Attachment 1

PUBLIC LAW 108–79—SEPT. 4, 2003

PRISON RAPE ELIMINATION ACT OF 2003

Public Law 108–79
108th Congress

An Act

Sept. 4, 2003
[S. 1435]

To provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Prison Rape Elimination Act of 2003.
45 USC 15601 note.

SECTION 1.SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Prison Rape Elimination Act of 2003".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Purposes.
Sec. 4. National prison rape statistics, data, and research.
Sec. 5. Prison rape prevention and prosecution.
Sec. 6. Grants to protect inmates and safeguard communities.
Sec. 7. National Prison Rape Reduction Commission.
Sec. 8. Adoption and effect of national standards.
Sec. 9. Requirement that accreditation organizations adopt accreditation standards.
Sec. 10. Definitions.

42 USC 15601.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) 2,100,146 persons were incarcerated in the United States at the end of 2001: 1,324,465 in Federal and State prisons and 631,240 in county and local jails. In 1999, there were more than 10,000,000 separate admissions to and discharges from prisons and jails.

(2) Insufficient research has been conducted and insufficient data reported on the extent of prison rape. However, experts have conservatively estimated that at least 13 percent of the inmates in the United States have been sexually assaulted in prison. Many inmates have suffered repeated assaults. Under this estimate, nearly 200,000 inmates now incarcerated have been or will be the victims of prison rape. The total number of inmates who have been sexually assaulted in the past 20 years likely exceeds 1,000,000.

(3) Inmates with mental illness are at increased risk of sexual victimization. America's jails and prisons house more mentally ill individuals than all of the Nation's psychiatric hospitals combined. As many as 16 percent of inmates in State prisons and jails, and 7 percent of Federal inmates, suffer from mental illness.

(4) Young first-time offenders are at increased risk of sexual victimization. Juveniles are 5 times more likely to be sexually

assaulted in adult rather than juvenile facilities—often within the first 48 hours of incarceration.

(5) Most prison staff are not adequately trained or prepared to prevent, report, or treat inmate sexual assaults.

(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.

(7) HIV and AIDS are major public health problems within America's correctional facilities. In 2000, 25,088 inmates in Federal and State prisons were known to be infected with HIV/AIDS. In 2000, HIV/AIDS accounted for more than 6 percent of all deaths in Federal and State prisons. Infection rates for other sexually transmitted diseases, tuberculosis, and hepatitis B and C are also far greater for prisoners than for the American population as a whole. Prison rape undermines the public health by contributing to the spread of these diseases, and often giving a potential death sentence to its victims.

(8) Prison rape endangers the public safety by making brutalized inmates more likely to commit crimes when they are released—as 600,000 inmates are each year.

(9) The frequently interracial character of prison sexual assaults significantly exacerbates interracial tensions, both within prison and, upon release of perpetrators and victims from prison, in the community at large.

(10) Prison rape increases the level of homicides and other violence against inmates and staff, and the risk of insurrections and riots.

(11) Victims of prison rape suffer severe physical and psychological effects that hinder their ability to integrate into the community and maintain stable employment upon their release from prison. They are thus more likely to become homeless and/or require government assistance.

(12) Members of the public and government officials are largely unaware of the epidemic character of prison rape and the day-to-day horror experienced by victimized inmates.

(13) The high incidence of sexual assault within prisons involves actual and potential violations of the United States Constitution. In Farmer v. Brennan, 511 U.S. 825 (1994), the Supreme Court ruled that deliberate indifference to the substantial risk of sexual assault violates prisoners' rights under the Cruel and Unusual Punishments Clause of the Eighth Amendment. The Eighth Amendment rights of State and local prisoners are protected through the Due Process Clause of the Fourteenth Amendment. Pursuant to the power of Congress under Section Five of the Fourteenth Amendment, Congress may take action to enforce those rights in States where officials have demonstrated such indifference. States that do not take basic steps to abate prison rape by adopting standards that do not generate significant additional expenditures demonstrate such indifference. Therefore, such States are not entitled to the same level of Federal benefits as other States.

