

A high-contrast, black and white photograph showing the silhouette of a person, likely a prisoner, looking out through a window with vertical bars. The person is positioned in the center-left, with their head bowed and arms resting on the bars. The light from the window creates a strong silhouette effect. The background is dark, and the bars are prominent.

IN THE SHADOWS

Sexual Violence in U.S. Detention Facilities

A Shadow Report to the U.N. Committee Against Torture by
STOP PRISONER RAPE

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Sexual Violence in U.S. Detention Facilities
A Shadow Report to the U.N. Committee Against Torture
2006

Alternative NGO Report Prepared for the 36th
Session of the U.N. Committee Against Torture

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EXECUTIVE SUMMARY

“In the Shadows: Sexual Violence in U.S. Detention Facilities” was prepared by Stop Prisoner Rape (SPR) for the 36th session of the United Nations Committee Against Torture. The aim of this report is to highlight the widespread sexual abuse of incarcerated men, women, and youth in U.S. detention facilities and to offer recommendations aimed at remedying this acute human rights crisis.

U.S. law contains various provisions relevant to combating sexual violence behind bars, including the Eighth Amendment to the U.S. Constitution, the federal Prison Rape Elimination Act (PREA), and state rape and custodial sexual misconduct laws. However, U.S. policymakers and law enforcement authorities are not effectively using this legal framework, despite the clear requirement to do so in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

SPR calls on the U.S. government to use the arsenal of legislation already at its disposal to put an end to the sexual assault of inmates. At a minimum, corrections officials who perpetrate acts of sexual violence against detainees must be held responsible for their crimes.

Various systemic conditions of detention in the U.S. today contribute to the unacceptably high rates of sexual abuse behind bars, including: over-incarceration and overcrowding; lack of proper inmate classification; and a pervasive ‘code of silence.’

With more than 2.2 million people in custody at any given time, the U.S. incarcerates a larger proportion of its population than any other country in the world. This over-incarceration has led to serious overcrowding in detention facilities across the nation, forcing prison and jail administrators to convert gymnasiums and other common areas into dormitories. Many facilities also lack proper protocols to ensure that those who are vulnerable to abuse are separated from those who are likely to commit acts of sexual violence. To make matters worse, a ‘code of silence’ adhered to by both corrections officials and inmates continues to keep prisoner rape shrouded in secrecy both inside prisons and jails and in society at large.

SPR calls on the U.S. government to reduce overcrowding in its detention facilities. The government must ensure that all inmates are offered safe housing; overcrowding must never be used as an excuse for failing to guarantee every inmate’s right to be free from sexual violence. An effective inmate classification system that identifies vulnerable prisoners and potential predators must be established in all facilities and fully implemented at all times. Policymakers and corrections administrators must also demonstrate to staff and inmates that there can be no place in U.S. prisons and jails for a ‘code of silence.’

While anyone can become a victim of sexual assault in detention, certain groups of inmates are especially vulnerable. Among the chief targets for sexual violence are: non-violent, first-time

offenders who are inexperienced in the ways of prison life; youth held in juvenile and adult facilities; gay and transgender detainees, or those who are perceived to be gay or gender variant; and, finally, those held in immigration detention centers.

SPR calls on the U.S. government to acknowledge that certain inmate groups are at extreme risk of being assaulted while in custody and to improve the ways in which the safety of these inmates is protected. Simple measures that would help prevent vast numbers of sexual assaults must be established, such as improved surveillance of detention facilities and the strict separation of juveniles from adults.

In the aftermath of a sexual assault in detention, a survivor is frequently faced with the threat of continued abuse and further systemic victimization by the prison or jail administration itself. In addition to the dearth of confidential mental health services available to survivors of sexual violence behind bars, a cloud of impunity hangs over prisons and jails nationwide, in breach of both the letter and spirit of the CAT. Adding insult to injury, the vast majority of victims of sexual violence in detention are faced with insurmountable barriers to seeking redress through civil rights litigation.

SPR calls on the U.S. government to ensure that inmates have access to prompt and fully confidential mental health counseling and medical care in the aftermath of sexual abuse. The U.S. should also reconsider its system of judicial remedies available to inmates who have been subjected to sexual abuse. Specifically, state and local prosecutors must investigate and prosecute all substantiated instances of custodial sexual misconduct, sexual assault, or rape in custody. In addition, the U.S. Congress must repeal, or at the very least amend, the Prison Litigation Reform Act (PLRA).

The plight of survivors of sexual violence in U.S. facilities is further aggravated by the fact that the U.S. government refuses to recognize Article 22 of the CAT, thereby denying victims of abuse in detention the opportunity to communicate directly with the CAT Committee once they have exhausted available avenues of relief within the U.S. legal system.

SPR calls on the U.S. government to permit Article 22 communications with the Committee Against Torture.

I. INTRODUCTION

When photos of United States (U.S.) military personnel sexually abusing and humiliating Iraqi prisoners hit the newsstands in April 2004, the American public was appalled. In testimony before Congress, Secretary of Defense Donald Rumsfeld described what happened at Abu Ghraib as “fundamentally un-American.”¹ Sadly, Mr. Rumsfeld was wrong.

The reality is that sexual abuse in detention is a widespread, systemic problem in U.S. detention facilities. The U.S. government’s Second Periodic Report to the Committee Against Torture (CAT Committee) asserts that when “unfortunate instances” of such abuse occur, they are promptly and thoroughly investigated and referred for prosecution.² Unfortunately, that is not the case. On the contrary, prisoner rape is arguably the most widespread and neglected form of human rights abuse in the U.S. today.

According to the best available research, one in five male inmates faces sexual assault behind bars.³ While estimated rates of sexual abuse at women’s prisons vary widely, at the worst facilities, as many as one in four prisoners is victimized.⁴ The Bureau of Justice Statistics (BJS) produced a report in July 2005, based solely on administrative records of reported incidents, which found that 8,210 allegations of sexual assault were reported at prisons, jails, and juvenile facilities in 2004, of which nearly 2,100 were substantiated.⁵

Rape in detention constitutes torture under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁶ Other forms of sexual assault and harassment in detention may constitute cruel, inhuman or degrading treatment, in which case they also amount to violations of the CAT and other provisions of international human rights law.⁷ Although the U.S. has recognized that rape in prison violates the U.S. Constitution, the government has failed to comply fully with its treaty obligations. In general, there is a lack of serious governmental effort to address sexual violence behind bars, both in terms of proactive prevention and redress for victims. In particular, corrections officials are rarely held accountable for sexual violence that occurs on their watch.

This report first provides a brief overview of the legal framework that exists in the U.S. to address prisoner rape. It then examines the following three core problems related to sexual violence in detention and provides recommendations on how to address them:

“Sexual violence in prison consists not only in direct victimization, but also in the daily knowledge that it’s happening. It approaches legitimacy in the sense that it’s tolerated. Those who perpetuate these acts of violence often receive little or no punishment. To that extent alone, corrections officials render these acts acceptable. At the same time, we can’t expect a rape victim to report it if he anticipates a lack of responsiveness, a lack of sensitivity or basic protection by those who are charged with his care.”

