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Congress of the United States

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WITNESS LIST

Subcommittee on Crime, Terrorism, and Homeland Security

Robert C. "Bobby" Scott, Chairman
and
Louie Gohmert, Ranking Republican Member

Hearing

on

"Keeping Youth Safe While in Custody:
Sexual Assault in Adult and Juvenile Facilities"

4:00 p.m.

Tuesday, February 23, 2010

2141 Rayburn House Office Building

WITNESSES

Brenda Smith, Professor American University
Washington, DC

Troy Erik Isaac
North Hollywood, CA

Bernard Warner, Chief Deputy Secretary for Juvenile Justice
Department of Corrections and Rehabilitation, Division of Juvenile Justice
Sacramento, CA

Gabriel Morgan, Sheriff, Newport News, VA

Grace Bauer, Campaign for Youth Justice, Washington, DC

Keeping Youth Safe While in Custody

Testimony submitted by Bernard Warner, chief deputy of the California Division of Juvenile Justice, and president of the Council of Juvenile Correctional Administrators (CJCA) Feb. 22, 2010 before the US House Judiciary Sub Committee on Crime,

Chairman Scott, Chairman Conyers, Ranking Member Gohmert, and all members of the Crime Subcommittee - thank you for the opportunity to speak this afternoon about the important issue of keeping youth safe in juvenile facilities. Clearly, the report released two months ago by the Bureau of Justice Statistics (BJS) on sexual victimization in juvenile facilities has cast a bright light on the vulnerability of youth in our care. While there were alarming rates noted in many juvenile facilities, the truth is any sexual assault is unacceptable.

My name is Bernard Warner and I am the chief deputy of the California Division of Juvenile Justice (DJJ) where I am responsible for approximately 3,000 juvenile offenders ages 12 – 24, on parole and housed in five large institutions, with a budget of approximately 400 million dollars and over 2,000 staff. The state juvenile justice system in California is reserved for the highest risk, highest need youth in the state that cannot be managed at a local level. Over 95% are committed for serious violent crimes, and many have significant mental health and substance abuse issues. There is no greater responsibility I have than to keep youth and staff safe in our facilities.

In California, the state juvenile justice system is part of the California Department of Corrections and Rehabilitation, which also operates the largest prison system in the country. In both the juvenile and adult corrections, we have taken the Prison Rape Elimination Act very seriously and were early implementers of policies and procedures to ensure every effort was made to eliminate victimization. Key strategies such as employee training, offender education and appropriate classification of youth has, I believe, had a significant impact in reducing sexual victimization. We have also established pilot facilities that work with Just Detention International for independent review of our compliance with PREA policies and practices.

As result of a consent decree signed five years ago, DJJ has implemented many reforms to improve the safety of our youth. Better staffing, smaller living unit sizes, enhanced training in trauma informed care, specialized programs for those with mental health issues, engaging families —all have contributed to improvements and cultural change that has reduced victimization. Our facility in the Los Angeles area, which has housed the most violent, gang entrenched

youth in any correctional environment, actually was listed as a facility with a low rate of sexual victimization. Some of this can be attributed to our reforms to end violence.

In addition to representing the California Division of Juvenile Justice, I am also here as the current president of the professional association of state agency juvenile directors called the Council of Juvenile Correctional Administrators (CJCA.). Approximately 90% of states participate in the work of this association.

CJCA's mission is to improve juvenile correctional services so youth leave state custody with the skills and services they need to succeed in the community. CJCA works to achieve that goal by:

- Educating and training state directors on evidence-based practices and promising programs;
- Building tools for practitioners that are grounded in research and data and when implemented, result in positive outcomes for youths, staff and families.

Last month, CJCA convened a panel of state directors, including those leading facilities highlighted as "worst" in the BJS report, to talk and strategize about ways to eliminate sexual violence in facilities. All of the directors from the nearly 25 states present agreed that the most effective way to prevent sexual victimization is to ensure youths' safety – from all risks and dangers posed by facility life. Standards defining policies and procedures specific to sexual victimization alone will fall short of ending abuse in our facilities. There needs to be a broader focus on and support for creating an environment that is safe for youth, and establishing a culture that appropriately defines boundaries between staff and those under our care. How we make decisions as to where youth are housed, what programs and services we provide for them and the expectations for staff to appropriately engage youth, is critical to ending victimization in our facilities.

As individual states and as a national association, we are committed to working with federal partners to reduce and eliminate sexual violence in facilities. Several of us were invited by the Department of Justice, Office of Deputy Attorney General to participate in Listening Sessions and offered additional feedback on the Prison Rape Eliminate Act Commission standards for juvenile facilities. CJCA is preparing a standard-by-standard comment and review for the DAG office that will strengthen the standards to more effectively meet the goal of zero-tolerance for sexual victimization and add data to drive changes in practice and monitor continued safety in facilities. Although there is a concern about the fiscal impact on implementing the standards, we also understand you cannot put a price on preventing victimization.

