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Protecting Human Rights in California's Detention Facilities: The Sexual Abuse in Detention Elimination Act of 2005

Heather L. McCray

Code Sections Affected

Penal Code §§ 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643 (new).

AB 550 (Goldberg), 2005 STAT. Ch. 330.

I. INTRODUCTION

Within two weeks of her assignment to work in the electrician's shop of the Central California Women's Facility, state employees warned inmate Johanna Cinicerros not to turn her back on her supervisor.¹ On March 20, 1997, Johanna's supervisor requested her help to fix a short in a wiring system and led her to a small catwalk between the prison's gym and library.² When Johanna entered the room, her supervisor turned off the light, pushed her down on a mattress, and proceeded to rape, bite, and brutalize her.³ Although the police officers found the mattress and discovered that the lock to the door for the catwalk had been changed and the supervisor had the only key, Johanna was never permitted to talk to any police or detectives about the incident.⁴

Perhaps the most tragic element of Johanna's story is how common it is. An estimated thirteen percent of all prison inmates in the United States have been sexually assaulted,⁵ either by other inmates or by the prison staff.⁶ Most prison staff are not adequately trained or prepared to prevent, report, or treat inmate sexual assaults.⁷ Additionally, some prison staff either ignore, or even encourage, the sexual abuse of inmates.⁸ Allegations have been made against Corcoran Prison staff in California for deliberately placing a small, weak inmate in a cell

1. Johanna Cisneros, *Stories from Survivors of Rape Behind Bars*, STOP PRISONER RAPE, <http://www.spr.org/en/survivorstories/johanna.asp> (last visited Oct. 23, 2005) (on file with the *McGeorge Law Review*).

2. *Id.*

3. *Id.*

4. *Id.*

5. 42 U.S.C.A. § 15601(2) (West 2003).

6. Julie Samia Mair, Shannon Frattaroli & Stephen P. Teret, *New Hope for Victims of Prison Sexual Assault*, 31 J. L. MED. & ETHICS 602, 603 (2003).

7. 42 U.S.C.A. § 15601(5).

8. Mark Hansen, *Brutal Findings: Prison Rapists Go Unpunished, Victims Go Unrepresented*, 87-JUL A.B.A. J. 16, 17 (2001) ("[I]nmate rape is a common and widely accepted—if not actively encouraged—fact of prison life.").

with a much larger inmate, known for raping his cellmates, as a punishment for reportedly kicking a female guard.⁹

One of the largest problems with sexual abuse in prisons is a lack of consistent statistics.¹⁰ While several prisons have reported relatively low rates of sexual abuse incidents,¹¹ independent studies conducted by Human Rights Watch through interviews of guards and prisoners themselves estimated that approximately one in five inmates were victims of such abuse.¹² Scholars attribute this discrepancy to the fact that many incidents are not reported.¹³ Prisoners either fear retaliation from guards or other prisoners or fear that they will not be believed even if they do report the incident.¹⁴ Additionally, prisoners who do report incidents are often met with complacency or ridicule from guards¹⁵ or poor investigative efforts.¹⁶ Since some prison officials often do not take reported incidents seriously and fail in the timely collection of physical evidence, prisoners who actually do pursue legal action often find their cases dismissed early for a lack of evidence.¹⁷

9. Mark Arax, *California and the West: Tearful Victim Testifies on Prison Rape*, L.A. TIMES, Oct. 20, 1999, at A3.

10. See 42 U.S.C.A. § 15601(2) (“Insufficient research has been conducted and insufficient data reported on the extent of prison rape.”).

11. Joanne Mariner, *Stopping Prison Rape*, FINDLAW, July 28, 2003, <http://writ.findlaw.com/mariner/20030728.html> (on file with the *McGeorge Law Review*) (“[W]hen Human Rights Watch surveyed state corrections authorities in all fifty states as to the prevalence of prison rape, nearly all of them responded that they only knew of a handful of rape or sexual assault cases annually.”).