(14) The high incidence of prison rape undermines the effectiveness and efficiency of United States Government expenditures through grant programs such as those dealing with health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison construction,

maintenance, and operation; race relations; poverty; unemployment and homelessness. The effectiveness and efficiency of these federally funded grant programs are compromised by the failure of State officials to adopt policies and procedures that reduce the incidence of prison rape in that the high incidence of prison rape—

(A) increases the costs incurred by Federal, State, and local jurisdictions to administer their prison systems;

(B) increases the levels of violence, directed at inmates and at staff, within prisons;

(C) increases health care expenditures, both inside and outside of prison systems, and reduces the effectiveness of disease prevention programs by substantially increasing the incidence and spread of HIV, AIDS, tuberculosis, hepatitis B and C, and other diseases;

(D) increases mental health care expenditures, both inside and outside of prison systems, by substantially increasing the rate of post-traumatic stress disorder, depression, suicide, and the exacerbation of existing mental illnesses among current and former inmates;

(E) increases the risks of recidivism, civil strife, and violent crime by individuals who have been brutalized by prison rape; and

(F) increases the level of interracial tensions and strife within prisons and, upon release of perpetrators and victims, in the community at large.

(15) The high incidence of prison rape has a significant effect on interstate commerce because it increases substantially—

(A) the costs incurred by Federal, State, and local jurisdictions to administer their prison systems;

(B) the incidence and spread of HIV, AIDS, tuberculosis, hepatitis B and C, and other diseases, contributing to increased health and medical expenditures throughout the Nation;

(C) the rate of post-traumatic stress disorder, depression, suicide, and the exacerbation of existing mental illnesses among current and former inmates, contributing to increased health and medical expenditures throughout the Nation; and

(D) the risk of recidivism, civil strife, and violent crime by individuals who have been brutalized by prison rape.

42 USC 15602.

SEC. 3. PURPOSES.

The purposes of this Act are to—

(1) establish a zero-tolerance standard for the incidence of prison rape in prisons in the United States;

(2) make the prevention of prison rape a top priority in each prison system;

(3) develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape;

(4) increase the available data and information on the incidence of prison rape, consequently improving the management and administration of correctional facilities;

(5) standardize the definitions used for collecting data on the incidence of prison rape;

(6) increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison rape;

(7) protect the Eighth Amendment rights of Federal, State, and local prisoners;

(8) increase the efficiency and effectiveness of Federal expenditures through grant programs such as those dealing with health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison construction, maintenance, and operation; race relations; poverty; unemployment; and homelessness; and

(9) reduce the costs that prison rape imposes on interstate commerce.

SEC. 4. NATIONAL PRISON RAPE STATISTICS, DATA, AND RESEARCH. 42 USC 15603.

(a) ANNUAL COMPREHENSIVE STATISTICAL REVIEW.—

(1) IN GENERAL.—The Bureau of Justice Statistics of the Department of Justice (in this section referred to as the "Bureau") shall carry out, for each calendar year, a comprehensive statistical review and analysis of the incidence and effects of prison rape. The statistical review and analysis shall include, but not be limited to the identification of the common characteristics of—

(A) both victims and perpetrators of prison rape; and

(B) prisons and prison systems with a high incidence of prison rape.

(2) CONSIDERATIONS.—In carrying out paragraph (1), the Bureau shall consider—

(A) how rape should be defined for the purposes of the statistical review and analysis;

(B) how the Bureau should collect information about staff-on-inmate sexual assault;

(C) how the Bureau should collect information beyond inmate self-reports of prison rape;

(D) how the Bureau should adjust the data in order to account for differences among prisons as required by subsection (c)(3);

(E) the categorization of prisons as required by subsection (c)(4); and

(F) whether a preliminary study of prison rape should be conducted to inform the methodology of the comprehensive statistical review.

(3) SOLICITATION OF VIEWS.—The Bureau of Justice Statistics shall solicit views from representatives of the following: State departments of correction; county and municipal jails; juvenile correctional facilities; former inmates; victim advocates; researchers; and other experts in the area of sexual assault.

(4) SAMPLING TECHNIQUES.—The review and analysis under paragraph (1) shall be based on a random sample, or other scientifically appropriate sample, of not less than 10 percent of all Federal, State, and county prisons, and a representative sample of municipal prisons. The selection shall include at least one prison from each State. The selection of facilities for sampling shall be made at the latest practicable date prior to conducting the surveys and shall not be disclosed to any facility or prison system official prior to the time period studied in the survey. Selection of a facility for sampling during any

year shall not preclude its selection for sampling in any subsequent year.

Confidentiality.

(5) SURVEYS.—In carrying out the review and analysis under paragraph (1), the Bureau shall, in addition to such other methods as the Bureau considers appropriate, use surveys and other statistical studies of current and former inmates from a sample of Federal, State, county, and municipal prisons. The Bureau shall ensure the confidentiality of each survey participant.

(6) PARTICIPATION IN SURVEY.—Federal, State, or local officials or facility administrators that receive a request from the Bureau under subsection (a)(4) or (5) will be required to participate in the national survey and provide access to any inmates under their legal custody.