As we look toward solutions to improving the safety of youth in our care, we look to the Office of Juvenile Justice and Delinquency Prevention for resources to support technical assistance. The development and implementation of "best practices" which support staff training, youth assessments, and programs designed to improve the climate in detention facilities, is critical for long term improvements in the juvenile justice system. While progress has been made, certainly the BJS study demonstrates unacceptable failure throughout the country.

In addition, tools that measure change must be available for all jurisdictions so agencies can benchmark progress or identify barriers to safe facilities. CJCA is currently working with OJJDP to build on existing Performance Based Standards identify to provide a continuous self-improvement process that can be integrated into facility and agency operations and sustain positive change. The BJS report has clearly highlighted this need to better track data, be transparent and hold the system accountable.

Thank you for the opportunity to testify.

Bernard Warner
Chief Deputy Secretary
Division of Juvenile Justice
California Department of Corrections and Rehabilitation

Testimony of Troy Erik Isaac

Prepared for the United States House of Representatives,
Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security

Hearing on Keeping Youth Safe While in Custody: Sexual
Assault in Adult and Juvenile Facilities

February 23, 2010

Good afternoon, and thank you Mr. Chairman and members of the committee for holding this hearing and for inviting me to testify. I am 36 years old, and have spent most of the past 24 years in California corrections facilities.

I first went into a juvenile facility when I was 12 years old. I didn't know my sexual orientation, but I knew that I was different. Almost immediately, other boys began to harass me. After a couple of days, one boy forced me to have oral sex with him in the shower area. He said to me, 'Your name is gonna be Baby Romeo and I'm Big Romeo.' He claimed that he would protect me from others, but he didn't. Soon after that, I was raped by another older boy.

After both rapes, I didn't know who to go to. I was scared to tell anyone because I didn't know if I would get killed or beaten up. I didn't know if staff members would take me seriously. No one informed me that this was how the facility ran.

I realized I needed to figure out what to do to protect myself and keep myself safe. Guards knew what was happening and looked the other way; I was too afraid to fight back. So I started telling staff members that I was suicidal; I would cut my wrists -- anything to get out of that situation and get into isolation. I found myself in situations I could not handle. People would take advantage of me and I just didn't know how to get help.

Being attacked and not receiving support from the adults in charge turned my world upside down. It's a traumatizing experience for someone who is young. I take that with me wherever I go.

That trauma sent me into a cycle of imprisonment -- I kept being sent to juvenile hall, and later to prisons, where I continued to be assaulted and abused. I have spent most of my life in prison -- never for anything violent. When I was

released two years ago, I committed to staying out of prison. I started a community service organization, Hands On Advocacy Group. I provide peer counseling and crisis support, and I talk with young people about my experience and what they can learn from it.

The recent government report shows that sexual abuse is still rampant in youth detention centers. In my experience, juvenile facilities don't try hard enough to prevent it, and they do not like to deal with it when it happens. There were no preventative measures in place when I was assaulted.

When I was first locked up, when I was first raped, I was a terrified 12 year old boy. I had never been violent, and I was different – I was skinny and effeminate. Everything about me made clear that I was a likely target, but the guards never considered my vulnerability in deciding where to house me. Never was I provided with the protection that I clearly needed.

Having been incarcerated – and sexually assaulted – in both youth and adult facilities, I have seen how things are similar and how they are different. Vulnerable inmates are vulnerable wherever they are, and those protections are needed everywhere. Young inmates, in particular, need extra attention.

Officials should be careful in their decisions about housing and program assignments. A slight, first time offender should not be placed with a larger, older inmate who is serving many years for violent crimes. But youth and other vulnerable inmates should not be punished with isolation either.

Juvenile detention is supposed to help troubled kids turn their lives around – offer them the support they need to return successfully to society, and not be re-incarcerated. Allowing youth behind bars to be raped completely contradicts this mission. Juvenile detention authorities need to take special care in screening employees and educating youth about their right to be free of abuse.

Despite my experiences, I am hopeful. The standards developed by the National Prison Rape Elimination Commission include common-sense measures that would make youth detention facilities safer. One of the things that would have prevented my abuse is a vulnerability assessment, like what is included in both the juvenile standards and in the adult prison and jails standards.

The standards also mandate officials to encourage youth to report abuse, respond with investigations and discipline of perpetrators, and provide proper after-care care for youth who have been assaulted; including age-appropriate mental health treatment.

