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Human Rights and Prison Rape

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Prison Rape is a common occurrence in America's penal institutions. Sexual assault occurs most frequently on juveniles, the LGBT community, and people who are weak in stature. To combat this problem, The Prison Rape Elimination Act (PREA), passed in 2003 with bipartisan support and the backing of special interest groups, was envisioned as a human rights milestone. Prison rape is assumed by an apathetic public to be an expected part of the incarceration experience. PREA, in addition to encountering major time setbacks in implementation, has not become a human rights milestone and, even where it has been implemented, is often discriminatory in its application. As part of an interdisciplinary team, the social worker is in a unique position to understand the extent and the reality of prison rape and can devise and recommend policy revisions to fulfill the goals of PREA. These revisions might include suggestions for more adaptable prison construction, more efficient operations procedures, and guidelines for a more sympathetic system of administration.

Keywords: PREA, Prison Rape Elimination Act of 2003, Social Work, Human Rights

Popular television shows such as *Oz* and *Orange is the New Black* would have you believe that prison rape is an inevitable part of incarceration. In fact, most male prisoners who enter the system anticipate rape as part of their sentencing (Walton, 2009; Wyatt, 2006). In 2008, it was estimated that more than 209,400 individuals suffered sexual assault inside American correctional institutions (U.S. Department of Justice [DOJ], 2012). For those who experienced being raped in prison, the effects were devastating—causing both physical and mental trauma (Wyatt, 2006).

Article 5 of the *Universal Declaration of Human Rights*, as well as the Eighth Amendment of the U.S. *Bill of Rights*, declare that no individual shall undergo cruel or unusual punishment (United Nations [UN] General Assembly, 1948; U.S. Const., amend. VIII). This was the foundation on which the Prison Rape Elimination Act was originally built, but the relationship between incarceration and human rights has long been contested (Smith & Hattery, 2007). On the one side are those who argue that when someone commits a crime they choose to give up their claim to rights (Smith & Hattery, 2007). On the other side are those who argue that although inmates should be deprived of citizenship rights, such as the right to

vote and the right to freedom of movement, they should not be deprived of basic human rights such as life, liberty, and security of person that are delineated in the International Declaration of Human Rights (Smith & Hattery, 2007). When you are sentenced, being raped is not part of that sentence (Smith & Hattery, 2007).

To combat the human rights violations, the U.S. Congress passed, funded, and provided for implementation of a new law: The Prison Rape Elimination Act (PREA), which was designed to help protect the rights of prisoners. This law, however, has veered away from its original human rights mission and continues to be discriminatory.

PREA—Background

Prior to the passing of PREA, data suggested that certain populations were at risk for becoming victims of sexual abuse and having their rights violated: the mentally ill, the LGBT community, and people who were small in stature (Friedmann, 2013). Persons under the age of 18 were also considered some of the most vulnerable targets (Wyatt, 2006). The data also suggested that, since 1992, 45 states made it easier to place juvenile offenders in adult populations (Walton, 2009). In

2005, it was estimated that 21% of the rapes that transpired in adult correction centers were on individuals aged 18 or younger (Walton, 2009). Boys were also five times more likely to become victims in adult facilities than in juvenile detention centers (Robertson, 2011).

Human Rights Watch presented this information to Congress in a study entitled: *No Escape: Male Rape in the U.S Prisons* (Human Rights Watch, 2001; Robertson, 2011; Shay, 2014; Wyatt, 2006).

In addition to Human Rights Watch, testimony was heard from numerous individuals who had become victims of rape in prison, and this study led to the proposal of PREA (Robertson, 2011; Shay, 2014; Wyatt, 2006). However, the concept of prison rape quickly turned from a human rights issue to a public safety issue (Jenness & Smyth, 2011). Jenness & Smyth (2011) argued that the main reason for PREA's passage was not human rights, but because of what prison rape was thought to do to society. HIV, for example, is rampant in the prison system (Pub. L. No. 108-79 § 7). In 2000, according to PREA legislation, 25,088 inmates were infected with the HIV virus (Pub. L. No. 108-79 § 7). HIV rates in prisons are ten times higher than the general population (Corlew, 2006). It would be possible for an individual to become incarcerated for a misdemeanor or for a short sentence and wind up with a serious life-long illness (Shay, 2014). The inclusion of "diseases" in PREA was not seen as something that could help prisoners (Jenness & Smyth, 2011). PREA stated "prison rape undermines public health by contributing to the spread of diseases," and quickly turned the focus toward public health concerns (Pub. L. No. 108-79 § 7).

Another area where PREA deviated from its human rights mission was the thought that "prison rape endangers public safety by making brutalized inmates more likely to commit crimes when they are released" (SpearIt, 2011). Lawmakers felt that men who experienced victimization from sexual assault were more likely to be malicious towards females when released (SpearIt, 2011). Shay (2014) pointed out that 95% of inmates would eventually be released back into the public—meaning that prison rape would become the public's issue (Corlew, 2006).

