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## **Stopping Prison Rape: The Evolution of Standards Recommended by PREA's National Prison Rape Elimination Commission**

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# Stopping Prison Rape: The Evolution of Standards Recommended by PREA's National Prison Rape Elimination Commission

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## **Abstract**

The authors, one a past member of the National Prison Rape Elimination Commission (NPREC), review the historic literature on solutions to prison sexual assault. We contend that pressure for humanitarian treatment of inmates as well as other forces internal and external to the prison system brought about the 2003 Prison Rape Elimination Act (PREA) and NPREC. We review the 40 standards to stop prison rape in adult prisons and jails proposed by NPREC in 2009 and compare their scope to solutions from past literature. We recommend that the effectiveness of NPREC standards be evaluated and that the search for solutions continue.

## **Keywords**

Prison, Rape, Reform, NPREC, Standards

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Prison rape, broadly defined as unwanted sexual contact experienced by incarcerated men and women, has been aptly described by Robert Dumond (2000) as “the plague which persists.” In 1968, Alan Davis (1982) reported that over a 26-month period, at least 2,000 (3%) of 60,000 men in the Philadelphia prison system had been sexually assaulted. Davis famously pronounced the level of sexual assaults in the city prisons and jails to be “epidemic” (p. 108). Now 40 years later, the Department of Justice (DOJ) estimated that nationwide, 88,500 inmates (4.4% in prisons and 3.1% in jails) were sexually victimized in the previous year (Beck & Harrison, 2010). The DOJ study found that in some prisons (e.g., Fluvanna, VA), as many as 17% of inmates had been sexually victimized in the past year. However, there was positive news in the DOJ report: numerous prisons and jails reported no or very low rates of sexual victimization. In all, the report documented that prison rape, while persistent, is not inevitable.

Much progress has been made in finding and implementing ways to stop prison rape. In this article, we will review how solutions to prison rape in the literature from past decades have helped shape national commission policy recommendations released in 2009. We contend that pressure for humanitarian treatment of inmates ultimately brought about passage of the Prison Rape Elimination Act (PREA). Other contributing factors were legal liability of prisons for failure to protect inmates, a need to reduce prison violence, a growing belief that inmates do not deserve rape, decreasing homophobia, increasing public awareness of prison rape, and the failure of corrections to take action. After reviewing the National Prison Rape Elimination Commission (NPREC) recommended standards, we reflect on the future of solutions for prison sexual assault.

## **Review of Solutions to Prison Sexual Assault— 1930s to 2003**

Our review of the literature convinced us that there has never been a shortage of ideas of ways to stop prison rape. In our selection of important historical studies of prison rape, the authors devoted pages, and sometimes chapters, to ways to bring about change. The problem, in our opinion, is that ideas to stop prison rape were rarely translated into policy until changes were mandated by an act of Congress in 2003. The passage of PREA was deemed a “legislative miracle” by its founders—a case where short-term politics took a backseat to real policy needs (Horowitz, 2003, p. 3). At the time, passage of PREA seemed the achievement of the impossible for those of us who had faced resistance while doing prison rape research (e.g., Struckman-Johnson, 1998). However, looking back, we now see how forces of change were inexorably

moving the American prison system, along with public opinion, toward acceptance of policies to stop prison rape.

We learned from the literature that many of those who first investigated prison rape expressed a humanitarian concern for the interest and welfare for inmates. Joseph Fishman (1934), appointed special Inspector of Prisons in the 1930s, was one of the first to expose widespread forced "homosexuality" in American prisons and jails. Fishman expressed sympathy to the plight of inmates, especially young boys, who were trapped in small cells with sexual predators. He was among the first to recommend classification of inmates although his goal was total segregation of "real" homosexuals whom he viewed as a serious menace to security. However, he argued that inmates should be allowed sexual "normalcy" with family (conjugal) visits and that all inmates should be kept distracted from sex with exercise, recreation, and good work opportunities.

The humanitarian basis for stopping prison rape is exemplified in the work of Anthony Scacco Jr. (1982), author of the first professional book on the topic in 1975. The beginning of change, according to Scacco, will happen when the public grant offenders "the benefit of possessing human qualities" and move beyond being only concerned that inmates be "securely caged" (p. 299). Judging rules against sexuality in prison as a "denial of humanity" (p. 303), Scacco advocated for allowance of masturbation, furloughs for conjugal visits, and consensual male-male sex as ways to decrease tensions and sexual aggression. He supported classification of vulnerable inmates, coed schooling and education opportunities, work release programs, and protection for youthful offenders. Scacco predicted that ultimately the courts would end prison rape by holding prison authorities liable for failure to protect inmates from sexual assault.

