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

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**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 “sunsetting” 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.<sup>1</sup>

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<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

### **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 *parens patriae*. That responsibility brings with it a particular responsibility for protecting

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<sup>2</sup> *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.

<sup>3</sup> *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.<sup>4</sup> Developmentally, teens and preteens are even less able to cope with sexualized coercion from older youth or staff.<sup>5</sup> 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.<sup>6</sup> The Commission also found that, like other settings, internal reporting procedures were barriers to addressing abuse in custody.<sup>7</sup> 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.<sup>8</sup> The Commission also noted that ongoing medical and mental health care were essential for addressing trauma for youth in custody.<sup>9</sup>

#### C. Youth Imprisoned in Adult Settings

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<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> *See*, REPORT *supra* note 2 at 151.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *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.<sup>10</sup> While only twenty percent of juveniles housed as adults are there for a violent crime, fifty percent of adults are incarcerated for violent crimes.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

#### D. Youth in Community Corrections Settings

Finally, the Commission found that youth in community settings are also at risk for sexual abuse.<sup>14</sup> 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.<sup>15</sup> 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

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<sup>10</sup> *Id* at 156

<sup>11</sup> *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).

<sup>12</sup> *Id*.

<sup>13</sup> *Id* at 157.

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

<sup>15</sup> *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.<sup>16</sup> 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).<sup>17</sup> Additionally, BJS found that nearly two-thirds of all substantiated incidents that correctional authorities reported were youth-on-youth sexual violence.<sup>18</sup>

#### 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*,<sup>19</sup> 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

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<sup>16</sup> 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].

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

<sup>18</sup> *Id* at 4.

<sup>19</sup> 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.<sup>20</sup> This is not surprising given that 92% of youth in custody are male.<sup>21</sup> However, in 2008, only 42% of staff in juvenile facilities under state jurisdiction was female.<sup>22</sup> This result is consistent with adult data collections<sup>23</sup> 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

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<sup>20</sup> *Id* at 13.

<sup>21</sup> *Id*

<sup>22</sup> *Id*

<sup>23</sup> *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.