



A TEXAS-SIZED FAILURE:

SEXUAL ASSAULTS IN TEXAS PRISONS

A JOINT REPORT OF THE PRISON JUSTICE LEAGUE & THE TEXAS ASSOCIATION AGAINST SEXUAL ASSAULT

Acknowledgements

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Thank you to everyone who wrote to share their experiences with sexual assault in a Texas prison and who completed our survey.



The Prison Justice League (PJL) amplifies the voices of prisoners and their loved ones to end mass incarceration in Texas.



The Texas Association Against Sexual Assault (TAASA) is committed to ending sexual violence in Texas through education, prevention and advocacy. In the meantime, we desire to support survivors on their paths to hope, healing and justice. TAASA is the voice of the sexual assault movement in Texas. We are a unifying force bringing together parties involved in and affected by sexual assault as a catalyst for change.

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INTRODUCTION

Every person, including individuals in jail or prison, deserves to be free from sexual violence. Sexual victimization is not included in a prison sentence, and it should not be part of the punishment. States bear legal responsibility under the Constitution and federal law for protecting prisoners in its facilities from sexual violence and other serious harm. Yet, people in prison are at heightened risk of sexual assault. In particular, the State of Texas and the Texas Department of Criminal Justice (TDCJ) have failed to protect prisoners in their custody from sexual assaults. Despite more than a decade of federal legislative efforts and oversight by the U.S. Department of Justice—including the Prison Rape Elimination Act (PREA)—the prevalence of sexual assault remains high in Texas prisons. Several prisons in Texas have among the highest rates of sexual victimization in the nation. Regardless of claims that PREA standards are being implemented in Texas prisons, reports from prisoners themselves indicate that sexual assaults in Texas correctional facilities remain a serious problem. The alarming frequency of sexual assault in Texas prisons not only contributes to conditions in Texas facilities that are abhorrent to human dignity, but also violates the constitutional and human rights of prisoners in the TDCJ.

METHODOLOGY

Because detailed statistical research on sexual violence in Texas prisons is rare, we rely significantly on the 2011-2012 Bureau of Justice Statistics (BJS) report on sexual victimization in adult prisons and jails for evidence of TDCJ's compliance or noncompliance in and around that time period. For a more contemporary snapshot, the Prison Justice League (PJL) sent a confidential sexual assault survey in May 2016 to inmates who had self-reported a sexual assault at some point during their incarceration. Inmates who responded to the survey did so voluntarily. All survey results were gathered by self-reports, and communication between PJL and the inmates was limited to written, legal correspondence. In addition, data and narratives were collected over a six-month period from correspondence between TDCJ inmates and both PJL and Texas Association Against Sexual Assault (TAASA). This report highlights and analyzes findings from that correspondence and the 2016 PJL survey, and places those findings in context of TDCJ's PREA compliance efforts from 2003 through 2015.

SIGNIFICANT FINDINGS

Survey respondents reported sexual assaults at 15 prison units across the state with the majority of reports coming from three units:

40%

Estelle Unit in Huntsville

20%

Robertson Unit in Abilene

20%

Allred Unit in Iowa Park

100%

of survey respondents reported their assault to someone (e.g., unit-level staff, OIG, PREA Ombudsman), there was not a single instance of a successful investigation reported or a favorable outcome.

58.9%

of survey respondents reported being assaulted by a staff member.

41.2%

of survey respondents identify as LGBTQ.

82.3%

of survey respondents reported retaliation from either prison staff or other inmates after reporting their sexual assault. The most common form of retaliation was receiving a disciplinary case.

BACKGROUND & CONTEXT

Prison rape is a national problem, one that exists in nearly every correctional setting in the country. In an effort to mitigate the high incidence of prison rape across the nation, the Prison Rape Elimination Act (PREA), was enacted in 2003 to eliminate sexual abuse prevalent in correctional facilities. PREA requires the development of national standards for preventing, detecting, and responding to prison rape, with the goal of reducing the number of sexual assaults behind bars. The final PREA standards developed by The National Prison Rape Elimination Commission became effective June 20, 2012.

THREE CLEAR GOALS OF PREA

PREVENT

Develop and maintain a zero tolerance policy regarding sexual abuse



Screen inmates for risk of sexually abusive behavior or risk of being sexually abused, and use screening information to inform housing, work, education, and program assignments



Train employees on their responsibilities to prevent, recognize, and respond to sexual abuse



Ban cross-gender “pat” searches of female inmates in prisons



Restrict the use of solitary confinement as a means of protecting vulnerable inmates

DETECT

Make inmates aware of policies, and inform them how to report sexual abuse



Develop policies to prevent and detect retaliation against those who report sexual abuse or cooperate with investigations

RESPOND

Provide timely and appropriate medical and mental health care to victims of sexual abuse



Provide access to victim advocates from rape crisis centers for emotional support services



Establish an Evidence Protocol to preserve evidence following an incident and offer victims no-cost access to forensic medical exams



Investigate all allegations promptly and thoroughly, and deem allegations substantiated if supported by a preponderance of evidence

GENERAL PREA REQUIREMENTS

PREA requires recipients of federal funding to adopt a zero-tolerance standard for the incidence of prisoner sexual assault and to develop standards for the detection, prevention, reduction, and punishment of prison rape in facilities under state operation or control. For example, PREA prohibits any non-medical staff in a facility from performing cross-gender strip- or body-cavity searches on prisoners.¹ Further, prison staff are prohibited from checking the genitals of a prisoner to determine biological sex.

