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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 Pennsylvania Coalition Against Rape, I am submitting these comments in support of the recommended national standards developed by the National Prison Rape Elimination Commission. As professionals working in the field of sexual violence in the state of Pennsylvania, we believe that sexual abuse should never be tolerated and that, regardless of custody status or criminal history, anyone who is assaulted deserves proper support by a qualified service provider and a thorough investigation.

We support 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 of our fifty-one community rape crisis centers from providing services to incarcerated survivors of sexual violence, despite their commitment to serve all victims.

Lifting the VOCA funding ban will be a positive step, but more is needed. The Commission's recommended standards provide the best tool to date for corrections facilities to address sexual abuse. These base provisions are urgently needed, and should be promulgated as binding regulation without delay.

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-4 (limits to cross-gender viewing and searches) has been revised to substantially reduce its requirements, despite findings in each of the BJS inmate surveys that a significant percentage of sexual abuse in all types of corrections facilities is perpetrated by staff members of the opposite sex. Rather than limiting cross-gender supervision in any areas where inmates disrobe or perform bodily functions, the final recommended standard only prohibits *actually viewing* inmates of the opposite gender who are nude or performing bodily functions.

We understand that this may be difficult, especially in the cases of the female facilities, however, this is where it may be the most important to have implemented this particular standard. What we have seen here in Pennsylvania is that in our female facilities, there are many more male staff members than there are female. For a victim of sexual violence, being observed or touched by a member of the opposite sex in a way that may be unwanted or triggering for a victim, may re-traumatize them each and every time that this occurs.

Limiting officers from viewing inmates of the opposite sex unclothed and from touching opposite sex inmates' bodies during a search will also prevent re-victimization and related trauma. 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. In addition to becoming targets for abuse, inmates who are re-victimized have trouble adjusting to prison life, often resulting in disciplinary problems and grievances. Therefore, beyond minimizing the opportunity for staff sexual misconduct, enacting the compromise measures reflected in PP-4 will prevent needless institutional problems and help promote a healthier inmate population.

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 the survivors' full cooperation in the investigation while helping them begin the healing process.

In Pennsylvania, we have witnessed firsthand the positive impact that a victim advocate can have on a victim who is incarcerated. In cooperation with the Pennsylvania Department of Corrections, PCAR has been able to implement institutional SART teams. These teams work in collaboration with the community based SART team in that particular county. We have had cases of victims being transported to the local hospital to undergo a forensic sexual assault examination in which the victim advocate was present to provide support and information. This made a great difference in the way that the victim inmate responded to the other members of the team and requested follow up services from the rape crisis center after being returned to the

facility. This has happened on more than one occasion. It is clear to us here in Pennsylvania, that a standardized response by the medical personnel can have a positive impact not only on the victim that is being assisted at that moment, but also for the victims that may come after. They will see the clear and consistent method of treatment and will be more likely to come forward with their own report.

Collaborating with outside experts is a no-cost way for facilities to enhance dramatically their relevant expertise. 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. Reflective of concerns that corrections officials raised to the Commission, facilities can meet this standard even without a formal memorandum of understanding, so long as they make a serious effort to reach out to these entities.

As service providers, we particularly support Standard RP-2 and are eager to establish these partnerships. Some corrections officials may fear that if outside counselors are allowed to speak confidentially with survivors, the officials will not know the full scope of what is happening in their institutions. To the contrary, just as in the community, survivors who feel safe and supported are much more likely to report the sexual abuse and are better prepared to fully cooperate with the investigation and prosecution.

Our community based SART teams in Pennsylvania that have been working cooperatively with the institutional SART teams have proven how important these relationships are. The joint meetings that we have carried out to bring both of these groups together have proven both informative and effective in combating sexual violence. Each team was able to articulate to the other their particular role and how they worked in sync with one another to provide support and services to the victim. In addition, both teams were able to ask questions regarding the functioning of the other and reasoning for some of the policies and procedures that are in place. These newly established relationships have proven invaluable as we have moved through the process of working with victims of sexual violence.

Additionally, the opportunity for victims to talk with a victim advocate that is outside of the corrections system has proven to be extremely valuable as well. In the cases where we have been able to provide that support, the victims have taken the sessions and discussions seriously and felt that they were able to openly discuss their issues without the threat of repercussions. This has proven to be a valuable tool in the process of recovery.

Prevention

Preventing sexual abuse is at the heart of all PREA-related initiatives, and the training and classification provisions in the standards represent well-established means of doing so. Rather than imposing stringent curricula, Standards TR-1 through TR-5 (training and education) include basic information that can be incorporated into pre-existing staff training sessions and inmate orientation workshops.

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.

Pennsylvania has grappled with the issue of appropriately and effectively training investigators of the sexual assault allegations. There is a good deal of turnover due to promotions and transfers in the Department of Corrections. Appropriate sexual assault investigation and interview skills training needs to be an ongoing skill building activity for staff members to best meet the needs of victims of sexual violence.

Additionally, inmates must be aware of their absolute right to be free from sexual abuse, and that the facility will not tolerate sexually predatory treatment of inmates. The basic information required by Standard TR-3 will encourage inmates to report abuse when it occurs. Letting them know about common reactions to sexual abuse will also help normalize the reactions of prison rape survivors, further encouraging them to seek needed medical care and mental health assistance.

