



Shining Light in Dark Corners: An Overview of Prison Rape Elimination Legislation and Introduction to Current Research

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INTRODUCTION

On September 22, 2005, Governor Schwarzenegger signed into law the “Sexual Abuse in Detention Elimination Act” (AB 550), designed to prevent, reduce and effectively respond to the sexual abuse of inmates and wards held in detention facilities operated by the California Department of Corrections and Rehabilitation (CDCR). According to Stop Prisoner Rape (SPR), a Los Angeles-based human rights organization, this law “lays the foundation for California, the largest prison system in the country, to be a national leader in the fight to end prisoner rape.”¹ This historic legislation affirms the spirit of recent national legislation—the Prison Rape Elimination Act of 2003—signed into law by President Bush. Combined, these two laws focus newfound attention on sexual assault in correctional facilities, encouraging new ways of thinking about how best to foster safety in prisons, and demonstrating a commitment to increased and improved data collection and research on sexual assault in prison and other detention facilities.

In an era in which the CDCR promotes an “evidence-based” approach to corrections, support for data collection is consistent with this mission. The data collection efforts described in this bulletin are designed to help corrections officials understand the parameters of the problem of sexual assault in order to enhance the development of prevention, detection, and response protocols that address the realities of sexual assault.

THE PRISON RAPE ELIMINATION ACT

One of the many goals of the PREA is to analyze “the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape.”² The broad definition of rape provided in Section 10 of the Act includes most sexual contact against

one’s will, where the victim is incapable of giving consent, or where such contact occurs as a result of exploitation or fear. Furthermore, the Act applies to all confinement facilities, including adult and juvenile, public and private, state and federal, as well as community correctional facilities and correctional vehicles used to transport prisoners to and from other facilities.

RESEARCH ON SEXUAL ASSAULT IN PRISON

Prior research on sexual assault documents its wide-reaching impact on corrections: sexual assault in prison contributes to the spread of sexually transmitted diseases,³ leads to or exacerbates mental health problems,⁴ and increases violence in the form of defense or retaliation.⁵ Moreover, victims of sexual assault often require an extensive and therefore costly institutional response, including: medical examinations, investigations, and psychological treatment often continuing long after the incident occurs.⁶

Still, it is difficult to accurately assess the incidence and prevalence of prison rape and other forms of sexual assault in correctional facilities.

In this Bulletin, UC researchers discuss current and prior research efforts on sexual assault of inmates.

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The PREA reports that 13% of inmates experience sexual assault in correctional facilities in the United States. However, researchers investigating this issue have produced varied and often contradictory results, with studies finding that sexual victimization in prisons is rare,⁷ nonexistent,⁸ or a more frequently occurring event.⁹

Estimates of the incidence and prevalence of prison rape vary for a number of reasons.

First, the research suffers from small sample sizes, definitional problems, and low response rates from study subjects.¹⁰ In addition, the studies vary greatly in their approach to defining and measuring sexual assault, the populations sampled, and the methods of data collection. Moreover, attempts to understand the extent and nature of sexual assault may be hindered by institutionalized beliefs and practices within the correctional system, including inmate and staff understandings of this particular form of violence.

In short, there is a lack of credible empirical data on sexual assault in correctional facilities across the nation, including in California. In the most comprehensive literature review of sexual victimization in correctional facilities, only one study focuses specifically on California.¹¹ Between 1979 and 1980, Wooden and Parker (1982) investigated sexual behavior and victimization in a California medium-security prison that housed self-identified homosexual inmates (i.e., a greater proportion of homosexual inmates were housed there than in other prisons). The researchers analyzed 200 returned questionnaires (out of 600 that were distributed) from a random sample of all inmates. Fourteen percent of respondents claimed to have been the victim of sexual assault. The authors of the study were careful to emphasize that this prison was atypical, thus findings generated from it may not portray sexual victimization in a way that generalizes to the rest of the California adult male inmate population (or otherwise) at that time or now.

Alternatively, the Bureau of Justice Statistics' (BJS) in-depth Survey of Inmates in State and Federal Correctional Facilities (1997) provides the only national representative inmate self-report data to date. With a 92.5% response rate, the data indicate that .8% of inmates who have been previously incarcerated reported experiencing sexual pressure or forced sexual contact against their will while incarcerated, not including the time served during their current incarceration. Although the BJS data provide a glimpse of the extent and distribution of sexual assault in prisons, they are limited. Because the questions target prior admissions and do not include the current incarceration sentence, the questions regarding sexual contact against one's will while incarcerated do not specify the type of institution in which the incident occurred (e.g., jail, prison, youth facility), the state in which the incident occurred, nor the circumstances surrounding the events.

