

**Testimony of Just Detention International
For the House Committee on the Judiciary
Subcommittee on Crime, Terrorism and Homeland Security
February 23, 2010**

Just Detention International (JDI) thanks the Subcommittee on Crime, Terrorism and Homeland Security for holding this important hearing on sexual violence perpetrated against youth in detention. Recent government reports have shown clearly that detained youth, whether housed in juvenile facilities or with adults, are at serious risk of sexual abuse – often at the hands of corrections officials.

JDI is an international human rights organization whose mission is to combat sexual violence in all forms of detention. JDI led a diverse coalition of advocates who worked closely with politicians on both sides of the aisle to help secure the passage of the U.S. Prison Rape Elimination Act (PREA) in 2003. Since then, JDI has led the call for the law’s meaningful implementation at the federal, state, and local levels.

Thanks to the strong leadership of PREA’s sponsors – House Crime Subcommittee Chairperson Bobby Scott, Representative Frank Wolf, Senator Jeff Sessions and the late Senator Edward Kennedy – sexual violence in adult prisons and jails is finally beginning to be recognized as a serious human rights crisis. The recent report by the Bureau of Justice Statistics, which prompted this hearing, makes clear that juvenile facilities also are exceptionally dangerous.

I. Sexual Violence Against Youth in Detention

In its recent survey of youth in juvenile detention, the Bureau of Justice Statistics (BJS) found that a shocking 12.1 percent – almost one in eight – of youth reported being abused

at their current facility in the past year alone.¹ In the worst facilities, the rate was as high as 30 percent.² Among youth who previously had been sexually assaulted at another corrections facility, an unconscionable two-thirds reported also having been victimized at their current facility within the past year.³

A 2005 BJS study of sexual abuse reported in adult prisons and jails found that young inmates were at heightened risk for abuse in these facilities as well.⁴ Although the Juvenile Justice and Delinquency Prevention Act prohibits detaining juveniles with adults except in very limited circumstances,⁵ this protection does not apply to youth who are prosecuted as adults.⁶ With these alarming data in mind, it is clear that use of the adult criminal justice system to prosecute juveniles should be minimized.

Survivors of sexual violence in detention who wish to file a formal complaint face multiple serious barriers, including fear of stigma and further assaults. Young survivors face additional obstacles, such as a relative lack of experience in corrections settings and a common fear of adult authority figures. The BJS survey found that the vast majority of perpetrators in youth facilities were staff members whose job is to keep youth safe.⁷ Such blatant abuse of power further discourages reporting, and underscores the difficulty detained youth face when seeking to identify safe ways to report abuse. Moreover,

¹ ALAN BECK, PAIGE HARRISON & PAUL GUERINO, BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTER BY YOUTH 2008-2009 1 (2010).

² *Id.* at 1.

³ *Id.* at 11.

⁴ ALLEN J. BECK & PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES, 2005 (2006).

⁵ 42 U.S.C. § 5633 (a) (13), (14). State delinquency agencies that fail to comply with this and other requirements within the Juvenile Justice and Delinquency Prevention Act will lose their federal funding.

⁶ Three states consider 16 year olds to be adults as a matter of law; 10 states define 17 year olds as adults, and all states have provisions within their criminal justice laws allowing for youth who commit certain crimes and/or have prior contacts with the juvenile and criminal justice systems to be treated as adults. *See* Christopher Hartney, National Council on Crime and Delinquency, Fact Sheet, Youth Under Age 18 in the Adult Criminal Justice System (2006).

⁷ BECK, HARRISON & GUERINO, *supra* note 3, at 1.

detainees in juvenile facilities are often afforded less access to legal resources than inmates in adult facilities.⁸

Youth in detention who have previously been abused are more than twice as likely to be sexually abused while incarcerated.⁹ In girls' facilities, youth known to have a history of prostitution are chief targets for abuse by staff perpetrators.¹⁰ Boys were most often abused by female staff. Staff sexual abuse is greatly facilitated by the U.S. policy of allowing officers of the opposite sex to work in all areas of a detention center¹¹ -- a policy that violates international human rights standards and is banned in most developed nations.

Like in adult prisons and jails, predators in juvenile facilities disproportionately target youth who are lesbian, gay, bisexual, transgender or questioning (LGBTQ).¹² In particular, transgender girls are often tormented by constant sexual harassment, as they tend to be placed in boys' facilities, in accordance with their birth gender.

II. Increasing Safety for Incarcerated Youth through the PREA Standards

The BJS report confirms what JDI has long known: young detainees constitute an especially vulnerable population needing special protections. As the National Prison Rape Elimination Commission explained in its final report, "juveniles are not yet fully developed physically, cognitively, socially, and emotionally and are ill-equipped to respond to sexual advances and protect themselves."¹³

⁸ See, e.g., *Alexander s. v. Boyd*, 876 F. Supp. 773, 790 (D.S.C. 1995) (holding that juvenile detainees had no constitutional right to a law library).

⁹ BECK, HARRISON & GUERINO, *supra* note 3, at 1.

