

Stories from



# Inside

Prisoner Rape and the War on Drugs

A Publication of  
STOP PRISONER RAPE

Stories from  
**Inside**

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**STOP PRISONER RAPE**



**Stop Prisoner Rape (SPR)** is a human rights organization that seeks to put an end to sexual violence in all forms of detention. SPR works to: engender policies that ensure government accountability for prisoner rape; change flippant and ill-informed public attitudes toward sexual abuse behind bars; and promote access to services for survivors of this type of violence.

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# Table of Contents

Executive Summary	1
Stop Prisoner Rape and the <i>Stories from Inside</i> Campaign	2
Introduction	3
Definition of Prisoner Rape	4
Methodology	4
<b>Testimonies: Bryson Martel 5 • Hope Hernandez 6</b>	
Sexual Violence Behind Bars in the U.S.	8
Background	8
The Impact of Prisoner Rape	9
The Aftermath	10
<b>Testimonies: Jackie Tate 11 • Darryl Barnett 12 • Robin McArdle 14 • Oliver Michaels 16 • John Cooks 16 • Marilyn Shirley 17 • Daniel Sanford 19</b>	
The U.S. War on Drugs	20
Background	20
Harsh Sentencing Laws	21
Questioning the Drug War	23
<b>Testimonies: Leah Atkinson 25 • Troy Bishop 26 • Frank Johnson 28 • Chance Martin 29 • Sue Linez 31 • David Smith 32</b>	
The Impact of the War on Drugs on Sexual Violence	33
Prison Overcrowding	33
Lack of Appropriate Classification	34
Insufficient Rehabilitative Services	36
<b>Testimonies: Michael Piper 37 • Hedda Lowry 38 • Carl Shepard 40 • James Davis 41 • Sophia Brooks 42 • Betty Vasquez 44 • William Kent 45</b>	
Recommendations	46
<b>Testimonies: Jami Naturalite 49 • Kobutsu Malone 50</b>	
Notes	52



# Executive Summary

Prisoner rape is a human rights crisis of appalling magnitude. According to the best available research, as many as one in four female and one in five male inmates experience sexual violence while incarcerated. While anyone can be a victim of prisoner rape, inmates convicted of a non-violent drug offense typically possess characteristics that put them at great risk for abuse. They tend to be young, unschooled in the ways of prison life, and lacking the street smarts necessary to protect themselves from other detainees.

For survivors of prisoner rape, the physical and psychological effects are devastating. In addition to physical injuries, many survivors contract HIV and other sexually transmitted diseases, are impregnated against their will, and suffer long-term psychological harm. Once released, they bring all their prison experiences with them as they return home to their families and communities.

Every year, scores of non-violent men and women are placed at risk for sexual

violence behind bars as a result of the “war on drugs.” For more than three decades, with its focus on long sentences for drug offenses and limited judicial discretion to offer leniency, the war on drugs has been America’s primary response to the problems of drug use and addiction. The financial and moral costs of these drug policies have been substantial and well-publicized. Federal, state, and local governments have spent billions of dollars on the implementation of the war on drugs. In the meantime, a majority of Americans have come to believe it is a losing cause.

The massive prison population growth caused by current U.S. drug policies has resulted in increasingly overcrowded detention facilities, rife with idleness and tension among inmates. With an astonishing 2.3 million people behind bars at any given time, U.S. prisons and jails have simply run out of bed space, leading non-violent detainees to be housed together with predators in poorly monitored dormitories or cramped cells. The swelling

prison population also strains rehabilitative services, rendering it impossible for those struggling with drug addiction and other problems to receive the treatment and counseling they need.

Prisoner rape is known to be a significant problem in U.S. prisons and jails—and the ways to prevent it are known as well. This report offers the following recommendations that, if implemented, would significantly reduce sexual violence behind bars.

- Employ standardized classification systems that effectively separate likely rape victims from likely sexual predators.
- Provide vulnerable inmates with voluntary, non-punitive protective housing.
- In the aftermath of an assault, immediately separate perpetrators from victims.
- Train corrections officials on how to prevent and respond to prisoner rape.
- Ensure that victimized inmates have access to safe and effective medical and mental health services that are not contingent upon filing a report.
- Establish a confidential complaint system that encourages reporting sexual violence without increasing the risk of future attacks or any other form of retaliation.
- Reduce incarceration rates for people convicted of non-violent drug offenses.
- Utilize diversion programs and treatment services to address drug addictions.

## Stop Prisoner Rape and the *Stories from Inside* Campaign

This report is one component of a media and advocacy campaign, *Stories from Inside*, that seeks to draw attention to the relationship between current U.S. drug policy and prisoner rape. This initiative is built around the first-hand testimonies of men and women who were raped or sexually assaulted while serving time for a non-violent drug charge.

It may take years or even decades before a survivor of prisoner rape is able to talk about the sexual violence that he or she experienced behind bars, and some are never able to do so. SPR applauds the courage of the survivors who told their stories for use in this report, either “on the record” or anonymously. SPR also thanks the Marijuana Policy Project for its generous support of the *Stories from Inside* campaign.

*Names in quotation marks in the testimony introductions indicate that a pseudonym was used at the request of the survivor.*

# Introduction

The U.S. is the world's leading per-capita jailer, with some 2.3 million people incarcerated at any given time.<sup>1</sup> Among these inmates, a staggering number experience sexual violence. In fact, prisoner rape is arguably the most widespread and neglected form of human rights abuse in the U.S. today.

The war on drugs has directly contributed to the unconscionable rate of sexual violence behind bars by causing prisons to become overcrowded with people convicted of non-violent drug offenses. At any given time, more than 500,000 people are incarcerated on drug charges,<sup>2</sup> with thousands more non-violent individuals imprisoned on other drug-motivated crimes, such as property offenses and public order violations.<sup>3</sup> Federal and state governments pursue policies that incarcerate low-level drug users and exacerbate overcrowding. One in five state inmates and nearly three in five federal prisoners are serving a drug sentence.<sup>4</sup> Drug enforcement personnel often focus on minor offenses. Of the nearly 1.75

million drug arrests made in 2004, more than 771,000 involved marijuana.<sup>5</sup> Marijuana arrests also accounted for more than 80 percent of the increase in drug arrests between 1990 and 2002.<sup>6</sup> More than four-fifths of all drug arrests in that period were for simple possession.<sup>7</sup> In 2003, 89 percent of marijuana arrests were for possession, with no allegations of sale or trafficking.<sup>8</sup>

Despite a prison building boom spanning nearly two decades, overcrowding persists. Officials at many U.S. corrections facilities have converted dining halls and gymnasiums into dormitories and are operating at almost double capacity. Severe overcrowding creates opportunities for predators, and the rapidly swelling ranks of inmates with non-violent drug convictions are among the principal victims of sexual assault in prison. Many of these inmates struggle to defend themselves in a hostile environment, even as they cope with untreated drug addiction.

As the stories that accompany this report illustrate, people who are raped or



coerced into sex behind bars are more than just numbers. They are individuals whose lives have been irreparably changed by the sexual abuse they suffered while incarcerated. They come from every walk

of life. Some were high-school students, military veterans, or business owners before they were incarcerated. They have one thing in common—all were caught in the web of the U.S. war on drugs.

## Definition of Prisoner Rape

Like all of Stop Prisoner Rape’s work, this report examines sexual violence behind bars broadly, addressing sexual assault and harassment as well as rape. While the term “prisoner” is typically used to describe a post-conviction inmate housed in a state or federal prison, and “rape” is often limited to forced sexual intercourse, the phrase “prisoner rape” is used here to describe all forms of sexual violence inflicted on anyone in custody, including someone awaiting trial in a county jail.

## Methodology

Stop Prisoner Rape receives letters daily from current and former inmates who were sexually abused behind bars. In seeking survivors to share their experiences for the *Stories from Inside* initiative, SPR contacted individuals listed in its survivor database, advertised in a number of publications geared toward prisoners, placed a link on its website inviting survivors to tell their stories, asked allied organizations to place notices in their newsletters, and sent letters to members of a prisoner mailing list. The brave individuals who are a part of this project range from survivor advocates who have worked actively with SPR for a number of years to people who heard about the project through word-of-mouth at their facilities and are telling their stories for the very first time in this report. While every survivor’s story is unique, the accounts included here are representative of what SPR regularly hears from inmates around the country.

**W**hen I went to prison, people started preying on me. I started getting attacked almost right away. I got jumped on in prison. I got beaten. I had a knife pulled on me.

I got sexually attacked too. You get labeled as a faggot if you get raped. If it gets out and then people know you have been raped, that opens the door for a lot of other predators. Anywhere I was, everybody looked at me like I was a target.

I wrote everything down and documented it. I filed grievances. I did all the procedures that I could do.

I fought. I deliberately disobeyed so I could run away from my predators. I deliberately caught charges. I went to the hole. When they put you in the hole, it's complete isolation. It was just so hard.

Eventually, they put me in protective custody. That didn't work. I was raped there too. A lot of folks get into protective custody. They put me in a cell with a predator, a guy that had full-blown AIDS. He attacked me. He made me perform oral sex and then he had anal sex with me against my will.

You never forget. You never heal from it emotionally. You might heal your body, but you will never get over it emotionally. That's something that is stuck in you. I wake up with it on my mind.

I started getting sick. I started bleeding really bad from the rectum. That's when I got the devastating news. Then everything added up. The guy that raped me in the cell had full-blown AIDS.

I felt suicidal. I felt like my world had come to an end. I felt ashamed, embarrassed, degraded, and humiliated.

Living with AIDS is an uphill battle. It's

They robbed me of my manhood, my security, serenity, all that.

You could have been in there for forgery and not even walk out alive.

not easy. I accept the fact that I'm going to die. They took my life.

They should have screened the inmates that they put me in the cell with. Don't put me in a cell with murderers. You could have been in there for forgery and not even walk out alive. I've seen guys get stabbed or killed because of rape.

I think that locking up people for drug addiction is wrong. Putting everybody in prison for drug addiction causes overpopulation. They're not getting any help in there. A lot of them need help. They have to learn to lead a productive life, to keep them from robbing, stealing, doing something self-destructive, to get some skills. All the things the prison doesn't do. You waste the taxpayer's money. The people who are out there raping and killing people—those are the ones who need to be locked up.

There are so many predators in prison. I don't care where you go—to Arkansas or Memphis, California or New York, wherever you go, you got the same aggressive predators there. They do it in the county jail, too.

They robbed me of my manhood, my security, serenity, all that. It's horrifying to get robbed of all that. They didn't take my pride, because I hold my head up. But like I said, I still think about it, it hurts. I try not to worry about it. I try not to let my family worry, but they do. They worry constantly.

It's awful that a person would have to go in and pay that price like that. I paid double price. That check I wrote cost me my life.



***Bryson Martel, formerly known as Kendell Spruce, is a 42-year-old Michigan man who went to live with his grandmother as an infant when his parents abandoned him. He grew up in Arkansas, Michigan, and California while being moved from relative to relative. He began using drugs at 12, after returning to his mother's home. He became addicted to crack cocaine at the age of 20 and was sent to jail or prison more than 15 times over the next decade. In 1993, he was sentenced to jail in Arkansas for forging a check to buy crack cocaine. Upon his release, Mr. Martel violated the terms of his probation and was sent to prison.***



**Hope Hernandez is a 31-year-old Washington, D.C. woman who was born to drug-addicted parents in a hippie commune in Hawaii. Repelled by her parents' addiction, she swore that she would never use drugs, but took her first drink at a party at 14 and began smoking marijuana and using LSD a few years later. She began injecting heroin at 19, and stopped using drugs at 23. Ms. Hernandez is now a married mother of three who recently graduated from college with highest honors, and is beginning a career in social work.**

### Testimony: Hope Hernandez

**A**t first, I was only using heroin on the weekends, but after a while, I had to use it all the time. At first it was one bag a day, then it was two, and then it was four, then it was 14, and by the time I finally got arrested, I was up to 20 bags or more a day if I could afford it. Affording it became the really hard part. We were stealing property and selling it.

Eventually, I was indicted on 19 felony charges and was arrested. I got stuck with all of these drug charges. I was buying dope for myself, for my own personal usage, but I helped this girl score one time, and they charged me with distribution.

I was given a court date and released the next day to go to rehab, but in rehab I got so ill from withdrawal that they took me back to jail because they said they didn't have the medical facilities required to take care of me.

There were two jails in Washington D.C.—the regular side and the privatized side. The regular side is run by the city. They have a unit where they put people with mental health concerns. For some reason they kept shifting me back and forth, back and forth between the regular side and the privatized side.

They put me on some medications. I had no idea what they were or what they would

do to me. I ended up sleeping a lot and I was kind of in a daze. I was wearing a paper jumpsuit that was really just a piece of gauze with a zipper.

I needed a shower. There was a sink and a toilet and a bed in the room, but no shower, and they weren't letting me out of my cell. Every time a new guard would come on shift, I would ask for a shower. I was promised a shower by guard after guard, but I never got one.

One night, in the middle of the night, this guard came into my cell and said I could go take a shower. He had a towel and a fresh paper jumpsuit and some shampoo. He led me to a room with locked doors that had a separate bathroom and a shower. He waited out in the hallway.

The light was kind of hurting my eyes so I turned it off. I got undressed and into the shower, and he came in. The next thing I knew he was standing in the shower stall and was engaging in intercourse with me. He pulled down his pants and turned off the shower and raped me.

I couldn't do anything. It was like I was on a 30-second delay. I was heavily medicated and it was 2:30 or 3:00 in the morning. He had awoken me from a dead sleep.

I saw all this stuff about Abu Ghraib. People were outraged that this was happening overseas, but this is also happening in our nation's capital. It's happening to people who need drug treatment. It's happening to 19-year-old girls who have low self-esteem. It's happening to people who are arrested for the first time after being completely strung out. This is happening in our country.

Testimony (cont'd): Hope Hernandez

After it was over, he led me back to my cell. I felt myself screaming inside but the sound wasn't making it out of my throat. The nurses were supposed to be on duty 24 hours a day, but they were asleep in the station.

I think I was asleep for the whole next day. The night after that, he led me to a bed. After he had finished, he handed me a paper jump suit. I was putting it on and still had an arm and a breast exposed as the shift captain walked in. He had already pulled his pants up but the shift captain saw it and asked what he was doing. He said he was helping me get dressed after a shower.

