TEXAS CRIMINAL JUSTICE COALITION

Prison Rape Elimination Act:

Why Texas should and will comply

May 21, 2014

Presented by: Elizabeth A. Henneke
Policy Attorney
Texas Criminal Justice Coalition

Youth Are At Risk

According to "You're An Adult Now," youth are most at risk in adult jails and prisons:

- According to research by the Bureau of Justice Statistics, 21% of all substantiated victims of inmate-on-inmate sexual violence in jails in 2005, and 13% in 2006, were youth under the age of 18.
- Research also shows that youth are 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility.

Texas Facilities Have High Reported Incidents of Sexual Assault

Table 4. Prison facilities with the highest prevalence of sexual assault, by another inmate or staff and by level of force and injury, National Inmate Survey, 2007

		Inmate-on-inmate sexual assault			Staff-on-inmate sexual assault			
Facility name	Total prevalence[a]	Physically forced	Pressured	Injured[b]	Physically forced	Pressured	Reported as willing	Injured[b]
U.S. total	4.5%	1.3%	1.7%	0.5%	0.9%	1.5%	1.7%	0.3%
Estelle Unit, TX	15.7	5.1	7.9	2.0	0.9	4.4	5.2	0.4
Clements Unit, TX	13.9	1.7	3.3	1.0	4.1	6.8	5.6	3.1
Tecumseh State Corr. Inst., NE	13.4	0.0	1.2	0.0	7.5	11.8	5.9	3.9
Charlotte Corr. Inst., FL	12.1	0.6	1.1	0.0	2.6	6.1	5.7	0.0
Great Meadow Corr. Fac., NY	11.3	1.0	2.8	0.0	6.0	6.3	2.8	2.0
Rockville Corr. Fac., IN[c]	10.8	6.5	7.5	3.7	0.5	1.1	0.9	0.6
Valley State Prison for Women, CA[c]	10.3	4.7	5.9	1.5	1.5	3.3	3.3	0.9
Allred Unit, TX	9.9	3.6	3.2	3.3	2.8	3.2	2.3	0.9
Mountain View Unit, TX[c]	9.5	7.5	6.8	2.7	0.7	3.0	1.4	2.1
Coffield Unit, TX	9.3	2.1	3.9	0.0	0.4	1.4	4.3	0.0

Note: Detail may add to more than totals because victims may report more than one type of victimization, injury, and type of force.

[a]Percent of inmates reporting one or more incidents of sexual victimization involving another inmate or facility staff in the past 12 months or since admission to the facility, if shorter. (See *Methodology* for definitions.) Weights were applied so that inmates who responded accurately reflected the entire population of each facility on selected characteristics, including age, gender, race, time served, and sentence length. (See *Methodology* for nonresponse and post-stratification weighting procedures.)

[b]Injuries included knife or stab wounds, broken bones, anal or rectal tearing, teeth chipped or knocked out, internal injuries, knocked unconscious, bruises, black eyes, sprains, cuts, scratches, swelling, or welts.

[c]Female facility.

Prison Rape Elimination Act

- Data Collection
- Training and Technical Assistance
- Grants to the States
- Development of National Standards

Cross-Gender Viewing Standard

Section 115.15 prohibits:

- Cross-gender strip or visual body cavity searches except in exigent circumstances or when performed by medical practitioners.
- Cross-gender pat-down searches of female inmates, absent exigent circumstances. *(Effective 8/20/15 for facilities over 50 inmates, 8/20/17 for facilities under 50 inmates)*
- Facilities from restricting female inmates' access to regularly available programming or other out-of-cell opportunities.

Cross-Gender Viewing Standard

Furthermore, facilities must implement policies and procedures enabling inmates to do the following without non-medical staff of the opposite gender viewing their breasts, buttocks, or genitalia:

- shower,
- perform bodily functions, and
- change clothing
- EXCEPT
  - in exigent circumstances
  - when such viewing is incidental to routine cell checks

Youthful Inmates Standard

Section 115.14 requires:

- No youth under 18 years of age can be placed in a housing unit where contact will occur with adult inmates in a common space, shower area, or sleeping quarters.
- Outside of housing units, agencies must either maintain "sight and sound separation"—i.e., preventing adult inmates from seeing or communicating with youth—or provide direct staff supervision when the two are together.
- Agencies must avoid placing youth in isolation and, absent exigent circumstances, must afford them daily large-muscle exercise and any legally required special education services, and must provide them access to other programs and work opportunities to the extent possible.

Legal Implications of PREA

In *Farmer v. Brennan*, the Supreme Court adopted a two-prong approach for determining whether there is an 8th Amendment violation. This test requires a plaintiff to prove:

1) that the conditions were cruel, and

2) that the government was deliberately indifferent to the conditions facing the inmate.

Deliberate Indifference

PREA has the potential, however, to change the way this litigation proceeds in the future by providing national standards—supported by extensive evidence-based research, correctional administrator input, public commentary, and other documentation—that suggest what governments must do to provide safe environments for inmates.

Failure to follow these PREA standards could be seen as prima facie evidence of deliberate indifference and may result in plaintiffs succeeding past the initial stages of litigation, substantially increasing litigation costs to facilities that fail to comply with PREA.

What is the Liability Risk?

Although there is no reliable data available specifically setting forth the costs of litigating these cases in Texas, the National Center for State Courts (NCSC) has developed a model to estimate the costs of civil litigation that resolve at different stages of litigation.

Litigation Stage	Amount expended on attorney's fees alone for lowest 25%	Amount expended on attorney's fees alone for highest 75%
Case Initiation	$1,000	$7,350
Between Discovery through Formal Negotiations or ADR	$5,000	$36,000
Trial	$18,000	$109,000

Recommendation #1

Fully implement the National Standards to Prevent, Detect, and Respond to Prison Rape.

Violence and victimization have no place in our society, including in our prisons, and we have an obligation to ensure that any facility under state or local operation is safe. The punishment of incarceration does not, and cannot, include a sentence of rape.

These National Standards are the result of years of study, professional and public comment, and research into methods for preventing prison rape.

Recommendation #2

Raise the age of maximum juvenile jurisdiction from 17 to 18 to lower the financial burden on counties.

The Youthful Inmates Standards have greatly impacted adult county jails, forcing them to expend extra costs to comply, and leaving many counties simply unable to comply due to architectural constraints.

Raising the age of jurisdiction would move these 17-year-olds into juvenile facilities that are more **easily able to comply with PREA standards** and would **obviate the costs of doing sight and sound separation**.

Recommendation #3

Expand the jurisdiction of the Texas Commission on Jail Standards and the Ombudsman for the Texas Juvenile Justice Department so they may provide PREA audits at no cost to counties.

To be considered compliant with the PREA standards, all confinement facilities must be audited at least every three years, with one-third of each facility type operated by an agency, or private organization on behalf of an agency, audited each year.

PREA experts anticipate that these audits will cost approximately $3,000-$10,000 per facility.

Contact Information

Elizabeth A. Henneke, J.D.
Policy Attorney

Texas Criminal Justice Coalition
1714 Fortview Road, Suite 104
Austin, Texas 78704
Cell: (512) 810-8392
Office: (512) 441-8123, ext. 105
Fax: (512) 441-4884
ehenneke@texascjc.org

www.TexasCJC.org