



Office of the Attorney General
Washington, D. C. 20530

June 22, 2010

The Honorable Frank R. Wolf
United States House of Representatives
Washington, D.C. 20515

The Honorable Bobby Scott
United States House of Representatives
Washington, D.C. 20515

Dear Representatives Wolf and Scott:

I am writing you regarding the Department's work related to the elimination of prison rape. This work is very important to the Department and to me. We cannot tolerate the sexual abuse of those who are committed to government custody, even if they have committed crimes of their own. Simply put, sexual abuse is not part of a prison sentence and it is not punishment for a crime. Rather, it *is* a crime, one that can have severe consequences for victims, for the security of our prison facilities, and for the safety of our communities, to which nearly all incarcerated persons will eventually return.

Eight years ago this month you introduced a bill that, the following year, became law as the Prison Rape Elimination Act of 2003 (PREA). Your work brought to the national agenda an issue that for too long our society had preferred to downplay or ignore. The Department of Justice is devoting intensive efforts to addressing that issue.

As the Department has discussed with your offices, we will not be able to promulgate regulations within one year of issuance of the final report of the National Commission on the Elimination of Prison Rape. While I regret that we will not meet Congress's deadline, I believe that it is essential that the Department take the time necessary to craft regulations that will endure.

I would like to take this opportunity to share with you the activities of the Department of Justice to combat prison rape over the past year. The list below does not include every relevant activity of the Department, but I hope it will indicate to you the breadth and scope of our focus on this area.

Building a resource center to assist state and local authorities in complying with the forthcoming PREA regulations. The Department wants to ensure that, once promulgated, the national PREA standards are successful. The Department is uniquely positioned to serve as a force multiplier, enabling best practices to gain recognition and enabling correctional systems—

especially those with limited experience at developing practices and procedures to detect, prevent and punish prison rape—to benefit from the PREA efforts of other jurisdictions. To that end, the Department will award a grant of up to \$13 million for the development and operation of a Resource Center for the Elimination of Prison Rape over a three-year period. The Resource Center will provide additional training, technical assistance, and program implementation resources to the field to assist in the identification and promulgation of best practices and promising practices. The Resource Center programs will build on the accumulated work in the field, much of which has been funded by previous grants made by the Department's Bureau of Justice Assistance in 2004 and 2006.

Increasing our focus on juvenile conditions of confinement. I am deeply troubled by the recent study conducted by the Department's Bureau of Justice Statistics that revealed high levels of sexual victimization in juvenile facilities. Although, as noted above, the Department funded PREA-related grants in 2004 and 2006, nearly all such funding focused on adult facilities, and therefore provided limited assistance to states and localities struggling with the unique issues confronting juvenile facilities charged with protecting and rehabilitating the children in their care. The Department's Office of Juvenile Justice and Delinquency Prevention (OJJDP) recently issued a solicitation to establish a National Center for Youth in Custody. The Center will serve as a resource for the range of facilities that hold youth and, among other activities, will identify and replicate data-driven approaches to identify, monitor, and improve conditions of confinement and treatment services. Working with the Center, OJJDP will target the training and technical assistance necessary to promote safety, security and rehabilitation of youth in detention and correctional facilities. In addition, pursuant to an Interagency Agreement entered into in FY 2009, OJJDP will partner with the National Institute of Corrections to provide a range of additional services to the juvenile justice field, including training for juvenile facilities to prevent sexual assault and to intervene effectively when such an assault occurs. As we intensify our efforts regarding juvenile conditions of confinement, the Department is actively soliciting the input of leaders in the field. Earlier this month, OJJDP convened a conference of juvenile detention and correctional leaders and experts to discuss strategies for improving conditions of confinement in juvenile facilities, including how best to implement PREA regulations once promulgated, and how to replicate and disseminate best practices for keeping kids safe in custody.

Providing opportunities for States to share their PREA experiences. Our solicitation for a Resource Center builds on the success of a December 2009 conference sponsored by the Department's Bureau of Justice Assistance (BJA) that brought together for the first time—and at the Department's expense—the official PREA coordinators of all 50 states. Coordinators shared PREA work products and promising practices with each other, discussed the upcoming national standards, and identified training and technical assistance needed to meet the standards. The participants started an email distribution list and have been actively seeking input from each other and sharing recommendations. The Department is currently considering additional ways to promote further collaboration with stakeholders.

