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PRISON RAPE REDUCTION ACT OF 2003

JULY 18, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 1707]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1707) to provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Purposes.
Sec. 4. National prison rape statistics, data, and research.
Sec. 5. Prison rape prevention and prosecution.
Sec. 6. Grants to protect inmates and safeguard communities.
Sec. 7. National prison rape reduction commission.
Sec. 8. Adoption and effect of national standards.
Sec. 9. Requirement that accreditation organizations adopt accreditation standards.
Sec. 10. Definitions.

SEC. 2. FINDINGS.

Congress makes the following findings:

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

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

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

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

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

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

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

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

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

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

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

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

(13) The high incidence of sexual assault within prisons involves actual and potential violations of the United States Constitution. In Farmer v. Brennan, 511 U.S. 825 (1994), the Supreme Court ruled that deliberate indifference to the substantial risk of sexual assault violates prisoners' rights under the Cruel and Unusual Punishments Clause of the Eighth Amendment. The Eighth Amend-

ment rights of State and local prisoners are protected through the Due Process Clause of the Fourteenth Amendment. Pursuant to Congress's power under Section Five of the Fourteenth Amendment, Congress may take action to enforce those rights in States where officials have demonstrated such indifference. States that do not take basic steps to abate prison rape by adopting standards that do not generate significant additional expenditures demonstrate such indifference. Therefore, such States are not entitled to the same level of Federal benefits as other States.

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

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

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

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

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

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

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

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

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

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

(C) the rate of post-traumatic stress disorder, depression, suicide, and the exacerbation of existing mental illnesses among current and former inmates, contributing to increased health and medical expenditures throughout the Nation; and

(D) the risk of recidivism, civil strife, and violent crime by individuals who have been brutalized by prison rape.

SEC. 3. PURPOSES.

The purposes of this Act are to—

(1) establish a zero-tolerance standard for the incidence of prison rape in prisons in the United States;

(2) make the prevention of prison rape a top priority in each prison system;

(3) develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape;

(4) increase the available data and information on the incidence of prison rape, consequently improving the management and administration of correctional facilities;

(5) standardize the definitions used for collecting data on the incidence of prison rape;

(6) increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison rape;

(7) protect the Eighth Amendment rights of Federal, State, and local prisoners;

(8) increase the efficiency and effectiveness of Federal expenditures through grant programs such as those dealing with health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison construction, maintenance, and operation; race relations; poverty; unemployment; and homelessness; and

(9) reduce the costs that prison rape imposes on interstate commerce.

SEC. 4. NATIONAL PRISON RAPE STATISTICS, DATA, AND RESEARCH.

(a) ANNUAL COMPREHENSIVE STATISTICAL REVIEW.—

(1) IN GENERAL.—The Bureau of Justice Statistics of the Department of Justice (in this section referred to as the "Bureau") shall carry out, for each calendar year, a comprehensive statistical review and analysis of the incidence and effects of prison rape. The statistical review and analysis shall include, but not be limited to the identification of the common characteristics of—

(A) both victims and perpetrators of prison rape; and

(B) prisons and prison systems with a high incidence of prison rape.

(2) CONSIDERATIONS.—In carrying out paragraph (1), the Bureau shall consider the following:

(A) How rape should be defined for the purposes of the statistical review and analysis.

(B) How the Bureau should collect information about staff-on-inmate sexual assault.

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

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

(E) The categorization of prisons as required by subsection (c)(4).

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

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

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

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

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

(b) REVIEW PANEL ON PRISON RAPE.—

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

(2) MEMBERSHIP.—

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

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

(3) PUBLIC HEARINGS.—

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

(B) TESTIMONY AT HEARINGS.—

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

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

(C) SUBPOENAS.—

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

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

(c) REPORTS.—

(1) IN GENERAL.—Not later than June 30 of each year, the Attorney General shall submit a report on the activities of the Bureau and the Review Panel, with respect to prison rape, for the preceding calendar year to—

(A) Congress; and

(B) the Secretary of Health and Human Services.

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

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

(B) with respect to the incidence of prison rape—

(i) statistical data aggregated at the Federal, State, prison system, and prison levels;

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

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

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

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

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

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

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

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

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

SEC. 5. PRISON RAPE PREVENTION AND PROSECUTION.

(a) INFORMATION AND ASSISTANCE.—

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

(2) TRAINING AND EDUCATION.—The National Institute of Corrections shall conduct periodic training and education programs for Federal, State, and local

authorities responsible for the prevention, investigation, and punishment of instances of prison rape.

(b) REPORTS.—

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

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

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

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

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

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

(1) PROTECTING INMATES.—Protecting inmates by—

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

(B) investigating incidents of prison rape; or

(C) prosecuting incidents of prison rape.

(2) SAFEGUARDING COMMUNITIES.—Safeguarding communities by—

(A) making available, to officials of State and local governments who are considering reductions to prison budgets, training and technical assistance in successful methods for moderating the growth of prison populations without compromising public safety, including successful methods used by other jurisdictions;

(B) developing and utilizing analyses of prison populations and risk assessment instruments that will improve State and local governments' understanding of risks to the community regarding release of inmates in the prison population;

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

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

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

(D) promoting collaborative efforts, among officials of State and local governments and leaders of appropriate communities, to understand and address the effects on a community of the presence of a disproportionate number of released inmates in that community; or

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

(c) GRANT REQUIREMENTS.—

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

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

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

(d) APPLICATIONS.—

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

(2) CONTENTS.—Each application required by paragraph (1) shall—

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

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

(ii) will consider adopting all national prison rape standards that are promulgated under this Act after such date;

(B) specify with particularity the preventative, prosecutorial, or administrative activities to be undertaken by the State with the amounts received under the grant; and

(C) in the case of an application for a grant for one or more activities specified in paragraph (2) of subsection (b)—

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

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

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

(e) REPORTS BY GRANTEE.—

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

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

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

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

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

(g) AUTHORIZATION OF APPROPRIATIONS.—

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

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

SEC. 7. NATIONAL PRISON RAPE REDUCTION COMMISSION.

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

(b) MEMBERS.—

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

(A) 3 shall be appointed by the President;

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

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

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

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

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

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

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

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

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

(c) OPERATION.—

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

(2) MEETINGS.—The Commission shall meet at the call of the chairperson. The initial meeting of the Commission shall take place not later than 30 days after the initial appointment of the members is completed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) REPORT.—

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

(i) the President;

(ii) the Congress;

(iii) the Attorney General;

(iv) the Secretary of Health and Human Services;

(v) the Director of the Federal Bureau of Prisons;

(vi) the chief executive of each State; and

(vii) the head of the department of corrections of each State.

(B) CONTENTS.—The report under subparagraph (A) shall include—

(i) the findings and conclusions of the Commission;

(ii) recommended national standards for reducing prison rape;

(iii) recommended protocols for preserving evidence and treating victims of prison rape; and

(iv) a summary of the materials relied on by the Commission in the preparation of the report.

(e) RECOMMENDATIONS.—

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

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

(A) the classification and assignment of prisoners, using proven standardized instruments and protocols, in a manner that limits the occurrence of prison rape;

(B) the investigation and resolution of rape complaints by responsible prison authorities, local and State police, and Federal and State prosecution authorities;

(C) the preservation of physical and testimonial evidence for use in an investigation of the circumstances relating to the rape;

(D) acute-term trauma care for rape victims, including standards relating to—

(i) the manner and extent of physical examination and treatment to be provided to any rape victim; and

(ii) the manner and extent of any psychological examination, psychiatric care, medication, and mental health counseling to be provided to any rape victim;

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

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

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

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

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

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

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

(L) data collection and reporting of—

(i) prison rape;

(ii) prison staff sexual misconduct; and

(iii) the resolution of prison rape complaints by prison officials and Federal, State, and local investigation and prosecution authorities; and

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

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

(f) CONSULTATION WITH ACCREDITATION ORGANIZATIONS.—In developing recommended national standards for enhancing the detection, prevention, reduction, and punishment of prison rape, the Commission shall consider any standards that have already been developed, or are being developed simultaneously to the deliberations of the Commission. The Commission shall consult with accreditation organizations responsible for the accreditation of Federal, State, local or private prisons, that have developed or are currently developing standards related to prison rape. The Commission will also consult with national associations representing the corrections profession that have developed or are currently developing standards related to prison rape.

(g) HEARINGS.—

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

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

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

(i) PERSONNEL MATTERS.—

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

(2) DETAIL OF FEDERAL EMPLOYEES.—With the affirmative vote of ⅔ of the Commission, any Federal Government employee, with the approval of the head of the appropriate Federal agency, may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status, benefits, or privileges.

(3) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—Upon the request of the Commission, the Attorney General shall provide reasonable and appropriate office space, supplies, and administrative assistance.

(j) CONTRACTS FOR RESEARCH.—

(1) NATIONAL INSTITUTE OF JUSTICE.—With a ⅔ affirmative vote, the Commission may select nongovernmental researchers and experts to assist the Commission in carrying out its duties under this Act. The National Institute of Justice shall contract with the researchers and experts selected by the Commission to provide funding in exchange for their services.