(b) REVIEW PANEL ON PRISON RAPE.—

(1) ESTABLISHMENT.—To assist the Bureau in carrying out the review and analysis under subsection (a), there is established, within the Department of Justice, the Review Panel on Prison Rape (in this section referred to as the "Panel").

(2) MEMBERSHIP.—

(A) COMPOSITION.—The Panel shall be composed of 3 members, each of whom shall be appointed by the Attorney General, in consultation with the Secretary of Health and Human Services.

(B) QUALIFICATIONS.—Members of the Panel shall be selected from among individuals with knowledge or expertise in matters to be studied by the Panel.

(3) PUBLIC HEARINGS.—

(A) IN GENERAL.—The duty of the Panel shall be to carry out, for each calendar year, public hearings concerning the operation of the three prisons with the highest incidence of prison rape and the two prisons with the lowest incidence of prison rape in each category of facilities identified under subsection (c)(4). The Panel shall hold a separate hearing regarding the three Federal or State prisons with the highest incidence of prison rape. The purpose of these hearings shall be to collect evidence to aid in the identification of common characteristics of both victims and perpetrators of prison rape, and the identification of common characteristics of prisons and prison systems with a high incidence of prison rape, and the identification of common characteristics of prisons and prison systems that appear to have been successful in deterring prison rape.

(B) TESTIMONY AT HEARINGS.—

(i) PUBLIC OFFICIALS.—In carrying out the hearings required under subparagraph (A), the Panel shall request the public testimony of Federal, State, and local officials (and organizations that represent such officials), including the warden or director of each prison, who bears responsibility for the prevention, detection, and punishment of prison rape at each entity, and the head of the prison system encompassing such prison.

(ii) VICTIMS.—The Panel may request the testimony of prison rape victims, organizations representing

such victims, and other appropriate individuals and organizations.

(C) SUBPOENAS.—

(i) ISSUANCE.—The Panel may issue subpoenas for the attendance of witnesses and the production of written or other matter.

(ii) ENFORCEMENT.—In the case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

(c) REPORTS.—

(1) IN GENERAL.—Not later than June 30 of each year, the Attorney General shall submit a report on the activities of the Bureau and the Review Panel, with respect to prison rape, for the preceding calendar year to— Deadline.

(A) Congress; and

(B) the Secretary of Health and Human Services.

(2) CONTENTS.—The report required under paragraph (1) shall include—

(A) with respect to the effects of prison rape, statistical, sociological, and psychological data;

(B) with respect to the incidence of prison rape—

(i) statistical data aggregated at the Federal, State, prison system, and prison levels;

(ii) a listing of those institutions in the representative sample, separated into each category identified under subsection (c)(4) and ranked according to the incidence of prison rape in each institution; and

(iii) an identification of those institutions in the representative sample that appear to have been successful in deterring prison rape; and

(C) a listing of any prisons in the representative sample that did not cooperate with the survey conducted pursuant to section 4.

(3) DATA ADJUSTMENTS.—In preparing the information specified in paragraph (2), the Attorney General shall use established statistical methods to adjust the data as necessary to account for differences among institutions in the representative sample, which are not related to the detection, prevention, reduction and punishment of prison rape, or which are outside the control of the State, prison, or prison system, in order to provide an accurate comparison among prisons. Such differences may include the mission, security level, size, and jurisdiction under which the prison operates. For each such adjustment made, the Attorney General shall identify and explain such adjustment in the report.

(4) CATEGORIZATION OF PRISONS.—The report shall divide the prisons surveyed into three categories. One category shall be composed of all Federal and State prisons. The other two categories shall be defined by the Attorney General in order to compare similar institutions.

(d) CONTRACTS AND GRANTS.—In carrying out its duties under this section, the Attorney General may—

(1) provide grants for research through the National Institute of Justice; and

(2) contract with or provide grants to any other entity the Attorney General deems appropriate.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $15,000,000 for each of fiscal years 2004 through 2010 to carry out this section.

42 USC 15604.

SEC. 5. PRISON RAPE PREVENTION AND PROSECUTION.

(a) INFORMATION AND ASSISTANCE.—

Establishment.

(1) NATIONAL CLEARINGHOUSE.—There is established within the National Institute of Corrections a national clearinghouse for the provision of information and assistance to Federal, State, and local authorities responsible for the prevention, investigation, and punishment of instances of prison rape.

(2) TRAINING AND EDUCATION.—The National Institute of Corrections shall conduct periodic training and education programs for Federal, State, and local authorities responsible for the prevention, investigation, and punishment of instances of prison rape.