As quickly as it was proposed, PREA soon started serving other agendas (Friedmann, 2013). According to *Targeted News Services* (2014), the act passed, surprisingly, with a solid bipartisan backing on September 4, 2003 and no opponents.

Jenness and Smyth (2011) argued that the bipartisan passage was a result of pressure from special interest groups that sought to gain from the law. One such group, Prison Fellowship Ministries—the largest prison ministry in the world and deemed to be one of the twelve Christian "heavyweights"—was thought to be the most influential in getting PREA passed (Jenness & Smyth, 2011). By advocating for PREA, Prison Fellowship Ministries could continue to uphold their mission, in which they "develop and defend a clear Christian worldview by integrating biblically based, restorative forms into the criminal justice system" (Jenness & Smyth, 2011). For them, this was a chance to support a "faith based initiative," a popular concept in the political climate at the time that PREA was proposed (Jenness & Smyth, 2011). It was not surprising that staunch conservatives and evangelical leaders like Charles Colson advocated for the passing of PREA, since their churches would ultimately see capital gain (Friedmann, 2013).

Although the law originally had good intentions, the fact that PREA was passed to serve special interest groups and because of public and health safety concerns, the human rights spirit of the law was devalued. PREA missed the mark on what could have been a human rights milestone and continues to struggle with its mission. Before one can see how PREA unduly affected prisoners, it is important to understand what PREA was originally intended to accomplish.

PREA's Mission

The Prison Rape Elimination Act was an ambitious law from the beginning, and the goals were simple: it was meant to serve as a catalyst that would jumpstart research and provide further analysis on prison rape (Iyama, 2012). Additionally, it was to create a foundation for funding and for the provision of resources and recommendations on how to best address the issues of prison rape (Pub. L. No. 108-79 § 1). The act laid out

nine points: (1) it established a “zero-tolerance” policy for any rape that occurred in prison; (2) it sought to make the elimination of prison rape a “high priority”; (3) it aimed at executing national standards for the prevention and punishment of prison rape, as well as (4) to hold officials more accountable for incidents of reported rape; (5) the law sought to standardize the way data was collected on incidents of prison rape and (6) wanted to increase the available data on prison rape; (7) it was designed to protect the Eighth Amendment rights of prisoners; (8) to reduce the costs that are incurred due to prison rapes; and (9) it attempted to make itself more efficient by providing federal expenditures through grants (Pub. L. No. 108-79 § 3; Robertson, 2011).

Under PREA, the organization known as the National Prison Rape Elimination Commission (NPREC) was tasked with the job of researching the prevalence of prison rape and addressing the goals of PREA (National Prison Rape Elimination Commission, n.d., pg. 7; Pub. L. No. 108-79 § 7; Walton, 2009). In order to do this, NPREC underwent a process by which it held eight public hearings to get testimony from more than 100 heads of correctional facilities, previously incarcerated individuals who experienced sexual abuse, and researchers, investigators, and prosecutors (National Prison Rape Elimination Commission, n.d.).

On May 5, 2008, the Commission completed its task and made a set of standards available to the public. Having achieved its purpose, the Commission dissolved (Friedmann, 2013). Its proposed set of standards would become the guidelines for how to implement PREA throughout the nation’s prison systems (Friedmann, 2013; Walton, 2009). This information was then given to the DOJ, and on May 17, 2012, an agreement was reached on how to implement PREA (Friedmann, 2013).

Section 8 of PREA stated that—no later than 90 days after completion of the standards—the Attorney General would review the standards and pass the oversight of the standards onto “the chief executive of each state, the head of the department of corrections of each state, and the appropriate authorities in those units of local government who oversee operations in one or more prisons” (Pub. L. No. 108-79 § 8). The standards of NPREC went

into effect in August of 2013, nearly ten years after PREA became law (Friedmann, 2013).

PREA’s Current Offering

As it currently sits, PREA extends itself to anyone who is—or may become—a victim of either inmate-on-inmate rape or corrections officer-on-inmate-rape (National Prison Rape Elimination Commission, n.d.). The National Prison Rape Elimination Commission created a list of more than one hundred standards that would be implemented in the nation’s prison systems (National Prison Rape Elimination Commission, n.d.). For example, it is required that upon entry into a prison or jail, all individuals must be screened to determine their likelihood of being victimized (National Prison Rape Elimination Commission, n.d.). Those classified as being possible perpetrators or potential victims were to be separated from the general population (National Prison Rape Elimination Commission, n.d.). Another example of a PREA standard is to utilize corrections officers as the first line of defense (Struckman-Johnson, Struckman-Johnson, Kruse, Gross, & Summers, 2013). This has become problematic, however, because statistics now indicate that corrections officers make up a large percentage of those perpetrating rapes on both male and female prisoners (Struckman-Johnson et al., 2013).

