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Department of Justice
950 Pennsylvania Avenue NW.
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Washington, DC 20530-0001

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 Texas Association Against Sexual Assault (TAASA), I am submitting these comments in support of the recommended national standards developed by the National Prison Rape Elimination Commission.

TAASA is the statewide organization committed to ending sexual violence in Texas. A non-profit educational and advocacy organization based in Austin, TAASA member agencies comprise a statewide network of more than 80 crisis centers that serve rural and metropolitan areas. Founded in 1982, the agency has a strong record of success in community education, legal services, youth outreach, law enforcement training, legislative advocacy, and curricula and materials development. As community-based sexual assault programs comprise our membership, we assure you that such programs throughout Texas stand ready to support the Commission's recommended standards. Because this issue is critically important, thirty TAASA member agencies requested to sign-on to this letter so that their support could be specifically noted.

Unfortunately, in Texas, we are intimately familiar with the horror of prison rape. According to the U.S. Bureau of Justice Statistics, five of the ten prisons nationwide with the highest reported rates of rape in 2006 are in Texas. The rates of reported rape in those facilities range from 9.3 to 15.7 percent, compared with a national rate of 4.5 percent. As professionals working in the field of sexual violence, we believe 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 particularly 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. That

restriction has prevented community rape crisis centers throughout the United States from providing counseling to incarcerated survivors of sexual violence, despite their commitment to serve all survivors.

Combined with a lifting of the VOCA funding ban, the Commission's recommended standards provide a critical, cost-effective tool for corrections facilities to address sexual abuse. Importantly, they represent an intelligent and workable compromise, balancing the fiscal and security interests of corrections administrators with the basic right of all people—including prisoners—to be free from sexual violence. Swift ratification of these provisions will spare thousands of men, women, and children the devastation of sexual abuse behind bars.

Response to 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. To that end, the national standards should take an expansive approach and 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. Different states define rape differently, and some limit its meaning to forcible vaginal-penile intercourse. *See, e.g.*, N.C. Gen. Stat. § 14-27.3, defining second degree rape as “vaginal intercourse.” Using the widely recognized terminology of “sexual abuse” in the standards will minimize confusion with state-specific criminal standards and will promote the zero-tolerance expectations and intent of PREA.

The Commission's definition of sexual abuse includes all the behaviors delineated in PREA's definition of rape as well as sexual harassment (inmate-on-inmate and staff-on-inmate), staff-on-inmate voyeurism, and staff-on-inmate indecent exposure. Importantly, that definition is not inconsistent with PREA's statutory definition. PREA defines prison rape to “include[] the rape of an inmate in the actual or constructive control of prison officials.” 42 U.S.C. § 15609(8) (emphasis added). Thus, the term “prison rape” is given an expansive statutory definition, including but not limited to rape. Consistent with PREA's intent and spirit, the statutory definition is expansive so that, as more information about the problem is learned, the proper scope of sexually inappropriate behaviors can be included.

Perhaps most importantly, practical considerations support an expansive understanding of sexual abuse as well. First, any sexual activity between inmates and staff should fall within the definition of “sexual abuse,” because of the inherent power differential between the parties. Excluding consensual activity would allow jailers to use their positions to coerce inmates with impunity. In addition, sexual harassment, voyeurism, and indecent exposure are known precursors to sexual assault and create a hostile environment for both inmates and staff. Addressing those forms of sexual misconduct will enable corrections officials to prevent rapes from occurring, which is PREA's primary objective.

Finally, 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