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

(k) SUBPOENAS.—

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

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

(3) CONFIDENTIALITY OF DOCUMENTARY EVIDENCE.—Documents provided to the Commission pursuant to a subpoena issued under this subsection shall not be released publicly without the affirmative vote of ⅔ of the Commission.

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

(m) TERMINATION.—The Commission shall terminate on the date that is 60 days after the date on which the Commission submits the reports required by this section.

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

SEC. 8. ADOPTION AND EFFECT OF NATIONAL STANDARDS.

(a) PUBLICATION OF PROPOSED STANDARDS.—

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

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

(3) LIMITATION.—The Attorney General shall not establish a national standard under this section that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities. The Attorney General may, however, provide a list of improvements for consideration by correctional facilities.

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

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

(c) ELIGIBILITY FOR FEDERAL FUNDS.—

(1) COVERED PROGRAMS.—

(A) IN GENERAL.—For purposes of this subsection, a grant program is covered by this subsection if, and only if—

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

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

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

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

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

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

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

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

(5) REDISTRIBUTION OF AMOUNTS.—Amounts under a grant program not granted by reason of a reduction under paragraph (2), or returned by reason of the prohibition in paragraph (4), shall be granted to one or more entities not subject to such reduction or such prohibition, subject to the other laws governing that program.

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

(7) EFFECTIVE DATE.—

(A) REQUIREMENT OF ADOPTION OF STANDARDS.—The first grants to which paragraph (2) applies are grants for the second fiscal year beginning

after the date on which the national standards under section 8(a) are finalized.

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

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

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

(b) REQUIREMENTS.—To be eligible to receive Federal grants, an accreditation organization referred to in subsection (a) must meet the following requirements:

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

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

SEC. 10. DEFINITIONS.

In this Act, the following definitions shall apply:

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

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

(3) JAIL.—The term "jail" means a confinement facility of a Federal, State, or local law enforcement agency to hold—

(A) persons pending adjudication of criminal charges; or

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

(4) HIV.—The term "HIV" means the human immunodeficiency virus.

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

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

(A) inmates pending bail or transport to jail;

(B) inebriates until ready for release; or

(C) juveniles pending parental custody or shelter placement.

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

(A) any local jail or police lockup; and

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

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

(9) RAPE.—The term "rape" means—

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

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

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

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

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

(12) EXCLUSIONS.—The terms and conditions described in paragraphs (9) and (10) shall not apply to—

(A) custodial or medical personnel gathering physical evidence, or engaged in other legitimate medical treatment, in the course of investigating prison rape;

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

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

PURPOSE AND SUMMARY

H.R. 1707, the "Prison Rape Reduction Act of 2003" makes prevention of prison rape a priority for Federal, State, and local institutions and develops national standards for detection, prevention, reduction, and punishment of prison rape. The legislation requires State and local governments to work with the Federal Bureau of Justice Statistics (BJS) to study the number and effects of incidents of sexual assaults in correctional facilities and to adopt and maintain compliance with the national standards developed by the Attorney General.

All sections of the bill are intended to address the problem of inmates who are raped by fellow inmates as well as the equally serious problem of inmates who are raped by correctional staff and contractors.

BACKGROUND AND NEED FOR THE LEGISLATION

More than 2 million individuals were incarcerated in the United States at the end of 2001. Although most correctional facilities have procedures in place to protect inmates against violence from other inmates while they are incarcerated, often these procedures are not enough. There is very little data regarding the number of violent incidents that occur in correctional facilities, and even less data on the incidence of sexual assaults in prisons. Estimates put the incidence of sexual assaults as high as 13 percent of the inmates or as low as 3 percent. However, regardless of percentages, it is generally agreed that these incidents have real consequences for the physical, emotional, and psychological well-being of the prisoners, who may 1 day be released into society.

The original legislation mandated a study to determine the incidents and effects of sexual assault in correctional facilities and, provide accurate data for the first time on the number of incidents. The legislation as introduced was controversial due to its grant funding scheme. For institutions that complied with the Federal Government standards and requests for information, it would have increased the amount of all grant funding a State or local government receives by 10 percent, at the expense of those States who do not comply with such requests or adopt such standards. Additionally, because this legislation required that the grant funds designated must aggregate a minimum of $1 billion (affecting approximately one-third of all grants at the Office of Justice Programs),

many different grants for many entities that have no relationship to prisons might have been affected.

Due to the controversial provisions in the original legislation, a compromise was reached after negotiation among all the affected parties. A bipartisan substitute amendment representing that compromise was then reported favorably by the Subcommittee on Crime, Terrorism, and Homeland Security.

The substitute amendment still requires a study on the incidence and effects of sexual assault in correctional facilities and provide accurate data for the first time on the number of incidents; however, the controversial provisions have been changed. The substitute no longer rewards States and institutions who are invited to testify at the expense of other States and institutions. Additionally, the grant program provisions were revised in the substitute to specifically target only those grant programs which award funds to State and local prisons. The substitute requires States to adopt national standards for the prevention and prosecution of prison rape. States that do not adopt these standards can lose 5 percent of prison funds unless they choose to redirect those funds to become compliant with the national standards.

The provisions of this legislation, including both the reporting requirements and the standards and protections developed by the Attorney General, are intended to apply to all individuals detained in the United States in both civil and criminal detentions.

HEARINGS

The Committee's Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on H.R. 1707 on April 29, 2003. Testimony was received from four witnesses, Tracy Henke, Principal Deputy Assistant Attorney General, Office of Justice Programs, U.S. Department of Justice, Asbel T. Wall, II, Director, Department of Corrections, State of Rhode Island, Charles Kehoe, President, American Correctional Association, and Frank Hall, Director, Eagle Group, and with additional material submitted by fifteen individuals and organizations.

COMMITTEE CONSIDERATION

On June 11, 2003, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered favorably reported the bill H.R. 1707, with an amendment, by a voice vote, a quorum being present. On July 9, 2003, the Committee met in open session and ordered favorably reported the bill H.R. 1707, with an amendment, by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the Committee consideration of H.R. 1707.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activi-

ties under clause 2(b)(1) of Rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1707, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 17, 2003.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1707, the Prison Rape Reduction Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 1707—Prison Rape Reduction Act of 2003.

SUMMARY

H.R. 1707 would authorize the appropriation of:

- $15 million for each of the fiscal years 2004 through 2010 for the Department of Justice (DOJ) to carry out comprehensive statistical analyses of prison rape incidents nationwide;
- $5 million annually over the 2004–2010 period for DOJ to provide training and other assistance to federal, State, and local prison authorities to deter prison rape;
- $40 million annually over the 2004–2010 period for the DOJ to make grants to States to prevent and prosecute prison rape; and
- such sums as necessary to establish the National Prison Rape Reduction Commission, which would have two years to conduct a comprehensive study of the impacts of prison rape.

Assuming appropriation of the necessary amounts, CBO estimates that implementing

H.R. 1707 would cost $236 million over the 2004–2008 period. Enacting this legislation would not affect direct spending or revenues.

H.R. 1707 contains intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs of complying with those mandates would be significantly below the thresholds established under that act ($59 million for intergovernmental mandates and $117 million for private-sector mandates in 2003, adjusted for inflation). It also would provide benefits to State, local, and tribal governments in the form of new grant programs.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

For this estimate, CBO assumes that H.R. 1707 will be enacted by the end of fiscal year 2003, that the necessary amounts will be appropriated by the beginning of each fiscal year, and that outlays will follow the historical spending rates for these or similar activities. The estimated budgetary impact of H.R. 1707 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

	By Fiscal Year, in Millions of Dollars				
	2004	2005	2006	2007	2008
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
DOJ Statistical Analyses of Prison Rape					
Authorization Level	15	15	15	15	15
Estimated Outlays	4	10	15	15	15
Training and Assistance to Prison Authorities					
Authorization Level	5	5	5	5	5
Estimated Outlays	4	5	5	5	5
Grants to States to Prevent and Prosecute Prison Rape					
Authorization Level	40	40	40	40	40
Estimated Outlays	9	24	38	40	40
National Prison Rape Reduction Commission					
Estimated Authorization Level	1	1	0	0	0
Estimated Outlays	1	1	0	0	0
Total Changes					
Estimated Authorization Level	61	61	60	60	60
Estimated Outlays	18	40	58	60	60

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 1707 contains intergovernmental and private-sector mandates as defined in UMRA. It would require State, local, or tribal governments and entities in the private sector, if subpoenaed, to attend and produce written or other matter at hearings conducted by the Review Panel on Prison Rape and the National Prison Rape Reduction Commission. CBO expects that the panel and commission would likely exercise their subpoena power sparingly and that the costs to comply with a subpoena would not be significant. CBO estimates that the cost of those mandates to public and private entities would be small and well below the relevant annual thresholds established by UMRA.

In addition, this bill would provide benefits to State, local, and tribal governments. It would authorize appropriations of $315 million over seven years for new training and grant programs and would create a new information clearinghouse to assist local offi-

cials. Eligibility requirements, such as the adoption of current national standards, would be conditions of federal aid and not mandates as defined in UMRA.

This bill would direct the Attorney General to adopt national standards for the prevention of prison rape. Though the language specifies that those standards may not place substantial additional costs on federal, State, or local prison authorities, CBO has no basis for estimating what those standards might be or what costs State and local governments would face in complying with them.