PREA requires state governors to comply with federal standards, or risk losing 5% of any Department of Justice (DOJ) funds that would otherwise be used for correctional purposes.² PREA standards also require correctional facilities to screen incoming prisoners for the risk of being sexually abusive or of being sexually abused. Screening involves reviewing prior history of being sexually abused or possessing certain characteristics that increase the likelihood of being abused, with the goal to separate those at high risk of sexual victimization from those at high risk of committing sexual assaults. Characteristics that are considered for one's potential risk for sexual assault while incarcerated include the following: age, body height and weight, sexual orientation, gender identity, history of previous sexual abuse, previous incarceration, medical or mental health problems, developmental disabilities, physical weaknesses, crime sophistication, group affiliation, and passive tendencies or perceived vulnerability.³

PREA IMPLEMENTATION IN TEXAS

The TDCJ created the Safe Prisons Program in 2003. The program was established prior to the passage of PREA to address the problem of sexual abuse behind bars.⁴ The office, now known as the Safe Prisons/PREA Management Office (SPPMO), provides technical support regarding regulatory operating policies for both the unit and region staff. They also maintain a database of reported sexual assaults committed by prisoners while in custody.

In addition to the SPPMO, TDCJ created the position of PREA Ombudsman in 2007. This position coordinates the agency's efforts to eliminate sexual assault in Texas prisons and provides an independent office to respond to allegations of sexual assault. This office is also responsible for ensuring adherence to PREA standards across the correctional system.

TDCJ has a total of 152 staff members assigned full time to Safe Prisons/PREA management offices across the state. Of those, 142 are unit-based employees whose primary responsibility is the management of the Safe Prisons/PREA operations, investigations, tracking, and analysis on the unit level. There are six regional Safe Prisons/PREA managers assigned to regional offices and four full-time Safe Prisons/PREA management office staff assigned to the central office.⁵

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When prisoners report sexual assaults, PREA standards require a quick, comprehensive response.

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INVESTIGATIONS

When prisoners report sexual assaults, PREA standards require a quick, comprehensive response. Agencies that conduct their own investigations of alleged sexual abuse or harassment must conduct a prompt, thorough, and objective investigation.⁶ PREA regulations require investigations whenever allegations are made, regardless of whether the reports are made by a victim, a third party, or anonymously. In addition, sexual assault investigators must receive specialized training on how to conduct sexual abuse investigations.⁷ PREA standards also set forth the requirements for gathering evidence, conducting interviews, assessing witness credibility, and conducting administrative and criminal investigations.⁸ In Texas, allegations of sexual abuse are reviewed by the Office of the Inspector General (OIG). The OIG determines whether the incident satisfies the elements of a felony Penal Code offense. If the OIG makes such a determination, a thorough criminal investigation is conducted.⁹

Upon notification of a sexual assault complaint, the OIG staff begins the investigation process through the collecting of information in one-on-one interviews with the complainant and alleged

perpetrator. OIG staff also determine whether medical staff will conduct a forensic medical exam in order to document and collect evidence.¹⁰

Medical services personnel oversee any medical examination performed in response to a sexual assault complaint. Prisoners requiring medical examinations are transported to outside facilities for the administration of the sexual assault evidence kit. Information obtained from the victim during the medical interview, evaluation, and examination is shared with OIG investigators.

PROTECTION

According to PREA standards, administrators should not simply place victims in isolated or segregated housing as a means of protecting them from harm.¹¹ Voluminous research¹²

Voluminous research demonstrates that solitary confinement exacerbates mental health conditions and, therefore, should not be used with victims of rape trauma.

demonstrates that solitary confinement exacerbates mental health conditions and, therefore, should not be used with victims of rape trauma. Solitary confinement, the punitive practice of removing a prisoner from general population and placing them in a windowless, individual cell for 23 hours a day, has been proven to pose great psychological risks, due to sense deprivation, solitude, monotony, and lack of human contact. These deprivations can cause panic attacks,

depression, paranoia, and hallucinations in prisoners.¹³ For victims of the extreme trauma of rape, the risks are even more dire. Thus, if there is no alternative to placing a victim in segregated housing, very specific conditions must be met, including maintaining the victim's full access to prison programming and medical and mental health services, and the housing classification must be reassessed frequently.¹⁴ PREA Standards 115.43 and 115.342 require documentation of instances in which a decision is made to place someone in segregated housing.¹⁵

In theory, PREA is a positive step toward improving prison conditions with regard to sexual assault. PREA standards are clear, and, if properly implemented, would reduce many instances of sexual assault. In unfortunate cases where sexual assault does occur, the standards would make the reporting process quicker and safer for victims. However, despite a stated zero-tolerance policy¹⁶ on prison rape, PREA standards appear not to have not been adequately implemented in Texas, and the state's rate of prison rape remains among the highest in the country.