I very much hope that Congress will urge the Attorney General to act quickly and enact the full set of national standards drafted by the National Prison Rape Elimination Commission. The sooner these basic measures are put into place, the sooner we can finally end the sexual abuse of youth in detention.

Thank you again for addressing this problem and for allowing me to share my story.

**“Keeping Youth Safe While in Custody: Sexual
Assault in Adult and Juvenile Facilities.”**

**Gabriel A. Morgan
Sheriff**

February 23, 2010

segregation for their own protection. This amounts to an additional punishment, inasmuch, as the juvenile is in an isolation cell for the majority of the day.

These findings and many cited in my written submission begs the question; is this a violation of the Eight Amendment of our Constitution. Further, as a civilized body are we guaranteeing the provisions of the Fourteenth Amendment due process and equal protection clause.

Upon taking office, I was faced with an overcrowded jail that the National Institute of Corrections called a "ticking time bomb." I had over 700 inmates in a facility that was designed for 248. Every time a juvenile was transferred to my custody it was a nightmare. For the protection of the juvenile, I had to move adult prisoners into already overcrowded blocks, further creating an added danger to the adult inmate and the correctional staff.

This situation was further complicated by the fact that almost 30% of the adults in my facility suffered from some form of mental illness. I lacked the professional staff to adequately deal with this population. Our Community Services Board would evaluate the most outrageous behavior. Despite my constant request for additional funding, my request was denied until there was a tragedy. After a brave deputy by the name of Brian Dodge was critically injured, losing one of his eyes at the hands of an inmate suffering from mental illness, I was able to secure a grant to address this problem.

It took Corporal Dodge's injury for something to be done. There are plenty of juveniles who have fallen victim in adult facilities. In my state of Virginia a juvenile can be tried as an adult at the age of 14 and they are subject to the same facility as an adult offender.

As a criminal justice practitioner, I must also caution of the unintended consequences of good meaning laws. Please do not saddle us with unfounded mandates that would be impossible to accomplish without additional resources. We do our best with the limited resources that are given to us by state and local government. However, since the mid 1980s politicians seeking election or re-election have held the criminal justice system hostage to sound bites. Politicians talk about getting tough on crime and they pass many draconian laws without regard to the data and evidence-based practices. As a practitioner and a taxpayer, I would submit that we must be smarter on crime. We must begin to focus more on prevention, rehabilitation, and reintegration. We cannot afford to continue in this manner. We are wasting human capital along with monies that could provide greater returns on our investment.

Prevention is always cheaper than correction. It is time to do what was started in the late 1800s in Illinois. It is time to ensure a juvenile court system is designed to protect the welfare and rehabilitation of youthful offenders. We desperately need a system that will recognize that 99% of these juveniles will return to communities; and it is up to us to decide how they will return.

Thank you for allowing me to be here today and to add my voice in support of America's children.

Myers, D. (1999, doctoral dissertation). Excluding Violent Youths from Juvenile Court: The Effectiveness of Legislative Waiver. University of Maryland, Baltimore.

Winner, L., Lanza-Kaduce, L., Bishop, D., and Frazier, C. (1997). The Transfer of Juveniles to Criminal Court: Reexamining Recidivism Over the Long Term. *Crime and Delinquency*, 43: 548-563.

CAMPAIGN FOR
YOUTH JUSTICE

BECAUSE THE CONSEQUENCES AREN'T MINOR

Grace Bauer, Parent, and Organizer of Families of Incarcerated Children
Campaign for Youth Justice

Testimony before the House Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security

Hearing on "Keeping Youth Safe While in Custody –
Sexual Assault in Adult and Juvenile Facilities"

February 23, 2010

Good afternoon Chairman Scott, Ranking Member Gohmert, and other members of the Subcommittee and thank you for having me here to testify. I would like to thank you - and everyone here today - for focusing on an issue of critical importance that for decades was ignored and treated with sneers and ignorance.

My name is Grace Bauer and I am the parent of a youth who has been involved with both the juvenile and the adult criminal justice system. I also work with the Campaign for Youth Justice organizing parents who have had their sons and daughters go through these systems. The Campaign is a national organization working to end the practice of prosecuting youth in adult court and to promote more effective approaches in the juvenile justice system as an effective alternative for these youth.

As a parent of a young man who has been involved in the system, I unfortunately know better than most that individuals who are incarcerated are not valued - no matter that those incarcerated in America number, shamefully, in the millions and their families who love and care for them number in the tens of millions. It is only through the hard work of many, such as the members of the National Prisoner Rape Elimination Commission (NPREC) and the Members of Congress who worked to pass the Prison Rape Elimination Act, as well as national non-profit organizations such as Just Detention that this work is discussed at all.

