

ADDRESSING THE EPIDEMIC OF SEXUAL ASSAULT IN CALIFORNIA'S IMMIGRATION DETENTION CENTERS

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Otay Mesa Immigrant Detention Facility, a privately run facility near San Diego, CA that has one of the worst records of sexual violence among immigrant detention facilities in the United States. Photograph by Valeria Perasso, BBC World Service, <https://flic.kr/p/kYgCQR>.

Thousands of immigrants are currently and mobilize local officials and advocating being held in detention facilities nationwide. While the Trump administration continues to implement increasingly restrictive and severe immigration orders, immigrants held in detention as they await immigration proceedings are at risk for sexual abuse in facilities where the majority of sexual assault allegations go uninvestigated.¹ While sexual abuse in immigrant detention centers is a nationwide problem, privately run detention centers have the worst record by far and the state of California hosts two of the most egregious offenders.² Recently passed California legislation is intended to enact stricter oversight over private detention centers at the state level, but neglects to address the nuances of private detention facilities in California or employ any sort of penalty provisions. The California Department of Justice needs to take a proactive stance

THERE IS AN UNCHECKED epidemic of sexual assault occurring in immigration detention facilities nationwide. In 2017, the national advocacy group Community Initiatives for Visiting Immigrants in Confinement (CIVIC) filed a federal civil rights complaint alleging extensive sexual assault and abuse in immigration detention facilities.³ Data from the Department of Homeland Security's Office of the Inspector General indicate that between May 2014 and July 2016, there were 1,016 reports of sexual abuse filed by people in detention nationwide, and just 2.4% of these incidences were investigated.⁴

CIVIC found that the facilities with the worst records of sexual assault were all privately-run.⁵ CIVIC analyzed calls made to the Immigration and Customs Enforcement (ICE) sexual and physical abuse hotline and found that two of the facilities with the worst records are in California – the Adelanto Detention Facility and the San Diego Contract Detention Facility, also known as the Otay Mesa Detention Center.⁶ Private detention facilities in California hold roughly 3,700 people per day, including asylum seekers, green card holders, and people awaiting immigration hearings.⁷ Women, the LGBTQ population, and gender non-conforming people are disproportionately at risk for sexual assault and abuse while in detention. In keeping with California's progressive values, the state has a duty to protect the most vulnerable, and establish more robust oversight and enforcement mechanisms for private detention facilities.

The Prison Rape Elimination Act (PREA) is the main mechanism in place to address sexual assault in detention facilities, and was expanded to include immigration detention facilities in 2012.⁸ The PREA is intended to monitor and document sexual assault in federal, state, and local institutions.⁹ However, sexual assault claims submitted to the federal oversight systems outlined by the PREA are largely ignored. While this is an ongoing national crisis, in California the situation is especially severe. Between 2000 and 2016, there were 4,500 complaints lodged with the Office of the Inspector General, originating from private detention facilities in California, yet only 45 were investigated – just 1%.¹⁰ These incidents illustrate that the current ICE sexual assault hotline is little more than a superficial reporting mechanism, as calls made to the system do not result in any legitimate investigation.

Existing federal oversight mechanisms do not provide sufficient monitoring of privately run immigration detention centers. CIVIC found that private facilities have less government oversight than government-run centers, and most immigration detention contracts have no penalty provisions for failing to meet government standards.¹¹ Additionally, there are serious discrepancies regarding which facilities are subject to PREA standards, and the PREA standards themselves were drafted to allow for a range of compliance.¹²

The lack of federal oversight and the preponderance of the problem in California require the state government to take an active role in ending the epidemic of sexual assault. Though the state's powers are limited in regulating immigration, as such powers ultimately lie with the federal government, the state of California has a duty to protect

all persons residing within its borders. As a progressive leader, California must ensure the safety of all immigrants residing in the state's detention centers.

CRITIQUE

California recently passed legislation to enact additional oversight over detention centers. The Dignity Not Detention Act (SB 29), which limits the expansion of private detention centers in California, was signed into law in 2017.¹³ Under SB 29, no city, county, or law enforcement agency may enter into a contract with a private detention facility unless there was an existing contract in place by January 2018. SB 29 also makes private detention facilities subject to the California Public Records Act.¹⁴ In addition, California's 2017 budget bill (AB 103) gives California's Attorney General power to monitor all California immigration detention facilities.¹⁵ Among other provisions, AB 103 allots \$1 million per year over the next 10 years for an annual audit of each facility.¹⁶

