

# The Effectiveness of the Prison Rape Elimination Act

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*An analysis on the history of the PREA, the flaws in the law and its implementation (with respect to preventing prisoner-on-prisoner rape in male US prisons), and the proposed fixes informed by scholarly discussion.*

## 01. Methodology

Analyzing the scholarship on US male prisoner-on-prison rape and the Prison Rape Elimination Act and scoring global comparisons of incarcerated human rights as an assistant scorer for the World Prison Project with Professor Cingranelli's CIRIGHTS Project.

## 02. Legal Framework & History

### US Constitution (1788):

- 8<sup>th</sup> Amendment: no "cruel and unusual punishment"
- 14<sup>th</sup> Amendment: US must treat people with "equal protections of the law"

### Gibbs v Franklin (1995): upheld the "deliberate indifference standard"

- Prisoner must prove that correctional officials knew of the attack and chose not to intervene-- near impossible standard to prove in courts. (Hein Online)
- Fosters environment where prison guards don't report suspected cases of prisoner-on-prisoner violence
  - if the warden is aware of it, they can be held liable for allowing it to happen.

### Human Rights Watch "No Escape: Male Rape in US Prisons" (2001): (Mariner)

- Condemned US government for not intervening on the rampant problem of prisoner-on-prisoner rape in male prisons across the US
- Inspired unanimous passage of the Prison Rape Elimination Act in 2003



## 03. Analysis of the PREA

- Claims that victims of prison rape have a harder time reintegrating into society
  - "are thus more likely to become homeless and/or require government assistance" (PREA Section 2 pt. 11)
- States prison rape is an 8<sup>th</sup> Amendment violation.
- Goal of the act: foster a zero tolerance policy for prison rape
- Requires the Bureau of Justice Statistics make a yearly comprehensive report on prison rape
- Requires that prisons train their guards to prevent prison rape
- Explains that National standards will be set and must be met
  - took another 9 years: national standards weren't passed till 2012 due to party disagreements

PREA (US Congress 2003)



## 04. Failures of the PREA

- There are positive qualities of the PREA such as better training for guards, and the DOJ statistics
- Sexual abuse incidents in US prisons and jails has increased since the passage of the act (Bitna)
- A state's compliance is self reported
  - governors are incentivized to ignore evidence their state is not complying with the PREA so they don't lose grants (Palacios)
- PREA standards are held inconsistently in courts, often to the benefit of the prison guard standing trial
  - Courts often consider PREA standards valid when proving that violations have not occurred- but not when prisoners try to use the standards for an 8<sup>th</sup> amendment based prosecution
    - PREA is more effective for guards to use as a defense than for prisoners to use in prosecution. (Sage)
- Not used to help transgender and gay prisoners, who are more likely to experience prisoner-on-prisoner rape
  - 13 policies relate directly to transgender prisoners in the PREA
    - only one state (Indiana) had all 13 of them (Malkin)
  - standards have been weaponized against consensual sex between gay inmates, prison guards further ostracize gay inmates in prison (Palacios)

## 05. Consequences to prison rape

- 70% of prisoners who experienced physical or sexual violence report "getting tough to avoid victimization" such as lifting weights or keeping a weapon on them. (Wolff)
- Survivors of prisoner-on-prisoner rape are more likely to ...
  - join a gang
  - request protective custody
  - transfer to another facility
  - agree to the demands of their attackers. (Wolff)
- Narrative:
  - 16 year old child in prison was raped and repeatedly beaten
  - His applications to move from the general population was ignored.
  - When his mom called the warden she was told her son would need to grow up.
  - "He said, 'Mom, I'm emotionally and mentally destroyed.' That was the last time I heard his voice. Our son hanged himself in his cell. He was 17 and felt afraid, and ashamed, and hopeless." (Stemple)



## 05. Conclusion: Proposed Fixes

- Lift bans on consensual sex and masturbation in prison
  - Studies show that sexual frustration can lead to crime be committed, especially sex crimes. (Lankford)
  - the bans historically are rooted in homophobia and a fear of gay sex in prison (Borchert)
- Federal oversight that is not self reported
- Lift requirements that prisoners must go through their prisons' grievance system
  - according to the 2012 DOJ leads to retaliation 46% of the time (Palacios)
- Add a private right of action
  - a private right of action is the ability to sue private citizens for violating PREA standards
  - PREA should explicitly state that prisoners have the right to sue prison guards (Sage)
- Require that guard training is comprehensive and based on the real experience of prisoners