

Statement of Senator Dick Durbin
Sexual Assault in Detention and the Prison Rape Elimination Act
May 23, 2012

Mr. President, I rise to speak about the human rights issue of sexual assault in U.S. prisons, jails, and detention centers – and the historic release of our country’s first-ever national standards to eliminate prison rape.

When the government takes people into custody, and puts them behind bars, their human rights become our responsibility. And we are accountable for the results. In studying this issue for nearly a decade, we learned that sexual assault in detention has become an epidemic. It is occurring at the hands of other inmates, and it is occurring at the hands of prison officials whose job it is to protect.

We learned that hundreds of thousands of inmates are victims of sexual assault every year. According to a Bureau of Justice Statistics report released this month, approximately one out of ten former state prisoners reported incidents of sexual victimization during their most recent stay behind bars. Approximately a third of former inmates reported other types of sexual harassment or victimization. Many say these are conservative estimates of those brave enough to report.

It is also disturbing that “prison rape” has become an accepted part of our culture. We hear people make light of it in jokes, in movies, in television shows. It is a common pop culture reference. This is unacceptable, and it sends the message that this brutal, terrorizing conduct is actually part of a United States prison sentence. As our Supreme Court has said, it is not. The Court stated, in the 1994 case of *Farmer v. Brennan*, that being violently assaulted in prison is not part of the penalty offenders should pay for their offenses against society.

Winston Churchill declared in 1910: “The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country.” We are utterly failing the test when it comes to prison rape. Our status quo is intolerable for a country that prides itself on its commitment to civil liberties, to civil rights, and to human rights.

And this issue affects so many individuals and their families so deeply. We have more than two million people incarcerated in America today. We incarcerate more individuals, and at a higher per capita rate, than any other country on earth.

Congress passed the Prison Rape Elimination Act, “PREA,” in 2003. This was a bipartisan effort so important that its champions included unlikely bedfellows like

Senators Jeff Sessions and Edward M. Kennedy. I was an original cosponsor of this legislation. Just last week, the Department of Justice finally issued the first-ever national standards to prevent, detect, and respond to prison rape, which are required under PREA.

These are historic regulations that aim to eliminate sexual assault in all federal, state, and local facilities. I applaud President Obama and Attorney General Eric Holder on their achievement. This nearly 300-page document represents one of the most comprehensive and challenging rulemaking processes the Department of Justice has undertaken in decades.

In particular, I want to thank the Attorney General for incorporating my concerns and suggestions into the Justice Department's final standards – and for making them stronger. As an original cosponsor of PREA, I have been following the progress of these long-delayed standards for nearly nine years. The Department's proposed standards, released early last year, were missing important protections. I sent a letter to the Attorney General, emphasizing the need for stronger provisions in certain key respects. For example:

The sea change we need requires, above all, accountability. In my letter, I expressed concern that the proposed standards did not require regular audits of detention facilities by *external*, objective auditors. The final standards require external audits every three years to ensure the regulations are being implemented.

One of the biggest problems with custodial sexual assault is underreporting and fear of retaliation. I learned it was key that inmates have access to “outside reporting” – a way to report abuse to someone entirely separate from the facility and agency holding them. According to one Illinois inmate, this “could make all the difference.” Heeding these concerns, the final standards now require this outside reporting.

I expressed concern about imposing short timelines for reporting abuse and hampering the ability of victims to seek appropriate redress. I also asked the Department to ensure inmates weren't chilled from reporting emergency situations due to fear of reprimand for false reporting. I am pleased that the final rule made these changes.

I commented on the need for increased protections related to certain staff practices we know can contribute to instances of sexual abuse – so-called “cross-gender pat-downs and cross-gender viewings.” I am pleased that many of the critical protections were added.

I have long been concerned about the use of solitary confinement, where some inmates spend prolonged periods in extreme isolation. I learned one reason some do not report abuse is a fear of placement in solitary confinement. Placing those who report abuse in extreme confinement can make a “victim” even more of a victim. I asked the Department to impose important safeguards in this regard, and I am pleased to see these changes were included in the final standards.