While these measures indicate progress, they prioritize future investigation of the centers and do not establish any penalty provisions for detention centers with established or continuing records of sexual assault. State officials may be limited in their control over federal immigration facilities, but these facilities operate at the discretion of local officials and have operating contracts at the city and county level, giving local officials the potential for leverage. For example, the city of Tacoma, Washington recently utilized their local permitting and rezoning powers to limit the expansion of a local immigrant detention center.¹⁷ The city successfully upheld their action in court.¹⁸ The Mesa Verde Detention Facility and Adelanto Correctional Facility main-

tain contracts with the cities of Bakersfield and Adelanto respectively, and are therefore subject to local authorities.¹⁹ However, the Otay Mesa Detention Center is a privately run and owned facility and is therefore not beholden to city or county officials in the same way as facilities with local contracts.²⁰ It is also the only detention facility in California currently able to expand under the restrictions imposed by SB 29, and yet has one of the worst sexual assault records in the country.²¹

These kinds of regulatory complications highlight the need for the state to prioritize not just local and state-level strategies, but a long-term strategy that advocates at the federal level for amending current contracting policies with private detention centers. Immigrants currently residing in federal detention need immediate access to reliable reporting mechanisms, and state, county, and local officials need to work together to ensure there are consequences for facilities that allow immigrants to be abused and assaulted while in custody.

RECOMMENDATIONS

The practice of mass incarceration and detention is violent in nature, and the imposed hierarchy of prison systems fosters widespread abuse.²² As such, **all efforts should be made at the federal level to end the detention of immigrants and forced separation of families as a national policy.** However, the current, aggressive federal immigration guidelines necessitate California taking the lead in addressing the unchecked sexual abuse occurring in private detention centers throughout the state. Potential consequences of the current system are made starker by the recent separations of immigrant families and the detention of thousands of

children. State Attorney General Xavier Becerra has been outspoken about the need for California to set a precedent for other states and his duty to protect all Californians.²³

Under Becerra's leadership, the California Department of Justice is uniquely positioned to execute a more stringent statewide monitoring and enforcement system for private detention facilities but this will require a strategic, coordinated approach. To adequately protect immigrants residing in California's private detention centers, the state needs to employ a multilevel response that prioritizes both short-term protection for detainees, and a long-term strategy that advocates for limiting federal contracts with facilities that allow immigrants in their custody to be sexually assaulted.

To successfully curb incidences of sexual assault in California detention facilities, city and county officials must take into account reports of sexual assault and abuse of detained immigrants when negotiating detention facility contracts, and should implement a policy to terminate contracts with any facility that has unaddressed occurrences of sexual assault. The California Department of Justice should establish a sexual assault hotline for immigrants in detention as an alternative to the ICE sexual assault hotline. In addition to serving as a check on the federal system, a record of these calls and reports would be available to the California Department of Justice as part of the audit of detention facilities, and would be made available to local officials to inform contract reviews and negotiations.

To successfully implement these objectives, the California Department of Justice should convene a coalition that includes county and city officials

in regions that contract with detention facilities, and immigrant advocacy organizations and initiatives, such as California ACLU chapters, Freedom for Immigrants, Ready California, and community members from key constituencies.²⁴ The coalition would be crucial to enhancing enforcement and monitoring through the use of local contracts as an enforcement mechanism on private detention facilities, the successful implementation of a state-run monitoring system, and the mobilization of public pressure to support federal strategies.

County and city officials can leverage their existing contracts and re-zoning rights as enforcement mechanisms to ensure that facilities with uninvestigated sexual assault complaints are held accountable. Immigrant advocate organizations and community volunteers, such as Freedom for Immigrants and their members, have access to detention facilities and detainees through organized visitation networks.²⁵ They would therefore be able to share information about the state-run sexual assault hotline, and serve as a connection between detained immigrants and Department of Justice officials. Furthermore, the coalition would be able to mobilize public support and pressure of a long-term strategy to push the federal government to crack down on private detention facilities.

The California executive branch should formalize their support for a policy that eliminates Department of Homeland Security contracts with the most egregious offenders. The California Department of Justice should mobilize the coalition in appealing to members of the House Committee on Homeland Security to recommend this policy in its capacity as the oversight authority of the Department of Homeland Security.²⁶ With the House

of Representatives now in Democratic control, which includes taking control of the House Committee on Homeland Security, crackdowns on private contractors may well be in reach.²⁷ The Democrat-led committee will likely prioritize challenging President Trump's immigration policies and this would be an ideal time to push this national issue forward. The Department of Justice coalition would be key to garnering public support and pressure for this policy, specifically among the constituents of Representatives Nanette Diaz Barragán and J. Luis Correa, whose districts are mere miles from the Adelanto Detention Facility and who are both members of the Border and Maritime Security Subcommittee.²⁸

Addressing the epidemic of sexual assault inside California's immigration detention centers will require coordinated action from California stakeholders, and creative strategies to fight a well-organized and well-funded private detention system. California is poised to be a national leader in the fight for immigrants' rights, but to do so, we cannot allow private detention facilities to violate the human rights of immigrants in their custody. Through well-managed strategies that enhance enforcement and monitoring of private detention facilities, and are responsive to the nuances of private detention contracting, California can pave the way for a stronger state-level system that protects immigrants as they fight to make the United States their home.



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NOTES

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