

# The Prison Rape Elimination Act: Implications for Women and Girls

By Andie Moss

*"PREA is about sexual safety in correctional environments and this safety has a gendered meaning." — Barbara Owen*

The Prison Rape Elimination Act (PREA), in many ways, is now part of the corrections profession's vernacular. However, the need to go beyond a basic understanding of the law requires thoughtful consideration of the implications of various correctional populations impacted by the law. For women and girls in correctional facilities and residential settings, PREA has significant implications.

## The Basics of PREA

On Sept. 4, 2003, President Bush signed PREA into law. This legislation was unanimously passed on both sides of the aisle to ensure that all U.S. correctional facilities would practice zero tolerance for sexual violence and abuse among offenders as well as between staff and offenders. The act:

- Establishes a zero-tolerance standard in correctional facilities;
- Directs the Bureau of Justice Statistics to carry out a comprehensive annual statistical review and analysis of the incidence and effects of prison rape;
- Establishes within the U.S. Department of Justice the Review Panel on Prison Rape to carry out public hearings concerning the operation of the three facilities with the highest incidence of prison rape and the two facilities with the lowest incidence in each category of facilities identified;
- Charges the National Institute of Corrections with providing training and technical assistance to the field, developing a clearing house and authoring an annual status report to Congress;
- Directs the attorney general to develop grants to assist states in ensuring that budgetary circumstances do not compromise efforts to protect inmates and safeguard the communities to which they return; and
- Creates the nine-person National Prison Rape Elimination Commission to conduct a comprehensive legal and factual study of the penological, physical, mental, medical, social and economic impacts of prison rape; submit a report on the study; develop recommended national standards for the field; and conduct public hearings to accomplish the work of the commission.

The standards proposed by the National Prison Rape Elimination Commission will apply to all agencies and populations under the law. These proposed standards will be presented to the U.S. attorney general's office for a full year of review. During that year, accrediting associations and the corrections profession at large will provide comments to the attorney general's office. At present, the commission anticipates reviewing draft standards in the fall of 2008.

## Influence of Litigation In Women's Prisons

The predominant concern of the supporters of the law was a focus on violent male-on-male inmate rape, primarily in the adult prison and jail settings. The addition of staff sexual misconduct with offenders as a component of the legislation was a late addition to the language. The fact that staff sexual misconduct was even raised to this level of national discussion is at least in part due to:

- The visibility in the 1990s of class-action lawsuits in women's prisons addressing staff sexual misconduct;
- Subsequent major reports that emerged from human rights organizations and the U.S. General Accounting Office focusing on staff sexual misconduct in women's facilities; and
- The development of strategies by NIC to address staff sexual misconduct as a result of "lessons learned" from early class-action lawsuits in women's prisons.

The issue also was raised as a result of an earlier attempt at federal legislation focused on staff sexual misconduct. The Prevention of Custodial Sexual Assault by Correctional Staff Act was a precursor to PREA. Though unsuccessful, the proposed legislation emerged because of the earlier mentioned series of reports documenting sexual abuse of women in custody and the visibility of litigation in women's prisons. Although the act failed to be included in the Violence Against Women Act as proposed, the advocate community concerned about staff sexual misconduct in women's facilities, the advocates concerned about male inmate rape and the faith community later merged to form an unusual but effective coalition to ultimately pass PREA.

These factors suggest that litigation in women's facilities contributed to the development of PREA. The definitions

from these lawsuits that described staff sexual misconduct, informed current definitions used by NIC, state laws, agency policy, and surveys conducted by BJS under PREA.

## Understanding Context

**Historic growth.** In 2004, there were 104,848 women incarcerated in U.S. prisons, according to BJS's *Prisoners in 2004* report. This represents about 7 percent of the total incarcerated population, up from 6.1 percent in 1995 and 5.7 percent in 1990. Since 1995, the male inmate population has grown 32 percent while the female inmate population has increased 53 percent. The significant increase in the number of women under criminal justice supervision has called attention to the status of women in the system and increasingly made evident the lack of gender-specific policies and procedures for managing female offenders.