As you know, the recently released BJS study found that - within the past year - over 13 percent of youth in juvenile facilities reported sexual victimization by either staff or other youth in the facility. In addition, we know that this abuse extends to youth who are prosecuted in the adult criminal justice system. The NPREC found 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 youth be housed separately from adults.

I wish I could say that what happened to my son was a rarity or that we have come so far in the last nine years that these things don't happen to children anymore. Let me be loud and clear, there is not one week that goes by in the last nine years that I haven't heard the pain and pleas of other parents in the same or similar situations: The 13-year-old boy who gets put into a cell with an older, bigger youth and is brutally raped while prison guards stand outside the cell and take bets on which child will be the rapist (the "winner") and which will be the raped. The 14-year-old girl who suffers a life of physical and sexual assault at the hands of her father and begins leading a life on the streets. After she is locked up, another set of authority figures repeatedly rape her with no where to run this time. The mother who can't approach her son without alerting him she is coming because, if he doesn't know she's coming, he may have a panic attack or strike out in blind fear of another attack.

What I hate most is after all this time I still don't have good answers for these families any more than anyone had an answer for me. We do nothing to protect those behind bars and instead assume that this is part of the punishment they deserve. No one deserves to be violated but it is even more heinous when it happens at the hands of those with a mandate to keep our children safe. I ask that you consider how we could expect an already vulnerable group of children to live through such violence and neglect all within plain sight of authority and to somehow emerge on the other side as a well adjusted person ready to return and give back to our society. I believe this is why we - as a country - have outrageously high recidivism rates.

Until the NPREC hearings I wondered if this nation had the courage or the political will to look beyond media hype and the political grandstanding on being tough on crime to get to the heart of what happens to millions that belong the next generation of Americans. Fortunately, we have individuals that are tough, but also smart about what the criminal and juvenile justice systems are incapable of doing for us as a society. These individuals are unafraid to go beyond the rhetoric and see the horrendous damage done to those who are the most vulnerable and most unrepresented in this country.

After years of documented cases of sexual assault to children in juvenile facilities, I find it appalling that state administrators still doubt the outcomes of such studies and reports. Many administrators and other state government authorities continue to doubt the repeated findings of sexual assault in their facilities and can't accept the overwhelming evidence that it exists. For me, this means that we must recognize what we can expect of state juvenile justice authorities when it comes to protecting our children and the answer falls extremely short of our expectations.

The family court judge in my son's case believed he had no alternative to sending my son away to a state facility and some practitioners believed they were sending children to facilities that would improve their lives and help them succeed. I don't blame these people for doing what they believed to be right. Instead, the blame I have felt is directed at those who have heard my son's experience and the experience of other families and their children and failed to act.

Therefore, in closing, I echo *The Washington Post* editorial printed this weekend and call on Congress to reauthorize the Juvenile Justice and Delinquency Prevention Act, which would provide protections to youth in both juvenile and adult facilities. I also call on the Department of

**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

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 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.

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

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.



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PRESS RELEASE

Prisoner Rape Survivor Urges Congress to Help End Sexual Abuse in Detention

House Subcommittee hearing focuses on rampant abuse of detained youth

Washington, DC, February 23, 2010. At a hearing this afternoon, prisoner rape survivor Troy Erik Isaac will urge the House Subcommittee on Crime, Terrorism, and Homeland Security to ensure that the Department of Justice finalizes strong national standards aimed at ending sexual abuse behind bars. These standards were released on June 23, 2009 by the National Prison Rape Elimination Commission and are now bogged down in a Department of Justice review.

Isaac will be a witness at a Subcommittee hearing that was triggered by the alarming results of a Bureau of Justice Statistics (BJS) study released last month, "Sexual Victimization in Juvenile Facilities Reported by Youth, 2008-2009." Through surveys with juvenile detainees, the BJS found that more than 12 percent – almost one in eight youth – had been sexually abused in the preceding year alone. In the worst facilities, one in three youth had been victimized.

"I was raped at age 12 because I wasn't given the protection I obviously needed," Isaac explains. "Unfortunately, this report makes it painfully clear that sexual abuse of incarcerated kids remains widespread." Isaac is a member of Just Detention International's Survivor Speakers Bureau.

Isaac insists that his assaults could have been prevented had the measures required by the National Prison Rape Elimination Commission's standards been in place. The standards were developed under the Prison Rape Elimination Act (PREA) of 2003. Subcommittee Chairman, Rep. Bobby Scott (D-VA), who called for today's hearing, was a co-sponsor of PREA. The law gives Attorney General Eric Holder one year from June 23, 2009 to review the Commission's standards. Seven months into that process, it appears certain that he will miss his deadline, perhaps by as much as a year.

"Every day without these standards is another day in which detained youth will suffer rape, often at the hands of the very officials who are supposed to keep them safe," says Lovisa Stannow, Executive Director of Just Detention International.

