



Bureau of Justice Statistics Status Report

February 5, 2004

Implementing the Prison Rape Elimination Act of 2003

On September 4, 2003, President George W. Bush signed into law the Prison Rape Elimination Act of 2003 (P.L. 108-79). The legislation requires the Bureau of Justice Statistics (BJS) to develop a new national data collection on the incidence and prevalence of sexual assault within correctional facilities.

There have been only a few studies on the prevalence of sexual assault within correctional facilities. These studies are typically small in scale, covering only a few facilities, and generalizations to the national correctional population are not appropriate. The magnitude of sexual assault among prisoners is not currently well understood. BJS is tasked with developing reliable methods to measure the problem so that it can be addressed and eliminated.

Victimization, particularly sexual assault by a same-sex perpetrator, is a sensitive event that introduces complexities for collecting self-report data. There are ethical concerns, a need to insure respondent confidentiality to ease fears of reprisal, and a general reluctance to fully report past incidents. Data collection from juveniles also requires consent from parents or legal guardians. Corrections administrators have concerns about legal liability, reliability of self-reports, and potential disruption of facility operations. BJS has developed an implementation plan to address these obstacles.

Highlights of Public Law 108-79

- **Sec. 4 (a)(1).** *The Bureau of Justice Statistics ... shall carry out, for each calendar year, a comprehensive statistical review and analysis of the incidence and effects of prison rape. The statistical review and analysis shall include, but not be limited to the identification of the common characteristics of —*
 - (A) *both victims and perpetrators of prison rape; and*
 - (B) *prisons and prison systems with a high incidence of prison rape.*
- **Sec. 4 (a)(4).** *The review and analysis ... shall be based on a random sample, or other scientifically appropriate sample, of not less than 10 percent of all Federal, State, and county prisons, and a representative sample of municipal prisons.*
- **Sec. 4 (a)(6).** *Federal, State, or local officials or facility administrators that receive a request from the Bureau ... will be required to participate in the national survey and provide access to any inmates under their legal custody.*
- **Sec. 4 (b)(3)(A).** *... there is established, within the Department of Justice, the Review Panel on Prison Rape The duty of the Panel shall be to carry out, for each calendar year, public hearings concerning the operation of the three prisons with the highest incidence of prison rape and the two prisons with the lowest incidence of prison rape within each category of facilities*
- **Sec. 4 (c)(1).** *Not later than June 30 of each year, the Attorney General shall submit a report on the activities of the Bureau and the Review Panel, with respect to prison rape, for the preceding calendar year*
- **Sec. 4 (c)(2).** *The report required under paragraph (1) shall include ...*
 - (B)(ii) *a listing of those institutions in the representative sample, separated into each category ... and ranked according to the incidence of prison rape in each institution; and*
 - (C) *a listing of any prisons in the representative sample that did not cooperate with the survey ...*
- **Sec. 8 (c)(4).** *For each fiscal year, any amount that a State receives for that fiscal year under a grant program covered by this subsection shall not be used for prison purposes ... unless the chief executive of the State submits to the Attorney General a certification that neither the State, nor any political subdivision or unit of local government within the State, is listed in a report ... pursuant to section 4(c)(2)(C).*

BJS is developing new methods to address current deficiencies

At present, there is no reliable collection methodology for measuring prison rape. Most prior attempts to measure the prevalence of prison rape have relied on either personal interviews of inmates, or use of mail-in, self-administered inmate questionnaires. Personal interviews of inmates have generally yielded low positive response rates (below 1%). These low rates of reporting make it impossible to perform further analyses of victim, perpetrator, and facility characteristics. More recent studies have utilized self-administered questionnaires, which have yielded higher prevalence rates (around 20% with a broad definition of sexual assault). However, questions about the credibility of such studies remain due to low questionnaire completion rates (e.g., 25% response rate)

and loss of control over who completes the forms and under what settings in the facility.