The shift captain was suspicious, and they took me to the hospital to do a rape kit, but he had used a condom. I told the nurses what had happened, but nothing ever came of it. The jail people said I was nuts, because I had been hallucinating for days. But I didn't hallucinate being raped.

They kept me there on a mental health hold for eight months, and when I finally went to court, they said it was a first offense and I should only get probation. I spent eight months in jail, I got raped, and I lost everything I own, but my sentence was probation.

It's been eight years now, and I can still see him stepping into the shower with me. I can look down and see the shine on his shoes.

I spent eight months in jail,  
I got raped, and I lost  
everything I own, but my  
sentence was probation.

I can see a guard in a uniform and suddenly I feel terrified. I feel panicked. For all I know, he's still a guard.

I think drug addicts need to get treatment. That is all anybody needs. I can't honestly say that some people would get it without jail, because some people don't. Some people don't get it, period. But I do know that a lot of people that are addicted just need a way to get clean. There is a total lack of treatment, a lack of proper mental health care. I had been on a waiting list for a methadone program, but I never got in.

I saw all this stuff about Abu Ghraib. People were outraged that this was happening overseas, but this is also happening in our nation's capital. It's happening to people who need drug treatment. It's happening to 19-year-old girls who have low self-esteem. It's happening to people who are arrested for the first time after being completely strung out. This is happening in our country.

# Sexual Violence Behind Bars in the U.S.

## Background

Sexual abuse behind bars is a widespread problem. Reliable estimates of its incidence are difficult to obtain because of the lack of comprehensive research to date. The shortage of information is in part the result of the challenges of collecting data in a climate of fear of retaliation and stigma. The research that has been completed, however, suggests that as many as 20 percent of male prisoners have been pressured or coerced into sex, and ten percent have been raped.<sup>9</sup> In one women's facility, more than a quarter of the women studied said they had been pressured into sex.<sup>10</sup> While fear of future attacks causes many prisoner rape survivors to remain silent about their abuse, according to the Bureau of Justice Statistics, more than 6,000 inmates in adult prisons and jails filed reports of sexual violence in 2005 alone.<sup>11</sup>

Anyone can be a victim of rape behind bars, but typical male victims are young, non-violent, first-time offenders who are

small, weak, shy, and gay or feminine.<sup>12</sup> Among women, young and mentally ill inmates and first-time offenders are particularly vulnerable.<sup>13</sup> Marginalized populations are among the most at risk for abuse. A study of one institution reported that 41 percent of gay inmates had been sexually assaulted, a rate three times higher than that for the institution overall.<sup>14</sup> In addition, gay and transgender inmates often face even more institutional apathy than other prisoners when they report abuse. Many officers confuse homosexuality and transgender status for consent to rape, and therefore trivialize the claims by such inmates.

Although there are many different prisoner rape scenarios, a majority of male victims are assaulted by one or several fellow inmates, often with the complicity of corrections staff. Survivors of prisoner rape are frequently marked by other inmates as targets for further attacks.<sup>15</sup> The abuse can be relentless, sometimes occurring on a daily basis for weeks, months, or even years. Gang rapes

are especially brutal, and can result in permanent injury or death.<sup>16</sup>

In women's prisons and jails, male staff pose the greatest threat. Corrections officials are frequently allowed to watch female inmates when they dress, shower, and use the toilet, and many routinely engage in verbal degradation of prisoners under their supervision. Others abuse their authority by offering privileges for sexual favors, coerce intercourse with vulnerable inmates, or rape prisoners whose safety they are supposed to protect.<sup>17</sup>

Non-violent prisoners often find that the techniques they used to protect themselves on the outside are of little use behind bars. One man convicted of dealing drugs was sent to a high-security prison because he was carrying a gun when arrested. Once in prison, he found that without his gun, his small physical stature and homosexuality made him a target for prison predators. He was beaten and raped repeatedly.<sup>18</sup>

Non-violent drug offenders and other vulnerable inmates often find themselves forced into so-called protective pairing—submitting to an unwanted relationship with another, more powerful prisoner to gain protection.<sup>19</sup> Although some inmates understandably find this arrangement preferable to facing violent attacks, many report that they are forced to endure what is essentially non-consensual sex for periods of months or even years to remain relatively safe.

## The Impact of Prisoner Rape

Sexual assault behind bars has devastating physical and psychological consequences. During the beatings that frequently accompany prisoner rape,

survivors suffer injuries ranging from torn flesh to broken bones to rectal bleeding.<sup>20</sup> The physical harm suffered by survivors is often compounded by their reluctance to seek medical care after an assault for fear of ridicule or retribution.<sup>21</sup>

Rape in prison creates emotional wounds that can fester for years or even decades. In the short term, survivors often experience shock, disbelief, panic, and fear.<sup>22</sup> Long-term psychological problems, such as post-traumatic stress disorder (PTSD), anxiety, depression, exacerbation of pre-existing psychiatric disorders, and suicidal feelings, are also common.<sup>23</sup>

Adequate mental health counseling is generally unavailable, particularly for people suffering from PTSD. According to psychiatrist Terry Kupers, an expert on mental health behind bars, “[b]ecause PTSD is not on the correction department’s list of ‘major mental illnesses,’ which includes such disorders as schizophrenia and bi-polar disorder, it is often wrongly treated as undeserving of urgent attention.”<sup>24</sup>

The relationship between sexual violence and drug abuse is notable. Many survivors of rape in prison are like T.J. Parsell, who, after being gang raped in prison at the age of 17, turned to drugs and alcohol as a way to cope with the pain and trauma.<sup>25</sup> No study has documented the extent to which prisoner rape increases drug abuse. However, rape survivors in the community are more than three times more likely than non-survivors to use marijuana, six times more likely to use cocaine, and ten times more likely to use other hard drugs.<sup>26</sup> Thus, while the goal of drug enforcement policies is to reduce substance abuse, warehousing inmates in unsafe facilities may, in fact, result in increased levels of addiction.

Prisoner rape victims are especially vulnerable to sexually transmitted diseases, and risk being exposed to HIV and hepatitis, among others. The rate of confirmed AIDS cases is more than three times higher inside U.S. prisons than in American society overall.<sup>27</sup> Because inmates with non-violent drug convictions are among the most vulnerable to rape in prison, contracting HIV through sexual assault can transform a relatively short time in prison for drug possession into an un-adjudicated death sentence.

Bryson Martel is one such survivor. A crack cocaine addict who was sent to prison for writing a bad check, Mr. Martel was raped repeatedly by more than 25 inmates at an Arkansas prison. He contracted HIV, and in 2002 was diagnosed with full-blown AIDS. “It’s awful that a person would have to go in and pay that price like that,” he said. “I paid double price. That check I wrote cost me my life.”

## The Aftermath

As inmates return home, they bring their violent experiences with them. The U.S. Congress has recognized the societal violence fueled by prison violence. In the Prison Rape Elimination Act of 2003 (PREA),<sup>28</sup> the first-ever federal legislation addressing prisoner rape, Congress found that, “[p]rison rape endangers the

public safety by making brutalized inmates more likely to commit crimes when they are released.”<sup>29</sup> Additionally, Congress stated, “[p]rison rape increases the level of homicides and other violence against inmates and staff, and the risk of insurrections and riots.”<sup>30</sup>

The devastation caused by sexual assault behind bars is dramatic. Marilyn Shirley, a Texas mother who was incarcerated for conspiracy to distribute drugs, was raped by a corrections officer while a fellow officer stood watch. In her testimony before the National Prison Rape Elimination Commission, Ms. Shirley explained how this assault has continued to affect her, years after her release:

Now that I am out of prison, I am left with the devastating impacts of the rape. ... I haven’t been able to be intimate with my husband since my rape. ... I have paralyzing panic attacks. I can’t even hold my grandbaby because I’m afraid of having a panic attack and dropping her. I can’t do some of the basic things, like watch certain TV shows, or go over high freeway overpasses because I start to panic.

I have awful nightmares and sometimes I wet the bed as a result. Sometimes my husband has to come and pull me out of the closet, where I go when I have these attacks. At the request of my therapist, I wear a rubber band around my wrist so that I can ‘snap’ myself back to reality when I have panic attacks. I’m also on five different medications for these conditions.

And, although my boss was very understanding about my situation, it got to a point where I could not work anymore. So I am now unable to work.<sup>31</sup>

Congress found that, “[p]rison rape endangers the public safety by making brutalized inmates more likely to commit crimes when they are released.”



## Testimony: Jackie Tate

In Sacramento, the deputies were letting inmates into my cell to have sex with me against my will. The first time it happened, I tried to tell the inmate no. He showed me some autopsy photos. He said, 'This is what happens to people who fuck with me.'

[T]he deputies were letting inmates into my cell to have sex with me against my will.

I ended up submitting. I did what he told me to do. I orally copulated him, and he sodomized me. Thirty or forty minutes later, the deputy came onto the speaker and asked him if he was done. He said, 'I'm done.' The door clicked and let him out.

They must have let 12 or 14 inmates into my cell to have sex. One day, I said to a deputy, 'If you're going to make me do this, could I at least have some condoms so I don't get AIDS?' He told me to shut the fuck up. The next day, he came in and threw 15 condoms at me.

Where I am now, it's just as bad. They have me in general population. I've asked over and over to be put on the unit with the gay and transgender inmates, but I always get denied.

In September 2004, it was so crowded here that they had us sleeping on pads on the floor of the day room. The inmate on the next pad over told me to come to the shower with him, or he was going to slice me. I was afraid, so I went with him. He was fucking me in the

shower when a deputy walked by. He just started laughing.

Later, they moved me to a cell, and I was so happy, because I thought I had escaped this inmate. Then they moved him into the cell with me. He did nothing but beat me and rape me. When I finally got out of there, I had two black eyes that were completely closed up. I didn't deserve this.

In September 2005, I was put into a 'protective custody' tank with five or six other inmates. Two of them jumped me right away. They both made me suck them off. The deputy walked by and saw me fighting and struggling with them, but he didn't do anything.

The next day, the deputy made jokes about it. He asked me how much I charge for that.

Gay people, transgender people in this jail—they put us in compromising positions. They chain us to 12 inmates and throw us in the back of a van with no supervision. People get dragged into bathrooms. One of my friends got dragged into a bathroom—she walks with a walker now.

The deputies call me names—they call me 'it,' and 'he/she,' and 'punk', and 'faggot'. They whistle at me in the shower. They come to my cell door asking to see my breasts.

Sometimes I want to die. I'm scared to close my eyes at night.

Sometimes I want to die.  
I'm scared to close my eyes  
at night.



**Jackie Tate is a 39-year-old transgender woman who is currently being held in a San Bernardino, California county jail. While incarcerated on a probation violation in 1999, she wrote a threatening letter to the governor of California. She was found not guilty by reason of mental defect and was committed to a mental hospital in 2003. A man who visited her there was found to be in possession of marijuana, and Ms. Tate was charged with smuggling drugs into a correctional facility, even though the drugs were not intended for her and the two never made contact.**





***Darryl Barnett is a 39-year-old Texas man serving a nine-year sentence for drug possession. His drug use began at 13, when his uncles introduced him to alcohol and marijuana. By the age of 16, he was injecting amphetamines. He began stealing from stores and committing credit card fraud to support his drug habit. His trouble with the law began at 16, when he was arrested for receiving stolen property. At 18, he was convicted of fraud and sentenced to three years in prison. He bounced in and out of prison on parole violations for the next 15 years before being convicted of a new drug possession charge in 2003.***

### Testimony: Darryl Barnett

**W**hen I first went to prison, I was approached—I was one of the youngest inmates at the prison. The majority of the inmates there were doing life sentences. At that particular time, a lot of people were getting viciously and seriously hurt in the Texas prison system and even killed.

I was scared. I was 18 years old. So I felt my only opportunity to survive was to pay for protection so I wouldn't get seriously hurt or killed. I paid them my commissary as a means to protect myself so I could eventually at some point get out of prison.

It helped me get out. But then I violated my parole and they sent me back to prison. I was being pressured to perform sexual acts or to pay for protection. I refused to pay for protection. I thought they were bluffing.

One particular evening, when they opened the cell doors to allow the inmates to come out to the dining hall, I stayed in my cell to eat food from the commissary. When the officers opened my cell door, a muscle-built guy who was doing a life sentence for aggravated rape came into my cell and tried to get me to jack him off. When I refused, he hit me four or five times in my sternum, my ribs, and my kidneys. Then, he raped me in the cell.

I did make an attempt to fight back, but I was no match for this guy. I weighed about 165. He was about an inch or two taller than me and I'd say he weighed about 220 or 230 pounds.

He gave me body blows that literally put me to the ground. He grabbed me and put his arms around me and slammed me up against the bars and forced me down and forced my pants off of me. At that point, my sternum was cracked and my ribs were bruised. I felt like there was a possibility that he might kill me if I resisted. I'd seen what he had done to me at first when I resisted. I was

in a lot of pain and I was scared.

A few hours later, I took an overdose of several hundred Tylenol. I refused to allow them to pump my stomach. They took me to the hospital. They forced me—there were four or five officers that held me down while the doctor gave me some kind of injection to make me go to sleep. They pumped my stomach while I was unconscious.

The next day I woke up in intensive care. I felt really humiliated and disrespected and embarrassed. I felt anger. I was still suicidal. I told the doctor what had happened. The officers that were at the hospital were making derogatory comments like, 'Well, he should have fought back if he didn't want to get raped.'

The doctor had me transferred to a psychiatric prison. I went before this committee which consisted of a psychiatrist and two psychologists. They listen to your complaint and determine if they are going to admit you into the psychiatric prison hospital or not. They decided not to admit me because they thought that I was just making this up to get attention or to get off that particular prison unit. They discharged me from what they call observation crisis management and transferred me back to the Huntsville unit.

At that point, I was pretty determined to pursue my suicidal thoughts. Once I got to the Huntsville unit and they placed me in a cell, I took some razor blades and I tried to cut an artery in my neck. I cut several times.

I intended to die. It was just too humiliating. It just hurt too much to have to deal with it, not being able to get no counseling, not being able to have anybody on the inside to help me deal with it and being turned down by people who had the position and the ability to help me. It just hurt.