Another famous work in this era was Daniel Lockwood's (1980) study of sexual aggression in New York prisons. Classifying the nature of Lockwood's solutions to prison rape is difficult because he had few to offer. Lockwood believed that a cycle of violence in prisons made it almost impossible to stop prison rape: perpetrators used violence to rape, while targets used violence to resist. In his opinion, racial conflict that fueled Black sexual aggression against White targets could not be solved legally by segregation of the races. Segregation of vulnerable inmates would stigmatize or "sissify" them to other inmates. Lockwood was also skeptical that single celling, hiring of more staff, offering more activities, or conjugal visits could quell the more violent aggressor's hunt for victims. Lockwood concluded that the only effective way to stop prison rape was to move potential victims out of the state prison system into alternative community programs.

Peter Nacci and Thomas Kane (1983, 1984), authors of influential research on sexual aggression in the federal prison system, offered solutions that were

more “security based” than humanitarian. They concluded that sexual aggression incidents were few and were caused by a small number of offenders. However, they viewed consensual homosexual activity as the underlying cause of much of prison violence, including homicides. Consequently, they held that the goal of management should be to control and restrict homosexual activity. The authors recommended that officers receive training about the difference between consensual and coercive homosexual sex and signs of predatory behavior. Other solutions were to classify vulnerable inmates with objective instruments, to build or modify architectural features (e.g., to avoid open bay dorms), to use rape kits in investigation of incidents, and to identify, prosecute, and sanction offenders.

A breakthrough in the search for solutions was Donald Cotton and Nicholas Groth’s (1982) publication of the first protocol for an institutional response to prison rape. They proposed prevention through classification, intervention with treatment of victims, and prosecution of offenders. All stages were to be bolstered with staff training and inmate education. These authors also recommended heightened surveillance of inmates and architectural blind spots where assaults could take place. What is notable about Cotton and Groth is their humanitarian concern for the plight of the male victim of prison sexual assault. They were among the first to suggest that male victims in prison and female victims in the community can both experience symptoms of the rape trauma syndrome. According to Thompson (2009), raising awareness of the suffering of men raped in prison helped the public understand that not even criminals deserve to be raped—a lesson promulgated by the antirape movement in the 1970s.

Important research by Helen Eigenberg (1989), an academic with corrections experience, illuminated how homophobia among correctional staff was a counterforce to prison rape reform. We found evidence of the negative effects of homophobia in the earliest literature. Fishman (1934) described a short-lived practice in a large federal prison where a large yellow “D” for degenerate was painted on the backs of men caught having sex together (p. 99). Scacco (1982) commented on correctional officers’ jokes, sarcasm, and hostility directed toward homosexual incidents. Nacci and Kane (1984) encouraged officers to hold negative attitudes against consensual homosexuality although they discouraged blaming the victim of forced encounters. Ahead of their times, Wooden and Parker (1982) noted that the already increasing tolerance by staff of homosexuality could be enhanced by hiring officers with more humanitarian traits and developing programs to improve the positive self-image of vulnerable gay inmates.

In the 1990s, an important contribution to ending prison rape was a review article by Robert Dumond (1992), an academic and mental health expert with

a background in corrections. With a strong humanitarian point of view, Dumond elaborated on solutions to prison rape with special emphasis given to Cotton and Groth's (1982) model for victim treatment and staff training. He brought attention to new concerns that victims may commit suicide or be exposed to HIV and AIDS. Dumond reiterated that "protective custody"—viewed by some as a way to protect prison rape victims—isolates victims, cuts them off from services, and may put them in reach of a predator. He echoed the warnings of other researchers that untreated victims may take their rage back into the community on release. Dumond noted that a growing number of court courses were supporting the legal responsibility of prison staff to protect inmates from sexual assault.

A pioneering effort to end prison rape in the 1990s was the release of the prisoner rape education program by the church-supported Safer Society Program of Pennsylvania. This humanitarian program was designed by prison-rape survivor Stephen Donaldson (1993), cofounder with Russel Smith in 1979 of the fledgling advocacy group that eventually became "Stop Prisoner Rape" (SPR).<sup>1</sup> The program was the first (and perhaps only) protocol that reflected the inmate perspective on dealing with prison rape. The program's inmate education tapes described ways to avoid sexual predators, when to stand up and fight, and how to cope with rape trauma syndrome if victimized. Protective pairing with a stronger inmate was suggested as a survival tactic in the absence of administrative protection. Donaldson also recommended staff training, classification, allowance on consensual sexuality, and availability of condoms to prevent the spread of HIV.

