



May 5, 2010

Dear Attorney General Holder,

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

On behalf of the Institute for Juvenile Justice Reform and Alternatives, we write to express our support of the recommended national standards for the prevention, detection, response, and monitoring of sexual abuse developed by the National Prison Rape Elimination Commission (NPREC).

IJJRA's mission is to reduce the number, rate and likelihood of youth incarceration by effecting

- System Change through policy reform and system accountability founded on principles of human rights, human development and human justice.
- Community Empowerment through organizing, advocacy training and service networks.
- Personal Transformation and Social Justice Leadership through educational initiatives, training fellowships and intergenerational mentorship.

We are particularly supportive of the NPREC standards which recognize that isolation policies for young people at risk of sexual victimization need to be carefully considered and used only in exceptional circumstances. In particular, we support the recommendation that lesbian, gay, bisexual, transgender (LGBT), or other gender-nonconforming inmates are not placed in segregated units or given particular housing assignments solely on the basis of their sexual orientation, genital status, or gender identity. We also believe this provision should be included in Juvenile AP-2.

We also support those standards which encourage the prompt and accurate record keeping and reporting of incidents of sexual abuse. We support the establishment of independent oversight entities.

We also believe that young people should have improved opportunities to seek legal relief for sexual abuse and misconduct, which are endorsed through the exhaustion provisions outlined in Standard RE-2.

We recommend that the following changes be made to the NPREC standards:

We urge the Department to distinguish between sexual abuse, which should always fall under the purview of these standards, and voluntary consensual sexual activities between residents, which a facility should not treat as sexual abuse.

The Commission's expansion of the definition of sexually abusive penetration in the Juvenile Standards to include any sexual penetration by a resident of another resident, even when this activity is both voluntary and consensual, is inappropriate and potentially harmful. By conflating non-abusive sexual activity with actual sexual abuse, the Commission minimizes the real and serious harms and trauma connected to sexual abuse. If the Department were to adopt this definition, this would undermine the effectiveness of the Standards, as facilities would have to use their limited resources to investigate and file reports for sexual activity that in any other setting would not be considered sexual abuse

We believe the Adult standards should be modified to be consistent with existing federal laws and policy used by the Federal Bureau of Prisons to prohibit the placement of youth in adult facilities.<sup>1</sup> This response would also be consistent with the recent Department of Justice views letter submitted in support of Senate Bill 678, which would extend protections of the Juvenile Justice and Delinquency Prevention Act (JJDP A) to youth in the adult criminal justice system.<sup>2</sup> We recommend that the standards make clear that youth are not to be held in adult facilities, except under the six-hour hold exception or rural exception of the current JJDP A.<sup>3</sup> The Adult and Lock-up Standards also should clearly reference these specific exceptions to ensure that youth are not housed in adult facilities outside of the narrow allowable circumstances. Finally, while children should never be held in adult facilities, to the extent that they are, the child-specific protections that are evident in the other standards should be incorporated equally into the adult standards.

Children who do not speak English should receive the same protections and supports under the standards as children who do speak English. The current standards do include some provisions that address the needs of residents who are limited English proficient. Specifically, Standard PP-5 (Accommodating Residents with Special Needs) requires facilities to ensure that LEP residents understand sexual misconduct policies and can directly report abuse or victimization. However, the standards do not explicitly require facilities to ensure

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<sup>1</sup> See, e.g., Federal Bureau of Prison Program Statement 5216.05 and Title 18 U.S.C. § 5039.

<sup>2</sup> Letter from Assistant Attorney General Ronald Weich to Senate Judiciary Committee Chairman Patrick J. Leahy, dated April 15, 2010, *available at*: <http://judiciary.senate.gov/resources/documents/111thCongress/upload/041510DOJViewsLetterJJDP A.pdf>.

<sup>3</sup> See 42 U.S.C. 5633(a)(13)

that LEP residents are able to communicate with staff during other important phases, including investigation, medical and mental health care, and other supportive services that might be necessary after a youth is victimized.

The sexual abuse of youth in juvenile detention facilities, adult jails, prisons, and lock-ups, and community corrections, must stop. Strong standards are urgently needed to protect juveniles from this devastating, but all too common abuse. We urge you to promulgate the Commission's standards with our recommended modifications without delay.

Thank you for your consideration. We can be reached for any further comments or inquiry at (718) 804-8852.

Sincerely,

The Institute for Juvenile Justice Reform and Alternatives