

FACT SHEET

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THERE IS *tremendous pressure within an institution to keep quiet.*¹

— U.S. Department of Justice
Inspector-General Glenn Fine

The Need for Prison Oversight

When the government removes someone's liberty, it incurs the absolute responsibility to protect that person's safety and dignity. With more than 2.3 million people behind bars at any given time in the U.S.,² often held for long periods and in overcrowded facilities, keeping each inmate safe is a formidable task. Today, corrections facilities across the U.S. are failing at that task. That failure stems, in large part, from the unparalleled secrecy of U.S. corrections facilities, which has resulted in a culture of violence, impunity, and retaliation.

Without effective oversight, corrections facilities continue to rely on dangerous policies and practices. For example, inmates who are known to be vulnerable – such as youth in adult facilities³ and lesbian, gay, bisexual, transgender, or queer (LGBTQ) detainees⁴ – are frequently housed with known predators, abused relentlessly, and marked as fair game for future attacks.⁵ Incarcerated survivors of sexual violence who are brave enough to report their abuse are often not believed, and in some cases punished.

According to Michelle Deitch, a leading expert on prison oversight, “[a] robust system of correctional oversight involves sound internal auditing and accountability measures, complemented by credible and effective forms of external scrutiny.”⁶ In most U.S. facilities, external scrutiny is particularly lacking. Few jurisdictions empower an outside entity, such as an Inspector General or ombudsperson, to respond to inmate complaints and/or to audit facilities.⁷

Traditionally, civil rights litigation has served as a strong component of external oversight – allowing those whose rights have been violated to seek redress and demand reforms in court. Unfortunately, prisoner rape survivors and other inmates whose rights have been violated are virtually barred from the courthouse, due to the complex procedural requirements and substantive demands of the Prison Litigation Reform Act (PLRA).⁸ According to the PLRA, prisoner rape survivors who were unable to file and appeal a grievance within the deadlines imposed by their facilities, or who are not deemed to have endured a ‘physical injury,’ are unable to have a judge review the merits of their claims.⁹

Improved oversight of U.S. detention facilities should come with the ratification of national standards addressing sexual violence in detention. In accordance with the Prison Rape Elimination Act (PREA) of 2003, the National Prison Rape Elimination Commission is developing such standards. Once released (due in June 2009), the Attorney General will have one year to promulgate a final rule issuing the standards. Departments of Corrections nationwide will then have one year to certify their compliance or risk losing a portion of their federal funds. PREA does not specify how these binding standards will be monitored. Until the Attorney General publishes his final rule, the level of oversight that will be provided will remain unclear.

There is growing recognition internationally that prisons and jails must be transparent, have strong internal accountability mechanisms, and be open for external monitoring.

Although formerly a leader among nations in protecting human rights, the U.S. now lags dangerously behind in ratifying and complying with key international human rights treaties. In particular, the U.S. has not signed the Optional Protocol to the Convention Against Torture (OPCAT), which requires establishing an independent, national body that conducts regular visits to prisons and other detention settings with the aim of preventing torture.¹⁰

Sexual violence in detention is preventable – a product of mismanagement that thrives in large part because U.S. corrections facilities are subject to little to no oversight. Officials who participate or acquiesce in sexual violence behind bars are currently placed in powerful positions with little to no external monitoring. Robust external oversight would make detention facilities safer for inmates and staff alike, helping to end sexual and other forms of abuse.

Endnotes

- 1 Commission on Safety and Abuse in America's Prisons, *Confronting Confinement* 82 (Vera Institute of Justice 2006).
- 2 WILLIAM J. SABOL & HEATHER COUTURE, BUREAU OF JUSTICE STATISTICS, PRISON INMATES AT MIDYEAR 2007 (2008) (reporting that, on June 30, 2007, there were 1,595,034 people incarcerated in a federal or state prison); WILLIAM J. SABOL & TODD D. MINTON, BUREAU OF JUSTICE STATISTICS, JAIL INMATES AT MIDYEAR 2007 (2008) (on June 29, 2007, there were 780,581 people detained in a county jail).
- 3 For more information about the vulnerability of incarcerated youth, see Just Detention International, Fact Sheet, *Incarcerated Youth at Extreme Risk of Sexual Abuse* (2009).
- 4 To learn more about the unique safety risks for LBTQ detainees, see Just Detention International, Fact Sheet, *LGBTQ Detainees Chief Targets for Sexual Abuse in Detention* (2009).
- 5 One study found that nearly 75 percent of male and 57 percent of female prisoner rape survivors were sexually abused more than once, and 30 percent endured six or more assaults. Cindy Struckman-Johnson & David Struckman-Johnson, *A Comparison of Sexual Coercion Experiences Reported by Men and Women in Prison*, 21 J. INTERPERSONAL VIOLENCE 1591, 1599 (2006).
- 6 Special Topics In Preventing and Responding to Prison Rape: Medical and Mental Health Care, Community Corrections Settings, and Oversight, Hearing before the National Prison Rape Elimination Commission (Dec. 6, 2007) (testimony of Michele Deitch), available online at <http://www.nprec.us/docs3/Deitch%20Testimony.pdf> (last visited Feb. 5, 2009).
- 7 For a review of the types of oversight that currently exist, see VERA INSTITUTE OF JUSTICE, COMPENDIUM OF CORRECTIONAL OVERSIGHT MECHANISMS IN THE UNITED STATES (2009).
- 8 Prison Litigation Reform Act of 1995, Pub. L. No. 104-134 (codified as amended in scattered titles and sections of the U.S.C.); see also H.R. 3019, 104th Cong. (1996).
- 9 To learn more about how the PLRA hinders prisoner rape survivors' efforts to seek redress, see Just Detention International, Fact Sheet, *The Prison Litigation Reform Act Obstructs Justice for Survivors of Sexual Abuse in Detention* (2009).
- 10 The U.S. is a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res.39/46, 39 U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984) (entered into force June 26, 1987 and ratified by the U.S. Oct. 14, 1994), and the International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976 and ratified by the U.S. June 8, 1992). To learn more about these treaties and their relevance to sexual violence in detention, see Just Detention International, Fact Sheet, *Sexual Violence in Detention is Torture* (2009).

About Just Detention International (JDI)

Just Detention International (JDI) is a human rights organization that seeks to end sexual abuse in all forms of detention.

All of JDI's work takes place within the framework of international human rights laws and norms. The sexual assault of detainees, whether committed by corrections staff or by inmates, is a crime and is recognized internationally as a form of torture.

JDI has three core goals for its work: to ensure government accountability for prisoner rape; to transform ill-informed public attitudes about sexual violence in detention; and to promote access to resources for those who have survived this form of abuse.

JDI is concerned about the safety and well-being of all detainees, including those held in adult prisons and jails, juvenile facilities, immigration detention centers, and police lock-ups, whether run by government agencies or by private corporations on behalf of the government.

When the government takes away someone's freedom, it incurs a responsibility to protect that person's safety. All inmates have the right to be treated with dignity. No matter what crime someone has committed, sexual violence must never be part of the penalty.

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