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# ACKNOWLEDGED BUT IGNORED: A Critical Race Theory Approach to the Prison Rape Elimination Act

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I was dehuman[ized] by the lack of empathy prison officials have towards victims of sexual assault, potential victims, inmate[’s] safety in general. Inmates are looked at and treated as subhuman across the board. If an incident can be covered, it will be. If it can be ignored, it will be.

—As cited in *No Escape, Male Rape in US Prisons* (2011).

## WHY IS THERE A PRISON RAPE EPIDEMIC?

In *The New Jim Crow*, Michelle Alexander argues that the criminal justice system has essentially become the United States’ new racial caste system. Through the systematic persecution and prosecution of mainly black bodies, beginning with the Reagan administration’s supposed “War on Drugs,” the prison population exploded starting in the 1980s, (over) filling prisons with nonwhites. This system of criminalizing racial minorities results from a distinct inequality of criminalization: despite proportional rates of drug use across ethnicities, African Americans see higher incarceration rates of any other ethnicity and experience harsher punishments for similar violations.<sup>1</sup> Beyond the war on drugs, other historically disenfranchised communities, including individuals of Asian, Middle Eastern, and Latina/o descent, immigrants, Native Americans, and LGBT individuals are victimized as the result of overt and more subtle collusion of systematic practices of racism, classism, transphobia,

Islamophobia, xenophobia, and more. As such, the criminal justice system has become a new tool of social and racial control, in which minorities are funneled into an institution that creates a vicious cycle of exit and reentry; through the loss of public benefits, employment discrimination, housing obstacles, physical and mental health, and more as the result of incarceration, the combination of state and federal laws and public policies and individual prison regulations and operations has effectively prevented former inmates from assimilating back into greater society.

However, this racial caste system also has a more insidious aspect that, while publically recognized, is widely ignored: prison rape. Although definitions of rape and sexual assault differ state-to-state, rape has more generally been interpreted as “sexual relations with another person obtained through physical force, threats, or intimidation.”<sup>2</sup> Prison rape has been a known issue within the system for decades, tracing back to at least 1968, when Alan J. Davis, a former Chief Assistant District Attorney of Philadelphia, “found that sexual assaults in the Philadelphia prison system are epidemic.”<sup>3</sup> Further reports have indicated varying incidence rates from 7–21% for the general population, while certain communities may experience more, such as upwards to 23% for transgender-identified individuals.<sup>4,5</sup> The Human Rights Watch study states that as of 2001, at least 200,000 inmates have been raped, with numbers higher now a decade later.<sup>6</sup> As prison rape draws more administrative and public recognition as a serious issue and inmates receive more resources and feel less stigmatized, the numbers of reports continue to rise.

Despite this acknowledgment, prison rapes continue to devastate the inmate population, unabated and even abetted by prison officials. The explosion of the number of incarcerated unfortunately has coincided with the explosion of prison rapes as well. This direct correlation between the number of inmates and prison rapes the proportional increase in number of prisoners. Outside the walls of prisons, the criminal justice system already dominates the lives and communities of minorities, especially African Americans. Within prison walls, rape becomes a tool to ensure the success of mass incarceration and the potency of white supremacy. More specifically, the criminal justice system uses rape as a means to discipline, divide, and distract those trapped within the system.

## SCOPE OF THE PROBLEM

Similar to rape outside of prisons, rape within prisons by both inmates and prison staff is “not so much about sex” but a “vehicle for the expression of power relationship, dominance, and control”.<sup>7</sup> Accusations of rape by prison staff accounted for nearly half of rape allegations in 2011, with concerns that “the number of reported incidents may be grossly under-represented by official statistics.”<sup>8</sup> African Americans and women report as the primary targets of these rapes. In addition to these accusations, prison staff has also been accessories to these rapes. In a survivor testimony to the National Prison Rape Elimination Commission, Pamanicka “Chino” Hardin states that, in addition to being raped by a guard while incarcerated at the Spofford Juvenile Center in Bronx, “the corrections officers allowed certain boys to enter the cells of girls that the corrections officers did not like or said were not behaving well. . . . Three different girls told me they were raped by boys who corrections officers allowed to go into their cells. I was terrified and did my best to keep a low profile so that I would not be targeted.”<sup>9</sup> In these instances, rape serves as a mechanism to control inmate behavior. For many, especially African American, women, and youth, the threat of rape by prison staff hung above them throughout their experience. In the most literal sense, the use of rape codified the authority of the prison system and those who lead it over those they purport to “correct.” Thus, mass incarcerations results in the systematic rape of women and African Americans in the name of “justice.”

Furthermore, the success of an incarceration system of primarily Black individuals requires a tool to divert the frustration experienced by those it targets. While studies report conflicting data about the prevalence of rape of white men by African American men in prisons, many reports state that white men are disproportionately raped. Once again, this rape results as desire to control; however, among rapes between inmates, “blacks appear to be taking out their frustrations and feelings of exploitation. . . . Prison is merely an arena in which blacks vent rage at whites perceived to be representatives of their oppressors.”<sup>10</sup> The racist nature of the criminal justice system reifies itself within prisons; however, because the system targets the Black community in order to prop up whites, prison sees the reaction to this racism: the rape of white inmates. The use of rape redirects the anger that Black inmates feel toward at other

inmates as opposed to the system itself.<sup>11</sup> Additionally, the proliferation of prison rapes has further divided the prison population along racial lines. Multiple studies indicate that most rapes are interracial—with few rapes occurring within racial groups. As such, ethnic and/or racial groups protect their own members when able but do not protect other groups. This mentality serves to divide the prison population from collectivizing and organizing for different conditions or a new system.