An inmate who was sweeping in front of

I intended to die. It was just too humiliating. It just hurt too much to have to deal with it, not being able to get no counseling, not being able to have anybody on the inside to help me deal with it and being turned down by people who had the position and the ability to help me.

my cell saw me sitting on the commode with razor blades in my hand just slicing my neck up.

Once again, they transferred me back to the psychiatric prison hospital and I saw the same doctor. He once again claimed that I was doing this with the intention of trying to get off that particular unit. He thought that I was faking it or whatever even though he had seen with his own eyes that I had stitches in my neck and my neck was all cut up.

I feel at times they have given me a life sentence for being addicted to drugs. I definitely want drug treatment because I acknowledge and admit that I have a serious problem.

I feel like I'm trapped. I feel pressured. I've only been here in this unit for two weeks, but I've been approached. I've been approached about fighting to see if I'm going to stay down. When confrontations happen, I always cut it off. I'll try to walk away, even though it gives the predators, the violent

inmates, reason to believe that I'm weak.

Inmates who are in prison for check writing, possession of drugs—these ain't violent offenders. These offenders that have drug charges and seem not to be a violent type of inmate or who are not in here on a violent offense, they should not be housed with these other inmates who have nothing to look forward to besides preying on inmates like me, because they are never getting out. These violent offenders are doing serious sentences, life sentences, 99-year sentences, 65-year sentences.

One of the things that they are notorious for in Texas prisons is when an inmate like me makes a complaint to the administration about certain inmates pressuring me, they lock us up in a solitary confinement cell and pull the individuals that we named out of their cell blocks and say, 'Hey, this inmate has made complaints about you that you are trying to pressure him in doing this and doing that.'

They expect those inmates to be truthful. Of course, the inmates are going to deny it. So they pull us out of solitary and put us right back over there with them. Then we are approached by these individuals and we're beat up or we're forced to have to pay our commissary to them.

I've tried to kill myself a couple of times since then. I have never been in the same frame of mind since the incident. It has changed me dramatically. It has changed me as far as how I feel about myself. It has changed the way I interact with people. I've been holding a lot of animosity in me for a long time since this happened. I don't trust nobody.

This happens all the time in here every day to people like me. It's just out of hand.



**Robin McArdle is a 41-year-old Michigan mother of two from an upper-middle-class home. She was molested by a family member from age six to 12. She began to use powdered cocaine at 19, and quickly turned to freebasing and then crack cocaine. She was sent to prison for the first time at 26 for possession of stolen goods. She went in and out of prison for 11 years, and was sexually abused by corrections officials on two separate occasions.**

### Testimony: Robin McArdle

In 1991, I was on a paint crew. It was a big wide spread—it was miles long, and they would drop certain prisoners off in one spot and tell them to paint.

I was the last one, and the guard drove me outside the work area and told me that if I didn't give him oral sex, he would report me as an escapee.

I did what I was told to do, because I wanted to go home. This was the first time I was in prison, and I didn't know anything. I performed oral sex because I didn't want to be charged with escape. My mind was somewhere else the whole time. When I got back to my unit, I cried and cried.

The next morning, I refused to go to work—I couldn't go back out there again. I was afraid it was going to happen again. I was afraid it was going to happen every day. I was disciplined because I refused to go back out and work on his crew.

Three years later, in 1994, an officer would come into my room and he would grab my breast and grab my ass and put his hands on my pussy and squeeze. He did this every day for about a week, until one day he went down in my pants and was rubbing and grinding himself against my ass with his privates. He inserted his fingers in me. That was the final straw.

I just couldn't take it anymore, and we fought. A witness came forward. I wasn't going to say anything because he kept telling me, 'You are the one locked up. It is my word against yours.' I was afraid. An officer shook down my cell and he found my journal and he read it. An inspector called me down to the control center. Eventually, I told them what happened.

They sexually assaulted the women all the time coming out of chow hall. That was their favorite pat down. They would grab your

boob. Every time I went to chow—breakfast, lunch or dinner—I got singled out to be shook down and my breasts were always squeezed and my nipples pinched. It happened every time I went to chow hall for years.

There was a deputy who used to sell drugs to the girls and then threaten to go to the parole board if they didn't suck his dick.

The officers would walk in on the girls when they were taking showers because there were no curtains. They would stand there and watch girls in the shower. It made you feel like a piece of meat.

There was a deputy who used to sell drugs to the girls and then threaten to go to the parole board if they didn't suck his dick. He knew if you were dirty, and if he turned you in, you would have to spend another year in prison.

There was a woman who was two doors down from me—I used to see an officer go into her room and shut the door behind him. They had sex in her room—she would tell me about it later.

For me, being sexually abused as a child made me an easy target. It is in our file, and the guards can see that. We are easy targets because we learn from a young age to keep our mouths shut. There are repercussions to telling. It is brainwashed into us.

It was almost the norm because of how I grew up. I just felt like 'Well, here comes another one.' It's hard to explain it unless you have been there. I have known it all my life

since I was six years old. I just reverted back to being totally numb. It just made me feel like I used to—like I wanted to use more drugs to forget about it.

In prison, you can't speak up about being abused. They get you in trouble, and they call you a liar, and your grievance disappears. The officers retaliate. They write you tickets. You get charged with major misconduct. If you get written up with major misconduct too many times, you don't go home.

Eventually, I testified in a lawsuit, and after that, the retaliation was really bad. They even told me, 'You aren't going home if we can help it.' One of the officers threatened me over the loudspeaker. 'You are never leaving this prison. I am seeing to it that you are never getting out of here.' He was telling me to watch my back, because he was coming for me. That's how blatant they were. He didn't care who heard, because there was nobody to stop them. Nobody believed us.

Almost everybody was there on drug charges. Probably 95 percent were drug users and doing time on drug charges. It is all related to using drugs.

I feel there is a better alternative than locking up drug users. It just makes it worse. It is incarceration without rehabilitation. They are not giving them understanding as to why they do what they do. That's what I needed—I needed to know why I did what I did. Why did I need drugs? I finally found that out, but it wasn't through incarceration.

In prison, you can't speak up about being abused. They get you in trouble, and they call you a liar, and your grievance disappears.

The prisons are so overcrowded, and the officers take advantage of that. They see all your weaknesses. Some of them are predators.

The gym is where I slept in and there were 120 women in there. There is no privacy. There are no partitions. There are no doors. So where do you change your clothes? What happens when you kick the covers off in bed at night? You have got officers walking by with flashlights looking at you.

Being locked up in that kind of environment was devastating—emotionally, physically, and mentally draining. It takes its toll.

I am angry, very angry, because they didn't have a right to do that to me. They had no right to take my innermost feelings. It really makes me angry that they feel like they can just do whatever they want.

It was like I was in a stable and I was their animal to do whatever they chose to do with it because they own it, and because they can. I have feelings. I have emotions. I am a person. And they took all of that, and they didn't care. They didn't care.

***“Oliver Michaels” is a 45-year-old man from Kansas City, Kansas, who is serving approximately 12 years for possessing marijuana and methamphetamine and selling cocaine.***

**Testimony: Oliver Michaels**

I was in medium custody in a pod of 16 people—the locks had been removed as ordered by the warden. Aryan gang members resided in this 16-man pod; two of them were top member enforcers. The inmate who attacked me was and still is the top guy. I have a shaved head but I am not a neo-Nazi.

I was attacked in my sleep around 11:30 at night. I woke with an inmate choking me. Then he repeatedly hit me in the face until I had two gashes under my eyes. He left and came back with a toilet brush in his hand. He had already pulled down my pants. He beat my penis and testicles with the bristle end of the toilet brush and then tried ramming the

handle in my anus. I was then coherent and tried to fight back. They left only to come back and five of them took turns telling me what would happen if I told on them and what would happen to members of my family on the outside.

I was extorted by this group for three months and forced into fighting someone that was a group member.

Mentally, I cannot be in a prison multi-dwelling. I have to be in a maximum lock-up cell. I suffer from anxiety, depression, panic attacks and OCD [obsessive-compulsive disorder]. I have to fight constantly with DOC [Department of Corrections] to keep a max cell.

[F]ive of them took turns telling me what would happen if I told on them and what would happen to members of my family on the outside.

**Testimony: John Cooks**

When I entered protective custody, I was placed in a three-man room, with only one other inmate in it. On January 1, 2006, he told me that I was going to be his ‘New Year’s present.’ Even though he was double my weight, I thought he was just joking. My mind was just on going home.

Later on that day, he grabbed me by the throat and threatened to kill me if I didn’t give him oral sex. I was so scared, I started crying and begging and pleading with him. But, he wouldn’t stop. I tried telling the CO [Corrections Officer] but he wouldn’t allow

me to go near the door. So, when he went to get a check-up, I told the CO what happened. And that’s when I got placed in the SHU [segregated housing unit].

Emotionally, I have been so stressed out that I have tried to kill myself several times. I am on some medication for the depression, but the pain never goes away.

Just because I’m in jail for drugs shouldn’t mean that I should be subjected to all of the things that I am going through. Rather, nobody should go through what I’ve been through and am going through.

On January 1, 2006, he told me that I was going to be his ‘New Year’s present.’



***John Cooks is serving a four-to-eight year sentence at Attica Correctional Facility in New York for attempted possession of a controlled substance.***

## Testimony: Marilyn Shirley

I was a model prisoner. I was the welder there. If they needed bars built or they needed a seclusion cage built, I did it. I joked around with all the officers, and we all got along. I trusted them.

I was asleep one night after all the head counts had already happened. Miller was the only officer on duty that night. He kicked my door open and he shined the flashlight in my face and he said 'Shirley, get up. You're wanted at the officer's station.'

I said, 'Miller what's going on? Did Doug die? Did something happen to my kids?' He said, 'Just shut up and git. Hurry up.'

We got to the officer's station, and he told me to sit down. The blinds were closed. He picked up the phone and said, 'If the Lieutenant heads over here, give me the signal.'

The next thing I knew he had pulled me to him and kissed me right on the mouth. I pushed him back and I said, 'Oh, no, this ain't happening.' His eyes completely turned to stone. He said, 'Yes, it is going to happen. Do you think you are the only one?'

He grabbed my hair and wrapped it around his hand. He already had his pants down. He was already hard. He shoved my head down on his penis until it wouldn't go any farther.

He bent my arm around and shoved my face into the wall. He started ripping my sweatpants away. He reached down there and opened me up and just shoved it in.

I was mad at first, but then I just went numb. I had been trying to talk him out of it—I said, 'You know, I just had a hysterectomy. I'm old enough to be your mom. I thought we were friends.' But he just turned to stone.

I'm thinking he's going to kill me or he's going to tell them that I assaulted him or tried to run. I'm thinking, 'I'm fixing to die.'

When he was really working me over bad, he got the signal. He must have had the volume turned up so loud on his police radio—the officer looking out for him cleared his throat over the radio.

He started freaking out. He was screaming, 'Get up, get up!' He kicked me over. He said, 'Get your pants on and get the fuck out!' He had to unlock the door and put all of his belts and handcuffs and his uniform top back on.

When he unlocked the door, he said, 'Don't try to say anything. It'll be your word against mine. Who do you think they're going to believe?'

I wanted to tell right then, but I was afraid if I did, they would ship me far away, and I wouldn't be able to see my kids. Ten thousand things were going through my head. Could I make it seven more months without anybody finding out? Should I just forget about this? Is this part of my punishment? Did I make him think that I wanted this? You start blaming yourself. You start feeling guilty yourself.

I went back to my room, where my roommates were sleeping. I put the T-shirt and the sweatpants in a bag and rolled it up like trash and shoved it up underneath my locker. I was thinking that when everyone else was gone, I would just throw them away. I lay awake all that night, just crying and trembling, looking at the wall.

I said, 'You know, I just had a hysterectomy. I'm old enough to be your mom. I thought we were friends.' But he [the officer] just turned to stone.



***Marilyn Shirley is a 49-year-old Texas mother of two and stepmother of five who was sentenced to prison along with her husband in 1998 for conspiracy to distribute drugs. The charges were brought when a customer at their auto body shop tried to pay his bill with methamphetamine. At the time, both Ms. Shirley and her husband, Doug, had been drug-free for 15 years. Neither she nor her husband were found to be in physical possession of any drugs.***



Testimony (cont'd): Marilyn Shirley

I was going to throw the sweatpants away, but I started thinking, 'There's men's semen on my sweatpants. This is a women's prison. That's going to be the proof. I've got him red-handed.'

I kept the sweatpants until the day I got released from prison seven months later, and then I reported the rape. My probation officer took me to a rape crisis center. The FBI came and picked me up, and took me to the federal building in Dallas. They gave me a lie detector test, which I passed.

It took a long time for the sweatpants to come back from the FBI crime lab. The DNA matched him. The jury convicted him of aggravated assault, aggravated sodomy, sexual abuse of a ward of the court, and abusing and raping an inmate on federal property. He got 12 years. He is serving his time now.

I sued Miller for damages, and a jury awarded me \$4 million. I haven't seen a

penny. Miller doesn't have \$4 million.

It's not right that they're putting so many people in prison for drugs. Sometimes there aren't even any drugs found, and they put people in for conspiracy. There were no drugs found in my case. They never could connect me with any type of drugs.

Most of the women there are doing time because of a boyfriend. They won't testify against their boyfriends so they end up getting 10, 15, 25 years on drug charges all because they're being stubborn. They love their man so much.

Half of the women in there were there on conspiracy charges because they were somebody's girlfriend or husband. There are older women in there in wheelchairs that look like grandmothers. You ask them what they're in for, and they say, 'It was my house that my son dealt drugs out of. They tied me up in this conspiracy, and I got 25 years.'

**B**efore the actual rape, I fought the two individuals nearly to the death. I continuously screamed for help. I begged at the top of my lungs for someone to please help me. I begged them to please stop and please don't do this. Eventually, they physically overpowered me and threw me on the bed. While the knife was at my neck, one penetrated me while the other one held my legs. I struggled until I was initially penetrated; after that I must have gone into shock and went completely limp and numb. I felt like I was hovering over my body, while they violated me. After the first individual finished, the other individual raped me while the other one held my legs. After they were both finished, the initiator urinated on me. The initiator commenced to rape me again. At which point, I came to and started fighting back. That was when I was cut by the knife. While I struggled, I heard one say, 'Hit the Bitch ... let me go again.' I was able to free myself and escape the room.

