

April 4, 2011

Robert Hinchman, Senior Counsel  
U.S. Department of Justice  
Office of Legal Policy  
950 Pennsylvania Avenue NW., Room 4252  
Washington, DC 20530

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

Dear Attorney General Holder,

On behalf of the General Board of Church and Society of The United Methodist Church, I am submitting these comments in support of many of the Department's proposed standards and to express concern about certain standards. The United Methodist Church represents 11 million members worldwide and its members are included in services and ministries among people directly impacted by the U.S. criminal justice system. Thus, we offer a unique perspective; one interested in the welfare of those incarcerated as well in public safety.

As Christians, we hold as sacred the basic right of all people, including those in custody, to be free from sexual abuse. Sexual abuse adversely affects one's physical, mental, emotional, and spiritual health, and every person, no matter their life circumstances, should be protected from such violence. The United Methodist Church believes in "the creation of an entirely new [criminal justice] system for the care and restoration of victims, offenders, criminal justice officials, and the community as a whole. Restorative justice grows out of biblical authority, which emphasizes a right relationship with God, self and community. When such relationships are violated or broken through crime, opportunities are created to make things right." (*United Methodist Social Principles*, ¶164H)

The issue of sexual violence behind bars is a moral and human rights crisis. The Department has concluded that approximately 200,000 adults in prisons and jails were sexually abused in 2008 - and another 17,000 in juvenile detention. The Bureau of Justice Statistics reports that in juvenile institutions, one in eight detainees was victimized during the prior 12-month period. This is a disgrace and is evidence of the lack of concern for the human rights of inmates. Despite the high rates of abuse, sexual violence behind bars is preventable. Strong national standards will spare tens of thousands of men, women, and children the devastation of sexual abuse behind bars.

Some of the standards proposed by the Department reinforce the fact that individuals behind bars have a right to human dignity and respect and ensure that inmates will receive the care and services available to individuals victimized in the community. Other standards, however, fall short of adequately protecting incarcerated individuals or responding to their needs. We believe that how we treat those who are imprisoned reflects who we are as a nation. Thus, we urge the Department to strongly consider these concerns and recommendations.

We are disappointed that immigration detention, military facilities, tribal facilities and nonresidential probation and parole are excluded from the Department's standards. All victims of sexual violence, regardless of where they are housed, deserve to be protected from abuse and to have meaningful access to safe reporting options, medical and mental health treatment, and protection from retaliation in the aftermath of an assault. The Department's decision to remove specific types of facilities from the standards exempts certain officials from being held accountable for sexual abuse, while sending the message that some groups do not deserve protection from such violations or assistance if they are victimized.

We are especially concerned with the Department's decision to remove the supplemental standards for facilities housing immigration detainees that the National Prison Rape Elimination Commission (NPREC) appended to its recommended standards for adult prisons and jails. Detained immigrants are particularly vulnerable to sexual abuse, and they can face seemingly insurmountable barriers in relation to reporting abuse. As such, we strongly encourage the Department to reinstate the supplemental immigration standards.

We are disappointed that the Department's standards allow for both cross-gender pat searches in adult facilities and cross-gender viewing of unclothed inmates "incidental to routine cell checks" in all facilities. It is particularly disturbing that the Department's standards allows for juvenile detention officials to view residents in states of undress incidental to routine cell checks. Given that the Bureau of Justice Statistics (BJS) has documented a high rate of cross-gender sexual abuse by staff in juvenile and adult corrections facilities, it is clear that such practices encourage a sexualized institutional environment. We therefore request that the Department prohibit cross-gender pat searches and cross-gender viewing in states of undress, in all non-emergency situations.

We are also concerned that the Department allows for prison and jail inmates who are at high risk for sexual abuse or who have been sexually victimized to be placed in involuntary protective custody for at least 90 days. Protective custody is essentially punitive as it often results in a loss of services and programs, can brand an inmate as a victim and/or a snitch, and often leaves an inmate who is a survivor of sexual abuse with little access to outside support. Relying on this form of isolation to protect likely victims discourages inmates from informing officials about their vulnerabilities and from reporting abuse.