THE PROBLEM

Sexual assaults remain a serious problem in the Texas prison system. Inmate-on-inmate and staff-on-inmate sexual assault rates in Texas prisons remain among the highest in the nation. A 2013 Department of Justice (DOJ) report found that five Texas prisons had rates of sexual victimization more than double the national average of 4.5%, including two facilities with the highest rates in the country: the Estelle Unit at 15.7% and the Clements Unit at 13.9%.¹⁷ According to the report, between 9.3% and 15.7% of all prisoners in Texas prisons had reported being sexually assaulted within the previous twelve months.

TDCJ operates 25% of the nation's correctional facilities with the worst rates of inmate-on-inmate sexual violence.¹⁸ Texas also operates three correctional facilities which have the highest rates of inmate-on-inmate sexual assault in the

country: the Montford Psychiatric Facility at 8.4%, the Stiles Unit at 7.8%, and the Clements Unit at 6.8%.¹⁹ Particularly alarming is the rate of inmate-on-inmate sexual victimization at facilities that house prisoners with a history of mental health problems: almost half of the prisoners at the Clements Unit in Amarillo, Texas are receiving inpatient or outpatient mental health care, and the Montford Psychiatric Facility has sexual victimization rates at more than double the national rate.²⁰

Tragically, Texas facilities also rank high in staff-on-inmate sexual assault rates: for example, the Clements Unit (9.5%) and the Coffield Unit (6.8%) have among the nation's worst rates.²¹ The national average for staff-on-inmate sexual victimization was 2.4%.²² In 2011-2012, 8.1% (308) of prisoners at the male Clements Unit

reported sexual victimization by staff involving force or threat of force.²³ The same report showed that prisoners at the Clements Unit reported the highest rate in the state of being coerced or pressured into sex (8.7%).²⁴

Such dramatic deviations from typical rates of sexual assault cannot be attributed to bad luck or a particularly violent inmate population. Shedding light on the ineffectiveness of current prison rape policies, The Panel on Prison Rape twice investigated the Allred Unit, in Iowa Park, Texas, regarding its consistently high rates of sexual assault.²⁵

Under PREA, the Panel is responsible for holding public hearings using data collected by the DOJ Bureau of Justice Statistics (BJS) “to identify the common characteristics of (1) sexual predators and victims, (2) correctional institutions with a low prevalence of sexual victimization, and (3) correctional institutions with a high prevalence of sexual victimization.”²⁶ The Panel found that the Allred Unit had not made significant improvements since being identified

as a facility with high incidences of sexual victimization from the time of the first

panel hearings in 2008 to the second hearing in 2011. The Panel was interested in learning why the Allred Unit had not reduced rates of sexual victimization, despite being alerted to problems at a prior hearing appearance.²⁷ During the hearing, the Panel produced data indicating abusive sexual contact at the Allred Unit had more than doubled since the release of the prior BJS report

in 2007.²⁸ Since the 2011 Panel hearing, as evidenced by our independent correspondence with prisoners, these disturbing trends at the Allred Unit have not abated.

Sexual violence also persists more broadly throughout the Texas prison system, according to TDCJ data. In 2013, there were 1,041 inquiries of inmate-on-inmate alleged sexual abuse incidents reported to the PREA Ombudsman by

Inmate-on-inmate and staff-on-inmate sexual assault rates in Texas prisons remain among the highest in the nation.

the TDCJ.²⁹ In 2014, the PREA Ombudsman Office received 1,467 inquiries regarding sexual abuse, 378 of which were referred to various departments for processing.³⁰ In a single year, the number of inquiries increased by 426 (more than 30%).

There is an obvious disconnect between PREA’s regulatory goals and the reality of the failure to significantly reduce sexual assault rates in Tex-

TDCJ operates 25% of the nation’s correctional facilities with the worst rates of inmate-on-inmate sexual violence.

as prisons. Both specific incidents and broad trends illustrate the problem. For example,

PREA requires investigations by specially trained personnel for all sexual assault allegations, whether thought to be founded or unfounded. Administrative decisions to disregard prisoners’ complaints are strictly prohibited. However, in Texas prisons these standards simply are not being followed. From 2008 to 2009, BJS identified 66 investigations of inmate-on-inmate sexual assault at

the Allred Unit, yet not a single charge was submitted for recommended prosecution.³¹ The Panel on Prison Rape could not determine what happened to the complainants or the alleged assailants, based on the investigative files.³² Today, administrative indifference, incompetence, and retaliation remain common themes in our correspondence with inmates who have reported their sexual assaults. The narratives included in the following section of this report are representative of these problems.

