

May 7, 2010

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

RE: Docket No. OAG-131; AG Order No. 3143-2010
National Standards to Prevent, Detect, and Respond to Prison Rape

Dear Attorney General Holder,

On behalf of the Iowa Coalition Against Sexual Assault (IowaCASA) I am submitting these comments in support of the recommended national standards developed by the National Prison Rape Elimination Commission. IowaCASA has worked in Iowa prisons for the past seven years and this work informs our comments below regarding the standards.

IowaCASA unites people and organizations to promote a society free from sexual violence and to meet the diverse needs of survivors of sexual assault. As Iowa's state coalition against sexual assault, we believe that sexual abuse should never be tolerated and that, regardless of custody status or criminal history, every sexual abuse survivor deserves proper support by a qualified service provider and a thorough investigation.

In furtherance of its mission, IowaCASA has been working closely with the Iowa Department of Corrections since 2003. At that time, we began facilitating support groups for female offenders with sexual abuse, post-traumatic stress disorder, and/or substance abuse histories at the Iowa Correctional Institution for Women. We also received a subgrant under the Prison Rape Elimination Act allowing us to collaborate with the Iowa Department of Corrections on policy development and to provide training on sexual violence to corrections staff. IowaCASA continues to facilitate inmate support groups for inmates with co-occurring substance abuse and trauma, develop memoranda of understanding (MOUs) with corrections facilities around the state, and provide ongoing training to corrections officials.

We applaud the U.S. Department of Justice's commitment, as noted in the Advanced Notice of Proposed Rulemaking, to remove the current ban on Victims of Crime Act (VOCA) funding for treatment and rehabilitation services for incarcerated victims of sexual abuse. This funding restriction has prevented many community rape crisis centers from providing counseling to incarcerated survivors of sexual violence, despite their commitment to serving all victims.

Response to the questions in the ANPR

1. *What would be the implications of referring to “sexual abuse” as opposed to “rape” in the Department’s consideration of the Commission’s proposed national standards?*

Truly establishing a zero-tolerance standard for prison rape requires addressing the full spectrum of sexual violence. The national standards incorporate all staff sexual misconduct and all coercive sexual activity between inmates. The term “rape” is often understood to have a narrow definition in accordance with its use in criminal law. The widely recognized terminology of “sexual abuse” used in the standards will minimize confusion with the criminal standard for rape -- which varies by state -- and will conform to the expectations and intent of PREA.

2. *Would any of the Commission’s proposed standards impose “substantial additional costs”?*

IowaCASA has seen firsthand the impact sexual abuse has on victims. Whether in the community or in custody, the emotional, physical, and psychological consequences of sexual violence are devastating to victims, their loved ones, and the community at large. The monetary costs for implementing these standards will be small in comparison to the damage caused by sexual violence.

Incarcerated survivors of sexual abuse are at high-risk for developing long-term psychological problems, such as post-traumatic stress disorder (PTSD), depression, addiction, and suicidal ideation. The lack of control that inmates have over their environment exacerbates the challenges of recovering from sexual assault. Prisoners who suffer multiple assaults and/or are under the long-term control of a perpetrator or group of perpetrators may develop Complex PTSD. Sexual abuse also often involves physical injuries and exposure to sexually transmitted infections, all of which are more prevalent in detention settings than in the community.

We feel strongly that proper crisis intervention, medical care, and mental health care at the outset of an incident of sexual violence will help identify medical and psychiatric conditions and ensure that survivors are treated in a proactive and cost-effective manner, resulting in substantial savings for inmate health and mental health care. Implementing the standards will also promote safety and efficiency within corrections systems, resulting in net savings in areas such as staffing and investigations.

Approximately 95% of currently incarcerated individuals will one day return to their communities – and bring their emotional trauma and medical conditions with them. Without proper care and services while they are incarcerated, positive reentry efforts may be thwarted. Prison rape survivors who do not receive adequate care are often unable to become self-sufficient members of society because of their untreated trauma.

Beyond the economic impact, the moral costs of allowing sexual violence to continue must also be considered. Failing to put in place the basic measures recommended by the Commission to prevent and respond to this abuse is unconscionable. When the government removes someone's liberty, it has the absolute responsibility to protect that person from abuse.

3. *Should the Department consider differentiating within any of the four categories of facilities for which the Commission proposed standards ...?*

We believe that every person has the right to be free from sexual abuse, no matter where they are housed. The standards represent basic measures to protect inmates from abuse and to ensure that those who are victimized receive appropriate care. Varying compliance requirements based on factors such as the size and resources of a facility will undermine the standards and will needlessly complicate their otherwise straightforward expectations.

Comments on the Standards

The Commission's standards ensure that, where possible, victimized inmates are afforded the same quality of care as survivors in the community. The 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.

Prevention and Response Planning

Proper planning, through the development of sound policies and the collaboration with outside resources, is essential to improving health and safety in detention. Adequate planning is also indicative of the strong leadership needed to address sexual violence in detention. The provisions in this section reflect the innovations and concerns raised by corrections leaders throughout the process as well as proven best practices from the community.