Just Detention International seeks to ensure government accountability for prisoner rape; to change ill-informed public attitudes about sexual violence in detention; and to promote access to resources for those who have survived such abuse.

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United States House of Representatives

Committee on the Judiciary

Subcommittee on Crime, Terrorism, and Homeland Security

Testimony of Prof. Brenda V. Smith
American University, Washington College of Law

February 23, 2010

Hearing on
Keeping Youth Safe While in Custody: Sexual Assault in Adult and Juvenile Facilities

Hearing on Keeping Youth Safe While in Custody: Sexual Assault in Adult and Juvenile
Facilities

Testimony of Prof. Brenda V. Smith

I. Introduction

Good afternoon Chairman Conyers and Representative Scott. Thank you for inviting me here today and for the opportunity to speak with the members of the Subcommittee on Crime, Terrorism and Homeland Security.

I am a Professor of Law at the American University Washington College of Law. In November, 2003, I was appointed by then House Minority Leader, Nancy Pelosi to serve on the National Prison Rape Elimination Commission. I served in that capacity until August 2009, when the commission “sunsetted” after having issued comprehensive standards to address sexual abuse of individuals in custodial settings – prisons, jails, juvenile detention facilities, community corrections and immigration detention settings. In addition to those roles, I have also directed the Project on Addressing Prison Rape at the Washington College of Law since 2000. That project was funded by the U.S. Department of Justice, National Institute of Corrections.

In 2003, the President signed the Prison Rape Elimination Act, or PREA, into law. The legislation created the Commission and charged the Commission with conducting the first national study of government policies and practices related to sexual abuse of individuals detained in our nation’s prisons and jails as well as those under community supervision and held by juvenile justice agencies. Our mandate also required us to develop and propose national standards for the detection, prevention, reduction, and punishment of prison rape and other forms of sexual abuse.¹

¹ See generally, THE PRISON RAPE ELIMINATION ACT OF 2003, Pub. L. 108-79. 4 Sept. 2003. Stat 117.972

On June 23, 2009, the Commission publicly released its report and standards.² Today, I would like to focus on the standards and findings related to juveniles—juveniles in detention, in the community and juveniles convicted and housed with adults.

First, I will discuss the findings of the Commission. Second, I will address the recent Bureau of Justice Statistics (BJS) juvenile data collections—both the collection of information from juvenile agencies and from youth themselves. Third, I will discuss what I have learned working with twelve juvenile agencies across the country to address the sexual abuse of youth in custody. Last, I will provide a number of recommendations for moving forward.

II. Findings of the National Prison Rape Elimination Commission

The Commission found that juveniles in confinement are much more likely than incarcerated adults to be sexually abused, and that they are particularly at risk when confined with adults.³

A. The Role of the State

The state has a particular interest in protecting those who are in custody from physical abuse, particularly sexual abuse. Given the different purposes for which youth are held away from their family-- rehabilitation and protection rather than punishment-- the state has an even greater responsibility for youth. The state stands in the place of parents, in *parents patriae*. That responsibility brings with it a particular responsibility for protecting

² See generally, The National Prison Rape Elimination Commission, REPORT, Washington, DC, June 23, 2009 [hereinafter REPORT]; The National Prison Rape Elimination Commission, STANDARDS FOR THE PREVENTION, DETECTION, RESPONSE AND MONITORING OF SEXUAL ABUSE IN ADULT PRISONS AND JAILS, Washington, DC, June 23, 2009; The National Prison Rape Elimination Commission, STANDARDS FOR THE PREVENTION, DETECTION, RESPONSE AND MONITORING OF SEXUAL ABUSE IN LOCK-UPS, Washington, DC, June 23, 2009; The National Prison Rape Elimination Commission, STANDARDS FOR THE PREVENTION, DETECTION, RESPONSE AND MONITORING OF SEXUAL ABUSE IN COMMUNITY CORRECTIONS, Washington, DC, June 23, 2009; The National Prison Rape Elimination Commission, STANDARDS FOR THE PREVENTION, DETECTION, RESPONSE AND MONITORING OF SEXUAL ABUSE IN JUVENILE FACILITIES, Washington, DC, June 23, 2009.

³ See, REPORT *supra* note 2 at 140.

youth from abuse. Numerous court decisions and studies have found that youth are particularly vulnerable because of their youth and different cognitive development than adults.⁴ Developmentally, teens and preteens are even less able to cope with sexualized coercion from older youth or staff.⁵ The different space that youth inhabit vis-à-vis authority is recognized in numerous laws – child exploitation, statutory rape, mandatory reporting, and greater constitutional protections for youth.

