

Rape Among Incarcerated Men: Sex, Coercion and STDs

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ABSTRACT

Male inmates fear being raped most of all. Criminologists have yet to reach consensus on the prevalence of male inmate-on-inmate rape. The leading prevalence studies found that 7–12% of the responding male inmates had been raped an average of nine times. With a national jail and prison population of 2 million at mid-year 2002, the United States likely exposes tens of thousands of male inmates to rape, and consequently, to HIV/AIDS and other sexually transmitted diseases (STDs). The release of inmates from jails and prisons—estimated at 11.5 million persons in 1998—transforms the consequences of male rape from a correctional matter into a public health crisis. The quest for dominance and control over other inmates—not sexual release—best explains male custodial rape. Prison sexual predators are typically heterosexual. Their victims, however, involuntarily assume female roles in the prison sexual system. Moreover, they experience stigmatization by inmates and staff as well as physical and mental trauma. Civil rights litigation on behalf of victims rarely succeeds and damage awards are usually small. In 2003, Congress provided \$13 million for the study and prevention of rape in jails and prisons. Preventing custodial rape and treating its victims will require a sustained commitment by government.

A youthful inmate can expect to be subjected to homosexual rape his first night in jail, or, it has been said, even on the van on the way to jail. Weaker prisoners become the property of stronger prisoners or gangs, who sell the sexual services of the victim. Prison officials either are disinterested in stopping abuse of prisoners by other prisoners or incapable of doing so. . . . *United States v. Bailey*, 444 U.S. 394, 420 (1980) (Blackmun, J. dissenting).

INTRODUCTION

“WILL I BE RAPED?” That question more than any other haunts men awaiting incarceration.¹ And for good reason: “New convicts are almost instantly sized up as dominant and sub-

missive, penetrator or penetrated.”² Targeted inmates must “fight, fuck, or flee.”³

A jail or prison rape can impose an “unadjudicated death sentence”⁴ because of the risk of contracting HIV/AIDS. A March 2002 report by the National Commission on Correctional Health Care (NCCHC) estimated that 0.5% of inmates confined in state and federal prisons in 1996 had AIDS, 5 times the prevalence in the U.S. population.⁵ The NCCHC estimated a much higher incidence of HIV infection (non-AIDS): 2.3%–2.98% of all state and federal prisoners, 4 times the prevalence in the U.S. population.⁵ Between 1995 and 2000, the prevalence of HIV-positive prisoners ranged from 2.3%–

2.1% for males and decreased from 4.0% to 3.4% for females.⁵ Other sexually transmitted diseases (STDs) found among state and federal prisoners in 1996 included syphilis (2.6%–4.3% of all prisoners); chlamydia (2.4% of all prisoners); gonorrhea (1.0% of all prisoners); hepatitis B (2.0% of all prisoners); hepatitis C (17.0%–18.6% of all prisoners); tuberculosis disease (0.04% of all prisoners); and tuberculosis infection (7.4% of all prisoners).⁵ Similar rates were reported for inmates confined to local jails, with the exception of HIV infection (1.2%–1.8% of jailed persons).⁶

An unprecedented number of inmates are threatened with rape and its collateral consequences. At mid-year 2002, the nation confined just over 2 million people in its jails and prisons.⁷ The incarceration rate reached a record 702 persons per 100,000 U.S. residents, a 53% increase since 1990.⁷ The custodial population remained disproportionately male, black, and under age 40.⁷ While the rate of population growth among female inmates has outpaced their male counterparts since 1995, males comprised 93% of all inmates and were 15 times more likely than women to be imprisoned.⁷ Black non-Hispanic males between the ages of 20 and 39 numbered nearly 600,000.⁷ At the close of 2001, black non-Hispanic males of all age groups constituted 43% of the prison population, compared to 36% white non-Hispanic prisoners and 16% Hispanic prisoners.⁸