CURRENT RESEARCH EFFORTS

The discrepant findings of prior work on this issue invite more empirical research on sexual assault in correctional facilities. Fortunately, national and state research efforts on prison rape and sexual assault were mandated by the PREA and new research efforts are currently underway.

Dr. Mark Fleisher, funded by the National Institute of Justice (NIJ) in 2003, has conducted a “cultural and social analysis” of prison rape.¹² Fleisher and his research team conducted 564 interviews nationwide with adult male and female inmates. These interviews reveal how inmates think about rape in the context of prison life, including their commonly held beliefs and attitudes about and commonly held explanations for sexual behavior in prison. Fleisher's preliminary results indicate that the PREA assumptions, especially with regard to its description of prison rape, are absent in inmates' own descriptions of their prison experiences. Fleisher's 2005 research argues that prison rape, as understood by the PREA and prior research, is a subject that fits the public conception of prison life but not an inmate conception of prison life. In fact, he argues that language in the legislation and most research (such as “sexual coercion” or “rape”) is not what inmates use when discussing prison sexual behavior. According to Fleisher, inmates describe sexual activity as consensual rather than violent and aggressive conduct. Inmates also report not worrying about prison rape and deny that rape is a

frequent problem. Furthermore, not a single inmate reported that an institution was currently a dangerous or violent place. Fleisher concludes that the term “rape” connotes a “fundamental misunderstanding of sexual behavior within the context of correctional culture.”¹⁴ Therefore, he claims that any correctional response seeking to effectively *eliminate* prison rape’s existence is currently misguided until an accurate understanding of the culture of prison sexuality is obtained.

Adopting a distinctly different approach to understanding sexual assault in prison, the Bureau of Justice Statistics (BJS) has undertaken national research on prison rape that, given the legislative requirement of the PREA, is designed to measure the prevalence of sexual assault in different types of detention facilities. Under the direction of Dr. Allen J. Beck, the first step in this research consisted of a national survey of administrative records on sexual violence in both adult and juvenile correctional facilities. These records capture allegations reported to correctional authorities. The BJS selected over 2,700 correctional facilities, representing 79% of all confined adults and juveniles, and found 8,210 reported allegations of sexual violence in 2004. Of those reported allegations with completed investigations, 2,090 (or 30%) were substantiated by correctional authorities. Most interestingly, the BJS research highlighted the particular problem of sexual violence in juvenile facilities. As the recently published report explained:

Because many States have laws specifying that all sexual acts involving youth below certain ages are nonconsensual, rates of alleged nonconsensual sexual acts were high in juvenile correctional facilities. In 2004 there were an estimated 7.31 allegations of

youth-on-youth nonconsensual sexual acts per 1,000 youth in local or private juvenile facilities and 6.75 allegations per 1,000 in State juvenile facilities. These rates were more than 6 times the inmate-on-inmate rate in State prison systems (1.05 per 1,000) and nearly 7 times the rate in local jails (.97 per 1,000).¹⁶

This report focused only on administrative data; therefore, it could not capture any incidents of violence unreported to corrections officials. Self-report data regarding inmates’ own experiences with sexual violence may uncover hidden victimization. Thus, the BJS is preparing instruments to survey inmates from a sample of 10% of the nation’s correctional facilities including federal, state, county, and municipal facilities.

PREA RESEARCH IN CALIFORNIA

Thinking about sexual assault in California prisons requires first acknowledging the unique context in which prison violence occurs in the state more generally. The California Department of Corrections and Rehabilitation (CDCR) currently houses 162,545 adults in its prisons and camps.¹⁷ Compared to other large correctional systems, California experiences almost twice the number of officially reported inmate assaults as Texas and nearly triple the assaults in the Federal system (see Table 1).¹⁸ Although a number of factors, such as definitional differences or reporting practices, may account for changes in rates of violence over time, the number of officially reported assaults in California nonetheless indicates the need for increased research on violence in California institutions. What is going on in California that produces this extent of violence in its state prisons? A current study of violence, including sexual assault, is

System	Prison Population (2003)	Inmate Assaults	
		Number (2000)	Per 100 Inmates (2000)
Federal	170,461	2,538	1.7
Texas	164,222	3,885	2.5
California	163,361	7,210	4.4
Florida	80,352	2,840	4.0
New York	65,914	1,640	2.3

Source: Legislative Analyst’s Office. (2005). *Analysis of 2005-2006 Budget Bill, Judiciary and Criminal Justice*.