B. Findings Related to Issues in Addressing Sexual Violence in Juvenile Agencies

In its study, the Commission found that juvenile agencies need increased training and education for staff and youth on addressing sexual violence in custody.⁶ The Commission also found that, like other settings, internal reporting procedures were barriers to addressing abuse in custody.⁷ Given the developmental profile for youth, the Commission found that youth must have access to family and legal representatives and that agencies need to develop investigative techniques suited to juvenile victims.⁸ The Commission also noted that ongoing medical and mental health care were essential for addressing trauma for youth in custody.⁹

C. Youth Imprisoned in Adult Settings

⁴ *Id* at 142-143; *See also*, *Roper v. Simmons*, 543 U.S. 551, 570 (2005) (banning death penalty for youth who committed crime before the age of 18); Steinberg, L., & Cauffman, E.. *A developmental perspective on serious juvenile crime: When should juveniles be treated as adults?* FEDERAL PROBATION, 63, 52–57 (1999); Woolard, J. L., & Reppucci, N. D.. *Researching juveniles' capacities as defendants*. In T. Grisso & R. G. Schwartz (Eds.), *YOUTH ON TRIAL: DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE*. Chicago: University of Chicago Press (2000); Berliner, L., & Conte, J. R.. *The process of victimization: The victim's perspective*. CHILD ABUSE AND NEGLECT, 14(1), 29–40 (1990).

⁵ *Id* at 142.; *see also*, Schlozman, B. J. Letter to Mitch Daniels, Governor, Indiana, Regarding Investigation of the Plainfield Juvenile Correctional Facility, Indiana (September 9, 2005); Restated and Amended Consolidated Complaint, *Byrd v. Alabama Department of Youth Services* (N.D. Ala. Aug.14, 2003)(No 01433-LSC); *State Department of Health & Rehabilitative Services v. Whaley*, 531 So.2d 723, 724 (Fla. Dist. Ct. App. 1988).

⁶ *See*, REPORT *supra* note 2 at 151.

⁷ *Id.*

⁸ *Id.*

⁹ *Id* at 153-154

The Commission made a particular finding about youth convicted as adults and housed in adult facilities. The Commission found that these youth were at the highest risk for sexual abuse.¹⁰ While only twenty percent of juveniles housed as adults are there for a violent crime, fifty percent of adults are incarcerated for violent crimes.¹¹ This, along with the fact that most of these youth have no prior exposure to the adult correctional environment, makes adult prisons very difficult for youth to navigate and puts them at an increased risk for sexual abuse.¹² Because of these risks, the Commission recommended that individuals below the age of 18 who have been sentenced as adults be housed separately from general adult population.¹³

D. Youth in Community Corrections Settings

Finally, the Commission found that youth in community settings are also at risk for sexual abuse.¹⁴ The Commission feels that in order to address sexual abuse of youth in community custodial settings there needs to be increased supervision of staff, additional training on healthy boundaries and viable investigations into reports of sexual abuse.¹⁵ Approximately half of adjudicated youth are under community supervision; however, data on the prevalence of sexual abuse in these settings is non-existent. I will discuss the lack of data more fully later in my presentation.

III. The Bureau of Justice Statistics Data Collections of Youth in Custody

Under PREA, the Bureau of Justice Statistics must collect facility level data on the prevalence of sexual abuse in custody. In order to collect that data, BJS collected several

¹⁰ *Id* at 156

¹¹ *Id*; See also, Bishop, D. M. *Juvenile offenders in the adult criminal justice system*. In M. Tonry (Ed.), CRIME AND JUSTICE (Vol. 27). Chicago: University of Chicago Press (2000).

¹² *Id*.

¹³ *Id* at 157.

¹⁴ *Id* at 158; See also, Saker, A. "Teens' abuser gets locked up for life." THE OREGONIAN (October 14, 2005).

¹⁵ *Id* at 158-159.

types of information. First, BJS collected information from correctional authorities and then it collected information from youth in custody.

A. The Perspective of Correctional Administrators

Looking at reports by correctional authorities, from 2004-2006, BJS found that juvenile facilities reported the highest rates of alleged sexual violence—nearly three times the rate in state prison systems.¹⁶ This was not a surprising result given the vulnerability of youth and the mandatory reporting requirements for reports of abuse involving youth.