— T.J. Parsell, prisoner rape survivor and President of Stop Prisoner Rape. Testimony before the National Prison Rape Elimination Commission (August 19, 2005).

1. Systemic conditions give rise to prisoner rape, including: over-incarceration and overcrowding; lack of proper inmate classification; and a prison 'code of silence';
2. Certain populations are especially vulnerable to sexual assault in detention, including: first-time, non-violent offenders; youth; gay and transgender inmates; and detainees in the custody of the U.S. Immigration and Customs Enforcement (ICE); and
3. In the aftermath of a sexual assault in detention, survivors are faced with further victimization, including: the absence of basic confidentiality standards within detention facilities; inadequate grievance procedures; and a lack of access to effective legal remedies.

This report is intended to provide the United Nations Committee Against Torture (CAT Committee) with additional information concerning the Second Periodic Report of the government of the United States to the CAT Committee.

The report was written by Stop Prisoner Rape (SPR), a non-governmental human rights organization based in Los Angeles, California. SPR works to end sexual violence against men, women, and youth held in all forms of detention within the U.S. To achieve this goal, SPR seeks to: engender policies that ensure institutional accountability for prisoner rape; change ill-informed and flippant public attitudes toward sexual assault behind bars; and promote access to resources for survivors of this type of violence.

INCIDENCE OF SEXUAL ASSAULT IN U.S. DETENTION FACILITIES

Reliable studies on the incidence of sexual violence in U.S. detention facilities are scarce. According to the best available research, one in five male inmates faces sexual assault behind bars. While rates of sexual abuse at women's prisons vary widely, at the worst facilities as many as one in four prisoners is victimized.

Pursuant to the Prison Rape Elimination Act (PREA), adopted in 2003, the U.S. government has begun to track the incidence of sexual assaults by staff and inmates. The Bureau of Justice Statistics (BJS) released its first findings in July 2005, based solely on administrative records of reported incidents. The agency found that there were 8,210 allegations of sexual assault reported at adult prisons, jails, and juvenile facilities in 2004, of which nearly 2,100 allegations were substantiated. While direct surveys of inmates are also part of the BJS's mandate to determine the incidence and impact of prisoner rape, this research is still in progress and expected in 2007. BJS and other researchers agree that cases reported to facilities do not represent the full scope of the problem, due to underreporting caused by fear, stigma, and a 'code of silence' in prisons.

Every week, Stop Prisoner Rape (SPR) is contacted by an average of ten survivors of sexual assault behind bars, the vast majority of whom write letters while still incarcerated. Between 2002 and 2005, SPR received letters from 527 different survivors describing sexual assault that occurred in detention in all 50 U.S. states. SPR's database of letters does not permit statistical conclusions about prevalence, but it does provide rare, first-person insight from survivors of horrifying sexual abuse.

Total number of survivors in SPR database as of December 2005.....527

Male Survivors.....454 (86%)*

(27 survivors held in male facilities self-identified as transgender)

Female Survivors.....66 (13%)*

*Seven survivors did not identify themselves by gender

Total number of male survivors sexually assaulted by another prisoner.....247 (54%)*

By a corrections official.....78 (17%)

By a non-custody staff member.....14 (3%)

Did not state who committed the assault.....115 (25%)

*Percentages based on # of male survivors.

Total number of female survivors sexually assaulted by another prisoner.....8 (12%)*

By a corrections official.....32 (48%)

By a non-custody staff member.....17 (26%)

Did not state who committed the assault.....9 (14%)

*Percentages based on # of female survivors.

Total number of survivors who were assaulted for the first time while under age 21.....29 (6%)

Total number of survivors who were assaulted by more than one person.....92 (36%)

Total number of survivors who were assaulted more than once.....97 (37%)

Total number of survivors who reported the assault.....68 (51%)

Total number of survivors who reported that their complaints resulted in discipline of the abuser.....16 (3%)

II. LEGAL FRAMEWORK

There are several important aspects of U.S. law that are directly relevant to addressing sexual assault in detention facilities, chief among them the Eighth Amendment to the U.S. Constitution, the Prison Rape Elimination Act (PREA), and U.S. rape and custodial misconduct laws. If fully implemented, this legal framework would largely ensure that officials responsible for committing – or acquiescing in – acts of sexual violence in detention are held accountable.

A. Eighth Amendment to the U.S. Constitution

In its 1994 decision in *Farmer v. Brennan*, the U.S. Supreme Court explicitly recognized prisoner rape as a violation of the Eighth Amendment to the U.S. Constitution's prohibition against cruel and unusual punishment.⁸ The Supreme Court held unanimously that officials have a responsibility to safeguard prisoners from violence perpetrated by other prisoners.⁹

The majority opinion stated that, “being violently assaulted in prison is simply not ‘part of the penalty that criminal offenders pay for their offenses against society.’”¹⁰ However, as described further in Section V below, while *Farmer v. Brennan* is considered an important recognition of the gravity of sexual violence in detention, the legal standard established through this case also limits the extent of prison officials' liability for what occurs in the facilities they oversee. The standard, known as “deliberate indifference,” has been extremely difficult for prisoner rape survivors to meet.

B. Prison Rape Elimination Act

As the U.S. highlights in its Second Periodic Report to the CAT Committee, in 2003, the first-ever federal law addressing prisoner rape was passed, entitled the Prison Rape Elimination Act (PREA). The passage of PREA was a momentous development in the fight against prisoner rape. However, more than two and a half years after PREA was signed into law, its implementation is just beginning and the letter and spirit of its provisions have not yet been felt in the majority of U.S. detention facilities. PREA provides for: the gathering of national statistics about prisoner rape; the formation of a national commission to study the issue and develop standards for local, state, and federal governments about how to address prisoner rape; the creation of a review panel to hold annual hearings examining conditions and practices at the best and worst performing facilities; the development and provision of training for corrections officials; and the provision of grants to states to combat the problem.¹¹

By April 2006, the processes of measuring incidence of sexual assault, training corrections officials, and developing national standards had just begun. Implementation of other key provisions of PREA, such as identifying best and worst performing facilities, had not yet been initiated.

C. U.S. Rape and Custodial Misconduct Laws

Rape and sexual assault are serious crimes under the laws of all 50 U.S. states. There is no exception for when such crimes occur inside detention facilities.