Texas also falls short of PREA requirements in its initial prisoner risk assessment during intake screening. PREA standards require prisoners to be screened for risk of being sexually abused or perpetrating sexual abuse.³³ This screening information is then used to inform housing, cell, work, education, and program assignments for prisoners.³⁴ It has been established that prisoners who identify as homosexual, bisexual, or transgender are at greater risk for sexual assault victimization and harassment than inmates who identify as heterosexual.³⁵ As such, PREA includes express guidelines to protect LGBTQ inmates. In its examination of the Allred Unit's investigative files, the Panel on Prison Rape noted that there were a significant number of complainants who self-identified as homosexual.³⁶ The Panel also observed that during its visit to the Allred Unit, staff members referred to homosexual prisoners as "queens."³⁷ Among those inmates who identified as homosexual, 39% reported being victimized by another prisoner—a higher rate than heterosexual or bisexual prisoners (35% and 34%, respectively).³⁸

These cases are not isolated, confined to the worst few facilities, or unrepresentative of current conditions. In our own surveys of prison rape victims

throughout the TDCJ system, 41.2% of respondents identified as LGBTQ, and, of those, fully 100% said they believe they were assaulted because of their sexual orientation. One survey respondent who was assaulted at the Estelle Unit was threatened by a Major at the unit after he reported a sexual assault. According to the respondent, the Major asked, "How can a fag be raped?" and wrote the respondent a disciplinary case for "consensual sex." The respondent described his plight succinctly: "I'm harassed every day by staff and inmates because I reported being raped. This is why so many inmates on Estelle Unit refuse to report being sexually assaulted. They know they will be punished, not treated as a victim." [sic]

After one inmate was raped in the shower by another prisoner, the victim attempted to report the assault to unit-level staff. He requested to speak to a staff member with the Safe Prisons Program, because of the specialized training those staff are supposed to receive, but he was told by a sergeant that, "[I] only got what [I] asked for—being gay—and that the other inmate should've kicked my ass." The complainant was told that the Safe Prisons staff did not have time for such complaints and to stop causing trouble. Other prisoners who witnessed the assault in the shower sent statements to the Office of Inspector General (OIG). OIG investigators eventually spoke to the victim, but not until 11 months later, long after forensic evidence was gone and crucial details were forgotten.

In addition, PREA standards establish strict protocols for searches, especially when performed on transgender people. Searches must always be conducted in the least intrusive manner possible, and

staff must be trained on how to be professional and respectful in conducting searches of transgender people. However, reports from transgender prisoners have indicated this particular standard is routinely flouted in some Texas prisons. One prisoner, who has been formally diagnosed with gender dysphoria and is currently taking female hormone treatments, has requested numerous times to be strip-searched by female staff members. Each request has been denied and, instead, the inmate is subjected to pat-downs and searches by male staff members who sexually caress her breasts during the procedure. She wrote, “When I complain to the Safe Prisons Program and the Warden, they tell me that I am a male on a male unit and I should enjoy the attention by the male staff.”[sic]

Another prisoner at the same unit says, “The Safe Prisons staff use their positions more to punish and harass victims than they do to help.”

Texas’ rate of sexual abuse by staff members is particularly concerning. In 2014, 766 allegations of staff-on-offender sexual abuse and sexual harassment incidents were reported to the PREA Ombudsman by unit-level TDCJ staff.³⁹ Data before this date does not appear to have been collected. Approximately 59% of our 2016 survey respondents indicated they were sexually abused by correctional staff. Despite the seriousness of this statistic, reports of staff assault fail to be taken seriously by TDCJ officials. According to one respondent, “[The] administration took no concern in my outcry because it was a TDCJ official; OIG failed to investigate all the evidence and commented that high ranking officials didn’t like the type of complaints of sexual assaults; Safe Prison officials at the unit

level concocted and retaliated against me with high ranking officials, with false disciplinary cases to try and scare me, and they did!”[sic]

Another prisoner who was assaulted by a staff member encountered retaliation from unit-level staff after reporting his assault. He shared, “They all pretended to listen until I told them it was officers/prison staff that sexually assaulted me.

Then I got the cold shoulder and was sent back to my cell. Within minutes the officers whom I named were at my cell door angry that I told on them and proceeded to threaten me and trash my cell, turn my water off, and take my property for the next 2 ½ weeks. I kept writing grievances and I-60s⁴⁰ but got

no relief from the continual sexual harassments, threats, retaliation, denial of food and water, taunts, and racial discrimination.”[sic]

Texas has a minimal felony charge for staff engaging in sexual contact with prisoners who are in their custody, which carries a maximum two-year prison sentence, but it is rarely enforced. Since 2000, nearly 400 cases of staff sex crimes against prisoners have been referred to prosecutors by the state prison system’s inspector general.⁴¹ Unfortunately, according to a Marshall Project report, prosecutors refused to pursue almost half of those cases.⁴² Of the 126 staff members convicted of sexual misconduct or assault, only nine were sentenced to serve time in a state jail.⁴³ The majority received fines ranging from \$200 to \$4,000 and a few years of probation, with the possibility of having their criminal record expunged if certain conditions were met.⁴⁴

41.2%

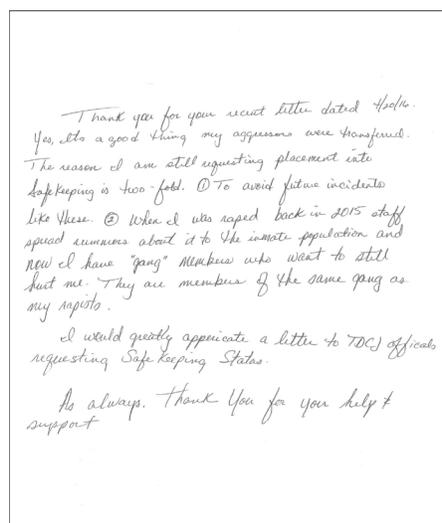
of respondents identified as LGBTQ, and, of those, fully 100% said they believe they were assaulted because of their sexual orientation.

