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Justice Department Releases Final Rule to Prevent, Detect and Respond to Prison Rape

Landmark Regulation Contains New Standards to Combat Sexual Abuse in Confinement Facilities

WASHINGTON – The Justice Department today released a final rule to prevent, detect and respond to sexual abuse in confinement facilities, in accordance with the Prison Rape Elimination Act of 2003 (PREA). This landmark rule sets national standards for four categories of facilities: adult prisons and jails, lockups, community confinement facilities and juvenile facilities. Today’s rule is the first-ever federal effort to set standards aimed at protecting inmates in all such facilities at the federal, state and local levels.

“The standards we establish today reflect the fact that sexual assault crimes committed within our correctional facilities can have devastating consequences – for individual victims and for communities far beyond our jails and prisons,” said Attorney General Eric Holder. “These standards are the result of a thoughtful and deliberative process – and represent a critical step forward in protecting the rights and safety of all Americans.”

The standards have three clear goals: to prevent, detect and respond to sexual abuse.

Prevent: To prevent sexual abuse, the standards require, among other things, that facilities:

- Develop and maintain a zero-tolerance policy regarding sexual abuse;
- Designate a PREA point person to coordinate compliance efforts;
- Screen inmates for risk of being sexually abused or sexually abusive, and use screening information to inform housing, bed, work, education and program assignments;
- Develop and document a staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring;
- Train employees on their responsibilities in preventing, recognizing and responding to sexual abuse;
- Perform background checks on prospective employees and not hire abusers;
- Prevent juveniles from being housed with adult inmates or having unsupervised contact with adult inmates in common spaces;

- Ban cross-gender pat-down searches of female inmates in prisons and jails and of both male and female residents of juvenile facilities;
- Incorporate unique vulnerabilities of lesbian, gay, bisexual, transgender, intersex and gender nonconforming inmates into training and screening protocols;
- Enable inmates to shower, perform bodily functions and change clothing without improper viewing by staff of the opposite gender;
- Restrict the use of solitary confinement as a means of protecting vulnerable inmates; and
- Enter into or renew contracts only with outside entities that agree to comply with the standards.

Detect: To detect sexual abuse, the standards require, among other things, that facilities:

- Make inmates aware of facility policies and inform them of how to report sexual abuse;
- Provide multiple channels for inmates to report sexual abuse, including by contacting an outside entity, and allow inmates to report abuse anonymously upon request;
- Provide a method for staff and other third parties to report abuse on behalf of an inmate;
- Develop policies to prevent and detect any retaliation against those who report sexual abuse or cooperate with investigations; and
- Ensure effective communication about facility policies and how to report sexual abuse with inmates with disabilities and inmates who are limited English proficient;

Respond: To respond to sexual abuse, the standards require, among other things, that facilities:

- Provide timely and appropriate medical and mental health care to victims of sexual abuse;
- Where available, provide access to victim advocates from rape crisis centers for emotional support services related to sexual abuse;
- Establish an evidence protocol to preserve evidence following an incident and offer victims no-cost access to forensic medical examinations;
- Investigate all allegations of sexual abuse promptly and thoroughly, and deem allegations substantiated if supported by a preponderance of the evidence;
- Discipline staff and inmate assailants appropriately, with termination as the presumptive disciplinary sanction for staff who commit sexual abuse;
- Allow inmates a full and fair opportunity to file grievances regarding sexual abuse so as to preserve their ability to seek judicial redress after exhausting administrative remedies; and

- Maintain records of incidents of abuse and use those records to inform future prevention planning.

In addition, the standards require that each facility be audited every three years to assess compliance.

The standards set forth in the final rule are binding on the Federal Bureau of Prisons. With regard to states, those that do not comply with the standards are subject to a five percent reduction in funds they would otherwise receive for prison purposes from the department unless the governor certifies that five percent of such funds will be used to enable compliance in future years. No organization responsible for the accreditation of correctional facilities may receive any federal grants unless it adopts accreditation standards consistent with the standards set forth in the final rule.

The administration has also determined that PREA applies to all federal confinement facilities, including those operated by executive departments and agencies other than the Department of Justice. According to a presidential memorandum issued today, other federal departments with confinement facilities will work with the attorney general to issue rules or procedures that will satisfy the requirements of PREA, in recognition of the fact that each federal agency is accountable for the operations of its own facilities and, therefore, is best positioned to determine how to implement federal laws and rules that govern its operations and the safety of persons in its custody. Those agencies will work with the attorney general to propose, within 120 days of the date of the Presidential Memorandum, any rules or procedures necessary to satisfy the requirements of PREA, and to finalize any such rules or procedures within 240 days of their proposal.

Congress unanimously passed the Prison Rape Elimination Act in 2003 and created the National Prison Rape Elimination Commission to recommend a set of standards to the attorney general, after which it disbanded pursuant to the act. After receiving the commission's recommendations in 2009, the attorney general convened an intradepartmental PREA working group that was tasked with reviewing the commission's recommendations and collecting public feedback on the commission's proposal. Last year the department published a draft rule for public comment.

The final rule reflects careful consideration of all public input, including over 1300 public comments on the proposed rule, as well as detailed analysis of anticipated benefits and costs, in light of PREA's requirement that the standards not "impose substantial additional costs compared to the costs presently expended by federal, state and local prison authorities." The

department also is seeking additional comment on a standard that mandates specified staff-to-resident ratios in secure juvenile facilities.

To assist federal, state and local agencies in their compliance efforts, the department has funded the National Resource Center for the Elimination of Prison Rape to serve as a national resource for online and direct support, training, technical assistance, and research to assist adult and juvenile corrections, detention, and law enforcement professionals in combating sexual abuse in confinement. Focusing on areas such as prevention strategies, improved reporting and detection, investigation, prosecution, and victim-centered responses, it will identify promising programs and practices that have been implemented around the country and demonstrate models for keeping inmates safe from sexual abuse. The center will offer a full library, webinars and other online resources and will provide direct assistance through skilled and experienced training and technical assistance providers. The department also funds the National Center for Youth in Custody to assist facilities in addressing sexual safety for youth.

The department is also continuing grantmaking to support state and local demonstration projects aimed at combating sexual abuse in confinement facilities, through the Bureau of Justice Assistance. In addition, the National Institute of Corrections will develop electronic and web-based resource materials based on the standards set forth in the final rule.

The final rule is being sent to the Federal Register today for publication.

The rule may be read in its entirety at www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

The Executive Summary is available at www.ojp.usdoj.gov/programs/pdfs/prea_executive_summary.pdf.

The Regulatory Impact Assessment, which summarizes the costs and benefits of the rule, is available at www.ojp.usdoj.gov/programs/pdfs/prea_ria.pdf.

The Presidential Memorandum is available at www.whitehouse.gov/the-press-office/2012/05/17/presidential-memorandum-implementing-prison-rape-elimination-act.

For more information on the National Resource Center for the Elimination of Prison Rape, visit www.prearesourcecenter.org.