Helping prisons conduct medical examinations of victims of sexual assault. The Department's Office on Violence Against Women is overseeing the development of a corollary

to the 2004 National Protocol for Sexual Assault Medical Forensic Examinations that is customized to the conditions of confinement, pursuant to the Commission's recommendation that the Department sponsor the development of a national protocol tailored to correctional settings. Developing such a protocol will greatly benefit prison and jail authorities that may have little experience in conducting such examinations. This month, the Department will award a grant to the Vera Institute of Justice to prepare a guide to help correctional agencies adopt and implement the SAFE protocol.

Allowing Victims of Crime Act (VOCA) funding to assist programs that provide services to victims of prison rape. Under longstanding Department regulations, States are not allowed to use VOCA funds to award grants to programs that intend to use such funds to benefit incarcerated persons. I do not believe that this restriction is a wise one—and the Commission, in its final report, agreed. The fundamental premise of PREA is that the fact that a victim of sexual assault is behind bars is no excuse for failing to prevent, detect, investigate, or prosecute such crime. The same principle must apply to assisting victims. Accordingly, the Department's Office of Victims of Crime is in the process of drafting regulations to allow States to use VOCA formula victim assistance funding for treatment and rehabilitation services for incarcerated victims of sexual abuse.

Prosecuting prison rape. Because prison rape is a crime, it must be treated as such by federal investigators and prosecutors. In 2006, Congress gave the Department additional tools by significantly increasing maximum terms of imprisonment, eliminating the limitations period, and expanding federal jurisdiction to include sexual abuse in federally-contracted private prison facilities. Yet crimes committed against prisoners can raise unique challenges for prosecutors. Accordingly, the Executive Office for United States Attorneys (EOUSA) recently developed a new training module on prosecuting criminal cases in federal prisons, which is available for all federal prosecutors to access from their desktop computer. To improve our ability to track the Department's efforts in this regard, each United States Attorney's Office has been instructed to ensure that all sexual abuse matters in federal confinement settings within that office's jurisdiction that are presented for prosecution, as well as the reasons for any declinations, are properly documented, even if the matter declined was presented orally to the office.

Strengthening the Bureau of Prisons' efforts to combat prison rape. BOP has developed detailed policies and procedures aimed at combating sexual assault in its facilities. The BOP has a zero-tolerance policy when it comes to sexual abuse, and the Department is reviewing ways in which BOP's practices can be further strengthened. BOP's policies recognize the importance of screening inmates, training staff, reporting information regarding sexual abuse, assisting victims with medical care, disciplining and/or prosecuting abusers, and exerting leadership at an institutional level. Over the past year, BOP has improved its existing procedures in response to recommendations received from the Department's Office of the Inspector General. These efforts include updating and increasing training for staff, revising information provided to inmates, clarifying data collection procedures, and contributing to EOUSA's efforts to train federal prosecutors. A recent message from BOP Director Harley Lappin to agency staff, which is attached to this letter, provides greater detail on BOP's efforts to combat sexual assault.

Conducting civil rights investigations regarding the sexual abuse of prisoners. Our Civil Rights Division's Special Litigation Section has taken a leading role in addressing pervasive sexual misconduct in a number of state and local facilities. Pursuant to our authority under the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997, and the pattern or practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, we have initiated several ongoing investigations and cases in adult and juvenile detention and correctional facilities where staff-on-inmate or inmate-on-inmate sexual misconduct were significant precursors to our investigations. In a number of investigations, the Department has found that facilities fail to adequately protect youth or inmates from sexual assault. For example, the Department is currently litigating a CRIPA case involving the Erie County Holding Center and Erie County Correctional Facility in Buffalo and Alden, New York, arising out of a Civil Rights Division investigation that found that those facilities inadequately protected inmates from sexual abuse. In addition, the Department has several active inquiries and investigations involving potential institutional sexual misconduct in adult and juvenile correctional facilities and nursing homes. The Commission's current standards have already provided significant assistance to the Civil Rights Division in crafting recommended remedial measures for facilities found to have engaged in a pattern or practice of failing to protect individuals from sexual misconduct.