NARRATIVES FROM INSIDE

Examples of derelict or abusive treatment of prison rape victims in TDCJ facilities are tragically abundant. The following narratives illustrate how many of the policy failures described in this report play out in the individual lives of rape survivors in Texas prisons.

NARRATIVE #1

John Doe 1⁴⁵ was repeatedly gang-raped by prison gangs while incarcerated at the Robertson, Allred, and Hughes Units. The gangs targeted him because he was a former Texas Peace Officer, TDCJ corrections officer, and self-identified bisexual man. After each assault, Doe 1 filed Step 1 and Step 2 grievances to alert TDCJ staff of his victimization and request safekeeping status, because he identified as bisexual. Despite his best efforts to follow TDCJ's protocols to obtain safekeeping or protective custody, Doe 1 was instead transferred from unit to unit and housed with the general population, where his sexual victimization continued. Instead of taking the report by Doe 1 seriously, *TDCJ staff often mocked him, with one sergeant even calling him a "prison gang-bang whore."* TDCJ staff often mocked him, with one sergeant even calling him a "prison gang-bang whore." It was not until a year later, when Doe 1 was brutally attacked by a cellmate who inserted a razor blade into Doe 1's anus, that TDCJ finally put him into safekeeping.



Thank you for your recent letter dated 4/24/16. Yes, it's a good thing my aggressors were transferred. The reason I am still requesting placement into safekeeping is two fold. 1) To avoid future incidents like these. 2) When I was raped back in 2015 staff spread rumors about it to the inmate population and now I have "gang" members who want to still hurt me. They are members of the same gang as my rapists.

I would greatly appreciate a letter to TDCJ officials requesting Safekeeping Status.

As always, Thank You for your help & support

NARRATIVE #2

John Doe 2 was sexually assaulted at the Estelle Unit located in Huntsville, Texas. Doe 2, a gay man, filed several Step 1 and Step 2 grievances requesting protective custody or safekeeping after being forced to perform oral sex on other prisoners who knew he was gay and threatened to seriously harm him if he did not comply. After several incidences of sexual abuse, Doe 2 filed grievances requesting help from the administration to protect him from his attackers. After filing these grievances, he was physically assaulted by a correctional officer in retaliation, resulting in a broken nose. Although Doe 2 named his assailants, today he remains in general

population, where he continues to be physically and sexually assaulted. Doe 2 now feels suicidal because he cannot escape the constant harassment and assaults, and his pleas for help from TDCJ's administration have gone unanswered.

❖❖

Doe 4 was told by UCC staff, "There's no reason why Black punks can't fight if they don't want to fuck."

❖❖

NARRATIVE #3

John Doe 3, a prisoner with an IQ of 77, which should have immediately categorized him as a sexual assault risk according to PREA risk-assessment standards, was sexually assaulted at the Stiles Unit in Beaumont, Texas. Doe 3 requested a medical examination by a medical professional and asked that a forensic sample be taken. Instead, the examination consisted only of an eye exam. PREA standards require investigators to gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence.⁴⁶ When Doe 3 requested that surveillance video evidence be examined to confirm his claim, he was told that the camera was not working at the time of his assault.

Despite that claim, one officer at the unit sent a

letter to the PREA Ombudsman's office expressing concern that the investigation team had not bothered to watch the surveillance video footage. In the end, Doe 3 was told that his only option was to move to a different cellblock. In a desperate attempt to avoid future sexual assaults, Doe 3 wrote a letter to the men-

Staff not only refused to investigate but told him they "hope he gets raped and killed."

I just want it to let you know that I got ship out from Hughes unit, an it was good. now Im in 111 Red unit. but in here I got Sexual assaulted by MV cell. it happen in 7-22-16. but I did report onto 8-5-16, because he threat me if I say somethin about this, he went on chain he gets his parole but they stop him @oin home. an he came back to the unit. I saw UCC, for the sexual assault on 8-10-16. an the warden that it was there he toll me that he was goin to give me here in the unit because my threat was nothin in the unit no more. without from 11-Building 8-15-16. and 8-20-16 my old cell send me a kite threaten me savin that he was goin to stab me. no matter were he see me or that he was goin to go out of place no matter were I stay on the 8-Building. that he send word to his homobois to smash me out of the unit. an ther is more people sexual harassin me sentin me kites savin that they want me to have sex with them. this time I got lockup 8-22-16 and I file the inter work 8-22-16 please Ms. Erica I need your help. I don't know what to do. I don't want nothin bad to happen to me now that my old cell is back on this unit. I feel that my life is in danger. need to get ship out from this unit. I been havin problems were ever I go because Im Gay. they don't want to put me in safe keepin or protectin custody. at less they can ship me out from this unit. I will appreciate for your help.

tal health department threatening escape in hopes that he would be moved to administrative segregation (i.e., solitary confinement).