12. See Steve Chapman, *The Hidden, Accepted Horror of Our Prisons*, TOWNHALL.COM, June 7, 2001, <http://www.townhall.com/columnists/stevechapman/printsc20010607.shtml> (on file with the *McGeorge Law Review*) (“When Human Rights Watch did a confidential poll of prison guards in an unnamed Southern state, they estimated that one in five inmates were victims of such abuse. Inmates said it was more like one in three.”).

13. See 42 U.S.C.A. § 15601(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.”); see also Cheryl Bell et al., *Rape and Sexual Misconduct in the Prison System: Analyzing American’s Most “Open” Secret*, 18 YALE L. & POL’Y REV. 195, 196 (1999) (“Raped male prisoners often will not discuss it for fear of having their manhood questioned, while raped female prisoners often want to avoid the embarrassment of ‘sharing the highly intimate, sexual details of their rape with [primarily] male investigators.”).

14. James E. Robertson, *Rape Among Incarcerated Men: Sex, Coercion and STDs*, 17 AIDS PATIENT CARE AND STDs 423, 425 (2003), available at <http://www.spr.org/en/academicarticles/robertson.html> (on file with the *McGeorge Law Review*); see also Bell, *supra* note 13, at 209 (enumerating specific acts of retaliation that guards have taken against inmates reporting abuse, which include issuing false disciplinary tickets and denying inmates the right to see their children).

15. See Bell, *supra* note 13, at 209 (“Raped inmates fail to notify prison workers out of shame, fear of retaliation by their assailants, adherence to an inmate code that labels such conduct as ‘snitching,’ and concern that staff will disbelieve or ridicule them and/or do nothing.”).

16. See Shara Abraham, *Male Rape in U.S. Prisons: Cruel and Unusual Punishment*, 9 HUM. RTS. BRIEF 5 (2001), available at <http://www.spr.org> (on file with the *McGeorge Law Review*) (“Correctional authorities often do not react effectively to, or investigate complaints of, sexual abuse.”).

17. See *id.* (“Failure to take the appropriate steps, such as collecting physical evidence, hinders the proper fact-finding that would accompany criminal prosecution.”).

Victims of sexual abuse suffer a variety of physical and psychological injuries that result from the abuse.¹⁸ Physical trauma that results from sexual abuse can include vaginal or rectal bleeding, bruises, and soreness.¹⁹ Additionally, these victims suffer a variety of short and long term psychological consequences, including insomnia, shock, post traumatic stress disorder, depression, and even suicide.²⁰ Statistics also show that juvenile inmates incarcerated in adult prisons are five times more likely to be assaulted and eight times more likely to commit suicide than juveniles housed with other juveniles.²¹ One seventeen-year-old Texas prisoner, incarcerated for setting fire to a dumpster, hanged himself after seventy-five days in prison when guards refused to protect him from severe sexual abuse.²²

Sexual assault in prisons also spreads sexually transmitted diseases, bringing additional traumatic consequences to the victim.²³ With the rates of HIV and AIDS five to ten times higher inside prisons than outside, a sexual assault can easily become an “un-adjudicated death sentence.”²⁴ Equally disturbing is that since ninety-five percent of inmates are eventually released, these victims bring back into society all the diseases that have been rapidly spreading through the prisons.²⁵

Chapter 330, titled the Sexual Abuse in Detention Elimination Act, is California’s attempt to address the issue of sexual abuse within the California Corrections System.²⁶

II. LEGAL BACKGROUND

The United States ratified the International Covenant on Civil and Political Rights (ICCPR or “Covenant”) in 1992 and the Covenant Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1994,

18. See 42 U.S.C.A. § 15601(11) (“Victims of prison rape suffer severe physical and psychological effects that hinder their ability to integrate into the community.”).

19. STOP PRISONER RAPE, *The Basics on Rape Behind Bars*, Apr. 15, 2005, http://www.spr.org/en/doc_01_factsheet.html [hereinafter SPR Factsheet] (on file with the *McGeorge Law Review*).