The use of rape not only divides the prison population along racial lines but also “destroys potential leaders and intimidates prisoners into becoming informers”.<sup>12</sup> In and outside of prisons, male victims often feel emasculated by rape and may be perceived as gay or weak. This feeling becomes more concretized within prisons, as prison rape culture revolves around power—those who are raped lose power and those who rape gain power. Prisoners must constantly be on guard for rape, knowing that their power and standing within the prison population hinges on their ability to prevent their rape or their ability to rape others. As such, the use of rape destroys the ability for inmates to establish long-standing leaders for the entire prison population. Here, the system relies on both homophobia and racism as sustenance. Secondly, potential and current prison rape victims can also work with prison administrators as snitches, or informants to prison staff on the wrongdoings of fellow inmates, in exchange for their safety. Rape, then, becomes a tool to even further divide the prison population. Prisoners who cannot protect themselves must either submit to another prisoner to be raped in exchange for protection or turn to administrators, who did not prioritize inmate safety to begin with, in exchange for information about their fellow inmates.

Thus, mass incarceration founded upon systems of oppression requires a prison rape epidemic. The very success of the system depends on the ability for the system to be overtly oppressive in its practices while able to subdue those it oppresses. Through prison rapes committed by staff and allowing prison rapes to continue between inmates, the system of mass incarceration can systematically control inmates. The combined threat of rapes, action of rapes, and the trauma of rapes prevent inmates from organizing themselves, organizing each other, and organizing as a collective to address the different –isms of the systems. Rape acts a tool that physically, emotionally, and mentally immobilizes the most vulnerable from building power to change the conditions that they have been subjected.

Yet, despite these high numbers and the seriousness of this issue, prison rape has only recently entered the public consciousness, and its entrance has been met with both ridicule and passive acceptance. The levity in which the media treats this issue indicate its complicity with prison rape, either due to a belief that a prison sentence implicitly entails rape, that prison rape should be used as a crime deterrent, or that prison rape is merely a joke.<sup>13</sup> Popular culture's treatment of prison rape has manifested as common tropes of late night TV hosts, "edgier" comedians, satirical book titles, songs, punchlines in films and television, and even a board game called "Don't Drop the Soap."<sup>14</sup> As such, prison rape results in the further dehumanizing process of incarceration. The real needs of inmates and the seriousness of the issue is consistently and constantly undermined by messages that the public need not consider prison rape as a real societal, political, or policy concern and that those who experience prison rape must deserve it. The white supremacist nature of the criminal justice system requires the support of the media and apathy of the public. Through the media, the criminal justice system has shaped public opinion toward believing that black and brown people are by nature or culture inherently criminals and that criminals are less than human. Consequentially, inhumane violence can then be tolerated within prisons. Without the support of media, the criminal justice system could not so blatantly achieve its goal of racial and heteropatriarchal subjugation.

#### WHAT ARE THE EFFECTS OF THESE RAPES?

The lasting consequences of these rapes include high rates of psychological and physiological trauma, suicides, transmission of diseases, and longer sentences. In a testimonial to the Human Rights Watch, L.O. from Texas asserts, "When I was sentenced I didn't hear the part of sentencing that stated, "you are hereby sentenced to six years of hard labor to the Texas Dept. of Criminal Justice. While there, you will be beaten daily, savagely raped, and tortured, mentally, to the point of contemplating suicide."<sup>15</sup> M.O.'s comments reflect oft-repeated sentiments from as well as the mental health deterioration of other prison rape victims. Prison rape victims experience "nightmares, deep depression, shame, loss of self-esteem, self-hatred," "anger, hypervigilance to danger, sexual dysfunction and a diminished capacity to enjoy life or attempts," suicidal tendencies and

attempts, and finally, rape trauma syndrome, “a variant of post-traumatic stress disorder (PTSD) characterized by depression, severe anxiety, and despair.”<sup>16</sup> Homophobia and masculinity further complicates the issue of male prison rape is homophobia and masculinity—the notion that male rape victims “asked” to be raped because they are gay. As such, male victims often feel great shame and emasculation as the result of their rape. Compounding this situation is the lack of mental health resources and expertise within prisons—due to overcrowding and under-resourcing, many prisons cannot provide adequate mental health services to inmates. For those that do provide mental services, many of the service providers lack expertise in suicide prevention and rape trauma.<sup>17</sup> As a result, “suicides ranked third as a cause of death in prison,” “a percent more than 50 percent higher than the national average outside of prisons,” and “the leading cause of death in jail.”<sup>18</sup>

Physiologically, prison rape victims experience a range of effects, depending the nature of their attack. Some rape victims are coerced into sex by their attackers through the threat of violence while others are violently beaten into submission. Furthermore, penetrative rape and non-penetrative rape also have different physical effects, including whether lubricant and condoms were used. Rape victims can experience “intense pain, abrasions, soreness, bleeding, even, in some cases, tearing of the anus or transmission of the HIV virus.”<sup>19</sup> The last of these consequences often lead to greater issues. Compared to the general population, multiple reports indicate that the prison population has a higher rate of STDs, including HIV infection. Because prisons rarely provide condoms to inmates, “violent forms of unprotected vaginal or anal intercourse have the highest risk” of transmitting an STD.<sup>20</sup> Again, compounding this issue is homophobia and notions of masculinity as well as overcrowding. The shame that results from rape is a huge factor that leads to under-reporting. Consequently, many rape victims may not request tests or support to ensure their sexual and reproductive health. Furthermore, similar to mental health services, many prisons also lack the resources to prevent and treat STDs as the result of overcrowding and a lack of adequate funding. Thus, many prison rape victims may have HIV or other STDs and not know or may know but lack the access to necessary resources to treat their condition.

