



Civil Rights and Human Dignity

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October 12, 2010

Robert Hinchman

Senior Counsel, Office of Legal Policy
Department of Justice
950 Pennsylvania Avenue, NW., Room 4252
Washington, DC 20530

RE: Docket No. OAG-131;
National Standards to Prevent, Detect, and Respond to Prison Rape

Dear Mr. Hinchman,

On behalf of the Bazelon Center for Mental Health Law, I am submitting these comments in support of the recommended national standards developed by the National Prison Rape Elimination Commission. These standards represent a compromise, balancing the fiscal and security interests of corrections administrators with the basic right of all people, including inmates, to be free from sexual abuse. Swift ratification of these provisions will spare thousands of men, women, and children the devastation of sexual abuse behind bars.

The Bazelon Center for Mental Health Law works to protect and advance the rights of adults and children who have mental illnesses and developmental disabilities. On any given day, between 300,000 and 400,000 people with mental illnesses are incarcerated in jails and prisons across the United States; 70% of jail inmates with mental illnesses are there for nonviolent offenses. Nationwide, more than 16% of jail inmates have a mental illness, according to the United States Department of Justice. Nearly 80% of women in prison and jail have been victims of sexual or physical abuse; up to 92% of incarcerated girls reported sexual, physical or severe emotional abuse. Prisoners who are mentally ill or cognitively impaired are frequently victimized while in jails or prisons. They are also often discredited when they try to report abuse. The Commission's recommended standards will help provide needed protections for this highly vulnerable population.

The standards go a long way towards providing a trauma-informed environment. The standards limit cross-gender viewing and searches (PP4). Except in the case of emergency, they prohibit cross-gender strip and visual body cavity searches and restrict nonmedical staff from viewing inmates of the opposite gender who are nude or performing bodily functions and

similarly restricts cross-gender pat-down searches. Inmate education standards provide for informing inmates of the right to be free from sexual abuse and retaliation for reporting abuse, the dynamics of sexual abuse in confinement, the common reactions of sexual abuse victims, and agency sexual abuse response policies and procedures, as well as the zero-tolerance policy regarding sexual abuse, and how to report incidents or suspicions of sexual abuse (TR3). The standards also provide for specialized medical and mental health training to detect and assess signs of sexual abuse and how to respond effectively and professionally to victims of sexual abuse (TR5). We further support the standards' requirements that inmates who have suffered sexual abuse have access to emergency medical and mental health services free of charge (MM-2), along with appropriate follow up care and ongoing treatment (MM-3) a victim advocate to accompany them throughout the forensic medical exam process (RP-1), and access to outside confidential support services (RE-3, RP-2, MM-3).

When officials fail to protect inmates from sexual abuse, victims need access to legal redress that is not hindered by unrealistic and arbitrary procedural requirements. The standards recognize that harsh procedural requirements of many grievance systems such as short filing deadlines cannot realistically be met by rape survivors (RE-2).

While many prisoner rape survivors are reluctant to report abuse, incarcerated survivors with mental or cognitive disabilities face additional reporting barriers. Providing multiple reporting options for sexual abuse and retaliation (RE-1), including staff reporting (OR-1) and accepting third party reports (RE-4) will ensure that inmates who may not be able to navigate complex grievance procedures have their abuse addressed, and accepting complaints as triggering exhaustion of administrative remedies (RE-2) will protect inmates rights. The standards also ensure that inmates who are limited English proficient (LEP), deaf, visually impaired or disabled receive information about sexual abuse policies and have access to non-inmate interpreters or interpretive technology in order to be able to report sexual abuse to staff directly (PP-5).

Adoption of the standards recommended by the Commission will represent a tremendous and unprecedented step forward in efforts to ensure that prisoners with mental illness and cognitive disabilities are spared the horrific trauma of sexual abuse during their detention. I strongly urge you to promulgate the Commission's standards without delay.

Thank you for your consideration.

Respectfully,

/s/

Karen Bower
Senior Staff Attorney

