
H.R.1707

Prison Rape Reduction Act of 2003 (Introduced in House)

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the 'Prison Rape Reduction Act of 2003'.

(b) TABLE OF CONTENTS- The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Purposes.

Sec. 4. National prison rape statistics, data, and research.

Sec. 5. Prison rape prevention and prosecution.

Sec. 6. Prison rape prevention and prosecution grants.

Sec. 7. National Prison Rape Reduction Commission.

Sec. 8. Adoption and effect of national standards.

Sec. 9. Model standards for acute post-trauma treatment.

Sec. 10. Requirement that accreditation organizations adopt accreditation standards.

Sec. 11. Designation of grant programs for funding increases; adjustments to increases.

Sec. 12. Definitions.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) 2,100,146 persons were incarcerated in the United States at the end of 2001: 1,324,465 in Federal and State Prisons and 631,240 in county and local jails. In 1999, there were more than 10,000,000 separate admissions to and discharges from prisons and jails.

(2) Insufficient research has been conducted and insufficient data reported on the extent of prison rape. However, experts have conservatively estimated that at least 13 percent of the inmates in the United States have been sexually assaulted in prison. Many inmates have suffered repeated assaults. Under this estimate, nearly 200,000 inmates now incarcerated have been or will be the victims of prison rape. The total number of inmates who have been sexually assaulted in the past 20 years likely exceeds 1,000,000.

(3) Inmates with mental illness are at increased risk of sexual victimization. America's jails and prisons house more mentally ill individuals than all of the Nation's psychiatric hospitals combined. As

many as 16 percent of inmates in state prisons and jails, and 7 percent of Federal inmates, suffer from mental illness.

(4) Young first-time offenders are at increased risk of sexual victimization. Juveniles are 5 times more likely to be sexually assaulted in adult rather than juvenile facilities--often within the first 48 hours of incarceration.

(5) Most prison staff are not adequately trained or prepared to prevent, report, or treat inmate sexual assaults.

(6) Prison rape often goes unreported, and inmate victims often receive inadequate treatment for the severe physical and psychological effects of sexual assault--if they receive treatment at all.

(7) HIV and AIDS are major public health problems within America's correctional facilities. In 2000, 25,088 inmates in Federal and State prisons were known to be infected with HIV/AIDS. In 2000, HIV/AIDS accounted for more than 6 percent of all deaths in Federal and State prisons. Infection rates for other sexually transmitted diseases, tuberculosis, and hepatitis B and C are also far greater for prisoners than for the American population as a whole. Prison rape undermines the public health by contributing to the spread of these diseases, and often giving a potential death sentence to its victims.

(8) Prison rape endangers the public safety by making brutalized inmates more likely to commit crimes when they are released--as 600,000 inmates are each year.

(9) The frequently interracial character of prison sexual assaults significantly exacerbates interracial tensions, both within prison and, upon release of perpetrators and victims from prison, in the community at large.

(10) Prison rape increases the level of homicides and other violence against inmates and staff, and the risk of insurrections and riots.

(11) Victims of prison rape suffer severe physical and psychological effects that hinder their ability to integrate into the community and maintain stable employment upon their release from prison. They

are thus more likely to become homeless and/or require government assistance.

(12) Members of the public and government officials are largely unaware of the epidemic character of prison rape and the day-to-day horror experienced by victimized inmates.

(13) The high incidence of sexual assault within prisons involves actual and potential violations of the United States Constitution. In *Farmer v. Brennan*, 511 U.S. 825 (1994), the Supreme Court ruled that deliberate indifference to the substantial risk of sexual assault violates prisoners' rights under the Cruel and Unusual Punishments Clause of the Eighth Amendment. The Eighth Amendment rights of State and local prisoners are protected through the Due Process Clause of the Fourteenth Amendment. Pursuant to Congress's power under Section Five of the Fourteenth Amendment, Congress may take action to enforce those rights

in States where officials have demonstrated such indifference. States in which the incidence of prison rape exceeds the median by 30 percent whose officials refuse to explain their policies and practices regarding sexual assault and States that do not adopt carefully selected grant performance standards that do not generate significant additional expenditures demonstrate such indifference. Therefore, such States are not entitled to the same level of Federal benefits as other States.

(14) The high incidence of prison rape undermines the effectiveness and efficiency of United States Government expenditures through grant programs such as those dealing with health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison construction, maintenance, and operation; race relations; poverty; unemployment and homelessness. The effectiveness and efficiency of these Federally funded grant programs are compromised by officials' failure to adopt policies and procedure that reduce the incidence of prison rape in that the high incidence of prison rape--

- (A) increases the costs incurred by Federal, State, and local jurisdictions to administer their prison systems;
- (B) increases the levels of violence, directed at inmates and at staff, within prisons;
- (C) increases health care expenditures, both inside and outside of prison systems, and reduces the effectiveness of disease prevention programs by substantially increasing the incidence and spread of HIV, AIDS, tuberculosis, hepatitis B and C, and other diseases;
- (D) increases mental health care expenditures, both inside and outside of prison systems, by substantially increasing the rate of post-traumatic stress disorder, depression, suicide, and the exacerbation of existing mental illnesses among current and former inmates;
- (E) increases the risks of recidivism, civil strife, and violent crime by individuals who have been brutalized by prison rape; and
- (F) increases the level of interracial tensions and strife within prisons and, upon release of perpetrators and victims, in the community at large.