Standard PP-1 (Zero Tolerance Policy) provides an important foundation for the standards. We believe it is crucial for corrections agencies to commit to preventing sexual violence in their facilities, even when there is not specific funding to address sexual abuse. In addition to the requirement that an agency must employ a PREA Coordinator, we recommend that large, statewide agencies with multiple facilities designate a PREA liaison at each institution to ensure that PREA requirements are implemented in the day-to-day operation of the facility.

Standard PP-4 (limits to cross-gender viewing and searches) prohibits the viewing of inmates of the opposite gender who are nude or performing bodily functions. Limiting officers from viewing inmates of the opposite sex unclothed and from touching opposite sex inmates' bodies during a search can prevent re-victimization and related trauma for individuals who have experienced past sexual violence. A significant number of inmates have suffered sexual abuse in the past, and the extreme loss of privacy that comes with cross-gender searches and supervision prevents them from retaining a sense of bodily

integrity that is vital to healing. Although corrections officers may not be aware of the sexual history of each inmate, we suggest they treat all inmates as if they have a history of abuse when they are conducting body searches, and that their training include information about how searches can trigger trauma from past sexual abuse.

Standard PP-6 (hiring and promotion decisions) prohibits agencies from hiring or promoting anyone who has engaged in sexual abuse in an institutional setting or who has engaged in sexual activity in the community facilitated by force, the threat of force, or coercion. Agencies should also be required to work with the unions that represent corrections employees. Unions should take a strong stance that the perpetration of abusive behavior against inmates is not in keeping with standards expected of corrections employees. Union leadership should promote the standards to all union members and work to ensure that the union's organizational culture expects professional behavior from its members.

Standard RP-1 (evidence protocol and forensic medical exams) relies upon the proven practice of uniform evidence collection, which will improve administrative and criminal investigations by maximizing the potential for obtaining usable physical evidence. The 2004 publication "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents" is the definitive source for how to conduct a proper medical forensic examination. To ensure that these exams are conducted with the most effective cooperation of the victim, they must be provided free of charge and include a victim advocate.

Forensic examinations are critical to the investigation, but emotionally difficult and physically invasive to the victim. By providing clear information and unconditional support, victim advocates help secure survivors' full cooperation in the investigation while helping them begin the healing process. The standards should encourage corrections systems to work with hospitals to determine the best location for a forensic exam. For example, many rural areas do not have an adequate pool of Sexual Assault Nurse Examiners (SANE). The corrections facility should proactively determine whether it is best to utilize local hospitals or transport inmates further away to a facility with a SANE or qualified staff specially trained in medical forensic exams and evidence collection.

We recommend that inmate confidentiality be carefully protected, especially during the forensic medical exam. The confidentiality of the inmate can be compromised if corrections staff is present in the exam room, so exam procedures should be victim-sensitive while still ensuring the security of the hospital staff. Where state statutes exist allowing the presence of victim advocates, the standards should require that the corrections facilities comply with state statute by allowing the presence of victim advocates at all proceedings relating to the crime.

Additionally, we suggest a complete prohibition on the use of polygraph tests for victims of sexual assault as such exams are traumatizing, often do not yield accurate results, and are inadmissible in court.

Standards RP-2 to RP-4 (agreements with outside public entities and service providers, law enforcement agencies, and prosecuting authority) encourage officials to take advantage of the expertise available in their community, by proactively reaching out to reporting entities, direct service providers, police, and prosecutors and defining the proper role for each of these professionals in the response to a sexual assault at the facility. IowaCASA has experienced the positive impact of such collaborative relationships and is eager to build on the partnerships we have already established with Iowa corrections officials.

Prevention

Policies aimed at eliminating sexual abuse in detention become meaningful only if corrections staff, contractors, and volunteers are appropriately trained to take action to prevent and address incidents of sexual violence. Specialized training for investigators and medical and mental health staff (Standards TR-4, TR-5) is especially important to ensure that these professionals are able to fulfill their specific duties pertaining to the detection and response of sexual abuse, including proper evidence preservation, assessing signs of sexual abuse, and ensuring that victims are adequately protected from further abuse and receive appropriate health care.

In regard to specialized training for investigators (Standard TR-4), it is important to note that techniques for interviewing sexual abuse victims are specialized and different from techniques used in suspect interviews. We recommend that the training of investigators includes victim-specific interviewing techniques and that the training be done in consultation with victim advocacy organizations. We also recommend that training of investigators be system-wide.

With respect to immigration custody, Supplemental Standard ID-2 (Supplement to TR-1, TR-4, and TR-5: employee training and specialized training of investigators and medical and mental health care) addresses the unique training needs for those working at facilities that house immigration detainees. In addition to cultural sensitivity issues, this training should include information about the high rates of sexual violence against immigrants that occur in many workplaces, and that immigrants who have been sexually assaulted also may have immigration remedies available to them. For example, immigrants identified as victims of sexual assault are referred by Immigration and Customs Enforcement to nongovernmental organizations and given the opportunity to avail themselves of appropriate remedies. Immigrant detainees should have access to individuals who can inform them of the remedies to which they are entitled. Detention facilities should be encouraged to develop MOUs with local agencies with expertise on immigrant legal issues.