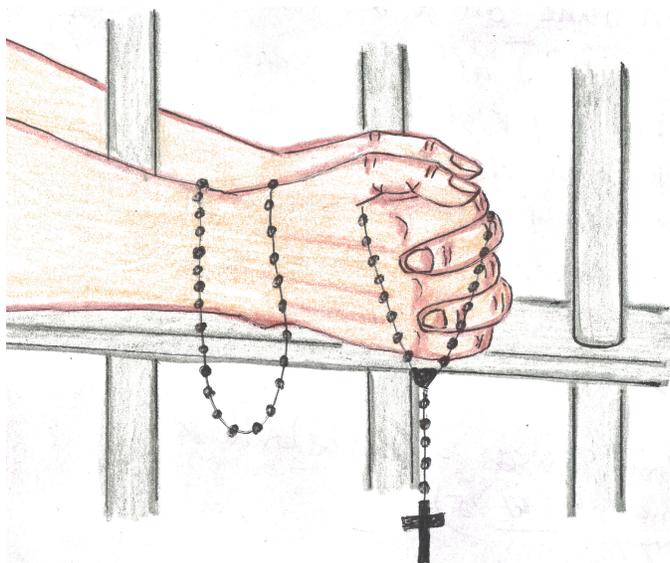
NARRATIVE #4

John Doe 4, a prisoner at the Robertson Unit in Abilene, Texas, was sexually assaulted dozens of times over an 18-month period before being sold into sexual slavery by various violent prison gangs for \$5. Doe 4 had alerted staff during the intake process that he identified as homosexual. He also exhausted TDCJ's

He also reported his assault to the unit warden, who did not take his claim seriously, laughed at him, and stated they did not have the resources to investigate the assault.

grievance protocol, explaining the brutal sexual and physical abuse he faced on an almost daily basis. During his appearance before the Unit Classification Committee for a safekeeping request, Doe 4 was told by UCC

staff, "There's no reason why Black punks can't fight if they don't want to fuck." Doe 4 was subsequently moved into administrative segregation, where he remains today, four years later. As explained earlier in this report, placing an inmate in solitary confinement for ostensible protective reasons is in violation of PREA standards, except when alternative means of separation have been exhausted, and other strict procedures are followed. No alternative protective measures were considered for Doe 4, even though placing him in protective custody or safekeeping status would have offered him protection from gangs and continuing sexual abuse, as well as the trauma-exacerbating effects of an extended duration in isolation. Further, after four years in solitary confinement TDCJ still has not reevaluated Doe 4's administrative segregation, despite frequent requests from him to do so and despite PREA's express requirement that any housing segregation of a prison rape victim be periodically reevaluated.



NARRATIVE #5

John Doe 5, who identifies as gay and is housed at the Allred Unit, first experienced threats from gang members who demanded money and sexual acts. He has since experienced several physical assaults. After submitting a Step 1 grievance after being assaulted, staff not only refused to investigate but told him they "hope he gets raped and killed." In addition, the Safe Prisons Staff at the Allred Unit have told other prisoners and staff that Doe 5 is a homosexual and that they can have

access to him to rape or physically assault him. Doe 5 continues to plead unsuccessfully with officials to put him in safekeeping custody.

NARRATIVE #6

John Doe 6 is incarcerated at the McConnell Unit in Beeville, Texas. He was sexually assaulted by his cellmate and immediately submitted multiple reports regarding the incident. Doe 6 has feelings of shame, embarrassment, and struggles with suicidal thoughts. Although he attempted to contact medical staff immediately after the assault, medical staff did not respond until 72 hours later. He also reported his assault to the unit warden, who did not take his claim seriously, laughed at him, and stated they did not have the resources to investigate the assault. The warden also denied his request for a medical forensic exam and contact information for a local rape crisis center. Doe 6 also wrote to the PREA Ombudsman's Office, but his only response was a letter stating that his claims were unsubstantiated and that the investigation was closed.

NARRATIVE #7

John Doe 7, who identifies as disabled, was sexually assaulted by his cellmate while at the Huntsville Unit in Huntsville, TX. Doe 7 says that he was not properly screened during intake in light of his vulnerability and was housed with someone who had an assaultive history. He reported the assault, and the OIG conducted an investigation. Despite finding evidence substantiating the assault, no criminal charges were filed against his attacker. Instead, Doe 7 was transferred to a different prison unit, where he continues to endure threats of sexual violence because of his physical impairment.

NARRATIVE #8

Jane Doe 8, who identifies as a transgender woman, is currently at the Allred Unit. She wrote to TAASA explaining that the Allred Unit is grossly abusing transgender individuals and violating PREA standards related to rape investigations. Doe 8 says that the Allred Unit does not care for transgender individuals and “botches and misdirects” any investigations into their mistreatment. In 2014, she and other transgender prisoners on the unit filed more than 70 PREA complaints to the PREA Ombudsman Office. Subsequently, Doe 8 was removed from her safekeeping classification and placed in administrative segregation. While in isolation, she has been denied access to health services, including her medication to treat her gender dysphoria.