Historian Nicole Hahn Rafter highlights this shift, reporting that roughly two or three prisons were built or created for women each decade between 1930 and 1950. However, seven units opened in the 1960s, 17 in the 1970s, and in the 1980s, 34 women's units or prisons were established, continuing the trend in the 1990s.<sup>1</sup> Until the 1990s, some states did not even have a women's facility. Similarly, the jail population experienced unprecedented growth, putting a strain on housing and services for women in mixed-gender populations.

**Theory and practice.** Parallel to the growth, the past 15 years have been marked by an increase in theoretical models emerging to better understand the lives of women and girls and their pathways to crime. In the NIC publication *Gender-Responsive Strategies*,<sup>2</sup> the authors suggest the following theoretical models that influence effective practice in working with women in the adult setting:

- The pathways perspective;
- Relational theory and female development; and
- Trauma and addiction theories.

Studies report that between 40 percent and 88 percent of incarcerated women have been the victims of domestic violence and sexual or physical abuse prior to incarceration.<sup>3</sup> These experiences with intimate violence create pathways to prison in two ways. First, trauma is typically untreated and is tied to entry into substance abuse — the primary reason for increasing female imprisonment. Second, repeated victimization in the lives of women can lead to defensive violence and other criminal behavior.<sup>4</sup>

This cycle has important implications for community safety, both for citizens as well as the women returning to the community. PREA does little to explicitly cover women under supervision in the community. Thus, as more information is presented about sexual violence and the continuation of the victimization cycle, any discussion about PREA should include a serious focus on safety in the community.



Female inmates at the Arlington County Detention Facility

Karen Souyre, Eikon Photography

Emerging theories of women involved in the criminal justice system call for practitioners to be thoughtful about evidence-based practices and the integration of gender-responsive principles in shaping a response to PREA. The opportunity to better understand the complexity of dynamics that women and girls bring to the discussion of sexual safety will further be enhanced with integrating past and current research, theoretical models and the experience of seasoned practitioners.

## Listening to the Field

Through a cooperative agreement with The Moss Group Inc., NIC has collected data from staff working with women and girls, specifically to document staff perspectives of sexual activity in women's facilities. This data collected from focus groups and on-site technical assistance events include suggestions for expanded strategies to address both staff sexual misconduct and women's and girls' involvement with one another. *Staff Perspectives on Sexual Violence in Adult Prisons and Jails: Trends from Focus Group Interviews*<sup>5</sup> is an overview of this work and the first part in a series of bulletins.

When surveying staff regarding the differences in addressing sexual abuse and violence in facilities, staff made the following collective distinctions between male and female inmates:

- Staff noted that sexual assault training typically focuses on male-based information and staff receive little information, about the dynamics and prevention of sexual assault within women's facilities.
- Staff felt female sexual violence between women was defined as being more difficult to detect and prove, as indicated by this comment: "It is not like the male inmates, where there is semen. A girl getting touched is harder to prove as opposed to males. [You] have to catch women in the act."
- Staff were aware of the processes known as "protective pairing" and "grooming" for sexual activities. Many suggested that a large part of sexual victimization was tied to "domestic violence" and rooted in

relationships that may have begun as consensual and ultimately turned coercive.

- Staff in both men's and women's facilities discussed the difficulty in distinguishing between consensual vs. coerced sexual relationships. According to one employee, "Staff may be confused about what is really going on — if there is no [obvious] injury, then is it an obvious rape?"
- Staff in both women's and men's facilities also suggested that inmates with histories of prior victimization, either through incest, molestation or other forms of sexual assault, were more vulnerable to in-custody assault. One respondent said that most women have been victims and think that it's OK to be sexually assaulted or abused.
- Staff acknowledged that while male staff involvement with female inmates was the more common occurrence, misconduct between female staff and inmates was also a possibility.
- Staff also expressed great concern regarding the validity of claims of staff sexual misconduct and the damage such false accusations could create. Credibility was also an issue in reports of staff sexual misconduct. According to one staff member: "It is not easy to distinguish between a real incident and inmate manipulation to gain a cell change, or reporting it to get other inmates in trouble. It is hard to know what is happening in here."

These staff themes suggest the importance of acknowledging the histories women bring; the implications for dynamics in relationships with staff and offenders; the concern staff have about false allegations; and the need for operational practice and procedures that work in facilities housing women and girls.