In addition, custodial sexual misconduct laws prohibiting sexual relations between corrections staff and inmates are in effect in all U.S. states except Vermont. Nevertheless, relatively few cases of sexual violence in detention are prosecuted, because of a lack of prosecutorial will and resources.¹² The criminal penalty under custodial sexual misconduct statutes is often limited to a fine and a one-year prison sentence, depending on the level of force used to carry out the crime and whether it was a first offense. These low penalties contribute to prosecutors' lack of interest in using resources to pursue them. Moreover, in several states, including Colorado, New Hampshire, and Wyoming, consent is recognized as a legal defense to custodial sexual abuse, ignoring the inherent authority corrections staff hold over detainees that makes the concept of consent largely meaningless.¹³

The U.S. Department of Justice (DOJ) also has the discretion to investigate abuses and pursue civil suits against state institutions under the Civil Rights of Institutionalized Persons Act or the Violent Crime Control and Law Enforcement Act of 1994.¹⁴ The DOJ may criminally prosecute persons "acting under color of state law" for violating a prisoner's constitutional rights. However, these statutes are seldom used to combat sexual violence in detention.

Recommendations on the U.S. Legal Framework

In contrast to the prevailing U.S. practice of not fully enforcing its existing laws, the CAT mandates that detainees held at U.S. facilities be provided with protections to ensure that they are not subjected to torture and other cruel, inhuman, and degrading treatment. Articles 2 and 16 require state parties to take *effective* legislative, administrative, judicial or other measures to prevent torture and cruel, inhuman, and degrading treatment. In addition, Article 12 provides that the competent authorities "proceed to a prompt and impartial investigation" whenever an act contrary to the CAT may have occurred.

SPR calls on U.S. policymakers and law enforcement authorities to use the extensive existing U.S. legal framework to combat prisoner rape as well as conditions of detention that tend to increase its incidence.

- Vermont, the only state in the U.S. without a custodial sexual misconduct statute, must enact such legislation.
- Penalties for custodial sexual misconduct must be increased to appropriately reflect the severity of such crimes.
- With the Prison Rape Elimination Act as an impetus, DOJ officials must aggressively use the arsenal of legislation at their disposal to prosecute state corrections systems and officials involved in the sexual assault of inmates.

III. SYSTEMIC CONDITIONS GIVING RISE TO SEXUAL ASSAULT IN DETENTION

“How was it possible, in a protective custody unit, for two gang members who had spent many years in prison to rape a vulnerable man who had never been to prison and never committed a violent crime? At the time of the rape, a single officer was responsible for observing a day room, a dining area, and two floors of cells with open doors. It was not possible, at any given time, for that officer to observe the entire unit. [T]he victim [reported] that the rape took place over a forty-five minute time span, in a second floor cell, while the officer was in the day room, where she was unable to see inside the cells on the second floor... But in an overcrowded system, it is unlikely that prisoners of different security levels who are identified as being in need of protective custody will be further segregated...”

Terry Kupers, “Rape and the Prison Code,” in *Prison Masculinities* 113 (Don Sabo et. al. eds., 2001).

As the U.S. inmate population continues to swell, the likelihood of sexual abuse increases. Prison and jail administrators across the nation are failing to keep their populations from outpacing the capacity of existing facilities. Partly due to the massive influx of new inmates, many prisons and jails also fail to ensure that non-violent, first-time offenders are separated from potentially predatory inmates. In addition, a ‘code of silence’ that is honored by prisoners and corrections officials alike continues to keep prisoner rape shrouded in secrecy both inside prisons and jails and in society at large.

A. Over-Incarceration and Prison Overcrowding

With more than 2.2 million people behind bars, the U.S. incarcerates a larger percentage of its population than any other country in the world. The inmate population quadrupled between 1980 and 1999.¹⁵ More than 500,000 of these prisoners are incarcerated on drug charges.¹⁶

Although public support in the U.S. for the “war on drugs” has waned considerably in recent years, the U.S. government has continued to pursue anti-drug policies that lead to the incarceration of large numbers of low-level drug users. Exceedingly long drug sentences contribute to the current prison overcrowding and understaffing. Despite a prison building boom of nearly two decades, officials at many U.S. corrections facilities have had to convert cafeterias and gymnasiums into dormitories. Such severe overcrowding creates opportunities for predators,¹⁷ as procedures for housing potential perpetrators and victims of sexual violence separately tend to be overlooked in facilities with a shortage of beds.¹⁸

“Teresa Smith,” a mother of two and a victim of sexual abuse during childhood, began to use powdered cocaine at age 19 and eventually became addicted to crack cocaine. She was sent to prison for the first time at age 26 for possession of stolen goods, and was in and out of prison for the next 11 years. Smith was raped by corrections officials twice, and was repeatedly sexually harassed and assaulted throughout her years in prison. She told SPR:

“The prisons are so overcrowded, and the officers take advantage of that. They see all your weaknesses. Some of them are predators. The gym is where I slept in and there were 120 women in there. There is no privacy. There are no partitions. There are no doors.... What happens when you kick the covers off in bed at night? You have got officers walking by with flashlights looking at you. Being locked up in that kind of environment was devastating – emotionally, physically, and mentally draining.”

SPR staff in-person interview, August 2005.

B. Lack of Proper Inmate Classification

A 19-year-old University of Florida college student arrested in 2002 for possession of about an ounce of marijuana and who had no criminal record, was violently raped after being placed in a cell in a county jail with a 35-year-old career criminal awaiting trial on sexual battery charges. Jail and city officials acknowledged that the youth should never have been placed in a cell with a known predator, and attributed the mistake to overcrowding and a flawed inmate classification system.

Tim Lockette, "Jail Gets Flak Over Policy," Gainesville Sun, June 14, 2003.

One of the most important tools available to corrections officials to prevent prisoner rape is the appropriate classification of detainees when they enter a facility, as well as a system for rapidly re-classifying them when an actual or potential problem arises. By housing non-violent prisoners with violent ones, corrections officials create environments that virtually guarantee sexual assault.

Despite efforts to adopt an objective, uniform system of classification in U.S.

prisons and jails, many state departments of corrections do not collect data needed to assess an inmate's risk of harming others. Nearly 40 percent of corrections departments do not collect information on whether a weapon was used during the prisoner's offense.¹⁹ Twelve of the nation's 52 departments of corrections do not collect information on an inmate's history of violence and 17 do not collect information on gang membership.²⁰

"Sophia Brooks," a transgender woman from Florida who is a U.S. army veteran, began the transition to becoming female in 1999. She initiated hormone therapy, adopted a feminine voice and mannerisms, grew her hair long, and acquired breast implants. In 2002, she was arrested for drug possession and sentenced to seven years in a men's prison. She recounted her harrowing experiences in detention to SPR.

"When I arrived at the reception center...I stepped off the bus and was strip-searched in front of two guards and about a dozen male inmates. A sergeant yelled, 'Look at the tits on that one! Those are the best-looking tits I've ever seen on a man.' He pointed me out to a six-foot, three-inch inmate and said to him, 'You like that one, don't you? I'm going to put you in a cell with that one.' Another sergeant called me 'tits' and 'titty man'... While the rest of my group went through the intake process, I was left sitting on a bench until the afternoon so that all the other intake inmates could see me. My head was completely shaved, and my sports bra was taken away, because 'males' don't need bras in prison. I was placed in a locked-down 'protective management' unit with murderers and a predator who had a prior 'relationship' with a transsexual before my arrival."

