further abuse. Eighty-one percent of juveniles sexually abused by other inmates were victimized more than once, and 32 percent more than ten times. Forty-two percent were assaulted by more than one person. Of those victimized by staff, 88 percent had been abused repeatedly, 27 percent more than ten times, and 33 percent by more than one facility employee. Those who responded to the survey had been in their facilities for an average of 6.3 months.

Just as the BJS report on sexual abuse in juvenile detention facilities shows that problems like the ones at Pyote aren't limited to Texas, two previous BJS reports, on the incidence of sexual abuse in adult prisons and jails, show that abuses in juvenile detention are only a small part of a much larger human rights problem in this country. Published in December 2007 and June 2008, these were extensive studies: they surveyed a combined total of 63,817 inmates in 592 different facilities.

Sexual abuse in detention is difficult to measure. Prisoners sometimes make false allegations, but sometimes, knowing that true confidentiality is almost nonexistent behind bars and fearing retaliation, they decide not to disclose abuse. Although those who responded to the BJS surveys remained anonymous, it seems likely, on balance, that the studies underestimate the incidence of prisoner rape.[2] But even taken at face value, they reveal much more systemic abuse than has been generally recognized or admitted.

Using a snapshot technique—surveying a random sample of those incarcerated on a given day and then extrapolating only from those numbers—the BJS found that 4.5 percent

[2]This opinion is shared by the National Prison Rape Elimination Commission: see its report, pp. 1, 39, and 40. The commissioners were commenting on adults, but children may be even more likely to underreport abuse.

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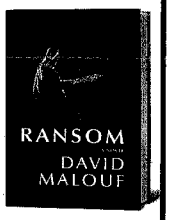

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of the nation's prisoners, i.e., inmates who have been convicted of felonies and sentenced to more than a year, had been sexually abused in the facilities at which they answered the questionnaire during the preceding year: approximately 60,500 people. Moreover, 3.2 percent of jail inmates—i.e., people who were awaiting trial or serving short sentences—had been sexually abused in their facilities over the preceding six months, meaning an estimated total, out of those jailed on the day of the survey, of 24,700 nationwide.[3]

Both studies divide these reports of abuse in two different ways. They ask whether the perpetrator was another inmate or one of the facility's staff. And they differentiate between willing and unwilling sexual contact with staff, although recognizing that it is always illegal for staff to have sex with inmates. Similarly, they distinguish between "abusive sexual contact" from other inmates, or unwanted sexual touching, and what most people would call rape. The results are summarized in Tables 1 and 2. Overall, the more severe forms of abuse outnumber the lesser ones in both surveys. And the reported perpetrators in both jails and prisons, as in juvenile detention, are more often staff than inmates.

The prison survey estimates not only the number of people abused, but the instances of abuse. In our opinion, the BJS's methodology here undercounts the true number. Inmates who said they had been sexually abused were asked how many times. Their options were 1, 2, 3–10, and 11 times or more; that answers of "3–10" were assigned a value of 5, and "11 or more" a value of 12. We know of no reason to think that answers of "3–10" should be skewed so far toward the low end of the range, however—and inmates are sometimes raped many more than twelve times. Bryson Martel, for example:

> When I went to prison, I was twenty-eight years old, I weighed 123 pounds, and I was scared to death.... [Later] I had to list all the inmates who sexually assaulted me, and I came up with 27 names. Sometimes just one inmate assaulted me, and sometimes they attacked me in groups. It went on almost every day for the nine months I spent in that facility.

Because of these attacks, Martel contracted HIV. "You never heal emotionally," he said.

Methodology aside, though, this question about frequency was an important one to ask, precisely because rape in prison is so often serial, and so often gang rape. The BJS estimates that there were 165,400 instances of sexual abuse in state and federal prisons over the period of its study, an average of about two and a half for every victim. Had it made a similar estimate on the basis of data from its youth study using the same method, it would have found that juvenile victims were abused an average of six times each. Especially when thinking about the effects on a child, it's awful to realize that these numbers are probably too low.