20. *Id.*

21. Linda Chavez, *A National Disgrace in the Nation’s Prisons*, CNSNEWS.COM, <http://www.cnsnews.com/ViewCommentary.asp?Page=/Commentary/archive/200307/COM20030702e.html>, July 2, 2003, (on file with the *McGeorge Law Review*).

22. Rodney Hulin, *Beatings, Rape and Suicide at 17—The Experience of a Child in a Texas Prison*, NO SPANK.NET, June 3, 1996, <http://www.nospank.net/hulin.htm> (on file with the *McGeorge Law Review*); see also Chavez, *supra* note 21 (stating that Hulin’s original arrest was for setting fire to a dumpster).

23. SPR Factsheet, *supra* note 19, at 2.

24. *Id.*

25. *Prisoner Rape Spreads Disease—Inside and Outside of Prison*, STOP PRISONER RAPE, <http://www.spr.org/en/factsheetdisease.html> (last visited on Oct. 23, 2005) (on file with the *McGeorge Law Review*).

26. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 550, at 1 (Apr. 19, 2005).

both of which protect the human rights of prisoners.²⁷ Among other provisions, Article 7 of the ICCPR prohibits the use of cruel and unusual punishment, and the CAT specifies that violations can include acts perpetrated by officials, as well as acts committed with their acquiescence.²⁸

However, when ratifying these covenants, the United States attached numerous provisions, which substantively and procedurally limited the international protections.²⁹ Procedurally, the United States declared that neither instrument could stand alone as a cause of action in a federal court.³⁰ Thus, if an inmate wishes to rely on international treaty provisions to bring suit for abuse, he or she can only do so in conjunction with a federal constitutional or statutory claim.³¹ Substantively, the United States also entered a reservation to the ICCPR Article 7 provision (prohibiting cruel and unusual punishment), which nullified any provision that granted broader rights than those already guaranteed under federal law.³² Not surprisingly, the United Nations Human Rights Commission determined this reservation to be incompatible with the object and purpose of the Covenant.³³

In the 1994 landmark case *Farmer v. Brennan*, the United States took a small step forward when the Supreme Court declared that the Eighth Amendment of the Constitution³⁴ imposes duties on prison officials to “take reasonable measures to guarantee the safety of inmates” and “to protect prisoners from violence at the hands of other prisoners.”³⁵ However, this declaration was greatly restricted by the Supreme Court’s articulation of the test for liability of a prison official.³⁶ A prison official’s act or omission violates the Eighth Amendment only when the deprivation alleged is objectively “sufficiently serious”³⁷ and when the official acted with “deliberate indifference.”³⁸ The Supreme Court went on to equate deliberate indifference with criminal recklessness, which requires the plaintiff to

27. Abraham, *supra* note 16.

28. *Id.* at 8.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. U.S. CONST. amend. VIII (“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”).

35. *Farmer v. Brennan*, 511 U.S. 825, 832-33 (1994).

36. *See Bell, supra* note 13, at 211 (“[A]pplying the *Farmer* test in subsequent litigation, federal courts have, for the most part, severely limited the liability of prison officials for permitting sexual misconduct within their correctional facilities.”); *see also* Abraham, *supra* note 16, at 7 (“[T]he strengths of [the *Farmer*] decision with respect to eradicating prison rape are outweighed by the stringent ‘deliberate indifference’ standard.”).

37. *See Farmer*, 511 U.S. at 834 (defining “sufficiently serious” as an act or omission which results in “the denial of ‘the minimal civilized measure of life’s necessities’”).

