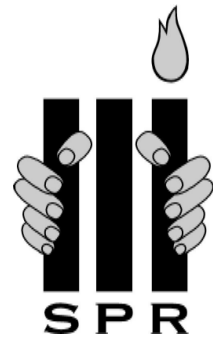


Stop Prisoner Rape: A Brief Background

Stop Prisoner Rape (SPR), an international human rights organization, seeks to end sexual abuse in all forms of detention. SPR has three core goals: to ensure government accountability for prisoner rape; to transform negative stereotypes about inmates and their right to be free from sexual abuse; and to promote access to resources for those who have survived this form of violence.

SPR was instrumental in securing passage of the Prison Rape Elimination Act (PREA), the first federal legislation addressing sexual violence in detention. Since PREA was signed into law in 2003, SPR has led the call for its meaningful implementation. SPR provides expert analysis, survivor accounts, training, and technical assistance to federal agencies with mandates under the law, and to policymakers and corrections officials at the federal, state, and county levels.

SPR's work takes place within the framework of international human rights law and norms. The sexual assault of prisoners, whether perpetrated by corrections officials or by inmates with the acquiescence of staff, is a crime and is recognized internationally as a form of torture.



PREA Update

by Stop Prisoner Rape

Unique Opportunity to Stimulate Reform

On May 5, 2008, the National Prison Rape Elimination Commission (NPREC) released a draft of its “Standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse in Adult Prisons and Jails.” To ensure transparency and public support for this effort, the draft standards are open for public comment for 60 days. (Because of the July 4th holiday, the public comment period will end on July 7, 2008.)

Stop Prisoner Rape (SPR) considers these standards a crucial step forward in the effort to establish zero-tolerance toward rape and other forms of sexual violence in U.S. corrections facilities. SPR strongly encourages current and former prisoners, their loved ones, advocates for inmates, sexual abuse survivors, and others with an interest in protecting the safety of inmates to submit comments on the draft standards (see sidebar on page 3 for more information about submitting comments).

This *PREA Update* focuses on several of the issues and provisions in the draft standards that SPR has identified as

pivotal to preserving the inalienable right of inmates to be free from sexual abuse, many of which are controversial within the corrections field. The *PREA Update* does not summarize the complete set of draft standards. Rather, it is intended to provide guidance for organizations and individuals who would like to participate in the

public comment period. In addition to offering recommendations that would strengthen the draft standards, SPR has highlighted provisions which should remain in the final version but are likely to face resistance from corrections officials.

At the end of the public comment period, the NPREC will review all comments it has received and revise the standards.

The final version will be submitted by the NPREC to the Attorney General in early 2009. The Attorney General will have one year to publish a final rule adopting the national standards. Once the standards are adopted, all corrections systems will be required to comply with them. The Attorney General will establish procedures to ensure compliance, and reduce by five percent the discretionary grants of states that fail to adhere to the standards.¹



The NPREC Standards – A Tool for Ending Sexual Abuse

The goal of these new national standards, as described by the NPREC, is “to establish policies and practices that, if implemented properly, will enable agencies to improve safety and eliminate sexual abuse.”² The standards are divided into four categories: leadership and accountability, prevention, detection and response, and monitoring.

Each standard has three parts: a statement, a discussion, and a compliance checklist. The statement is “the broadest articulation of what every agency is required to achieve.”³ The discussion provides clarification, explanation,

and suggested strategies for compliance. The checklist specifies the actions needed to establish compliance. The statement and the checklist portions of each standard are mandatory and must be read together.

SPR commends the NPREC for recognizing that both PREA and its draft standards are, in essence, human rights documents. As noted in the introduction to the draft standards, “Sexual abuse of people in confinement violates their basic human rights, impedes the likelihood of their successful reentry into the community, and violates the government’s

PREA and the NPREC

The Prison Rape Elimination Act (PREA) of 2003, the first civil law to address sexual violence in detention, requires a zero-tolerance approach to this type of violence, provides for the gathering of information about the prevalence of sexual abuse, and calls for the development of policies and practices to combat the problem. In addition to the development of the national standards that are the focus of this *PREA Update*, the law requires:

- Annual statistical reviews by the Bureau of Justice Statistics (BJS), including nationwide anonymous inmate surveys;
- Annual hearings by the Review Panel on Prison Rape focusing on facilities found by the BJS to have the highest and lowest incidence of sexual abuse;
- Federally funded technical assistance to prevent and prosecute sexual abuse in detention;
- Federally funded grants for states to protect inmates and safeguard communities;
- Federally funded contracts for research; and
- A comprehensive study of sexual abuse in detention by the National Prison Rape Elimination Commission (NPREC), culminating in a final report to be issued together with the finalized national standards.

