
Summary of Comments:
Draft NPREC Standards for the Prevention, Detection, Response, and Monitoring of
Sexual Abuse in Adult Prisons and Jails

July 2008

The National Prison Rape Elimination Commission (NPREC), a bipartisan panel created by the Prison Rape Elimination Act (PREA) of 2003, was formed to study federal, state, and local government policies and practices related to sexual abuse in lockups, jails, prisons, and juvenile and community corrections facilities. Using expert development committees, specialized research staff, and stakeholder insights, the NPREC developed a set of draft national standards for the prevention of and response to sexual abuse in all confinement settings, with matching compliance checklists to represent the standards' contents and help to evaluate progress toward meeting the PREA benchmarks. These draft standards were recently released for public comment, and NPREC is in the process of reviewing feedback from the public to develop the final standards to submit to Congress, the President, the Attorney General, and other national and state decision-makers.

Our organizations, Campaign for Youth Justice, Youth Law Center, and Center for Children's Law and Policy, are committed to removing youth from adult facilities and improving the conditions of confinement for youth held in juvenile facilities. Attached are our recommendations to the NPREC adult standards, specifically focused on the particular needs of youth held in adult facilities. Overall, our organizations applaud the NPREC for developing a draft set of standards that will significantly reduce the occurrence of sexual abuse in adult facilities nationwide. However, we also believe the standards should be improved by adding additional considerations for inmates under the age of 18 who are held in adult prisons and jails.

On any given day, nearly 10,000 youth under the age of 18 are detained in adult jails and prisons in the United States.¹ Juvenile populations housed in adult institutions are particularly vulnerable to sexual exploitation. According to the U.S. Department of Justice's Bureau of Justice Statistics, in 2005 and 2006, 21 percent and 13 percent (respectively) of the victims of inmate-on-inmate sexual violence in jails were youth under the age of 18, despite the fact that only one percent of all jail inmates are juveniles.² Given these harsh statistics, the Draft Standards for Adult Prisons and Jails should be strengthened to explicitly address the needs of youth in adult facilities.

The comments we submitted provide additions or modifications to the standards and checklists so that they fully account for the special needs of youth. Many of our suggestions incorporate language from the Draft Standards for Juvenile Facilities so that the protections for youth in adult facilities more closely mirror the protections provided to their peers in juvenile facilities. All incarcerated youth deserve protection from sexual abuse, and the revisions we suggested to the Draft Standards for Adult Prisons and Jails will ensure that youth receive that protection when they are confined in adult facilities.

Below are some particular areas that need strengthening:

Vulnerable Populations

A key theme of the draft standards involves the protection of “vulnerable populations,” inmates who are more likely to experience sexual abuse during confinement. Where the standards call for heightened protection of certain inmates because of their vulnerability, the guidelines do not provide an adequate definition. We suggested an inclusive definition of “vulnerable populations” that warrants placement in the glossary preceding the standards, rather than relying on partial and scattered references to subgroups of “vulnerable populations” for the purposes of particular requirements. We also suggested that all youth under the age of 18 (not just youth who appear young) are presumed to be vulnerable.

Keeping Youth Separate from Adult Inmates

Our organizations oppose the practice of housing youth in adult facilities because adult facilities are inherently dangerous for children and inappropriate for a variety of developmental reasons. Nonetheless, we recognize that some jurisdictions do hold youth in adult facilities, and juveniles need particular protections in these situations. While banning the practice of housing youth in adult facilities may be outside the scope of the NPREC mandate, the standards can be strengthened to ensure the safety of young inmates.

First, the NPREC standards should explicitly reference the federal Juvenile Justice and Delinquency Prevention Act provisions that substantially limit the ability to house youth in adult jails (the “jail removal” requirement) and require that youth are out of clear visual contact and direct oral communication with other inmates who are adults (the “sight and sound separation” requirement). 42 U.S.C. § 5633 (a)(12) & (13). While under current law, these protections do not apply to youth prosecuted in the adult system, a major way to reduce the risk of sexual abuse of youth in adult facilities is to ensure that facilities follow the “sight and sound separation” requirement for all youth under the age of 18, regardless of what court system they are being prosecuted in.

Second, inmates under the age of 18 deserve special protection prior to, during, and after their intake screenings for admission to a facility because youth are inherently vulnerable to abuse. While it may not be possible to keep youth completely segregated from the adult population at all times in some facilities, we have suggested that youth never share housing assignments or cells with adult inmates.

Age-Appropriate Response and Treatment

In the unfortunate event that a youth is sexually victimized, our recommendations ensure that the response to such abuse provides age-appropriate support and services. Although the draft standards do an admirable job thoroughly detailing the training that sexual abuse response teams receive, the effective methods for investigating and reporting abuse, and the availability of medical and mental health services to victims, these details do not make clear the differential response needed to appropriately deal with a youth victim. For example, the draft standards require obtaining the informed consent of victims before disclosing any information about an abusive incident to other authorities. Even though this standard may be appropriate for adult victims, these procedures would likely be illegal under many state mandatory reporting laws that require disclosures of child abuse.

To account for the special needs of sexually abused inmates under the age of 18, our principal recommendations were to:

- Add a definition of “mandatory reporting laws” to the glossary and reference it in all standards involving disclosures of abuse
- Integrate a youth sexual abuse expert into the coordinated response team when the victim of a reported abusive incident is an inmate under the age of 18
- Convey information about sexual abuse and reporting abuse to youth in a manner that accommodates those with limited literacy, limited English proficiency, sight or hearing impairments, and learning or developmental impairments
- Adapt investigative interviews with age-appropriate communication and conduct medical examinations with age-appropriate explanations and instruments, and
- Establish protocols for reporting sexual abuse allegations to the parents or legal guardians of a youth victim.

With these changes, youth victims in adult facilities will receive treatment nearly equal to that provided to their peers in juvenile facilities.

Action Plans and Full Compliance

Finally, the Draft Standards use checklists to monitor “full compliance” with the PREA benchmarks. However, even with diligent efforts, facilities may not achieve “full compliance” and there will be room for improvement. To help facilities move toward “full compliance” in areas that call for improvement, the standards tell agencies and facilities to develop “action plans.” Our recommendations in this area are twofold: “action plan” needs to be specifically defined and included among the glossary terms that precede the standards, and “full compliance” must be measured by a concrete time period during which facilities have continuously maintained compliance. After examining the ways in which the standards use the term “action plan,” we suggested a definition that clearly incorporates the functions of these plans, including setting concrete targets for improvement to be achieved before a subsequent audit, explaining methods for overcoming staff resistance to change, developing a communication plan to update all stakeholders about the plan’s implementation, and informing the community about strategies and goals for reaching full compliance. As for “full compliance,” we suggested that auditors withhold such a label until facilities demonstrate continuous compliance with the standards for at least one year.

For questions or comments about our recommendations, please contact Neelum Arya, Policy and Research Director, Campaign for Youth Justice, at (202) 558-3580 or narya@cfyj.org.

¹ *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, Campaign for Youth Justice, p. 4, available at http://www.campaign4youthjustice.com/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf. (November 2007) and Beck, A.J. & Harrison, P.M. (May 2006). *Prison and jail inmates at midyear 2005*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

² *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, Campaign for Youth Justice, p. 4, available at http://www.campaign4youthjustice.com/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf. (November 2007).