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Committee on the Judiciary  
Subcommittee on Crime, Terrorism, and Homeland Security

Hearing on the National Prison Rape Elimination Commission  
Report and Standards

July 8, 2009

Good morning, and thank you Mr. Chairman and members of the committee for holding this hearing and for inviting me to testify about the National Prison Rape Elimination Commission Report and Standards. I am the East Coast Program Director of Just Detention International.

Formerly known as Stop Prisoner Rape, JDI is the only U.S. organization exclusively dedicated to ending sexual violence in detention. Specifically, we 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. All of these efforts are guided by the expertise of men, women, and children who have endured sexual violence behind bars and who have been brave enough to share their experiences with us.

Congress's attention to the problem of sexual abuse behind bars has been a critical factor in improving inmate safety. Thanks to the Prison Rape Elimination Act of 2003, corrections officials can no longer deny that sexual violence is a problem in their facilities and leading agencies are already developing best practices to improve inmate safety.

On June 23<sup>rd</sup>, the National Prison Rape Elimination Commission released its final report and national standards, as mandated by PREA. These documents are arguably the most powerful tool to date in the effort to end sexual violence behind bars. The Commission's report confirms what we at JDI have long known to be true: sexual violence in detention is not an inevitable aspect of incarceration. On the contrary, it can be prevented – through sound policies, safe practices, and effective management.

The standards address core prison management issues, such as staff training, inmate education, housing, investigations, and medical and mental health care in the aftermath of an assault. While broad in scope, the requirements are quite basic – and perhaps most importantly, they are achievable.

JDI is collaborating with officials in California and Oregon to bring their state prison systems into compliance with the standards – even before they are required to do so. Both systems have already made tangible improvements. In California, JDI helped secure a community-based rape crisis counselor on the sexual assault response teams at 31 of the state’s 33 prisons and provided cross-training so that the counselors and prison officials understand each other’s respective jobs and are able to work together in a constructive way. In Oregon, the Department of Corrections established an inmate hotline, so that survivors can safely contact the Inspector General’s office when they are too afraid to report an assault to a prison official.

While both states are suffering severe budget deficits, resulting in spending freezes, their standards implementation projects are continuing – both because, in the long term, preventing sexual abuse is cost effective and because it is the right thing to do.

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While the passage of PREA and the release of the standards represent important milestones in improving inmate safety, we are a long way from ending prisoner rape. In inmate surveys mandated by PREA, the Bureau of Justice Statistics (BJS) found that 4.5 percent (or 60,500) of the more than 1.3 million inmates held in federal and state prisons had been sexually abused in the previous year alone and that nearly 25,000 jail detainees had been sexually abused in the

previous six months. These surveys were snapshots, reaching only inmates present on a particular day. As the annual number of admissions to county jails is 17 times higher than the jail population on any day, the BJS data represent just the tip of the iceberg.

Further action is needed to ensure inmate safety and to end this egregious form of abuse. The Attorney General has one year to codify the standards as part of federal regulation. Congress should encourage him to do so swiftly, and without watering down these crucial provisions. NPREC relied on years of deliberation, including public hearings, expert working groups, and a public comment period. Corrections officials, practitioners, advocates, prisoner rape survivors, and other stakeholders participated in each process. Continued scrutiny will only serve to silence the input of those most in need of protection. Indeed, delaying ratification will simply allow dangerous conditions to persist in our prisons and jails.

Congress should also encourage the Attorney General to establish a mechanism for effective oversight of standards compliance, which goes beyond the certifications of corrections administrators and the auditors with whom they contract. Without external monitoring, officials who participate or acquiesce in sexual violence behind bars are able to act with impunity. Additionally, even the most outstanding officials often cannot identify problems within their own system – problems that an outsider can recognize – and may not be aware of best practices from other jurisdictions. Implementation of the standards must include strong, external oversight that takes into account information from current and former inmates, advocates, and other stakeholders along with the assessment of corrections insiders.

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Congress must also ensure that other PREA-related activities are able to continue, and have sufficient funding to meet their mandates. In particular, the work of the Bureau of Justice Statistics must continue in order to identify trends, such as characteristics of inmates targeted for abuse, likely perpetrators, and dangerous locations within corrections facilities.

State grants must also be restored. To improve safety in their facilities, corrections officials in many jurisdictions seek to develop innovative programs and/or improve their access to technology, but they lack the resources to do so. Decreasing PREA appropriations have resulted in no grants being awarded under the Protecting Inmates and Safeguarding Communities Program since Fiscal Year 2006. Congress should restore its commitment to supporting state efforts to combat prisoner rape.

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Congress should also encourage the Department of Justice to revise the funding guidelines for the Victims of Crime Act, so that rape crisis counselors that rely on victim assistance grants are able to serve incarcerated victims. The guidelines – which have had no publicly available revisions since 1996 – currently state:

Subrecipients cannot knowingly use VOCA funds to offer rehabilitative services to offenders. Likewise, VOCA funds cannot support services to incarcerated individuals, *even when the service pertains to the victimization of that individual.*

In addition to prohibiting the use of more than 300 million dollars in victim assistance funds every year, this funding restriction has caused many rape crisis centers and other community-based service providers erroneously to believe that they cannot use support from other sources to serve incarcerated individuals without jeopardizing their government grants. As a result, this restriction has had a devastating chilling effect on VOCA-funded agencies and their ability to serve all crime victims – including victims of rape in detention.

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Finally, legislative action is needed to ensure that other laws do not thwart PREA’s mission. In particular, the Prison Litigation Reform Act should be amended to address the insurmountable barriers confronted by prisoner rape survivors seeking legal redress for the serious abuses they have endured. Every day, JDI hears from prisoner rape survivors from across the country, many of whom could not meet the exhaustion requirements under PLRA. Short deadlines for filing a grievance, coupled with harsh and detailed procedural requirements of many facilities’ grievance systems, can be simply impossible to navigate while suffering acute trauma from a sexual assault.

Shockingly, some courts have found that sexual assault on its own does not amount to a “physical harm” – another requirement set forth in the PLRA – thereby precluding a survivor from receiving any monetary damages. Examples of claims that the courts have dismissed, before trial and without any findings of fact, include forced touching, abusive strip searches of women by male officers, and being “sexually battered by sodomy.”

The PLRA applies to all inmates, including incarcerated youth who may have limited access to legal resources and who often lack the sophistication to understand detailed procedural requirements. Whether housed in adult prisons or juvenile facilities, incarcerated youth are both more vulnerable to abuse and less prone to file lawsuits. While not the primary focus of the law, young inmates have been drastically affected by the PLRA.

The NPREC standards seek to minimize the impact of the PLRA's exhaustion requirement, but they propose only a relatively small fix to one of various barriers imposed by the law. Congress should provide more comprehensive reform to further ease the exhaustion requirement, remove the physical injury provision, and exempt juveniles from the law's application.

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With the support of a broad-based coalition of faith-based groups, human rights organizations, researchers, and other advocates, PREA passed with unanimous support –confirming that combating prison rape is not a partisan issue. Sexual abuse in detention is an affront to basic human dignity that cannot and should not be tolerated. Now, Congress needs to continue its effort to ensure that rape and other forms of sexual abuse never are a part of the penalty.

Thank you very much.