Table 1: Assaults in California Surpass Other Large Correctional Systems

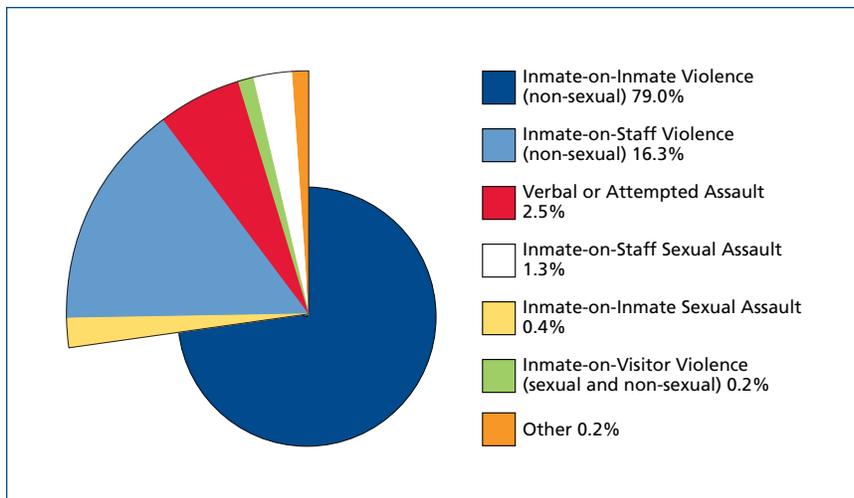


Figure 1. Crime/Incident Reports (837s) for Inmate Aggressors in California Adult Prisons, 1975-2004 (n = 209,556).²¹

needed, given the magnitude of California’s correctional system and the sparse research on prison violence and sexual assault in the state’s prisons.

In January of 2005, Valerie Jenness and Cheryl Maxson, Professors of Criminology, Law and Society and Research Affiliates of the Center for Evidence-Based Corrections at the University of California, Irvine, secured PREA funds to conduct empirical research on the causes and correlates of violence in general and sexual assault more specifically in California correctional facilities. Currently underway, this research relies on two sources of data: 1) official reports of violence perpetrated by inmates and wards and 2) structured interviews with inmates and wards designed to capture detected as well as undetected violence in correctional facilities.

The first step in this research required the research team to obtain official adult inmate Crime/Incident reports (837s) from the CDCR.¹⁹ Data on these incidents from 1975 to 2004 have been compiled (by the CDCR) and the UCI research team is currently analyzing them to evaluate the distribution of violence in adult institutions in California. These data are invaluable insofar as they reveal where reported violence is occurring, how frequently, who is participating in it, and most notably, how the nature of serious violence is—or is not—changing over time.

Figure 1 shows a preliminary analysis of the offenses for which Crime/Incident reports (837s) were submitted for adult inmates (considered to be aggressors) in California correctional facilities from 1975 to 2004.²⁰ During this 29-year period, most (79%) of the 837s reported were for inmate-on-inmate (non-sexual) violent incidents (including

stabbing assault, assault with other weapon, and physical assault without weapon). Approximately 16% of 837s were issued for inmate-on-staff violence (non-sexual). In the realm of official reports of sexual assault, .4% of 837s were given to inmates for sexual assault on other inmates and 1.3% for sexual assault on staff. It is important to emphasize that these numbers reflect the raw number of inmates issued an 837 for the specified categories of offenses over this time. It is possible, however, that the same inmate was issued an 837 multiple times and was therefore counted more than once.

The number of 837s issued to inmate aggressors over time is depicted in Figure 2.²² As can be seen from this figure, inmate-on-inmate violence rises slowly from 1975 to 1990, and increases dramatically starting in 1993 until it peaks in 2000. In contrast, the official reports of inmate-on-staff violence

“... California experiences almost twice the number of officially reported inmate assaults as Texas and nearly triple the assaults in the Federal system.”

do not show the same dramatic increase; rather inmate-on-staff violence increases more slowly (and less so) over time.

