

September 24, 2024

Chair, Senate Judiciary Committee
Criminal Justice Sub-Committee
United States Senate

Dear Chair and Members of the Judiciary Committee,

I am a survivor of BOP staff sexual assault at FCI Dublin. I am writing to express my concerns regarding the Prison Rape Elimination Act (PREA) and offer suggestions for improving its efficacy. While the original intent of PREA is commendable, it has largely served as a mechanism for gathering statistical data rather than effectively deterring prison rape and sexual assault. After a thorough review, I believe modifications are needed to strengthen its impact and address several key gaps in the law. Below are four areas where opportunities exist to enhance the current framework of PREA:

1. Clarifying the Application of the Kalkines Warning

Currently, federal employees are provided the Kalkines Warning during internal or administrative investigations, immunizing them from prosecution based on their compelled statements. However, there is a significant gap when the investigation is conducted solely as a criminal matter. In cases involving sexual assault within correctional facilities, it is critical to ensure that criminal investigations are not undermined by administrative proceedings that provide immunity. I urge the committee to consider whether a parallel or follow-up investigation can be mandated to ensure that federal employees are held criminally accountable when appropriate, and that immunity is not granted in cases where the public's safety is at risk. This would promote justice for victims and maintain the integrity of the legal system.

2. Felony Classification Without Requirement of Overt Force

The current PREA framework classifies sexual assault as a felony only when overt force or threats are used. This provision fails to consider the inherent coercion present in nearly all prison sexual assaults. Victims often comply with their attackers not because of direct threats or physical force, but due to the power dynamics and implicit retaliation they may face if they resist. It is essential to recognize that sexual assault in a correctional setting often carries implicit force, regardless of the outward circumstances. Prosecutors frequently avoid pursuing misdemeanor charges, leaving many offenders without significant consequences. I recommend that all sexual assaults in correctional facilities automatically be classified as felonies, in line with the stricter laws currently enforced in 43 states. This would close an unnecessary loophole and ensure stronger penalties for these heinous acts.

3. Positive Incentives for Compliance

Under the current provisions of PREA, facilities failing to comply with the standards face a reduction of 5% in federal funding. While this punitive measure is necessary, it is equally important to incentivize compliance. Facilities that not only meet but exceed

PREA standards, and that actively report violations, should be rewarded with additional funding or other forms of recognition. By creating a system of positive reinforcement, facilities may be more likely to prioritize the safety of inmates and staff, improve reporting mechanisms, and foster a culture of accountability. Such an approach would demonstrate that adherence to PREA is not just about avoiding penalties, but about improving the overall safety and integrity of our correctional system.

4. Expanding PREA's Application to Contract Facilities

Currently, there is ambiguity in applying PREA to facilities that are under contract with federal authorities, such as private prisons or immigration detention centers. These facilities should be subject to the same rigorous standards and oversight as federally managed institutions. Without ensuring that PREA applies equally to all facilities that house individuals under federal jurisdiction, the law's protective measures will remain incomplete. By explicitly expanding PREA's reach to include contracted facilities, we can close this loophole and provide consistent protections for all individuals in custody, regardless of where they are housed. This would create a uniform standard of safety and accountability across the board.

The Prison Rape Elimination Act has been an important first step toward addressing a serious issue within our nation's correctional facilities, but there is much more work to be done. By addressing the issues outlined above, we can strengthen the law's deterrent effect and ensure that offenders are prosecuted accordingly, victims receive justice, and facilities are encouraged to actively promote safe environments.

I urge the Judiciary Committee to consider these revisions as it continues its work on improving PREA. Thank you for your attention to this matter, and I welcome any opportunity to provide further input on this critical issue.

Sincerely,
Aja Jasmin