¹⁰ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION (ACLU), *CUSTODY AND CONTROL: CONDITIONS OF CONFINEMENT IN NEW YORK'S JUVENILES PRISONS FOR GIRLS* 63-64 (2005).

¹¹ *Id.* at 63-71.

¹² *Id.* at 1. For more information about the severe danger of sexual abuse facing LGBTQ detainees, see JDI Fact Sheet, *LGBTQ Detainees Chief Targets for Sexual Abuse in Detention* (October 2007).

¹³ National Prison Rape Elimination Commission, *Final Report* at 142-43.

In accordance with its mandate under PREA, the bipartisan Commission developed national standards to prevent, detect, respond, and monitor sexual violence in detention. Recognizing the unique dynamics of different types of facilities, the Commission developed separate sets of standards for adult prisons and jails, juvenile facilities, lock-ups, and community corrections as well as supplemental standards for facilities housing immigration detainees.

The Commission's standards were the product of five years of hearings, deliberation, and review. They address core prison management issues that directly affect the levels of sexual abuse in a facility, such as staff training, inmate education, housing, and investigations in the aftermath of an assault.

If enacted, specific provisions in the Commission's standards could help eliminate the disturbing trends identified by BJS. For example, the BJS survey showed that staff-on-inmate abuse is particularly common in youth facilities; the Commission's standards mandate that staff receive appropriate training about the problem of sexual violence and their role in preventing it; disciplinary sanctions for abusive staff, including the possibility of termination and criminal prosecution; and limitations on staff ability to view detainees of the opposite sex while they are undressed. Basic privacy measures regarding cross-gender supervision are particularly important for youth, who are still developing physically and emotionally. Likewise, the BJS surveys identified non-heterosexual youth as particularly vulnerable; the standards require that sexual orientation and gender identity be taken into account when making housing and programmatic decisions, but not be used to punish a vulnerable individual.

These recommended standards represent a compromise, balancing the rights of inmates with security interests and other concerns of corrections agencies. Nevertheless, if fully approved and implemented, they will significantly lower the rate of sexual abuse in detention and improve the response in the aftermath of an assault.

III. The Attorney General's Review of the Standards

The standards are now with U.S. Attorney General Eric Holder, who by law has until June 23, 2010 to codify final standards based on the Commission's recommendations. Once his final rule is issued, the standards will become federal regulation and will be immediately binding on all federal facilities; other detention systems in the U.S will have one year to certify their compliance, or they will lose a portion of their federal corrections-related funding.

These standards have the potential to save tens of thousands of people from the devastation of rape every year. Nonetheless, it is already clear that Holder will not meet his deadline. The Department of Justice has convened an internal PREA Working Group to review the standards, and the Working Group coordinators have projected that their work may not be completed until 2011. Congress should urge Attorney General Holder and the PREA Working Group to ratify strong standards without undue delay by deferring to the expertise that informed the Commission's standards.

A significant part of the delay appears to be in response to the claims of opponents of PREA that coming into compliance with the new standards will be too costly. Some argue that they represent an "unfunded mandate" and at times go so far as to suggest that it is too expensive to end prisoner rape. In response, the Attorney General has commissioned a cost projection study to produce an estimate of how much it will cost

to implement the standards. This study is not a cost-benefit analysis; it will be based on estimated expenses provided by corrections administrators who have agreed to participate. Preliminary data are due to be released in the spring of 2010 and the final results in the fall of 2010.

With a focus exclusively on cost – irrespective of savings and other benefits to states, agencies, prisoners, and the community – this study will provide, at best, a distorted picture of the standards’ economic impact. Moreover, by relying exclusively on the projections of corrections administrators, officials who oppose the standards or who are seeking to bolster corrections appropriations will have a clear incentive to inflate their estimated expenses. Beyond the questionable utility and accuracy of such a study, it dangerously encourages a narrative focused on cost rather than on safety. Cost should be one factor among many when the Attorney General issues the final standards; it should not obscure the responsibility of corrections agencies to provide safe custodial settings nor the devastating impact of sexual abuse in detention on inmates, families, and the community.

In reality, facilities that have basic policies and practices in place to protect people in their charge, as they are legally required to do regardless of PREA, will not incur substantial costs by complying with the standards. JDI is working with three jurisdictions – the California Department of Corrections and Rehabilitation (including its Division of Juvenile Justice), the Oregon Department of Corrections, and the Macomb County Sheriff’s Office in Michigan – to establish low and no-cost ways of coming into full compliance. By repurposing staff and other resources, and by utilizing expertise available in the community, each of these cash-strapped agencies have discovered that not only can

they meet the standards' requirements, but doing so has enormous benefits for the safety of staff and inmates alike.

III. Conclusion

Sexual violence in detention is not inevitable; it is the result of poor corrections management, bad policies, and dangerous practices. The national standards mandated by the Prison Rape Elimination Act, currently before Attorney General Holder, have the potential finally to help end this type of violence. As such, they constitute a once-in-a-lifetime opportunity for U.S. corrections reform. JDI urges Congress to demand that the Attorney General ratify strong standards, without undue delay. Every day without them is another day in which youth and other vulnerable inmates endure sexual abuse.