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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 NYSCASA, 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, 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 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.

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.

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.

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.

Many agencies already comply with PP-4's preclusion of routine cross-gender viewing and searches in their women's facilities. In light of the BJS data, which showed high percentages of abuse by female staff of male inmates, these protections are clearly needed in all facilities.

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.

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.

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.

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

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.

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.

As noted above (with Standard RP-2), confidential services 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.

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.

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,

Josie McPherson

Criminal Justice Collaboration Project Director of the New York State Coalition against
Sexual Assault