(b) REPORTS.—

Deadline.

(1) IN GENERAL.—Not later than September 30 of each year, the National Institute of Corrections shall submit a report to Congress and the Secretary of Health and Human Services. This report shall be available to the Director of the Bureau of Justice Statistics.

(2) CONTENTS.—The report required under paragraph (1) shall summarize the activities of the Department of Justice regarding prison rape abatement for the preceding calendar year.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of fiscal years 2004 through 2010 to carry out this section.

42 USC 15605.

SEC. 6. GRANTS TO PROTECT INMATES AND SAFEGUARD COMMUNITIES.

(a) GRANTS AUTHORIZED.—From amounts made available for grants under this section, the Attorney General shall make grants to States to assist those States in ensuring that budgetary circumstances (such as reduced State and local spending on prisons) do not compromise efforts to protect inmates (particularly from prison rape) and to safeguard the communities to which inmates return. The purpose of grants under this section shall be to provide funds for personnel, training, technical assistance, data collection, and equipment to prevent and prosecute prisoner rape.

(b) USE OF GRANT AMOUNTS.—Amounts received by a grantee under this section may be used by the grantee, directly or through subgrants, only for one or more of the following activities:

(1) PROTECTING INMATES.—Protecting inmates by—

(A) undertaking efforts to more effectively prevent prison rape;

(B) investigating incidents of prison rape; or

(C) prosecuting incidents of prison rape.

(2) SAFEGUARDING COMMUNITIES.—Safeguarding communities by—

(A) making available, to officials of State and local governments who are considering reductions to prison budgets, training and technical assistance in successful methods for moderating the growth of prison populations without compromising public safety, including successful methods used by other jurisdictions;

(B) developing and utilizing analyses of prison populations and risk assessment instruments that will improve State and local governments' understanding of risks to the community regarding release of inmates in the prison population;

(C) preparing maps demonstrating the concentration, on a community-by-community basis, of inmates who have been released, to facilitate the efficient and effective—

(i) deployment of law enforcement resources (including probation and parole resources); and

(ii) delivery of services (such as job training and substance abuse treatment) to those released inmates;

(D) promoting collaborative efforts, among officials of State and local governments and leaders of appropriate communities, to understand and address the effects on a community of the presence of a disproportionate number of released inmates in that community; or

(E) developing policies and programs that reduce spending on prisons by effectively reducing rates of parole and probation revocation without compromising public safety.

(c) GRANT REQUIREMENTS.—

(1) PERIOD.—A grant under this section shall be made for a period of not more than 2 years.

(2) MAXIMUM.—The amount of a grant under this section may not exceed $1,000,000.

(3) MATCHING.—The Federal share of a grant under this section may not exceed 50 percent of the total costs of the project described in the application submitted under subsection (d) for the fiscal year for which the grant was made under this section.

(d) APPLICATIONS.—

(1) IN GENERAL.—To request a grant under this section, the chief executive of a State shall submit an application to the Attorney General at such time, in such manner, and accompanied by such information as the Attorney General may require.

(2) CONTENTS.—Each application required by paragraph (1) shall—

(A) include the certification of the chief executive that the State receiving such grant—

(i) has adopted all national prison rape standards that, as of the date on which the application was submitted, have been promulgated under this Act; and

(ii) will consider adopting all national prison rape standards that are promulgated under this Act after such date;

(B) specify with particularity the preventative, prosecutorial, or administrative activities to be undertaken by the State with the amounts received under the grant; and

(C) in the case of an application for a grant for one or more activities specified in paragraph (2) of subsection (b)—

(i) review the extent of the budgetary circumstances affecting the State generally and describe how those circumstances relate to the State's prisons;

(ii) describe the rate of growth of the State's prison population over the preceding 10 years and explain why the State may have difficulty sustaining that rate of growth; and

(iii) explain the extent to which officials (including law enforcement officials) of State and local governments and victims of crime will be consulted regarding decisions whether, or how, to moderate the growth of the State's prison population.

(e) REPORTS BY GRANTEE.—

Deadline.

(1) IN GENERAL.—The Attorney General shall require each grantee to submit, not later than 90 days after the end of the period for which the grant was made under this section, a report on the activities carried out under the grant. The report shall identify and describe those activities and shall contain an evaluation of the effect of those activities on—

(A) the number of incidents of prison rape, and the grantee's response to such incidents; and

(B) the safety of the prisons, and the safety of the communities in which released inmates are present.

(2) DISSEMINATION.—The Attorney General shall ensure that each report submitted under paragraph (1) is made available under the national clearinghouse established under section 5.