The NPREC is a bipartisan commission created by PREA and mandated by the law to develop binding standards for detention systems to address sexual violence behind bars. To help develop the standards, the NPREC held public hearings throughout the country and convened several expert committees in Washington, DC. Representatives from SPR worked closely with the NPREC throughout this process, by serving on the expert committees and by enabling more than a dozen prisoner rape survivors to testify at the public hearings.

obligation to provide safe and humane conditions of confinement.”⁴

I. Leadership and Accountability

A. Safety, Oversight, and Transparency

Strong enforcement and oversight mechanisms are essential to ensure that the standard requirements are taken seriously by all levels of corrections staff. In this section of the draft standards, the NPREC recognizes the important role of independent auditors, state chief executives, corrections agency leaders, and facility heads in securing implementation of the standards. SPR appreciates the NPREC’s foresight in highlighting the need for oversight, but urges that this issue be taken further.

The term ‘oversight’ encompasses various functions, such as regulation, audit, accreditation, reporting, investigation, and monitoring.⁵ No one method of oversight can effectively serve all of these functions. A combination of internal and external oversight measures is essential to putting an end to the sexual abuse that continues to plague U.S. detention facilities. Indeed, the historical lack of transparency of U.S. prisons and jails has been a major contributor to the widespread human rights crisis that the standards seek to eliminate.

The draft standards focus primarily on internal oversight—audits and assessments done (or commissioned) by agency and facility leaders. These tools will help administrators identify and correct systemic problems, but they cannot provide the credible, objective assessment of an outside entity. According to one scholar, “External scrutiny is essential any time that a closed institution is responsible for the control of individuals; it is a linchpin in any effort to ensure the safety of prisoners.”⁶

SPR agrees with the NPREC that independent audits are a key tool for determining

whether a facility, or a corrections system, is in compliance with the standards. SPR also supports the requirement that chief executives certify in writing the compliance of corrections systems within their jurisdictions. However, SPR urges the NPREC to strengthen the standards in the following ways.

- Under the draft standards, the chief executive (Governor, for state prisons) is the only person required to certify in writing that the corrections agency within his/her jurisdiction is in compliance with the standards (SA-2). However, an elected official cannot know what is going on in each facility. As the person who is responsible for the day-to-day operations of a prison or jail, each facility head should be held publicly accountable in a similar fashion. By adding a written certification requirement at the facility level to standard SA-3 and compliance checklist 3, genuine accountability is more likely to occur.
- Chief executives must be required to publish the results of independent audits (SA-2). Similarly, agency heads should be required to publish all assessments and action plans (SA-3). Broad publication, including through the internet, would ensure that this information can be accessed by advocacy organizations, journalists, and others. If there are well-founded concerns that such publication would “jeopardize the safety and security of the facility” (SA-3), documents should be redacted, rather than kept entirely out of the public’s view.
- Because a majority of inmates do not file formal complaints in the aftermath of sexual abuse,⁷ the independent auditor designated by the chief authority must not rely solely on official data. Rather, standard SA-2 and compliance checklist 2 should require that auditors interview a sample of staff and inmates at all audited facilities.
- Relevant outside organizations should be able to speak directly and confidentially with inmates, and corrections management

Commenting on the Standards

A copy of the draft standards can be downloaded from the NPREC’s website at: http://www.nprec.us/UpcomingEvents/5.1_MasterAdultPrison_andJail_andImmigrationStandardsClean.pdf.

The NPREC has created a form for submitting comments, which is available on its website at: http://www.nprec.us/UpcomingEvents/PUBLIC_COMMENTS_FORM_MAY2008.doc.

Comments should be entered onto the form and submitted in one of the following manners:

- **By email:**
comments@nprec.us
- **By fax:**
(202) 233-1089
- **By mail:**
National Prison Rape Elimination Commission
1440 New York Ave, NW
Suite 200
Washington, D.C.
20005-2111

Anyone providing feedback to the NPREC must provide his/her name and contact information. The content of all comments will be made publicly available, but the NPREC will respect requests for anonymity.

must ensure access for this type of oversight. As part of the certification of the chief executive (mandated by SA-2) and the facility head (proposed by SPR for SA-3), these officials should be required to attest to the availability of external oversight, including specifying how inmates can provide confidential complaints to outside entities and how these independent bodies can raise concerns with the corrections administration.

B. Prevention Planning

SPR commends the NPREC for establishing firm requirements for sight and sound supervision of all inmates, especially of those who have been identified as vulnerable to sexual abuse. Compliance checklist 5, for standard PP-2, is particularly strong and illustrates the NPREC's recognition of the extreme dangers facing certain detainees based on known risk factors, such as sexual orientation, gender identity, disability, and youth. Unfortunately, the draft standards do not spell out how to handle predatory inmates.

- In order for prevention planning efforts to be successful, the NPREC should develop a standard and compliance checklist for the identification and housing of predatory inmates.

Corrections staff are the ultimate enforcers of human rights in detention and, as such, must adhere to the highest possible professional and ethical standards. Hiring decisions must be based on a thorough review of an applicant's background. The draft standard for staff qualifications (PP-5) screens for egregious concerns, such as criminal history, history of engaging in sexual abuse, and other prior conduct suggesting a likelihood of engaging in abuse, but SPR urges the NPREC to make this standard broader.