The growing numbers of inmates released from jails and prisons—estimated at 11.5 million persons in 1998⁵—transforms the consequences of male rape from a correctional issue into a public health crisis. The NCCHC estimated that jail and prison inmates released in 1996 accounted for an estimated 13.1%–19.3% of all HIV cases; 17% of all AIDS cases; 12.4%–15.5% of all hepatitis B cases; 28.9%–32.0% of all hepatitis B cases; and 35% of all tuberculosis cases.⁵

This paper provides the reader with a primer on male inmate-on-inmate rape. Rape in this context denotes oral or anal intercourse. Although female inmates experience sexual abuse, the distinctive prison experience of male inmates as well as other considerations dictate that I solely address their victimization. Once “shrouded in dead silence,”⁹ male inmate-on-

inmate rape imperils a vast jail and prison population and the communities that eventually receive large numbers of undiagnosed and untreated former inmates.

LIFE BEHIND BARS

The contemporary prison operates as a “human warehouse with a jungle-like underground.”¹⁰ Daily life for most inmates consists of “deadening routine punctuated by bursts of fear and violence.”¹¹ Over the past four decades a reign of terror has descended over many of the nation’s prisons. Murder and assault rates may be several times higher than the national average.¹²

While “doing time” appears highly regimented, inmates encounter a *sub-rosa* environment resembling an urban slum.¹³ Here one finds powerful gangs; an illicit economy fueled by drugs; outnumbered and sometimes corrupted correctional officers, who accommodate inmate desires in exchange for “surface” order; and a fragmented inmate population largely composed of uneducated, impoverished, young men.¹⁴

Criminal statutes and prison regulations overlay the prison subculture. Both prohibit male rape.³ Prosecutors, however, rarely bring charges against accused prison rapists.⁴ Indeed, they can usually ply their aggression with impunity. The nation’s crowded prisons, replete with multiple occupancy cells and communal bathing areas, render many rapes undetectable.¹⁵

Correctional officers hold ambivalent attitudes about male prison rape. While most officers will protect inmates from sexual assault, many erroneously regard subtle forms of coerced sex—such as exchanging sex for protection from gang rape—as consensual.¹⁶ Officers frequently fault targeted inmates who failed to vigorously defend themselves.³ Allegations abound that prison staff set up rapes to either pacify aggressive inmates or punish troublemakers.¹⁷

FREQUENCY

Anecdotal accounts of custodial rape almost invariably describe it as commonplace.⁴ How-

ever, social scientists vigorously debate its frequency.¹⁸ Just over half of U.S. states fail to collect data on rapes occurring in their jails and prisons.¹⁷ Consequently, determining the national rate remains elusive.

Prison records greatly undercount sexual assaults because inmates infrequently report their victimization.¹⁵ Raped inmates fail to notify prison workers out of shame, fear of retaliation by their assailants, adherence to an inmate code that labels such conduct as "snitching," and concern that staff will disbelieve or ridicule them and/or do nothing.¹⁶

Disparate findings emerge from prevalence studies. In 1968, Davis¹⁸ conducted the first major study of male custodial rape. He interviewed 3304 male inmates housed in Philadelphia's jails and concluded that 3% had been raped.¹⁸ In 1978, Lockwood's interviews¹⁹ with some 100 randomly selected inmates revealed that 28% had been targets of sexual aggression but only 1.3% experienced coerced anal or oral copulation. By contrast, 14% of the 200 California inmates responding to an anonymous survey during 1979–1980 reported being "pressured into having sex against their will."²⁰

The three major studies conducted over the next 14 years found a low incidence of rape. In 1983, Nacci and Kane²¹ reported a rape prevalence of 0.3% upon surveying 330 male inmates in 17 federal prisons. Five years later, Tewksbury²² anonymously queried 150 male inmates in an Ohio prison and received no reports of rape from the 137 respondents. In face-to-face interviews with 106 inmates confined to a Delaware prison in 1994, Saum et al.²³ reported a prevalence just under 1%.