(f) STATE DEFINED.—In this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(g) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated for grants under this section $40,000,000 for each of fiscal years 2004 through 2010.

(2) LIMITATION.—Of amounts made available for grants under this section, not less than 50 percent shall be available only for activities specified in paragraph (1) of subsection (b).

42 USC 15606.

SEC. 7. NATIONAL PRISON RAPE REDUCTION COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the National Prison Rape Reduction Commission (in this section referred to as the "Commission").

(b) MEMBERS.—

(1) IN GENERAL.—The Commission shall be composed of 9 members, of whom—

President.

(A) 3 shall be appointed by the President;

(B) 2 shall be appointed by the Speaker of the House of Representatives, unless the Speaker is of the same party as the President, in which case 1 shall be appointed by the Speaker of the House of Representatives and 1 shall be appointed by the minority leader of the House of Representatives;

(C) 1 shall be appointed by the minority leader of the House of Representatives (in addition to any appointment made under subparagraph (B));

(D) 2 shall be appointed by the majority leader of the Senate, unless the majority leader is of the same party as the President, in which case 1 shall be appointed by the majority leader of the Senate and 1 shall be appointed by the minority leader of the Senate; and

(E) 1 member appointed by the minority leader of the Senate (in addition to any appointment made under subparagraph (D)).

(2) PERSONS ELIGIBLE.—Each member of the Commission shall be an individual who has knowledge or expertise in matters to be studied by the Commission.

(3) CONSULTATION REQUIRED.—The President, the Speaker and minority leader of the House of Representatives, and the majority leader and minority leader of the Senate shall consult with one another prior to the appointment of the members of the Commission to achieve, to the maximum extent possible, fair and equitable representation of various points of view with respect to the matters to be studied by the Commission.

(4) TERM.—Each member shall be appointed for the life of the Commission.

(5) TIME FOR INITIAL APPOINTMENTS.—The appointment of the members shall be made not later than 60 days after the date of enactment of this Act. Deadline.

(6) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made, and shall be made not later than 60 days after the date on which the vacancy occurred. Deadline.

(c) OPERATION.—

(1) CHAIRPERSON.—Not later than 15 days after appointments of all the members are made, the President shall appoint a chairperson for the Commission from among its members. Deadline. President.

(2) MEETINGS.—The Commission shall meet at the call of the chairperson. The initial meeting of the Commission shall take place not later than 30 days after the initial appointment of the members is completed. Deadline.

(3) QUORUM.—A majority of the members of the Commission shall constitute a quorum to conduct business, but the Commission may establish a lesser quorum for conducting hearings scheduled by the Commission.

(4) RULES.—The Commission may establish by majority vote any other rules for the conduct of Commission business, if such rules are not inconsistent with this Act or other applicable law.

(d) COMPREHENSIVE STUDY OF THE IMPACTS OF PRISON RAPE.—

(1) IN GENERAL.—The Commission shall carry out a comprehensive legal and factual study of the penalogical, physical, mental, medical, social, and economic impacts of prison rape in the United States on—

(A) Federal, State, and local governments; and

(B) communities and social institutions generally, including individuals, families, and businesses within such communities and social institutions.

(2) MATTERS INCLUDED.—The study under paragraph (1) shall include—

(A) a review of existing Federal, State, and local government policies and practices with respect to the prevention, detection, and punishment of prison rape;

(B) an assessment of the relationship between prison rape and prison conditions, and of existing monitoring, regulatory, and enforcement practices that are intended to address any such relationship;

(C) an assessment of pathological or social causes of prison rape;

(D) an assessment of the extent to which the incidence of prison rape contributes to the spread of sexually transmitted diseases and to the transmission of HIV;

(E) an assessment of the characteristics of inmates most likely to commit prison rape and the effectiveness of various types of treatment or programs to reduce such likelihood;

(F) an assessment of the characteristics of inmates most likely to be victims of prison rape and the effectiveness of various types of treatment or programs to reduce such likelihood;

(G) an assessment of the impacts of prison rape on individuals, families, social institutions and the economy generally, including an assessment of the extent to which the incidence of prison rape contributes to recidivism and to increased incidence of sexual assault;

(H) an examination of the feasibility and cost of conducting surveillance, undercover activities, or both, to reduce the incidence of prison rape;

(I) an assessment of the safety and security of prison facilities and the relationship of prison facility construction and design to the incidence of prison rape;

(J) an assessment of the feasibility and cost of any particular proposals for prison reform;

(K) an identification of the need for additional scientific and social science research on the prevalence of prison rape in Federal, State, and local prisons;

(L) an assessment of the general relationship between prison rape and prison violence;

(M) an assessment of the relationship between prison rape and levels of training, supervision, and discipline of prison staff; and

(N) an assessment of existing Federal and State systems for reporting incidents of prison rape, including an assessment of whether existing systems provide an adequate assurance of confidentiality, impartiality and the absence of reprisal.