(15) The high incidence of prison rape has a significant effect on interstate commerce because it increases substantially--

- (A) the costs incurred by Federal, State, and local jurisdictions to administer their prison systems;
- (B) the incidence and spread of HIV, AIDS, tuberculosis, hepatitis B and C, and other diseases, contributing to increased health and medical expenditures throughout the Nation;
- (C) the rate of post-traumatic stress disorder, depression, suicide, and the exacerbation of existing mental illnesses among current and former inmates, contributing to increased health and medical expenditures throughout the Nation; and

(D) the risk of recidivism, civil strife, and violent crime by individuals who have been brutalized by prison rape.

SEC. 3. PURPOSES.

The purposes of this Act are to--

- (1) establish a zero-tolerance standard for the incidence of prison rape in prisons in the United States;
- (2) make the prevention of prison rape a top priority in each prison system;
- (3) develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape;
- (4) increase the available data and information on the incidence of prison rape, consequently improving the management and administration of correctional facilities;
- (5) standardize the definitions used for collecting data on the incidence of prison rape;
- (6) increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison rape.
- (7) protect the Eighth Amendment rights of Federal, State, and local prisoners;
- (8) increase the efficiency and effectiveness of Federal expenditures through grant programs such as those dealing with health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison construction, maintenance, and operation; race relations; poverty; unemployment; and homelessness; and
- (9) reduce the costs that prison rape imposes on interstate commerce.

SEC. 4. NATIONAL PRISON RAPE STATISTICS, DATA, AND RESEARCH.

(a) ANNUAL COMPREHENSIVE STATISTICAL REVIEW-

- (1) IN GENERAL- The Bureau of Justice Statistics of the Department of Justice (in this section referred to as the 'Bureau') shall carry out, for each calendar year, a comprehensive statistical review and analysis of the incidence and effects of

prison rape. The statistical review and analysis shall include, but not be limited to the identification of the common characteristics of--

- (A) both victims and perpetrators of prison rape; and
 - (B) prisons and prison systems with a high incidence of prison rape.
- (2) SAMPLING TECHNIQUES- The analysis under paragraph (1) shall be based on a random sample, or other scientifically appropriate sample, of not less than 10 percent of all Federal, State, and county prisons, and a

representative sample of municipal prisons. The selection shall include at least one prison from each State. The selection of facilities for sampling shall be made at the latest practicable date prior to conducting the surveys and shall not be disclosed to any facility or prison system official prior to the time period studied in the survey. Selection of a facility for sampling during any year shall not preclude its selection for sampling in any subsequent year.

(3) SURVEYS- In carrying out the review required by this subsection, the Bureau shall, in addition to such other methods as the Bureau considers appropriate, use surveys and other statistical studies of current and former inmates from a sample of Federal, State, county, and municipal prisons. The Bureau shall ensure the confidentiality of each survey participant.

(4) FAILURE TO PARTICIPATE- If, after receiving a request from the Bureau under subparagraph (a)(2), a State or local official or facility administrator declines to participate in the national survey or prohibits access to any inmates under their legal custody, the entity represented by that official, or any jurisdiction to which the facility is subject, shall not be entitled in any funding increases under section 4, subsections (b)(3)(C) or (f).

(b) REVIEW PANEL ON PRISON RAPE-

(1) ESTABLISHMENT- To assist the Bureau in carrying out the review and analysis under subsection (a), there is established, within the Bureau, the Review Panel on Prison Rape (in this section referred to as the 'Panel').

(2) MEMBERSHIP-

(A) COMPOSITION- The Panel shall be composed of 3 members, each of whom shall be appointed by the Attorney General, in consultation with the Secretary of Health and Human Services.

(B) QUALIFICATIONS- Members of the Panel shall be selected from among individuals with knowledge or expertise in matters to be studied by the Panel.

(3) PUBLIC HEARINGS-

(A) IN GENERAL- The duty of the Panel shall be to carry out, for each calendar year, public hearings concerning the operation of each entity identified in a report under clause (ii) or (iii) of subsection (c)(2)(B). The purpose of these hearings shall be to collect evidence to aid in the identification of common characteristics of both victims and perpetrators of prison rape, and the identification of common characteristics of prisons and prison systems with a high incidence of prison rape.