Inmate orientation in Pennsylvania includes information regarding sexual violence and the department's policy relating to sexual violence, DC-008. This orientation informs inmates during their classification process of the zero tolerance that the department has implemented. The video that is shown to new inmates discusses basic sexual violence information, how they can report, and the alternate methods of reporting. Pennsylvania has implemented a sexual assault, anonymous reporting line accessible to all inmates and the general public, as well as a mailbox that they may write to requesting assistance, which is answered by the Prison Project Consultant. Since this video has been in use for several years, the PREA committee at the state level is looking at other video options to update the information that is provided to inmates.

Proper classification is 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. The Department of Corrections utilizes this information for not only classification purposes, but to also look at issues such as housing to ensure that appropriate housing arrangements are made so as not to endanger those that are more vulnerable to victimization.

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.

Trained advocates who can protect confidentiality are the best source of compassionate, skilled responses to sexual abuse survivors. Standard RE-3 (inmate access to outside confidential support services) will give inmates access to one of the most basic and proven mechanisms for an effective response: confidential emotional support services. 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.

Currently in Pennsylvania, the Department of Corrections, with the assistance of PCAR, has developed the relationships with local rape crisis centers in the counties where their facilities are located. We have four pilot institutional SART sites where the advocates and prison officials have met to have conversations about how and when an advocate will come into the facility to meet with a victim. This process has proven to be most effective thus far.

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 not 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.

Clearly in Pennsylvania, we have found this to be one of the most beneficial tools in working with the Department of Corrections. The DOC has established a Clinical Review Committee to review and provide feedback on clinical review reports from each of the institutions regarding their sexual violence cases. This committee is made up of the major discipline areas in the department such as medical, psychology, security, Office of Professional Responsibility, Office of the Victim Advocate, standards, and counseling. In addition, the DOC has invited PCAR to be a part of the committee to offer input and suggestions.

The committee will discuss each case and the processes that were used. It looks for best practices that are being used out in the field, as well as practices that are not acceptable and need to be changed.

The idea behind the review is twofold. One, the committee provides written feedback to the institution about those items that were done successfully and those that were not and what needs to be changed to make the process operate more effectively. Secondly, the committee looks at the statewide policies and procedures to determine if revisions are needed based on the information that is gained from what the field is doing. This committee has enacted several revisions to both policy and procedure related to PREA.

While internal analysis is productive, external scrutiny is essential 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.

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 should take an expansive approach and incorporate all staff sexual misconduct and all coercive sexual activity between inmates. The term “rape,” however, is often understood to have a narrow definition in accordance with its use in criminal law. Using the widely recognized terminology of “sexual abuse” 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.

PREA’s definition of rape includes all of the conduct within the Commission’s definition of sexual abuse except for sexual harassment (inmate-on-inmate and staff-on-inmate), staff-on-inmate voyeurism, and staff-on-inmate indecent exposure. Sexual harassment, voyeurism, and indecent exposure create a hostile environment for both inmates and staff. These behaviors are also known precursors to sexual assault and should not be tolerated. Most importantly, addressing these forms of sexual misconduct will enable officials to prevent rapes from occurring.

While the full spectrum of sexual abuse must be addressed as part of a comprehensive response to prison rape, consensual sexual activity between inmates should not be incorporated into the definition of sexual abuse. Corrections agencies remain free to establish disciplinary rules and regulations as they see fit, but conflating consensual sexual activity between inmates with the crimes of sexual assault and staff sexual misconduct serves no legitimate purpose and thwarts many of PREA’s goals. Indeed, doing so will force survivors of sexual abuse to suffer in silence,

as fear that sexual abuse will be misconstrued as prohibited consensual sexual activity (and that they will face punishment) will prevent survivors from reporting their abuse and from seeking medical assistance. This disincentive to reporting will allow sexual violence to flourish – and will increase the vulnerability of many inmates, such as those who are gay or transgender, who are known to be at especially high risk for abuse but are often mistakenly assumed to have consented to any sexual activity.

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

The costs for implementing these standards are small compared to the devastating toll that sexual abuse takes on survivors, facilities, and the community. 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.

For the corrections agency, implementing the standards’ provisions will promote safety and efficiency, resulting in net savings in areas such as staffing and investigations. Proper crisis intervention, medical care, and mental health care at the outset will help identify medical and psychiatric conditions and ensure that they are treated in a proactive and cost-effective manner, resulting in substantial savings for inmate health care.

The vast majority of inmates 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. Recent studies from the Bureau of Justice Statistics make clear that sexual violence is a serious problem across the country. 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 ...?*

Every person has the right to be free from sexual abuse, no matter where they are housed. The standards represent basic measures that all facilities must put in place 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. It should not matter whether a victim is housed in a small county jail, or a federal facility, care, custody and control are still the benchmarks of a good institution. By allowing sexual violence to continue to occur, the corrections community will continue to fall short of the benchmarks that they have set for themselves.

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. The positive influence of the implementation of these standards has been demonstrated in the work that the Pennsylvania Coalition Against Rape has been doing in cooperation with the department of corrections. I strongly urge you to ratify 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,

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