Later in the 1990s, Struckman-Johnson et al.²⁴ undertook the two most rigorous and generalizable surveys to date of male custodial rape. Approximately 30% of 1708 men in two medium security and one minimum security prisons in Nebraska returned anonymous surveys in the first of the studies.²⁴ Twenty-two percent of the respondents reported coerced sexual contact and 12% reported coerced anal or oral sex during their confinement in Nebraska correctional facilities.²⁴

In 1998, Struckman-Johnson et al.²⁵ surveyed 7032 male inmates in seven midwestern states. Twenty-one percent of the respondents re-

ported coerced sexual contact during confinement in their state prison system.²⁵ Seven percent of the respondents reported coerced oral or anal sex in their current prison.²⁵ Among the several prisons, the prevalence of coerced sexual contact ranged from 4%–21% and the incidence of coerced oral or anal sex ranged from 0.0%–11%.²⁵ The largest prisons, with over 1000 inmates, had the highest rates. One of every 5 respondents confined to the largest prisons reported staff involvement in a sexual incident.²⁵

Commentators have attributed the disparate findings of the aforementioned studies to several methodological limitations. They include: (1) small, unrepresentative samples; (2) high rates of illiteracy among surveyed inmates; (3) respondents' underreporting of victimization, especially in personal interviews; and (4) dissimilar management practices, some of which tolerant rape.²⁶

Moreover, these studies assumed a meaningful distinction between coerced and consensual sexual acts. Inquiries into consensual sex have reported participation rates ranging from 25%–65%.²⁷ Sexual practices that are outwardly consensual, however, are usually bounded by fear, threat, and intimidation. Coercive techniques include the threat of harm, the presence of a weapon, and the size and strength of the aggressor.²⁴ For instance, a common tactic involves extending credit for a day at an interest rate of \$2 for every \$1 loaned. When the "mark"—usually a naive, drug-addicted inmate—cannot make good on his debt, he will be given the option of "servicing" the debt through copulation or face repeated beatings.²⁸

ETIOLOGY

The etiology of custodial rape resembles that of female rape: both are more about power and control than sexual release.²⁹ Indeed, the prisoner subculture regards the rape of a fellow inmate as one of the premier forms of masculine domination. Accordingly, most inmate sexual aggressors view themselves as heterosexual.^{4,17}

"Turning out" an inmate (prison argot for raping him) assigns assailant and victim to socially constructed, hierarchical gender roles.

The assailant becomes a "pitcher," a respected masculine role.³⁰ The victim assumes one of several female, "catcher" roles. They include the "fags," who are the "natural" gay inmates.³⁰ Below them reside the "punks," the "made" homosexuals, so named because they initially resisted sexual advances but eventually fell victim through force or intimidation.³⁰

These roles and their hierarchical rank originate in the several value systems influencing inmates. Prior to their confinement, most males had embraced Western gender norms, including the notion that masculinity must be aggressively acquired by controlling people and resources.³¹ The inmate subculture has exaggerated these gender norms; the ideal type, "the real man," evinces hypermasculinity. Some scholars attribute this exaggerated concern for masculinity to the lower class background of many offenders.³² This social stratum contains a predominately black subculture of violence, which embraces aggression and domination as manly virtues.³²

Once imprisoned, male offenders experience an authoritarian, punitive environment that assails their sense of competency and worth. The many official rules governing when to sleep, eat, bathe, and other aspects daily life threaten the offender's self-image as a competent, autonomous adult male.³³ Moreover, confinement in the single-sex prison deprives men of an important referent—women: "The inmate is shut off from the world of women which by its very polarity gives the male world much of its meaning."³³ In response to their demeaning circumstances, inmates strive to become the hypermasculine "real man." Sexualized aggression provides the means for achieving this ideal type.³⁴

For the disproportionate number of African American pitchers and non-Hispanic white catchers,³² sexualized aggression has additional significance. One explanation posits that African American inmates target Caucasians because they symbolize white oppression: "Punking [prison argot for raping] whites," wrote one black inmate, "is just one way of getting even."³⁵ However, some commentators assert that blacks simply find whites to be inviting targets because of their perceived feminin-

ity, naiveté about prison life, and reluctance to retaliate when one of their own is victimized.³⁶

SEQUELAE

Male custodial rape inflicts "pervasive, devastating, and global" consequences.³⁷ These consequences have social, physiological, and psychological dimensions, which are delineated below.