In addition to the psychological and physical consequences, prison rape also strengthens the ability of the criminal justice system as a tool to

permanently suppress people of color and other at-risk communities. In a prisoner rape survivor testimonial, L.L. recounts, “My celly (sp) tried to rape me with a knife for a weapon. We fought, and I got the knife . . . to fight him off. I was charged with attempted murder and felonious assault and taken to trial, found guilty and received 12 to 15 years. The system feels that justice was done.”<sup>21</sup> L.L., like many other prison rape victims, indicate that their attempt to protect themselves from violent rape resulted in longer sentences, either as the result for “possession or a weapon” or for other violations they “committed” during the attack or because they accepted plea bargains of longer sentences in fear of losing in a trial. The criminal justice system not only fails to protect those in its care from rape, but as added salt to the wound, punishes those who deign to protect themselves.

#### WHO DOES THIS AFFECT MOST?

Diving deeper into the victims of this system, African Americans and whites proportionally and numerically constitute the largest victim groups. The literature on prison rape the past few decades have indicated that whites make up the majority of the rape victims at the hand of black perpetrators. However, new studies “confirm previous findings that most of those who commit sexual abuse in detention are corrections staff, not inmates.”<sup>22</sup> With African Americans reporting the highest rates of abuse by prison staff, the conclusion of these new studies would then indicate that African Americans make up the majority of prison rape victims, a finding that contradicts much of previous research. Regardless of current and past studies, large numbers of both white and black inmates have been victims of prison rapes. However, prominence of white rape victims does not point to a non-racist criminal justice system; simply, the “inclusion of some whites in the system of control is essential to preserving the image of a colorblind criminal justice system and maintain our self-image as fair and unbiased people.”<sup>23</sup> As such, “in any war, a tremendous amount of collateral damage is inevitable. Black and brown people are the principal targets in this war; white people are collateral damage.”<sup>24</sup> The white supremacist nature of the criminal justice systems subjugates entire communities of color at the expense of a small percentage of its own white population and, more specifically, of its lower class and poor white population.

In addition to African Americans, people of Asian, Middle Eastern, Latin, and Native American descent have also been victimized by system-sponsored rape. As the result of Islamophobia, South Asians and people of Middle Eastern descent have experienced a spike in policing, detention, and imprisonment and sexual assault within this system. Since 9/11, multiple court cases have already been filed accusing the United States of sexually assaulting and raping “suspected terrorists” as a method to obtain information, including an American Civil Liberty Union petition that accuses the United States of “forced anal penetration” of a Middle Eastern man.<sup>25</sup> However, the recent Senate Torture report provides concrete evidence of state-sponsored rape through “anal bleedings” of inmates, a “form of sexual assault masquerading as medical treatment.”<sup>26</sup>

Similar to the War on Terror, the War on Immigrants has also resulted in large numbers of immigrants, mainly individuals of Asian and Latin descent, in detention centers. In detention centers, “officers have an astounding degree of leverage,” which enable them to “proposition women whose cases they control, telling them that if they want to be released they need to comply with their sexual demands.”<sup>27</sup> Certain detention centers, such as the Krome Service Processing Center in Florida, have had decades of reports of molestation, rape, and even impregnation of detainees.<sup>28</sup> The current pro-fence politics that dominate Washington has resulted in an exponential expansion of the for-profit detention industry. Policy makers who have espoused xenophobic rhetoric have also instituted many state-wide policies that illegalizes many aspects of daily life required for self-sufficiency, including access to employment, driving, and housing. These laws and polices further strengthen a system that preys and profits on vulnerable populations, especially immigrants. On the other side of the coin, indigenous people also face high incidence of rape and sexual assaults. While Native Americans have the option to govern their own jails through their Bureau of Indian Affairs, one federally-run facility that houses native inmates, the Oglala Sioux Tribal Offenders Facility, actually reports the sexual abuse rate of 10.8% by staff members, which is higher than that of any other adult facility covered by the National Inmate Survey.<sup>29</sup> This high incident rates reflect modern day colonialism; not only has the United States ravaged Native American peoples and colonized their lands, the current system now jails and allows for the state to colonize Native bodies.

This system not only results in the rape of people of color but of also LGBT people. As remarked by a former inmate, “It seem that . . . gays . . . are used as sacrificial lamb[s]. The reason is to use these men as a way to keep the gangs and killers from turning on the system.”<sup>30</sup> LGBT individuals, and those who may fit into LGBT stereotypes—e.g. feminine features or passive personalities—“are much more likely than other prisoners to be targeted for abuse.”<sup>31</sup> Similar to white inmates, gay inmates are considered collateral in the War on Drugs, or, more realistically, the War on Black Lives. The criminal justice system requires rapes to properly function, and LGBT self-identified and labeled individuals serve to fill that role in the equation. Equally disturbingly, prison officials often fail to consider the rape of gay men as rape. Instead, notions of victim blaming run rampant where officials view gay male rape as consensual, causing these rape victims from receiving adequate health and administrative resources required for their protection.<sup>32</sup> Thus, victims go unassisted, and victimizers go unstopped.

Within the LGBT community, transgender-identified individuals face the highest rates of rape. Both transgender men and transgender women face higher incidences of abuse and rape by guards and by inmates than the general prison population. Prisons have even placed transgender women who had received breast implants into a male prison, leading to violent rapes and transmission of HIV. Reports indicate that 59% of transgender women in male prisons have been sexually assaulted, a rate of more than 14 times than the general male population.<sup>33</sup> Unfortunately, those lie at the intersection are among the highest victimized groups. In the National Transgender Discrimination Survey, 38% of black transgender people reported being sexual assaulted in jails compared to 12% of their white counterparts.

As such, within the walls of the prison system is the convergence of multiple systems of oppression. Racism, Islamophobia, xenophobia, homophobia, and transphobia all operate simultaneously within the criminal justice system, leading to not only the incarceration of these population but also systematic rape as well. Rape then further divides communities within prisons and detracts from efforts to build coalitions. Ultimately, prison rape serves as a tool to refocus the energies of the most disenfranchised against each other as opposed to the system. Rape abounds within the walls of US systems, and the US has allowed this to occur to ensure the erection of rich white cisgender heterosexual men at the top of the totem pole at the expense of all others.