Finally, the bill would add new conditions for existing grant programs. States that refused, or had localities that refused, to participate in the federal survey on prison rape would be required to return federal funds they received for prisons. In addition, State grant awards would be reduced by 5 percent if they did not comply with national standards or agree to use at least 5 percent of any federal grant money for prisons to maintain their compliance with the national standards.

ESTIMATE PREPARED BY:

Federal Costs: Mark Grabowicz (226–2860)
Impact on State, Local, and Tribal Governments: Melissa Merrell (225–3220)
Impact on the Private Sector: Paige Piper/Bach (226–2940)

ESTIMATE APPROVED BY:

Robert A. Sunshine
Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth these performance goals and objectives. H.R. 1707 authorizes funding for a grant program to make 1 year grants to State and local governments to prevent, investigate, and punish prison rape or to help in addressing prisoner and community safety issues in States facing budget crises. Additional funding is authorized to study the number and effects of incidents of sexual assaults in correctional facilities and to adopt and maintain compliance with the national standards developed by the Attorney General. The Committee goal is that these programs will reduce or eliminate the incidence of prison rape in Federal, State, and local institutions.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title. Table of Contents

This section sets forth the short title and the table of contents for the legislation.

Section 2. Findings

This section makes certain findings regarding the number of persons who are incarcerated in the United States and estimates the number of rapes that have occurred or will occur in the prisons. It also sets forth the social, economic, health, and psychological effects of rape on prisoners and the community. The section also cites constitutional considerations that may be raised with regard to deliberate indifference to prison rape.

Section 3. Purposes

This section establishes the purpose of this act to make collection of data on, and prevention of, sexual assault within correctional institutions a priority and to develop national standards that Federal, State, and local correctional institutions must follow for detection, prevention, reduction, and punishment of prison rape.

Section 4. National Prison Rape Statistics, Data, and Research

a) Annual Comprehensive Statistical Review

This section requires the Bureau of Justice Statistics (BJS), using random sampling, to collect statistics annually on inmates involved in sexual assaults in correctional facilities and prisons. Any State or local official or facility that declines to participate in the national survey or prohibits access to any inmate in custody will lose Federal prison grant funding for facilities under their jurisdiction.

b) Review Panel on Prison Rape

Bureau of Justice Statistics shall establish a Review Panel on Prison Rape consisting of three members with expertise in this area. The panel shall conduct public hearings concerning the operation of prisons to collect evidence to aid in the identification of common characteristics of prisons with both high and low incidences of rape.

The Panel shall request the public testimony of Federal, State, and local officials, including the warden or director of institutions, who bear the responsibility for prevention, detection, or punishment of rape. The Panel will have subpoena authority that may be enforced by the Attorney General.

The original text of the legislation provided for the Panel to request the public testimony of Federal, State and local officials, including the warden or director of an institution with the highest incidence of prison rape, who bear the responsibility for prevention, detection or punishment of rape at prison. If a State or local official appeared to testify, the entity would have received increases in grant funding of 10 percent at the expense of other States who failed to testify or refuse to testify. If a State or local official is not invited to testify, the entity would not be eligible for an increase in grant funding. This was eliminated in the substitute in favor of a more balanced approach. Institutions with both a high and low incidence of prison rape would be invited to testify or would receive subpoenas to testify but would not lose Federal funds. The Attorney General would have the authority to enforce the subpoenas.

c) Reports

BJS shall prepare an annual report to Congress, the Attorney General, and the Secretary of HHS regarding the effects of prison rape; statistics on incidence; identification of institutions where incidence exceeds the national median level; and identification of jail and police lockup systems where prison rape is largely avoidable.

d) Contracts for Research

This section authorizes appropriations of $15 million per year for FY 04 to FY 10 for BJS to contract for research on this issue.

Section 5. Prison Rape Prevention and Prosecution

a) Information and Assistance

This section establishes a national clearinghouse within the Department of Justice for information and assistance for Federal, State, and local authorities, which will provide information on prevention of prison rape and how States can address prisoner safety while facing budget crises.

b) Reports

The Attorney General shall provide Congress and HHS with an annual report of the activities taken under this section with regard to prison rape abatement.

c) Authorization of Appropriations

This section authorizes $5 million per year for FY 04 to FY 10 to carry out this section.

Section 6. Prison Rape Prevention and Prosecution Grants

a) Enhanced Response to Prison Rape Grants

This section requires the Attorney General to make 1 year grants to State and local governments to prevent, investigate, and punish prison rape or to help in addressing prisoner and community safety issues in States facing budget crises. The grants require a 50 percent match by the State or local government and may not exceed $1 million. Any applicant for a grant under this section must show that it has adopted all national prison rape standards and specify the particular actions it has taken to prevent and respond to prison rape. Each grantee must submit a report on the activities and an evaluation of the impact of such activities on incidents of prison rape.

b) Authorization of Appropriations

This section authorizes appropriations in the amount of $40 million per year for FY 04 to FY 10 to fund grants authorized under this section.

The original text of the legislation provided grants only for addressing issues of prison rape. Due to concerns of overcrowding and the budget crises facing the prisons, this section was expanded in the substitute to allow grants to be provided for either prison rape or community safety issues with regard to releasing prisoners.

Section 7. National Prison Rape Reduction Commission

This section establishes a National Prison Rape Reduction Commission composed of 9 members, three of whom are appointed by the President, with expertise in prison rape reduction matters. This section specifies the procedure for choosing members for the Commission and describes the procedures for the Commission meetings and operations. The Commission shall be charged with a comprehensive study on the effects of prison rape including the physical, psychological, social, and economic impact on government and society.

A report which includes the findings of the Commission, recommended national standards for reducing prison rape, protocols for preserving evidence, and a summary of materials collected shall be provided to the President, the House and Senate Judiciary Committees, the Attorney General, the Secretary of HHS, the Bureau of Prisons, and the governor of each State.

Recommendations shall include national standards on classification and assignment of prisoners; investigation and resolution of rape complaints; preservation of evidence; acute and long term care for both physical and psychological symptoms; HIV and other sexual disease testing; training of correctional staff; investigation of staff misconduct; confidentiality of prison rape complaints; data collection and reporting; and any other matters related to prevention and punishment of prison rape. The Commission shall not propose any recommended standard that would impose substantial increases in costs for Federal, State and local prisons.

The Commission has the authority to hold public hearings and subpoena witnesses for those hearings. The Attorney General may enforce the subpoenas. Such sums as may be necessary are authorized to be appropriated to carry out this section for FY2004 to FY 2010.

The Commission does not terminate until the report has been completed. The Commission is exempt from the Federal Advisory Committee Act (FACA).

Section 8. Adoption and Effect of National Standards

a) Publication of Proposed National Standards

The Attorney General is required to establish a rule adopting national standards based on recommendations of the Commission, but shall not establish national standards that would impose substantial increases in costs for Federal, State or local authorities. The Attorney General shall transmit the final rule to the governor of each State.

b) Applicability to Federal Bureau of Prisons

The final rule shall immediately apply to the Federal Bureau of Prisons.

c) Reduction in Federal Prison Grant Funding for Noncompliance with Standards

The Attorney General shall reduce by 5 percent any State's allocation of Federal grant funding for any grant program that provides funding to prisons unless the State certifies that it has adopt-

ed, and is in compliance with, the national standards or it will use that funding to become compliant with national standards.

Additionally, a State must cooperate with the survey performed by the Bureau of Justice Statistics or lose its Federal grant funding for prisons.

The original legislation provided that any State that adopted the national standards would receive a 10 percent increase in grant funding for all grant programs designated by the Attorney General affecting no less than $1 billion in grant funding and no more than $3 billion. This section was amended by the substitute due to concern that there was not a sufficient nexus between the all grant programs that would need to be included to meet this threshold and the issue of prison rape. The substitute narrowed the focus to only funds that were specifically directed to prisons and allowed a 5 percent reduction or redirection in these funds.

Section 9. Requirement that Accreditation Organization Adopt Accreditation Standards

Any organization responsible for accrediting prisons or jails shall not be eligible to receive any Federal grants during any period where it fails to adopt accreditation standards consistent with the national standards.

Section 10. Definitions

This section establishes definitions for terms pertaining to this legislation.

The original legislation contained an additional two sections. In the substitute amendment, section 9, having to do with model standards was consolidated in the section on adoption of national standards, and section 11, having to do with reductions in grants, was eliminated entirely to ensure the focus on prisons and the criminal justice system. The text was renumbered accordingly.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of Rule XIII of the Rules of the House of Representatives, the Committee notes H.R. 1707 makes no changes to existing law.

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, JULY 9, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr., [Chairman of the Committee] presiding.

* * * * *

Chairman SENSENBRENNER. The next item on the agenda is H.R. 1707, the "Prison Rape Reduction Act of 2003." The Chair recognizes the gentleman from North Carolina, Mr. Coble, the Chairman

of the Subcommittee on Crime, Terrorism, and Homeland Security for a motion.