In 1994, the Supreme Court ruled that prison agencies who fail to protect inmates from sexual assault are in violation of the Eighth Amendment which forbids cruel and unusual punishment (*Farmer v. Brennan*, 1994). The push for reform was further intensified by a growing public awareness of the magnitude of the problem of prison rape. In 1996, Stephen Donaldson of SPR and other victims of brutal prison rape—one consequently infected with HIV—were featured in the top-rated CBS news program *Sixty Minutes*. A surge of media publicized our research finding that 19% of male inmates in the Nebraska prison system had been sexually coerced since incarceration (Struckman-Johnson, Struckman-Johnson, Rucker, Bumby, & Donaldson, 1996). Human Rights Watch (HRW; 1996) and Amnesty International (AI; 1999) released reports about the sexual abuse of female inmates by correctional staff that detailed shocking stories of forced prostitution, unwanted pregnancies, and forced abortions.

Academics continued to educate the public with scholarly research on prison rape. In 2000, Editor Rosemary Gido with Chris Hensely dedicated the entire issue of *The Prison Journal* to prison sexuality. The issue included

articles by Dumond (2000) on the crucial role of mental health professionals in remedies to prison rape and our study of sexual coercion rates in seven Midwestern facilities for men (Struckman-Johnson & Struckman-Johnson, 2000). Eigenberg (2000) documented decreasing homophobia and victim blaming among correctional officers. Hensley (2002) published another edited volume on prison sexuality that featured chapters on prison sexual assault and strategies for prison reform. The role of advocacy groups continued with the publication of HRW's expose' of the brutality of rape of men in U.S. prisons (2001). In this report, HRW called on Congress to implement policy reforms to address prison rape.

### **Passage of PREA and Creation of NPREC**

The move toward legislative action was already underway by 2000. Michael Horowitz, a human rights activist at the conservative Hudson Group in Washington D.C., invited 18 persons to form the Prison Rape Coalition. Members included a prison rape survivor, a past warden, representatives from the Prison Fellowship ministries, the Salvation Army, the Heritage Foundation, and at least two academics—Robert Dumond and Cindy Struckman-Johnson. The purpose of the politically diverse coalition was to draft a bill to bring about humanitarian reform of prison conditions that fostered rape. By 2003, the coalition expanded to 57, including members from SPR, HWR, AI, the NAACP, and the American Correctional Association (ACA). Congressmen Frank Wolf and Bobby Scott and Senators Ted Kennedy and Jeff Sessions sponsored the bill. After Congressional hearings and rewrites, the Prison Rape Elimination Act or PREA was passed unanimously by Congress and signed into law by President George W. Bush on September 4, 2003 (Struckman-Johnson, 2011).

The passage of PREA was an unexpected victory for those who were familiar with the long-standing social and political indifference toward prison rape. What made PREA possible will always be the subject of debate. However, the authors believe that the passage of PREA was primarily a humanitarian response by members of Congress who heard overwhelming evidence that prison rape was real and that thousands were suffering its consequences. PREA founder Horowitz commented that he knew the bill would pass after he witnessed a Congressman's reactions to the testimony submitted by prison rape survivor Tom Cahill (Horowitz, 2003, p. 3). We think that the wrenching testimony of prison rape survivors brought forward by SPR before Congress was crucial to passage of the Bill. Public awareness of the wrongness of rape, a fear that prison rape could spread HIV and AIDS to victims

and to the community, and increasing public tolerance of homosexual behavior helped create the climate for passage of PREA.

Another factor in the passage of PREA, in our opinion, is the failure of the American correctional system to make significant progress in addressing rape in its own prisons and jails. A decade before, Dumond (1992) questioned why most prison settings had not responded with a practical protocol for prison rape when so much attention surrounded the issue. He noted that the National Institute of Corrections (NIC), long a proactive force in this area, had been able to identify only one prison protocol in use—a program in the San Francisco Jail system. In 2000, Eigenberg commented that, with the exception of the 1995 Federal Bureau of Prisons sexual assault protocol, the development of policy to address prison rape was disturbingly slow. HRW (2001) found that most state and Federal correctional departments who responded to their survey had not yet implemented any type of sexual abuse prevention program for male inmate on inmate sexual assault. The authors' view is that with so little being done by corrections, Congress felt compelled to act by passing PREA.