38. *Id.*

prove that the official disregarded a risk of harm of which he or she was actually aware.³⁹

The problem with this subjective standard is that it “enable[d] a court to dismiss even the most egregious cases in which the risk of rape would have been obvious to a reasonable person.”⁴⁰ This standard encouraged prison guards or officials to ignore incidents to avoid liability by claiming that they were unaware of the problem,⁴¹ because courts were required to dismiss these cases unless the prisoner proved that the guard or official actually knew of the risk to the prisoner.⁴²

With sexual abuse continuing to plague prisons after the *Farmer* decision, the United States Congress unanimously passed⁴³ Senate Bill 1435, the Prison Rape Elimination Act of 2003 (PREA).⁴⁴ This sweeping reform established a zero-tolerance standard for prison rape and included several components to accomplish this purpose.⁴⁵ Specifically, PREA requires the Bureau of Justice to conduct an annual comprehensive statistical review and analysis of the incidence and impact of prison rape by collecting data and surveys from federal, state, and county prisons.⁴⁶ Prison officials and administrators are required to participate in these studies.⁴⁷ Additionally, PREA established grants to be given to state correctional departments to fund additional training, data collection, and the equipment and personnel needed to prevent and prosecute prison rape.⁴⁸

PREA requires the United States Attorney General to publish a final rule establishing national standards for the detection, prevention, reduction, and punishment of prison rape within one year of receiving the final report from the newly created National Prison Rape Reduction Commission.⁴⁹ All state correctional facilities will be required to adopt standards consistent with the national standards to receive the federal funding.⁵⁰

In addressing the liability standard of deliberate indifference, PREA additionally clarified that “[s]tates that do not take basic steps to abate prison rape by adopting standards that do not generate significant additional expen-

39. *Id.* at 836-37.

40. Abraham, *supra* note 16 at 7.

41. See *id.* (“[B]ecause a trier of fact may not infer knowledge from even a seemingly obvious risk, a prison official seeking to escape liability could argue he was unaware of a substantial risk of harm to the prisoner.”).

42. *Id.*

43. Mair, *supra* note 6, at 602.

44. 42 U.S.C.A. § 15601 (West 2005) *et seq.*

45. *Id.* § 15602(1).

46. *Id.* § 15603(a)(1).

47. *Id.* § 15603(a)(6).

48. *Id.* § 15605.

49. *Id.* § 15607(a)(1).

50. *Id.* § 15608.

ditures demonstrate such indifference.”⁵¹ PREA added that pursuant to the Fourteenth Amendment, Congress may enforce those rights in states where officials have demonstrated such indifference.⁵² Chapter 330 is California’s attempt to comply with the requirements of PREA and address the problem of sexual abuse within the California corrections facilities.⁵³

III. CHAPTER 330

Chapter 330 created the Sexual Abuse in Detention Elimination Act, which requires the California Department of Corrections and Rehabilitation (CDCR) to establish policies and procedures to address the sexual abuse of inmates and wards⁵⁴ (hereinafter collectively referred to as “inmates”).⁵⁵ This bill provides for policies intended to prevent sexual abuse of inmates and guidelines for staff and inmates to follow when abuse has already occurred.⁵⁶ Additionally, Chapter 330 established the position of Sexual Abuse in Detention Elimination Ombudsperson to ensure the impartial resolution of inmate sexual abuse complaints.⁵⁷

A. *Prevention of Sexual Abuse of Inmates*

Chapter 330 requires the CDCR to establish specific policies for the prevention of sexual abuse of inmates.⁵⁸ These include educational procedures for inmates and specific procedures that the CDCR must implement.⁵⁹

1. *Education*

Chapter 330 requires the CDCR to review informational handbooks, published by other organizations, about sexual abuse in detention and, upon approval of the CDCR, Chapter 330 requires that these handbooks be distributed to inmates.⁶⁰ Additionally, information on confidentially contacting the Sexual Abuse in Detention Elimination Ombudsperson must be clearly posted in all

51. *Id.* § 15601(13).

52. *Id.*

53. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 550, at 7-8 (June 28, 2005).

54. A ward is defined as a “person, usu[ally] a minor, who is under a guardian’s charge or protection.” BLACK’S LAW DICTIONARY 758 (2d Pocket ed. 2001). In the context of this article, the term “ward” is specifically referring to a minor under the guardianship of the state.

55. SENATE FLOOR, FLOOR ANALYSIS OF AB 550, at 4 (Sept. 3, 2005).

56. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 550, at 1-2 (Apr. 19, 2005).

