



American Probation and Parole Association

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May 10, 2010

Mr. Robert Hinchman
Senior Counsel
Office of Legal Policy
U. S. Department of Justice
950 Pennsylvania Avenue, NW, Room 4252
Washington, DC 20530

Dear Mr. Hinchman:

On behalf of the members of the American Probation and Parole Association (APPA), we are writing in response to Attorney General Holder's invitation to submit public comments on the proposed standards related to the Prison Rape Elimination Act of 2003 (PREA). We appreciate the opportunity to comment on the implications of the standards for the field of community corrections, including probation, parole, pretrial supervision, and residential programs that provide supervision services for criminal offenders within the community setting.

APPA is an international association composed of members from the United States and its territories, Canada, and other countries actively involved with probation, parole and community-based corrections, in both adult and juvenile sectors. All levels of government, including local, state/provincial, and federal, and from all three branches—legislative, executive, and judicial—are constituents. Since its establishment in 1975, APPA has grown to become the voice for thousands of probation and parole practitioners, including line staff, supervisors and administrators.

In its many efforts to develop standards, provide training and shape public policy, APPA is guided by a vision statement that states, in part, "we seek to create a system of Community Justice where a full range of sanctions and services provides public safety by ensuring humane, effective, and individualized sentences for offenders, and support and protection for victims." Perhaps nowhere is this dual focus on offender accountability and support for victims more critical than in addressing sexual assault victimization of offenders under correctional supervision.

APPA fully supports the spirit of the standards proposed by the National Prison Rape Elimination Commission, and we firmly agree with the Commission's finding that "individuals under correctional supervision in the community, who outnumber prisoners by more than two to one, are at risk of sexual abuse. The nature and consequences of the abuse are no less severe, and it jeopardizes the likelihood of their successful reentry," (NPREC, 2009, p. 19).

Furthermore, APPA recognizes that community corrections agencies are uniquely suited to provide assistance to victims of corrections-based sexual violence in an effort to promote their recovery and facilitate a successful return to the community, including providing victims with access to mental health services and other community-based service providers. We applaud the Commission's acknowledgement of the critical role that community corrections can—and should—play in ensuring that offenders under correctional supervision remain free from sexual violence, and we encourage the inclusion of probation, parole, pretrial services, and residential community corrections programs to be included in the final standards promulgated by the Attorney General.

Although APPA is supportive of the recommended PREA Standards for Community Corrections, we respectfully raise a few points of concern regarding the Commission's recommendations.

- **PP-1: ZERO TOLERANCE OF SEXUAL ABUSE**

APPA supports requirements for all community corrections agencies—including residential facilities and probation, pretrial services and parole—to demonstrate a zero tolerance for sexual abuse through the adoption of a zero tolerance policy. While APPA recognizes the critical need for the coordination of agency efforts to comply with PREA, we have some concerns about the potential cost implications related to the employment of a part-time PREA Coordinator, as currently articulated in standard PP-1. Most community corrections agencies are currently understaffed and underfunded, due in large part to the economic recession and resulting cuts to governmental program budgets. Requiring pretrial services, as well as probation and parole agencies to hire even a part-time position dedicated to the coordination of PREA-related activities could become fiscally onerous, however most agencies would be able to designate existing staff to carry out the responsibility of overseeing the agency's compliance with PREA. *APPA therefore recommends that this standard be revised to explicitly authorize the designation of existing staff to fulfill the role of part-time PREA Coordinator for probation, parole, pretrial services, and community corrections programs housing fewer than 500 offenders.*

- **TR-3: DEFENDANT/OFFENDER EDUCATION**

While it is imperative that defendants/offenders being supervised in the community are informed about the Prison Rape Elimination Act and the standards in place to prevent and respond to corrections-based sexual abuse, this standard's requirements for additional "comprehensive education to defendants/offenders" beyond information provided during the initial intake process may be difficult to achieve in some cases. For instance, many offenders who are classified using validated risk/needs assessment instruments as "Low Risk" may receive a sentence of unsupervised probation, meaning that little to no contact between the probation agency/officer and the offender may take place beyond the intake process. In this situation, the provision of additional "comprehensive education" on the PREA standards may be both superfluous and

difficult to attain. *This standard should be revised to account for the decreased training/education needs of defendants/offenders who have only very limited interaction with the community corrections agency; for cases involving individuals on unsupervised conditions of release, general information about PREA standards and policy provided during initial intake should suffice.*

