

Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), nothing in this chapter may be construed to authorize or require conduct prohibited under any of the following laws, or to supersede, restrict, or limit the application of such laws:

- (1) The Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).
- (2) The Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.).
- (3) The Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.).
- (4) The National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.).
- (5) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).
- (6) The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

**(b) No effect on preclearance or other requirements under Voting Rights Act**

The approval by the Administrator or the Commission of a payment or grant application under subchapter I or subchapter II of this chapter, or any other action taken by the Commission or a State under such subchapter, shall not be considered to have any effect on requirements for preclearance under section 5 of the Voting Rights Act of 1965 (42 U.S.C. 1973c) or any other requirements of such Act [42 U.S.C. 1973 et seq.].

(Pub. L. 107-252, title IX, §906, Oct. 29, 2002, 116 Stat. 1729.)

REFERENCES IN TEXT

The National Voter Registration Act of 1993, referred to in subsec. (a), is Pub. L. 103-31, May 20, 1993, 107 Stat. 77, which is classified principally to subchapter I-H (§1973gg et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 107-252, Oct. 29, 2002, 116 Stat. 1666, known as the Help America Vote Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

The Voting Rights Act of 1965, referred to in subsecs. (a)(1) and (b), is Pub. L. 89-110, Aug. 6, 1965, 79 Stat. 437, which is classified generally to subchapters I-A (§1973 et seq.), I-B (§1973aa et seq.), and I-C (§1973bb et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

The Voting Accessibility for the Elderly and Handicapped Act, referred to in subsec. (a)(2), is Pub. L. 98-435, Sept. 28, 1984, 98 Stat. 1678, which is classified generally to subchapter I-F (§1973ee et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

The Uniformed and Overseas Citizens Absentee Voting Act, referred to in subsec. (a)(3), is Pub. L. 99-410, Aug. 28, 1986, 100 Stat. 924, which is classified principally to subchapter I-G (§1973ff et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 1971 of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (a)(5), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to chapter 126 (§12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (a)(6), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

**CHAPTER 147—PRISON RAPE ELIMINATION**

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**§ 15601. Findings**

Congress makes the following findings:

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

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

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

(4) Young first-time offenders are at increased risk of sexual victimization. Juveniles are 5 times more likely to be sexually assaulted in adult rather than juvenile facilities—often within the first 48 hours of incarceration.

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

(6) Prison rape often goes unreported, and inmate victims often receive inadequate treatment for the severe physical and psychological effects of sexual assault—if they receive treatment at all.

(7) HIV and AIDS are major public health problems within America's correctional facilities. In 2000, 25,088 inmates in Federal and State prisons were known to be infected with HIV/AIDS. In 2000, HIV/AIDS accounted for more than 6 percent of all deaths in Federal and State prisons. Infection rates for other

sexually transmitted diseases, tuberculosis, and hepatitis B and C are also far greater for prisoners than for the American population as a whole. Prison rape undermines the public health by contributing to the spread of these diseases, and often giving a potential death sentence to its victims.

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

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

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

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

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

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

(14) The high incidence of prison rape undermines the effectiveness and efficiency of United States Government expenditures through grant programs such as those dealing with health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison construction, maintenance, and operation; race relations; poverty; unemployment and homelessness. The effectiveness and efficiency of these federally funded grant programs are compromised by the failure of State officials to adopt policies and procedures that reduce the incidence of prison rape in that the high incidence of prison rape—

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

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

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

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

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

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

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

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

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

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

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

(Pub. L. 108–79, § 2, Sept. 4, 2003, 117 Stat. 972.)

#### SHORT TITLE

Pub. L. 108–79, § 1(a), Sept. 4, 2003, 117 Stat. 972, provided that: “This Act [enacting this chapter] may be cited as the ‘Prison Rape Elimination Act of 2003’.”

#### IMPLEMENTING THE PRISON RAPE ELIMINATION ACT

Memorandum of President of the United States, May 17, 2012, 77 F.R. 30873, provided:

Memorandum for the Heads of Executive Departments and Agencies

Sexual violence, against any victim, is an assault on human dignity and an affront to American values. The Prison Rape Elimination Act of 2003 (PREA) was enacted with bipartisan support and established a “zero-tolerance standard” for rape in prisons in the United States. 42 U.S.C. 15602(1).

My Administration, with leadership from the Department of Justice, has worked diligently to implement the principles set out in PREA. Today, the Attorney General finalized a rule adopting national standards to prevent, detect, and respond to prison rape. This rule expresses my Administration's conclusion that PREA applies to all Federal confinement facilities, including those operated by executive departments and agencies (agencies) other than the Department of Justice, whether administered by the Federal Government or by a private organization on behalf of the Federal Government.

Each agency is responsible for, and must be accountable for, the operations of its own confinement facilities, and each agency has extensive expertise regarding its own facilities, particularly those housing unique populations. Thus, each agency is best positioned to determine how to implement the Federal laws and rules that govern its own operations, the conduct of its own employees, and the safety of persons in its custody. To advance the goals of PREA, we must ensure that all agencies that operate confinement facilities adopt high standards to prevent, detect, and respond to sexual abuse. In addition to adopting such standards, the success of PREA in combating sexual abuse in confinement facilities will depend on effective agency and facility leadership and the development of an agency culture that prioritizes efforts to combat sexual abuse.

In order to implement PREA comprehensively across the Federal Government, I hereby direct all agencies with Federal confinement facilities that are not already subject to the Department of Justice's final rule to work with the Attorney General to propose, within 120 days of the date of this memorandum, any rules or procedures necessary to satisfy the requirements of PREA and to finalize any such rules or procedures within 240 days of their proposal.

This memorandum shall be implemented consistent with the requirements of Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments).

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

## § 15602. Purposes

The purposes of this chapter are to—

- (1) establish a zero-tolerance standard for the incidence of prison rape in prisons in the United States;
- (2) make the prevention of prison rape a top priority in each prison system;
- (3) develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape;
- (4) increase the available data and information on the incidence of prison rape, consequently improving the management and administration of correctional facilities;
- (5) standardize the definitions used for collecting data on the incidence of prison rape;
- (6) increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison rape;
- (7) protect the Eighth Amendment rights of Federal, State, and local prisoners;
- (8) increase the efficiency and effectiveness of Federal expenditures through grant programs such as those dealing with health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison construction, maintenance, and operation; race relations; poverty; unemployment; and homelessness; and
- (9) reduce the costs that prison rape imposes on interstate commerce.

(Pub. L. 108-79, §3, Sept. 4, 2003, 117 Stat. 974.)

## § 15603. National prison rape statistics, data, and research

### (a) Annual comprehensive statistical review

#### (1) In general

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

- (A) both victims and perpetrators of prison rape; and
- (B) prisons and prison systems with a high incidence of prison rape.

#### (2) Considerations

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

- (A) how rape should be defined for the purposes of the statistical review and analysis;
- (B) how the Bureau should collect information about staff-on-inmate sexual assault;
- (C) how the Bureau should collect information beyond inmate self-reports of prison rape;
- (D) how the Bureau should adjust the data in order to account for differences among prisons as required by subsection (c)(3);
- (E) the categorization of prisons as required by subsection (c)(4); and
- (F) whether a preliminary study of prison rape should be conducted to inform the methodology of the comprehensive statistical review.

#### (3) Solicitation of views

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

#### (4) Sampling techniques

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

#### (5) Surveys

In carrying out the review and analysis under paragraph (1), the Bureau shall, in addition to such other methods as the Bureau considers appropriate, use surveys and other statistical studies of current and former inmates from a sample of Federal, State, county, and