Funding PREA

To fund PREA, states were required to find the means within their budgets to implement the standards (National PREA Resource Center, 2015). Those states that needed extra financial assistance were allowed to apply for grants (National PREA Resource Center, 2015). In 2014, of 56 jurisdictions, 48 agreed to become compliant with PREA (Department of Justice, 2014). Beginning in 2013, states are required to utilize 5% of allocated federal funds from the DOJ to fully implement PREA in their penal institutions, and the governor of each state is required to submit an assurance that funds are being utilized in this way (National PREA Resource Center, 2015). In addition to spending \$23 million to help offset the

costs of PREA, the Bureau of Justice created the National PREA Resource Center to help with training for employees (DOJ, 2014).

Eight states have refused to implement PREA, which resulted in a 5% reduction in the funds they received from the DOJ (National PREA Resource Center, 2015). As of August 2014, only two states, New Jersey and New Hampshire, were in full compliance with PREA (Boone, 2014).

PREA's Effectiveness

The outcome of PREA is difficult to measure, because the laws that went into effect under George W. Bush in 2003 only started to be implemented in August 2013 (Friedmann, 2013).

Early data is suggesting that little has changed and that PREA is not living up to its mission. Before his term ended, Governor Rick Perry of Texas and the current Governor of Idaho, C.L. "Butch" Otter, were vocal in expressing that their states would not be meeting PREA's standards because the program was too expensive and the act would be of little benefit (Boone, 2014; Law, 2014). Although the DOJ called the governors' statements shameful, it has been calculated that in order for full compliance of the law to be met, it would cost U.S. taxpayers \$468.5 million per year (DOJ, 2012). Many prisons would have to undergo extreme renovations to meet the housing requirements necessary to comply (Boone, 2014).

Some argue that states that refuse to implement PREA are contributing to the Prison-Industrial Complex. For example, Jenness and Smyth (2011), argue that it was the prison systems that were always against the passage of PREA, because they had the least to gain and it would cost them the most financially. Incarceration supports a multibillion-dollar industry that relies on imprisoning some two million individuals each day (Smith & Hattery, 2007). Former Texas Governor Rick Perry's refusal to implement PREA was interpreted by many that human rights are not a priority in Texas, but others posited that the refusal was rather a reflection of the Prison-Industrial Complex's greed that is ingrained in our capitalist culture (Jenness & Smyth, 2011; Smith & Hattery, 2007). Whichever interpretation is correct, Texas decided it would rather take the 5% penalty than

spend more money for human rights.

Another way in which PREA is proving to be ineffective is in the use of security staff. As mentioned above, PREA suggested utilizing prison guards as the first line of defense (Struckman-Johnson et al., 2013). But, it has been discovered that those who are supposed to be protecting inmates from the brutalities of rape are, in some instances, using PREA as an excuse to enact harsher punishments (Jackson, 2013). Some officers are using PREA as an excuse to write people up for misdemeanors, in some instances simply for brushing fingertips (Jackson, 2013). In one study, security guards stated that they were willing to do whatever was necessary to help control prison rape, however, it was found that most security guards displayed homophobic attitudes towards consensual and non-consensual male sex (Struckman-Johnson et al., 2013). These homophobic attitudes are one of the factors that have led to so little having been accomplished in protecting the LGBT community.

As noted earlier, PREA is particularly important for LGBT individuals, because for them the possibility of being subject to sexual assault is far greater (Friedmann, 2013; Shay, 2014). In addition to thoroughly investigating rape allegations and requiring the screening of incoming inmates, PREA allows facilities to work with transgendered individuals on a "case-by-case" basis in regard to their housing (Shay, 2014). Under the law, jails can now make a decision based on ensuring the inmate's health and safety, rather than on their biological gender (Shay, 2014). It has been noted, however, that prisons incarcerated a transgender woman in a male facility, rather than a female facility, where she was at constant risk of sexual abuse and other violence (Lambda Legal, 2015).

Dromm et al. (2014) argued that transgendered inmates were purposely being placed in solitary confinement under PREA because jails simply could not house them safely. This was going on even though one of the standards of the law mandated that inmates who are placed outside of the general population for safety should not be confined to isolation (National Prison Rape Elimination Commission, n.d.). The housing need of the transgendered community indicates why funding is essential for more adaptable prison construction.

Additionally, PREA proved to be discriminatory in its screening process of LGBT inmates. The largest jail in the U.S., the Los Angeles County Men's Jail, has a separate unit known as K6G to house gay and transgendered men (Robinson, 2011). In order to get into this unit, a man must undergo a humiliating process in which he is forced to answer questions pertaining to gay culture (Robinson, 2011). The questions include defining words such as glory hole and prince albert (Robinson, 2011). Additionally, the men are told that their mother's name must be provided so that she can be contacted to confirm "their gay lifestyle" (Robinson, 2011).