The aftermath felt by a victim of rape is indescribable. I have not and will never be the same person I was before that horrific incident. To actually beg and plead with an individual not to hurt you, to plead with someone to not violate you, and to actually beg for your life is very traumatizing. Everyday, I look into the mirror to do everyday things like brush my hair or teeth, and I see the scar on my neck and I flash back to that incident. I have been haunted by that incident. There is not a night that goes by that I don't have a nightmare where I relive that horrific incident.

To actually beg and plead with an individual not to hurt you, to plead with someone to not violate you, and to actually beg for your life is very traumatizing.

The individual [who raped me] was granted parole to the very area that I resided in. The thing that haunted me the most was [his] last statement to me as I was leaving [the prison] to be transferred. He yelled this statement from segregation for the whole recreation yard to hear, as well as me. He stated, 'Ha, Ha, Bitch, I see they are transferring you!! ... This ain't over, Bitch!! This is far from over!! I'll see you on the street!! Don't forget that I'm from around the way, Bitch!! We'll finish this on the Bricks!!' When I close my eyes at night I hear this in my head and in my nightmares.

I then fell into a serious state of depression and paranoia. The nightmares and flashbacks were becoming more intense and frequent. I was having many intense mood swings. I would have uncontrollable fits of rage instantaneously. I was highly emotional and on constant edge. My sleeping and eating habits seriously diminished, so I was starting to suffer from sleep deprivation. I reverted back to all the symptoms that I had right after the rape—like I had a relapse. The hallucinations of seeing the two individuals that raped me, I would sometimes hear their voices where they would be laughing at me. It was basically as if I was reliving that event all over again.

All of the progress that I made trying to heal and forget about the rape was lost the day my perpetrator was released to my hometown.

I wish I could hear someone say that they are sorry for what I had to go through, and what I went through, and continue to go through, because no one should have to go through what I went through.

***"Daniel Sanford" was convicted in federal court of mail fraud that was motivated by his drug addiction. He was sentenced to three years in prison and three years supervised release. He was re-incarcerated during his supervised release because he tested positive for drug use.***



# The U.S. War on Drugs

## Background

Although government efforts to control drug use date back to the late 19<sup>th</sup> century, drug control initiatives became particularly zealous in the second half of the 20<sup>th</sup> century. The war on drugs was formally declared by Richard Nixon early in his first term as President.<sup>32</sup> Congress followed suit in 1970 when it passed the Comprehensive Drug Abuse Prevention and Control Act.<sup>33</sup> This Act centralized federal drug laws and placed these laws under the federal government's expansive Commerce Clause power, thereby giving the Attorney General enforcement power over virtually all narcotics and other dangerous drugs. The Drug Enforcement Administration (DEA) was established in 1973.<sup>34</sup>

While, in March 1973, Nixon insisted that “drug abuse was still public enemy number one,”<sup>35</sup> later that year he declared that “[w]e have turned the corner on drug addiction in the United States.”<sup>36</sup> The Ford and Carter administrations followed

this “success” with toned-down drug crime rhetoric.<sup>37</sup> However, President Ronald Reagan took up the Nixon drumbeat in the 1980s, when crack cocaine became visible, particularly in poor and minority communities.<sup>38</sup> As Nancy Reagan urged schoolchildren to “Just Say No” to drugs,<sup>39</sup> Congress enacted legislation that included mandatory minimum sentences for drug offenses,<sup>40</sup> and created federal sentencing guidelines that limited judicial discretion in criminal cases.<sup>41</sup>

While the federal government started the war on drugs, states and counties filled its warrior ranks. In the 1990s, drug arrest and imprisonment rates at the local level skyrocketed. A model of law enforcement developed, most notably in New York City, in which public order offenses, including minor drug offenses, were heavily prosecuted and punished under the theory that combating minor crimes will stave off more serious offenses.<sup>42</sup> Among defendants convicted of a drug offense, the proportion sentenced to prison increased from 79 percent in

1988 to 92 percent in 2003.<sup>43</sup> Increased enforcement was particularly notable for marijuana. Since 1996, there have been more drug arrests related to marijuana than any other substance.<sup>44</sup> In 2004, nearly 40 percent of all drug arrests were for possession of marijuana, and another five percent were for its manufacture or sale.<sup>45</sup> During that year, marijuana arrests outnumbered arrests for all violent crimes combined.<sup>46</sup>

## Harsh Sentencing Laws

As the political rhetoric initiated a war on drugs, federal and state legislators further criminalized addiction by imposing harsh penalties for drug offenses. The length of sentences generally increased over the past 20 years and jurisdictions enacted stringent laws such as mandatory minimum sentences, “truth-in-sentencing” legislation and “three strikes and you’re out” initiatives.

### Mandatory Minimum Sentences

Mandatory minimum sentences, as the name suggests, require judges to impose sentences of at least a certain length upon conviction. New York developed the first mandatory minimum sentences in 1973 with its Rockefeller Drug Laws. Under these laws, drug possession, particularly in large quantities, was punished as harshly as a violent crime.<sup>47</sup> Since the enactment of the Rockefeller Drug Laws, mandatory minimum sentencing schemes have become commonplace nationwide, particularly for drug and handgun offenses. By 1994, all 50 states and the federal government had adopted at least

one mandatory minimum sentencing provision.<sup>48</sup> New York’s Rockefeller Drug Laws and Michigan’s so-called “650 lifer” statute (requiring a life sentence for possession of more than 650 grams of a controlled substance) were among the harshest—imposing life sentences even for some first-time possession offenses.<sup>49</sup> Notably, both states have revised their laws and acknowledged that this sentencing experiment failed.<sup>50</sup> While the penalties have lessened, lengthy prison terms for non-violent drug offenses are still required in both states.

Mandatory minimum sentences have overwhelmed prisons with people convicted of non-violent drug offenses. Even proponents of harsh sentences for drug violations acknowledge that these laws have dramatically increased incarceration rates.<sup>51</sup> Without the judicial discretion to factor in an individual’s history of abuse, parental responsibilities, and community ties, even first-time, non-violent drug offenders are required to serve lengthy sentences, often without treatment or regard for the welfare of their children. As a result, a number of federal judges have publicly expressed their objection to mandatory sentencing, especially in drug cases,<sup>52</sup> with a few senior judges refusing to accept such cases on their dockets.<sup>53</sup>

Mandatory minimum sentences typically lead to the incarceration of inmates who are at great risk for prisoner rape. Leah Atkinson is a case in point. After developing an addiction to a prescribed

Mandatory minimum sentences have overwhelmed prisons with people convicted of non-violent drug offenses.

painkiller, she began trafficking cocaine for a street drug dealer. With no history of violence, and no prior convictions, she was sentenced under the federal sentencing guidelines for conspiracy to sell drugs. While incarcerated, Ms. Atkinson was sexually assaulted by one corrections officer and harassed by several others. After pursuing administrative remedies for this mistreatment, Ms. Atkinson became a target for humiliation, threats, and insults.

### “Truth-in-Sentencing” Provisions

Similar to mandatory minimum sentences, “truth-in-sentencing” laws have lengthened prison terms without regard for individual accomplishments and rehabilitation. As an incentive for good behavior and a means to minimize overcrowding, prison terms have historically been shortened through work release, parole, and other credits for inmates who complete programs and avoid disciplinary problems. However, under truth-in-sentencing provisions, inmates are now required to serve a larger portion of their sentences (typically 85 percent) before being considered for release.

In 1986, the federal government abolished parole and probation for most drug offenses, thereby ensuring that federal prisoners serve more time for these crimes.<sup>54</sup> As part of the Violent Crime Control and Law Enforcement Act of 1994,<sup>55</sup> Congress encouraged states to do the same by offering funds for prison construction to states that adopted laws requiring prisoners with prior violent or serious drug convictions to serve at least 85 percent of their sentences. While five states had truth-in-sentencing laws before the federal grant program, by 1998, 27

states and the District of Columbia had provisions that met the federal grant criteria and 13 more states had developed other truth-in-sentencing laws.<sup>56</sup>

While primarily focused on prison terms for inmates with violent convictions, truth-in-sentencing laws are often applied to drug offenses as well. In Arizona, the state’s prison population has increased by 65 percent since it passed a truth-in-sentencing law in 1993.<sup>57</sup> In January 2004, Arizona’s prisons were overstretched to 31,286 inmates—4,349 above capacity—20 percent of whom were incarcerated on drug charges, and nearly three-fifths of whom were non-violent offenders.<sup>58</sup>

### “Three Strikes and You’re Out” Laws

America’s incarceration fervor is also apparent in the adoption of “three strikes and you’re out” legislation. Three strikes laws swept the nation in the early 1990s, when public fear of violent crime and criminals was at a crest. Under these laws, individuals with two or more prior convictions are subject to longer sentences. Often, the third conviction will result in an automatic life sentence. Altogether, 23 states and the federal government have enacted three strikes laws.

The most draconian of these laws was passed in California, where any serious felony—including any felony drug offense or non-violent burglary—counts as a strike. After the first strike, any subsequent felony conviction results in double the sentence. A third felony brings a sentence of 25-years-to-life.<sup>59</sup> Because its three strikes law is so broad, California incarcerates four times as many people under this law as all other states with three strikes legislation combined.<sup>60</sup> While

enacted with the promise that it would put violent repeat felons away for life, more than half of California prisoners serving sentences under the three strikes law were convicted of non-violent offenses and 23 percent, nearly 10,000 people, were sentenced for drug offenses.<sup>61</sup>

Troy Bishop is serving a 25-years-to-life sentence under Texas's three strikes law. Having served shorter sentences for larceny offenses related to his drug addiction, Mr. Bishop's current sentence was for cocaine possession. Placed in a cell with a violent offender, Mr. Bishop was repeatedly raped by his cell mate. After reporting the abuse to a corrections officer, who did nothing, Mr. Bishop made a knife and showed it to an officer so that he could be placed in administrative segregation.

## Questioning the Drug War

For all the effort poured into the current drug enforcement regime, the cost/benefit ratio is rather dubious. In 2005, the federal government reportedly spent \$7.6 billion on drug interdiction and federal drug law enforcement, and only \$5 billion on prevention and treatment.<sup>62</sup> These figures do not include all of the federal money spent on incarceration for drug sentences. From 1982 to 2003, total justice spending at the federal, state, and local levels increased more than 400 percent, with corrections accounting for the largest increase.<sup>63</sup>

This increased spending resulted in many needless minor drug arrests. Of the 734,000 people arrested for marijuana offenses in 2000, only about 41,000—six percent—were convicted of a felony.<sup>64</sup>

From 1982 to 2003, total justice spending at the federal, state, and local levels increased more than 400 percent, with corrections accounting for the largest increase.

Many of the others spent hours, days, weeks or months in pre-trial detention, where they risked being victimized by sexual predators before being released.

The zeal to prosecute drug-related crime sweeps up individuals barely connected to the drug trade and subjects them to a dangerous prison environment and a lifelong classification as a criminal. Many of those convicted of drug offenses have only a peripheral connection with the narcotics trade, if any at all. For example, a possession conviction can arise from merely being in a car or room where drugs are found.<sup>65</sup> Chance Martin was arrested when he was 18 years old for drugs found in the lobby of a hotel where he was attending a party. Young, non-violent, and new to the prison culture, Mr. Martin was brutally gang raped by six inmates.

The harsh sentencing laws developed under the war on drugs disproportionately impact the most vulnerable, non-violent low-level offenders. Without judicial discretion at sentencing, the prosecutors' power to decide what offense to charge takes on increased significance. As the Seventh Circuit Court of Appeals recognized in *United States v. Anthony Brigham*, mandatory minimum sentencing laws create an inverted sentencing scheme:

The 'mandatory' minimum is mandatory only from the perspective of judges. To the parties, the sentence is negotiable. ... A prosecutor may charge a lesser crime, if he offers something in return. Let's make a deal. Does the participant have valuable information; can he offer other assistance?

The more serious the defendant's crimes, the lower the sentence—because the greater his wrongs, the more information and assistance he has to offer to a prosecutor. Discounts for the top dogs have the virtue of necessity, because what makes the post-discount sentencing structure topsyturvy is the mandatory minimum, binding only for the hangers on.<sup>66</sup>

Some of the most severe sentences are imposed on spouses or girlfriends of drug dealers who are pressured to transport or sell drugs for their partners. At the bottom rung of the drug trade, these non-violent individuals lack any bargaining power to obtain a favorable plea offer from the prosecution. As a result, they are subject to lengthy mandatory minimum sentences in dangerous facilities.<sup>67</sup>

The war on drugs has continued, despite signs that it is increasingly unpopular with the American public. One study in 2001 found that nearly three-quarters of Americans surveyed viewed the drug war as a losing cause.<sup>68</sup> In 2002, a majority of Americans thought that mandatory sentencing laws should be eliminated.<sup>69</sup> A November 2005 Gallup poll confirmed that most Americans do not believe that marijuana should be treated as a criminal matter.<sup>70</sup>

As the pendulum of public opinion about today's drug enforcement policies begins to swing, more and more Americans are also recognizing drug addiction as a disease that calls for compassionate

treatment. In a 2001 survey, 63 percent of Americans described drug abuse as a medical problem to be addressed with counseling and treatment, while only 31 percent considered it a serious crime that should be handled by the courts and prison system.<sup>71</sup>

The enthusiasm for U.S. drug enforcement policies has further eroded on both ends of the political spectrum, particularly as overcrowding and the cost of building new prisons gain attention. Editors at the conservative *The National Review* concluded, "that the war on drugs has failed, that it is diverting intelligent energy away from how to deal with the problem of addiction, that it is wasting our resources, and that it is encouraging civil, judicial, and penal procedures associated with police states."<sup>72</sup> Judge Richard A. Posner, a Reagan appointee to the Seventh Circuit Court of Appeals, similarly concluded that the drug war was lost just before he became Chief Judge of that court in 1993.<sup>73</sup> More than 500 economists, including Nobel laureates Dr. Milton Friedman, Dr. George Akerlof, and Dr. Vernon Smith, endorsed a report calling for legalization and taxation of marijuana, essentially arguing that it should be regulated similar to alcoholic beverages.<sup>74</sup>

Despite agreement among many Americans—including politicians, law enforcement professionals, and pundits—that current drug enforcement laws are a waste of national resources, police officers and prosecutors continue zealously to pursue the war on drugs. The price of this war goes beyond dollars and cents, however. The cost is ultimately measured in the war's human toll, when non-violent offenders fall prey to a culture of brutality behind bars.