RECOMMENDATIONS

Unfortunately, there are many other Texas prisoners with tragic sexual assault survivor stories that could have been avoided had PREA standards been properly implemented and enforced. Many of the clear violations of DOJ's PREA regulations that prisoners describe to us every day are avoidable. The disconnect between what PREA requires and what is happening in Texas prisons must be thoroughly investigated and resolved immediately. In addition to full implementation of current PREA standards, we urge TDCJ to adopt the following recommendations:

1) Establish independent oversight to evaluate TDCJ facilities' compliance with PREA standards. The TDCJ should be held accountable if it deviates from PREA standards without justification. This recommendation has proven successful for some facilities already:

The Panel on Prison Rape investigated both the FCI Elkton and Bridgeport facilities and identified policies that each of these facilities had implemented that mitigated rate of sexual victimization. FCI Elkton's success at reducing the rate of sexual victimization was attributed to a system in which the staff are expected to report incidents of staff sexual misconduct directly to the U.S. Department of Justice's Office of the Inspector General (OIG), which then refers the matter to the Federal Bureau of Prison's (BOP) independent Office of Internal Affairs.⁴⁷ The OIG also has a hotline available to the public and BOP inmates for reporting the sexual misconduct of BOP staff.⁴⁸ Further, the BOP not only has PREA coordinators at the facility level, but it also has PREA coordinators at the regional and central-office levels to oversee the work of the facility coordinator.⁴⁹ These procedures encourage reporting and reduce the risk of retaliation against victims. Likewise, the Bridgeport Pre-Parole Facility, a minimum-security female facility located in Bridgeport, Texas has designed its own, similar oversight system. Bridgeport is operated by the Corrections Corporation of America (CCA) under a contract with the TDCJ. The CCA has appointed a corporate PREA committee, which convenes by conference call within 48 hours each time a sexual abuse allegation is received to discuss the incident and to ensure that the facility is adhering to CCA's PREA policy.⁵⁰ The CCA's protocol and administrative structure at Bridgeport ensures that every allegation of sexual victimization is treated as credible and is investigated in accordance with PREA standards.

2) Immediately halt the practice of placing sexual assault victims in solitary confinement without thoroughly exhausting alternative protective measures. In rare cases in which administrative segregation is the only option, housing assignments should be reviewed every 15 days or less, and the prisoner should have meaningful access to mental health treatment, counseling, and all other programming he or she would have access to in general population.

3) Increase resources for the PREA Ombudsman Office. There are currently only one PREA Ombudsman and one assistant despite the nearly 150,000 prisoners housed in TDCJ facilities.⁵¹ Corrections staffing levels should be increased in the living areas during the times when most sexual assaults are reported, between 6 a.m. and 6 p.m.⁵² Although the number of staff assigned to the units is greatest during these hours, the activity levels of the prisoners also increases dramatically.⁵³ As a result, housing unit staff are frequently drawn away from the routine duty of checking on cell activity.⁵⁴ Providing more resources to the PREA Ombudsman’s Office would help alleviate the burden on unit-level staff and raise the level of specialized victim services to victims throughout the system.

4) Improve the Offender Grievance System. An effective policy to prevent and respond to sexual assault must include a functional grievance system. Staff at all levels of the grievance process require better training on PREA standards and should be held accountable for failing to respond to victims properly. To deter staff-on-inmate sexual assault, complaints must always precipitate prompt and thorough investigations, and substantiated complaints must result in strict administrative and criminal enforcement.

5) Involve outside agencies in assessing PREA compliance. Advocates and experts can provide technical assistance on assisting sexual assault victims, and gather longitudinal data that would not only help alleviate the burden on correctional staff and administrators, but would also promote transparency and public accountability. Since 2010, TAASA has provided a reporting outlet for currently incarcerated prisoners—still one of the only Texas-based organizations to do so. Further, with a newly established incarcerated survivor team, TAASA is equipped to perform ample research directly with prisoners and support service providers and to monitor statewide trends. Educating inmates on TAASA’s mission and contact information would help connect victims in TDCJ with necessary resources and ease the burden on an often overworked correctional staff.

CONCLUSION

In the 13 years since PREA’s enactment and the six years since the publication of DOJ’s final PREA rule, Texas has failed to stem sexual violence within its prisons. Although PREA was enacted on the strength of exhaustive research and unprecedented bipartisan support, it has fallen short of achieving material improvement in Texas’s rates of prison rape. Sexual assault rates—and attendant rates of medical and mental health problems, suicide rates, and targeted harassment and retaliation—increase each year. The situation is urgent. Drastic changes need to take place within the Texas prison system immediately. We believe that tremendous change can happen without substantial cost, legislation, or additional federal rulemaking. We hope this report helps to illuminate the crisis many inmates face daily in Texas correctional facilities and prompts officials to act decisively.

SOURCES

¹ 28 C.F.R. § 115.15.

² 42 U.S.C. 15607(c); see also “Safe Prisons Program Report 2013,” Texas Department of Criminal Justice, 19 (2013), available at http://tdcj.state.tx.us/documents/PREA_SPP_Report_2013.pdf.