57. CAL. PENAL CODE § 2641 (enacted by Chapter 330).

58. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 550, at 1-2 (Apr. 19, 2005).

59. *Id.*

60. *Id.* § 2635.

CDCR institutions, allowing inmates to write confidential letters to the Ombudsperson.⁶¹

The CDCR must also develop guidelines for allowing outside organizations to provide resources to inmates, including rape crisis agencies, hospitals, gay rights organizations, HIV/AIDS service providers, and civil rights or human rights organizations.⁶²

2. Policies

Chapter 330 also provides for the CDCR to establish practices to promote inmate safety, including several classification procedures for housing assignments.⁶³ Specifically, the CDCR must develop housing assignment procedures that account for risk factors leading to sexual victimization.⁶⁴ When assigning housing, the CDCR should consider such factors as the age of the inmates, prior criminal or mental illness history, and whether the inmate is currently incarcerated for a violent or non-violent crime.⁶⁵

The CDCR must also develop procedures to ensure that when an inmate appears to be a target of sexual abuse, the staff members will intervene on behalf of the inmate.⁶⁶

B. Establishing Guidelines for when Abuse Has Already Occurred

In addition to the prevention policies, Chapter 330 also establishes guidelines to be followed after the occurrence of sexual abuse, including protocols for staff responses, physical and mental health care of victims, investigative procedures, and the collection of data on sexual abuse in detention.⁶⁷

1. Staff Responses

Chapter 330 enumerates several specific protocols that the CDCR must follow to ensure proper staff responses to reports of inmate sexual abuse.⁶⁸ Once sexual abuse has been reported, the staff must provide housing safety and ensure that segregation of the victim is not disciplinary to the victim.⁶⁹ Additionally, Chapter 330 decrees that the CDCR absolutely must not tolerate any

61. *Id.* § 2641(c)-(d).

62. *Id.* § 2642.

63. *Id.* § 2636.

64. *Id.* § 2636(a).

65. *Id.* § 2636(a)(1)-(4).

66. *Id.* § 2636(b).

67. *Id.* §§ 2637-40.

68. *Id.* § 2637.

69. *Id.* § 2637(a)-(b).

discrimination against inmates based on sexual orientation nor punishment or staff retaliation against any inmate who reports sexual abuse.⁷⁰

2. *Physical and Mental Health Care*

Chapter 330 also requires the CDCR to implement standards for thoughtful, confidential physical and mental health care for victims of sexual abuse to reduce the impact of the abuse on the inmates.⁷¹ Physical care must include appropriate acute-trauma care.⁷² Additionally, if an inmate displays symptoms of having been abused, Chapter 330 requires health practitioners to ask the inmate whether he or she has experienced sexual abuse.⁷³

Chapter 330 further addresses the mental health care of inmates by requiring the CDCR to offer confidential counseling to reporters of sexual abuse.⁷⁴ The CDCR must monitor these victims for suicidal tendencies, post traumatic stress disorder, depression, and any other mental health problem that may develop as a consequence of the abuse.⁷⁵

3. *Investigative Procedures*

Chapter 330 requires the CDCR to follow specific procedures during the investigation and prosecution of sexual abuse, which must include the use of forensic rape kits and gathering of other evidence as appropriate and preserving any physical or testimonial evidence.⁷⁶ The CDCR must also discourage staff beliefs of inmate unreliability and take measures to ensure that housing options and medical care are not made contingent upon a victim's willingness to press charges.⁷⁷ Additionally, if an investigation confirms that any employee has sexually abused an inmate, the employee must be terminated and reported to law enforcement authorities.⁷⁸

4. *Data Collection*

Finally, Chapter 330 mandates that the CDCR collect data and statistics on the sexual abuse of inmates to comply with the PREA requirements for data collection.⁷⁹

70. *Id.* § 2637(b), (e)-(f).

71. *Id.* § 2638.

72. *Id.* § 2638(a).

73. *Id.* § 2638(b).

74. *Id.* § 2638(d)-(e).