Social

News of a custodial rape spreads quickly. Having embraced the rape myth that "real men" fend off sexual assaults, inmates will blame the victim and describe him in gender animus terms, such as "pussy."³⁸ In turn, his social identity will be altered; as two Louisiana inmates observed, "The act [of rape] defines him as "female" in this perverse subculture. . . ."³⁹ Victimization also becomes a calling card for predators: the raped inmate is likely to be raped repeatedly by his original assailant and others. A leading study found that on average a victim of rape will experience nine sexual assaults.²⁴ Attacking his assailant constitutes the victim's only honorable recourse in the inmate subculture. Nearly half of the targeted inmates in one study responded in this manner.¹⁹ Many struck preemptively.¹⁹ The resulting battles were potentially lethal: a study of prison homicide found that 30% of single-assailant murders arose from sexual targeting.⁴⁰

Already defeated, injured, and humiliated, many victims "hook-up" with a sexual partner—a "daddy" (also known as a "jocker" or "booty bandit")—to exchange sex for protection from other predators.⁴¹ This arrangement will cost the victim dearly: his newfound "daddy" may rent, sell, or auction him off to other inmates.⁴¹ Also, his "daddy" may rename him as a woman and require his use of lipstick and other female cosmetics.⁴ A one-time "punk" described these relationships as "survival driven": "From the typical punks point of view, none of his passive sexual activities are truly voluntary, since if he had his own way, he would not need to engage in them."⁴¹ None-

theless, such arrangements are often accepted by correctional officers as consensual.⁴²

Retreating to protective custody, a form of solitary confinement for at-risk inmates, constitutes the victim's final option.⁴³ Entrance, however, can come at a high price. Prison staff may not admit him unless he identifies his assailant and thus becomes a "snitch."¹⁵ Upon admission to protective custody, staff and inmates alike stigmatize the victim as a "non-man."⁴⁴ Moreover, protective custody offers few programs or other diversions from solitary confinement.⁴⁵

Physiologic

Human Rights Watch observed that "[r]ape in prison can be almost unimaginably vicious and brutal. Gang assaults are not uncommon, and victims may be left beaten, bloody and, in most extreme cases, dead."⁴ One-third of the victims of custodial rape in Nebraska reported being restrained and nearly an equal number had been injured.²⁴ Just over 25% indicated that their assailant used a weapon.²⁴

Penile penetration can result in transmission of HIV/AIDS and other diseases.^{4,26} Three factors enhance this risk. First, a victim will likely suffer multiple rapes. Nebraska victims reported, on average, 9 incidents, with 33% of the victims reporting 1 incident; 24% reporting 2 incidents; 14% reporting 4–5 incidents; 15% reporting 6–10 incidents; 4% reporting 11–20 incidents; 6% reporting 21–50 incidents; and 4% reporting 51–100 incidents.²⁴

Second, sexual assault victims reported on average 4 perpetrators, with 50% of the victims reporting 1 perpetrator; 30% reporting 2–3 perpetrators; 10% reporting 4–5 perpetrators; 6% reporting 6–10 perpetrators; and 4% reporting 11 or more perpetrators.²⁴

Third, the prevalence rate of confirmed AIDS inmates (0.52%) exceeded that of the U.S. population (0.13%) by four times at the close of 2000.⁶ The percent of confirmed AIDS inmates varied dramatically by region: 4.9% in the Northeast; 1.1% in the Midwest; 2.2% in the South; and 1.0% in the West.⁶

The plight of sexually assaulted inmates is compounded by the failure of many jails and

prisons to adequately respond to HIV, syphilis, and other STDs.⁵ Few institutions provide comprehensive HIV education, screening, and prevention.⁵ Only 5 states test all inmates and but 4 test at time of release for HIV.⁶ While 41 states test inmates after an "incident,"⁶ most rapes will not be detected or reported.¹⁵