The passage of PREA established prison rape as a top priority in prison systems. The Act created NPREC, which was assigned to report on the nature and causes of prison rape and to recommend national standards for reducing prison rape to the U.S. Attorney General (AG). The Commission membership was bipartisan. Republican leaders in Congress chose five members: a federal district judge, a CEO philanthropist, an ex-inmate, a corporate prison lawyer, and a law professor. Democrat leaders chose four members: an ex-prison warden, a law professor, a human rights advocate, and an academic researcher (coauthor Cindy Struckman-Johnson). The Commission varied by gender (five men and four women) and by race (six White and three African Americans). The sharp political differences among the Commissioners played out intensively in every meeting, yet the members continually sought consensus for the cause. The Commission met from July of 2004 through August of 2009 (Struckman-Johnson, 2011).

## **NPREC Definition of Prison Rape**

The first challenge for the Commission was to agree on a definition of prison rape. We adopted the more general term sexual abuse to “capture the full range of conduct the standards seek to address” (National Prison Rape Elimination Commission [NPREC], 2009b, p. 3). “Inmate on inmate” sexual abuse was defined as all incidents of sexual touch and penetration that occurred without the inmate’s consent, or by coercion by threat of violence, or because the inmate is unable to give consent or refuse. Inmate on inmate sexual harassment was also considered sexual abuse. “Staff on inmate”



sexual abuse included sexual touch or penetration that occurs with or without the consent of the inmate that is unrelated to official duties (e.g., pat downs). Staff to inmate indecent exposure and voyeurism were also considered to be sexual abuse (NPREC, 2009b, pp. 6-7). The Commission agreed that sex between inmates and staff is never consensual because of the great power of authority held by staff (NPREC, 2009a, p. 13).

## **Development of NPREC Standards**

NPREC held eight public hearings in major cities around the country, collecting thousands of pages of testimony and materials from more than 100 witnesses, including corrections leaders, inmate survivors of sexual abuse, medical and mental health practitioners, academic researchers, investigators, and prosecutors. After the hearings, the Commission invited 120 corrections professionals and members of interest groups for round table discussions on best practices for prison rape reduction. The NPREC draft of standards in 2008 went through two public comment periods. Eleven correctional facilities received site visits for feedback on the standards. In June, 2009, NPREC released a final report (NPREC, 2009a) and a four-volume set of standards for adult prisons and jails (with supplemental standards for immigration detainees), juvenile facilities, lockups, and community corrections (NPREC, 2009b).

NPREC created 40 core standards for adult prisons and jails. The genesis of the standards is Section 12 in PREA, which lists 12 matters related to prison rape such as classification of inmates, investigation of rape complaints, and trauma care for victims (Prison Rape Elimination Act [PREA] S.1435, 2003). The Commission was allowed, however, to pursue any matter reasonably related to prison rape. NPREC was restricted by PREA not to recommend a standard that would impose substantial additional costs to prison authorities. The Commission's own guidelines were to give agencies flexibility in establishing their sexual abuse policies; that compliance with the policy would be an ongoing process with adjustments; and that there would be greater transparency of an agency's records and efforts to address sexual abuse (NPREC, 2009b, p. 2). The 40 final standards are categorized by Planning for Prevention and Response, Prevention, Detection and Response, and Monitoring in Table 1.

## ***Planning for Prevention and Response***

The Commission's founding principle for the standards was that "leadership matters." Reform is a top-down process. They wrote seven standards that require agency heads to enact policies that will change the prison culture

**Table 1.** NPREC Standards for Prevention, Detection, Response, and Monitoring of Sexual Abuse in Adult Prisons and Jails.

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I. Prevention and response planning
Prevention planning (PP)
PP-1: Zero tolerance of sexual abuse
PP-2: Contracting with other entities for the confinement of inmates
PP-3: Inmate supervision
PP-4: Limits to cross-gender viewing and searches
PP-5: Accommodating inmates with special needs
PP-6: Hiring and promotion decisions
PP-7: Assessment and use of monitoring technology
Response planning (RP)
RP-1: Evidence protocol and forensic medical exams
RP-2: Agreements with outside public entities and community service providers
RP-3: Agreements with outside law enforcement agencies
RP-4: Agreements with the prosecuting authority
II. Prevention
Training and education (TR)
TR-1: Employee training
TR-2: Volunteer and contractor training
TR-3: Inmate education
TR-4: Specialized training: Investigations
TR-5: Specialized training: Medical and mental health care
Screening for risk of sexual victimization and abusiveness (SC)
SC-1: Screening for risk of victimization and abusiveness
SC-2: Use of screening information
III. Detection and response
Reporting (RE)
RE-1: Inmate reporting
RE-2: Exhaustion of administrative remedies
RE-3: Inmate access to outside confidential support services
RE-4: Third-party reporting
Official response following an inmate report (OR)
OR-1: Staff and facility head reporting duties
OR-2: Reporting to other confinement facilities
OR-3: Staff first responder duties
OR-4: Coordinated response
OR-5: Agency protection against retaliation
Investigations (IN)
IN-1: Duty to investigate
IN-2: Criminal and administrative agency investigations
IN-3: Evidence standard for administrative investigations.