**T**hree weeks into my prison sentence, my mother visited me at Atwood Federal Prison Camp in Kentucky. During the visit, I began to shiver, and my mother wrapped her shawl around me. The officer supervising the visiting room told me that I can never wear clothes brought by a visitor. She instructed me to go into a tool room for a visual search.

I went into the tool room and started to strip, as the officer instructed. My disability prevented me from taking my clothes off quickly. Clearly frustrated with my limitations, the officer put on rubber gloves and patted me down by running the palms of her hands over my breasts and touching my nipples. Her rubber gloves pulled out pubic hair as she “patted down” my genitals.

I was shocked by her aggressive actions, and asked her why she was acting that way. She told me to be quiet. I pleaded with her to unlock the door and let me out of the tool room. Finally satisfied with the search, she allowed me to return to the visiting room.

When the visit ended, it was time to be searched again by the same officer. I told the officer that although I was not refusing to be searched, I would like to have another officer be present. I was given a ticket for disobeying a direct order.

I reported the incident through the administrative remedy process. By doing so, I learned that nine other women had filed complaints against the officer who strip-searched me. She was suspended during the month of

Since I began pursuing administrative remedies, I have become a target for humiliation and harassment...

October 2002, and my strip search took place on the first weekend she returned to work.

Another officer made sexual advances toward me in April 2003. When I rejected his advances, he became very angry and aggressive. When I witnessed him in a sexually compromising position with another inmate, he began threatening me and following me everywhere.

Since I began pursuing administrative remedies, I have become a target for humiliation and harassment, including verbal threats and aggressive insults. I was denied visits for two years, and when I tried to appeal, I was moved to segregation. The final retaliation was a transfer to a high-security prison in Danbury, Connecticut—more than 1,000 miles from home.

This prison is dirty, dangerous, and horribly overcrowded—many inmates are forced to sleep on the floor upon arrival. Danbury’s reputation for sexual misconduct is even worse than Atwood’s—I am being subjected to it daily. I never knew such treatment existed in our country—especially sanctioned by the government. I have done nothing to deserve this abuse, and I am powerless to stop it.

I never knew such treatment existed in our country—especially sanctioned by the government.



**Leah Atkinson is a 41-year-old Kentucky woman who grew up in a deeply religious home. A violinist and former beauty pageant contestant, she was very active in her church’s youth group. After graduating from college with dual degrees in business and education, she worked as a fitness trainer and substitute teacher. She was disabled by a 1998 snowmobile accident, and became addicted to the powerful painkiller Oxycontin. After her medical benefits ran out, she started obtaining the drug from a street dealer, and eventually began trafficking cocaine for him. In 2002, she was sentenced to seven years in federal prison for conspiracy to distribute cocaine.**



***Troy Bishop is a 39-year-old man who grew up in a working-class home in Illinois. He began smoking marijuana at age nine or ten and continued to use marijuana and barbiturates as a way to self-medicate his epilepsy. He began using cocaine at 16 and later injected heroin and cocaine. He started stealing to support his habit, and served several short jail and prison sentences. In 1993, he was sentenced to 25 years in prison for possession of cocaine under Texas' habitual offender law.***

In 1992, I was put in the same cell with [someone convicted of murder]. They made a movie on this guy, and he made me watch it one night. After I watched this movie, I did not want to be in his cell no more.

We were in the cell one night and he said, 'Hey, Troy, have you ever done it with a guy?' I said, 'No way, what do you think I am?' He said, 'This is another world. Nobody really knows what we do in here. I've been with punks before, and no one knows it.' I said, 'Well, I do now, because you just told me. It must not be too much of a secret.'

He gave me this look, and I got scared, because I had a catheter in my heart—I had osteomyelitis from shooting drugs. I also had a bone infection in my ulna—I had these metal rods sticking out of my arm. He said, 'Those can come out real easy.'

I picked up my Bible—I was thinking, 'God help me. Please.' I had my Bible, and he said, 'That isn't going to help you.' He knocked it on the floor. He told me to get on my stomach on the floor. I did what he told me, and he put it inside me.

I did what he wanted, but then he wanted me to suck his dick. I said, 'No, I don't want to do that. Please don't make me do that.' He said, 'OK, will you let all of my homeboys do you like this?' I said yes.

I said that so he wouldn't beat me up. The next day, I went and told the sergeant, and he said, 'What are you doing here, anyway? You shouldn't be over here with these guys.' All those guys in that whole wing were life sentences or came off death row. They all killed people. They were murderers and rapists. They were all gang members.

I don't know what I was doing there. I guess they put me there because I was complaining about the other unit, so they said, 'Put him here and see how long he lasts.'

I was in that cell with him for a week, and it went on all that week. It happened every night, and during the day when he was working in laundry he would come and tell me to put the towel up and close the door and tell his homeboys to watch out for him. He let two of his homeboys do it too.

I told the sergeant that [my cellmate] was in there raping me. The sergeant did not want to hear me, so I told the chaplain that I was being raped by my cellmate. Nothing happened. I told another inmate that my cellmate was forcing me to have sex, and he said, 'If you're not doing anything about it, you must want it.'

I was so mad at myself because I did not fight the guy. I should have hit him in his mouth and been a man. I was sick, and I used that as an excuse.

I wasn't raised to be a fighter. I was raised in a 'Leave it to Beaver' neighborhood in a nice little town where everyone keeps their lawns nice. I never learned how to fight. One day [my cellmate] and those other guys beat me up so bad my nose cracked and I couldn't breathe any more.

I never thought this would happen to me, because I considered myself a badass, but these guys were hard core. They can cut your throat and watch you bleed and sit there and eat a sandwich.

The only way I could get out of there was to rip out my catheter and the rods in my

I feel like I'm less than a man. I get reminded every day by these inmates and officers—they tell me that I'm a whore, that I'm a punk.

arm. I ripped them out, and blood started squirting everywhere, and they took me to the hospital. A little later, they let me out early because the prison was so overcrowded.

I kept thinking about what happened in the cell with [my cellmate]. I was doing drugs as soon as I got out. I got busted again within six months, and before long I was back in prison.

When I went back in, everyone knew what happened before. One day I was in the day room and these guys came in and held a welding rod to my throat. They said, 'You're either going to ride, or you're going to pay us to protect you.' I told the sergeant about it, and he said I should make an equalizer. He meant I should make a knife.

I made a stainless-steel double-blade knife out of a receptacle cover. It was a seven-inch blade and when they came back, I came out of my cell with it—I did that so I could be seen with it. Ever since then, for seven years, I've been in administrative segregation.

I had to do something. It was either me or them. Otherwise, I knew it was never going to stop.

I still have dreams about this crap. I wake up stressed out—I feel like I have to get out of my cell, because the walls are closing in. My head is full of pressure. I don't have a cellmate, so I don't have to worry about him getting me, but I'm still living this nightmare of these guys beating up on me. That's when I start cutting my arms.

The prison system is a warehouse with a revolving door, because there is no rehabilitation. They don't give us any help. I have sat there for seven years, and I've gotten no help at all.

Every time I cut myself real bad they send me off for a psychiatric evaluation. They ask me what's wrong, and I tell them again that I was raped. They say there is no medicine to cure that, and I need to get over it. They say I have an anger problem and I need to watch my temper.

I feel like I'm less than a man. I get reminded every day by these inmates and officers—they tell me that I'm a whore, that I'm a punk.

This is my first drug charge in my whole entire life, and it was only four-fifths of a gram, and they gave me 25 years. I had a job and I was a taxpayer, and they gave me 25 years for a little bit of cocaine.

They use the drug laws to incarcerate minorities. The prison system is a warehouse with a revolving door, because there is no rehabilitation. They don't give us any help. I have sat there for seven years, and I've gotten no help at all.



***“Frank Johnson” is a 39-year-old man who grew up in Long Beach, California, as one of eight children in a household headed by a single mother and a series of stepfathers. He began running the streets and smoking marijuana at age 13. Eventually, he was introduced to PCP, and began breaking into houses to support his drug habit. As a teenager, he was sent to the California Youth Authority twice for burglary and, once released, began selling crack cocaine. He was arrested twice for selling crack, and was sent to county jail and state prison. In 1997, he was arrested again after a girlfriend sold a \$20 rock of cocaine. To avoid being sentenced to 25-years-to-life under California’s three-strikes law, he accepted a plea bargain and is currently serving a 13-year sentence in a California state prison.***

I had a lot of different cellmates. They would put you in a cell with anyone. They put me in a cell with this one guy, I don’t know what he was in for. For the first couple of days, everything was okay, but one night I woke up because he was holding a razor blade attached to a toothbrush to my neck.

He was a big guy, and he had me pinned. There was nothing I could do. He forced himself on me. He sodomized me.

I didn’t report it. I didn’t want to keep it to myself, but I felt like I had no choice. Nothing was going to be done about it. The damage was already done. I was going to prison. I didn’t want to make things worse for me in there.

The first couple of years were the hardest. I was trying to deal with it the best way I knew how. I smoked weed in here. I listened to music. I did whatever I could to block it out. It messed with my head. I pride myself on being a man. I pride myself on being able to meet all physical challenges.

I sit and I wonder what I could have done differently. That’s when the dark side comes out. That’s when the monster rears its ugly head. I used to think about what I would do to him if I saw him again. I would think about beating him. I would think about killing him. But when my thoughts go way out there, I rein them in. I don’t want to throw my life away. I want to get out of here.

I served time at another prison where they kept people in dorms that used to be gyms and rec rooms. That kind of thing happened all the time. It doesn’t matter if you’re affiliated [with a gang]. There was this guy, and they moved a youngster into his dorm, a young Crip, and that guy didn’t care that he was affiliated. He sodomized him. If they can get the drop on you in a confined situation, with no retaliation, they’re going to do it.

I knew what I was doing [when I sold drugs], but the crime doesn’t fit the time. I got 14 years, and I never even touched the drugs. I’m not a violent person. You can look at my history and see that it’s wrong. It doesn’t fit.

These drug laws aren’t there to help society. If they wanted to stop drugs from coming into the country, they would stop them.

These drug laws aren’t there to help society. If they wanted to stop drugs from coming into the country, they would stop them. They’re creating jobs for a whole class of people by locking up a whole other class of people. You build a prison, you’re helping an entire community. We’ve given them job security with our stupidity.

I didn’t report it. I didn’t want to keep it to myself, but I felt like I had no choice. Nothing was going to be done about it. The damage was already done.

## Testimony: Chance Martin

I was a few weeks from graduating high school. I attended a party at a local hotel, celebrating a friend's birthday.

Another birthday guest initiated our arrests that evening when he unwittingly dropped a lump of hashish in the hotel's lobby, witnessed by a security officer. The security officer followed our friend up to our room, and then summoned police. Everyone of age was arrested.

Taken to the county jail for processing, I imagined I could call my parents there to arrange my release.

I was wrong. It was three days before I could call my parents.

'General pop' was a large cage holding about 40 men. It was the dead of the night when I got there. My cellmates were all awaiting trial or serving county sentences. One was a blond man with a mustache whose face was beaten to a pulp—and who kept strictly to himself.

Finding me sitting hopelessly on my bunk, a trustee insisted that I join a card game to 'cheer me up.' The game only lasted three hands. It then became a demand for sex. Threats were made pointing out the example of the cellie with the battered face.

Driving their point home, four other trustees jammed my ribs with broomsticks and mop handles. I tried to call for help. Repeatedly I had my breath beat from my lungs.

Curled up on the floor, my arms protected my head.

Dark memories recall being dragged to a bunk obscured by army blankets at the farthest end of the cell from the turnkey's office.

One guy said, 'Now you have to give me head.'

I had never even heard the term before.

The scariest part was I lacked the first clue what was going to go down until it already

happened. I'm glad that there were only six guys. Six is only the best of my recollection. It might have been more. I don't recall their faces, except a couple.

I didn't even see most of their faces.

There was near-zero supervision in that jail. No guard had line of sight into that cell. The guards' office was at the end of a hallway at the cellblock's end, and their TV was blaring 24/7.

The only time I ever saw a guard was when they brought a prisoner in or took one out, or when they inspected the cell in the morning to ensure their trustees had swept it with those brooms and mops.

Released—and a deal was made to expunge my arrest if I enlisted in the military. That's how I became a Vietnam era veteran. In the service I abused alcohol and drugs at every opportunity. I felt worthless, and I only further reinforced this feeling—trapped in a self-fulfilling prophecy.

I've made so many poor decisions trying to cope with a nearly inextinguishable sense of shame, I've never really forgiven myself. I have recurring issues with guilt and trust today. I

I've made so many poor decisions trying to cope with a nearly inextinguishable sense of shame, I've never really forgiven myself. I have recurring issues with guilt and trust today. I can easily conjure feelings of worthlessness.



**Chance Martin is a 52-year-old San Francisco man from a working-class home in Gary, Indiana. University-bound, instead he was forced to volunteer for military service during the Vietnam War because of a drug arrest before graduating from high school. For nearly three decades after that, Mr. Martin struggled with mental illness, drug abuse, suicidal ideation, and homelessness. Today, Mr. Martin works days at a law office, and nights as resident manager in a low-income high rise in San Francisco.**

Testimony (cont'd): Chance Martin

can easily conjure feelings of worthlessness.

These traits have truly come to define me.

Being raped in that cell permanently damaged my being. I can imagine if it happened minus the rape I might have moved on sooner. I'm overcoming it now, but it took me until I was in my 40s to find any real perspective.

Being raped took 20 years from my life.

And I learned the law hurts Americans a lot more than drugs hurt Americans.

We live in a country at war with itself.

America's drug war has now created a prison industrial complex that seems unable

to fill its own insatiable need. It disproportionately exploits poor people and people of color. It's become its own grand addiction—locking up America's poor.

Today's drug users are so stigmatized by America's failed War on Drugs, and lawmakers are so intent to punish, rather than rehabilitate non-violent drug offenders, that society somehow manages to overlook prisoner rape as the unspoken status quo in our correctional institutions.

I was fortunate. It didn't kill me.

Instead, it shaped the person I've become.

America's drug war has now created a prison industrial complex that seems unable to fill its own insatiable need. It disproportionately exploits poor people and people of color. It's become its own grand addiction—locking up America's poor.