- Corrections systems should be required to examine an applicant's employment history. Based on the draft standards (specifically PP-5), officials who engaged in sexual abuse and then resigned in lieu of disciplinary

action will easily be able to obtain employment in another corrections system.

- Criminal history should be clearly identified as a basis for termination during staff performance reviews, rather than merely "taken into account," as stated in compliance checklist 8, for standard PP-5.

The draft standards emphasize the need for corrections agencies to develop integrated information systems, which would allow for the tracking and sharing of data related to the problem of sexual abuse (PP-6). The creation of such systems will be an important step forward in the effort to eliminate sexual violence, but they must be developed *across* agency lines, in recognition of the fact that the vast majority of inmates have been held both in jails and in prisons.

- State and county agencies in the same geographic jurisdiction should be required to develop integrated information systems, allowing for the tracking of information related to sexual abuse throughout an inmate's tenure behind bars.

C. Response Planning

An appropriate and swift response in the aftermath of sexual abuse is essential to protect the well-being of survivors, to gather the evidence necessary to investigate assaults fully, and to hold perpetrators accountable. Unfortunately, SPR hears on a daily basis from survivors who describe officials taking no action when faced with incidents of sexual abuse—or worse, subjecting victims to retaliation for filing complaints.

- The coordinated sexual assault response team (SART) should include an advocate, in addition to medical, mental health, security, and investigations specialists (RP-1). While the discussion section of RP-1 notes the value of an advocate, compliance checklist 11 only requires an advocate to be included if the victim undergoes a forensic exam. Community SARTs—the model suggested

in the checklist—always include an advocate. Advocates are trained in providing crisis intervention and in advocating on behalf of sexual abuse survivors, a role that is particularly important in the detention setting. SART advocates would help to ensure that survivors who choose not to undergo forensic exams nevertheless are treated with respect. An advocate may also be able to alleviate survivor concerns about forensic exams, thereby encouraging them to undergo this important procedure.

- SPR applauds the NPREC’s recognition of the importance of community-based agencies—particularly rape crisis centers—in the aftermath of a sexual assault. Such agencies have the capacity to provide incarcerated survivors with support similar to that available in the community. In particular, SPR believes it is of utmost importance to maintain the requirement in standard RP-5 that corrections agencies sign memoranda of understanding (MOUs) with community agencies and advocates.
- SPR also believes it essential to maintain the requirement in standard RP-8 that prisons and jails enter into formal agreements with qualified, independent medical examiners who can perform forensic exams of sexual abuse victims. The best practice is for the full forensic exam to be conducted outside of the prison or jail. When that is not feasible, facilities should still retain outside contractors to perform these examinations on-site, rather than have them done by facility medical staff.
- SPR urges the NPREC to clarify item (g) of compliance checklist 15 (for standard RP-5), which appears to limit the ability of community service providers, such as rape crisis counselors, to abide by their professional standards with regard to client confidentiality. If prison and jail agency rules do not allow outside counselors to maintain confidentiality in their interactions with inmates, such agency rules should be changed. Outside mental health

counselors must not be expected to lower their professional standards in order to work in a prison or jail.

II. Prevention

A. Training and Education

Policies aimed at eliminating sexual abuse in detention become meaningful only if corrections staff, contractors, and volunteers are appropriately trained to take action to prevent and address incidents of sexual violence. Similarly, inmates must be aware of their absolute right to be free from sexual abuse, and of their responsibility not to engage in predatory behavior. Both of these points are duly recognized in the draft standards.

Unfortunately, references to international human rights principles are glaringly absent in compliance checklist 20 (for standards TR-1 and TR-4)—principles to which the U.S. is legally bound, through its ratification of the Convention Against Torture and the International Covenant on Civil and Political Rights and through international customary law. SPR believes that it is essential to include the full legal framework—including international human rights law—in training that addresses sexual abuse.

- The NPREC should add explicit references to the international human rights framework in standards TR-1 (staff and volunteer training) and TR-4 (inmate education) and in compliance checklist 20, which covers both these standards. Specifically, training sessions should highlight the inalienable right of all inmates to be free from sexual abuse. They should recognize the important role of corrections officials in the protection and enforcement of human rights, and how this role relates to PREA, to policies and practices addressing sexual violence, and to criminal law. The draft training standards and compliance checklists should also reference the constitutional protection against cruel and unusual punishment.

- SPR also urges that trainings and workshops be supplemented with written materials. The standards require that paper copies of the agency's sexual abuse policies be available to staff, volunteers, and inmates (TR-1, TR-4, TR-5), but policies alone will not provide sufficient information about issues such as the dynamics of sexual violence in detention and red flags for possible abuse. Moreover, policies are rarely written in simple language nor are they tailored to highlight the most relevant information. At a minimum, staff should receive, and verify in writing that they have read, materials explaining their responsibilities in eliminating sexual abuse

and the protocol for addressing reports of abuse. Inmates should be provided with a written statement of their right to be free from sexual assault and the avenues available if they have been assaulted and/or fear abuse.