(3) REPORT.—

Deadline.

(A) DISTRIBUTION.—Not later than 2 years after the date of the initial meeting of the Commission, the Commission shall submit a report on the study carried out under this subsection to—

(i) the President;

(ii) the Congress;

(iii) the Attorney General;

(iv) the Secretary of Health and Human Services;

(v) the Director of the Federal Bureau of Prisons;

(vi) the chief executive of each State; and

(vii) the head of the department of corrections of each State.

(B) CONTENTS.—The report under subparagraph (A) shall include—

(i) the findings and conclusions of the Commission;

(ii) recommended national standards for reducing prison rape;

(iii) recommended protocols for preserving evidence and treating victims of prison rape; and

(iv) a summary of the materials relied on by the Commission in the preparation of the report.

(e) RECOMMENDATIONS.—

(1) IN GENERAL.—In conjunction with the report submitted under subsection (d)(3), the Commission shall provide the Attorney General and the Secretary of Health and Human Services with recommended national standards for enhancing the detection, prevention, reduction, and punishment of prison rape.

(2) MATTERS INCLUDED.—The information provided under paragraph (1) shall include recommended national standards relating to—

(A) the classification and assignment of prisoners, using proven standardized instruments and protocols, in a manner that limits the occurrence of prison rape;

(B) the investigation and resolution of rape complaints by responsible prison authorities, local and State police, and Federal and State prosecution authorities;

(C) the preservation of physical and testimonial evidence for use in an investigation of the circumstances relating to the rape;

(D) acute-term trauma care for rape victims, including standards relating to—

(i) the manner and extent of physical examination and treatment to be provided to any rape victim; and

(ii) the manner and extent of any psychological examination, psychiatric care, medication, and mental health counseling to be provided to any rape victim;

(E) referrals for long-term continuity of care for rape victims;

(F) educational and medical testing measures for reducing the incidence of HIV transmission due to prison rape;

(G) post-rape prophylactic medical measures for reducing the incidence of transmission of sexual diseases;

(H) the training of correctional staff sufficient to ensure that they understand and appreciate the significance of prison rape and the necessity of its eradication;

(I) the timely and comprehensive investigation of staff sexual misconduct involving rape or other sexual assault on inmates;

(J) ensuring the confidentiality of prison rape complaints and protecting inmates who make complaints of prison rape;

(K) creating a system for reporting incidents of prison rape that will ensure the confidentiality of prison rape complaints, protect inmates who make prison rape complaints from retaliation, and assure the impartial resolution of prison rape complaints;

(L) data collection and reporting of—

(i) prison rape;

(ii) prison staff sexual misconduct; and

(iii) the resolution of prison rape complaints by prison officials and Federal, State, and local investigation and prosecution authorities; and

(M) such other matters as may reasonably be related to the detection, prevention, reduction, and punishment of prison rape.

(3) LIMITATION.—The Commission shall not propose a recommended standard that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities.

(f) CONSULTATION WITH ACCREDITATION ORGANIZATIONS.—In developing recommended national standards for enhancing the detection, prevention, reduction, and punishment of prison rape, the Commission shall consider any standards that have already been developed, or are being developed simultaneously to the deliberations of the Commission. The Commission shall consult with accreditation organizations responsible for the accreditation of Federal, State, local or private prisons, that have developed or are currently developing standards related to prison rape. The Commission will also consult with national associations representing the corrections profession that have developed or are currently developing standards related to prison rape.

(g) HEARINGS.—

(1) IN GENERAL.—The Commission shall hold public hearings. The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out its duties under this section.

(2) WITNESS EXPENSES.—Witnesses requested to appear before the Commission shall be paid the same fees as are paid to witnesses under section 1821 of title 28, United States Code. The per diem and mileage allowances for witnesses shall be paid from funds appropriated to the Commission.

(h) INFORMATION FROM FEDERAL OR STATE AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out its duties under this section. The Commission may request the head of any State or local department or agency to furnish such information to the Commission.

(i) PERSONNEL MATTERS.—

(1) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of service for the Commission.

(2) DETAIL OF FEDERAL EMPLOYEES.—With the affirmative vote of ⅔ of the Commission, any Federal Government employee, with the approval of the head of the appropriate Federal agency, may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status, benefits, or privileges.