75. *Id.*

76. *Id.* § 2639(b)-(c).

77. *Id.* § 2639(a), (d).

78. *Id.* § 2639(e).

79. *Id.* § 2640(a)-(b).

IV. ANALYSIS

Supporters contend that Chapter 330 is a necessary step for the protection of inmates and for compliance with the provisions of PREA.⁸⁰ The requirement for the collection of data and statistics for the California Corrections system will specifically help California to comply with the PREA provision requiring the Bureau of Justice to collect nationwide data.⁸¹ With PREA's mandate to "make the prevention of prison rape a top priority in each prison system"⁸² and to "increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison rape,"⁸³ supporters feel that the educational and policy provisions of Chapter 330 will help California prepare for the dramatically increased level of federal scrutiny.⁸⁴

The education of inmates regarding sexual abuse, through the distribution of CDCR approved informational handbooks, will help prevent incidents as inmates learn how to avoid being targeted for abuse.⁸⁵ Furthermore, the prohibition on retaliation against those who report abuse should help overcome prisoners' fears of reporting incidents.⁸⁶

Supporters also argue that Chapter 330 will positively affect the public in several ways.⁸⁷ A reduction in the incidence of prison sexual abuse should lead to a reduction in the rate at which sexually transmitted diseases are spread through the prisons, lowering the number of prisoners with diseases who are released back into society.⁸⁸ Cost to taxpayers will likely also be reduced as fewer prisoners will experience the psychological trauma of sexual abuse, which could require them to receive disability or other public assistance upon release.⁸⁹ Finally, when prisons or prison officials are sued and found liable for failing to protect the Eighth Amendment rights of prisoners, the judgment can be in excess

80. Letter from Elmy Bermejo, Chairperson, Comm. on the Status of Women & Mary M. Wiberg, Exec. Dir., Comm. on the Status of Women, to Assembly Member Judy Chu, Cal. State Assembly (May 11, 2005) [hereinafter Bermejo Letter] (on file with the *McGeorge Law Review*).

81. 42 U.S.C.A. § 15603(a)(1) (West 2005).

82. *Id.* § 15602(2).

83. *Id.* § 15602(6).

84. Letter from Celina Ramirez, Pol'y Advocate, Books Not Bars, to Assembly Member Mark Leno, Cal. State Assembly (Apr. 11, 2005) [hereinafter Ramirez Letter] (on file with the *McGeorge Law Review*).

85. See Bell, *supra* note 13, at 217-18 (calling the education of inmates one of "the most effective ways to reduce prison rape and sexual misconduct").

86. See *generally id.*, at 209 (discussing methods of retaliation against prisoners).

87. Letter from Barry Broad, Shane Gusman & Liberty Sanchez, Cal. Pub. Defender's Assoc., to Senate Pub. Safety Comm., Cal. State Senate (June 14, 2005) [hereinafter Broad Letter] (on file with the *McGeorge Law Review*).

88. See *Society Pays the Cost for Prisoner Rape*, STOP PRISONER RAPE, Oct. 23, 2005, <http://www.spr.org/en/factsheetcost.html> (on file with the *McGeorge Law Review*) ("Sexual violence behind bars also perpetuates other societal costs, such as . . . the spread of sexually transmissible diseases.").

89. See *id.* (stating that victims of prison abuse are "routinely shattered by the experience [and] . . . suffer extreme levels of harm, often disabling them so that they are less able to contribute to society and are disproportionately reliant on social services").

of one million dollars and taxpayers end up paying that bill.⁹⁰ As the CDCR works to implement the provisions of Chapter 330, and sexual abuse incidents decrease, so too should potential lawsuits against the prison systems.⁹¹