B. Classification

Inmate classification is one of the most critical tools for preventing sexual abuse in detention. If done properly, classification ensures that potential predators and potential victims are housed apart. Appropriate classification can also break the insidious and common prison practice, following an incident of sexual abuse,

The Targets of Sexual Abuse

While any inmate can become the victim of sexual abuse, marginalized and special needs populations are at heightened risk. Among women, typical survivors of sexual abuse are non-violent, young, and mentally ill inmates. Among men, non-violent, young inmates, and gay and transgender prisoners have the highest rates of victimization. Once raped, an inmate is likely to be marked as a victim and abused repeatedly.

In a recent academic study,¹ funded by the California Department of Corrections and Rehabilitation and conducted at seven California men's prisons, 59 percent of transgender inmates reported having been sexually assaulted by another inmate during their incarceration, a rate that was more than 13 times higher than for the inmate population overall. Of the more than 900 survivors who have contacted SPR in the past few years, approximately 20 percent openly identify as lesbian, gay, bisexual or transgender (LGBT).

For many LGBT survivors, the trauma of sexual abuse is further aggravated by pervasive homophobia among staff. Corrections officials often confuse homosexuality and transgender status with consent to rape, and LGBT inmates describe officials ignoring or laughing at their reports, or subjecting them to further attacks, humiliating strip searches, and punitive segregation. Gay and transgender inmates who seek protective custody because of their risk for abuse often find themselves placed in solitary confinement, locked in a cell for 23 hours a day, and losing access to programming and other services.

To address the unique safety concerns of LGBT inmates, SPR has developed a set of policy recommendations entitled *Call for Change* that, if fully implemented, would significantly decrease the incidence of sexual violence against LGBT inmates. More than 80 LGBT and allied organizations have signed onto the Call for Change. The policy recommendations are available on SPR's website at http://www.spr.org/pdf/Call_for_Change.pdf.

1. VALERIE JENNESS ET AL., CENTER FOR EVIDENCE-BASED CORRECTIONS, VIOLENCE IN CALIFORNIA CORRECTIONAL FACILITIES: AN EMPIRICAL EXAMINATION OF SEXUAL ASSAULT 27 (2007).

of automatically placing the victim in administrative segregation. Such isolation is punitive by default as it results in a loss of services and programs. SPR hears on a regular basis from survivors of sexual abuse in detention who decided against filing a formal complaint for fear of being placed in segregation.

SPR is pleased to note that the NPREC recognizes that classification is a dynamic process and that housing decisions must be revisited regularly to ensure that inmates remain safe. The NPREC's willingness to identify specific factors that contribute to vulnerability to sexual abuse, such as physical stature and sexual orientation, is particularly encouraging. SPR is concerned, however, that the NPREC has not paid enough attention to factors that contribute to an inmate's propensity to commit sexual abuse. SPR recommends the following additions to the standards.

- The NPREC should develop concrete criteria for identifying potentially predatory inmates. By identifying inmates who are likely to perpetrate an assault, and separating them from inmates who are likely to be targeted for abuse, corrections officials can effectively protect vulnerable inmates without subjecting them to segregation or other punitive, isolating conditions.
- Classification reassessments (CL-2) should include specific factors, such as an inmate's perception of vulnerability, any disciplinary involvement, dramatic changes to commissary accounts, and medical needs. Without specific criteria, the reassessment process may amount to a *pro forma* continuation of the current classification, even in the aftermath of an assault.
- The inmate management plan (CL-3) should be modified whenever a reassessment results in a classification change.
- Classification decisions should have an appeals process, so that an inmate's safety does not rest solely on the decision of one officer. Such review is particularly important when

the classification officer does not agree with an inmate's assessment of his or her own vulnerability.

III. Detection and Response

A. Reporting

In order for efforts to prevent and respond to sexual violence to succeed, inmates must be able to report abuse safely and to receive competent, compassionate care. Inmates tend not to report sexual abuse out of fear of retaliation, shame, or a lack of trust that prison staff will respond appropriately. An outside entity for reporting, such as an Inspector General's office or ombudsperson, is an invaluable resource for obtaining and responding to sexual abuse complaints.

While rape survivors in the community are generally able to access rape crisis counseling, incarcerated survivors have little or no access to outside services. The counseling that is available is typically not confidential, as the majority of corrections counselors are obliged to report to prison administrators any crime within their facility. (For more information about the importance of confidential counseling, see 'Need to Know' versus Confidentiality, on page 13).

SPR applauds the NPREC for recognizing the vital role that outside entities play, both in providing avenues for reporting abuse and in ensuring that incarcerated survivors can access care similar to what is available on the outside. These standards would be further strengthened by adding the following provisions.