(B) TESTIMONY AT HEARINGS-

(i) PUBLIC OFFICIALS- In carrying out the hearings required under subparagraph (A), the Panel shall request the public testimony of Federal, State, and local officials (and organizations that represent such officials), including the warden or director of each prison and the head of the

prison system encompassing such prison, who bear responsibility for the prevention, detection, and punishment of prison rape at each entity.

(ii) VICTIMS- The Panel may request the testimony of prison rape victims, organizations representing such victims, and other appropriate individuals and organizations.

(C) FUNDING INCREASE AFTER TESTIMONY- If, after receiving a request by the Panel under subparagraph (B)(i), a State or local official from an entity identified in a report under clause (ii) or (iii) of subsection (c)(2)(B) testifies at a reasonably designated time, the proportional share of the total Federal funds of the grant programs designated under section 11 provided to the entity represented by the official shall be increased by 10 percent in the fiscal year following the fiscal year in which the official testifies. No entity shall receive an increase in its proportional share of more than 10 percent under this subsection. This increase shall be in addition to any other increase provided under this Act.

(c) REPORTS-

(1) IN GENERAL- Not later than March 30 of each year, the Bureau shall submit a report on the activities of the Bureau (including the Review Panel), with respect to prison rape, for the preceding calendar year to--

(A) Congress;

(B) the Attorney General; and

(C) the Secretary of Health and Human Services.

(2) CONTENTS- The report required under paragraph (1) shall include--

(A) with respect to the effects of prison rape, statistical, sociological, and psychological data; and

(B) with respect to the incidence of prison rape--

(i) statistical data aggregated at the Federal, State, prison system, and prison levels;

(ii) an identification of the Federal Government, if applicable, and each State and local government (and each prison system and institution in the representative sample) where the incidence of prison rape

exceeds the national median level by not less than 30 percent; and

(iii) an identification of jail and police lockup systems in the representative sample where the incidence of prison rape is significantly avoidable.

(3) DATA ADJUSTMENTS- In preparing the information specified in paragraph (2), the Bureau shall, not later than the second year in which surveys are conducted under this Act, use established statistical methods to adjust the data as necessary to account for exogenous factors, outside of the control of the State, prison system, or prison, which have demonstrably

- contributed to the incidence of prison rape. For each such adjustment made, the Bureau shall identify and explain such adjustment in the report.
- (d) **CONTRACTS AND GRANTS-** In carrying out its duties under this section, the Bureau may--
- (1) contract with the National Research Council of the National Academy of Science;
 - (2) provide grants for research through the National Science Foundation or the National Institute of Justice; and
 - (3) contract with or provide grants to any other entity the Bureau deems appropriate.
- (e) **AUTHORIZATION OF APPROPRIATIONS-** There are authorized to be appropriated \$15,000,000 for each fiscal year to carry out the purposes of this section, which shall remain available until expended.
- (f) **FUNDING INCREASE-** The proportional share of the total Federal funds of the grant programs designated under section 11 provided to any Federal, State, or local government or prison system and institution that is not identified in a report under clause (ii) or (iii) of subsection (c)(2)(B) shall be increased by 10 percent in the fiscal year following the fiscal year in which the report is issued. This increase shall be in addition to any other increase provided under this Act.

SEC. 5. PRISON RAPE PREVENTION AND PROSECUTION.

- (a) **INFORMATION AND ASSISTANCE-**
- (1) **NATIONAL CLEARINGHOUSE-** There is established within the National Institute of Corrections a national clearinghouse for the provision of information and assistance to Federal, State, and local authorities responsible for the prevention, investigation, and punishment of instances of prison rape.
 - (2) **TRAINING AND EDUCATION-** The National Institute of Corrections shall conduct periodic training and education programs for Federal, State, and local authorities responsible for the prevention, investigation, and punishment of instances of prison rape.
- (b) **REPORTS-**
- (1) **IN GENERAL-** Not later than February 15 of each year, the National Institute of Corrections shall submit a report to Congress and the Secretary of Health and Human Services. This report shall be available to the Director of the Bureau of Justice Statistics.
 - (2) **CONTENTS-** The report required under paragraph (1) shall summarize the activities of the Department of Justice regarding prison rape abatement for the preceding calendar year.
- (c) **AUTHORIZATION OF APPROPRIATIONS-** There are authorized to be appropriated \$5,000,000 for each fiscal year to carry out the purposes of this section, which shall remain available until expended.

SEC. 6. PRISON RAPE PREVENTION AND PROSECUTION GRANTS.

(a) ENHANCED RESPONSE TO PRISON RAPE GRANTS-

(1) GRANTS AUTHORIZED- The Attorney General shall make 1-year grants to States, units of local government, prisons, and prison systems.

(2) USE OF FUNDS- Grants awarded under paragraph (1) shall only be used to--

(A) undertake more effective efforts to prevent prison rape;