To address existing deficiencies, BJS is developing and testing the use of Audio Computer-Assisted Self-Interviews (known as "audio-CASI"). The audio-CASI methodology involves inmates responding to a computer questionnaire using a touch-screen, following audio instructions delivered via headphones. It is anticipated that, by removing the presence of a personal interviewer, this methodology will increase an inmate's willingness to report sensitive information. Audio-CASI also permits inmates with limited literacy to report victimization. At the same time, the conditions under which inmates complete the survey can be controlled, unlike past surveys in which inmates completed a written questionnaire however they chose.

To identify the best measurement strategy, BJS will test audio-CASI in two interview settings: (1) inmates in prisons and jails and residents in juvenile facilities; and (2) inmates and residents who are soon-to-be released.

BJS will also test supplemental survey methodologies, using paper and pencil interviews (PAPI), to collect information from recently released prison inmates in parole offices. Initial tests may show, that despite the improvements of audio-CASI in making inmates feel secure in reporting prison rapes, fears of retribution and perceived lack of confidentiality will not be entirely overcome as long as inmates remain in prison or jail. BJS intends to test PAPI methods that include surveying inmates who have been released from prison in the last 12 months and jail inmates who are in the process of being released.

How will rape be measured?

Section 10 of the Prison Rape Elimination Act defined the term "rape" as:

... the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person, forcibly or against that person's will; or not forcibly or against the person's will, where the victim is incapable of giving consent because of his or her youth or his or her temporary or permanent mental or physical incapacity; or ...the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person achieved through the exploitation of the fear or threat of physical violence or bodily injury.

After consulting with experts in sexual victimization, prison rape researchers, and corrections administrators and practitioners, BJS intends to operationalize this definition by disaggregating sexual assault into three categories of inmate-on-inmate sexual violence and all incidents of staff sexual misconduct.

Categories of sexual violence will reflect uniform definitions formulated by the National Center for Injury Prevention and Control, in "Sexual Violence Surveillance: Uniform Definitions and Recommended Data Elements," Center for Disease Control and Prevention (CDC).

These categories are: 1) completed non-consensual sexual acts; 2) attempted non-consensual sexual acts; and 3) abusive sexual contacts. Inmate-on-inmate non-consensual sexual acts include:

- contact of any inmate without his or her consent, or of an inmate who is unable to consent or refuse;
- contact between the penis and the vulva or the penis and the anus involving penetration, however slight;
- contact between the mouth and the penis, vulva, or anus;
- penetration of the anal or genital opening of another person by a hand, finger, or other object.

Inmate-on-inmate abusive sexual contacts include:

- contact of any inmate without his or her consent, or of an inmate who is unable to consent or refuse;
- intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of an inmate.

All sexual acts involving staff are considered misconduct and are covered under the Act, including:

- any behavior of a sexual nature directed toward an inmate by an employee, volunteer, official visitor, or agency representative;
- all completed, attempted, threatened, or requested sexual acts between staff and inmates;
- any incident of intentional touching of the genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, arouse, or gratify sexual desire;
- incidents of indecent exposure or invasion of privacy for sexual gratification.

Multiple measures of sexual assault will be used to assess reliability and to rank facilities

Due to the complexities associated with collecting sensitive data from correctional facilities serving a variety of functions and supervising different populations, BJS will obtain multiple measures of sexual assault victimization. BJS will disaggregate the number of incidents by type of facility and distinguish non-consensual acts from abusive sexual contacts. (See box on page 2.) This approach will permit BJS to analyze the validity of different data collection methodologies as well as their impact on facility-level estimates.

BJS will attempt to validate victim self-reports through the use of independent measures. The audio-CASI surveys will include questions on other types of victimization (in addition to sexual assault). These questions will be used to assess the reliability of the victim self-reports. Reliability will also be assessed by asking victims a series of questions describing the circumstances surrounding each incident.

Due to the need to provide anonymity to victims and give assurances of confidentiality of their responses, reports of sexual assault cannot be validated through follow-ups and verification using official records. By incorporating multiple measures within the audio-CASI surveys and comparing results across multiple modes of data collection, BJS will determine the reliability of the facility-level estimates.