- In developing external reporting mechanisms, agencies must accept responsibility for abuses reported to government officials outside the traditional grievance system—and not seek to avoid judicial accountability. While standard RE-1 notes that the avenues provided should all meet any exhaustion requirements, compliance checklist 28 does not include a

Bringing Survivors to the Table

SPR believes that any serious effort to end sexual violence in detention must include survivors of such abuse. The role of survivors goes beyond adding a human face to the discussion. Individuals who have endured shocking abuses, often at the hands of corrections staff or with their acquiescence, are able to offer first-hand experiences and wisdom that have the potential to improve substantially corrections policy and practice.



These portraits of the 2007 Survivor Summit participants were taken by photographer James Stenson, to document the dignity and courage of men and women across the country who have refused to be silenced by the abuses they endured while incarcerated. (Above: Esmeralda Soto.)

Since 2005, SPR has enabled more than a dozen prisoner rape survivors to testify at the NPREC's public hearings. In addition, in March 2007, SPR gathered survivors from across the country to develop their own recommendations—to advise the NPREC in its development of the national standards. These recommendations were presented in a publication entitled *In Our Experience* (available on SPR's website at: <http://www.spr.org/pdf/InOurExperience.pdf>.) Highlights of the recommendations include:

- Corrections facilities should utilize designs that increase lines of sight and hearing in housing units.
- Corrections officials should consult with outside organizations that have regular contact with vulnerable inmates, or that focus on the prevention of sexual assault and domestic violence, to obtain feedback on the content and practical implementation of classification procedures.
- Housing for inmates who fear sexual assault or who have been assaulted should not involve isolation, punitive conditions or discrimination in the form of loss of privileges or programming, as these practices greatly deter inmates from reporting assault.
- Applicants for employment involving inmate contact should be carefully screened, including a mental health screening and a criminal background check.



From top left: Chino Hardin, Garrett Cunningham, Thomas Clinton, Bryson Martel.

- Orientation should be provided for all inmates, emphasizing the human dignity of their fellow inmates, their inalienable human right not to be subjected to sexual abuse or coercion, and how the system will respond to such abuse.
- Reports of sexual abuse or threats thereof should be handled in a truly confidential manner, such that only personnel who have an active role in an investigation have access to the information.
- Inmates who choose to report their abuse to facility staff should be able to file a formal complaint to any staff member, bypassing the usual chain of command, so that nobody is faced with the unacceptable scenario of having to report an assault to the perpetrator.
- In order to maintain transparency, sexual assault examinations should be

performed off-site at an independent medical facility whenever possible.

- Sexual assault survivors should never be required to make a report of sexual abuse or to fill out documentation of any sort in order to access medical and mental health counseling services.
- As part of reentry planning, corrections facilities should provide inmates with information about free or low-cost mental health care in the communities to which they are returning.

In late June 2008, SPR will again convene a group of survivors of sexual abuse in detention, who will have an opportunity to comment on the draft standards, suggest improvements, and meet with NPREC Commissioners for a roundtable discussion. SPR applauds the NPREC for its willingness to listen to—and learn from—those who have endured sexual abuse while behind bars.



From top left: Keith DeBlasio, Erica Hejnar, Michael Williams, Jason Lydon.

PREA, the NPREC Standards, and the Prison Litigation Reform Act (PLRA)

Many prisoners who have endured sexual abuse cannot hold corrections officials accountable because of the Prison Litigation Reform Act (PLRA), a federal law passed in 1996. Intended to limit the number of frivolous lawsuits filed by inmates, the PLRA has instead greatly undermined the crucial oversight role played by courts in addressing sexual assault and other constitutional violations in corrections facilities. SPR believes that the new national standards have the potential to help ensure that survivors of sexual violence in detention are not barred from seeking judicial relief based on unrealistic and often insurmountable procedural requirements.

The PLRA established a number of procedural hurdles that an inmate must overcome before filing a civil rights complaint in federal court. Arguably the most dramatic of these provisions is the so-called exhaustion requirement. Before filing suit, an inmate must 'exhaust' administrative remedies by completing the facility's internal grievance process. Prison and jail grievance procedures tend to be complex and unclear. Worse still, many include deadlines for filing a complaint that are as short as a few days. An inmate must fully and properly navigate this internal system, even when it is clearly futile to do so, when there is a risk of retaliation by staff, or when there is an immediate threat to the inmate's health or safety. Moreover, some facilities' procedures require that grievances be submitted directly to a specific officer—without regard to whether that officer is implicated in the complaint. Not surprisingly, numerous claims of serious and unconstitutional abuse of prisoners have been dismissed for lack of proper exhaustion, meaning that there was never an inquiry into the truth of the allegations.