Drafting PREA regulations. Finally, I would like to discuss the Department's work at drafting PREA regulations. These regulations are indispensable to fulfilling PREA's mission. In response to the Commission's recommendation, I formed a PREA Working Group that includes representatives from thirteen Department offices, plus the Department of Homeland Security. The Working Group is led by a Senior Counsel to the Deputy Attorney General—also pursuant to the Commission's recommendation—who is coordinating the Department's PREA implementation efforts.

The Working Group has undertaken an in-depth review of each of the Commission's proposed national standards. In addition, it convened a series of listening sessions at which it received input from a wide range of stakeholders, including representatives of State and local prisons and jails, juvenile facilities, community corrections programs, lockups, State and local sexual abuse associations and service providers, national advocacy groups, survivors of prison rape, and members of the Commission. At the Commission's request, a representative of the Vera Institute of Justice attended each listening session and provided summaries to the Commission so that it could respond appropriately at its listening session.

I share your desire to promulgate these standards as swiftly as possible, and I recognize your concern regarding the pace of the Department's work. PREA mandates that the standards "shall be based upon the independent judgment of the Attorney General, after giving due consideration to the recommended national standards provided by the Commission . . . , and being informed by such data, opinions, and proposals that the Attorney General determines to be appropriate to consider." The Commission required over four years to complete its challenging and complex assignment. The Commission's insightful findings, extensive analysis, and comprehensive set of proposed national standards are indispensable to the Department, and provide a foundation that guides our efforts.

It is significant that PREA requires that the Attorney General “shall not establish a national standard under this section that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities.” Accordingly, the Department’s Office of Justice Programs commissioned a study by an independent contractor to analyze the costs of the Commission’s proposed standards. That study has recently been completed, and will be reviewed by the Working Group. The Department’s concern regarding cost derives not only from the statutory requirement but from a recognition that, in tight budgetary times, State and local correctional authorities may be resistant to adopting new measures, or may be tempted to cut other programs vital to protecting inmates and ensuring their eventual reintegration into society. Assessing such costs, therefore, is a key part of the Department’s efforts, and will help the Department assess how Federal resources can best be used to aid in implementation.

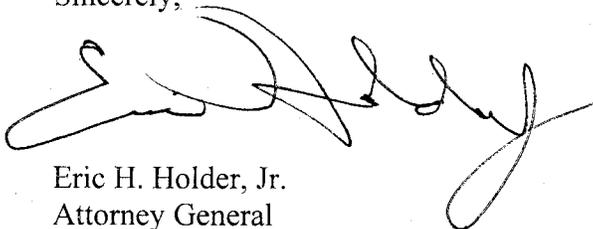
The Department has also sought public input more broadly. While awaiting the completion of the cost analysis, the Department issued an Advanced Notice of Proposed Rulemaking (ANPRM) to solicit public comments on the Commission’s proposed standards. The Working Group is now reviewing the nearly 650 comments received in response to the ANPRM, and will draft a proposed rule for my review. While the timing of the final rule is difficult to estimate given the inherent uncertainty of the regulatory clearance process, you have my assurance that the Department will do everything necessary to promulgate these rules as swiftly as possible, consistent with the statutory requirements imposed by PREA and with our shared goal of crafting regulations that will be both effective and enduring.

The promulgation of regulations will not mark the end of the Department’s involvement. Rather, the Department will retain an active role in working with Federal, State, and local authorities to ensure that, at all levels, we as a nation are fulfilling our responsibility to take appropriate steps to protect inmates from sexual assault. It is therefore all the more incumbent upon the Department to ensure that the regulations we promulgate are properly suited to the task.

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In closing, I would like to thank you for your dedication to combating sexual assault against inmates. Without your work, the Department likely would lack many of the statutory and budgetary tools necessary to accomplish the activities described above. Since 2003, the national conversation regarding prison rape has changed dramatically, thanks in large part to your efforts. I look forward to continuing to work with you in this important area.

