

CRUEL AND UNUSUAL PUNISHMENT

Stopping the Dangerous Policies Putting Men in Women's Prisons

TOP TAKEAWAYS *Federal and State Prisons*

Federal Prisons - The Prison Rape Elimination Act

- In 2003, Congress responded to a perceived crisis in prison safety, especially with regard to sexual violence in prisons, by passing the Prison Rape Elimination Act (PREA). The PREA was an attempt to hold prison officials responsible for protecting prisoners of both sexes from rape and other sexual violence while they paid their debts to society.
- PREA requires the agency to screen incoming inmates for their risk of being sexually abused by other inmates or sexually abusive toward other inmates. In particular, the regulations require prison officials to consider “whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming,” in assessing the inmate’s “risk of sexual victimization.”
- When it comes to housing trans-identifying inmates, the Department must consider “the inmate’s health and safety, and whether the placement would present management or security problems” in placing trans-identifying prisoners.
- These “PREA screenings,” instead of protecting female inmates from sexual assault, have become a process through which incarcerated males gain access to female facilities.
- Since 2017, the PREA guidelines allow housing inmates by gender identity.

State Prisons

- The vast majority of incarcerated people are convicted under state law and housed in local or state facilities.
- Prison regulations in all of the states are based upon the federal PREA regulations, giving the administration wide influence: if a state doesn’t certify full compliance with the PREA, it can lose up to 5% of any DOJ prison grants it would otherwise receive.
- Two states, Louisiana and Utah, have laws prohibiting men in women’s prisons.
- Four states, California, Connecticut, Maine and New Jersey, have laws permitting men in women’s prisons.
- The remaining 44 states have laws that permit men in women’s prisons on a case-by-case basis.

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