Allowing corrections officials an initial opportunity to resolve an inmate's complaint, before it is brought to the courts, eases the burden on the judicial system. However, inmates who have been sexually assaulted are in urgent need of options for reporting their abuse—options that take into account their safety needs and their medical and mental health concerns. The draft standards recognize these concerns by mandating multiple reporting options. The requirement that corrections agencies recognize these alternative avenues of reporting as sufficient for exhaustion is just as critical. In addition to providing survivors with a forum for relief that they deserve, officials will become better informed about sexual violence in their facilities and can be held accountable for policies and practices that allow for sexual abuse to continue.

corresponding requirement. As the checklist is the portion ultimately signed by the facility chief, it too should specify that all avenues for reporting satisfy exhaustion requirements for getting into court.

- In addition to being provided with contact information for confidential

counseling (RE-2), inmates should be informed about the extent (and limits) of confidentiality and the distinction between outside confidential support—which will not trigger an investigation or serve as a grievance for exhaustion purposes—and utilizing the agency's reporting procedures.

- Compliance checklist 29 of standard RE-2 should require agencies to sign a memorandum of understanding (MOU) with each organization whose contact information is provided to inmates. In doing so, the agency can gain assurance that the services advertised are truly available and the counseling agency will be informed about the parameters of providing services in the detention setting.

B. Staff Duties Following an Inmate Report

C. Agency Duty to Protect Against Retaliation

SPR regularly hears from survivors who did not receive any support after reporting sexual abuse. Indeed, many survivors have told SPR that they were further traumatized in the aftermath of an assault, as officers ridiculed them or suggested that the assault was somehow warranted. Alarming, in its study of sexual violence reported to corrections authorities in 2006, the Bureau of Justice Statistics (BJS) found that, in cases of substantiated sexual misconduct or abuse committed by a staff member, only 6 percent of inmates were given a medical exam and only 12 percent were offered counseling.⁸ SPR encourages the NPREC to highlight the following in its standards.

- The first responding officer must treat the survivor with dignity and respect and initiate the coordinated response team to ensure that the survivor receives necessary medical and mental health attention (SD-1).
- Protections against retaliation should be expanded to include explicit references to the right to be free from intimidation and threats (AD-1). While the draft standards address the most blatant forms of retaliation—such as placement in harsh conditions or permitting further attacks and verbal abuse—the pressures against reporting abuse tend to be more subtle and insidious. Because of the extensive power that officials have over inmates in their charge, coercion against reporting rarely needs to be overly aggressive.

D. Investigations and Discipline

Sexual abuse in detention is a human rights violation, a crime, and a breach of prison rules. The draft standards require that every report of sexual assault be thoroughly investigated in a uniform manner by an investigator who has received training specific to sexual assault cases, and that the administrative process does not jeopardize any criminal prosecution.

For the past three years, the BJS has received administrative records of reported sexual violence in prisons and jails, and found that most sexual abuse-related investigations result in an unsubstantiated finding.⁹ In many facilities, physical evidence is required for a claim of sexual abuse to be substantiated, even though many forms of sexual abuse will never result in physical evidence. The following recommendations would help ensure that more sexual abuse reports result in a definitive finding that they were either credible or unfounded.

- Inmate testimonies should be reviewed for credibility on its merits and never automatically be discounted because they are presented by someone who is incarcerated (IN-2). Many facilities refuse to credit inmate statements as a matter of course, even if the inmate is not the complaining victim and has no incentive to participate in the investigation. As a result, an abusive officer is able to act with impunity so long as he or she is faced only with an inmate's verbal claims.
- In addition to terminating staff who sexually abuse inmates (DI-1), staff perpetrators should be referred for prosecution. Sexual violence behind bars is subject to the same laws as sex crimes in the community. Moreover, all fifty states as well as the federal government and the District of Columbia have custodial sexual misconduct laws which make it a crime for a corrections official to have sexual contact with an inmate, regardless of consent.¹⁰ To establish a zero-tolerance approach to sexual violence, agencies must help enforce

these laws and ensure that custodial sexual misconduct is treated like comparable crimes in the community.

E. Medical and Mental Health Care

SPR commends the NPREC for providing clear requirements that prisons and jails provide high quality, confidential medical and mental health services free of charge in the aftermath of sexual abuse. Survivors who write to SPR frequently explain that they were unable to receive a forensic exam, obtain post-assault treatment, or see a mental health practitioner because they could not afford the fees to do so.

The value of confidential services cannot be overstated. (See ‘Need to Know’ versus Confidentiality, on page 13.) While the draft standards seek to make certain that inmates can access confidential services, additional clarity is needed to ensure that the services available are truly confidential and that inmates fully understand the extent of the confidentiality provided. SPR recommends the following revisions.

- The standards should more clearly defer to confidentiality standards for medical professionals in the community, rather than agency-created reporting requirements. As currently written, standard MM-3 requires medical practitioners to report suspected abuse unless the inmate affirmatively requests that they not do so. Standard MM-3 further suggests that, even if the inmate tells the practitioner not to report, instances of suspected staff-on-inmate sexual abuse must still be reported. Instead, SPR suggests that whether the suspected perpetrator is a staff member or an inmate, medical practitioners should be required to maintain confidentiality. While they should offer to report, such reports should require the inmate’s consent.