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*(continued)*

**Table 1. (continued)**


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Discipline (DI)
DI-1: Disciplinary sanctions for staff
DI-2: Disciplinary sanctions for inmates
Medical and mental health care (MM)
MM-1: Medical and mental health screenings—history of sexual abuse
MM-2: Access to emergency medical and mental health services
MM-3: Ongoing medical and mental health care for sexual abuse victims and abusers
IV. Monitoring
Data collection and review (DC)
DC-1: Sexual abuse incident reviews
DC-2: Data collection
DC-3: Data review for corrective action
DC-4: Data storage, publication, and destruction
Audits (AU)
AU-1: Audits of standards

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regarding sexual assault (NPREC, 2009a, p. 52). The first stipulates that prison administrations have a written policy for zero tolerance of sexual abuse that is regulated by a PREA coordinator. This commitment is to be shared contractually with outside agencies. Adequate supervision of inmates is a priority, particularly in “blind spot” areas. Technology such as cameras should be utilized. Because cross-gender supervision carries the potential for sexual abuse, there are restrictions on cross-gender viewing and body searches of inmates by staff except in the case of emergencies. Inmates with special needs are to be kept informed of sexual abuse policies. Finally, an agency must make an effort not to hire or to promote anyone who has engaged in sexual abuse.

Good leadership means being prepared to respond appropriately when an inmate reports an incident of sexual abuse. Fundamentally, the agency needs a protocol for collecting evidence from the crime scene that will stand up in proceedings and court for prosecution of offenders (NPREC, 2009a, p. 116). To this aim, the Commission wrote a standard that requires the agency to utilize a DOJ national protocol that allows victims to have a forensic medical exam. The exam is to be given by a trained examiner with skills in collecting and preserving pertinent evidence. A victim advocate must accompany the victim during the exam. To ensure that a facility has trained personnel for responding to sexual abuse incidents, three other standards stipulate that the agency form agreements with outside community service providers, law enforcement agencies, and prosecuting authorities.

### *Prevention—Training*

The Commission's least controversial standards were those that improved training and education about sexual abuse. Experts, inmate survivors, advocates, and corrections officials all agreed that knowledge of sexual assault paves the way for prevention (NPREC, 2009a, p. 58). The Commission wrote two standards requiring that facility employees and volunteers and contractors in contact with inmates be educated about sexual abuse of inmates under PREA and other relevant laws. Topics include effective communication, the rights of inmates to be free from sexual abuse and retaliation from reporting, the dynamics of sexual abuse, and common reactions of victims. A parallel standard stipulates that inmates receive timely and comprehensive sexual assault education. Two more standards require specialized training for law enforcement staff who participate in investigations and for staff who provide medical and mental health care to sexual abuse victims.

### *Prevention—Screening*

Some of the most disturbing testimony at the hearings came from inmate survivors who had been sexually assaulted by violent cell mates (NPREC, 2009a, p. 70). The Commission responded with a standard that requires an agency to use a written screening instrument to classify inmates who are at high risk for being a victim or perpetrator of sexual abuse. Victim risk factors for men included size, age, offense history, disability, and sexual orientation. The victim risk factor for women was prior sexual abuse. The Commission recommended that risk factors be recalculated based on emerging social science research. Another standard directs an agency to consider high-risk inmates' safety in bed, housing, and work assignments. If possible, an agency should not segregate high-risk inmates from the general population or cause them to lose opportunities for programs and education.

### *Detection and Response—Reporting*

The Commission learned from the hearings that sexual abuse of inmates is underreported. Victims have many reasons not to report—fear of retaliation by the perpetrator, desire not to be labeled a snitch, feelings of shame and humiliation, or expectations that staff will not help them (NPREC, 2009a, p. 102). To help inmates “break the silence” about their sexual abuse, the Commission wrote nine standards to make reporting an easier and safer process. The first stipulates that an agency provide multiple internal ways for inmates to report incidents and threats of retaliation. Methods of reporting must be easy to use

and protect the privacy and security of the inmates. The agency must also provide at least one way for inmates to report to an outside public entity or office not affiliated with the agency. Staff must accept sexual abuse reports that are made verbally, in writing, anonymously, and from third parties.