Prison was something new for me. I was kind of scared. It was okay at first, and then they sent me to [another facility]. That's where everything started happening.

An officer on the second shift gave me extra duty cleaning the bathrooms. He came in and looked at me while I was in the bathroom. I got this real funny feeling—a nasty feeling. I came out and went to my cubicle. He said he needed to see me. Instead of him calling me to the desk, he called me to the back, to the storage room.

He pulled up to me and I cringed and I pushed him away. He said, 'You got some big tits.' I pushed him and I ran out the room. I ran back to my cubicle and my heart was beating so fast. I heard about stuff like that happening, but it had never, ever happened to me. I was really scared and I was so far away from home. I was all by myself.

So I told [two other inmates]. Then he called me back. After I told [one inmate], she said, 'Don't go talk to him. You don't have to talk to him.' I asked her if she would go with me, and she said yes. He wanted me to come back to the storage room, but I stayed at the desk.

I said, 'If there is anything you want to say to me, you can say it right here in front of [her].' He said, 'Well, you know you are on sanction, and I could write you up a major ticket.' In other words he was telling me that if I said anything to anybody that I would get written up for a violation.

Later on, after everybody went to sleep, he was still around. He said, 'Don't forget about that ticket.' I never told anybody. I never said anything else about it.

Later, when I took my shower and I got dressed in my cubicle, I felt somebody watching me. When I looked up, he was standing up there. He said, 'You don't have nothing to be ashamed of. You have a nice set of hooters on you.'

They should leave their personal feelings and desires at home. They should screen them and they should listen when the inmates scream rape or assault or abuse.

They are supposed to be there to protect us from each other, so no one gets hurt. We are not put there for their convenience. We may have crossed the wrong side of the street and have done something we shouldn't have done. We are there to do our time. We are not there for their abuse, for them to violate us and do what they please with us. I never want to go back to prison. Never, because there is so much corruption.

We are there to do our time.  
We are not there for their  
abuse, for them to violate us  
and do what they please  
with us.

***"Sue Linez" is a 44-year-old woman who was raised by her father and grandparents after her mother abandoned the family when Ms. Linez was three years old. She spent her childhood riding in the cab of her father's big rig or attending church with her grandfather, who was a minister. She turned to prostitution in her teens and began smoking marijuana in her early 20s. She eventually became addicted to crack cocaine. In 1999, she was sentenced to two-to-five years in prison for possession of a \$20 rock of cocaine. While imprisoned, Ms. Linez was diagnosed with paranoid schizophrenia.***

***“David Smith” is a 53-year-old man who grew up in an upper-middle-class home in Riverside County, California. His first experience with drugs at age 14 ended in a hospital emergency room when he overdosed on asthma medication. He began smoking marijuana and abusing prescription drugs at 16. At 19, he was working in a factory and pursuing a promising music career, but felt he had ventured too far into the drug scene. After a bad LSD trip, he called his parents for help, and they called the police.***

**T**hey came and arrested me at work. I had a couple of pills on me. Then they took me back to my house, and found a marijuana plant. They took me to the [jail]. I was charged with possession of pills and cultivation of marijuana.

They put me in a cell with five other guys in a four-man cell. There were not enough beds, so I had to lay on the floor. They were kicking me around. They started to make comments that really scared me. They said, ‘you’re going to play poker with us, and whoever loses gets the ‘brown eye’ [gets sodomized]. We played a hand, and they said, ‘you lose.’

The guy who raped me was the size of Arnold Schwarzenegger. He was in there for raping a college girl at gunpoint, but I didn’t know that at the time. He pulled me onto his bunk and told me to turn over, but I refused. He said he had a shank under his bed. I never saw it, but I believe he had it. He hit me so hard in the face it sounded like a gun going off.

He raped me. Then he told two other guys to rape me too. They only did it because they were scared of him.

There were people being raped in the cell next to me, they were screaming for help, and the guards never came back to see what was going on.

When they were done, he said, ‘Okay, we’re going to do this again tomorrow night.’ The trustee came by a few hours later, and I told him I feared for my life. Later, they took me to the office, and I reported the rape.

The police said it was my fault for taking drugs, and they hoped I had learned my lesson. My parents said it was my fault, too.

I didn’t realize the damage until later. When I got home, I took a shower, and I

couldn’t get out for an hour. I felt so filthy and disgusting.

I feel like I didn’t fight hard enough, but it wouldn’t have been much of a fight. I was just paralyzed with fear.

It destroyed my life. It destroyed my career as a singer and a musician. I couldn’t go up and sing in front of people any more. The pain was so bad from the rape, I turned to alcohol and drugs. I ended up in the street. I lived in a car for ten years. I was in the gutter for 20 years. The pain was so bad that I wanted to kill myself every day. I still do.

This rape came at a time when I was trying to feel like a man. I lost all of the natural joy I was born with. My emotions were damaged so bad. I lost all my confidence. I withdrew. I hid from people. Everyone knew about the rape. People asked cruel questions and said cruel things.

When you’re picked up for a crime, I don’t care what it is, I feel it’s unfair to add sodomy to the punishment. Doing the time is punishment enough.

The pain was so bad from the rape, I turned to alcohol and drugs. I ended up in the street. I lived in a car for ten years. I was in the gutter for 20 years. The pain was so bad that I wanted to kill myself every day. I still do.

# The Impact of the War on Drugs on Sexual Violence

## Prison Overcrowding

The war on drugs and its sentencing laws have resulted in rampant incarceration nationwide. Until the 1970s, the U.S. incarceration rate remained relatively stable.<sup>75</sup> However, in the past three-and-a-half decades, the growth in the prison population has far outstripped population growth as a whole, primarily due to the increased imprisonment for drug offenses.<sup>76</sup> The U.S. inmate population has quadrupled since 1980, to 2.27 million people in 2004,<sup>77</sup> and the imprisonment of people convicted of drug offenses has accelerated at an even faster pace. The number of state prisoners serving drug sentences increased more than tenfold, from 19,000 in 1980 to 256,000 in 2002.<sup>78</sup> The incarceration rate for drug offenses is the most dramatic in federal prisons—from 4,900 in 1980 to 86,972 in 2003.<sup>79</sup>

This massive prison population growth affects more and more Americans. According to the U.S. Department of Justice,

one in 140 people living in the United States was incarcerated in 2004,<sup>80</sup> and one in 15 Americans will serve time in prison during his or her lifetime if current incarceration rates remain unchecked.<sup>81</sup> For men of color, imprisonment is even more likely—one in ten Latino men and one in three black men are estimated to serve time during their lifetime.<sup>82</sup>

The capacity to build and operate prisons has simply not kept pace with these skyrocketing incarceration rates. Federal, state, and local expenditures for corrections increased between 1982 and 2003 from \$9.5 billion to \$60 billion.<sup>83</sup> Nonetheless, overcrowding has continued to

The number of state prisoners serving drug sentences increased more than tenfold, from 19,000 in 1980 to 256,000 in 2002. . . . in federal prisons—from 4,900 in 1980 to 86,972 in 2003.



plague facilities across the country. According to the Bureau of Justice Statistics, the prison systems of 24 states and the federal government were operating above capacity in 2004.<sup>84</sup> In that year, California housed nearly 158,000 prisoners in state facilities designed to hold approximately 80,000—operating at 195 percent capacity.<sup>85</sup> In 2003, Illinois prisons were operating at 138 percent capacity.<sup>86</sup> Federal U.S. prisons were operating at 140 percent capacity in 2000.<sup>87</sup>

The density of the prison population and the lack of inmate space directly impacts inmate misconduct and violence.<sup>88</sup> Overcrowding makes services less available to inmates, while increasing noise, heat, and tension. This dangerous combination caused Roderick Hickman, then-Secretary of the California Department of Corrections and Rehabilitation,<sup>89</sup> to conclude that overcrowding was the most significant factor contributing to prison violence.<sup>90</sup>

Double celling—where two inmates are placed in a cell designed for one person—is a common solution for overcrowding that increases the risk for sexual violence. As researchers from Human Rights Watch noted:

Inmates frequently find themselves placed among others whose background, criminal history, and other characteristics make them an obvious threat. In the worst cases, prisoners are actually placed in the same cell with inmates who are likely to victimize them—sometimes even with inmates who have a demonstrated proclivity for sexually abusing others.<sup>91</sup>

In addition to increasing tensions, overcrowding prevents corrections officials from appropriately classifying inmates and effectively watching everyone

under their guard. In *Prison Masculinities*, psychiatrist and prisoner rape expert Terry Kupers relays an incident in which a young man was raped by two gang members after all three were placed in protective custody in an overcrowded facility. One officer was responsible for the entire unit, which included a day room, a dining area, and two floors of cells with open doors. Dr. Kupers concluded:

The victim should not have been housed with the men who raped him. But in an overcrowded system, it is unlikely that prisoners of different security levels who are identified as being in need of protective custody will be further segregated—staff members are so far behind classifying the new prisoners that the assignment to protective custody is considered classification enough.<sup>92</sup>

## Lack of Appropriate Classification

The connection is clear between increasing prison populations due to the war on drugs, the failure of prison officials to properly classify inmates, and the prevalence of rape behind bars. With many prisons and jails operating well above capacity, predators have more opportunities to victimize non-violent prisoners without detection from corrections staff, and officials have fewer opportunities to make arrangements that would reduce the likelihood of rape.

The non-violent individuals convicted of drug possession and low-level dealing comprise a large proportion of the nation's burgeoning prison population, and are among the most vulnerable to

prisoner rape.<sup>93</sup> Often unschooled in the ways of prison life, inmates convicted of non-violent drug offenses may lack the street smarts to protect themselves behind bars. In assessing prisoners' "potential for violence index," researcher Daniel Lockwood found that only 25 percent of targets of violence were incarcerated for a threat or act of force, compared to 58 percent of non-targets and 79 percent of aggressors.<sup>94</sup>

In its report, *No Escape: Male Rape in U.S. Prisons*, Human Rights Watch noted that many of the prisoner rape survivors interviewed for the publication were incarcerated for drug offenses or petty crime commonly associated with untreated addiction.

[A] striking proportion of [rape victims] were nonviolent felons, many of them convicted of crimes such as burglary, drug offenses, passing bad checks, car theft, etc. Of the minority of victims who were aware of the criminal history of the perpetrator of abuse, many reported serious and violent crimes. This general pattern is consistent, of course, with the idea that perpetrators of rape tend to be more violent people than victims, both inside and outside of prison.<sup>95</sup>

The characteristics of likely perpetrators and potential victims are known, but these factors often are ignored when making housing decisions. Despite efforts to adopt an objective, uniform system of classification in U.S. prisons and jails, many state departments of corrections do not maintain the data needed to assess an inmate's risk of harming others. Nearly 40 percent of corrections departments do not collect information on whether a weapon was used during the offense.<sup>96</sup> Twelve of the nation's 52 departments of corrections do not gather information on inmates' history of violence and 17

The characteristics of likely perpetrators and potential victims are known, but these factors often are ignored when making housing decisions.

do not collect information on gang membership.<sup>97</sup>

San Francisco County jails, in contrast, have used an effective classification system since the 1980s. Originally created to protect the city's gay inmates, corrections staff interview, assess, and assign housing based on each inmate's likelihood of victimizing others.<sup>98</sup>

Even where a proper system of classifying inmates is in place, overcrowding has led many corrections officials to abandon their previous practice of at least segregating vulnerable prisoners from predators. A 19-year-old University of Florida college student arrested in 2002 for possession of about an ounce of marijuana serves as a telling example of a non-violent drug offender who was victimized. The teenager, who had no criminal record, was violently raped after being placed in a cell in the Alachua County jail with a 35-year-old career criminal awaiting trial for sexual battery. Jail and city officials acknowledged that the two should never have been placed in a cell together, and attributed the mistake to overcrowding and a flawed inmate classification system.<sup>99</sup>

By housing non-violent prisoners with violent ones, corrections officials have created environments that virtually guarantee assault. For example, Senior Judge Donald P. Lay of the Eighth Circuit Court of Appeals described meeting a



19-year-old who was convicted of marijuana possession and placed in a cell with 11 other inmates. Only after two days in this housing arrangement was he given a psychological assessment. All he wrote on the test was, “Help me, help me.” He had been raped for nearly 48 hours.<sup>100</sup>

## Insufficient Rehabilitative Services

While the war on drugs has punished drug use, it has not assured that those who suffer from a debilitating drug addiction receive treatment. Fewer than 40 percent of corrections facilities nationwide provide drug treatment.<sup>101</sup> Even where

programs do exist, the number of inmates seeking treatment far outnumber the available slots. While enduring long waiting lists, prisoners remain idle and frequently immerse themselves in the violent culture of prisons.

Services are also scarce for inmates who have been sexually assaulted. Mental health counseling behind bars is rarely confidential. On the contrary, counselors are obliged to report to prison administrators any crime within their facility. In many facilities, a corrections official is present for all post-rape counseling. Inadvertently, then, a prisoner seeking mental health assistance becomes a “snitch,” risking serious retaliation from the perpetrator of the assault, and possibly others.<sup>102</sup>

Testimony: Michael Piper

They put me in a day cell with five other inmates. We were watching 'Dragnet' through the bars when one of them started to stroke my hair and tell me how pretty I was. He said he had been upstate for two years, and I looked real sweet.

I pushed his hand away and tried to focus on the TV. He got really upset. He said, 'You can't push me away.' He stroked my hair again, and I pushed him again. He threw a right cross that hit me in the right eye and crushed my eye socket.

Even after all that, he was still intent on raping me. I fell on the floor and pretended I was having a seizure. He hit me pretty hard. I was in enough pain that feigning a seizure wasn't that hard.

I must have convinced the other inmates that I was dying. One of the other inmates called for a guard. He said, 'I'm not doing no murder rap just so you can get your dick wet.' The guards finally came and got me out of there before he could do any more damage.

After I got hit I was interrogated by the sheriffs and the detectives for hours without medical attention. I refused to tell them what happened. I didn't know what they were going to do. I didn't know if they were going to

put me back in that cell with that guy. I didn't want to be labeled as a snitch.

Finally, they took me to a hospital. I was in the hospital for a week, and eventually underwent two surgeries. I still have wires in my skull that show up in X-rays. I can still feel it. One of my eyes doesn't close all the way. My face got shattered because I had a quarter-gram of pot in my pocket.