Recommended Revisions for PREA

As noted earlier, 45 states made it easier to place juvenile offenders in adult populations. Boys are five times more likely to become victims in adult facilities than in juvenile detention centers (Robertson, 2011; Walton, 2009). One human rights issue and recommendation for PREA would be to begin changing the laws that put younger offenders in adult facilities—or to place younger offenders in special units. Organizations like the Equal Justice Initiative (2014) are petitioning on behalf of juveniles in adult facilities. Until laws are changed, juvenile offenders will continue to be subject to rape in prison (Equal Justice Initiative, 2014).

PREA has mandated a "zero-tolerance" policy when it comes to sexual assault, but an amendment might be made to include coercive sex. Buchanan (2012) argued that inmates are subject to coercive sex by security guards who will do "favors" in exchange for sex. This can be interpreted as sexual abuse, because the person in power manipulates a person with few choices (Buchanan, 2012).

Implications for Social Workers

Section 6.04 (d) of the National Association for Social Workers (NASW) Code of Ethics states that: "social workers should act to prevent and eliminate domination of . . . any person based on sexual orientation, gender identity, mental or physical disability . . ." (Reamer, 2006). PREA

stands as a policy to which social workers can refer to facilitate better living conditions for inmates and bring PREA back to its original human rights undertaking. Social workers are on the front line and best equipped to advocate for both their individual clients and their community of clients, whose human rights may go unnoticed or be disregarded.

Getting prisoners to talk about their adjustments to prison is the best way forensic social workers can begin to help implement the missions of PREA. Studies suggest that PTSD is higher among prisoners than the general population (Goff, Rose, Rose, & Purves, 2007). It is possible that men in prison want to represent themselves as "super-masculine" and do not wish to portray themselves as vulnerable (Goff et al., 2007). This is particularly pertinent to PTSD that follows sexual assault in prison, since implicating another prisoner as a perpetrator might feel risky given the hierarchical prison system and culture of loyalty and secrecy (Goff, et al., 2007). In addition, prisoners may be hesitant to admit that they have been raped for fear of being perceived as weak (Wyatt, 2006). Of the 88% of youth who reported sexual abuse in adult facilities, 32% later retracted their statements (DOJ, 2012). Social workers need to challenge the mindset of prisoners. If PREA is truly a public safety concern, "What sort of sexual culture can we hope to produce in communities already unduly affected by the carceral system, when former inmates are re-introduced without any source of treatment for their sexual trauma?" (The Nation, 2015).

Forensic social workers also need to educate security staff and have meaningful conversations about sexual misconduct. Correctional officers work closely with the inmates—they can identify victims and help them get to the necessary treatment (Struckman-Johnson et al., 2013). There needs to be a shared goal among social workers and security staff in preventing prison rape. Teaching correctional officers how to spot potential victims or perpetrators and educating them on how to best handle situations of sexual misconduct may be some of the best defenses prisoners have against sexual assault. In order for this to become an actuality, however, the reality of sexual misconduct among correctional officers and inmates

must be addressed. Social workers are best equipped to handle this trial.

On a macro level, forensic social workers can help collect data that is relevant to furthering PREA. Some of the ideas behind PREA are now starting to illustrate themselves in a new, ironic light. According to Buchanan (2012), surveys—that are now mandated by PREA—are beginning to indicate that the biggest perpetrators of prison rape are female officers. Buchanan (2012) argues that PREA disproportionately focuses on a cliché version of male-on-male rape and fails to address the real issue for which the evidence is starting to show. The DOJ completed a national survey of inmates in over 167 federal prisons and 286 jails in 2009 (Beck & Harrison, 2011; Buchanan, 2012). It showed that PREA has opened more channels of communication, and in a survey of both men and women victims of sexual assault, 68.8% stated that their perpetrators were female (Beck & Harrison 2011; Buchanan, 2012).

For social workers who do not work in the forensic setting, the most effective advocacy is public education. Society fails to see prison rape as something that affects it and seems to perceive it as a form of punishment (Corlew, 2006). As noted at the beginning of this article, prison rape is seen as nothing more than a mockery in popular culture—promoting rape through normalization (The Nation, 2015). “There is no other element of carceral life which is so frequently referenced in television” (The Nation, 2015). This systemic form of oppression continues to place prison rape on the backburners of American minds.

Like so many issues that affect prisoners, in order to fully solve the problem of prison rape, a complete structural change and an overhaul of the entire system will be necessary (The Nation, 2015). PREA still has the potential to be the human rights milestone that it was once meant to be. The process needs to begin with an outreach to effect an American culture shift toward understanding and supporting that rape is not an acceptable part of the punishment when our court systems impose a prison sentence.

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