³ “PREA Essentials: Screening for Risk of Sexual Victimization and Abusiveness,” National PREA Resource Center, Bureau of Justice Assistance, US Department of Justice, (2015), available at <http://www.prearesourcecenter.org/training-technical-assistance/prea-essentials>.

⁴ See “PREA Brochure,” PREA Ombudsman Office, Texas Department of Criminal Justice, available at https://www.tdcj.state.tx.us/documents/TBCJ_PREA_Brochure.pdf.

⁵ “Safe Prisons Program Report 2014,” Texas Department of Criminal Justice (2014), available at http://tdcj.state.tx.us/documents/PREA_SPP_Report_2014.pdf.

⁶ Id. at 29-31.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ 28 C.F.R. § 115.342(b).

¹² See Jeffrey L. Metzner & Jamie Fellner, Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics, 38 J. Am. Acad. Psychiatry & I. 104, 105 (Nov. 2010), available at <http://www.jaapl.org/content/38/1/104.full.pdf>; Craig Haney, Mental Health issues in Long-term Solitary and “Supermax” Confinement, 49 Crime & Delinquency 124, 142 (Jan. 2003), available at <http://www.supermaxed.com/NewSupermaxMaterials/Haney-Mental-HealthIssues.pdf>.

¹³ See, e.g., “Psychologist Testifies on the Risks of Solitary Confinement,” American Psychological Association (2012), available at <http://www.apa.org/monitor/2012/10/solitary.aspx>.

¹⁴ 28 C.F.R. § 115.43.

¹⁵ 28 C.F.R. §§ 115.43(d).

¹⁶ PREA Brochure, supra note 2.

¹⁷ Beck, Allen, Berkzofky, Marcus, Caspar, Rachel, and Krebs, Christopher. “Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12.” U.S. Department of Justice: Bureau of Justice Statistics (2013).

¹⁸ Id. at 12.

¹⁹ Id.

²⁰ Id.

²¹ Id. at 13.

²² Id. at 6.

²³ Id. at 14.

²⁴ Id.

²⁵ “Report on Sexual Victimization in Prisons and Jails,” Review Panel on Prison Rape, U.S. Department of Justice, 4 (2012), available at <http://www.prearesourcecenter.org/sites/default/files/library/preafinalreport2012.pdf>.

²⁶ Id. at 4.

²⁷ Id.

²⁸ Id. at 36-37.

²⁹ Safe Prisons Program Report 2013, supra note 2, at 21.

³⁰ Safe Prisons Program Report 2014, supra note 5, at 23.

³¹ Report on Sexual Victimization in Prisons and Jails, supra note 25, at 31.

³² Id.

³³ 28 C.F.R. § 115.41.

³⁴ 28 C.F.R. § 115.42; see also “PREA Essentials: Screening for Risk of Sexual Victimization and Abusiveness,” National PREA Resource Center, Bureau of Justice Assistance: US Department of Justice (2015), available at <http://www.prearesourcecenter.org/training-technical-assistance/prea-essentials>.

³⁵ Jason Lydon, “Coming Out of Concrete Closets: A Report on Black & Pink’s National LGBTQ Prisoner Survey,” 5 (October 2015), available at <http://www.blackandpink.org/wp-content/uploads/Coming-Out-of-Concrete-Closets.-Black-and-Pink.-October-21-2015.pdf>.

³⁶ Report on Sexual Victimization in Prisons and Jails, supra note 25, at 32.

³⁷ Id. at 35.

³⁸ Beck, et al. “Sexual Victimization in Prisons and Jails Reported by Inmates,” U.S. Department of Justice, Bureau of Justice Statistics, 5 (2007).

³⁹ Safe Prisons Program Report 2014, supra note 5, at 24.

⁴⁰ An I-60 form is TDCJ’s official avenue for inmates to submit requests to officials about a wide range of issues. See “Offender Orientation Handbook,” Texas Department of Criminal Justice, 70 (April 2016), available at http://www.tdcj.state.tx.us/documents/Offender_Orientation_Handbook_English.pdf.

⁴¹ Alysia Santo, “Preying on Prisoners,” The Marshall Project, June 17, 2015, available at https://www.themarshallproject.org/2015/06/17/preying-on-prisoners?utm_

campaign=communications&utm_source=txcomm&utm_medium=email&utm_term=prison-prosecutions.

⁴² Id.

⁴³ Id.

⁴⁴ Id.

⁴⁵ We have chosen not to name survivors and staff members in this report in order to protect their safety and privacy.

⁴⁶ 28 C.F.R. §§ 115.64, 115.71.

⁴⁷ Report on Sexual Victimization in Prisons and Jails, *supra* note 25, at 8.

⁴⁸ Id.

⁴⁹ Id. at 11.

⁵⁰ Id. at 13.

⁵¹ See “Texas Prison Inmates,” Data Applications, The Texas Tribune, available at <http://www.texastribune.org/library/data/texas-prisons>.

⁵² Austin, et al. “Sexual Violence in the Texas Prison System.” U.S. Department of Justice, VI.

⁵³ Id.

⁵⁴ Id.



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