BJS will conduct an administrative records collection in 2004

Concurrent with developing and testing self-report survey methodologies, BJS will conduct an annual administrative records collection. During 2004, BJS intends to conduct an initial survey of all Federal and State prison systems and a representative sample (not less than 10%) of local jails and juvenile facilities. The administrative records collection is expected to include 2,288 of the 8,727 facilities covered by the Act.

Number of facilities covered under the Prison Rape Elimination Act of 2003

| Facility type | Number of facilities | Sampled for collection in 2004 |
|---------------------------|----------------------|--------------------------------|
| Total | 8,727 | 2,288 |
| Prisons | | |
| Public - Federal | 84 | All ^a |
| Public - State | 1,320 | All ^a |
| Private | 264 | 30 |
| Local jails | | |
| Public | 3,318 | 390 |
| Private | 47 | 10 |
| Juvenile facilities | | |
| Public | 1,211 | 230 |
| Private | 2,323 | 194 |
| Other facilities | | |
| Indian country jails | 70 | 10 |
| Military-operated | 59 | 10 |
| ICE-operated ^b | 31 | 10 |

^aThe administrative records collection will cover all 50 State systems and the Federal Bureau of Prisons.

^bIncludes facilities operated by or exclusively for the Bureau of Immigration and Customs Enforcement, formerly the U.S. Immigration and Naturalization Service.

The main objectives of the administrative collection are to determine:

- the number of reported incidents of inmate-on-inmate sexual violence and staff-on-inmate sexual misconduct, by gender;
- how prison systems and facilities record these incidents (e.g., in disciplinary, grievance, investigative, or medical files);
- what information is recorded (e.g., allegations, confirmed incidents, only incidents involving serious bodily harm, or threats);
- where the incidents occur (e.g., in the victim's cell/room, in a common area, or outside of the facility);
- what additional data are available (for purposes of administrative collections in future years).

Overall, the administrative collection will provide BJS with an understanding of what corrections officials know, what information is recorded, how allegations and confirmed incidents are handled, what disciplinary or administrative and legal sanctions are imposed on perpetrators, and what treatment is provided to victims of sexual assault.

The results from these collections in prisons, jails, and juvenile facilities will provide BJS with facility- and system-level estimates of the incidents of sexual assault for the 12-month period ending June 30, 2004. As required under the Act, BJS will report the findings at a facility level, identifying those facilities with the highest and lowest rates of sexual assault. In subsequent years, the administrative records collections will obtain more detailed data on the circumstances surrounding each reported incident.

BJS is seeking data collection agents for administrative records collection and audio-CASI

The U.S. Census Bureau will act as BJS' collection agent for the 2004 survey of administrative records. Through an interagency agreement, BJS and Census staff will in early 2004 develop and test three separate collection forms (for prisons, jails, and juvenile facilities) and optimal sampling designs (for jails and juvenile facilities). Data collection will begin in the fall of 2004, following approval from the Office of Management and Budget.

BJS will also seek data collection agents to design, develop, and field test the audio-CASI and PAPI surveys. An initial solicitation for work related to adult prisons and jails was announced in September 2003. The final selection is expected in February 2004. A second announcement, expected in March 2004, will solicit a data collection agent for work related to audio-CASI development and testing in juvenile facilities. A final collection agent will be sought for development and testing of the PAPI surveys of soon-to-be released jail inmates and former prisoners under parole supervision.

Each of the designated collection agents will be responsible for completing a cognitive test of the audio-CASI or PAPI instrument within 12 months of the start of the project and a national field test within 16 months.

National implementation to begin in 2004 and fully operational by 2006

To meet the requirements of the Act, BJS will conduct an initial administrative records collection in 2004. This collection will provide facility-level estimates of sexual assault for the

12-month period ending June 30, 2004. Similar collections are planned for 2005 and 2006, with additional detail from official records.

It is anticipated that the audio-CASI and PAPI surveys of current and former inmates will be fully operational

for a national data collection by the end of 2006. Test results of audio-CASI and PAPI surveys will be made available in early 2006. The first facility-level measures of sexual assault using victim self-reports will be collected for the 12-month period ending June 30, 2006.

Schedule of BJS activities for the Prison Rape Elimination Act