## ENACTMENT HISTORY

While a pressing issue, prison rape has been the focus of only small-scale studies prior to 2011, with no reliable national statistics available on sexual violence in United States prison systems. To address this need, the Human Rights Watch conducted a report titled *No Escape: Male Rape in U.S. Prisons*. Using over 200 inmates' testimonies from 34 different states, this report revealed the high incidence and prevalence of prison rape as well as the social and cognitive complexities of rape. This study garnered nationwide attention when it was featured on the cover of *The New York Times*.<sup>34</sup> *No Escape: Male Rape in U.S. Prisons* was a first introduction to many United States citizens on the reality of prison rape. The results caused outrage and upheaval, eventually being cited in congressional testimony in the creation of the Prison Rape Elimination Act.<sup>35</sup>

While *No Escape: Male Rape in U.S. Prisons* seemingly catalyzed the creation and eventual enactment of the Prison Rape Elimination Act (PREA), it is imperative to contextualize this given other events. Prior to this study, the Human Rights Watch published several other reports on sexual violence in the United States prisons. Its initial report, *All too Familiar: Sexual Abuse of Women in U.S. State Prisons*, was published in 1996, five years before the report on male rape.<sup>36</sup> This 1996 report on the sexual abuse experienced by female inmates in prison systems failed to attract significant traction to affect policy. Thus, it seems that the enactment of PREA followed society's heteropatriarchal script. Prison rape captured the attention of key policy advocates and makers only after re-centering the issue to focus on male victims. Furthermore, the language in the initial draft of PREA solely addressed male prison rape.<sup>37</sup> After receiving feedback on this draft, PREA then included sexual misconduct when staff are perpetrators; however, the sole focus remained on male-on-male rape. This is an apparent example of the manifestation of society's preferential treatment toward males. These series of events connote that it is more unacceptable for a man to get raped than a female. Despite the Human Rights Watch Report published in 1996, Congress mentioned that the nation was largely unaware of the "epidemic character of prison rape and the daily horror experienced by victimized inmates."<sup>38</sup>

Aside from the male-centric approach to passing PREA, the spread of HIV/AIDS was also of concern in passing PREA. Many religious

organizations framed this issue as an issue of gay men spreading “their disease.”<sup>39</sup> These conservative religious institutions supported PREA and packaged the policy to their constituencies as advancing interests that are core to their ideology. These institutions included The Concerned Women for America and the Baptist Ethics and Religious Liberty Commission.<sup>40</sup>

In addition to these organizations, a diverse group of activists, lobbyists, and organizations supported PREA. The groups that provided significant sponsorship included Just Detention International, Amnesty International USA, Focus on the Family, Human Rights Watch, National Association for the Advancement of Colored People, National Association of Evangelicals, Penal Reform International, Physicians for Human Rights, Presbyterian Church USA, the Salvation Army and the Union of American Hebrew Congregations. Alabama Senator Jeff Sessions sponsored PREA and Ohio Senator Mike Dewine, Illinois Senator Richard Durbin, California Senator Dianne Feinstein, and Massachusetts Senator Edward Kennedy all co-sponsored. With such a wide range of support, PREA was passed with unanimous consent in the Senate and without objection in the House in July. On September 4, 2003 President George W. Bush signed PREA into public law.<sup>41</sup>

### PRISON RAPE ELIMINATION ACT

According to the PREA Resource Center, PREA was created with the intention of eliminating sexual abuse in confinement.<sup>42</sup> As the result of its enactment in 2003, PREA mandates certain provisions. First, it requires that The United States Department of Justice Bureau of Justice Statistics to conduct a comprehensive annual statistical review and analysis on the incidence and effects of prison rape and produces a report on these findings.

Second, the enactment of PREA established the National Prison Rape Elimination Commission.<sup>43</sup> NPREC was charged with analyzing federal, state, and local government policies and practices concerning sexual assaults and crimes within the prison and jail systems. The purpose was to produce a comprehensive report on its findings including recommendations to the President, Congress, and the United States Attorney General to address prison rape.<sup>44</sup> NPREC consisted of nine members, three that were appointed by the president and six by congressional

leaders in 2004. The panel largely obtained its information from public hearings throughout the nation. These hearings included victims of prison rape and federal lawmakers. The Chance Act of 2007, involving the reintegration of criminal offenders into the community, caused a delay in NPREC's report. On August 22, 2009, NPREC released their report including analysis and recommendations on the detection, prevention, reduction, and punishment of prison rape.<sup>45</sup> The report stated that approximately 60,000 inmates are sexually abused in the United States every year. Further, inmates' reports of sexual violence are not always taken seriously by staff and, thus, not always reported to the proper authorities. Additionally, they found that 2.9 percent of inmates reported sexual abuse by staff whereas 2 percent of inmates reported rape by other prisoners. In response, Attorney General Eric Holder published final rule and adopted national standards in 2012.<sup>46</sup>

Lastly, PREA mandates the National Institute of Corrections (NIC) to offer training and technical assistance in order to help facilities comply with these standards and produce its own annual report to Congress.<sup>47</sup>

### OUTCOMES OF PREA

A first outcome of PREA is in funding. Since its enactment, PREA authorized sixty million dollars in funds to prisons. Facilities have used these grants to provide trainings, improve investigation structures, install surveillance equipment, enhance medical and mental health treatment, and hire staff to implement PREA.<sup>48</sup>