Sincerely,



Eric H. Holder, Jr.
Attorney General

Enclosure

Director's Message For Staff
BOP Support of Proposed PREA Standards
June 2010

I want to recognize all of the great work you do each and every day in support of the mission of the Federal Bureau of Prisons (BOP). You have my heartfelt thanks for the dedication and commitment you display in maintaining the safety and security of our federal prisons and the staff and inmates therein.

One of the most challenging areas of our work involves protecting inmates from sexual abuse; our agency has long recognized that sexual abuse can have devastating effects on inmates and on the security of our institutions. And we must recognize that despite our best efforts, sexual abuse does occur in our facilities and it must be detected and responded to appropriately. Simply put, BOP has zero tolerance for sexually abusive behavior.

Last year, the National Prison Rape Elimination Commission, established by the Prison Rape Elimination Act (PREA) of 2003, issued draft standards regarding prison rape. The Attorney General is required by PREA to promulgate final standards that will apply to our agency. The Department of Justice (DOJ) has formed a working group, including BOP, to consider the standards proposed by the Commission and develop final standards. To assist with these efforts, Abigail Harris, Correctional Programs Division, has been appointed the national PREA Coordinator for the BOP.

The BOP's policy regarding sexual abuse of inmates is articulated in Program Statement 5324.06, Sexually Abusive Behavior Prevention and Intervention Program. Many of the proposed PREA standards reflect current BOP policies, and are based on the same principles: Prevention, Detection, Response, Investigation, and Discipline. As the proposed PREA standards appropriately recognize, combating sexual abuse requires

- Providing information to inmates, and training to staff and volunteers concerning sexual abuse;
- Screening inmates for risk of victimization and sexual predation;
- Reporting all knowledge and information concerning sexually abusive behaviors;

- Establishing a protocol for responding to incidents of sexual abuse, focusing on treatment and care of victims and maintaining evidence for prosecution;
- Using a coordinated effort among different disciplines, such as medical, psychology, security staff, and institution leadership in response to incidents of sexual abuse;
- Seeking prosecution and/or disciplinary action for inmate or staff abusers; and
- Providing access to emergency and on-going medical and mental health care for victims, and providing treatment opportunities for abusive inmates.

We are continually working to improve our policy and practices and we will be revising this Program Statement upon the conclusion of the PREA regulatory process. In the meantime, I would like take this opportunity to remind you of certain core aspects of our policy, and encourage you to re-read the Program Statement in its entirety. Key aspects of our Program Statement include the following:

- All inmates must be screened upon admission to a BOP facility. The purpose of screening is to determine whether an inmate's history or profile renders the inmate at risk of becoming a victim or perpetrator of sexually abusive behavior while in BOP custody. Inmates who are at risk are referred to Psychology Services for an assessment of risk and treatment and management needs and to Unit Management to review classification options, including transfer to a different facility.
- All staff are responsible for detecting sexually abusive behaviors and intervening where appropriate. Undetected and unchecked sexual acting out (e.g. swatting someone on the buttocks, sexually suggestive comments, etc.) can lead to more serious incidents.
- All staff must assume that all reports of sexual victimization, regardless of the source of the report, are credible and respond accordingly.

- Victims must receive appropriate psychological and medical care, in accordance with BOP's Response Protocol. In cases where the full Response Protocol is activated, staff are trained to investigate allegations of sexually abusive behavior thoroughly.
- In keeping with BOP's zero-tolerance policy, perpetrators of sexually abusive behavior will be disciplined and/or referred for prosecution.
- Tracking and analyzing the incidents of sexually abusive behavior are critical to ensuring the safety and management of inmates and to assessing the effectiveness of current policy and procedures. The Program Statement provides detailed instructions on how relevant data is to be recorded.
- Each institution must have an Institution Supplement to this Program Statement that specifies how the institution will comply, including
 - specification of staff member(s) responsible for staff training and inmate education;
 - notification procedures to be followed when sexually abusive behavior occurs;
 - procedures to assist inmate victims; and
 - procedures to manage inmate predators.

Staff in Central Office will continue to work closely with the Department of Justice as the Attorney General moves towards finalizing prison rape standards. We will continue to ensure that the workload of our staff and the resources that are available to our agency are important considerations in this process, while remaining mindful of the very serious nature of this issue.

Thank you for your continued support of the Bureau of Prisons.