

Congress of the United States

Washington, DC 20515

May 25, 2011

The Honorable Eric Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Dear Attorney General Holder:

We are writing in reference to the Department of Justice's (hereinafter "Department") upcoming rulemaking on the National Standards to Prevent, Detect, and Respond to Prison Rape. Though the comment period has ended, the issue that has come to our attention is of such import that we felt compelled to write: the failure of the proposed standards to adequately address the safety of the most at-risk segment of the prison population, youths held in adult jails or prisons. As Members of Congress very concerned about this issue, we ask that you ensure that the standards are consistent with Congressional intent that this serious aspect of the problem is effectively addressed.

According to the Bureau of Justice Statistics (BJS), on any given day approximately 10,000 children are held in adult jails and prisons and an estimated 200,000 youth spend some period of time in an adult facility each year. PREA-funded studies have shown that these youths are at high risk of sexual assault. A BJS study in 2005 found that 21% of the victims of sexual violence in jails and prisons were under the age of 18. Considering that inmates under 18 make up only about 1% of the jail and prison population, this statistic is shocking.

In consideration of this and other evidence, the National Prison Rape Elimination Commission concluded that "more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse" and recommended that "individuals under the age of 18 be held separately from the general population."^[1] Unfortunately, the Commission failed to address the numerous problems caused by efforts to separate youth from adults while still holding them in the same facilities.

Under the Department's proposed standards, adult facilities will make case-by-case determinations of how to ensure the safety of vulnerable youth (§115.41). Adult facilities housing children and youth will be forced to choose between housing youth in the general adult population, which the Commission recommends against, and housing youth in segregated settings. This frequently results in solitary confinement, which can cause anxiety and paranoia and exacerbate existing mental disorders, putting youth at a higher risk of suicide.

^[1]National Prison Rape Elimination Commission, Report 18 (June 2009), available at <http://www.ncjrs.gov/pdffiles1/226680.pdf>.

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Neither remaining in the general population nor being placed in solitary confinement is safe or appropriate for children, and the stresses inherent in both have resulted in a suicide rate for children in adult facilities that is nearly forty times greater than that for children in juvenile detention facilities. While considering passage of PREA, Congress heard moving testimony from a mother whose son committed suicide after being abused. Unfortunately, his tragic death was not an isolated incident.

The purpose of PREA is to protect incarcerated individuals from unfair, unjust, and unconscionable treatment. Congress did not intend for the Department to rely on one dangerous practice in an attempt to eliminate another. The widespread consensus among correctional, mental health and juvenile detention organizations is that adult facilities are simply not equipped to safely detain youth. We therefore urge the Department to swiftly promulgate a final rule that will ensure that all youth are protected from sexual abuse as was intended by Congress when it passed PREA. A critical component for this protection is the removal of all under-18 youth from adult prisons and jails.

Thank you for your attention to this issue. We look forward to continuing to work with you to strengthen PREA standards and to eliminate rape and sexual assault in prison.

Sincerely,



Robert C. "Bobby" Scott
Member of Congress



Frank R. Wolf
Member of Congress