Finally, I am concerned about younger inmates who are especially vulnerable and easily victimized – namely, children serving time in adult prisons. The final standards include important protections for this population.

I am grateful to Attorney General Holder for considering my input and for making these changes to the Justice Department’s historic national standards.

Of course, the standards are not perfect. I look forward to working with the Department of Justice on remaining issues like ensuring that inmates have access to confidential reporting and services – and making sure that staff practices, like cross-gender pat-downs, with regard to male inmates are appropriate.

But the bottom line is that the Department’s strong standards make clear that the federal government will not tolerate this conduct, and that a culture change is necessary.

My work on this issue has been inspired by hearing from sexual abuse victims. For example, I received an account from one Illinois inmate who was incarcerated for a non-violent offense. He described multiple threats he received in jail, and how he tried to get help from prison officials, to no avail. He explained how he was knocked to the floor, choked, and raped in the shower. He now wants to spend his life putting an end to prison rape.

I received a report from another survivor in Illinois, a father of two who explained how he contracted HIV after being sexually assaulted in prison. He talked about the stress, hyperventilating, nightmares, and shame. He explained that he wakes some nights and can “smell the soap from the washcloth that had been crammed in [his] mouth to silence [the] screams.”

Criminal detainees aren’t the only detainees at risk. Last week, the White House made another important announcement. It confirmed that Prison Rape Elimination Act standards will apply to *all* federal confinement facilities, including immigration facilities. This is an important step that speaks to the Administration’s commitment to ending sexual assault in all forms of detention.

The Department of Homeland Security will be promulgating its own regulations that will apply to immigration detainees. I have long been concerned about the sexual assault of immigration detainees.

We have heard about truly horrific instances of assault occurring in immigration detention facilities. A troubling episode of Frontline, the PBS program, detailed one woman's story in great detail recently. But that was hardly an isolated incident.

When we drafted and passed PREA, it was always our intent that it would apply to all those in detention – including immigration detainees. I discussed this issue with Secretary Napolitano at a recent Judiciary Committee hearing. And I also – working with Senator Leahy – included a provision in the current Violence Against Women Reauthorization Act to clarify that standards to prevent rape must apply to all immigration detainees.

I am disappointed that nearly nine years after PREA was passed, our immigration detainees still do not have the strong protections they deserve. But I look forward to working with the Department of Homeland Security to ensure that its forthcoming regulations effectively address this issue. It was never our intention to have those accused of violating civil immigration laws left with fewer protections than those serving criminal sentences.

Again, I applaud President Obama and Attorney General Holder for their efforts to end this serious human rights abuse. I also give special recognition to the bipartisan Prison Rape Elimination Commission, whose impressive work, expertise, and strong proposed standards were the lynchpin of this effort.

I want to recognize my former colleague, the late, great Senator Ted Kennedy, for his leadership on this issue, as he led us on so many civil rights issues over the years.

I also want to thank my colleague Senator Sessions for his leadership as the lead sponsor of the Prison Rape Elimination Act. Senator Sessions and I often disagree, but we have been able to come together across the political divide to work on civil rights issues like prison rape and the sentencing of nonviolent drug offenders. As Senator Kennedy stated about prison rape: "It is not a liberal issue or a conservative issue. It is an issue of basic decency and human rights."

Finally, I thank the organizations that worked with me and my office to address this issue: Just Detention International, the ACLU, the National Immigrant Justice Center,

Human Rights Watch, Human Rights First, Campaign for Youth Justice, and so many others.

I look forward to confronting what may be the most challenging part of this process ahead – ensuring that these standards protect the rights of *all* detainees, and that they are adopted and enforced expeditiously. I look forward to working with my colleagues to put an end to one of the more alarming criminal justice and human rights crises in our country today.