Mr. COBLE. Mr. Chairman, the Subcommittee on Crime, Terrorism, and Homeland Security reports favorably the bill H.R. 1707. With a single amendment in the nature of a substitute, it moved its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 1707, follows:]

I

108TH CONGRESS
1ST SESSION

H. R. 1707

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 2003

Mr. WOLF (for himself and Mr. SCOTT of Virginia) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

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

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Prison Rape Reduction Act of 2003''.

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

Sec. 1. Short title; table of contents.

Sec. 2. Findings.
Sec. 3. Purposes.
Sec. 4. National prison rape statistics, data, and research.
Sec. 5. Prison rape prevention and prosecution.
Sec. 6. Prison rape prevention and prosecution grants.
Sec. 7. National Prison Rape Reduction Commission.
Sec. 8. Adoption and effect of national standards.
Sec. 9. Model standards for acute post-trauma treatment.
Sec. 10. Requirement that accreditation organizations adopt accreditation standards.
Sec. 11. Designation of grant programs for funding increases; adjustments to increases.
Sec. 12. Definitions.

SEC. 2. FINDINGS.

Congress makes the following findings:

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

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

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

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

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

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

(7) HIV and AIDS are major public health problems within America's correctional facilities. In 2000, 25,088 inmates in Federal and State prisons were known to be infected with HIV/AIDS. In 2000, HIV/AIDS accounted for more than 6 percent of all deaths in Federal and State prisons. Infection rates

for other sexually transmitted diseases, tuberculosis, and hepatitis B and C are also far greater for prisoners than for the American population as a whole. Prison rape undermines the public health by contributing to the spread of these diseases, and often giving a potential death sentence to its victims.

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

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

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

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

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

(13) The high incidence of sexual assault within prisons involves actual and potential violations of the United States Constitution. In Farmer v. Brennan, 511 U.S. 825 (1994), the Supreme Court ruled that deliberate indifference to the substantial risk of sexual assault violates prisoners' rights under the Cruel and Unusual Punishments Clause of the Eighth Amendment. The Eighth Amendment rights of State and local prisoners are protected through the Due Process Clause of the Fourteenth Amendment. Pursuant to Congress's power under Section Five of the Fourteenth Amendment, Congress may take action to enforce those rights in States where officials have demonstrated such indifference. States in which the incidence of prison rape exceeds the median by 30 percent whose officials refuse to explain their policies and practices regarding sexual assault and States that do not adopt carefully selected grant performance standards that do not generate significant additional expenditures demonstrate such indif-

ference. Therefore, such States are not entitled to the same level of Federal benefits as other States.

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

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

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

(C) increases health care expenditures, both inside and outside of prison systems, and reduces the effectiveness of disease prevention programs by substantially increasing the inci-

dence and spread of HIV, AIDS, tuberculosis, hepatitis B and C, and other diseases;

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

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

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

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

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

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

and medical expenditures throughout the Nation;

(C) the rate of post-traumatic stress disorder, depression, suicide, and the exacerbation of existing mental illnesses among current and former inmates, contributing to increased health and medical expenditures throughout the Nation; and

(D) the risk of recidivism, civil strife, and violent crime by individuals who have been brutalized by prison rape.

SEC. 3. PURPOSES.

The purposes of this Act are to—

(1) establish a zero-tolerance standard for the incidence of prison rape in prisons in the United States;

(2) make the prevention of prison rape a top priority in each prison system;

(3) develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape;

(4) increase the available data and information on the incidence of prison rape, consequently improving the management and administration of correctional facilities;

(5) standardize the definitions used for collecting data on the incidence of prison rape;

(6) increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison rape.

(7) protect the Eighth Amendment rights of Federal, State, and local prisoners;

(8) increase the efficiency and effectiveness of Federal expenditures through grant programs such as those dealing with health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison construction, maintenance, and operation; race relations; poverty; unemployment; and homelessness; and

(9) reduce the costs that prison rape imposes on interstate commerce.

SEC. 4. NATIONAL PRISON RAPE STATISTICS, DATA, AND RESEARCH.

(a) ANNUAL COMPREHENSIVE STATISTICAL REVIEW.—

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

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

(A) both victims and perpetrators of prison rape; and

(B) prisons and prison systems with a high incidence of prison rape.

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

(3) SURVEYS.—In carrying out the review required by this subsection, the Bureau shall, in addition to such other methods as the Bureau considers appropriate, use surveys and other statistical studies

of current and former inmates from a sample of Federal, State, county, and municipal prisons. The Bureau shall ensure the confidentiality of each survey participant.

(4) FAILURE TO PARTICIPATE.—If, after receiving a request from the Bureau under subparagraph (a)(2), a State of local official or facility administrator declines to participate in the national survey or prohibits access to any inmates under their legal custody, the entity represented by that official, or any jurisdiction to which the facility is subject, shall not be entitled in any funding increases under section 4, subsections (b)(3)(C) or (f).

(b) REVIEW PANEL ON PRISON RAPE.—

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

(2) MEMBERSHIP.—

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

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

(3) PUBLIC HEARINGS.—

(A) IN GENERAL.—The duty of the Panel shall be to carry out, for each calendar year, public hearings concerning the operation of each entity identified in a report under clause (ii) or (iii) of subsection (c)(2)(B). The purpose of these hearings shall be to collect evidence to aid in the identification of common characteristics of both victims and perpetrators of prison rape, and the identification of common characteristics of prisons and prison systems with a high incidence of prison rape.

(B) TESTIMONY AT HEARINGS.—

(i) PUBLIC OFFICIALS.—In carrying out the hearings required under subparagraph (A), the Panel shall request the public testimony of Federal, State, and local officials (and organizations that represent such officials), including the warden or director of each prison and the head of the prison system encompassing such prison,

who bear responsibility for the prevention, detection, and punishment of prison rape at each entity.

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

(C) FUNDING INCREASE AFTER TESTIMONY.—If, after receiving a request by the Panel under subparagraph (B)(i), a State or local official from an entity identified in a report under clause (ii) or (iii) of subsection (c)(2)(B) testifies at a reasonably designated time, the proportional share of the total Federal funds of the grant programs designated under section 11 provided to the entity represented by the official shall be increased by 10 percent in the fiscal year following the fiscal year in which the official testifies. No entity shall receive an increase in its proportional share of more than 10 percent under this subsection. This increase shall be in addition to any other increase provided under this Act.

(c) REPORTS.—

(1) IN GENERAL.—Not later than March 30 of each year, the Bureau shall submit a report on the activities of the Bureau (including the Review Panel), with respect to prison rape, for the preceding calendar year to—

(A) Congress;

(B) the Attorney General; and

(C) the Secretary of Health and Human Services.

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

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

(B) with respect to the incidence of prison rape—

(i) statistical data aggregated at the Federal, State, prison system, and prison levels;

(ii) an identification of the Federal Government, if applicable, and each State and local government (and each prison system and institution in the representative sample) where the incidence of prison rape

exceeds the national median level by not less than 30 percent; and

(iii) an identification of jail and police lockup systems in the representative sample where the incidence of prison rape is significantly avoidable.

(3) DATA ADJUSTMENTS.—In preparing the information specified in paragraph (2), the Bureau shall, not later than the second year in which surveys are conducted under this Act, use established statistical methods to adjust the data as necessary to account for exogenous factors, outside of the control of the State, prison system, or prison, which have demonstrably contributed to the incidence of prison rape. For each such adjustment made, the Bureau shall identify and explain such adjustment in the report.

(d) CONTRACTS AND GRANTS.—In carrying out its duties under this section, the Bureau may—

(1) contract with the National Research Council of the National Academy of Science;

(2) provide grants for research through the National Science Foundation or the National Institute of Justice; and

(3) contract with or provide grants to any other entity the Bureau deems appropriate.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $15,000,000 for each fiscal year to carry out the purposes of this section, which shall remain available until expended.

(f) FUNDING INCREASE.—The proportional share of the total Federal funds of the grant programs designated under section 11 provided to any Federal, State, or local government or prison system and institution that is not identified in a report under clause (ii) or (iii) of subsection (c)(2)(B) shall be increased by 10 percent in the fiscal year following the fiscal year in which the report is issued. This increase shall be in addition to any other increase provided under this Act.

SEC. 5. PRISON RAPE PREVENTION AND PROSECUTION.

(a) INFORMATION AND ASSISTANCE.—

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

(2) TRAINING AND EDUCATION.—The National Institute of Corrections shall conduct periodic train-

ing and education programs for Federal, State, and local authorities responsible for the prevention, investigation, and punishment of instances of prison rape.

(b) REPORTS.—

(1) IN GENERAL.—Not later than February 15 of each year, the National Institute of Corrections shall submit a report to Congress and the Secretary of Health and Human Services. This report shall be available to the Director of the Bureau of Justice Statistics.

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

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each fiscal year to carry out the purposes of this section, which shall remain available until expended.

SEC. 6. PRISON RAPE PREVENTION AND PROSECUTION GRANTS.

(a) ENHANCED RESPONSE TO PRISON RAPE GRANTS.—

(1) GRANTS AUTHORIZED.—The Attorney General shall make 1-year grants to States, units of local government, prisons, and prison systems.

(2) USE OF FUNDS.—Grants awarded under paragraph (1) shall only be used to—

(A) undertake more effective efforts to prevent prison rape;

(B) investigate such incidents; and

(C) punish the perpetrators.