Psychological

Of inmates targeted in several New York prisons, Lockwood⁴⁶ described the psychological consequences as "devastating and debilitating." Fifty-five percent of the targeted men spoke of their extreme fear of future assaults.⁴⁶ One inmate explained, "My fear was so heavy that I kept thinking about it. Day and day and day. And I couldn't get this fear out."⁴⁶ One-third of the victimized inmates spoke of feeling great anxiety, including shaking and crying.⁴⁶ Approximately 1 in 4 targets sank into what Lockwood called "crises" (i.e., "situations which individuals are unable to handle").⁴⁶ In addition, 38% made suicide gestures, with targets being 17 times more likely to attempt suicide than nontargets.¹⁹

A study of custodial rape targets in Nebraska obtained similar findings. When asked about the psychological impact of their victimization, 77% of the targets marked the highest scale on the survey instrument.²⁴ Over half reported depression and 36% experienced "thoughts of suicide."²⁴

"Virtually all" raped inmates experience rape trauma syndrome (RTS).⁴⁷ Inmates afflicted by RTS manifest feelings of vulnerability, such as "extreme fear, pain, acute anxiety, an intense urge for flight," and yet they are expected to defend themselves in a prison environment where self-help measures are the norm.⁴⁸ Also, RTS inmates believe that their masculine identity has been compromised by virtue of being sexually penetrated.^{47,48}

DISCUSSION

The Supreme Court in 1994 stated that "being violently assaulted in prison is simply not part of the penalty that criminal offenders pay

for their offenses against society."⁴⁹ Similarly, the United Nations Convention against Torture has banned the rape of inmates.⁵⁰ Nonetheless, custodial rape continues. Why? The answer lies in the politics of male custodial rape.

Inmates have become the untouchable caste of American politics.⁵¹ Conviction and imprisonment has spoiled their social identities. For a significant segment of the body politic, inmates are unworthy of respect and regard—even when confronted with the dangers of custodial rape. When asked if “society accepts prison rape as part of the price criminals pay for their wrongdoing,” half of the queried registered voters said yes.²⁶

Similar to other stigmatized groups, inmates have turned to the federal courts for protection. For the most part, judicial intervention has improved the lives of inmates.⁵² Victims of custodial rape, however, encounter an ill-advised legal standard. It originated in the Supreme Court ruling in *Farmer v. Brennan*.⁴⁹ The Supreme Court held that prison officials violate the Eighth Amendment prohibition of cruel and unusual punishment when they are deliberately indifferent to a high risk of rape.⁴⁹ This standard excuses prison staff who fail to protect inmates out of ignorance, even if their ignorance arises from negligent conduct.⁴⁹ Consequently, only the rare custodial rape lawsuit succeeds.⁴ When victims do secure damage awards, they tend to be small.⁴

To make matters worse, the United States has engaged in a policy of mass incarceration with little regard for its impact on public health. Since 1973 the number of inmates has grown by more than 5-fold; comprising 5% of the global population, the U.S. now confines 25% of the world's prisoners.⁵³ Mass incarceration has led to practices conducive to rape including: (1) overcrowding; (2) understaffing; (3) and housing violent offenders with the sexually vulnerable, especially youthful white inmates of slight stature.²⁴

Nonetheless, the politics of custodial rape took an expected turn in 2001 with the release of a Human Rights Watch report. *No Escape: Male Rape in U.S. Prisons* described the various harms visited upon the male victims of custodial rape and the frequent indifference of cor-

rectional authorities to their plight.⁴ The report led to an unprecedented degree of sympathetic media coverage about the victims of custodial rape. It also spawned a coalition against custodial rape that included both politically left and right-leaning organizations.

In 2002, this coalition urged congressional passage of the Prison Rape Reduction Act.⁵⁴ It mandates the following: (1) annual studies on the prevalence of rape; (2) rape prevention programs; and (3) model standards for the prevention and treatment of custodial rape.⁵⁴ In March 2003, President Bush signed an appropriation bill that included \$13 million for funding rape prevention programs.⁵⁵ Preventing custodial rape and treating its victims will require a sustained governmental commitment.

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