

# Congress of the United States

House of Representatives

Washington, DC 20515

April 4, 2011

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
ATTN: Robert Hinchman, Senior Counsel  
Office of Legal Policy, Department of Justice  
950 Pennsylvania Avenue, NW, Room 4252  
Washington, DC 20530

**RE: The National Standards to Prevent, Detect, and Respond to Prison Rape Docket No. OAG-131; AG Order No. 3244-2011**

Dear Attorney General Holder:

We are writing in response to the Department of Justice's (hereinafter "Department") request for public comments on the proposed National Standards to Prevent, Detect, and Respond to Prison Rape. As the lead House sponsors of the Prison Rape Elimination Act of 2003 (PREA) Pub. L. 108-79, we are concerned that the proposed national standards in reference to audit requirements, cross gender searches and immigration detention facilities, among others, are not consistent with Congressional intent or the National Prison Rape Elimination Commission's (PREA Commission) recommendations. It is imperative that the Department adopt strong and effective standards to eliminate sexual assaults in U.S. prisons.

PREA created a commission that spent more than four years studying the problem of prison rape and sexual assault and this commission issued comprehensive recommendations in June 2009 that the Department was given a year to review and implement. More than a year and half later and well after the legally-mandated deadline, the Department has proposed standards that appear to ignore recommendations of the PREA Commission in some respects.

We strongly believe that independent external audits are a critical component to eliminating the dangerous conditions within jails and prisons. This type of oversight must be conducted by independent entities that understand prison systems but also can assist facilities in responding to sexual assault victims. The PREA Commission's audit standard<sup>1</sup> which recommends that all facilities should be audited at least once every three years by qualified independent auditors seems to strike the right balance between requiring independent oversight

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<sup>1</sup> National Prison Rape Commission Audit Standard 1 "The public agency ensure[s] that all facilities of its facilities, including contract facilities, are audited to measure compliance with the PREA standards. Audits must be conduct at least every three years by independent and qualified auditors."

The Honorable Eric H. Holder, Jr.

April 4, 2011

Page 2

and not placing impractical burdens on corrections facilities. We urge the Department to adopt the Commission's standard.

We are disappointed that the Department's proposed standards significantly weaken the PREA Commission's recommendation on limits to cross-gender searches and viewing. The PREA Commission recommends prohibiting cross-gender searches and viewing except by medical staff and in the case of emergencies. The Department is proposing to merely "train" staff on how to conduct cross-gender pat-down searches and to limit cross-gender viewing of prisoners' by requiring corrections officials to create policies that would prohibit nonmedical staff from viewing inmates' except by accident or incidental to routine cell checks. Unfortunately this is a case where the exception undermines the rule and does not move us in the direction of eliminating rape and sexual assaults in jails and prisons. Although the Department's own recent Bureau of Justice Statistics (BJS) inmate surveys found that a substantial percentage of sexual assaults were committed by staff of the opposite sex<sup>2</sup>, the Department's proposed standard will do very little to address this reality.

While we understand the difficulty of implementing this standard in institutions with a substantial percentage of staff members of the opposite gender from the inmate population, we encourage the Department to strengthen this standard to better protect vulnerable prisoners from dangerous and abusive environments. We believe the rule should be that a search of a prisoner's body, including a pat-down search, and situations involving a search or viewing of a prisoner's private bodily areas, must be conducted by corrections staff of the same gender as the prisoner, with exceptions set out in a manner to ensure against the exceptions being or becoming the rule.

Finally, the proposed standards exclude any standards to address sexual abuse in immigration detention facilities. The Department has indicated that in its opinion it does not have the authority to adopt standards for Immigration Custody Enforcement (ICE) facilities because ICE detention centers are under the auspices of the Department of Homeland Security (DHS). However, we think that it is the Department's responsibility under the law to outline a plan and work with DHS to ensure standards apply to the immigration facilities. Thus, we strongly encourage you to publicly urge the Secretary Napolitano to adopt the DOJ standards for immigration facilities, consistent with the intent of the law, which was passed when these facilities were under the authority of the Department.

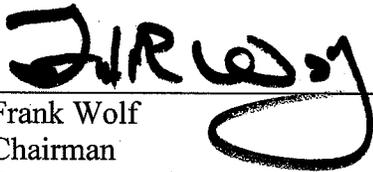
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<sup>2</sup> *Sexual Victimization in Juvenile Facilities Reported by Youth 2008-09*, Department of Justice Bureau of Statistics, (January 2010).

The Honorable Eric H. Holder, Jr.  
April 4, 2011  
Page 3

We look forward to working with the Department to strengthen the final PREA standards in an effort to ensure that the standards reflect the intent of Congress and, more importantly, are effective in eliminating prison rape and sexual assaults.

Sincerely,



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Frank Wolf  
Chairman  
Committee on Appropriations  
Subcommittee on Commerce, Justice,  
Science and Related Agencies



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Robert C. "Bobby" Scott  
Ranking Member  
Committee on the Judiciary  
Subcommittee on Crime, Terrorism,  
and Homeland Security