(3) MATCHING REQUIREMENT.—The Federal financial assistance provided under this subsection may not exceed 50 percent of the total costs of the program being funded.

(4) MAXIMUM AMOUNT.—The Attorney General shall not award a grant under this subsection in an amount which exceeds $1,000,000.

(5) APPLICATIONS.—

(A) IN GENERAL.—To request a grant under this subsection, the chief executive of a State or unit of local government shall submit an application to the Attorney General at such time, in such manner, and accompanied by such information as the Attorney General may require.

(B) CONTENTS.—Each application required by subparagraph (A) shall—

(i) include the certification of the chief executive that the State receiving such grant (or the State encompassing the unit of local government receiving such grant) has adopted all national prison rape standards that have been promulgated under this Act; and

(ii) specify with particularity the additional preventative, prosecutorial, or administrative actions to be taken by the State or unit of local government to prevent prison rape and to respond to incidents of prison rape that occur.

(6) REPORT BY GRANTEE.—

(A) IN GENERAL.—The Attorney General shall require each grantee to submit, not later than December 31 of the year following the receipt of a grant under this section—

(i) a report on the activities carried out with grant amounts during the preceding Federal fiscal year; and

(ii) an evaluation of the impact of such activities on the incidence of prison

rape and the grantee's response to such incidents.

(B) DISSEMINATION.—The Attorney General shall provide a copy of each report submitted under subparagraph (A) to the National Prison Rape Reduction Commission until such Commission is terminated.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $40,000,000 for each fiscal year to fund the grants authorized under subsection (a), which shall remain available until expended.

SEC. 7. NATIONAL PRISON RAPE REDUCTION COMMISSION.

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

(b) MEMBERS.—

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

(A) 3 shall be appointed by the President;

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

appointed by the minority leader of the House of Representatives;

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

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

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

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

(3) CONSULTATION REQUIRED.—The President, the Speaker and minority leader of the House of Representatives, and the majority leader and minority leader of the Senate shall consult with one another prior to the appointment of the members of the Commission to achieve, to the maximum extent

possible, fair and equitable representation of various points of view with respect to the matters to be studied by the Commission.

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

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

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

(c) OPERATION.—

(1) CHAIRPERSON.—

(A) APPOINTMENT.—Not later than 15 days after the initial appointment of the members is completed, the President, the Speaker of the House of Representatives, and the majority leader of the Senate shall jointly appoint a chairperson for the Commission from among the members of the Commission.

(B) MAJORITY VOTE.—If the designation of a chairperson does not occur by the date

specified in subparagraph (A), the chairperson shall be appointed by the majority vote of the President, the Speaker and minority leader of the House of Representatives, and the majority leader and minority leader of the Senate.

(2) MEETINGS.—The Commission shall meet at the call of the chairperson. The initial meeting of the Commission shall take place not later than 30 days after the initial appointment of the members is completed.

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

(4) RULES.—Each member of the Commission shall have 1 vote. The Commission may establish by majority vote any other rules for the conduct of Commission business, if such rules are not inconsistent with this Act or other applicable law.

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

(1) IN GENERAL.—The Commission shall carry out a comprehensive legal and factual study of the penalogical, physical, mental, medical, social, and

economic impacts of prison rape in the United States on—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) REPORT.—

(A) DISTRIBUTION.—Not later than 24 months after the date of the initial meeting of the Commission, the Commission shall submit a report on the study carried out under this subsection to—

(i) the President;

(ii) the Committees on the Judiciary of the Senate and the House of Representatives;

(iii) the Attorney General;

(iv) the Secretary of Health and Human Services;

(v) the Director of the Federal Bureau of Prisons;

(vi) the chief executive of each State; and

(vii) the head of the department of corrections of each State.

(B) CONTENTS.—The report under subparagraph (A) shall include—

(i) the findings and conclusions of the Commission;

(ii) recommended national standards for reducing prison rape;

(iii) recommended protocols for preserving evidence and treating victims of prison rape; and

(iv) a summary of the materials relied on by the Commission in the preparation of the report.

(e) RECOMMENDATIONS.—

(1) IN GENERAL.—In conjunction with the report submitted under subsection (d)(3), the Commission shall provide the Attorney General and the Sec-

retary of Health and Human Services with recommended national standards for enhancing the detection, prevention, reduction, and punishment of prison rape.

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

(A) the classification and assignment of prisoners, using proven standardized instruments and protocols, in a manner that limits the occurrence of prison rape;

(B) the investigation and resolution of rape complaints by responsible prison authorities, local and State police, and Federal and State prosecution authorities;

(C) the preservation of physical and testimonial evidence for use in an investigation of the circumstances relating to the rape;

(D) acute-term trauma care for rape victims, including standards relating to—

(i) the manner and extent of physical examination and treatment to be provided to any rape victim; and

(ii) the manner and extent of any psychological examination, psychiatric care,

medication, and mental health counseling to be provided to any rape victim;

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

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

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

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

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

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

(K) creating a system for reporting incidences of prison rape that will ensure the confidentiality of prison rape complaints, protect inmates who make prison rape complaints

from retaliation, and assure the impartial resolution of prison rape complaints;

(L) data collection and reporting of—

(i) prison rape;

(ii) prison staff sexual misconduct; and

(iii) the resolution of prison rape complaints by prison officials and Federal, State, and local investigation and prosecution authorities; and

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

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

(f) HEARINGS.—

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

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

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

(h) PERSONNEL MATTERS.—

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

(2) DETAIL OF FEDERAL EMPLOYEES.—With the affirmative vote of ⅔ of the Commission, any Federal Government employee, with the approval of the head of the appropriate Federal agency, may be

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

(3) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—Upon the request of the Commission, the Attorney General shall provide reasonable and appropriate office space, supplies, and administrative assistance.

(i) CONTRACTS FOR RESEARCH.—

(1) NATIONAL RESEARCH COUNCIL.—With a ⅔ affirmative vote, the Commission may select nongovernmental researchers and experts to assist the Commission in carrying out its duties under this Act. The National Research Council of the National Academy of Sciences shall contract with the researchers and experts selected by the Commission to provide funding in exchange for their services.

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

(j) SUBPOENAS.—

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

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

(3) CONFIDENTIALITY OF DOCUMENTARY EVIDENCE.—Documents provided to the Commission pursuant to a subpoena issued under this subsection shall not be released publicly without the affirmative vote of ⅔ of the Commission.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the National Academy of Sciences such sums as may be necessary to carry out the purposes of this section. Any sums appropriated shall remain available, without fiscal year limitation, until expended.

(l) TERMINATION.—The Commission shall terminate on the date that is 60 days after the date on which the Commission submits the reports required by this section.

(m) EXEMPTION.—The Commission shall be exempt from the Federal Advisory Committee Act.

SEC. 8. ADOPTION AND EFFECT OF NATIONAL STANDARDS.

(a) PUBLICATION OF PROPOSED STANDARDS.—

(1) IN GENERAL.—Not later than 180 days after receiving the report required under section 7(d)(3) from the National Prison Rape Reduction Commission, the Attorney General shall publish a notice of proposed rulemaking for the adoption of national standards for the detection, prevention, reduction, and punishment of prison rape.

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

(3) LIMITATION.—The Attorney General shall not establish a national standard under this section that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities. The Attorney General may, however, provide a list of improvements for consideration by correctional facilities.

(4) FINAL RULE.—Not later than 1 year after receiving the report specified in paragraph (1), the Attorney General shall publish a final rule adopting

national standards for the detection, prevention, reduction, and punishment of prison rape.

(5) TRANSMISSION TO STATES.—Upon publishing the final rule under paragraph (4), the Attorney General shall transmit the national standards adopted under such paragraph to the chief executive of each State and the head of the department of corrections of each State.

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

(c) FUNDING INCREASE.—The proportional share of the total Federal funds of the grant programs designated under section 11 provided to a State shall be increased by 10 percent in the 2 fiscal years following the fiscal year in which the State enacts a statute that expressly adopts the national standards received by the State under subsection (a)(5), as applicable to that State. This increase shall be in addition to any other increase provided under this Act.

(d) CERTIFICATION.—(1) Each State which adopts the national standards pursuant to section 8(c)(1) hereof shall, every two years, obtain, from an accreditation orga-

nization that is in compliance with section 10 of this Act, a certification that the State is in compliance with the national standards and in particular has adopted a system that is adequate and effective to ensure compliance with the section 7(e)(2)(K) standards regarding the confidentiality of prison rape complaints, protection of complainants from retaliation, and impartial resolution of prison rape complaints.

(2) The proportional share of the total Federal funds of the grant programs designated under section 11 provided to a State shall be increased by 10 percent for the 2 fiscal years following the fiscal year in which the State achieves a certification under paragraph (1). This increase shall be in addition to any other increase provided under this Act, except it shall not be provided in addition to any increase under subsection (c) of this section.

SEC. 9. MODEL STANDARDS FOR ACUTE POST-TRAUMA TREATMENT.

(a) REVIEW OF MODEL PROGRAMS AND PROTOCOLS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services, in consultation with the Attorney General, shall complete a review of model programs and protocols for the response to and treatment of acute trauma for male and female rape victims within prisons and jails.