Soon after her arrival, Brooks was raped by that predator in the protective custody unit. She told SPR, "I yelled for him to stop, but nobody heard me. He kept saying, 'Yeah, you like that, bitch. I knew you wanted it.' When he was done, he left, and...I cried all night. I was ashamed of feeling so helpless." Brooks emphasized to SPR that corrections authorities must, "acknowledge the problem of placing minimum-custody transsexuals into locked-down protective management areas with mixed custody levels."

Excerpts from letters to SPR from "Sophia Brooks," dated 2004 and 2005.

Some positive exceptions do exist. San Francisco County jails, for example, have used an effective classification system since the 1980s. Originally created to protect the city's gay inmate population, trained staff members interview, assess, and assign housing to inmates based on their likelihood of victimizing or being harmed by other prisoners.²¹

C. Prison 'Code of Silence'

A pervasive code of silence among corrections officials at the Corcoran State Prison in California contributed to the 1999 acquittal of four prison staff members charged with arranging the rapes of Eddie Dillard. A 23-year old, 120-pound, first-time prisoner, Dillard was deliberately housed in solitary confinement with a sexual predator known as the 'Booty Bandit,' in an effort by prison officials to "teach him a lesson" after he kicked a female corrections officer. The 'Booty Bandit' raped Dillard repeatedly over a two-day period, as corrections officers passed by the cell and laughed.

The implicated prison officials were put on trial, but acquitted, even though another corrections official testified against those who were tried. Prisoner rights advocates blamed the acquittal in part on the prosecutor's failure to "make the code of silence and culture of terror" at the facility central issues in the case. It was charged that the corrections union, the California Correctional Peace Officers Association, thwarted the prosecution by instructing its members not to cooperate with the FBI and state investigations.

Christian Parenti, Guarding their Silence, in Prison Nation (T. Herivel and P. Wright, eds., 2003).

In U.S. detention facilities, 'snitching' on another prisoner is considered unacceptable and a sign of weakness.²² According to Dr. Terry Kupers, a noted psychiatrist and expert on the psychological effects of prison abuse, by reporting sexual violence to an official or another prisoner, a victim violates a longstanding male prison code and invites retaliation from the perpetrator(s) and others who dislike snitches.²³ Administrative procedures and corrections officials' behavior often aggravate the situation further, as a prisoner who reports a rape typically is pressured to reveal the name of his/her assailant without any reasonable assurance of protection from retaliation.²⁴ Thus, to avoid looking weak and being labeled as a snitch, most prisoners choose not to file a formal complaint.²⁵ Some will even forego medical assistance and psychological counseling following a sexual assault, out of fear of inadvertently breaching the code of silence.

Similarly, because protective custody is often used to house vulnerable inmates, and especially those who have filed a formal complaint, the stigma of having been in protective custody can follow a vulnerable prisoner long after he or she is returned to the general population.²⁶

The code encouraging prisoners to remain silent is further enhanced by the likelihood that their complaints will not be investigated and dealt with seriously. In a 2005 report, the Bureau

of Justice Statistics highlighted several of the factors preventing inmates from reporting abuse. “Administrative records alone cannot provide reliable estimates of sexual violence. Due to fear of reprisal from perpetrators, a code of silence among inmates, personal embarrassment, and lack of trust in staff, victims are often reluctant to report incidents to correctional authorities.”²⁷

There is no question that a code of silence not only deters prisoners from reporting sexual violence, but that corrections officials and unions also utilize their version of the code to protect their collective interests during investigations of cases of abuse. This tendency to ‘close ranks’ in the face of a sexual assault fosters impunity and is a serious impediment to justice.²⁸

Recommendations on Conditions and Culture in Detention Facilities

Article 11 of the CAT provides that where circumstances in a country’s detention system change, the country should “review [its] arrangements for the custody and treatment of persons subjected to...imprisonment...with a view to preventing any cases of torture.” In accordance with the CAT, SPR calls on the U.S. government to adhere to the general mandates of Articles 2 and 16, which require states parties to take effective legislative, administrative, judicial or other measures to prevent acts of torture and cruel, inhuman or degrading treatment, as circumstances change and the overall prison population increases.

- All inmates must be offered adequate housing; overcrowding must never be used as an excuse for failing to guarantee every inmate’s right to be free from sexual violence.
- Policymakers should consider alternative strategies to incarceration, such as drug treatment opportunities for non-violent drug users, to ease overcrowding and keep such offenders away from the dangers of prison life.
- An effective inmate classification system that identifies vulnerable prisoners and predators must be in place and fully implemented at all times. With approximately 15 percent of U.S. prisoners classified as high risks to others, and 15 percent classified as likely victims, accurate classification is imperative.*
- Prisoners placed in protective custody must be separated according to security level. For example, a maximum security gang member and a first-time, non-violent drug offender who are both in need of protective custody must not be housed together.
- The code of silence that permeates prison life in the U.S. must be dismantled by following the mandate of Article 10 to “ensure that education and information regarding the prohibition against torture are fully included in the training” of corrections personnel. All corrections staff must be instructed that adherence to a code of silence that keeps prisoners and staff from preventing and reporting abuse is wholly inconsistent with universal human rights standards, as reflected in the CAT.

* National Institute of Corrections, Objective Prison Classification: A Guide for Correctional Agencies, 12-13 (2004).

IV. POPULATIONS VULNERABLE TO SEXUAL ASSAULT IN DETENTION

“Rachel McCarthy,” a college graduate who worked as a fitness trainer and substitute teacher, was disabled by a snowmobile accident and became addicted to a powerful painkiller. Once her medical benefits ran out, she began obtaining the drug from a street dealer, and eventually started trafficking cocaine for him. In 2002, she was sentenced to seven years in federal prison for conspiracy to distribute cocaine. In April 2003, a male corrections official made sexual advances toward her. McCarthy rejected them, and the staff member became aggressive. Soon after that incident, she witnessed the official in what she describes as a “sexually compromising position” with another woman inmate.

The official began threatening McCarthy and following her around the facility. When she pursued administrative remedies, she became the target of retaliatory conduct. She was subjected to insults and verbal threats, was denied visits from friends and family for two years, and was placed in segregation. McCarthy was ultimately transferred to a high-security prison more than a thousand miles from home, which had a terrible reputation for sexual abuse and misconduct.

McCarthy told SPR that, “I never knew such treatment existed in this country – especially sanctioned by the government. I have done nothing to deserve this abuse, and I am powerless to stop it.” She went on to describe the conditions at this second facility as “dirty, dangerous, and horribly overcrowded – many inmates are forced to sleep on the floor upon arrival.”

SPR staff in-person interview, 2005

While anyone can become a victim of sexual violence in detention, certain groups are especially hard hit by this type of abuse. Non-violent, first-time offenders who are inexperienced in the ways of prison life are frequently singled out for attacks. Youth held both in juvenile and adult facilities are also at high risk for rape and abuse. Gay and transgender detainees, or those who are small, effeminate, and perceived to be gay or gender variant, experience rates of prisoner rape that are several times higher than those for inmates overall. Finally, those held in immigration detention centers are exceptionally vulnerable to sexual violence.