Under the current policy set by the Federal Prison Litigation Reform Act (PLRA), victims who delay reporting sexual abuse for any reason may lose their opportunity to seek redress in the Federal courts. The Commission decided that this policy was unjust for sexual abuse victims who may be too fearful or traumatized to come forward in the aftermath of an incident (NPREC, 2009b, pp. 35). They wrote a standard to make it easier for inmates who report sexual abuse to “exhaust administrative remedies” in case they must seek redress in the court system. Another standard requires agencies to give victims access to confidential outside support services. A final reporting standard stipulates that all third-party reports of sexual abuse such as those from family members should be received and investigated. Those who report are to be informed of the outcome of the investigation.

### *Detection and Response—Official Response to Reports*

The Commission heard testimony from survivors that some staff did not take sexual abuse reports seriously or purposely kept silent to protect the perpetrators (NPREC, 2009a, p. 104). They wrote a standard that all staff must immediately report any knowledge or suspicion regarding a possible sexual abuse of inmates. This reporting by staff should be done on a “need to know” basis to protect the confidentiality of the inmate. After a difficult debate about patient–doctor confidentiality, the Commission decided that inmates are best served if medical and mental health staff are mandated to report sexual abuse to authorities (unless precluded by law). Finally, because some inmates will not report an incident until they are safely moved to another prison, facility heads who receive a sexual abuse allegation are required to inform the head of the facility where the incident occurred.

The Commission learned from the hearings that agency staff who discover a sexual assault situation must respond quickly and appropriately. The victim has to be separated from the perpetrator, the crime scene must be secured, and evidence on the victim must be preserved and not showered away (NPREC, 2009a, p. 115). The Commission wrote a standard that these precautionary steps must be taken by all staff who are “first responders” to a sexual assault. Another standard stipulated that an agency must work toward having a coordinated sexual assault response team or SART approach among first responders, medical and mental health services, and investigators. An additional standard requires that the agency protect those who report sexual abuse or cooperate in the investigation from retaliation by other inmates or staff.

### *Detection and Response—Investigation*

Commissioners were dismayed to learn in hearings that only a fraction of perpetrators of prison sexual abuse are prosecuted. The failure to consistently investigate incidents and hold perpetrators accountable silences victims and allows abuse to flourish (NPREC, 2009a, p. 119). To improve prosecution, the Commission wrote a standard that a facility must investigate all allegations of sexual abuse and notify victims and complainants of the outcome. Another standard stipulates that the investigation be promptly and objectively conducted by trained investigators. If a thorough review of evidence supports criminal prosecution, a prosecutor is to be contacted. Finally, the Commission recommends that an allegation of sexual abuse be substantiated by a preponderance of evidence and does not have to be proven beyond a reasonable doubt.

### *Detection and Response—Discipline*

The Commissioners agreed that no culture of safety can exist if perpetrators of sexual abuse are allowed to operate with impunity (NPREC, 2009a, p. 119). However, they disagreed on how to punish perpetrators. Some members felt that a staff person should be automatically fired for sexual misconduct; others felt it was beyond the Commission to dictate punishment. Ultimately, they wrote a standard that staff is subject to disciplinary sanction up to and including termination. It was added that the “presumptive” but not mandatory discipline would be termination. For inmates, the standard says that the discipline be commensurate with the nature and circumstance of the abuse committed. Because some Commissioners felt that perpetrators would be less likely to reoffend if given help, the standard included a provision that offending inmates could possibly participate in therapy or counseling.

### *Detection and Response—Medical and Mental Health Care*

The Commission heard firsthand from inmate survivors about the devastating effects of sexual abuse—physical injuries, flashbacks, anxiety, attempts of suicide, and loss of hope (NPREC, 2009a, p. 126). Deeply affected by the suffering of survivors, the Commissioners wrote standards that mandate proper care for victims. One stipulates that qualified staff ask inmates about prior sexual abuse victimization or perpetration during intake. This information may be used for referrals for treatment and for housing, bed, work, and program assignments. Another standard allows victims of sexual abuse to have timely, unimpeded access to free emergency medical treatment and crisis intervention services. A third standard requires that victims of sexual

abuse be provided ongoing care, including referrals for treatment after release. In some cases, perpetrators of abuse may receive treatment.