Because the data reported in Figure 2 do not include variables that allow us to statistically control for the growing inmate population or changes in policy related to the collection of 837 reports, it is likely that the increase in inmate-on-inmate violence is, at least in part, due to population increases in California correctional facilities (institutions and camps). Thus, Figure 3 reports both the growth in the inmate population and the growth in officially reported inmate-on-inmate violence in adult correctional facilities (excluding community facilities). Although both have increased over time, the extent of the growth in violence is greater for some years. Notably, between 1989 and 1992, the number of inmates issued 837s for inmate-on-inmate violence decreased slightly although the population was rising.

While the number of 837s given for sexual assault in Figure 2 appears to be negligible, it is important

to note that the magnitude of change over time is not. Figure 4 shows the change in 837s reported for inmate-on-inmate sexual assault and inmate-on-staff sexual assault from 1975 to 2004. During this period, inmate-on-staff sexual assault sharply increased starting in about 1999 while inmate-on-inmate sexual assault remains fairly constant. While an increase in incidents may have occurred during this time, such a drastic increase suggests a marked difference in other related variables such as the inmate population, or, most likely, staff reporting practices, and/or other organizational policies and routines. For instance, it is possible that in 1997 the CDCR saw significant changes in use of data collection forms (837s), increased surveillance, or greater pressure to report incidents.

Regardless, the image depicted from these data suggests officially reported inmate-on-inmate sexual assault is a rare occurrence. Figure 5 reveals how officially reported inmate-on-inmate sexual assault varies from 1975-2004.

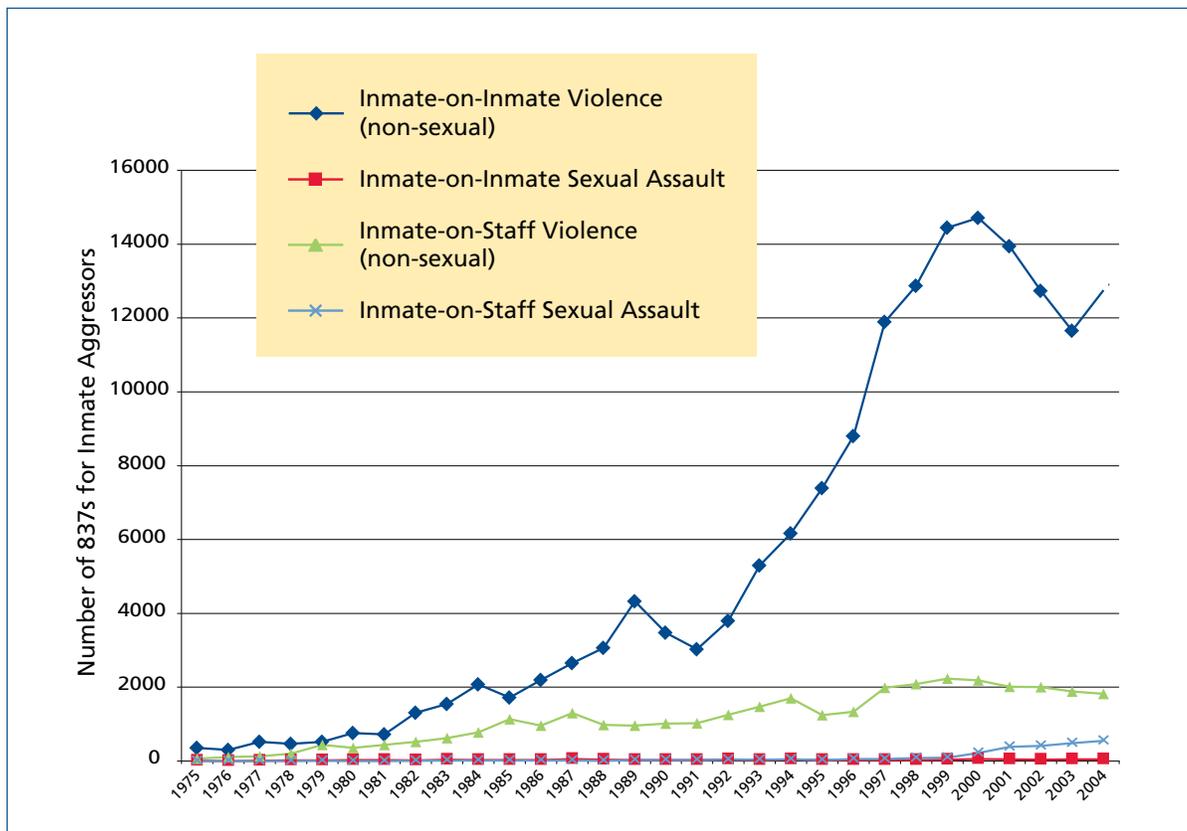


Figure 2. Crime/Incident Reports (837s) for Inmate Aggressors in California Adult Prisons, 1975-2004.