We appreciate the requirement that corrections agencies enter into agreements with outside public entities and community service providers, as collaborating with outside experts is a no-cost, best practice approach for facilities to dramatically enhance their relevant expertise and to increase the extent of services available to victimized inmates. In addition to making confidential emotional support services generally available, agencies should be required to attempt to enter into memoranda of understanding that provide specific assistance for limited English proficiency inmates. LEP inmates face significant language-related obstacles in navigating facilities' grievance and reporting systems. LEP inmates need unfettered access to safe reporting options and deserve full access to information about the investigation, the medical exam, and the services available to them.

We feel that policies aimed at eliminating sexual abuse in detention become meaningful only if corrections staff, contractors, and volunteers are appropriately trained to prevent and address

incidents of sexual violence. We specifically applaud the Department's decision to require staff training on avoiding inappropriate relationships with inmates, as staff is in a position of power over inmates and must uphold high moral, ethical, and legal standards of behavior.

We are concerned about the Department's removal of the requirement that inmates have access to an external, confidential reporting option. Providing inmates with safe ways to report abuse is essential to learning about, and fully addressing, the problem. A confidential reporting option may be the only safe way for an inmate to come forward, and the act of telling someone about sexual abuse can be a powerful step in the healing process. We recommend that the Department return the NPREC's "except when an inmate requests confidentiality" language to standard § 115.51 (b) to ensure that inmates who are afraid to reveal their identity have at least one safe way to report abuse.

We understand that issues around inmate litigation are controversial. However, the Department's minimum timeframe for inmates to file a grievance about sexual abuse is insufficient, even with the potential 90 day extension. Inmates routinely face a wide range of challenges to navigating a facility's grievance system and sexual abuse victims are especially unlikely to be able to meet short deadlines. Inmates in trauma often cannot access timely medical and mental health treatment due to overcrowding, and therefore would not be able to secure documentation for an extension, even if they had the wherewithal to do so. . We recommend that the Department mandate that sexual abuse grievances not be subject to any deadlines. At the very least, the Department should provide the additional 90 days (for a total of 110 days) for all claims of sexual abuse.

We urge the Department to adopt an effective monitoring system in order to determine the standards' effectiveness and impact. This is needed to provide a credible, objective assessment of a facility's safety, and to identify problems that may be more readily apparent to an outsider than to an official working within a corrections system. The outside monitor should visit every facility. These visits must be performed by an entity that is structurally external to the corrections agency being audited, and by individuals who have no recent relationship with the agency. The auditing team must also have a victim-centered approach that incorporates expertise in both corrections and sexual violence.

The Department also questions whether the standards should specifically address juveniles held in adult facilities. We applaud the Department's general recognition that youth are different from adults, and therefore need special protections. Because of adolescents' stage of development and cognitive and social immaturity, youth have characteristics that make them particularly vulnerable to abuse. In fact, the National Prison Rape Elimination Commission found that youth in adult facilities are at the highest risk of sexual assault of all inmates. We therefore believe the Department should prohibit the placement of youth in adult jails and prisons as a way to reduce the sexual abuse of youth.

Finally, we recognize that many corrections officials have expressed concern regarding the cost of implementing national standards. Any considerations of the cost of protecting inmates from sexual abuse must be understood in light of the dramatic benefits of doing so – for the agency, the individual, and society at large. In truth, the cost of implementing the standards will be

significantly offset by the substantial benefits that will come from even an extremely small reduction in sexual abuse behind bars. The costs for implementation will also be small in comparison to the billions of dollars spent on corrections every year. Preventing sexual abuse and providing victimized inmates with safe reporting options and appropriate follow-up care minimizes the likelihood that inmates will suffer the long-term emotional and spiritual trauma that often prevents them from becoming self-sufficient members of society upon release.

Moreover, the moral costs of allowing sexual violence to continue far outweigh any economic costs which are incurred. Every person has the right to be free from sexual abuse, regardless of criminal history. When the government removes someone's liberty, it has the absolute responsibility to protect that person from abuse.

Thank you for your consideration.

Sincerely,

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