Proper classification is also vital to ensuring that potential predators and potential victims are not housed together. It can also help break the insidious and common corrections practice of automatically placing the victim in protective custody following an incident of sexual abuse. Such isolation further traumatizes victims and makes it impossible for them to begin the healing process. Standards SC-1 (screening for risk of victimization and

abusiveness) and SC-2 (use of screening information) address these concerns, relying on the BJS data and academic research that have identified certain populations that are especially vulnerable to abuse. In addition to the protections in SC-2, when an inmate discloses sexual abuse, corrections officials need to be prepared to offer assistance. Similar to the provision in Standard MM-2 that health practitioners provide referrals for treatment when an inmate discloses sexual abuse during a medical and mental health screening, the classification process should ensure that inmates who disclose abuse to classification staff are referred for appropriate treatment, whether the abuse occurred in another institutional setting or in the community.

Detection and Response

In the aftermath of a sexual assault, inmates need safe, effective reporting options that are responded to swiftly and thoroughly. The reactions of the first people who a survivor tells about sexual abuse often will dictate the survivor's ability to participate in the investigation and begin his/her recovery. The ability to contact any trusted staff member and the creation of hotlines to outside entities have proven to be important mechanisms for encouraging reports. However, it is still far too common that officials fail to respond to reports of sexual abuse appropriately, such as by failing to initiate an investigation, refusing to provide protective measures, or by directly facilitating or participating in retaliatory behavior.

In Iowa, some inmate support groups are facilitated by advocates and others by corrections staff. Although many corrections officers are excellent facilitators, inmates tell us they always have trust issues with corrections staff and that they prefer outside assistance. Standard RE-3 (inmate access to outside confidential support services) addresses these concerns and provides inmates access to one of the most basic and proven mechanisms for an effective response: confidential emotional support services. Trained advocates who can protect confidentiality are the best source of compassionate, skilled responses to sexual abuse survivors

Confidential counseling provides survivors with a safe and trusted way to discuss the sexual assaults, deal with their fears, develop appropriate coping skills, and understand that the abuse was not their fault. As noted above (with Standard RP-2), confidential services also improve a survivor's ability to participate in an investigation of the assault. These services further enhance safety in the facility; a survivor who receives quality care with the support of a counselor is likely to tell other inmates about the experience and to encourage anyone experiencing sexual abuse to come forward.

OR-5 (agency protection against retaliation) protects inmates and staff who report sexual abuse or cooperate with sexual abuse investigations. It is crucial for corrections systems to proactively manage retaliation. IowaCASA advocates who assist inmates find that there is a great deal of peer pressure *against* reporting sexual abuse within the prison system, and that retaliation against those who do report is common. Although measures are taken to make reporting available and to prevent retaliation, inmates continue to have a negative view of reporting. Corrections systems must become serious about preventing retaliation against those who report.

Medical and mental health care are vital components of detecting and responding to sexual abuse. The minimal requirements of Standards MM-1 through MM-3 (screenings, access to emergency services, ongoing care) are a great start to ensuring that corrections health professionals are providing needed services. Standard MM-2 rightfully recognizes that services should be provided free of charge and should not be dependent on whether the survivor names the abuser. The importance of follow-up mental health and medical services, like those mandated by Standard MM-3, cannot be underestimated. The successful recovery of a survivor rests heavily on the post-abuse services he/she receives. Just as survivors in the community have access to follow-up medical services and counseling, so should survivors in custody.

Monitoring

Incident reviews and data collection (Standards DC-1 through DC-3) are important ways to learn about patterns of abuse within facilities and about the effectiveness of response measures. Such information will allow officials and others to improve their efforts and continually increase facility safety.

Likewise, external scrutiny is vitally important to the strength of any public institution – and corrections facilities are no exception. Sound oversight, conducted by a qualified independent entity, can identify systemic problems while offering effective solutions. Standard AU-1 (audit requirement) mandates the essential components of independent oversight in a cost-effective manner. Done properly, this outside monitoring will provide a credible, objective assessment of a facility's safety, identifying problems that may be more readily apparent to an independent monitor than to an official working within a corrections system. It will also help hold systems accountable when they do not meet the requirements of the standards.

Conclusion

Sexual violence in U.S. prisons and jails has reached crisis proportions. Strong standards are urgently needed to protect inmates from this devastating form of abuse. I strongly urge you to promulgate the Commission's standards without delay. Every day that these critically important measures are not in place, men, women, and children will continue to be raped while in custody.

Thank you for your consideration.

Respectfully,

Elizabeth Barnhill
Executive Director, Iowa Coalition Against Sexual Assault