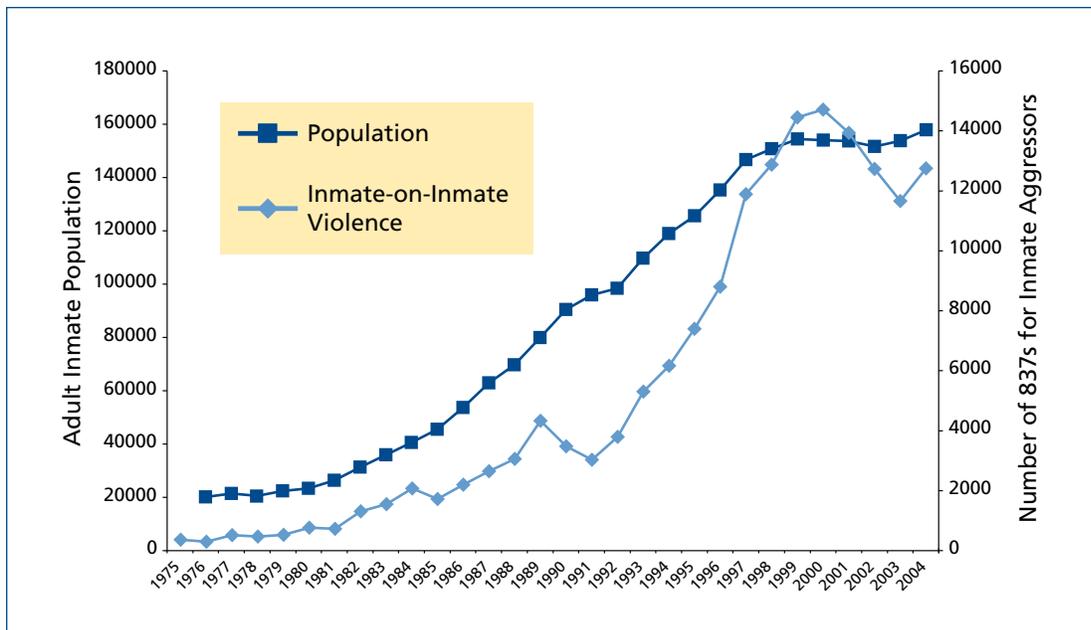


Figure 3. California Institutions and Camps Population and Crime/Incident Reports (837s) for Inmate-on-Inmate Violence (non-sexual), 1975-2004.

These data are as limited as they are telling because, by definition, official data collected by corrections personnel do not capture incidents that are not reported to corrections officials. There is always the potential for reporting bias and discrepant practices from institution to institution and/or from year to year. Thus, further original data collection designed to produce analyses that shed insight into the parameters of sexual assault in particular and violence more generally will be underway in April of 2006.

The second component of the University of California, Irvine PREA-related research requires randomly selecting male inmates and wards from multiple facilities and interviewing them about their experiences with fear of victimization, actual violence, and sexual assault in California correctional facilities. In addition, the research team will collect official data on the inmates being interviewed, including demographic information, criminal history, programming and employment information, and more. Collecting comparable data on incarcerated youth and adults will enable researchers, administrators, and policymakers to determine what factors—demographic, organizational, or administrative—are conducive to fear, violence in general, and sexual assault in particular among various subpopulations and types of correctional facilities.

CONCLUSION

A 1994 poll conducted on 400 Massachusetts residents found that half of the respondents

“believe society accepts prison rape as ‘part of the price criminals pay for wrongdoing.’”²³ Working against this mindset, the Prison Rape Elimination Act of 2003 and the Sexual Abuse in Detention Elimination Act (2005) focus newfound attention on sexual assault in prisons. In this sense, an old problem—a problem that has historically been dismissed as something that simply “went with the territory”—is now being greeted with new concern, new policy, and new programming. California is at the forefront of efforts that are first and foremost designed to improve the safety and well-being of correctional officers, inmates, and the community.