## Implementation of PREA

Women and girls represent the largest growing population under correctional supervision. The body of knowledge that recognizes their pathways into crime and the interplay of sexual violence, drug abuse and physical abuse cannot be ignored in responding to the implementation of PREA. The realities of correctional environments cannot be ignored either. As practitioners, agency leaders, researchers and key stakeholders continue the conversation about PREA and its implications for women and girls, some of the following suggestions will surely become refined and expanded.

**Staff.** Many correctional staff are not prepared for the often complex dynamics women and girls display in custodial settings. The knowledge that women and girls are relational means they are motivated by connections to others. This suggests that staff, other women and girls, volunteers, and contractors are all "in the mix."<sup>6</sup> To eliminate sexual behavior in women's facilities as defined by PREA, staff must be prepared with a skill set that includes:

- Effective communication skills in working with women and girls;
- Skills in setting professional boundaries while being respectful;
- Operational practices that are gender-sensitive and meet the goals of safety and security;
- Awareness of women's pathways to crime and the implications for sexual behavior and vulnerability to substance abuse and re-offending;
- Awareness of community resources working specifically with sexual assault, such as rape crisis centers;
- Resources to assist women with reentry into the community; and
- Cultural awareness and appreciation of diversity within the population.

**Women and girls.** Engaging women and girls in eliminating sexual violence is often a missed opportunity. Strategies to engage the population effectively may include:

- Programs focused on breaking the cycle of victimization, educational opportunities, skill-based vocational training and programs designed to be relational;
- Orientation to the agency's zero-tolerance policy, reporting mechanisms and effective ways to "do time";
- Opportunities for peer education models of support and learning;
- Access to substance abuse programming;
- Confidence in the investigative process; and
- Access to staff with clinical expertise.

A rarely discussed reality is the loss experienced by some young women who enter the system and continue to be in custody during their childbearing years. In "Rethinking Prison Sex," Brenda Smith refers to one type of institutional sexual behavior as "sex for procreation."<sup>7</sup> Groups allowing for grieving this loss would be a useful tool to address an unspoken reality.

**Agency response.** If practitioners are to eliminate sexual violence in correctional settings, a zero-tolerance policy, while important, is not enough. Administrators must have the interest and the tools to create an environment that supports staff working with this population. Agency leaders must support policy development that is gender-specific. This requires an organizational structure that ensures a review of gender-specific implications for policy, training, operational practice and trauma-informed programming. Additional focus should be placed on identifying community resources for victims of sexual assault. The agency leaders and facility leadership must make a commitment to a culture of safety for women, girls and the staff who work with them. Whether managing a small jail, a youth facility or a large prison system, it is important to acknowledge that gender matters. Administrators must seek ways to acknowledge and implement gender-responsive strategies.

**Research.** While some information is known about the pathways into crime of women and girls, there is little empirical data showing the realities of prison and jail sexual behavior among the female population.<sup>8</sup> However, a review of the literature does provide some valuable suggestions for

practitioners working with women, and practitioners should not fall into the trap of thinking there is no guidance from previous research. The research pertaining to girls and women under community supervision is particularly limited. Although this article has been informed by the research, it is beyond the scope of this overview to give a fair discussion of it.<sup>9</sup>

## Gender Matters

PREA opens the door for important and often sensitive conversations, creating a degree of urgency to discussing issues of sexual safety in correctional facilities housing women and girls. This means shining the light on ways in which pathways into crime impact behavior in custodial settings. One could certainly make the case that this would be an effective approach to addressing male sexual violence in institutions as well. Both genders would be well-served as we implement PREA if careful thought is given to ways in which men and women enter the system, do time and reenter communities. Simply put, women have different “pathways” than their male counterparts.