[3]Prison inmates had been in their current facilities for an average of 8.5 months prior to taking the survey; jail inmates had been in theirs for an average of 2.6 months.

What little attention the BJS reports on adult victims have received in the press has so far mostly been devoted to the prison study, not the one on jails. On June 23, 2009, the day the National Prison Rape Elimination Commission released its report, both *The New York Times* and *The Washington Post* ran editorials praising it, and both referred to the 60,500 number as if that represented the yearly national total for all inmates. However, we believe that these papers missed the true implication of the BJS reports, and that the jail study is the more important of the two.

This is partly because the study of jails answers more questions, and does more to help us understand the dynamics of sexual abuse in detention—beginning with the racial dynamics.[4] Of white jail inmates, 1.8 percent reported sexual abuse by another inmate, whereas 1.3 percent of black inmates did. But when considering staff-on-inmate abuse, the situation is reversed. 1.5 percent of white inmates reported such incidents, but 2.1 percent of black inmates did. Overall, a black inmate is more likely to suffer sexual abuse in detention than a white one, 3.2 percent to 2.9 percent. The study did not report the race of perpetrators.

Advocates have long known that victims of sexual abuse in detention tend to be those perceived as unable to

Table 1

STATE AND FEDERAL PRISONERS REPORTING SEXUAL VICTIMIZATION, 2007

	National Estimate	
	Number	*Percent*
Total	60,500	4.5%
Inmate-on-Inmate	27,500	2.1%
Nonconsensual sexual acts	16,800	1.3%
Abusive sexual contacts only	10,600	0.8%
Staff Sexual Misconduct	38,600	2.9%
Unwilling activity	22,600	1.7%
Excluding touching	16,900	1.3%
Touching only	5,700	0.4%
Willing activity	22,700	1.7%
Excluding touching	20,600	1.5%
Touching only	2,100	0.2%

Note: Detail may not sum to total because inmates may report more than one type of victimization. They may also report victimization by both other inmates and staff.

Source: Sexual Victimization in State and Federal Prisons Reported by Inmates, 2007

Table 2

LOCAL JAIL INMATES REPORTING SEXUAL VICTIMIZATION, 2007

	National Estimate	
	Number	*Percent*
Total	24,700	3.2%
Inmate-on-Inmate	12,100	1.6%
Nonconsensual sexual acts	5,200	0.7%
Abusive sexual contacts only	6,900	0.9%
Staff Sexual Misconduct	15,200	2.0%
Unwilling activity	10,400	1.3%
Excluding touching	8,300	1.1%
Touching only	2,100	0.3%
Willing activity	8,400	1.1%
Excluding touching	7,100	0.9%
Touching only	1,200	0.2%

Note: Detail may not sum to total because inmates may report more than one type of victimization. They may also report victimization by both other inmates and staff.

Source: Sexual Victimization in Local Jails Reported by Inmates, 2007

[4]It is impossible to understand life behind bars without considering racial dynamics—and above all, the unconscionable demographic composition of those we incarcerate in this country. For more on this, see David Cole's excellent article in these pages, "Can Our Shameful Prisons Be Reformed?," *The New York Review*, November 19, 2009.

defend themselves, and the jail study confirms this. Women were more likely to report abuse than men. Younger inmates are more likely to be abused than older ones, gay inmates much more than straight ones, and people who had been abused at a previous facility most of all. (See Table 3 in the Web version of this article for more detail.) Those targeted for abuse are also likely to be vulnerable in ways the BJS did not address in this report. Often they have mental disabilities or mental illness, they are disproportionately likely to be first-time and nonviolent offenders, and most simply, they are likely to be small.

Nearly 62 percent of all reported incidents of staff sexual misconduct involved female staff and male inmates. Female staff were involved in 48 percent of staff-on-inmate abuse in which the inmates were unwilling participants. The rates at which female staff seem to abuse male inmates, in jails and in juvenile detention, clearly warrant further study. Of the women in jail, 3.7 percent reported inmate-on-inmate sexual abuse; 1.3 percent of men did. Does this mean that women are more likely to abuse each other behind bars than men, or that they're more willing to admit abuse? We don't know—but if they're simply more willing to admit abuse, then the BJS findings on men may have to be multiplied dramatically.