Secondly, the enactment of PREA resulted in the establishment of national standards. These standards apply to any federal, state, or local confinement facility, including local jails, police lockups, holding facilities, juvenile facilities, and state and federal prisons. However, compliance to these standards is not mandated. States that do not comply with the standards experience a five percent reduction in federal funding.<sup>49</sup> The first portion of these standards covers prevention planning. PREA compliant agencies must adopt a zero tolerance policy on sexual abuse and harassment. The standards also outline specific criteria on inmate monitoring and supervision, limitations on cross-gender viewing and searches, as well as facility upgrades including video cameras to help with prevention. Officers must screen all inmates for their risk of victimization and abusiveness within 72 hours of entry or transfer to a facility. This

information is then utilized to inform housing, bed, work, education, and program assignments. On a broader scale, facilities are required to establish and implement a consistent staff, volunteer, and contractor training program, including specialized training for mental health and medical professionals. Furthermore, the prison must engage in data collection, sexual abuse incident reviews, audits, and an audit correction plan.<sup>50</sup>

While these standards aim to eliminate sexual misconduct, it also details processes for facilities should an incident occur. Facilities must have response protocol in place for forensic medical examinations and policies around investigations of investigations. Protocol must be in place for victim, staff, inmate, and third party reporting and official response to these reports. Investigative procedures must be defined and put into place. Lastly, both discipline as well as the outlined medical and mental health care must be implemented.<sup>51</sup> As these standards are still relatively new, there is currently no data on the efficacy of PREA in reducing rape.

Another outcome of PREA is the availability of data produced by the Bureau of Justice Statistics (BJS). In 2007, BJS published the findings of its first inmate survey. The results indicated that inmates report much higher rates of sexual violence than correctional authorities report. Inmates reported that sexual violence was occurring at 4.5% compared to 2.91% reported by correctional authorities in 2006. Based on this inmate survey, BJS required facilities with the three highest and two lowest rates of sexual violence to appear on a review panel to explain their incident rates. Some of the facilities with high prevalence admitted they had serious issues with sexual violence while others argued that their high numbers conveyed improved grievance and investigative processes. States with the lowest numbers attributed their rates to effective leadership and a healthy institutional culture.<sup>52</sup> A large problem with these data is the lack of a national standard for confinement facilities to effectively collect and share PREA-related information. In 2012, the Integrated Justice Information Systems received a grant to enable the effective and efficient sharing of information to identify critical PREA data elements pivotal to information sharing, data analysis, and data quality. This is projected to complete in 2016.

Additionally, this act established trainings and technical assistance for correctional staff and facilities. The National Institute of Corrections training now has an entire section of its website dedicated to trainings. They offer in-person classroom style trainings in Colorado. They also

offer webinars and have multiple training videos catalogued that can be accessed from virtually any location. In 2010, the Bureau of Justice Assistance funded the National PREA Resource Center to provide additional federally funded training and technical assistance to states and localities. This website is now considered a single stop resource for leading research and tools for all those in the field working to come into compliance with the PREA standards.<sup>53</sup> Despite these outcomes, there is currently no data on the efficacy of PREA in reducing rape.

### UNINTENDED CONSEQUENCES

While PREA aims to reduce the incidence of prison rape nationally, the crafting and implementation of PREA has led to a continual lack of protections for marginalized communities, especially transgender inmates of color.

A first area of concern is the inconsistencies in standards for screening. The goal of screening standards is to assess inmates within 72 hours of arrival using an objective screening instrument and keep individuals deemed high risk of victimization away from those at high risk for committing abuse.<sup>54</sup> While the Department of Justice argues that all staff have been trained by the National Institute of Corrections or the PREA Resource Center to complete risk assessments, assessments nevertheless can starkly vary depending on facility because no nationally validated risk assessment tool exists. This lack of standardized instrument has resulted in disparate and inconsistent inmate risk assessments, varying from facility to facility. Additionally, inmates can be reassessed as little as twice a year.<sup>55</sup> This is highly troublesome for incorrect assessments, which can affect inmates' participation in programs as well as housing placements.

Furthermore, risk screenings are used to determine housing placements. While the intention is to remove inmates from the potential risk of rape, individuals assessed as high risk of victimization can be placed in segregated housing against their will if no alternative for separation is available.<sup>56</sup> This is known as an administrative segregation, considered different punitive disciplinary segregation. However, inmates placed in administrative segregation are often placed in the same location and endure the same conditions as those on disciplinary segregation. Those placed in administrative segregation must be given access "to programs, privileges, education, and work opportunities to the extent possible."<sup>57</sup>

Unfortunately, agencies are given significant flexibility due to the wording of “to the extent possible.” According to the American Civil Liberties Union, those in administrative segregation are often prevented from socializing with other inmates but also from participating in drug treatment, education, and job training programs.<sup>58</sup> They are even barred from enjoying privileges like watching television and listening to the radio. Thus, administrative segregation has colossal negative implications for an individual’s well-being.

According to UC Santa Cruz psychologist Craig Haney, deprivation of normal human interaction in prisons can result in mental health problems including anxiety, panic, insomnia, paranoia, aggression, and depression. Of those in some type of solitary confinement, approximately 41% reported hallucinations and 27% had suicidal thoughts. Isolated inmates are also seven times more likely to hurt or kill themselves than their inmate counterparts not in isolation. Troubling neurological alterations can occur due to long-term isolation and the resulting stress, changing brain structure over time. This change in brain structure can affect memory, geographic orientation, cognition, and decision-making. Furthermore, administrative segregation can make it more difficult for inmates to integrate themselves back into society, as solitary confinement can cause inmates to lose the ability to regulate their lives and have normal social interactions.