A. First-time, Non-Violent Offenders

First-time, non-violent offenders often lack the street smarts to protect themselves behind bars. In assessing prisoners’ “potential for violence index,” one researcher found that only 25 percent of targets of violence were incarcerated for a threat or act of force, compared to 58 percent of non-targets and 79 percent of aggressors.²⁹ Other researchers have similarly found that, while there is a lack of conclusive data on the subject of prisoner rape, a highly disproportionate number of sexual assault victims are first-time, non-violent offenders.³⁰

First-time offenders are especially at risk because of prison officials’ failure to house them according to their vulnerability for abuse, as opposed to simply according to the crime for which they are incarcerated. Overcrowded conditions make it even more likely that non-violent offenders will be placed with violent, potentially predatory cellmates.

Many prisons have failed to implement effective sexual assault prevention programs, including communicating a “zero tolerance” policy to potential predators and sufficiently orienting first-time offenders on sexual assault prevention and risk. In many cases, prisons that do not separate violent offenders from non-violent ones also fail to make clear to vulnerable inmates what to do if they feel threatened. To make matters worse, some prisons and jails lack policies and practices to actually protect those who do express fear of sexual assault. Survivor Keith DeBlasio testified before the National Prison Rape Elimination Commission in 2005, describing how his pleas to prison officials for help went ignored, leaving him to be repeatedly raped by a cellmate:

[B]efore the abuse began, I told the officials that I felt vulnerable in the open dormitory unit and...that I felt threatened by the assailant. My assailant...was known for being violent. When he began to threaten and harass me, I told prison officials, but...[they] did nothing.³¹

B. Youth

Juveniles from ages 13 to 18 are particularly vulnerable to sexual abuse in U.S. adult prisons and jails. When incarcerated with adults, teenagers are five times more likely to report being sexually assaulted than when they are held in youth facilities.³² Moreover, juveniles held in adult prisons are eight times more likely to commit suicide than in juvenile detention.³³ Research indicates that this is in large part due to feelings of isolation, and an intense fear of sexual violence or physical assault.³⁴ Nevertheless, depending on the state, minors as young as 16 may be automatically tried as and housed with adults. In June 2004, more than 7,000 youth under the age of 18 were being held in adult facilities.³⁵

Youth held in juvenile facilities are also subjected to high levels of sexual violence.³⁶ In 2004, juvenile

In 1995, 16 year-old Rodney Hulin was sentenced to eight years in an adult facility in Texas for setting a dumpster on fire. In prison, he became an easy target, with a 5'2", 125-pound frame. He was raped multiple times by other inmates and reported the assaults to doctors and prison officials on numerous occasions, pleading for help. In particular, using the prison's established administrative procedures, he requested to be removed from the general prison population. His pleas were rejected. Prison officials decided that Hulin did not meet the "emergency grievance criteria" and told him that "[t]his happens every day, learn to deal with it. It's no big deal." Unable to tolerate any further abuse, Hulin hanged himself in January 1996, and died after lying in a coma for four months.

Adapted from testimony of Hulin's mother, Linda Bruntmyer, before the National Prison Rape Elimination Commission (June 14, 2005)

More recently, on March 15, 2006, a 12-year old detainee was allegedly raped repeatedly by two older teenagers while in a holding room at a Los Angeles court house. The officials in charge of monitoring the juveniles from an adjoining area appeared to have obscured the window, so that the juveniles could not be seen.

Noam Levey, "Rape of Boy at Court Site Reported," Los Angeles Times, March 25, 2006

facilities in the U.S. reported the highest rates of sexual abuse by corrections personnel.³⁷ The Department of Justice (DOJ) found that juveniles reported more than 2,800 allegations of sexual violence during that year alone.³⁸ Fifty-nine percent of these incidents were committed by other youth in the facilities, while 41 percent were committed by staff.³⁹ Three out of ten of the alleged incidents were substantiated by the facilities. In the remaining cases, there either was insufficient evidence or the allegations were determined to be unfounded.⁴⁰

C. Gay and Transgender Detainees

“Lisa Nelson” is a pre-operative transgender woman who suffers from mental illness. In September 2004, while being held at a California jail on charges of smuggling drugs into a correctional facility, another inmate threatened to stab her if she did not come with him to the shower stalls, where he proceeded to rape her. A corrections official walked by as the rape was being perpetrated and laughed, doing nothing to stop it. Subsequently, the facility placed the perpetrator in a cell together with Nelson.

Nelson told SPR that, “he did nothing but beat me and rape me. When I finally got out of there, I had two black eyes that were completely closed up. I didn’t deserve this.” In September 2005, after refusing Nelson’s requests to be housed in the unit for gay and transgender inmates, the facility placed her in a protective custody unit with about six other inmates. Two of them immediately forced her to perform oral sex. A deputy who saw the attacks taking place did nothing. Nelson told SPR that the next day, “the deputy made jokes about it. He asked me how much I charge for that.” Nelson went on to tell SPR that “[s]ometimes, I want to die. I’m scared to close my eyes at night.”

SPR staff in-person interview, 2005.

Gay and transgender inmates are perhaps the hardest hit by sexual violence in custody. A study of one institution reported that 41 percent of gay inmates had been sexually assaulted, a rate that was three times higher than that for the institution overall.⁴¹ Transgender inmates who have developed breasts and a feminine appearance, for example, are especially vulnerable to various forms of sexual harassment, such as being subjected to gawking, verbal abuse, and sexual touching by male prisoners and corrections officials. Contributing to the heightened risk that gay and transgender inmates face are the reckless and indiscriminate classification practices that most facilities continue to use. For example, transgender

inmates are often automatically placed either in protective custody with few opportunities to participate in prison programs, or with the general population without regard to their unique needs and physical appearance.⁴²

Gay and transgender inmates who have the courage to come forward and report abuse typically face greater institutional apathy than other detainees. Corrections officials tend to conflate homosexuality and transgender status with consent to rape, and so trivialize these inmates’ claims. In the many letters from inmates to SPR, gay and transgender prisoners frequently describe officials ignoring or even laughing at their reports of sexual abuse. In some cases,

prison officials have set gay and transgender prisoners up for abuse, and then are dismissive of or refuse to cooperate with investigations. Perhaps the best-known recent example of such conduct is the case of Roderick Johnson, a young, openly gay, black man who served time in a federal prison in Texas. Upon entering the facility, he asked to be placed in protective custody, as he was concerned that he might be targeted by other inmates. Instead of responding appropriately, corrections personnel told Johnson “we don’t protect punks on this farm.” Johnson was repeatedly brutalized, raped and ‘sold’ by prison gangs over the next 18 months. While Johnson requested transfer to protective custody nine times, prison administrators continually refused his requests, even mocking him by telling him to “learn to fight” or accept that he would continue to be raped.⁴³