(b) MODEL STANDARDS.—

(1) IN GENERAL.—Upon completion of the review required by subsection (a), the Secretary shall establish model standards relating to—

(A) the preservation of physical and testimonial evidence for use in an investigation of the circumstances relating to the rape;

(B) the manner and extent of physical examination and treatment to be provided to any rape victim;

(C) the manner and extent of any psychological examination, psychiatric care (including, if appropriate, medication), and mental health counseling to be provided to any rape victim;

(D) the preservation of the confidentiality of information relating to prison rape victims; and

(E) the production and dissemination within a prison system of model response protocols and programs for the treatment of, investigation of, and response to prison rape.

(2) LIMITATION.—The Secretary shall not establish a model standard that would impose substantial additional costs compared to the costs presently

expended by Federal, State, and local prison authorities.

(c) SUMMARY.—

(1) IN GENERAL.—Upon completion of the review required by subsection (a) and the establishment of model standards required by subsection (b), the Secretary shall submit a summary of the results of the review and the model standards to the National Prison Rape Reduction Commission.

(2) CONTENTS.—The summary shall include, for each model standard, the estimated costs for implementation of such standard and the basis for such estimates.

SEC. 10. REQUIREMENT THAT ACCREDITATION ORGANIZATIONS ADOPT ACCREDITATION STANDARDS.

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

(b) REQUIREMENTS.—To be eligible to receive Federal grants, an accreditation organization referred to in subsection (a) must meet the following requirements:

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

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

SEC. 11. DESIGNATION OF GRANT PROGRAMS FOR FUNDING INCREASES; ADJUSTMENTS TO INCREASES.

(a) DESIGNATION OF GRANT PROGRAMS.—Not later than 120 days after the date of enactment of this Act, and on a fixed date each year thereafter, the Attorney General shall designate and publish a list of formula grant programs that, in combination, aggregate no less than $1,000,000,000 and no more than $3,000,000,000 in annual Federal appropriations, which programs are most related to the failure to abate prison rape.

(b) CAP ON INCREASES.—For any formula grant program identified under subsection (a), the total dollar amount of any increase in the grant provided to any State or other entity under this Act shall not exceed 10 percent of the total Federal funds available under such grant program.

(c) SOURCE OF FUNDS FOR INCREASES.—For any increased grants provided under this Act to any entity under any grant program designated pursuant to subsection (a), the increased grant shall be provided first by funds redistributed from all grants under the program to entities that are not entitled to any increases under this Act, except that no grant shall be reduced by more than 20 percent of the total grant funds that otherwise would have been awarded, and second by funds redistributed from all other grants under the program.

(d) EFFECTIVE DATE OF INCREASE.—The programs designated under subsection (a) shall be subject to increases under this Act in the first fiscal year that commences after the date the Attorney General designates such programs.

SEC. 12. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) CARNAL KNOWLEDGE.—The term ''carnal knowledge'' means contact between the penis and

the vulva or the penis and the anus, including penetration of any sort, however slight.

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

(3) JAIL.—The term ''jail'' means a confinement facility of a Federal, State, or local law enforcement agency to hold—

(A) persons pending adjudication of criminal charges; or

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

(4) HIV.—The term ''HIV'' means the human immunodeficiency virus.

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

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

(A) inmates pending bail or transport to jail;

(B) inebriates until ready for release; or

(C) juveniles pending parental custody or shelter placement.

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

(A) any local jail or police lockup; and

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

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

(9) RAPE.—The term ''rape'' means—

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

(B) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person not forcibly or against the person's will, where the victim is incapable of giving con-

sent because of his or her youth or his or her temporary or permanent mental or physical incapacity; or

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

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

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

(12) EXCLUSIONS.—The terms and conditions described in paragraphs (9) and (10) shall not apply to—

(A) custodial or medical personnel gathering physical evidence, or engaged in other legitimate medical treatment, in the course of investigating prison rape;

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

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

○

Chairman SENSENBRENNER. And the Subcommittee amendment in the nature of a substitute, which the Members have before them, will be considered as read, considered as the original text for purpose of amendment, and open for amendment at any point.

[The amendment in the nature of a substitute follows:]

SUBCOMMITTE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1707

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Prison Rape Reduction Act of 2003''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Purposes.
Sec. 4. National prison rape statistics, data, and research.
Sec. 5. Prison rape prevention and prosecution.
Sec. 6. Grants to protect inmates and safeguard communities.
Sec. 7. National prison rape reduction commission.
Sec. 8. Adoption and effect of national standards.
Sec. 9. Requirement that accreditation organizations adopt accreditation standards.
Sec. 10. Definitions.

SEC. 2. FINDINGS.

Congress makes the following findings:

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

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

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

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

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

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

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

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

(9) The frequently interracial character of prison sexual assaults significantly exacerbates inter-

racial tensions, both within prison and, upon release of perpetrators and victims from prison, in the community at large.

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

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

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

(13) The high incidence of sexual assault within prisons involves actual and potential violations of the United States Constitution. In Farmer v. Brennan, 511 U.S. 825 (1994), the Supreme Court ruled that deliberate indifference to the substantial risk of sexual assault violates prisoners' rights under the Cruel and Unusual Punishments Clause of the Eighth Amendment. The Eighth Amendment rights of State and local prisoners are protected through the Due

Process Clause of the Fourteenth Amendment. Pursuant to Congress's power under Section Five of the Fourteenth Amendment, Congress may take action to enforce those rights in States where officials have demonstrated such indifference. States that do not take basic steps to abate prison rape by adopting standards that do not generate significant additional expenditures demonstrate such indifference. Therefore, such States are not entitled to the same level of Federal benefits as other States.

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

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

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

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

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

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

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

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

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

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

(C) the rate of post-traumatic stress disorder, depression, suicide, and the exacerbation of existing mental illnesses among current and former inmates, contributing to increased health and medical expenditures throughout the Nation; and

(D) the risk of recidivism, civil strife, and violent crime by individuals who have been brutalized by prison rape.

SEC. 3. PURPOSES.

The purposes of this Act are to—

(1) establish a zero-tolerance standard for the incidence of prison rape in prisons in the United States;

(2) make the prevention of prison rape a top priority in each prison system;

(3) develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape;

(4) increase the available data and information on the incidence of prison rape, consequently improving the management and administration of correctional facilities;

(5) standardize the definitions used for collecting data on the incidence of prison rape;

(6) increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison rape;

(7) protect the Eighth Amendment rights of Federal, State, and local prisoners;

(8) increase the efficiency and effectiveness of Federal expenditures through grant programs such as those dealing with health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison construction, maintenance, and operation; race relations; poverty; unemployment; and homelessness; and

(9) reduce the costs that prison rape imposes on interstate commerce.

SEC. 4. NATIONAL PRISON RAPE STATISTICS, DATA, AND RESEARCH.

(a) ANNUAL COMPREHENSIVE STATISTICAL REVIEW.—

(1) IN GENERAL.—The Bureau of Justice Statistics of the Department of Justice (in this section referred to as the ''Bureau'') shall carry out, for each calendar year, a comprehensive statistical review and analysis of the incidence and effects of prison rape. The statistical review and analysis shall include, but not be limited to the identification of the common characteristics of—

(A) both victims and perpetrators of prison rape; and

(B) prisons and prison systems with a high incidence of prison rape.

(2) CONSIDERATIONS.—In carrying out paragraph (1), the Bureau shall consider the following:

(A) How rape should be defined for the purposes of the statistical review and analysis.

(B) How the Bureau should collect information about staff-on-inmate sexual assault.

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

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

(E) The categorization of prisons as required by subsection (c)(4).

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

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

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

vey. Selection of a facility for sampling during any year shall not preclude its selection for sampling in any subsequent year.

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

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

(b) REVIEW PANEL ON PRISON RAPE.—

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

(2) MEMBERSHIP.—

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

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

(3) PUBLIC HEARINGS.—

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

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

(B) TESTIMONY AT HEARINGS.—

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

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

(C) SUBPOENAS.—

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

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

(c) REPORTS.—

(1) IN GENERAL.—Not later than June 30 of each year, the Attorney General shall submit a report on the activities of the Bureau and the Review Panel, with respect to prison rape, for the preceding calendar year to—

(A) Congress; and

(B) the Secretary of Health and Human Services.

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

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

(B) with respect to the incidence of prison rape—

(i) statistical data aggregated at the Federal, State, prison system, and prison levels;

(ii) a listing of those institutions in the representative sample, separated into

each category identified under subsection (c)(4) and ranked according to the incidence of prison rape in each institution; and

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

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

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

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

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

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

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

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

SEC. 5. PRISON RAPE PREVENTION AND PROSECUTION.

(a) INFORMATION AND ASSISTANCE.—

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

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

(b) REPORTS.—

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

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

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

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

(a) GRANTS AUTHORIZED.—From amounts made available for grants under this section, the Attorney General shall make grants to States to assist those States in

ensuring that budgetary circumstances (such as reduced State and local spending on prisons) do not compromise efforts to protect inmates (particularly from prison rape) and to safeguard the communities to which inmates return. The purpose of grants under this section shall be to provide funds for personnel, training, technical assistance, data collection, and equipment to prevent and prosecute prisoner rape.

