

**From the Attorney's Desk**  
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**Prison Rape: The Unspoken Punishment**

Most scars from rape are invisible. The broken neck, jaw, collarbone and finger, dislocated shoulder, two major concussions and lacerations on his head deep enough to cause bleeding on the brain have healed somewhat. The word "Master" – the name of the lockmaker imprinted on the lock – has faded from where they branded his forehead. But the indentation in M.R.'s head from the lock used to beat him into submission remains for the world to see.

Yet, the memory of having been repeatedly raped in one of the most heavily guarded environments in this country – a prison – will never fade. M.R.'s story and those of many other prisoners were profiled in the recently released study "No Escape: Male Rape in U.S. Prisons" by Human Rights Watch, an international human rights organization.<sup>1</sup> HRW solicited their stories through gender-neutral ads placed in prison publications -- the stories of prisoners who had been sexually assaulted by other prisoners. Interestingly, the request did not produce a single response from a female prisoner.

Although no conclusive data exists regarding the prevalence of rape in prison, at least two other quantitative studies have estimated the rate of prison rape at over 20% of inmates. The testimony of prisoners and guards interviewed for this study contradicts such statistics: prisoners report such assaults as widespread, almost universal; corrections officials refer to this as an anomaly, a highly unusual occurrence.

Prisoners report that certain groups of prisoners are targeted as victims: those who are physically weak, effeminate and lacking in street smarts. Offenders, although less easy to categorize, are often young and strong.

Forced sexual conduct happens in many scenarios in prison. In the simplest situation, it is the sheer physical overpowering of one prisoner by another larger, stronger or armed inmate, or perhaps by one who has enlisted the support of other prisoners. Many victims describe an assault unique to the prison setting. Senior prisoners insure new arrivals become quickly indebted to them by assisting the vulnerable prisoner in negotiating the prison system. This may involve "protecting" them from attack (real or contrived) by other prisoners or obtaining legal or illegal comforts for them. While this debt may initially be paid in gratitude, small tasks or money, eventually the inmate insists it be paid in sex, to him or to other prisoners. A system of sexual slavery is thereby created behind the prison walls.

Reporting sexual violence in prison is viewed by prisoners as useless or even dangerous. Evidence collection procedures are lax and internal grievance processes are plagued by a lack of confidentiality and anti-prisoner bias. In M.R.'s case, his earlier reports of rapes to the prison chaplain brought on the brutal revenge rape described above. The report also triggered a forced face-to-face attempt at mediation, an inexcusable and excruciating process for any rape victim.

While reporting these cases is rare, prosecuting them is virtually non-existent. Few cases ever get delivered to prosecutors' offices. For cases that are referred,

prosecutors cite a lack of evidence, including forensic evidence, as a prime deterrent to filing charges.

Seeking private remedies outside of the prison system is likewise difficult. The Prison Litigation Reform Act was passed in 1996.<sup>2</sup> This Act severely limits prisoners' ability to challenge abusive prison conditions through litigation by putting significant limitations on the enforceability of settlement agreements. Another 1996 law greatly reduced the number of public interest lawyers available to represent prisoners in such litigation by barring funding to legal aid organizations that represent inmates.<sup>3</sup> Pro se litigation by prisoners is impeded by their lack of access to and familiarity with the legal system.

The inability of the prison system to respond adequately to rape within its confines is exacerbated by many stresses already on the system including overcrowding, understaffing, inadequate training, a lack of segregation for those prisoners prone to conflict due to differences in race or gang affiliation and insufficient systems for resolving prisoner disputes. Tensions run high on a daily basis behind bars. This explosive human concoction is compressed into tiny spaces together. The resulting rage and animosity is often acted out through sexual violence.

The psychological impact of sexual assault behind prison walls is uncontroverted: shame and fear dominate the victim's life. The lack of support and responsiveness by prison officials intensifies these feelings, as may the related perpetual taunting by other prisoners. Rape Trauma Syndrome among prison rape victims is a common phenomenon. Sadly, so are suicide attempts.

Ironically, and despite the highly controlled conditions of prison life, the experience of rape behind bars differs little from the experience of rape in the rest of the world for victims. Prisoners who are raped are not informed about what they should do. They are often not believed. The response of established systems is often inadequate, insensitive or inappropriate. Many cases go unreported and unprosecuted. The response a victim receives upon disclosure is often impacted by the color of the victim's skin.

Victims of prison rape need access to the criminal justice system and to services to aid their healing, as do all victims of sex crimes. In response to this, many ICASA centers already provide services to incarcerated sexual assault victims.

Human Rights Watch proposes many systemic reforms that can also lessen the likelihood of and improve the response to sexual assault in prison:

- The U.S. Congress should amend or repeal the provisions of the Prison Litigation Reform Act that hinder prisoners, outside organizations and the Department of Justice from helping reform prison conditions around the country. Specifically, Congress should:
  - Not require that judicially enforceable consent decrees contain findings of federal law violations,
  - Expand the time period for the enforceability of settlement decrees,
  - Condition states' receipt of funding for prison construction on an adequate response to prisoner-on-prisoner sexual abuse, and

- Appropriate sufficient funds for the USDOJ to investigate adequately inmate-on-inmate sexual assault cases.
- The Special Litigation Section of the Civil Rights Division of the USDOJ should investigate reports of prisoner-on-prisoner sexual abuse, to determine whether they rise to the level of a “pattern or practice” invoking the power of the DOJ to investigate and prosecute. Investigators and prosecutors with specialized training on the sensitive issues surrounding male-on-male, prisoner-on-prisoner sexual abuse should be tapped for these responsibilities.
- The National Institute of Corrections should institute training programs on prisoner sexual abuse for correction officials and front-line staff. The NIC also should develop model investigatory procedures for prisoner-on-prisoner cases.
- State departments of corrections should draft protocols governing staff response to prisoner-on-prisoner sexual assault. These protocols must include an increase in attentiveness by staff to this issue and emphasize the importance of evidence collection and providing immediate medical care to victims. Protocols must provide for prompt, safe and appropriate responses to a victim who has been raped. DOC staff should routinely report all cases of rape to local law enforcement and prosecutorial authorities.
- Incoming prisoners should be educated on prisoner-on-prisoner sexual assault and the steps to take when they witness or are victims of a sexual assault.
- To the extent possible, abusive prison conditions, including understaffing and overcrowding, should be remedied, as these conditions encourage prisoner-on-prisoner violence, including sexual assault.

As anti-rape advocates, we refute the notion that prison rape is a deserved second punishment. The Eighth Amendment to the U.S. Constitution prohibits such cruel and unusual punishment. As a movement we stand in opposition to the debasing, inhumane act of rape in any circumstance.

We must work to end sexual violence in any context. As one prisoner, P.R., emphasized, “The opposite of compassion is not hatred, it’s indifference.”

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<sup>1</sup> The report is available at [www.humanrightswatch.com/reports/2001/prison/report.html](http://www.humanrightswatch.com/reports/2001/prison/report.html).

<sup>2</sup> 18 U.S.C.A. § 3626.

<sup>3</sup> 1996 Appropriations Act for the Legal Services Corporation, Public Law 104-134, 110 Stat. 1321 (1996).