### *Monitoring—Data Collection and Review*

In the hearings the Commission learned about facilities where staff reports of long-standing inmate sexual abuse were ignored by higher ups. These cases underscored the need for a mechanism to let administrations know “where, when and under what circumstances” sexual abuse occurs (NPREC, 2009a, pp. 84). One of the Commission’s four data standards stipulates that every incident report must receive a critical review by a management team who identify ways to prevent future occurrences. Data for every reported incident of sexual abuse must be collected using a standardized instrument and set of definitions. The agency must review and analyze sexual abuse data so that corrective actions can be taken. Data must be securely stored for 10 years and be made available in aggregate form to the public and to researchers and journalists.

### *Monitoring—Audit*

The Commission concluded that internal reviews for sexual assault incidents are not sufficient to guarantee safety of inmates. When institutions bear responsibility for the control of dependent individuals, there must be external scrutiny (NPREC, 2009a, p. 87). The CEO member of the Commission insisted that the auditing process is necessary for accountability for all big organizations—including prison facilities. The final NPREC standard calls for audits at least every three? years by independent and qualified auditors who are allowed full access to the facility. The results may lead an agency to develop a corrective plan for deficiencies. The audit report and the corrective plan are to be made available to the public, legislative bodies, and community advocates who can take action to improve sexual abuse prevention efforts.

### *Comparing NPREC Standards With Past Solutions*

In retrospect, how well did these 40 standards match with the solutions that have been proposed in the historic literature? The NPREC standards, in our opinion, fit most closely the humanitarian model suggested by Cotton and Groth (1982) that outlines the steps of prison rape prevention, intervention, and prosecution. NPREC standards greatly advance the protection of vulnerable inmates (e.g., young, disabled, gay, bisexual, and transsexual) through classification. The treatment standards offer a high level of humanitarian care

for victims and even the option of care for abusers. The standard that limits cross-gender supervision is humanitarian in that it protects both male and female inmates' right to privacy and personal dignity. However, the security-based approach of Nacci and Kane (1983) is reflected in NPREC standards that require zero tolerance for sexual abuse, increased supervision of inmates, and strict protocols for making reports, conducting investigations, and prosecuting offenders.

What past solutions were not addressed by NPREC? Solutions advocated by Fishman (1934), Scacco (1982), and Donaldson (1993) that were related to inmate sexual expression such as conjugal visits, allowing consensual sex and masturbation, and use of condoms were not incorporated into NPREC standards. Although some members believed that inmates should be allowed to have "normal" avenues for sexual expression, the Commission as a whole decided against writing standards that promoted consensual sexual activity. The reason, in the coauthor's opinion, is that the Commission felt that it had a rare and invaluable opportunity to stop nonconsensual sex in prison. We did not want to endanger the success of our mission by writing potentially controversial standards that allowed sex in prison.

## **Reactions to the NPREC Standards by Stakeholders and the AG**

Since the release of the NPREC standards in 2009, several groups have registered their opinion on how well the standards have fulfilled the mandate of PREA. Just Detention International (previously SPR) leaders David Kaiser and Lovisa Stannow (2010) had this comment to say about the NPREC report that summarizes the standards:

Reading it, one is repeatedly struck by how straightforward and plainly sensible these recommendations are—and, therefore, by how astonishing it is, and how appalling, that such basic measures haven't already been standard practice for decades. (p. 1)

The authors further stated that if the NPREC standards were implemented everywhere, they believe the incidence of prisoner rape would be cut in half over the next decade, sparing abuse to thousands of people.

Reactions from some corrections leaders were not so positive. In an article about "rethinking PREA," Glanz (2010) wrote that some NPREC standards did not take into consideration the differences between local jails and prison facilities. According to Kaiser and Stannow (2010), members of the American Society for Correctional Associates (ASCA) said the Commission was "one sided and



myopic” in its approach and “childlike” (p. 4). A director from the Bureau of Prisons was of the opinion that the Commission exceeded its mandate by recommending costly standards and broadening definitions contained within PREA. Corrections officials expressed a major concern with the costliness of implementing the new standards and fears that auditing will be used for embarrassment and punishment. Kaiser and Stannow (2010) countered that prison systems in California and Oregon and a county jail in Michigan were making good progress in implementing NPREC standards without excessive costs.

