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Department of Justice  
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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 Rape, Abuse, & Incest National Network (RAINN), we are 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, 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.

**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?*

The term “rape” 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. We would note, however, that “sexual abuse” is widely understood to mean a pattern or series of assaults, often against a minor. Therefore, we would suggest that the most appropriate term to use is “sexual assault.” This term is in wide usage and is understood to encompass single incidents as well as ongoing patterns of sexual violence.

- 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 victims, facilities, and the community. Incarcerated victims of sexual abuse are at high-risk for developing long-term psychological problems. Studies have shown that victims of sexual assault are three times more likely to suffer from depression, six times more likely to suffer from post-traumatic stress disorder (PTSD), 13 times more likely to abuse alcohol, 26 times more likely to abuse drugs, and four times more likely to contemplate suicide.



Prisoners who suffer multiple assaults and/or are under the long-term control of a perpetrator or group of perpetrators are at an even greater risk of developing long-term psychological problems. Sexual violence also often involves physical injuries and exposure to sexually transmitted infections, all of which are more prevalent in detention settings than in the community.

The effects of sexual assault could end up costing the Department of Justice more money in the long term if the standards are not implemented. The costs of treating psychological and physical problems resulting from sexual assault, and the higher likelihood of recidivism, have a higher price tag than implementing strong prevention and response standards.

*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 violence, 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.

### **Comments on the Standards**

The Commission's standards ensure that, where possible, victimized inmates are afforded the same quality of care as victims 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 violence. Swift ratification of these provisions will spare thousands of men, women, and children the devastation of sexual violence 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 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. DNA, considered the "fingerprint of the 21<sup>st</sup> century," is an invaluable resource in the investigation of a crime. There should be timely processing of DNA evidence, as it allows for the positive identification of the perpetrator, and facilitates the investigation and prosecution of an assault. 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 should be conducted by a Sexual Assault Nurse



Examiner (SANE), 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 victim's full cooperation in the investigation while helping them begin the recovery process.

Collaborating with outside experts is a no-cost way for facilities to dramatically enhance 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.

#### 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 violence 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 assault, and ensuring that victims are adequately protected from further abuse and receive appropriate health care.

Similarly, 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 victims, further encouraging them to seek needed medical care and mental health assistance.

#### Detection and Response

In the aftermath of a sexual assault, inmates need safe, effective and confidential reporting options that are responded to swiftly and thoroughly. The reactions of the first people who a victim tells about sexual assault often will dictate the victim's ability to participate in the investigation and begin his/her recovery. It is still far too common that officials fail to respond to reports of sexual assault appropriately, such as by failing to initiate an investigation, refusing to provide protective measures, or by directly facilitating or participating in retaliatory behavior. This problem is exacerbated when the victim is an incarcerated minor. If these victims do not have access to a trusted adult, or if a corrections



officer or other staff member commits the assault, these youth have nowhere to turn and may not receive the help they need to make a full recovery and eventually lead a healthy, productive life outside of incarceration.

Trained advocates who can protect confidentiality are the best source of compassionate, skilled responses to sexual abuse victims. 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 crisis intervention and counseling provides victims 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. At the PREA Listening Session on January 26, we heard that incarcerated victims are frequently unable to access telephone hotlines, and telephone hotline pilot programs were not always successful. As an alternative, we suggest a pilot program to use the National Sexual Assault *Online* Hotline, operated by RAINN. The Online Hotline provides live, secure, free and confidential help to victims of sexual assault nationwide. The Online Hotline was developed with the help of grants from OJJDP, OVW and OVC. With numerous facilities implementing pilot programs to allow inmates internet access, we believe that allowing access to the Online Hotline would enable victims to receive the crisis counseling they need in a private, safe setting, without the potential embarrassment of having to ask permission to use the phone to call a telephone hotline and reveal who they are calling and why. The Online Hotline would also present a way for incarcerated victims in rural facilities to get crisis intervention quickly, when other options are not readily available due to location.

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 good 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 victim 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 victim rests heavily on the post-abuse services he/she receives. Just as victims in the community have access to follow-up medical services and counseling, so should victims 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. RAINN strongly urges you to promulgate the Commission's standards without delay, particularly those encouraging independent crisis intervention. Every day that these critically important measures are not in place, men, women, and children will continue to be raped while in custody.

The Rape, Abuse & Incest National Network is the nation's largest anti-sexual assault organization and was selected as one of "America's 100 Best Charities" by *Worth* magazine. RAINN operates the National Sexual Assault [Telephone] Hotline at 1.800.656.HOPE and the National Sexual Assault *Online* Hotline at [rainn.org](http://rainn.org) in partnership with 1,100 rape crisis centers across the country. The hotlines have helped more than 1.4 million victims of sexual violence since 1994, providing free, confidential support 24/7. RAINN also provides training for rape crisis center staff and volunteers; runs extensive public education programs, including volunteer-led campaigns on more than 1,000 college campuses; and works with Congress and the administration to improve the criminal justice system and ensure that more rapists are brought to justice.

Thank you for your consideration.

Respectfully,

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