More broadly, LGBT inmates are often targets of administrative segregation.<sup>59</sup> The vulnerability of LGBT prisoners has led many prisons to their separation. In research conducted by Just Detention International (2007), 67% of all LGBT people in prison report being assaulted, making them among the most vulnerable population in prison. In 2014, the Bureau of Justice Statistics found that 40% of transgender prisoners are sexually abused each year. However, being gay in itself is not enough to justify a request for protective housing. In fact, inmates are not required to disclose their sexual orientation or gender identity. Regardless, the PREA Resource Center states staff should consider whether an inmate is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming during intake screenings.<sup>60</sup> Thus, it is often up to the screening staff to make this determination. According to the National Center on Transgender Equality, lesbians with stereotypically butch characteristics and gay men with stereotypically effeminate characteristics are disproportionately affected.<sup>61</sup>

In addition to screenings, PREA also fails to adequately address searches of inmates. According to the PREA Resource Center, strip searches and cavity searches are to be conducted by a prison official whose gender matches the inmate. Cross-gender strip searches and cavity searches should only occur in emergencies or by a medical professional. All cross-gender searches must be documented. However, the standards do not state how these requirements apply to transgender people. According to Transgender Equality, some agencies permit transgender individuals to make a choice at admission as to whether they will be searched by male or female officers for the purposes of these requirements.<sup>62</sup> This is highly problematic that standards do not illustrate specific protocol.

While these administrative segregation processes may have stark negative consequences, at least a certain level of consideration of LGBT populations was taken into account when drafting PREA. Nevertheless, the screening standards fail to offer recommendations on how to screen women differently from men. This is unsurprising, as the impetus for legislation was specifically around male-on-male rape during incarceration. Thus, women prisoners' particular needs were not incorporated. This is highly problematic as there are huge differences in patterns of abusiveness and victimization among genders. For example, a greater proportion of incarcerated women have histories of prior sexual victimization than women in the general population. According to the American Civil Liberties Union, approximately 85-90% of incarcerated women have a history of domestic and sexual abuse.<sup>63</sup>

## CONCLUSION

To address prison, advocates and policymakers must take a multi-prong approach. First, PREA must be amended to include clearer administrative processes that define, standardize, and mandate screenings, risk assessments, and strategies to ensure the safety of at-risk inmates. The Bureau for Justice Assistance and the Vera Institute released a report in 2015 that outlines alternative strategies to administrative segregation; these recommendations must be paired with mechanisms to ensure compliance. However, more fundamentally, PREA does not and cannot act as a solution to the prison rape epidemic. The system of mass incarcerations relies on the inability of those affected to organize and demand change.

Prison rape plays a key role in this strategy: rape leaves individuals isolated, damaged, and afraid. Ultimately, PREA fails to address the core of the issue: the mass criminalization of non-whites. In the effort to “solve” the issue of prison rape, advocates cannot ignore the omnipresence of the criminal justice system and its ripple of effects in the lives of the disenfranchised. In the introduction to *The New Jim Crow*, Alexander writes, “if a movement that merges to challenge mass incarceration fails to confront squarely the critical role of race in the basic structure of society . . . a new system of racialized social control will emerge.”<sup>64</sup> PREA does much to improve the lives of those within the system, but merely acts as a band aid to a great issue of a racist criminal justice system. So long as this system persists, prison rapes will also continue within prison walls.

## NOTES

1. Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, n.d.
2. Knowles, Gordon, “Male Prison Rape: A Search for Causation and Prevention,” *The Howard Journal*. 38 (n.d.).
3. Alan Davis, “Sexual Assaults in the Philadelphia Prison System and Sheriff’s Vans,” *Trans-Action* 6, no. 2 (n.d.).
4. Cindy Struckman-Johnson and David Struckman-Johnson, “Sexual Coercion Rates in Seven Midwestern Prison Facilities for Men,” n.d.
5. Christine Peek, “Breaking Out of the Prison Hierarchy: Transgender Prisoners, Rape, and the Eighth Amendment,” *Santa Clara Law Review*, n.d., <http://www.wcl.american.edu/endsilence/documents/BreakingOutofthePrisonHierarchy.pdf>.
6. Joanne Mariner, “Rape Crisis in U.S. Prisons,” *Human Rights Watch*, April 18, 2001, <https://www.hrw.org/news/2001/04/18/rape-crisis-us-prisons>.
7. Knowles, Gordon, “Male Prison Rape: A Search for Causation and Prevention.”
8. Kelly Riddell, “Guards, Staff Committed Half of Sexual Assaults in Prisons - Washington Times,” accessed May 14, 2016, <http://www.washingtontimes.com/news/2014/jan/23/staff-members-committed-half-sexual-assaults-priso/?page=all>.
9. Nell Bernstein, *Burning Down the House: The End of Juvenile Prison* (The New Press, 2014).
10. Knowles, Gordon, “Male Prison Rape: A Search for Causation and Prevention.”
11. Joanne Mariner, “Rape Crisis in U.S. Prisons.”
12. Knowles, Gordon, “Male Prison Rape: A Search for Causation and Prevention.”
13. Sasha Gear, Mbuyiselo Botha, and Emily Keehn, “Column: Prison Rape Is No Joke,” *IOL*, accessed May 14, 2016, <http://www.iol.co.za/pretoria-news/opinion/column-prison-rape-is-no-joke-1551714>.