Reactions from the U.S. AG to the NPREC standards are still being assessed at the time this article was written. According to PREA, the AG has the responsibility of accepting or modifying the NPREC standards before they are to be nationally binding. The AG surprised the Commission, however, by forming a work group in 2009 to review the standards (Moschen, 2011). In February, 2011, the AG published a set of revised standards (National Standards, 2011) for public comment. While some NPREC standards were strengthened (e.g., expanded medical care for victims, increased staff training), NPREC standards about cross-gender supervision and access to grievance procedures for inmates were significantly weakened. NPREC expressed its strong opposition to the diluting of the standards to the AG (NPREC, 2011). The fate of the NPREC standards in the hands of the AG will be revealed in the year ahead (Kaiser & Stannow, 2011; Moschen, 2011).

## **Conclusion and Recommendations for Future Research and Policy**

The NPREC standards represent a “seismic shift” in efforts to stop prison rape much like the changes that have been brought about by the antirape movement and domestic violence movements in this country (Thompson, 2009). Beyond adult prisons and jails, the standards are intended to reshape policy in juvenile facilities, lockups, immigration facilities, and community corrections. The influence of NPREC standards has been augmented by other PREA initiatives. PREA requires BJS to carry out annual surveys on the incidence and the effect of prison rape. These surveys (e.g., Beck & Harrison, 2010) have provided the first nationwide estimates of the scope of sexual abuse in prison. Utilizing these data, PREA-sponsored review panels have put the spotlight on heads of agencies with unusually high and low rates of prison rape (NPREC, 2009a, p. 49).

PREA funded a national clearinghouse within the NIC for providing information about prison rape. The NIC was also charged with conducting training and education programs aimed at the prevention, investigation, and punishment of prison rape. By 2009, the NIC had conducted programs in every state.

PREA also authorized the National Institute of Justice (NIJ) to award grants to help corrections facilities continue efforts to end prison rape and safeguard communities to which inmates return. As a result, the NIJ has funded numerous research projects on prison rape and the Bureau of Justice Assistance has provided grants to more than 34 States for the development of innovative practices and programs addressing sexual abuse (NPREC, 2009a, p. 49).

Together, the NPREC standards and the PREA initiatives constitute an enormous national effort to combat sexual assault in confinement facilities. While common sense tells us that these efforts will reduce the level of prison sexual assault, there remains a practical question: What solutions to prison rape work best? For example, are screening and classification the key to prevention, or are training and education equally or more important? Is same-sex supervision better than cross-gender supervision in preventing sexual abuse? If so, is it equally important to same-sex supervision in both male and female facilities? The Commission, having no empirical evidence on what works best, decided to treat every standard as equally important. To take away one would potentially diminish the effectiveness of all.

Yet as the NPREC standards are modified by the AG and implemented into future national policy, the question of what works best may become salient. In a time of diminishing resources for prisons, it would be useful to know what solutions or combination of strategies must be maintained at all costs. Therefore, we recommend that evaluation be the next step in the evolution of prison rape standards. The implementation of the NPREC standards by the AG will present a unique opportunity to evaluate the effectiveness of the various standards. For example, with data collection now mandated by standards, the review of critical incidents of sexual abuse may point to the value of certain policies. Because agencies tend to vary in the speed and thoroughness of adopting PREA policies (Thompson, Nored, & Cheeseman Dial, 2008), there may be opportunities for quasi-experimental comparisons of sexual abuse rates of facilities “with” and “without” certain policies. With innovative evaluation, the potency of various NPREC standards can be identified and refined.

Our second recommendation is to be prepared to look beyond the NPREC standards for solutions to prison rape. According to Tewksbury (2010), prisons are affected by increasing population size, emphasis on security, use of new technology, rising costs, and new laws like PREA. As the landscape of the American prison system changes, so will the problem of prison rape (NPREC, 2009a, p. 49). The effectiveness of the U.S. Attorney General’s final standards will depend on the confluence of many factors internal and external to prisons systems. NPREC was aware of the uncertainties of eliminating prison rape and proposed in a monitoring standard that policies be reevaluated in light of new information. We will go one step further and

encourage consideration of new approaches such as allowing conjugal visits and consensual sexuality, rehabilitative programming, celling and housing innovations, and alternative sentencing to community programs. As prisons and society continue to evolve, so must solutions for stopping prison rape.

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### Note

1. "The authors' decision to do prison rape research was a direct result of Stephen Donaldson's influence. In 1994, we contacted him for a reference on male rape for a book review and had a conversation about the need for new data on prison rape. This led to our study of prison rape in the Nebraska prison system and our collaborative friendship with "Donny". Donaldson died from AIDS (possibly contracted from prison rape) shortly after fulfilling his wish to be interviewed by Mike Wallace about prison rape for CBS's 60 Minutes.

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