(3) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—Upon the request of the Commission, the Attorney General shall provide reasonable and appropriate office space, supplies, and administrative assistance.

(j) CONTRACTS FOR RESEARCH.—

(1) NATIONAL INSTITUTE OF JUSTICE.—With a ⅔ affirmative vote, the Commission may select nongovernmental researchers and experts to assist the Commission in carrying out its duties

under this Act. The National Institute of Justice shall contract with the researchers and experts selected by the Commission to provide funding in exchange for their services.

(2) OTHER ORGANIZATIONS.—Nothing in this subsection shall be construed to limit the ability of the Commission to enter into contracts with other entities or organizations for research necessary to carry out the duties of the Commission under this section.

(k) SUBPOENAS.—

(1) ISSUANCE.—The Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter.

(2) ENFORCEMENT.—In the case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

(3) CONFIDENTIALITY OF DOCUMENTARY EVIDENCE.—Documents provided to the Commission pursuant to a subpoena issued under this subsection shall not be released publicly without the affirmative vote of ⅔ of the Commission.

(l) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

(m) TERMINATION.—The Commission shall terminate on the date that is 60 days after the date on which the Commission submits the reports required by this section.

(n) EXEMPTION.—The Commission shall be exempt from the Federal Advisory Committee Act.

SEC. 8. ADOPTION AND EFFECT OF NATIONAL STANDARDS.

Deadlines.
42 USC 15607.

(a) PUBLICATION OF PROPOSED STANDARDS.—

(1) FINAL RULE.—Not later than 1 year after receiving the report specified in section 7(d)(3), the Attorney General shall publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison rape.

(2) INDEPENDENT JUDGMENT.—The standards referred to in paragraph (1) shall be based upon the independent judgment of the Attorney General, after giving due consideration to the recommended national standards provided by the Commission under section 7(e), and being informed by such data, opinions, and proposals that the Attorney General determines to be appropriate to consider.

(3) LIMITATION.—The Attorney General shall not establish a national standard under this section that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities. The Attorney General may, however, provide a list of improvements for consideration by correctional facilities.

(4) TRANSMISSION TO STATES.—Within 90 days of publishing the final rule under paragraph (1), the Attorney General shall transmit the national standards adopted under such paragraph to the chief executive of each State, the head of the department of corrections of each State, and to the appropriate authorities in those units of local government who oversee operations in one or more prisons.

(b) APPLICABILITY TO FEDERAL BUREAU OF PRISONS.—The national standards referred to in subsection (a) shall apply to the

Federal Bureau of Prisons immediately upon adoption of the final rule under subsection (a)(4).

(c) ELIGIBILITY FOR FEDERAL FUNDS.—

(1) COVERED PROGRAMS.—

(A) IN GENERAL.—For purposes of this subsection, a grant program is covered by this subsection if, and only if—

(i) the program is carried out by or under the authority of the Attorney General; and

(ii) the program may provide amounts to States for prison purposes.

(B) LIST.—For each fiscal year, the Attorney General shall prepare a list identifying each program that meets the criteria of subparagraph (A) and provide that list to each State.

(2) ADOPTION OF NATIONAL STANDARDS.—For each fiscal year, any amount that a State would otherwise receive for prison purposes for that fiscal year under a grant program covered by this subsection shall be reduced by 5 percent, unless the chief executive of the State submits to the Attorney General—

(A) a certification that the State has adopted, and is in full compliance with, the national standards described in section 8(a); or

(B) an assurance that not less than 5 percent of such amount shall be used only for the purpose of enabling the State to adopt, and achieve full compliance with, those national standards, so as to ensure that a certification under subparagraph (A) may be submitted in future years.

Deadline.

(3) REPORT ON NONCOMPLIANCE.—Not later than September 30 of each year, the Attorney General shall publish a report listing each grantee that is not in compliance with the national standards adopted pursuant to section 8(a).

(4) COOPERATION WITH SURVEY.—For each fiscal year, any amount that a State receives for that fiscal year under a grant program covered by this subsection shall not be used for prison purposes (and shall be returned to the grant program if no other authorized use is available), unless the chief executive of the State submits to the Attorney General a certification that neither the State, nor any political subdivision or unit of local government within the State, is listed in a report issued by the Attorney General pursuant to section 4(c)(2)(C).

(5) REDISTRIBUTION OF AMOUNTS.—Amounts under a grant program not granted by reason of a reduction under paragraph (2), or returned by reason of the prohibition in paragraph (4), shall be granted to one or more entities not subject to such reduction or such prohibition, subject to the other laws governing that program.

Procedures.