NOTE: For more information on this report please direct correspondence to: Jennifer Sumner, Department of Criminology, Law and Society, University of California, Irvine 92697-7020 (jsumner@uci.edu).

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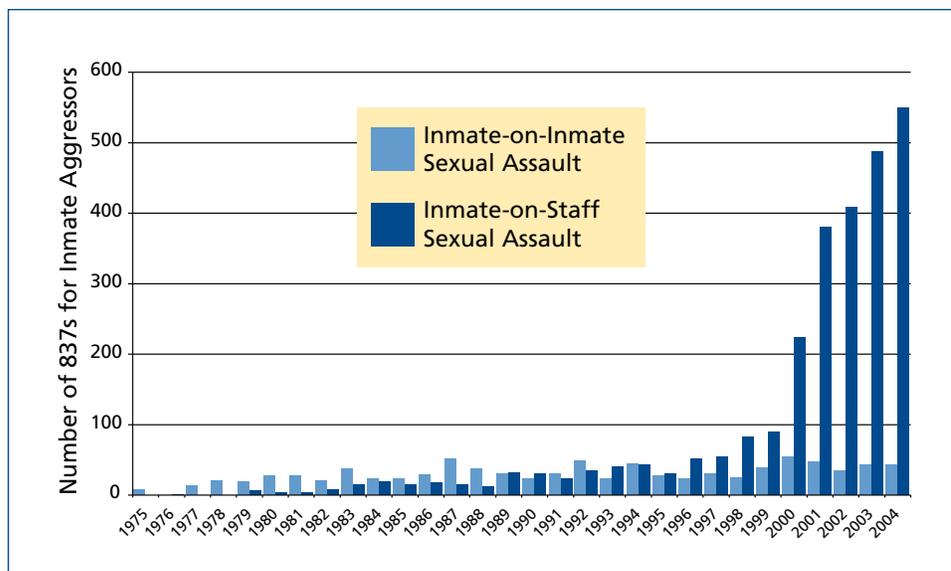


Figure 4. Crime/Incident Reports (837s) for Inmate-on-Inmate Sexual Assaults and Inmate-on-Staff Sexual Assaults, 1975-2004.

¹ Stop Prisoner Rape. (2005, September 22). Stop Prisoner Rape hails governor's signing of historic law in California. *Stop Prisoner Rape*. Retrieved September 23, 2005, from <http://www.spr.org/>

² Prison Rape Elimination Act, 45 USC §15601 (2003).

³ Human Rights Watch. (2001). *No escape: Male rape in U.S. prisons*. New York: Author.; Robertson, J.E. (2003). Rape among incarcerated men: Sex, coercion and STDs. *AIDS Patient Care and STDs*, 17(8), 423-430.

⁴ Dumond, R.W. & Dumond, D.A. (2002). The treatment of sexual assault victims. In C. Hensley (Ed.), *Prison sex: Practice*

and policy (pp.67-88). Colorado: Lynne Rienner Publishers, Inc.; Human Rights Watch, 2001.

⁵ Lockwood, D. (1980). *Prison sexual violence*. New York: Elsevier.; Wooden, W.S. & Parker, J. (1982). *Men behind bars: Sexual exploitation in prison*. New York: Da Capo Press.

⁶ Dumond, R.W. (1992). The sexual assault of male inmates in incarcerated settings. *International Journal of the Sociology of Law*, 20, 135-157.; Dumond & Dumond, 2002. Human Rights Watch, 2001.

⁷ Butler, T. & Milner, L. (2003). *The 2001 New South Wales Inmate Health Survey*. Sydney, Australia: Corrections Health Service.; Saum, C.A., Surratt, H.L., Inciardi, J.A., & Bennett, R.