- **OR-5: AGENCY OR FACILITY PROTECTION AGAINST RETALIATION**

APPA firmly supports efforts to ensure that individuals who report incidents of corrections-based sexual abuse are protected against retaliation. Standard OR-5, however, which seeks to enhance protections against retaliation, appears to have been designed primarily with residential facilities in mind, and it may therefore be difficult for non-residential community corrections agencies or programs to achieve compliance with the standard. The standard mandates that an agency or facility “employs multiple protection measures, including housing changes or transfers for defendant/offender victims or abusers, removal of alleged staff or defendant/offender abusers from contact with victims, and emotional support services for defendants/offenders or staff who fear retaliation...” Given that offenders/defendants on pretrial, probation or parole supervision are living in the community setting, it would be impossible for probation/pretrial service/parole agencies to ensure the removal of contact between an alleged abuser and a victim. All community corrections agencies should make good faith efforts to protect victims of corrections-based sexual abuse (and those who report it) against retaliation, however any mandated standards should take into consideration the limitations of community-based corrections agencies to implement such protective measures. *This standard should be revised to include language indicating that non-residential community corrections agencies or facilities take all “reasonable” steps to ensure protection against retaliation, and should eliminate existing language requiring agencies to ensure “the removal of abusers from contact with victims.”*

- **DC-3: DATA REVIEW FOR CORRECTIVE ACTION**

The review and analysis of incident-based and aggregate data on sexual abuse within a correctional environment is necessary for the improvement of policy and practice for the prevention and response to such abuses. While APPA concurs with the need to review and assess data on an annual basis for this purpose, the organization is concerned by this standard’s requirement of community corrections agencies to prepare and publish a report “of its findings and corrective actions for each facility as well as the agency as a whole,” that should be made available publicly on an annual basis. For many small community corrections agencies—particularly those providing probation, parole, pretrial, and other types of non-residential supervision services—the preparation of such a report would be an onerous undertaking. Many small and rural supervision agencies have only a few employees, and requiring the staff time needed to develop and publish such a report would detract from the time needed to provide proper supervision for offenders in the community. *One possible solution for this issue is the development of a form, approved by the U.S. Attorney General, that could be*

completed by community corrections agencies to fulfill the reporting requirements of this standard. Otherwise, APPA suggests this standard be revised to eliminate the requirement for community corrections agencies that DO NOT provide residential programming or services to develop and publish an annual report analyzing sexual abuse data.

- **AU-1: AUDITS OF STANDARDS**

While accountability measures are critical for the successful implementation of the PREA standards, APPA is concerned about the recommended standards' requirement of all public community corrections agencies to undertake an audit of all facilities by an "independent, qualified" auditor to measure compliance every three years. Specifically, the standard fails to identify the criteria and qualifications that auditors must meet in order to be considered "qualified" for auditing agencies' compliance with the PREA standards. Will auditors be trained on PREA in order to effectively review an agency's compliance? Who is responsible for covering the costs associated with such an audit, particularly for local agencies that may not receive national accreditation through an accrediting body or state regulatory review? Auditing is an important step in ensuring compliance, but it must be undertaken in a deliberate manner in order for the process to be meaningful for the agency, for offenders and for public safety. In addition, the costs associated with such an audit would likely prove onerous for many community corrections agencies, and this potential challenge has not been adequately addressed in the standards. *We would suggest that a variety of options and creative cost effective solutions be allowed to enable audits while not jeopardizing their integrity, including the availability of state, county or municipal-level auditing bodies capable of assessing agencies' compliance with the PREA standards or the adoption of a self-auditing process.*

In addition to the comments provided above on specific standards as recommended by the National Prison Rape Elimination Commission, APPA is pleased to have the opportunity to respond to the three general questions developed by the Department of Justice and included in the request for public comments. These questions, and APPA's responses to them, follow:

1. The Commission's proposed standards are intended to prevent, detect, and respond to "sexual abuse," which is defined in the glossary that precedes each checklist. PREA directed the Department to publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison "rape," which is defined in section 10 of Public Law 108-79 (42 U.S.C. 15609(9)). What would be the implications of referring to one term as opposed to the other in the Department's consideration of the Commission's proposed national standards?