It is notable that Chapter 330, as originally proposed by Assembly Member Goldberg, would also have required the CDCR to provide training for all current and future corrections staff members regarding sexual abuse.⁹² This requirement would likely have alleviated some of the problems of inadequate staff training and common staff misconceptions about what constitutes sexual abuse by providing information on sexual abuse and how to respond to it.⁹³ The training could also have had the effect of creating more accountability for prison officials.⁹⁴ Because prison officials would be better trained and educated about sexual abuse, it may have been easier to prove that the official “must have known” of the risk and was thus “deliberately indifferent” if he or she failed to adequately protect an inmate.⁹⁵ However, this requirement was deleted from Chapter 330 after the Senate Appropriations Committee found that the cost of annual staff training would exceed \$150,000 per year.⁹⁶

One concern regarding Chapter 330 is the unpopularity of the subject of prisoners’ rights with the general public.⁹⁷ People’s attitudes toward prisoners are generally negative.⁹⁸ For example, views on prison abuse include indifference, beliefs that the prisoner is getting what he or she deserves, and beliefs that abuse will deter others from breaking the law.⁹⁹ However, even absent popular public support, PREA passed through the federal Legislature with unanimous bipartisan support.¹⁰⁰ Congress explained their actions in their findings that “[m]embers of the public and government officials are largely unaware of the

90. *See id.* (“When verdicts returned in favor of prisoners—such as those in Arizona, California, Maryland, Missouri, New York, and Wisconsin that have included awards as high as \$1 million – taxpayers must foot the bill”).

91. *Id.* (“Prisons that make an effort to prevent sexual assault are not only more humane, they are less vulnerable to this type of legal liability.”).

92. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 550, at 1 (Apr. 19, 2005).

93. *See* Robertson, *supra* note 14 (“[M]any [officers] erroneously regard subtle forms of coerced sex—such as exchanging sex for protection from gang rape—as consensual”).

94. Bell, *supra* note 13, at 217.

95. *Id.*

96. SENATE APPROPRIATIONS COMMITTEE, COMMITTEE ANALYSIS OF AB 550, at 1-2 (Aug. 25, 2005).

97. *See, e.g.,* Daniel Brook, *The Problem of Prison Rape*, LEGAL AFF., Apr. 2004, at 24 (2004) (quoting Michael Hennessey, Sheriff of San Francisco, saying “[j]ails and prisons do not have many friends . . . [s]pending money on them is not a big vote-getter”).

98. Prisoner Rape Factsheet, *Public Attitudes Toward Prisoner Rape*, STOP PRISONER RAPE, <http://www.spr.org/en/factsheetattitudes.html> (last visited on Oct. 23, 2005) (on file with the *McGeorge Law Review*).

99. *Id.*

100. Mair, *supra* note 6.

epidemic character of prison rape and the day-to-day horror experienced by victimized inmates.”¹⁰¹

Despite this concern, legislation addressing the problems of sexual abuse has drawn the joint support of both conservative religious groups and liberal organizations, such as Amnesty International,¹⁰² all looking to make the prevention of prison rape a top priority in each prison system.¹⁰³

V. CONCLUSION

Sexual abuse in prisons is a problem that has plagued prison systems since the early 1800s.¹⁰⁴ Finally, in 2003, the federal government took notice and passed legislation requiring each state to address the problem within its own correctional facilities.¹⁰⁵ With the passage of Chapter 330, California has taken the first steps.¹⁰⁶

101. 42 U.S.C.A. § 15601(12) (West 2005).

102. Kal Raustiala, *The New Bi-Partisanship*, STOP PRISONER RAPE, July 7, 2005, <http://www.spr.org/en/sprnews/2005/0707.htm> (on file with the *McGeorge Law Review*).

103. 42 U.S.C.A. § 15602(2).

104. See Brook, *supra* note 97 (“In 1826, in what was likely the first public mention of prison rape in the history of the republic, the Rev. Louis Dwight wrote that ‘Boys are Prostituted to the Lust of old Convicts’ throughout the institutions he surveyed from Massachusetts to Georgia.”).

105. 42 U.S.C.A. § 15601 *et seq.*

106. See Broad Letter, *supra* note 87 (“[W]e should be doing everything possible to ensure successful reintegration [of inmates back into society] and reduced recidivism. AB 550 certainly takes many steps toward these goals.”).