The funny thing is, they were going to release me after that, and I had to talk the judge into giving me enough time so they would be forced to fix the damage to my face.

The whole thing was ridiculous. The guy who tried to rape me was in for armed robbery. I hadn't been convicted of anything, and I was in a cell with a pretty violent guy.

I think the drug war is ridiculous. I think it's the height of American fascism. The drug war makes criminals out of people who don't need to be criminals.

The drug war makes criminals out of people who don't need to be criminals.



**Michael Piper is a 50-year-old advertising agency network manager who lives on his sailboat in Port Washington, near New York City. In 1974, he was arrested for possessing a marijuana cigarette butt early on a Sunday morning while out walking in Tempe, Arizona.**

***“Hedda Lowry” is a Midwestern woman from a middle-class background who started using drugs at 16 when her parents divorced. She began injecting heroin with her ex-husband at 27, and went to prison for the first time a year later. She has gone to prison ten times for drug offenses, parole violations, and other crimes related to her addiction.***

It was just so common for stuff to happen that it wasn't called abuse. It was like they'd walk in the showers and stand there and have a conversation with us. You never realized that was not allowed. We were abused without even knowing we were being abused. It was so normal. It was just a part of prison.

It was overcrowded so they closed down the day rooms and put beds up. It's always been overcrowded. You usually have one officer for about 120 women. They can't keep an eye on everybody.

The warden let us sleep in our underwear and bras if it got too hot in the dormitories, even though it was against the rules. Stuff went on that was just crazy. It made things easier for them and for us as far as doing something that you wanted to do.

One officer had a crush on me. He had me lay down on the floor and gave me a back rub with all my bunkies around. I was so uncomfortable with him. I would wait for another officer to come in before I would get up and go to the bathroom because I knew he would try something. He would come and tuck me in at night and tell me dirty jokes all the time. I didn't tell anyone, but other women in the unit did. They called me up to a building on the night shift and asked me about it. I said yes. They pulled him out of the unit. I think he lost his job. I don't know what happened.

Also, a [civilian] kitchen supervisor pulled his dick out on me and told me to suck it. That was in 1995. I had to go ask him to get us some bananas out of the storage area. He called me back there with him. He said, 'Look at it, look at it, ain't it pretty?' He tried to kiss me. He told me I had soft lips.

I was so shocked. I didn't know what to do. He was so well-liked with all the inmates.

Then there was the [civilian] quartermaster. ...He would feel up all the girls. ...He would bring me Vicodin if I wouldn't say anything.

They all liked him. So you couldn't go and tell on him because then you would have had problems with inmates. He was one of their favorites. I just said, 'Oh my God.' Then I left.

After that I stayed out of the kitchen because every time I would go in the kitchen he would come up behind me and say, 'You got the softest lips,' and would whisper in my ear. So I would wait until he went home before I would go in the kitchen. I skipped breakfast and lunch for a couple of years.

Then there was the [civilian] quartermaster. I was the seamstress, and he was my boss. He would feel up all the girls. I was in the quartermaster room all the time and he would have the girls come in wearing a skirt with no panties on and have them sit on the desk. I'd have my back to him. He would bring me Vicodin if I wouldn't say anything. 'Look what I got, I got a little present.'

He ended up getting fired in 1997 or 1998. The nursing staff seen him grabbing the girls and told on him. Prior to that, he was caught—he had this one girl come in with a skirt on and to sit on a desk. He was all excited because she wasn't going to wear any panties.

I was sewing and she came in and when she was sitting on the desk, he was down on his knees in front of her and the counselor walked in and caught him and turned around and went and got the lieutenant to come back

— **Testimony (cont'd): Hedda Lowry** —

in. The lieutenant came back in and escorted the girl out. So they knew what was going on.

It was always there. I mean, there was always some officer that was having sex with somebody. They would bring us stuff in. It was real open. It was like a soap opera. I had a boyfriend then. We all had boyfriends that were officers.

I didn't have sex with him in prison, I had sex with him after I got out. I wouldn't. I was

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not bending over a box. He got fired for messing around with another inmate.

If an officer liked you, you could get away with anything. Officers would give you their phone numbers and tell you to call them. It was like their lives were so intertwined with ours when they shouldn't have been. It was like we were a part of their lives just like they were a part of ours. They knew our families. They told us everything about themselves. But there was always the possibility that they could write you up. They didn't have to say it. It was understood. You knew they had that power.

It seems like everybody was in there for something drug-related. They used drugs so they went out and wrote checks or shoplifted. I know it's not everybody, but probably 80 percent of the women were in there for something drug-related.

To me, the women sell themselves short. They lowered themselves. Officers would bring them a piece of gum and they would show them their breasts. I felt like they degraded themselves. I felt like it made all of us look bad.

***“Carl Shepard” is a gay Mississippi man who was sent to prison twice for charges related to his drug addiction. He was first incarcerated in 1990 for writing a bad check. In 2000, he was sentenced to five years in prison for grand larceny. During that incarceration, he was placed in a locked-down drug and alcohol rehabilitation unit.***

— **Testimony: Carl Shepard** —

**M**y roommate grabbed me by my arm and told me I was going to be his. I pulled away and told him I was in a relationship with someone else, and was going to be faithful to that person. He said okay, and I thought everything was fine.

The next night, we were on institutional lockdown because of a riot on another unit. After dinner, my roommate grabbed me by the arm and tried to pull me from the top bunk. Once my feet hit the floor, he shoved me face-down onto his bed and grabbed my neck like he was going to break it.

He said, ‘Nobody turns me down.’ He pulled my pants and underwear from my waist to my knees. He said if I made any loud noises, he would hurt me. He raped me for about 30

minutes. When he was done, he slapped me on the butt and told me to go clean up.

I went to the sink and used tissue to clean myself up. I realized I was bleeding.

When an officer came in with the mail, I tried to tell him what happened, but I realized that my roommate knew him from the street, so I knew it wouldn’t do any good to tell him. I sat in the doorway the rest of the night. Not one officer made a security check.

At 5 a.m., when the doors opened, I went to an officer and tried to get medical attention. He said no. When the shift changed at 7 a.m., I tried to talk to anyone I could, but they were all too busy.

That afternoon, I spoke with a sergeant, who contacted the unit administrator, a major, and the warden. When those three were questioning me, they actually made fun of me. The major said that because I am gay, the sex must have been consensual. He said I got what I deserved.

Since that day, I’ve been harassed by other officers. The system did nothing to protect me or help me after it happened.

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Testimony: James Davis

I filed two sexual harassment claims against another inmate in January 1999. I was then placed in segregation for 30 days. I was told this was for my own protection.

When the 30 days were up, I was placed in the cell of the inmate who had been sexually harassing me. I was told that the warden ordered this cell assignment, even though several staff members recommended that we be separated. I believe I was put into a cell with this predator in retaliation for the complaints I made.

I was sexually assaulted that same night. The man who assaulted me was a known sexual predator who was serving a 20-year sentence for sexual battery of a child.

The next morning, I reported the assault and asked for medical attention. Instead, I was thrown back into segregation for another ten days. My file shows that the doctor called the segregation unit several times asking to treat me, but all requests were denied. After being released from segregation, I was finally allowed to see a doctor.

Although I reported the assault, nothing ever happened. I hold the warden responsible

for my attack, even more than the assailant.

I have since been released, and suffer from post-traumatic stress disorder, anxiety, and depression as a result of this assault.

My assault was an example of the collusion between guards and rapists behind bars. Letting this attack go unpunished sends a message to prison staff and guards that it's okay to use prison rape as a punishment and a tool to control inmates.

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***“James Davis” is a 43-year-old gay man from Florida who was sentenced in 1996 to five years in a Virginia federal prison for conspiracy to possess cocaine. While there, he became upset about prison conditions and began writing letters to politicians and human rights organizations. He also complained about being sexually harassed by another prisoner who was a known sexual predator.***

***“Sophia Brooks” is a 34-year-old transgender prisoner currently serving a seven-year sentence in a Florida state prison for drug trafficking. A U.S. Army veteran, she was arrested outside a drugstore after getting into the car of an acquaintance who she later learned was a police informant. Ms. Brooks was convicted for possessing 1,000 pills that were in another acquaintance’s car and which she said she never touched or knew existed. Her story was compiled from a series of letters she wrote to SPR.***

I am a first-time, non-violent drug offender who began transitioning from a male to a female gender identity in 1999 by undergoing hormone therapy and adopting a feminine voice and mannerisms. When I was sent to a men’s prison in 2002, I had long hair and 36-DD saline breast implants.

When I arrived at the reception center in Orlando, I stepped off the bus and was strip-searched in front of two guards and about a dozen male inmates.

A sergeant yelled, ‘Look at the tits on that one! Those are the best-looking tits I’ve ever seen on a man.’ He pointed me out to a six-foot, three-inch inmate and said to him, ‘You like that one, don’t you? I’m going to put you in a cell with that one.’ Another sergeant called me ‘tits’ and ‘titty man.’

Normally, you go through the reception process dressed only in boxer shorts. They gave me a white T-shirt that you could see through. While the rest of my group went through the intake process, I was left sitting on a bench until the afternoon so that all the other intake inmates could see me. It was humiliating to be placed on display for a hundred or more inmates.

My head was completely shaved, and my sports bra was taken away, because ‘males’ don’t need bras in prison.

I was placed in a locked-down ‘protective management’ unit with murderers and a predator who had a prior ‘relationship’ with a transsexual before my arrival.

That predator befriended me, and I thought I could trust him.

My stress had gotten the best of me. My back hurt, and when the predator offered to rub it, I agreed.

It happened in my room. I was lying on my stomach wearing shorts and a t-shirt. He kept rubbing lower and lower, and I started to get up. He had already unfastened his pants and pulled them down.

I might have been able to stop him if I had realized what he was up to even seconds earlier. One of his arms was on my shoulders, pressing me into a pillow. He used the other arm to pull away my shorts and insert his penis.

I yelled for him to stop, but nobody heard me. He kept saying, ‘Yeah, you like that, bitch. I knew you wanted it.’

When he was done, he left, and I closed and locked my door. I cried all night. I was ashamed of feeling so helpless.

I questioned what I was even doing at the second-worst prison in the state. How could this happen? Why wouldn’t anyone help me?

I distrusted the sergeant on the midnight shift, so I didn’t tell anyone what happened until morning. I placed my boxers and shorts into a plastic bag and gave it to an officer. They took me to the medical office, and then to the North Florida Reception Center to do a rape kit and blood test. I was never given the results of either. I gave a statement to a lieutenant, who called the man who raped me a predator.

I asked for an update on the investigation and prosecution of the man who raped me, but I never got an answer. I requested

I was placed in a locked-down ‘protective management’ unit with murderers and a predator who had a prior ‘relationship’ with a transsexual before my arrival.



Testimony (cont'd): Sophia Brooks

the rapist's HIV and STD test results, but got no response.

I wasn't allowed to shower or get any psychological counseling. I was driven hours away to another prison. I was placed in confinement for more than a week, then assigned to a better, but very similar, unit as before.

I fought long and hard to get out of that unit. I am now at an adjoining work camp. My living conditions are better now. This is the type of prison I should have come to in the first place.

In addition to being placed into a locked-down unit with murderers and a predator who raped me, I've been threatened, sexually harassed, and humiliated by Florida Department of Corrections staff. I've been transferred six times, placed in confinement five times, denied medical treatment, and denied work opportunities, all due to my appearance.

It took me months to become, once again, the person I was before I began my gender transition. With the exception of my implants, I could pass for just another man in prison. Unfortunately, not all transsexuals can once again become who they were before transition.

The Florida Department of Corrections needs to acknowledge the problem of placing minimum-custody transsexuals into locked-down protective management areas with mixed custody levels.

Enough is enough. This must never happen to anyone else, ever again.

Enough is enough. This must never happen to anyone else, ever again.

***“Betty Vasquez” is a 38-year-old woman from an upper-middle-class Midwestern family who was sexually abused by her uncle from the time she was five years old. Her uncle, an anesthesiologist, regularly drugged her at bedtime before sexually molesting her. She began using heroin at age 12, and was sentenced to prison for the first time at 19 after being convicted of drug possession and burglary. In 1993, after being returned to prison on a probation violation, she was sexually abused by a civilian maintenance supervisor.***

**A**t the time I was working in the kitchen, but he got me assigned to a one-on-one maintenance detail with him. He approached me. He was very, very subtle. If I was squatting down by the tool bag, instead of grabbing the tool bag, he would grab my leg or brush up against me. It progressed from that to kissing and fondling. We had sexual intercourse.

It was a very old prison. They had underground tunnels that the maintenance had keys to go through. Why they allowed him to be with one female one-on-one—I don’t know, because it wasn’t allowed.

He would always bring me a pack of cigarettes. He would bring me doughnuts in the morning; just the simplest things you take for granted. You really tend to cherish things like that. It went on for a couple of years.

He would always bring me a pack of cigarettes. He would bring me doughnuts in the morning; just the simplest things you take for granted. You really tend to cherish things like that. It went on for a couple of years.

I was really afraid of him. It went on until he hit me on the side of my head and split my eye open. I didn’t get any stitches. I have a scar. We were down in the basement and he was really forceful, really wanting to have intercourse and me not wanting to. I thought I

Sometimes other officers act as a lookout for the ones that have sex with the inmates . . .

heard somebody up the stairs. Sometimes other officers act as a lookout for the ones that have sex with the inmates, but I was afraid it was someone who would get me in trouble. I didn’t want to get into trouble and I kept telling him no.

Somehow the administration found out about it. They transferred me to another prison at 11:00 at night.

They prosecuted him, but he only got convicted of disorderly conduct. He owned his own heating and cooling company in the area and he did a lot of work for a couple of judges and a couple of churches, so he knew a lot of people.

I got released a few months later. He contacted me after I was released, and we had a physical relationship for another year or so. My daughter was taken away by the state and I was trying to get custody of her again. He promised to help me, but when I refused to have sex with him, he got me sent back to prison.

Because I was sexually molested as a child, I felt helpless. I guess it just inverted me into a shell. I felt like I had no control over my life.

I feel taken advantage of. I feel manipulated. I am angry with the administration for covering it up.

This is how it is in here—a world within a world. You go with the flow. You just roll with it because that is how it is. It is a no-win situation. You have to do it for survival.