14. Anna Clark, "Why Does Popular Culture Treat Prison Rape As a Joke? | Sex Offender Issues," *Why Does Popular Culture Treat Prison Rape As a Joke? | Sex Offender Issues*, August 18, 2009, <https://sexoffenderissues.blogspot.com/2009/08/why-does-popular-culture-treat-prison.html>.
15. Joanne Mariner, "Rape Crisis in U.S. Prisons."
16. Ibid.
17. Ibid.
18. Ibid.
19. Ibid.
20. Maruschak, Lauren, "HIV In Prisons, 2007-08," 2009, <http://www.bjs.gov/content/pub/pdf/hivp08.pdf>.
21. Knowles, Gordon, "Male Prison Rape: A Search for Causation and Prevention."
22. David Kaiser and Lovisa Stannow, "The Shame of Our Prisons: New Evidence by David Kaiser | The New York Review of Books," accessed May 14, 2016, <http://www.nybooks.com/articles/2013/10/24/shame-our-prisons-new-evidence/?pagination=false>.
23. Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, n.d.
24. Ibid.
25. (Dakwar, Goodman, Watt, et al, 2008)
26. Physicians For Human Rights, "Medical Professionals Denounce Rectal Feeding as Sexual Assault Masquerading as Medical Treatment," 2014, [https://s3.amazonaws.com/PHR\\_other/fact-sheet-rectal-hydration-and-rectal-feeding.pdf](https://s3.amazonaws.com/PHR_other/fact-sheet-rectal-hydration-and-rectal-feeding.pdf).
27. (Seville 2011)
28. David Kaiser and Lovisa Stannow, "The Shame of Our Prisons: New Evidence by David Kaiser | The New York Review of Books."
29. Ibid.
30. Joanne Mariner, "Rape Crisis in U.S. Prisons."
31. Ibid.
32. Ibid.
33. Lori Sexton, Valerie Jenness, and Jennifer Summer, "Where the Margins Meet: A Demographic Assessment of Transgender Inmates in Men's Prisons," n.d.
34. Brenda Smith, "The Prison Rape Elimination Act: Implementation and Unresolved Issues," n.d.
35. Ibid.
36. Ibid.
37. Ibid.
38. Library of Congress, "S.1435 - Prison Rape Elimination Act of 2003," Legislation, (July 21, 2003), <http://thomas.loc.gov/cgi-bin/bdquery/z?d108:SN01435:@@L&summ2=m&.annually>, a comprehensive statistical review and analysis of the incidence and effects of prison rape. Requires: (1
39. Brenda Smith, "The Prison Rape Elimination Act: Implementation and Unresolved Issues."
40. Ibid.

41. Library of Congress, “S.1435 – Prison Rape Elimination Act of 2003.” annually, a comprehensive statistical review and analysis of the incidence and effects of prison rape. Requires: (1

42. The National PREA Resource Center, “PREA Essentials | The National PREA Resource Center,” accessed May 14, 2016, <http://www.prearesourcecenter.org/training-technical-assistance/prea-essentials>.

43. Ibid.

44. The National Prison Rape Elimination Commission, “Prison Rape Elimination Act Standards,” *California Coalition Against Sexual Assault*, n.d.

45. The National PREA Resource Center, “PREA Essentials | The National PREA Resource Center.”

46. Ibid.

47. Alberto R. Gonzales et al., “Report to the Congress of the United States on the Activities of the Department of Justice in Relation to the Prison Rape Elimination Act (Public Law 108-79)” (Washington, D.C.: The Department of Justice. National Institute of Corrections, 2006).

48. Brenda Smith, “The Prison Rape Elimination Act: Implementation and Unresolved Issues.”

49. The National PREA Resource Center, “PREA Essentials | The National PREA Resource Center.”

50. Ibid.

51. Ibid.

52. Brenda Smith, “The Prison Rape Elimination Act: Implementation and Unresolved Issues.”

53. Alberto R. Gonzales et al., “Report to the Congress of the United States on the Activities of the Department of Justice in Relation to the Prison Rape Elimination Act (Public Law 108-79).”

54. The National PREA Resource Center, “PREA Essentials | The National PREA Resource Center.”

55. Ibid.

56. Ibid.

57. Ibid.

58. American Civil Liberties Union, “Prison Rape Elimination Act of 2003 (PREA),” accessed May 14, 2016, <https://www.aclu.org/prison-rape-elimination-act-2003-prea>.

59. Ibid.

60. Ibid.

61. The National Center for Transgender Equality, “The Prison Rape Elimination Act,” 2012.

62. Transgender Equality, “Federal Survey: 40% of Transgender Prisoners Are Sexually Abused Each Year,” *National Center for Transgender Equality’s Blog*, December 18, 2014, <https://transgenderequality.wordpress.com/2014/12/18/federal-survey-40-of-transgender-prisoners-are-sexually-abused-each-year/>. National Center for Transgender Equality’s Blog}, December 18, 2014, <https://transgenderequality.wordpress.com/2014/12/18/>

federal-survey-40-of-transgender-prisoners-are-sexually-abused-each-year/.}”,”plainCitation”.”Transgender Equality, “Federal Survey: 40% of Transgender Prisoners Are Sexually Abused Each Year,” National Center for Transgender Equality’s Blog, December 18, 2014, <https://transgenderequality.wordpress.com/2014/12/18/federal-survey-40-of-transgender-prisoners-are-sexually-abused-each-year/>.”,”citationItems”:[{“id”:492,”uris”:[“http://zotero.org/users/local/SFEYRVS2/items/T5EWVEWG”],”uri”:[“http://zotero.org/users/local/SFEYRVS2/items/T5EWVEWG”],”itemData”:{“id”:492,”type”.”post-weblog”,”title”.”Federal Survey: 40% of Transgender Prisoners Are Sexually Abused Each Year”,”container-title”.”National Center for Transgender Equality’s Blog”,”abstract”.”The federal Bureau of Justice Statistics (BJS

63. American Civil Liberties Union, “Prison Rape Elimination Act of 2003 (PREA).”

64. Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*.

## WORKS CONSULTED

American Civil Liberties Union. “Prison Rape Elimination Act of 2003 (PREA).” <https://www.aclu.org/prison-rape-elimination-act-2003-prea>. (Accessed May 14, 2016).

Clark, Anna. “Why Does Popular Culture Treat Prison Rape As a Joke? | Sex Offender Issues.” August 18, 2009. <https://sexoffenderissues.blogspot.com/2009/08/why-does-popular-culture-treat-prison.html>. (Accessed May 14, 2016).