D. U.S. Immigration and Customs Enforcement (ICE) Detainees

The passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and the Homeland Security Act of 2002 has resulted in dramatic increases in the number of immigrant detainees and the length of periods of detention.⁴⁴ On an average day, the United States Department of Homeland Security detains more than 200,000 individuals in ICE detention centers.⁴⁵

There is a considerable record of sexual abuse in U.S. immigration detention. As documented in a 2004 SPR report entitled *No Refuge Here: A First Look at Sexual Abuse in Immigration Detention*, many ICE detention centers are plagued by systemic problems with sexual violence.⁴⁶ There are many reasons why immigration detainees are at heightened risk for sexual abuse, including: overcrowding; lack of independent monitoring by advocacy organizations; an absence of data on sexual abuse of detainees; fear of deportation; inadequate access to counsel; and varied literacy and language skills. Due to these factors, and especially to the acute fear of retaliatory deportation, few immigration detainees challenge the conditions of their confinement, including those who suffer sexual abuse.

In October 2004, Nereyda Escalante, a woman from Mexico residing in California, was detained by U.S. immigration officials after returning from a visit to Tijuana. She was taken to the San Diego Correctional Facility, an immigration detention facility, pending a court hearing before an immigration judge to determine whether she would be deported.

On December 15, 2004, Escalante alleges that a detention center official ordered her to accompany him to a room to work under his supervision filling bags with candy that the facility was going to distribute to detainees for the Christmas holidays. The room was out of the view of security cameras. Shortly after Escalante entered the room and sat down to work, the officer pushed her to the floor, pulled her pants down, and raped her. He then warned her not to say anything about what he had done, and threatened her with severe consequences if she were to do so. The next morning, the official ordered Escalante to accompany him to the same room, where he raped her again, and again warned her not to tell anyone what he had done. Escalante suffered serious physical injuries and emotional distress as a result of the attacks.

Adapted from Amended Complaint in Escalante v. Corrections Corp. of America, Inc., No. 05 CV 0022 WQH (AJB) (S.D. CA, filed August 16, 2005).

Despite the obvious risk factors among immigration detainees, the ICE Detention Operations Manual represents a distressing example of institutional indifference toward the potential for sexual misconduct and abuse. The manual does not deal with sexual assault in a comprehensive and substantive manner. Existing language is unfocused and out-of-date, contributing to a policy document that treats sexual assault as an afterthought in the context of ICE detention.⁴⁷

SPR, along with other human rights organizations, have attempted to obtain access to ICE detention centers to monitor the conditions, but have found it difficult, if not impossible, to gain entry to the facilities in general, and to individual detainees in particular. For example, of the eight ICE facilities SPR contacted in 2002-2003 in connection with the production of *No Refuge Here*, five denied even a low level site visit by SPR staff, either referring to post 9-11 safety concerns or offering no reason for the denial.

Recommendations on Vulnerable Populations

Article 11 of the CAT requires that the U.S. “keep under systematic review...arrangements for custody and treatment of persons subjected to any form of arrest, detention or imprisonment...with a view to preventing any cases of torture.” From the cases and analysis above, it is clear that certain groups of prisoners continue to be singled out for sexual abuse.

In accordance with the CAT, SPR calls on the U.S. to examine the ways in which current policies and procedures are placing these groups at increased risk and to implement necessary reforms.

- Dormitories and other living areas must be regularly patrolled, and special attention must be paid to blind spots. Security cameras must be installed to aid in the monitoring of blind spots.
- Dormitory-style housing must be discontinued in high-security facilities and wherever understaffing is an issue.
- Inmate objections to being paired with a specific cellmate due to fear of assault must be respected.
- The physical safety of sexual assault victims must be ensured in a non-punitive way, by moving the suspected aggressor into segregation or to another housing area, rather than punishing the victim further through segregation.
- Non-violent offenders must be kept safe from sexual violence at all times. Most importantly, a strict classification system must be implemented that ensures that those vulnerable to sexual violence never are assigned as cellmates to violent, predatory inmates.

- Juvenile inmates must be housed separately from adults.
- Juvenile inmates held in adult facilities must be recognized as youth, for whom standard procedures such as strip searches and being viewed while in a state of undress can be especially excruciating, particularly when guarded by members of the opposite gender.
- Officials at all detention facilities must take into account the extreme risk of sexual violence facing gay and transgender inmates. In particular, gay and transgender inmates should be given the option to be housed separately from the general population.
- Insensitive blanket housing policies for transgender inmates must end, such as automatically placing them in segregation or basing their housing assignment solely on their genitalia or perceived gender identity.
- ICE detention facilities must adopt sound policies and practices that adequately protect detainees from sexual assault.
- Given the limited constitutional protections applicable to non-U.S. citizens, it is especially urgent that independent NGOs be granted access to ICE detention facilities to ensure that violations of the CAT are not occurring.

V. IN THE AFTERMATH OF ASSAULT: LACK OF SERVICES AND REDRESS

In the aftermath of a sexual assault in detention, victims are faced not only with the very real threat of further abuse, but with further victimization from the prison or jail administration itself. Prisoners are often unable to access adequate mental health services and other assistance. To make matters worse, corrections officials who sexually victimize prisoners or knowingly fail to protect them from abuse by other inmates are rarely criminally prosecuted or held civilly liable. In cases where action is considered, resignation or termination—without prosecution—is the usual result. Moreover, inmates who wish to seek legal redress after an assault are confronted with significant legal and administrative hurdles, including those posed through the notorious Prison Litigation Reform Act (PLRA).⁴⁸

On April 1, 2002, Penifer Salinas, a woman serving a two-year sentence for car theft at the Denver Women's Correctional Facility, was assaulted by a corrections officer. The sergeant in charge was aware that this officer had previously had sexual contact with at least one other inmate, and he was under investigation by police for stalking women in the community.

The officer forced Salinas to perform oral sex and then raped her, telling her to keep quiet or "she would never get paroled." The attack left Salinas bleeding from her vagina. Fearful of retaliation, Salinas did not report the rape for months. When she did, she was provided no information about how the prison was going to respond. Instead, she was placed in solitary confinement, without access to her legal mail or letters from her mother, and was subjected to retaliation from other corrections officials. Salinas was not informed when the officer was removed from the prison and arrested on the stalking charge. Now out of prison, she continues to suffer from anxiety attacks as a result of the rape and the manner in which she was treated after reporting it.

Alan Prendergast, "If the Shoe Fits: Did Colorado Prison Guards Look the Other Way While a Guard's Fetish Turned Violent?," Prison Legal News, February 2006.