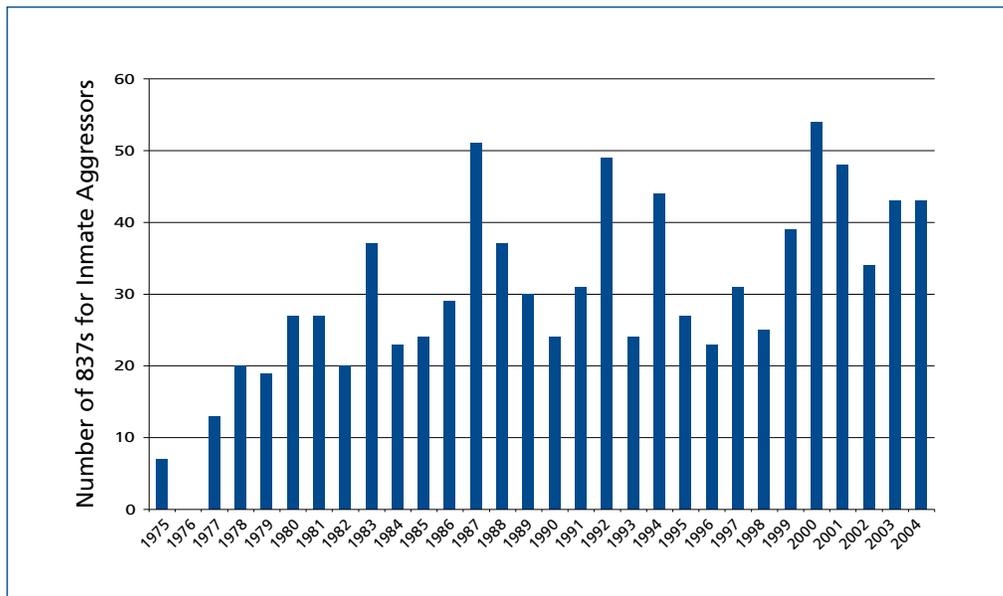


Figure 5. Crime/Incident Reports (837s) for Inmate-on-Inmate Sexual Assaults, 1975-2004.

E. (1995). Sex in prison: Exploring the myths and realities. *The Prison Journal*, 75(4), 413-430.

⁸ Tewksbury, R. (1989). Measures of sexual behavior in an Ohio prison. *Sociology and Social Research*, 74(1), 34-39.

⁹ Struckman-Johnson, C. & Struckman-Johnson, D. (2002). Sexual coercion reported by women in three Midwestern prisons. *The Journal of Sex Research*, 39(3), 217-227.

¹⁰ Gaes, G.G. & Goldberg, A.L. (2004). *Prison rape: A critical review of the literature, working paper*. Washington, D.C.: National Institute of Justice.

¹¹ Gaes and Goldberg, 2004.

¹² Fleisher, M. (2005). *The Culture of Prison Sexuality and Rape*. Working paper.

¹³ This bulletin was written prior to the submission of Dr. Fleisher's report to NIJ and thus prior to media coverage of his findings.

¹⁴ Fleisher, 2005, p. 12.

¹⁵ Beck, A.J. & Hughes, T.A. (2005, July). *Prison Rape Elimination Act of 2003: Sexual violence reported by correctional authorities, 2004* (NCJ 210333). Washington, D.C.: Bureau of Justice Statistics.

¹⁶ Beck & Hughes, 2005, p. 5.

¹⁷ California Department of Corrections and Rehabilitation. (2006). Retrieved February 20, 2006, from <http://www.cdcr.ca.gov/DivisionsBoards/AOAP/FactsFigures.html>.

¹⁸ Legislative Analyst's Office. (2005). *Analysis of 2005-2006 Budget Bill, Judiciary and Criminal Justice*. Retrieved October 1,

2005, from <http://www.lao.ca.gov/analysis.aspx?year=2005&chap=4&toc=1>

¹⁹ Per the California Department of Corrections and Rehabilitation Operations Manual (§51030.1) an 837 must be completed for crimes within any institutional jurisdiction. For the purposes of this bulletin, only processed incidents are included in the analyses capturing violent incidents in particular rather than all reportable incidents (e.g., power outages, consenting sexual activity, or gang involvement without fighting).

²⁰ The data analyses presented in this report represent incidents by inmate aggressors, or inmates actively participating in the violent incident, and do not include inmate participants (e.g., inmates who attempt or commit suicide or act as "lookouts" for others during a violent incident).

²¹ The focus of this report is inmate violence on others, including on staff and other inmates. Accordingly, 837s were categorized to highlight the distinctions between these types of violence. The category "other" includes: possession of weapon, drug or possession of suspected controlled substance, disturbance (with no personal injury), suicide, attempted suicide, and other (e.g., natural death, execution, cell extraction, arson, theft, inmate defiance, self mutilation, conspiracy).

²² The figures in this bulletin depict data that are presented as raw counts of 837s issued. They are not presented as rates per 1,000 inmates because it is possible for the same inmate to be issued numerous 837s.

²³ Sennott, C.M. (1994, May 17). Poll finds wide concern about prison rape; most favor condoms for inmates. *The Boston Globe*, pp. 22.