Davis, Alan J. 1968. “Sexual assaults in the Philadelphia prison system and Sheriff’s Vans.” *Society*. 6 (2): 8-17.

Fettig, Amy. “PREA Rule: DOJ Takes First Steps to Protect Prison Rape Victims.” *American Civil Liberties Union*. <https://www.aclu.org/blog/prea-rule-doj-takes-first-steps-protect-prison-rape-victims>. (Accessed May 14, 2016).

Gonzales, Alberto R., Harley G. Lappin, Morris L. Thigpen, Larry Solomon, and Dee Halley. 2006. “Report to the Congress of the United States on the Activities of the Department of Justice in Relation to the Prison Rape Elimination Act (Public Law 108-79).” Washington, D.C.: The Department of Justice. National Institute of Corrections.

Human Rights Watch. 2001. “Rape Crisis in U.S. Prisons.” *Human Rights Watch*. <https://www.hrw.org/news/2001/04/18/rape-crisis-us-prisons>. (Accessed May 14, 2016).

Kaiser, David and Lovisa Stannow. “The Shame of Our Prisons: New Evidence by David Kaiser | The New York Review of Books.” <http://www.nybooks.com/articles/2013/10/24/shame-our-prisons-new-evidence/?pagination=false>. (Accessed May 14, 2016).

- Knowles, Gordon James. 1999. "Male Prison Rape: A Search for Causation and Prevention". *The Howard Journal of Criminal Justice*. 38 (3): 267-282.
- Maruschak, Lauren. "HIV In Prisons, 2007-08," 2009. <http://www.bjs.gov/content/pub/pdf/hivp08.pdf>. (Accessed May 14, 2016).
- Moore, Darnell L. and Charles Stephens. "An Open Letter to Mainstream LGBT Organizations That Have Remained Silent on Black Lives Mattering." *The Huffington Post*, 59:03 500. [http://www.huffingtonpost.com/darnell-l-moore/an-open-letter-to-mainstream-lgbt-organizations-that-have-remained-silent-on-black-lives-mattering\\_b\\_6329048.html](http://www.huffingtonpost.com/darnell-l-moore/an-open-letter-to-mainstream-lgbt-organizations-that-have-remained-silent-on-black-lives-mattering_b_6329048.html). (Accessed May 14, 2016).
- The National Center for Transgender Equality. "The Prison Rape Elimination Act," 2012.
- The National PREA Resource Center. "PREA Essentials | The National PREA Resource Center." <http://www.prearesourcecenter.org/training-technical-assistance/prea-essentials>. (Accessed May 14, 2016).
- The National Prison Rape Elimination Commission. "Prison Rape Elimination Act Standards." *California Coalition Against Sexual Assault*. [www.caloes.ca.gov/GrantsManagementSite/Documents/AP.docx](http://www.caloes.ca.gov/GrantsManagementSite/Documents/AP.docx). (Accessed May 14, 2016).
- Nelson, E. C., A. C. Heath, P. A. F. Madden, M. L. Cooper, S. H. Dinwiddie, K. K. Bucholz, A. Glowinski, T. McLaughlin, M. P. Dunne, and D. J. Statham. 2002. "Association Between Self-reported Childhood Sexual Abuse and Adverse Psychosocial Outcomes: Results From a Twin Study". *Archives of General Psychiatry*. 59: 139-145.
- Peek, Christine. 2004. "Breaking Out of the Prison Hierarchy: Transgender Prisoners, Rape, and the Eighth Amendment". *Santa Clara Law Review*. 44: 1211-1248.
- Physicians For Human Rights. 2014. "Medical Professionals Denounce Rectal Feeding as Sexual Assault Masquerading as Medical Treatment." [https://s3.amazonaws.com/PHR\\_other/fact-sheet-rectal-hydration-and-rectal-feeding.pdf](https://s3.amazonaws.com/PHR_other/fact-sheet-rectal-hydration-and-rectal-feeding.pdf). (Accessed May 14, 2016).
- Riddell, Kelly. "Guards, Staff Committed Half of Sexual Assaults in Prisons - Washington Times." <http://www.washingtontimes.com/news/2014/jan/23/staff-members-committed-half-sexual-assaults-priso/?page=all>. (Accessed May 14, 2016).
- Santa Monica Rape Treatment Center. "Self-Blame and Shame | Rape Treatment Center." <http://www.911rape.org/impact-of-rape/self-blame-and-shame>. (Accessed May 14, 2016).
- Sasha Gear, Mbuyiselo Botha, and Emily Keehn. "Column: Prison Rape Is No Joke." *IOL*. <http://www.iol.co.za/pretoria-news/opinion/column-prison-rape-is-no-joke-1551714>. (Accessed May 14, 2016).
- Sessions, Jeff. "S.1435 - Prison Rape Elimination Act of 2003." Legislation, July 21, 2003. <http://thomas.loc.gov/cgi-bin/bdquery/z?d108:SN01435:@@L&summ2=m&>.
- Sethi, Arjun. 2014. "OPINION: Americans' Complicity in the Prison Rape Crisis." *Aljazeera America*. <http://america.aljazeera.com/opinions/2014/4/united-states-prisonrapesexualassaultovercrowdedprisons.html>.

- Smith, Brenda. 2008. "The Prison Rape Elimination Act: Implementation and Unresolved Issues Torture," *Criminal Law Brief*. 3 (2): 10-18.
- Struckman-Johnson, Cindy, and David Struckman-Johnson. 2001. "Sexual coercion rates in seven midwestern prison facilities for men". *Violence & Abuse Abstracts*. 7 (3): 163-252.
- Tangney, June Price, and Ronda L. Dearing. 2004. *Shame and guilt*. New York: Guilford Press.