A. No Confidentiality for Survivors

In SPR's experience, when an inmate is sexually assaulted behind bars, there is a severe disconnect between the serious nature of what has occurred and the response of most detention facilities. In particular, virtually all prisons and jails deny rape survivors the right to seek confidential mental health counseling. On the contrary, prison mental health staff and other employees are required to report anything that potentially threatens the security of the facility or that may constitute a crime or a breach of institutional policy. As a result, prisoners who confide in institutional mental health counselors do so at great risk, as details about their experiences are likely to be shared with other officials.⁴⁹

Because of these reporting requirements, inmates who speak with in-house counselors lose the power to decide when and if they feel ready and safe enough to formally report the perpetrator. Once a counselor reports the abuse to other officials, an investigation may follow in which the identity of the parties implicated is revealed and each such party is interrogated, leaving the victim at great risk of retaliation and further abuse and often in desperate need for transfer to a safer unit or facility.⁵⁰

Despite the existence of community rape crisis centers throughout the U.S., prisoners have

traditionally had no access to counselors from these centers, as detention facilities have taken the position that it would constitute a security risk to allow confidential communication between inmates and outside mental health providers. While the dearth of adequate services for inmates is widespread, positive change appears to be on the way in California. Through a groundbreaking project believed to be the first of its kind in the U.S., SPR is working with the California Department of Corrections and Rehabilitation to facilitate prisoners' access to independent rape crisis counselors. If the project develops according to plan, confidential counseling inside two California prisons will begin in mid-2006.

B. Prosecution of Staff Rare

In addition to the dearth of adequate services available to inmates in the aftermath of an assault, a cloud of impunity hangs over U.S. detention facilities for their failure to prosecute these cases. Even in the cases of complaints of sexual abuse filed by inmates and substantiated by staff, few corrections officials are prosecuted. According to the U.S. Department of Justice (DOJ), in 2004, there were 508 substantiated incidents of staff sexual misconduct in federal and state prisons, including juvenile and Immigrations and Custom Enforcement (ICE) facilities, and jails.⁵¹ Staff were discharged in 296 of these cases, while only 193 were referred for prosecution.⁵² During the same period, there were 140 substantiated incidents of sexual harassment of inmates by corrections staff. Staff were discharged in just 47 of these cases, and referred for prosecution in four.⁵³

In a review of inmates held in custody by the federal Bureau of Prisons (BOP), the U.S. Office of the Inspector General (OIG) found that a majority of the staff who committed sexual misconduct were not prosecuted for their crimes.⁵⁴ Instead, the cases were handled administratively, and the implicated corrections personnel either resigned from their positions, or were disciplined or terminated.⁵⁵ Between 2000 and 2004, the OIG submitted 163 sexual abuse cases for prosecution. Forty-five percent, or 73 of these cases, were actually accepted for prosecution and 65 resulted in convictions. Eighty-eight cases, or 54 percent, were declined for prosecution.⁵⁶

C. Inadequate Remedies at Law for Victims

It is difficult for a prisoner who has been victimized to seek legal redress in the civil system. Civil rights litigation, especially on behalf of prisoners, is often prohibitively expensive and usually takes years to conclude. In addition, the standard established under *Farmer v. Brennan* is so difficult to meet that few plaintiffs have been successful. Specifically, corrections officials can only be held liable for sexual violence against prisoners where they have shown “deliberate indifference” by “disregard[ing] an excessive risk to prisoner health or safety. The official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw that inference.”⁵⁷

This is, in practical terms, an insurmountable standard for liability, requiring that the prisoner be able to prove not that the official *should have known* that a prisoner was at risk for assault, but that the official did in fact *know* of the risk. The standard also creates a perverse incentive for prison officials to deliberately ignore what is happening in their facilities, and usually means that they will avoid liability for sexual violence by asserting that they were unaware of any risk.

In addition to the onerous *Farmer* standard, the Prison Litigation Reform Act (PLRA) of 1996 places limits on inmates’ ability to seek civil redress in federal court. With the stated purpose of discouraging prisoners from filing “frivolous” lawsuits, this statute dramatically limits the

ability of individuals, NGOs, and even the U.S. Department of Justice to challenge abusive prison conditions through litigation. Most importantly, the PLRA mandates that prisoners exhaust all administrative remedies before filing suit for damages. This requirement often means that prisoners must report their abuse to the very corrections officer who assaulted them, or who failed to put an end to abuse by another inmate, within a short timeframe following the assault. The PLRA also bars prisoners from seeking damages for sexual harassment, invasions of privacy such as strip searches, and inappropriate sexual touching that falls short of sexual assault. Additionally, the PLRA precludes attorneys' fees for lawyers representing prisoners.

Moreover, despite the CAT Committee's recommendation to the U.S. in 2000, the U.S. continues to refuse to permit Article 22 communications to the Committee. Such communications would allow individuals who are victims of sexual abuse in detention to contact the Committee once they have exhausted available avenues of relief within the U.S. legal system. The U.S. explained this decision by stating that "[its] legal system affords numerous opportunities for individuals to complain of abuse, and to seek remedies for such alleged violations," and that it would thus "continue to direct its resources to addressing and dealing with violations of the Convention pursuant to the operation of its own domestic legal system."⁵⁸ However, the U.S. continues to fail in its duty to protect inmates from abuse, provide adequate treatment for victims, prosecute corrections officials who are complicit in these abuses, and allow an adequate civil remedy at law for victims.

Recommendations on Adequate Services and Redress for Victims

In its Second Periodic Report, the U.S. government maintains that “[l]aw enforcement authorities in the U.S. continue to prevent and punish acts of sexual abuse committed against prisoners.” Unfortunately, that is not the case. On the contrary, the dearth of services available to inmates in the aftermath of a sexual assault paired with the cloud of impunity that continues to hang above U.S. detention facilities constitute a serious breach of both the letter and the spirit of the CAT. Article 12 of the CAT requires “competent authorities [to] proceed to a prompt and impartial investigation” of a suspected violation and to protect an inmate from “ill-treatment or intimidation as a consequence of his complaint.” Articles 13 and 14, respectively, require states to ensure that an individual has “the right to complain to, and to have his case promptly and impartially examined by, its competent authorities” and that he “obtains redress and has an enforceable right to fair and adequate compensation...”

SPR calls on the U.S. government to ensure that prisoner rape survivors are not left to suffer alone, and to reconsider its inadequate system of judicial remedies available to inmates who have been subjected to sexual abuse.

- All inmates, including those in administrative segregation, protective custody, and prison infirmaries must have access to prompt and confidential mental health counseling and medical care in the aftermath of sexual abuse.
- Mental health and other services must never be withheld from an inmate because he/she is unwilling to name the perpetrator of an assault or file a formal complaint.
- Detention facilities must ensure that all segregation of those who report sexual abuse is voluntary, non-disciplinary, and does not result in any loss of privileges, resources, services, and programs. Similarly, inmates must not be needlessly transferred to another facility, as such transfers frequently render it impossible to maintain contact with loved ones.
- NGOs and other independent monitors and service providers must be granted access to detention facilities and inmates.
- All inmates must be made aware of their right to bypass the chain of command when reporting a sexual assault, ensuring that nobody is put in the position of having to report an assault to the perpetrator.
- Corrections officials who interfere with a prisoner’s efforts to report abuse must be effectively disciplined.
- Regardless of the potential criminal penalty, state and local prosecutors must investigate and prosecute all substantiated instances of custodial sexual misconduct, sexual assault, or rape in custody.
- Congress should repeal the PLRA. Alternatively, and at the very least, the PLRA must be amended to exempt all cases involving allegations of sexual abuse.
- The U.S. should reconsider permitting Article 22 communications to the CAT Committee, which would allow individuals who are victims of sexual abuse in detention to address communications to the Committee when they have exhausted available avenues of relief within the U.S. legal system.