APPA Response: *One of the primary factors affecting the incidence of corrections-based sexual violence is the organizational culture of an agency or facility. In an agency or facility in which a sexualized culture exists and, more importantly, is tolerated, attempts to enhance the prevention and response to incidents of sexual violence are highly likely to*

fail. In other words, the agency culture serves as the foundation for practice, and a culture that is supportive of sexually abusive behaviors will not support efforts to better prevent and respond to prison rape. With this in mind, APPA discourages the use of the term “rape” as the definitive category of abuse that the PREA standards would address. While incidents of sexual harassment and some other forms of sexual abuse may be more difficult to prove through the investigatory process, the inclusion of these types of behaviors as prohibited offenses in the standards is necessary to develop a culture of zero tolerance. Moreover, the term “sexual abuse” includes behaviors that are defined by the term “prison rape,” thereby meeting the requirements of P.L 108-79 (42 U.S.C. 15609(9)). Therefore, APPA recommends that the standards use the term “sexual abuse,” to describe prohibited behaviors.

2. PREA mandates that the Attorney General shall not establish a national standard “that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities.” Would any of the Commission’s proposed standards impose “substantial additional costs”? How should any such standards be revised so as not to impose such costs?

APPA Response: *As articulated in our comments above, APPA does have concern about the potential for certain standards to impose “substantial additional costs” in their implementation. Primary among those are Standards PP-1 and AU-1. The requirement of community corrections agencies—particularly those that do not provide residential programs—to designate a part-time PREA coordinator to oversee the development and implementation of PREA policies, while noble, would present an enormous financial challenge to most probation, parole and pretrial services agencies. In particular, requiring this individual to serve in a senior role, reporting directly to the agency head, could make this unattainable for many agencies given the salary requirements that would be tied to the position. As an alternative, APPA would recommend that this obligation not be required for agencies that do not provide residential programming, or that an existing staff person could be designated as the PREA Coordinator for the agency. Further, requirements for agencies to ensure that an audit be undertaken by an “independent, qualified auditor” every three years would be onerous for most community corrections agencies. As an alternative, APPA suggests allowing for a state-level auditor/auditing body that could provide PREA auditing services to agencies within the state. Another option would allow for a self-auditing process to assess for PREA compliance, which would include a mandated report documenting compliance measures for each standard.*

3. Should the Department consider differentiating within any of the four categories of facilities for which the Commission proposed standards with compliance requirements dependant on size, personnel, or resource limitations, or any other factors?

APPA Response: *APPA appreciates the Commission’s differentiation between residential community corrections facilities and pretrial, probation, and parole supervision programs in the recommended standards, and we feel that this differentiation is critical due to the vastly different types of services that these programs provide. Moreover, it is important to*

note that community corrections agencies and programs exist at all levels of government, with many agencies operating at the county or municipal levels. And many of these agencies are small, some with only very few staff. Given this reality, APPA concurs that differentiation among large and small agencies for purposes of compliance requirements would be a reasonable strategy, as some of the aforementioned standards would pose a substantial challenge to small agencies with limited resources.

The American Probation and Parole Association is grateful for the opportunity to provide comments on the proposed National PREA Standards. We acknowledge the significant challenges in developing standards that are comprehensive, appropriate, and meaningful to the community corrections field, institutional corrections, and to the public, and we pledge our assistance and support to the U.S. Department of Justice in this effort. Thank you, again, for the opportunity to be to share the views of the American Probation and Parole Association and its constituents.

Sincerely,



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Chief Probation Officer, Maricopa County (AZ)



Carl Wicklund
Executive Director, APPA