Practitioners must also illuminate the interplay of staff with the female population, bringing a willingness to recognize how staff contribute to shaping the culture in correctional facilities. Similarly, agency-level leadership must recognize the need for policy review and development that aligns with the day-to-day practice of staff working with women and girls. For years, professionals in leadership roles in women’s services have searched for effective ways to have national dialogue about sensitive issues in women’s facilities, particularly the relationships among women, and the “gay for the stay” dynamic that occurs for some women and girls. Now is the time for an intentional discussion that builds on research, experience and leadership commitment in addressing sexual behavior in custodial settings for women and girls. Knowing about the pathways of women and girls entering the criminal justice system, practitioners have the responsibility to implement trauma-informed services, train staff and make the management commitment to acknowledge that gender makes a difference. Fortunately, there are excellent resources to assist the field in shaping a gender-responsive approach to PREA.

### ENDNOTES

<sup>1</sup> Zaplin, R.T. 1998. *Female offenders: Critical perspectives and effective interventions*. Gaithersburg, Md.: Aspen.

<sup>2</sup> Bloom, B., B. Owen and S. Covington. 2003. *Gender-responsive strategies: Research, practice, and guiding principles for women offenders*. Washington, D.C.: National Institute of Corrections.

<sup>3</sup> Human Rights Watch. 1996. *All too familiar: Sexual abuse of women in U.S. state prisons*. New York: Human Rights Watch.

Bloom, B. et al. 2003.

<sup>4</sup> Belknap, J. 2001. *The invisible woman: Gender, crime, and justice*. Australia: Wadsworth Publishing Co.

Bloom, B. et al. 2003.

<sup>5</sup> Owen, B. and J. Wells. 2006. Staff perspectives on sexual violence in adult prisons and jails: Trends from focus group interviews. Washington, D.C.: National Institute of Corrections/The Moss Group Inc.

<sup>6</sup> Owen, B. 1998. *In the mix: Struggles and survival in a women’s prison*. Albany, N.Y.: State University of New York Press.

<sup>7</sup> Smith, B.V. 2006. Rethinking prison sex: Self-expression and safety. *Columbia Journal of Gender and the Law*, 15(2006):185-234.

<sup>8</sup> Owen, B. 2005. At risk: Sexual abuse and vulnerable groups behind bars. Testimony at the National Prison Rape Elimination Commission Public Proceeding, 19 Aug. in San Francisco.

<sup>9</sup> Several resources are identified in the sidebar. Also of note is the grant, “Gendered Violence and Safety: A Contextual Approach to Improving Security in Women’s Facilities,” awarded by the National Institute of Justice to Barbara Owen and James Wells in 2006. This work promises to further contribute to the field’s understanding of sexual safety in correctional facilities for women.

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*Andie Moss is president of The Moss Group Inc. and project manager for a NIC cooperative agreement to assist the field in addressing the Prison Rape Elimination Act. She may be contacted at [amoss@mossgroup.us](mailto:amoss@mossgroup.us).*

## Prison Rape Web Resources

The work of the National Institute of Corrections continues its long-time focus on women and girls. Emerging work focusing on gender-specific risk factors will surely inform practitioners in addressing institutional behavior and behavior in the community. NIC’s Initiative on Women Offenders and the Initiative on the Prison Rape Elimination Act provide a wealth of resources to the field at [www.nicic.org](http://www.nicic.org). Several reviews of the literature addressing prison rape are included on this Web site. Additional useful sites include:

- American Correctional Association: [www.aca.org](http://www.aca.org)
- Bureau of Justice Assistance: [www.ojp.usdoj.gov/BJA](http://www.ojp.usdoj.gov/BJA)
- Bureau of Justice Statistics: [www.ojp.usdoj.gov/bjs](http://www.ojp.usdoj.gov/bjs)
- The Center for Innovative Public Policies: [www.cipp.org](http://www.cipp.org)
- Human Rights Watch: [www.hrw.org](http://www.hrw.org)
- National Institute of Justice: [www.ojp.usdoj.gov/nij](http://www.ojp.usdoj.gov/nij)
- National Institute on Drug Abuse: [www.nida.nih.gov](http://www.nida.nih.gov)
- National Prison Rape Commission: [www.nprec.us](http://www.nprec.us)
- NIC/WCL Project on Addressing Prison Rape: [www.wcl.american.edu/nic](http://www.wcl.american.edu/nic)
- Office of Juvenile Justice and Delinquency Prevention: <http://ojjdp.ncjrs.org>
- Stop Prisoner Rape: [www.spr.org](http://www.spr.org)