BJS has consistently found more than 2,000 allegations of sexual violence were reported each year, with state run facilities reporting the highest numbers (four to six times the rate of local and private facilities).¹⁷ Additionally, BJS found that nearly two-thirds of all substantiated incidents that correctional authorities reported were youth-on-youth sexual violence.¹⁸

B. The Perspectives of Youth

The most startling data collected by BJS came from the youth themselves. The Bureau of Justice Statistics collected data from youth in the years 2008 and 2009. In its report, *Sexual Victimization in Juvenile Facilities Reported by Youth*,¹⁹ youth reported rates well beyond those reported by correctional authorities. Twelve percent of youth in state juvenile facilities and large non-state facilities reported sexual abuse by another youth and 10.3% reported an incident involving a staff member. These numbers are very large

¹⁶ See generally, Beck, Allen and Timothy Hughes. THE PRISON RAPE ELIMINATION ACT OF 2003: SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES, 2004, Washington, DC. July 2005 [hereinafter SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES, 2004]; Beck, Allen, Devon Adams and Paul Guerino. THE PRISON RAPE ELIMINATION ACT OF 2003: SEXUAL VIOLENCE REPORTED BY JUVENILE CORRECTIONAL AUTHORITIES, 2005-06, Washington, DC. July 2008 [hereinafter SEXUAL VIOLENCE REPORTED BY JUVENILE CORRECTIONAL AUTHORITIES, 2005-06].

¹⁷ See, SEXUAL VIOLENCE REPORTED BY JUVENILE CORRECTIONAL AUTHORITIES, 2005-06 *supra* note 14 at 2.

¹⁸ *Id* at 4.

¹⁹ See generally, Beck, Allen, Paige Harrison and Paul Guerino. SPECIAL REPORT: SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH, Washington, DC; January 2010 [hereinafter SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH].

but not totally surprising given what we know about reporting sexual abuse. Even in the community, sexual abuse is extremely under-reported. We know the same is true in the adult settings and it is safe to make the assumption it is true for juveniles.

One of the most surprising findings is that female staff accounted for 95% of the staff sexual abuse incidents.²⁰ This is not surprising given that 92% of youth in custody are male.²¹ However, in 2008, only 42% of staff in juvenile facilities under state jurisdiction was female.²² This result is consistent with adult data collections²³ This is data that requires additional attention especially given the commission's recommendations regarding limitations on cross gender supervision.

C. Concerns Raised about the BJS Findings

There have been a number of states that have questioned BJS' most recent report; raising concerns about flawed methodology and the likelihood of youth lying about abuse. However, in my experience, these numbers are probably underestimated and are conservative estimates. Even if these numbers were cut in half (6% and 5% respectively) they are still almost double what juvenile correctional authorities reported at three percent. This is a significant difference and one that signals, that there needs to be more training and education for staff and youth as well as improved reporting structures within juvenile agencies.

D. What BJS Needs to Explore Further

1. Consensual Sex

²⁰ *Id* at 13.

²¹ *Id*

²² *Id*

²³ See, Beck, Allen, Paige Harrison and Carolyn Adams. THE PRISON RAPE ELIMINATION ACT OF 2003: SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES, 2006, Washington, DC. August 2007 at 7.

First, a major area of concern with juveniles in custodial settings is consensual sexual contact. Developmental information shows that on both a behavioral and cognitive level, the time at which many of these youth are in custodial settings is also the time when sexual development is taking place and begin explore and experiment with sexuality. However, the BJS data does not address consensual sexual contact between youth.

While it is understood that there are both legal and policy prohibitions on sexual contact between youth of certain ages, in or out of custodial settings, there is some benefit to knowing what consensual sex between youth in custody looks like so that we can better talk to youth about appropriate boundaries, healthy expressions of sexuality and safe choices when dealing with sex. Let me clarify however, I am not by any means proposing teaching sexual education to youth in custody. However, findings show that youth in custody, by and large, have victimization histories. This being the case, they do not always understand that saying no is an option and may agree to sex for a number of reasons—including coerced and/ or strategic sex (sex for protection, sex for trade etc.). This being the case, we should have mechanisms in place to talk to youth in custodial settings about healthy choices when dealing with sexual decision-making.

2. Data on Youth Housed in Adult Facilities

Second, there is little data on juveniles housed in adult facilities. To date, there is no prevalence data on this specific group. We know, however, they are one of the most vulnerable populations currently in custody. Based on what we know about the profile of a victim of sexual abuse in custody -- people who are young, small in stature and new to the prison/ criminal justice system are most vulnerable. This while not a fool-proof profile, it can describe many of the youth currently housed with adults.

While the numbers of youth sexually abused in adult facilities may have been captured by the reports of adults in custodial settings, without knowing their specific prevalence rates, it is very difficult to develop methodologies to keep them safe while in custody. Prevalence rates would let us know things such as where abuse happened, who is most at

risk, who likely predators may be, how often youth report these incidents, how these incidents are investigated and if there are sanctions—either criminal or administrative. By and large this would help us to determine classification tools specifically for youth in adult facilities, develop investigative tools, develop supervision models specific to youth housed with adults, develop training for staff and youth on preventing and addressing sexual abuse and overall the best methodology for keeping these youth safe from sexual abuse.