— Testimony: William Kent —

I was taken to jail, and two days later I found myself in the drug rehabilitation program offered by the county jail. It was the first drug program I ever encountered that insisted I go on drugs, and continue to take my myriad prescribed controlled substances.

On Easter Sunday, while in my jail cell during lights out, it happened. My cellmate, 'Todd,' pushed me down onto my cot, ripped down my orange jumpsuit, and forced his penis into my anus. It hurt so much. My screams didn't awaken the guards, and no one came to the cell. I lay there, face-to-face underneath Todd, crying and angry, with my nose bloodied.

The next lights out, it happened again. After the second rape, I knew I couldn't live at the mercy of the sexual attacks of this predator. I requested a transfer to protective custody, and awaited lights out with a quiet rage. Todd came at me, as I expected, and with all of my might and all of my will, I punched him in the face. All six-foot-plus of him tumbled across the cell. The other cellmate said nothing.

The guards came 20 minutes later, and I was taken to solitary confinement. I was then transferred to protective custody, where I met a couple of other inmates who had faced

Perhaps the scariest part of being raped is the desire to go on with life as if nothing ever happened, the need for control in subsequent sexual encounters, the pain that I am in this all alone.

Todd's rapes. I lived there in a bubble for 32 days, confined to my cell for 23 hours a day.

I eventually was released from jail, feeling several centuries older in my soul.

I eventually was released from jail, feeling several centuries older in my soul. My innocence was lost. I eventually returned to Boston, leaving my then-pregnant wife behind, and started a new life. I am blessed to have found a recovery program for my addiction, loving friends, and a caring therapist.

I'm trying hard to deal with the emotional fallout. Some days, it feels as though my life is a nuclear wasteland, like I am a newcomer to a strange, foreign planet. Some nights, I almost feel as though the rapes are happening again.

The issues that confront me—the need to stay away from alcohol and drugs, the confusion about my sexual orientation, the truth that I may never see my own child—sometimes overwhelm me.

I've been diagnosed with post-traumatic stress disorder (PTSD). I still feel very frightened, scared, and timid inside, although my outward projection of myself is nothing like that.

Perhaps the scariest part of being raped is the desire to go on with life as if nothing ever happened, the need for control in subsequent sexual encounters, the pain that I am in this all alone.

The frightening and outrageous part of this is that the correctional officers were aware of both rapes, and did nothing to stop the rapist. I'm as angry at the system, and the state of Florida, as I am at the man who raped me.

***“William Kent” is a Massachusetts man who left New England for Florida seeking better economic opportunities for himself and his now-ex-wife. Although they were looking for a new life, the couple brought their alcoholism and addiction with them. During an encounter with police outside their motel, Mr. Kent’s wife became combative, and despite his attempts to cooperate, both were arrested. He eventually posted bail, and wished to return to New England, but was forced to remain in Florida to attend to his court case. The couple went to live at a homeless shelter, and Mr. Kent was arrested again after a scuffle with the pastor who ran the shelter.***

# Recommendations

The relationship between drug policy and rape behind bars is clear—and it is a dangerous connection that has been ignored for far too long. The following policy changes would help end the sexual abuse of people convicted of non-violent drug offenses.

## **1. Employ standardized classification systems that effectively separate likely rape victims from likely sexual predators.**

An effective inmate classification system that identifies vulnerable prisoners and predators is an essential element in keeping prisons and jails safe. Simply put, likely victims should never be housed with likely sexual predators. A well-developed classification system requires maintaining critical data about inmates and ensuring that corrections staff are trained in assessing incoming prisoners through a combination of sound judgment and standardized tests. Staff must also be responsive to the need to re-classify

inmates if they are preyed upon or are victimized by another inmate, or if they prey upon or victimize others.

## **2. Provide vulnerable inmates with voluntary, non-punitive protective housing.**

Inmates should not have to endure abuse in order to be protected. Any time after the initial classification, vulnerable inmates should have the opportunity to request and receive protective housing that effectively separates them from likely perpetrators. Those who request protective housing should not be penalized for this decision through a loss of privileges and programs. Subjecting vulnerable inmates—or worse, recent rape victims—to 23-hour-a-day lock-down is no way to protect them. It is psychologically difficult to endure such isolation, it discourages inmates from seeking help, and it effectively punishes the vulnerable. True protective custody must ensure that prisoners with a history of violence are

housed separately from non-violent inmates.

### **3. In the aftermath of an assault, immediately separate perpetrators from victims.**

Once an assault has occurred, corrections officials must act swiftly and decisively to protect the victim and prevent further attacks. Perpetrators must immediately be separated from victims. Victims should be protected without isolation or punishment; punitive segregation should be reserved only for perpetrators. In addition, classification determinations should be re-examined to account for the violent behavior of perpetrators and the vulnerability of victimized inmates.

### **4. Train corrections officials on how to prevent and respond to prisoner rape.**

When allegations of sexual assault are made by a non-violent drug offender or other prisoner, action must be taken in a timely and professional manner. All corrections officials, particularly those who interact directly with inmates, must be educated about how to protect vulnerable prisoners and how to respond when an inmate has been threatened or sexually assaulted.

### **5. Ensure that victimized inmates have access to safe and effective medical and mental health services that are not contingent upon filing a report.**

An inmate who has been victimized should be provided with acute trauma care, including treatment of injuries, medical examination, STD testing, and

emergency mental health counseling. There should also be physical and mental health care follow-up with monitoring for post-traumatic stress disorder, depression, and other mental health consequences. As non-violent survivors are often targeted for future attacks, the confidentiality of these services is vital to protecting these inmates' safety. Aftercare treatment should never be dependent upon a victim's willingness to press charges against the perpetrator, and medical and mental health professionals should be able to provide treatment without filing a report against an inmate's will.

### **6. Establish a confidential complaint system that encourages reporting sexual violence without increasing the risk of future attacks or any other form of retaliation.**

When an inmate who has been assaulted chooses to file a complaint of sexual abuse, he or she should not be punished, either directly or indirectly. Complaints and reports of sexual violence should always remain absolutely confidential. Finally, there should be multiple avenues for filing a complaint so that an inmate is never required to report grievances to an abusive staff member.

### **7. Reduce incarceration rates for people convicted of non-violent drug offenses.**

Reducing incarceration rates for drug crimes would go a long way toward easing overcrowding and keeping non-violent offenders free from the dangers of prison life. Harsh mandatory sentences, truth-in-sentencing and three strikes laws

neither treat addiction nor prevent crime. By increasing the availability of alternatives to incarceration and allowing judicial discretion in sentencing, people with non-violent drug convictions can receive appropriate treatment without enduring the trauma of sexual violence in prison. For minor offenses, such as marijuana possession, reducing the use of incarceration would lessen overcrowding, allow corrections officials to focus on the more dangerous inmates, and protect people who are especially vulnerable to sexual violence behind bars.

#### **8. Utilize diversion programs and treatment services to address drug addictions.**

Providing quality drug treatment and rehabilitation services would effectively address the disease of addiction and reduce the burden on the criminal justice system by lowering rates of recidivism and overcrowding. In addition to offering treatment inside corrections facilities, diversion programs should be established and used, allowing judges to sentence non-violent offenders to drug treatment as an alternative to incarceration.

Testimony: Jami Naturalite

**A**s a person suffering from gender identity disorder, prison life has been even harder. While it is tough for any non-violent offender to be in any prison, it was even worse for me to be perceived as a female by my all male peers. I cannot even begin, or do not know where to start, as far as the years of unwanted sexual assault, rape, physical abuse, and games that prisoners and staff have subjected me to in pursuit of their own sexual release.

I can remember using the bathroom in a temporary facility. Just sitting there using the bathroom, a guy walks into the stall. I looked up in surprise and asked what was he doing. He told me to shut up, and told me his friend was standing at the entrance to make sure the coast was clear. With his friend's assurance, the man unbuttoned his pants, unzipped, pulled down his underwear and pulled out his penis. When I asked him to leave me alone, he pulled out a shank from his pocket and told me to suck his dick. He also started slapping my face with it and became more aggressive with his verbal instructions. Similar events happened several hundred times over the years.

Similarly, when taking a shower, men would enter the shower with me and force me to give them oral sex or sodomize me. On some occasions two guys would sexually assault me at once.

When inside Jackson, there was a guard who liked to watch another prisoner have his way with me. A lieutenant, a third shift guard and my teaching supervisor, all have sexually assaulted me under the pretext of segregation if I did not comply with their requests.

Finally in February of 2005 prison offi-

cially diagnosed me as having GID (Gender Identity Disorder). About a month later I was given an individual cell, and the ability to take private showers. Despite the positive change, I still wake up in the middle of the night shaking, looking around my cell to make sure that no one is around to rape me.

Right now, an inmate somewhere is getting raped. Right now, an inmate somewhere is going through the same things I described. Right now, as I often did before, an inmate is contemplating suicide. Right now, an inmate is quietly crying himself (or herself) to sleep. Another inmate is waking up just having had a nightmare about his attackers. Yet another inmate is being carried to the infirmary after being raped or beaten up. Meanwhile, rape test kits sit on the shelf. Psychologists who want to report the crimes to the state police are sternly advised against it, relocated or terminated for other reasons down the road.

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Right now, an inmate somewhere is going through the same things I described.

Right now, as I often did before, an inmate is contemplating suicide. Right now, an inmate is quietly crying himself (or herself) to sleep.



***Jami Naturalite is a 44-year-old transgender woman born and raised in Michigan. At the age of 24, Jami was incarcerated in a men's prison for aiding and abetting, and conspiracy to deliver 3.54 grams of cocaine. Jami is still serving her 10-to-40-year sentence.***





## Testimony: Venerable Kobutsu Malone

***Venerable Kobutsu Malone is a 56-year-old American Zen Buddhist priest who has spent most of the last two decades teaching meditation in prisons, serving as a volunteer Buddhist Chaplain, and ministering to prisoners on death row. As a teenager in the mid-1960s, he was involved in the "psychedelic revolution." In 1968, at the age of 18, he was arrested during a raid at a friend's Washington, D.C. house.***

I was charged with presence in an illegal establishment, possession of the instruments of a crime, violation of the 1937 Marijuana Tax Act, and impersonating a federal officer. The impersonating a federal officer charge consisted of me having a joke ID card in my wallet. That charge and the tax act charge were dropped.

The other two charges remained. The possession of the instruments of a crime charge consisted of the claim that I had a marijuana smoking pipe in my suitcase. I was a hippie—I had a gas mask bag—I never owned a suitcase, no self-respecting hippie in 1968 owned a suitcase. I had no drugs or paraphernalia; it was simply a routine police frame-up.

I got up in front of the judge, said I was not guilty and was given a trial date some three months down the line. Since I couldn't make bail, I had to go to the D.C. jail. I was absolutely scared to death—an 18-year-old white kid from middle class suburbia being placed in an inner-city, predominately black, jail. There were remarks made on the bus on the way to the jail: 'White boy is gonna get his ass reamed. You are in for it. You are going to be somebody's bitch.' When we got there, we were all made to strip and we were humiliated in front of everyone else, given ill-fitting clothing and put in cells.

One day later, after lunch, I went back to

my cell. Instead of the small, white fellow that had been in there, there was a very large black man inside. I stood outside the door because I was afraid to go in. One of the guards yelled, 'Get the fuck in your cell.' The black guy grabbed me and pulled me inside. At that point, the cell doors closed.

He sat me down and said we were going to play cards. I said I didn't know how to play cards. He said, 'Fuck this shit, you gonna suck my dick.' I was just floored. I got up to scream for help from the guards. The man hit me in the gut, as hard as I've ever been hit in my life. I nearly lost consciousness.

He pinned me down to the bars and had his fist in front of my face. This guy probably outweighed me by a factor of three. There was no way in hell I stood a chance. He threw me down onto the bunk, tore my pants off, and anally raped me.

I was terrified and in tremendous pain. People on the outside seemed to know what was going on, and they were making a lot of noise to cover up my protests.

After he had finished abusing me, he literally lifted me up and sat me down, and said, 'You're my bitch. You belong to me and you're going to do anything I say. You're going to fuck anyone I tell you to.'

When they opened the cell doors, I was frozen in place. It was lock-down time and they began closing the doors. I stuck my ankle

The possession of the instruments of a crime charge consisted of the claim that I had a marijuana smoking pipe in my suitcase. I was a hippie—I had a gas mask bag—I never owned a suitcase, no self-respecting hippie in 1968 owned a suitcase. I had no drugs or paraphernalia; it was simply a routine police frame-up.

Testimony (cont'd): Venerable Kobutsu Malone

in the moving door and screamed as loud as I could. They took me to the hospital, and I finally told an orderly what happened to me. They made a report and a doctor arrived five to six hours later to do a rectal examination.

A corrections captain then came in and said: 'You're a homosexual, right? You asked for this. You wanted this nigger with his telephone pole up your ass? That is what you have been going for, isn't it?'

It was something beyond any horror that I ever imagined—it gave me tremendous fear.

As a result of being so violently attacked, I was forced to deal with issues of racism, with issues of questioning my own masculinity in terms of defending myself against that attack. That work is not finished. I don't think that

work ever gets finished. It takes away something to be that humiliated, to be held so powerless, and to have the knowledge that one has not fought back with every shred of their being to the death. At some point, I surrendered out of unmitigated terror.

It never goes away. Over time, I think I've come to some understanding of the situation. One of the things that has helped me tremendously has been spending 16 years working with prisoners—witnessing countless cases of brutality, of dealing with rape and abuse victims, dealing with people who are being bought and sold as sexual chattel in prison, dealing with people who are being tortured, and worst of all, witnessing the executions of two of my students.

As a result of being so violently attacked, I was forced to deal with issues of racism, with issues of questioning my own masculinity in terms of defending myself against that attack. That work is not finished. I don't think that work ever gets finished.

# Notes

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23. *Id.*; Robert W. Dumond & Doris A. Dumond, *The Treatment of Sexual Assault Victims*, in PRISON SEX POLICY AND PRACTICE 67, 71, 81-83 (Christopher Hensley ed., 2002); Kupers, *supra* note 21, at 194, at 112-17.
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25. T.J. Parsell was raped in a Midwest prison in the late '70s, where he was serving time for robbing a photomat with a toy gun as a prank. Mr. Parsell is the former President of Stop Prisoner Rape.
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30. 42 U.S.C. § 15601(10).
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40. Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570. (1986); Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690 (1988).
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