ENDNOTES

1. *Transcript: Rumsfeld's Opening Statement*, WASHINGTON POST, May 7, 2004 (transcript of testimony from *To receive testimony on allegations of mistreatment of Iraqi prisoners: Hearing Before Senate Comm. on Armed Servs.*, 108th Cong. 1, 2004).
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3. Cindy Struckman-Johnson and David Struckman-Johnson, *Sexual Coercion Rates in Seven Midwestern Prison Facilities for Men*, 80 THE PRISON JOURNAL 379 (2000).
4. Cindy Struckman-Johnson and David Struckman-Johnson, *Sexual Coercion Reported by Women in Three Midwestern Prisons*, 39 J. OF SEX RESEARCH 3 (2002).
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7. See, e.g., Stop Prisoner Rape, Fact Sheet: Prisoner Rape is Torture Under International Law (undated), at www.spr.org/publications, citing Summary Record of 21st Meeting, U.N. ESCOR, Comm'n Hum. Rts, 48th Sess., para 35, U.N. Doc. E/CN.4/1992/SR.21 (1992), reprinted in Deborah Anker, LAW OF ASYLUM IN THE UNITED STATES, 3rd Ed., 490 (Refugee Law Center, Inc., 1999).
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9. *Id.* at 833-34.
10. *Id.* For discussion, see also, STOP PRISONER RAPE, STILL IN DANGER: THE ONGOING THREAT OF SEXUAL VIOLENCE AGAINST TRANSGENDER PRISONERS 2 (2005).
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12. See, e.g., Norman Sinclair et al., *Michigan Faces Conflict of Interest: Attorney General Defends the State Against Lawsuits and Prosecutes Offenders*, DETROIT NEWS, May 24, 2005 (discussing Wayne County Prosecutor's decision to "end its traditional role of prosecuting prison sex abuse cases" because "we can no longer devote scarce resources to investigate and charge crimes committed in state correctional institutions."); see also, Silja Talvi, *Not Part of My Sentence*, in PRISON NATION, 262, 265 (Tara Herivel & Paul Wright, eds., 2003) (discussing decision by a county prosecutor's office in Tacoma, Washington not to file charges against a corrections officer even though the prison superintendent fired him following an internal investigation into allegations of rape and sexual assault by three women inmates, citing a lack of corroborating evidence); HUMAN RIGHTS WATCH, NO ESCAPE: MALE RAPE IN U.S. PRISONS 339 (2001) (letter from Texas Department of Criminal Justice stating that of the 519 cases of sexual assault investigated by the Department's Internal Affairs division between the years 1984 through 1997, only four resulted in prosecution).
13. AMNESTY INTERNATIONAL USA, ABUSE OF WOMEN IN CUSTODY: SEXUAL MISCONDUCT AND THE SHACKLING OF PREGNANT WOMEN, OVERVIEW OF STATE LAWS ON CUSTODIAL SEXUAL MISCONDUCT, at <http://www.amnestyusa.org/women/custody> (visited March 1, 2006). In addition, laws in Arizona, California, Delaware and Nevada allow criminal action to be taken against inmates for engaging in sexual conduct.
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17. Terry Kupers, *Rape and the Prison Code*, in PRISON MASCULINITIES 111, 113 (Don Sabo et al. eds., 2001).
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22. Kupers, *supra* note 17, at 112.
23. *At Risk: Sexual Abuse and Vulnerable Groups Behind Bars*, Hearing Before the National Prison Rape Elimination Commission (August 13, 2005) (testimony of Terry Kupers, Ph.D., of The Wright Institute).
24. Kupers, *supra* note 17, at 112.
25. See, e.g., *id.* at 112-116.
26. DANIEL LOCKWOOD, PRISON SEXUAL VIOLENCE, 146-147 (1980).
27. BECK & HUGHES (BJS), *supra* note 5, at 2.
28. Christian Parenti, *Guarding Their Silence: Corcoran Guards Acquitted of Rape*, in PRISON NATION 254-55 (Tara Herivel & Paul Wright, eds., 2003).
29. Lockwood, *supra* note 26, at 33-34.
30. See, e.g., HUMAN RIGHTS WATCH, *supra*, note 12, at 149; LOCKWOOD, *supra* note 26, at 33-34.
31. *At Risk: Sexual Abuse and Vulnerable Groups Behind Bars*, Hearing Before the National Prison Rape Elimination Commission (August 13, 2005) (Testimony of Keith DeBlasio, Prisoner Rape Survivor).
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33. See, e.g., Stop Prisoner Rape, Fact Sheet: Juveniles in Adult Facilities are Vulnerable to Sexual Assault, citing Michael G. Flaherty, THE COMMUNITY RESEARCH FORUM OF THE UNIVERSITY OF ILLINOIS, AN ASSESSMENT OF THE NATIONAL INCIDENCE OF JUVENILE SUICIDE IN ADULT JAILS, LOCKUPS AND JUVENILE DETENTION CENTERS, 10 (1980); Jason Ziedenberg & Vince Schiraldi, *The Risks Juveniles Face: Housing Juveniles in Adult Institutions is Self-Destructive and Self-Defeating*, 60 CORRECTIONS TODAY 22, 24 (1998).
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36. For a recent case, see, e.g., Richard Walton, *Guards Accused of Sexual Misconduct: 6 girls in Marion County juvenile detention center allegedly were abused*, INDIANAPOLIS STAR, April 25, 2006 (detailing allegations that nine employees, including the superintendent of the facility, committed sexual misconduct against girls aged 13 to 15 between the years 2000 and (July) 2005).
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45. *Id.* at 1.
46. *Id.*
47. *Id.* at 11-16; for discussion of recommendations for information to be included in the ICE detainee handbook, see p. 20.
48. 18 U.S.C. § 3626 *et seq.*
49. KUPERS, *supra* note 17, at 112.
50. Terry Kupers, Mental Health in Men's Prisons, in PRISON MASCULINITIES 194-95 (Don Sabo et al. eds., 2001).
51. BECK & HUGHES, *supra* note 5, at 9-10.
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53. *Id.* at 9.
54. U.S. DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, DETERRING STAFF SEXUAL ABUSE OF FEDERAL INMATES 9 (April 2005).
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56. *Id.*
57. *Farmer*, 511 U.S. at 837.
58. U.S. Report to CAT, *supra* note 2, at 46.



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