(6) IMPLEMENTATION.—The Attorney General shall establish procedures to implement this subsection, including procedures for effectively applying this subsection to discretionary grant programs.

(7) EFFECTIVE DATE.—

(A) REQUIREMENT OF ADOPTION OF STANDARDS.—The first grants to which paragraph (2) applies are grants for the second fiscal year beginning after the date on which the national standards under section 8(a) are finalized.

(B) REQUIREMENT FOR COOPERATION.—The first grants to which paragraph (4) applies are grants for the fiscal year beginning after the date of the enactment of this Act.

SEC. 9. REQUIREMENT THAT ACCREDITATION ORGANIZATIONS ADOPT ACCREDITATION STANDARDS. 42 USC 15608.

(a) ELIGIBILITY FOR FEDERAL GRANTS.—Notwithstanding any other provision of law, an organization responsible for the accreditation of Federal, State, local, or private prisons, jails, or other penal facilities may not receive any new Federal grants during any period in which such organization fails to meet any of the requirements of subsection (b).

(b) REQUIREMENTS.—To be eligible to receive Federal grants, an accreditation organization referred to in subsection (a) must meet the following requirements: Deadlines.

(1) At all times after 90 days after the date of enactment of this Act, the organization shall have in effect, for each facility that it is responsible for accrediting, accreditation standards for the detection, prevention, reduction, and punishment of prison rape.

(2) At all times after 1 year after the date of the adoption of the final rule under section 8(a)(4), the organization shall, in addition to any other such standards that it may promulgate relevant to the detection, prevention, reduction, and punishment of prison rape, adopt accreditation standards consistent with the national standards adopted pursuant to such final rule.

SEC. 10. DEFINITIONS. 42 USC 15609.

In this Act, the following definitions shall apply:

(1) CARNAL KNOWLEDGE.—The term "carnal knowledge" means contact between the penis and the vulva or the penis and the anus, including penetration of any sort, however slight.

(2) INMATE.—The term "inmate" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

(3) JAIL.—The term "jail" means a confinement facility of a Federal, State, or local law enforcement agency to hold—

(A) persons pending adjudication of criminal charges; or

(B) persons committed to confinement after adjudication of criminal charges for sentences of 1 year or less.

(4) HIV.—The term "HIV" means the human immunodeficiency virus.

(5) ORAL SODOMY.—The term "oral sodomy" means contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus.

(6) POLICE LOCKUP.—The term "police lockup" means a temporary holding facility of a Federal, State, or local law enforcement agency to hold—

(A) inmates pending bail or transport to jail;

(B) inebriates until ready for release; or

(C) juveniles pending parental custody or shelter placement.

(7) PRISON.—The term "prison" means any confinement facility of a Federal, State, or local government, whether administered by such government or by a private organization on behalf of such government, and includes—

(A) any local jail or police lockup; and

(B) any juvenile facility used for the custody or care of juvenile inmates.

(8) PRISON RAPE.—The term "prison rape" includes the rape of an inmate in the actual or constructive control of prison officials.

(9) RAPE.—The term "rape" means—

(A) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person, forcibly or against that person's will;

(B) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person not forcibly or against the person's will, where the victim is incapable of giving consent because of his or her youth or his or her temporary or permanent mental or physical incapacity; or

(C) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person achieved through the exploitation of the fear or threat of physical violence or bodily injury.

(10) SEXUAL ASSAULT WITH AN OBJECT.—The term "sexual assault with an object" means the use of any hand, finger, object, or other instrument to penetrate, however slightly, the genital or anal opening of the body of another person.

(11) SEXUAL FONDLING.—The term "sexual fondling" means the touching of the private body parts of another person (including the genitalia, anus, groin, breast, inner thigh, or buttocks) for the purpose of sexual gratification.

(12) EXCLUSIONS.—The terms and conditions described in paragraphs (9) and (10) shall not apply to—

(A) custodial or medical personnel gathering physical evidence, or engaged in other legitimate medical treatment, in the course of investigating prison rape;

(B) the use of a health care provider's hands or fingers or the use of medical devices in the course of appropriate medical treatment unrelated to prison rape; or

(C) the use of a health care provider's hands or fingers and the use of instruments to perform body cavity searches in order to maintain security and safety within the prison or detention facility, provided that the search is conducted in a manner consistent with constitutional requirements.

Approved September 4, 2003.

LEGISLATIVE HISTORY—S. 1435:

CONGRESSIONAL RECORD, Vol. 149 (2003):
July 21, considered and passed Senate.
July 25, considered and passed House.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 39 (2003):
Sept. 4, Presidential statement.

○