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

(1) PROTECTING INMATES.—Protecting inmates by—

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

(B) investigating incidents of prison rape; or

(C) prosecuting incidents of prison rape.

(2) SAFEGUARDING COMMUNITIES.—Safeguarding communities by—

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

erating the growth of prison populations without compromising public safety, including successful methods used by other jurisdictions;

(B) developing and utilizing analyses of prison populations and risk assessment instruments that will improve State and local governments' understanding of risks to the community regarding release of inmates in the prison population;

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

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

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

(D) promoting collaborative efforts, among officials of State and local governments and leaders of appropriate communities, to understand and address the effects on a community of the presence of a disproportionate number of released inmates in that community; or

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

(c) GRANT REQUIREMENTS.—

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

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

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

(d) APPLICATIONS.—

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

(2) CONTENTS.—Each application required by paragraph (1) shall—

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

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

(ii) will consider adopting all national prison rape standards that are promulgated under this Act after such date;

(B) specify with particularity the preventative, prosecutorial, or administrative activities to be undertaken by the State with the amounts received under the grant; and

(C) in the case of an application for a grant for one or more activities specified in paragraph (2) of subsection (b)—

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

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

(iii) explain the extent to which officials (including law enforcement officials)

of State and local governments and victims of crime will be consulted regarding decisions whether, or how, to moderate the growth of the State's prison population.

(e) REPORTS BY GRANTEE.—

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

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

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

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

(f) STATE DEFINED.—In this section, the term ''State'' includes the District of Columbia, the Common-

wealth of Puerto Rico, and any other territory or possession of the United States.

(g) AUTHORIZATION OF APPROPRIATIONS.—

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

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

SEC. 7. NATIONAL PRISON RAPE REDUCTION COMMISSION.

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

(b) MEMBERS.—

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

(A) 3 shall be appointed by the President;

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

appointed by the minority leader of the House of Representatives;

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

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

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

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

(3) CONSULTATION REQUIRED.—The President, the Speaker and minority leader of the House of Representatives, and the majority leader and minority leader of the Senate shall consult with one another prior to the appointment of the members of the Commission to achieve, to the maximum extent

possible, fair and equitable representation of various points of view with respect to the matters to be studied by the Commission.

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

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

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

(c) OPERATION.—

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

(2) MEETINGS.—The Commission shall meet at the call of the chairperson. The initial meeting of the Commission shall take place not later than 30 days after the initial appointment of the members is completed.

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

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

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

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

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

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

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

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

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

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

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

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

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

(G) an assessment of the impacts of prison rape on individuals, families, social institutions

and the economy generally, including an assessment of the extent to which the incidence of prison rape contributes to recidivism and to increased incidence of sexual assault;

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

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

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

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

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

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

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

(3) REPORT.—

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

(i) the President;

(ii) the Congress;

(iii) the Attorney General;

(iv) the Secretary of Health and Human Services;

(v) the Director of the Federal Bureau of Prisons;

(vi) the chief executive of each State; and

(vii) the head of the department of corrections of each State.

(B) CONTENTS.—The report under subparagraph (A) shall include—

(i) the findings and conclusions of the Commission;

(ii) recommended national standards for reducing prison rape;

(iii) recommended protocols for preserving evidence and treating victims of prison rape; and

(iv) a summary of the materials relied on by the Commission in the preparation of the report.

(e) RECOMMENDATIONS.—

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

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

(A) the classification and assignment of prisoners, using proven standardized instruments and protocols, in a manner that limits the occurrence of prison rape;

(B) the investigation and resolution of rape complaints by responsible prison authorities, local and State police, and Federal and State prosecution authorities;

(C) the preservation of physical and testimonial evidence for use in an investigation of the circumstances relating to the rape;

(D) acute-term trauma care for rape victims, including standards relating to—

(i) the manner and extent of physical examination and treatment to be provided to any rape victim; and

(ii) the manner and extent of any psychological examination, psychiatric care, medication, and mental health counseling to be provided to any rape victim;

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

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

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

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

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

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

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

(L) data collection and reporting of—

(i) prison rape;

(ii) prison staff sexual misconduct; and

(iii) the resolution of prison rape complaints by prison officials and Federal, State, and local investigation and prosecution authorities; and

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

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

(f) CONSULTATION WITH ACCREDITATION ORGANIZATIONS.—In developing recommended national standards for enhancing the detection, prevention, reduction, and punishment of prison rape, the Commission shall consider any standards that have already been developed, or are being developed simultaneously to the deliberations of the Commission. The Commission shall consult with accreditation organizations responsible for the accreditation of Federal, State, local or private prisons, that have developed or are currently developing standards related to prison rape. The Commission will also consult with national associations representing the corrections profession that have developed or are currently developing standards related to prison rape.

(g) HEARINGS.—

(1) IN GENERAL.—The Commission shall hold public hearings. The Commission may hold such

hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out its duties under this section.

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

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

(i) PERSONNEL MATTERS.—

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

(2) DETAIL OF FEDERAL EMPLOYEES.—With the affirmative vote of ⅔ of the Commission, any Federal Government employee, with the approval of the head of the appropriate Federal agency, may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status, benefits, or privileges.

(3) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—Upon the request of the Commission, the Attorney General shall provide reasonable and appropriate office space, supplies, and administrative assistance.

(j) CONTRACTS FOR RESEARCH.—

(1) NATIONAL INSTITUTE OF JUSTICE.—With a ⅔ affirmative vote, the Commission may select nongovernmental researchers and experts to assist the Commission in carrying out its duties under this Act. The National Institute of Justice shall contract with the researchers and experts selected by the Commission to provide funding in exchange for their services.

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

carry out the duties of the Commission under this section.

(k) SUBPOENAS.—

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

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

(3) CONFIDENTIALITY OF DOCUMENTARY EVIDENCE.—Documents provided to the Commission pursuant to a subpoena issued under this subsection shall not be released publicly without the affirmative vote of ⅔ of the Commission.

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

(m) TERMINATION.—The Commission shall terminate on the date that is 60 days after the date on which the Commission submits the reports required by this section.

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

SEC. 8. ADOPTION AND EFFECT OF NATIONAL STANDARDS.

(a) PUBLICATION OF PROPOSED STANDARDS.—

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

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

(3) LIMITATION.—The Attorney General shall not establish a national standard under this section that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities. The Attorney General may, however, provide a list of improvements for consideration by correctional facilities.

(4) TRANSMISSION TO STATES.—Within 90 days of publishing the final rule under paragraph (4), the Attorney General shall transmit the national standards adopted under such paragraph to the

chief executive of each State, the head of the department of corrections of each State, and to the appropriate authorities in those units of local government who oversee operation in one or more prisons.

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

(c) ELIGIBILITY FOR FEDERAL FUNDS.—

(1) COVERED PROGRAMS.—

(A) IN GENERAL.—For purposes of this subsection, a grant program is covered by this subsection if, and only if—

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

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

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

(2) ADOPTION OF NATIONAL STANDARDS.—For each fiscal year, any amount that a State would oth-

erwise receive for that fiscal year under a grant program covered by this subsection shall be reduced by 5 percent, unless the chief executive of the State submits to the Attorney General—

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

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

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

(4) COOPERATION WITH SURVEY.—For each fiscal year, any amount that a State receives for that fiscal year under a grant program covered by this subsection shall not be used for prison purposes (and shall be returned to the grant program if no other authorized use is available), unless the chief

executive of the State submits to the Attorney General a certification that neither the State, nor any political subdivision or unit of local government within the State, is listed in a report issued by the Attorney General pursuant to section 4(c)(2)(C).

(5) REDISTRIBUTION OF AMOUNTS.—Amounts under a grant program not granted by reason of a reduction under paragraph (2), or returned by reason of the prohibition in paragraph (4), shall be granted to one or more entities not subject to such reduction or such prohibition, subject to the other laws governing that program.

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

(7) EFFECTIVE DATE.—

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

(B) REQUIREMENT FOR COOPERATION.—The first grants to which paragraph (4) applies

are grants for the fiscal year beginning after the date of the enactment of this Act.

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

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

(b) REQUIREMENTS.—To be eligible to receive Federal grants, an accreditation organization referred to in subsection (a) must meet the following requirements:

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

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

prison rape, adopt accreditation standards consistent with the national standards adopted pursuant to such final rule.

SEC. 10. DEFINITIONS.

In this Act, the following definitions shall apply:

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

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

(3) JAIL.—The term ''jail'' means a confinement facility of a Federal, State, or local law enforcement agency to hold—

(A) persons pending adjudication of criminal charges; or

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

(4) HIV.—The term ''HIV'' means the human immunodeficiency virus.

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

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

(A) inmates pending bail or transport to jail;

(B) inebriates until ready for release; or

(C) juveniles pending parental custody or shelter placement.

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

(A) any local jail or police lockup; and

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

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

(9) RAPE.—The term ''rape'' means—

(A) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling

of a person, forcibly or against that person's will;

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

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

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

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

(12) EXCLUSIONS.—The terms and conditions described in paragraphs (9) and (10) shall not apply to—

(A) custodial or medical personnel gathering physical evidence, or engaged in other legitimate medical treatment, in the course of investigating prison rape;

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

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

Chairman SENSENBRENNER. The Chair recognize the gentleman from North Carolina, Mr. Coble, to strike the last word.