- Reporting requirements created by the agency should never trump the confidentiality standards within the medical and mental health professions. Medical practitioners should not have reporting requirements, as suggested by section (e) of compliance checklist 40 (for standard MM-3).
- Written informed consent must be obtained from inmates before the start of any counseling services. While the draft standards take an important step forward by requiring medical and mental health practitioners to obtain written consent before reporting sexual abuse (MM-3, compliance checklist 40), information about the extent and limit of confidentiality should never occur after a disclosure. Rather, in accordance with community practices, service providers (medical and mental health) should be required to discuss the extent and limits of their confidentiality at the onset of services.

IV. Monitoring

The draft standards require each agency to collect standardized data for every incident of sexual abuse in its facilities (DC-1) and to retain this data for at least ten years (DC-2). For effective transparency and monitoring, outside advocacy groups should have easy access to this information, with identifying information redacted to protect the safety and privacy of any individuals named.

- In addition to publishing the aggregate data, ideally on a website, standard DC-2 and compliance checklist 44 should explicitly stipulate that requests for information be granted to the greatest extent possible, with the most minimal redactions necessary to protect the safety and security of the facility and individuals.

‘Need to Know’ versus Confidentiality

Survivors of sexual violence behind bars typically have access to scant mental health counseling. To the extent that post-trauma counseling is available, it is usually not fully confidential. Counseling sessions often occur in view or within earshot of corrections officials, who may have participated or acquiesced in the assault. Moreover, once an inmate shares information about being attacked, the vast majority of prison and jail counselors are obliged to report the abuse to prison administrators. As a result, a prisoner seeking mental health assistance in the aftermath of a sexual assault becomes a ‘snitch,’ risking serious retaliation from the perpetrator and possibly others.

Many prisons and jails have responded to the tension between the need for inmate confidentiality in the aftermath of abuse and the policy that all crimes occurring in an institution be reported by specifying that only those who ‘need to know’ should receive information about sexual abuse allegations. While often well-intended, most facilities do not offer a concrete definition of the ‘need to know’ concept, leaving it up to individual staff members to decide with whom to share information. This lack of a clear definition renders many ‘need to know’ policies largely meaningless, often causing information about sexual abuse to spread rapidly and widely within prisons and jails—including to inmates. SPR urges any corrections system using such a policy to provide all staff with a clear definition of who truly does need to know that a sexual assault has occurred.

Medical and mental health providers should not be covered by regular reporting requirements, including ‘need to know’ policies. They must instead be obliged to provide inmates with confidentiality comparable to that offered to survivors on the outside. In the community, a sexual assault survivor can receive services at a rape crisis center without filing a report to the police. Unfortunately, most inmates have no access to practitioners in the community and most medical professionals employed by a corrections department are still required to report sexual abuse.

In SPR’s experience, victimized inmates are much more likely ultimately to report a sexual assault if they are able to receive confidential counseling. In other words, a high confidentiality standard leads to more secure facilities. SPR’s pilot program *Paths to Recovery* has proven that point. Through this initiative, sexual assault survivors at two California state prisons—California Correctional Institution and California Institution for Women—are able to access confidential rape crisis counseling provided by community counselors. The availability of non-corrections counselors who are able to maintain the strong confidentiality standards that govern counselors in the community has enabled victimized inmates at both prisons to talk through their options and to begin healing, which in turn has led several such inmates to come forward and report their abuse.

Police lockups and immigration, juvenile, and community detention

In addition to national standards for adult prisons and jails, the NPREC is mandated to develop supplemental standards for immigration detention, juvenile detention, community corrections, and lockups. The supplemental standards for immigration detention were released on May 5, 2008, together with the standards for prisons and jails, and have the same public comment period. This section of the *PREA Update* discusses the immigration detention standards. The remaining supplemental standards are due to be released on June 16, 2008, and will have a 45-day public comment period that will end on August 1, 2008.

Immigration Detainees – An Exceptionally Vulnerable Community

I. Compliance with PREA Standards

Facilities housing immigration detainees are bound by additional standards created by the NPREC. Many immigration detainees are held in state or county facilities, and the units housing immigration detainees must meet the applicable standards for prisons, jails, or lockups that are required for the rest of the facility. Detention facilities run by Immigration and Customs Enforcement (ICE), Border Patrol, or the Office of Refugee Resettlement (ORR) are likewise subject to the standards of the most analogous type of corrections facility. The NPREC is also specifically requesting input on which standards would be most appropriate for ICE's family facilities, in which adult detainees are housed with their children.

