



JUST DETENTION

INTERNATIONAL

RAPE IS NOT PART OF THE PENALTY

Comments Submitted to the Department of Justice
Notice of Proposed Rulemaking on
National Standards to Prevent, Detect, and Respond
to Prison Rape

Docket No. OAG-131; AG Order No. 3244-2011

April 4, 2011

Agencies should not be able to limit these life-saving services based on the common misperception that confidentiality conflicts with their ‘agency needs.’

Limitations on confidentiality that have been identified and defined by the relevant legislature are the result of deliberation that has balanced the benefits of providing safe services, even for victims who do not want to initiate an investigation, with the value of providing law enforcement with timely information about ongoing crimes. ‘Agency security needs,’ in contrast, is a vague and broad measure. Officials may define this need differently from one another, and health care professionals are likely to define it differently than officials. On the one hand, any instance of wrongdoing relates to security and could therefore justify barring any confidentiality. On the other hand, absolute confidentiality can be justified as a good security measure, as information provided confidentially is unlikely otherwise to be shared at all. If the standard continues to limit confidentiality based on ‘agency security needs,’ how to determine these needs must be explicitly defined, in advance, both to ensure that service providers (and officials) have sufficient guidance in providing services and for auditors to be able to monitor compliance with the standard. Ultimately, given the proven benefits of confidentiality and the professional ethical obligations of counselors, the legal restrictions on confidentiality should be considered sufficient for agency security needs.

Recommendation: Add sexual harassment to § 155.53(a).

As discussed above (addressing § 155.22/222/322), sexual harassment frequently escalates into sexual abuse, and community service providers are skilled in assisting victims who have endured all forms of unwanted sexual activity. Adding sexual harassment to this provision would help provide inmates with the information and safety planning tools they need to address sexual harassment.

§ 115.54/154/254/354 Third-party reporting

JDI commends the Department for recognizing the value of third-party reporting. Some inmates may be too afraid to report abuse directly to officials, but will tell a trusted family member or other loved one about their victimization. Allowing third parties to express their concern and

Briefing to the Office of Information and Regulatory Affairs
on the Department of Justice's Final Rules for
National Standards to Prevent, Detect, and Respond to Prison Rape

Agenda

January 6, 2012
2:30pm

10103 New Executive Office Building
725 17th Street, NW

- I. Overview
- II. Accounting for the Prison Litigation Reform Act
- III. Audits that are periodical, independent, and certified
- IV. Access to confidential rape crisis counseling
- V. Limits to cross-gender viewing and searches
- VI. Conclusion

Participants:

Amy Fettig, ACLU National Prison Project
Jack Beck, Corrections Association of New York
Jamie Fellner, Human Rights Watch
Chris Daley, Just Detention International