Mr. COBLE. I thank the Chairman. I don't think it will take 5 minutes. Mr. Chairman and colleagues, more than 2 million individuals were incarcerated in the United States at the end of 2002. Although many and probably most correctional facilities have procedures in place to protect inmates against violence from other inmates while they are incarcerated, often these procedures are inadequate. Very little data exists regarding the number of violent incidents that occur in correctional facilities, and even less data on the incidents of sexual assaults in prisons. This is a very serious problem which merits our attention.

The physical and psychological problems caused by these incidents can have effects for the entire U.S. population. At the end of 2000 there were over 25,000 inmates who tested positive for HIV. The Subcommittee on Crime, Terrorism, and Homeland Security conducted hearings to examine the issue of sexual assault within Federal, State and local correctional institutions. The legislation we consider today, H.R. 1707, the "Prison Rape Reduction Act of 2003," is intended to make prevention of prison rape a priority for Federal, State and local institutions. This legislation encourages the development of nationwide standards for detection, prevention, reduction and punishment of prison rape. This legislation was marked up in the subcommittee, and a bipartisan substitute offered by Ranking Member Bobby Scott and me, was adopted by voice vote.

The legislation requires State and local governments to work with the Federal Bureau of Justice Statistics to study the number and effects of incidents of sexual assaults in correctional facilities. It also encourages States to adopt and maintain compliance with the national standard developed by the Attorney General.

I want to express my thanks to Mr. Bobby Scott, the distinguished gentleman from Virginia, and Mr. Frank Wolf, the other gentleman from Virginia, who worked endlessly on this very important piece of legislation. I believe this legislation, Mr. Chairman, will go a long way to address and bring attention to a very serious problem that exists in our correctional facilities, and I encourage my colleagues to support it, and yield back.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. I move the unanimous consent to revise and extend my remarks and put my complete statement in the record.

Chairman SENSENBRENNER. Without objection.

Mr. SCOTT. And I would like to thank Chairman Coble for his remarks and his cooperation, and yours, Mr. Chairman.

Mr. Chairman, society pays dearly for ignoring prison rape. Inmates, often nonviolent first-time offenders come out of the prison rape experience severely traumatized and leave prison not only more likely to commit crimes, but far more likely to commit violent crimes than when they entered. The high incidents of prison rape within prisons also leads to an increased transmission of HIV/AIDS, hepatitis and other diseases outside the prison, which in turn impose threats and cost to society.

In 1994 the Supreme Court held in *Farmer* v. *Brennan*, that deliberate indifference to the risk of prison rape violates the eighth and fourteenth amendments to the United States Constitution, and so failure to take reasonable measures to guarantee safety of inmates exposes local, State and Federal facilities to lawsuits.

Mr. Chairman, prison rape is nothing short of prison torture. Long after bodies have healed, emotional trauma and stigma of brutal and repeated prison rape lasts and embitters. Whatever their crimes, there should be a moral imperative to reduce the incidents of prison rape.

Mr. Chairman, I would like to thank the chief patron of the legislation, my colleague from Virginia, Frank Wolf, Michael Horowitz and Vinny Sheraldi, who are leading an amazing coalition of supporters of the legislation and many others for their support, and I yield back the balance of my time.

[The statement of Mr. Scott follows:]

PREPARED STATEMENT OF THE HONORABLE ROBERT C. SCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Thank you, Mr. Chairman, for holding this markup on the Prison Rape Elimination Act. And I want to express my appreciation to you, along with Chairman Coble, for assuring expeditious development and movement of this bill. Your staff has worked hard, and on a bi-partisan basis, with a bi-cameral group of members and a diverse coalition of organizations, to develop a bill we could all strongly support. I look forward to working with you to get the bill quickly through the House and to the Senate where I believe it will receive expeditious consideration and passage, as well.

Prison rape has been shown to have a devastating impact on its victims and ultimately on unsuspecting members of the public who become victimized by the rage, sexually transmitted diseases and other manifestations of prison rape. Prison rape is recognized as a contributing factor to prison homicide, violence against staff, and institutional riots. Not only does it cause severe physical and psychological trauma to victims; but it increases the transmission of HIV/AIDS, other sexually transmitted diseases, tuberculosis, and hepatitis B and C—all of which exist at a very high rate within U.S. prisons and jails.

And prison rape is a problem of sizable scope. Of the 2 million people incarcerated today, it is estimated that one in ten, or roughly 200,000, are victims of prison rape. And youths in adult prisons are 5 times more likely to be raped than adults. Yet this problem is, essentially, ignored as a societal problem. And society pays dearly for ignoring prison rape. Inmates, often non-violent first time offenders, come out of a prison rape experience severely traumatized and leave prison not only more likely to commit crimes, but far more likely to commit violent crimes than when they entered. And the high incidence of rape within prison also leads to the increased transmission of HIV, hepatitis and other diseases outside prison which, in turn, imposes threats and costs on all of society.

Prison rape is a crime with constitutional implications. The Supreme Court held in Farmer v. Brennan that deliberate indifference to the risk of prison rape violates the Eighth and Fourteenth Amendments to the United States Constitution. While prison conditions may be "restrictive and even harsh," prison and jail officials "must take reasonable measures to guarantee the safety of the inmates."

The bill establishes three programs in the Department of Justice: 1) A program to conduct an annual statistical study of a significant number of federal, state and county prisons and jails on the incidence of rape, and conduct public reviews of institution where the rate of prison rape is 30% above the national average rate; 2) a clearinghouse for complaints of prison rape to assist prevention and prosecution, and provide training and assistance to prison and jail officials; and 3) a program to provide grants—totaling $40 million each year—to state and local governments and institutions for the purpose of enhancing the prevention and punishment of prison rape

The bill also provides for the establishment of a Commission to develop standards for addressing and eliminating prison rape. Federal, state and local prisons would be required to adopt these standards to qualify for the full range of federal funding available use by prisons, including the grants under the bill. Finally, the bill re-

quires prison accreditation organizations to examine prison rape prevention practices as a critical component of their accreditation reviews.

Let the record show that this bill is intended to cover all inmates in all prisons and jails and to address the problem of inmates who are raped by their peers, as well as the equally serious problem of inmates who are raped by prison staff and contractors. No detainee, regardless of whether he or she is being held on criminal charges or in civil detention, shall be excluded from any reports, nor be exempted from the protections provided for under any standards related to this legislation.

In the end, and perhaps most importantly, the effort to combat prison rape is a moral imperative. Prison rape is nothing short of prison torture—the infliction of severe emotional and physical pain as punishment and coercion. Long after bodies have healed, the emotional trauma, shame and stigma of brutal and repeated prison rape lasts and embitters. Whatever their crimes and whatever the prescribed punishment for them, in a humane society prison rape should not be a part of it. Prison rape not only derails justice—it destroys human dignity.

This is long overdue legislation. And I would like to thank my colleague, Frank Wolf, Chairman of the Commerce, Justice, State Appropriations Subcommittee and chief sponsor of this bill, for his compassion, leadership and diligence in moving this matter forward. I would also like to thank Michael Horowitz and Vinnie Schraldi, the leaders of this amazing coalition, for their vision, leadership and dedication in bringing this matter to the forefront and keeping it going. Thank you Mr. Chairman.

Chairman SENSENBRENNER. Without objection, all Members may include opening statements in the record at this point.

Are there amendments?

Mr. WATT. Mr. Chairman, I move to strike the word, just to ask a question.

Chairman SENSENBRENNER. The gentleman from North Carolina.

Mr. WATT. I'm wondering from Mr. Coble and Mr. Scott whether between now and the floor they might consider changing the title of the bill from the Prison Rape Reduction Act of 2003 to the Prison Rape Prevention Act of 2003? It seems to me that——

Chairman SENSENBRENNER. Without objection, the title is amended.

Mr. WATT. Mr. Chairman, there may be some implications that——

Chairman SENSENBRENNER. Okay.

Mr. WATT. I didn't want to make the motion. I just wanted them to look at it.

Chairman SENSENBRENNER. Okay. Then we won't amend the title at this point in time.

Are there amendments? If there are no amendments, the question is on the subcommittee amendment in the nature of a substitute. Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the subcommittee amendment in the nature of a substitute is adopted.

A reporting quorum is present. The question occurs on the motion to report the bill H.R. 1707 favorably as amended. Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it. The motion to report favorably is adopted. Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute. Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days, as pro-

vided by House rules, in which to submit additional dissenting, supplemental or minority views.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia?

Mr. SCOTT. Mr. Chairman, somewhere along the lines in response to the gentleman from North Carolina, we intend to change the name to Prison Rape Elimination Act, and so that would I think achieve his concerns.

Chairman SENSENBRENNER. Duly noted.

There are two votes, a 15-minute vote and a 5-minute vote on two rules on bills to be brought up today. I think it's time to go to lunch. When we come back, and I urge the Members to be prompt, while we will work on the PTO modernization bill and the Committee is recessed until 1:00 p.m.

[Whereupon, at 11:45 a.m., the Committee recessed, to reconvene at 1:00 p.m., the same day.]

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