II. Supplemental PREA Standards

In addition to the issues that arise in any detention facility, immigration custody

triggers unique concerns. Unlike prisons and jails, which are run by corrections officials who have no control over a detainee's conviction or sentence, the Department of Homeland Security serves as both custodian and prosecutor. Moreover, most immigration detainees do not have lawyers and, unlike criminal defendants, have no right to have one appointed. Thus, in addition to the general concerns about reporting sexual violence, immigration detainees may have a heightened fear of retaliation in the form of deportation.

While many inmates face language barriers and other cultural issues, such concerns are exacerbated in immigration detention. Immigration detainees generally have fewer avenues of support in the community and are unlikely to know how to access service providers. Many immigration detainees have experienced torture or other human rights abuses in their native countries, and most have limited understanding of how the U.S. government and legal system work.

To account for these extreme vulnerabilities among immigration detainees, SPR makes the following recommendations to the supplemental draft standards.

- Standard ID-1 requires compliance with relevant portions of the ICE Detention Standards, but compliance checklist 1 does not include all of the relevant provisions, nor does it account for the upcoming revision to the ICE Detention Standards, which will add several relevant categories. If the NPREC is not going to mandate compliance with all of the ICE Detention Standards, at a minimum checklist 1 should include the standards for sexual abuse and assault awareness and prevention; detainee handbook; staff/detainee communications; searches; staff training; and transfers.
- Standard ID-1 should also include a certification requirement, similar to SA-3 in the draft standards for adult prisons and jails, requiring facility heads to attest to their compliance with the standards to the Attorney General and the Secretary of Homeland Security, and to prepare an action plan to remedy any deficiencies.
- Immigration detainees must be able to access outside confidential resources for their legal and emotional needs. Standard ID-3 and compliance checklist 3 allow the facility to decide what type of outside services will be available. The standard should more clearly require that facilities enter into agreements to ensure that detainees can access both confidential counseling and legal advocacy services.
- Compliance checklist 3 (for standard ID-3) must be revised, making clear that “facility rules” never trump the need for confidentiality in the aftermath of sexual abuse. As it stands, compliance checklist 3 conflicts clearly with standard ID-7, which makes clear the requirement to provide “confidential emotional support services related to sexual abuse.” If facility rules do not allow for the provision of confidential services in the aftermath of a sexual assault, such facility rules must be changed.
- Transferring immigration detainees can have a devastating punitive effect—separating them from whatever contacts they do have, possibly severing attorney-client relationships, and changing the jurisdictions (and corresponding laws) in which their immigration cases will be decided. SPR applauds the NPREC for limiting the transfer of immigration detainees who report abuse to those who request such a transfer (ID-8).
- SPR also commends the NPREC for accounting for the impact that an investigation and/or prosecution could have on the length of detention. Detainees who would otherwise be deported may need to remain in the country in order for an investigation and prosecution to continue. The provision within standard ID-8 that requires ICE officials to consider releasing survivors and witnesses to sexual violence and monitoring them in the community is very important. While compliance checklist 8 mandates that ICE develop criteria for release when needed to protect “the safety of an immigration detainee victim or witness,” criteria for release should be considered for all detainees for whom continued detention is solely to secure their participation in an investigation or prosecution.

Endnotes

1. See 42 U.S.C. § 15607.
2. NATIONAL PRISON RAPE ELIMINATION COMMISSION, STANDARDS FOR THE PREVENTION, DETECTION, RESPONSE, AND MONITORING OF SEXUAL ABUSE IN ADULT PRISONS AND JAILS 6 (2008) (*hereinafter* “NPREC STANDARDS”).
3. NPREC STANDARDS at 8.
4. NPREC STANDARDS at 6.
5. Michele Deitch, Prison Oversight and Systems of Accountability, Testimony before the National Prison Rape Elimination Commission, New Orleans, LA, December 6, 2007.
6. *Id.*
7. Compare ALLEN J. BECK & PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN STATE AND FEDERAL PRISONS REPORTED BY INMATES, 2007 (2007) (estimating 60,500 incidents of sexual violence during twelve-month period in 2006-2007, based on survey results) with ALLEN J. BECK, PAIGE M. HARRISON, & DEVON B. ADAMS, SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES, 2006 (2007) (estimating 3,774 reported allegations of inmate-on-inmate nonconsensual sexual acts, inmate-on-inmate abusive sexual contacts, and staff sexual misconduct at prisons nationwide in 2006).
8. BECK, HARRISON, & ADAMS, *supra* note 7, at 8-9.
9. *Id.* at 3.
10. A review of the relevant criminal laws by jurisdiction is available on SPR’s website at http://www.spr.org/en/state_by_state_laws.asp.



STOP PRISONER RAPE

Los Angeles Headquarters
3325 Wilshire Blvd., Suite 340
Los Angeles, CA 90010
Tel: (213) 384-1400
Fax: (213) 384-1411

East Coast Office
1025 Vermont Ave., NW, Third Floor
Washington, DC 20005
Tel: (202) 580-6971
Fax: (202) 638-6056

www.spr.org