3. Youth in Community Corrections Settings

Lastly, there absolutely needs to be more information about the prevalence of sexual abuse of juveniles held in community custodial settings. Juvenile community settings cover any custodial setting that is not secure detention—it can include electronic home monitoring, group homes, boot camps, residential treatment facilities, day reporting, probation and the like. Arguably, in these settings, staff has more access to youth in private settings such as their homes or schools, yet there is no data about the prevalence of sexual abuse in juvenile community custodial settings. As I described with juveniles in adult facilities, prevalence data would serve many purposes in addressing sexual abuse of youth in community custodial settings. The community setting is unique in nature and function, as such sexual abuse of youth in these settings presents itself in a unique way—be it youth-on-youth or staff sexual misconduct. That being said, the only way we will be able to address the unique needs of community juvenile corrections is to know and understand sexual abuse in these settings. Collecting prevalence data in these settings is a major stepping stone to that understanding.

IV. Experience Working with Juvenile Justice Agencies

Beginning in 2005, the Project on Addressing Prison Rape at the Washington College of Law has worked with twelve juvenile agencies—both state departments of juvenile justice and state juvenile community correctional agencies-- on addressing and investigating allegations of sexual abuse of youth in custody.

We have learned a number of important things from working with these agencies.

- There is a different culture that exists in juvenile agencies – rehabilitation discourse
- Juvenile agencies have different legal obligations – due process not cruel and unusual punishment
- There is a different level of knowledge on this issue -- very little information in juvenile agencies
- There is a different culture among youth advocates for addressing sexual abuse of youth in custody – focused on DMC not on this issues
- Juvenile agencies really do care about youth in their custody – for most part take *parens patriae* seriously

However, juvenile agencies have a number of barriers that are unlike those in other correctional settings.

- There is little integration of adolescent development training into daily activities – supervision, discipline, programming
- There is a lack of knowledge about how PREA relates to juvenile agencies – act framed as prisons and they did not received BJA money
- Juvenile agencies have very complicated relationships with outside agencies – Child protective services, courts, advocacy

In addition, there are a number of hot button issues that juvenile agencies have brought up in training sessions that relate to addressing sexual abuse of youth in their settings.

These issues include:

- Addressing adolescent development and sexuality
- What to do about false reporting—is it an issue?
- Cross gender supervision
- Consensual sexual activity between youth
- Age disparity between youth housed together
- Co-ed facilities

- No-touch policies
- Addressing PREA in community versus detention settings

It seems that the barriers and issues outnumber the advantages that juvenile agencies bring to the table in addressing sexual abuse in their agencies. However, I believe with additional resources for juvenile agencies, they can and are willing to address issues of sexual abuse in their settings.

V. Recommendations for Moving Forward

I hope I have given you a useful overview of both the current status of findings regarding sexual abuse in juvenile settings as well as some of the barriers. It is important to remedy the barriers in order to move forward and reduce sexual abuse of youth in custody. To that end, I would recommend the following:

1. Support the enactment of the standards recommended by NPREC for addressing sexual violence in youth facilities.
2. Strengthen the ability of OJJDP to address these issues as part of their compliance efforts.
3. Provide funding for development of specialized training for juvenile justice agencies
4. Data collections for prevalence of sexual abuse of juveniles in adult facilities as well as for juveniles supervised in the community
5. Development of appropriate classification tools for youth in custody
6. Special attention to the needs of sexual minorities in juvenile settings
7. Development of models for juvenile agencies to work with advocates for youth in the community
8. Build the capacity of juvenile justice agencies to address adolescent development and sexuality.

Conclusion

Based on my work over the course of over 20 years, first as an advocates for people in custody, then as Project Director of a national effort to address sexual abuse in custody and finally as a Commissioner serving for 5 years on the National Prison Rape Elimination Commission, I feel strongly that juvenile agencies have a unique ability and responsibility to address sexual abuse in their settings. However, in order to do that, the issue of sexual abuse in custody has to be a priority for juvenile justice agencies. That means they have to be held accountable for protecting youth in their custody. At the same time, they need to have support for those efforts. Addressing sexual violence in custody has to be on their agenda along with reducing the numbers of children in custody, reducing disproportionate minority contact and other important indicators of a constitutional and caring system of custody for youth. I would recommend additional funding for OJJDP to improve practice in this area. That being said, juvenile and community corrections agencies received the fewest resources under PREA. In order for juvenile and adult agencies who house juveniles to appropriately address sexual abuse of youth in their custody they will need additional resources to detect, address and respond to sexual abuse of youth in custody.

Thank you again for inviting me to be here today and for the opportunity to speak to our proposed standards and our key findings and recommendations.