There is another, starker reason why the jail study is the most important. Jail is where most inmates get raped. On first glance at the reports it doesn't look this way. But—and this is what the press seems to have missed—because the BJS numbers come from snapshot surveys, they represent only a fraction of those incarcerated every year. People move in and out of jail very quickly. The number of annual jail admissions is approximately seventeen times higher than the jail population on any given day.

To get the real number of those sexually abused in jails over the course of a year, however, we can't simply multiply 24,700 by seventeen. Many people go to jail repeatedly over the course of a year; the number of people who go to jail every year is quite different from the number of admissions. Surprisingly, no official statistics are kept on the number of people jailed annually. We've heard a very well-informed but off-the-record estimate that it is approximately nine times as large as the daily jail population, but we can't yet be confident about that.

Even if we could, though, we still couldn't just multiply 24,700 by nine. Further complicating the matter, snapshot techniques like the BJS's will disproportionately count those with longer sentences. If Joe is jailed for one week and Bill for two, Bill is twice as likely to be in jail on the day of the survey. Presumably, the longer you spend in jail, the more chance you have of being raped there. But even that is not as simple as it seems. Because those raped behind bars tend to fit such an identifiable profile—to be young, small, mentally ill, etc.—they are quickly recognized as potential victims. Very likely, they will be raped soon after the gate closes behind them, and repeatedly after that. The chance of being raped after a week in jail is likely not so different from the chance of being raped after a month. Probably more significant (at least, statistically) is the difference in the number of times an inmate is likely to be raped.

What is the right multiple—are five, six, seven times 24,700 people molested and raped in jail every year? We don't know yet, but we hope to soon. PREA requires the BJS to conduct its surveys annually. The BJS has revised its questionnaire to ask those who report abuse how long after they were jailed the first incident took place; it is also collecting data on the number of people jailed every year and the lengths of time they serve. Together, this new information should lead to much better estimates.

We do know already that all the BJS numbers published so far, which add up to almost 90,000, represent only a small portion of those sexually abused in detention every year. And that is without even considering immigration detention, or our vast system of halfway houses, rehab centers, and other community corrections facilities. Nor does it include Native American tribal detention facilities operated by the Bureau of Indian Affairs or corrections facilities in the territories.

In 1994, in *Farmer* v. *Brennan*, the Supreme Court angrily declared that "having stripped [inmates] of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course." Rape, wrote Justice David Souter, is "simply not 'part of the penalty'" we impose in our society. But for many hundreds of thousands of men, women, and children, whether they were convicted of felonies or misdemeanors or simply awaiting trial, it has been. Most often, their assailants have been the very agents of the government who were charged with protecting them.

Beyond the physical injuries often sustained during an assault, and beyond the devastating, lifelong psychological damage inflicted on survivors, rape in prison spreads diseases, including HIV. Of all inmates, 95 percent are eventually released—more than 1.5 million every year carrying infectious diseases, many of them sexually communicable—and they carry their trauma and their illnesses with them, back to their families and their communities.

Prisoner rape is one of this country's most widespread human rights problems, and arguably its most neglected. Frustratingly, heartbreakingly—but also hopefully—if only we had the political will, we could almost completely eliminate it.

In the second part of this essay we will discuss the National Prison Rape Elimination Commission's report, which analyzes the dynamics and consequences of prisoner rape, shows how sexual abuse can be and in many cases already is being prevented in detention facilities across the country, and proposes standards for its prevention, detection, and response. Those standards are now with US Attorney General Eric Holder, who by law has until June 23, 2010, to review them before issuing them formally, following which they will become nationally binding. We will discuss the attorney general's troubling review process, the opposition of some corrections officials to the commission's standards, and why some important corrections leaders are so resistant to change. □

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