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Testimony of Judge Reggie B. Walton

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Hearing on the National Prison Rape Elimination Commission Report and Standards

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Good afternoon. Chairman 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 United States District Judge Reggie Walton. For the past five years, I've had the honor and privilege of serving as the Chairman of the National Prison Rape Elimination Commission.

In 2003, the President signed the Prison Rape Elimination Act, or PREA, into law. The legislation created the Commission and charged us with conducting the first national study of government policies and practices related to sexual abuse of individuals detained in our nation's prisons, jails and other forms of detention facilities. Our mandate also required us to develop and propose zero-tolerance national standards for the detection, prevention, reduction, and punishment of prison rape and other forms of sexual abuse.

On June 23, 2009, the Commission publicly released its report and standards. Federal, state and local corrections officials across the country, in all types of facilities have now been provided the first comprehensive blueprint for eliminating sexual abuse in confinement or detention.

Congress, speaking through the Prison Rape Elimination Act, found that the "victims of prison rape suffer severe physical and psychological effects that hinder their ability to integrate into the community and maintain stable employment upon their release from prison." Those consequences are difficult to quantify, but our research has confirmed that the aftershocks of prison rape are felt far beyond the prison walls in the cost of services to help former inmates address the trauma of prison rape. It is, quite literally, a cost we all bear.

More than 7.3 million Americans are confined in the U.S. or supervised in the community, at a cost of more than \$68 billion every year. Given the Nation's enormous investment, we should ensure that these environments are as safe as they can be for those who live and work in these facilities. And we must recognize that sexual abuse dramatically undermines those goals.

This reality has been repeatedly confirmed during the five years that the Commission has investigated prison sexual abuse. We have been motivated and united not just by our charge from Congress, but also by the deeply moving accounts of sexual abuse that we heard from victims and their families.

These accounts were augmented by a path-breaking survey in 2007 by the Bureau of Justice Statistics ("BJS"), under the auspices of PREA. The BJS estimated that in the twelve months preceding its survey, 60,500 state and federal prisoners had been sexually abused. The results of a pilot study on juvenile detention by BJS were even more disturbing, finding far higher rates of abuse.

These stunning statistical results likely understate reality because they rely on prisoner self-reporting. Among the Commission's findings is the fact that in many facilities, inmates cannot easily and safely report prisoner rape. In still more cases, prisoners refuse to do so, because they are afraid of retaliation from staff or other inmates, or because they fear they will not be believed.

Informed by the BJS survey outcome and material from other federal agencies, the Commission consulted with hundreds of state and local officials, correctional staff, survivors of sexual abuse, medical personnel and academic and legal experts in a wide range of relevant fields. We also conducted an exhaustive review of the available professional and academic literature on prison sexual abuse.

We identified nine major findings on the causes and consequences of a problem that has been widely acknowledged, but poorly understood. They are now presented and

thoroughly discussed in the NPREC report. We also developed a four volume set of proposed standards to address prison rape and sexual abuse in correctional settings, including, adult prisons and jails, lockups, community corrections, and juvenile facilities.

Among our key findings is that prison rape is not inevitable. The existing data show that when corrections officials demonstrate leadership, they can create a culture within facilities that promotes safety, instead of tolerating abuse.

Developing that leadership is challenging. But the available data and our own research led the Commission to conclude that trained and committed corrections officials are the critical factor in keeping facilities safe.

We also concluded that few correctional facilities are subject to the kind of rigorous internal monitoring and external oversight that would reveal why abuse occurs and how to prevent it. Dramatic reductions in sexual abuse depend on both.

It is clear that the most effective prevention efforts are targeted interventions that reflect where, when, and under what conditions sexual abuse occurs. Sexual abuse incident reviews, as the Commission's standards would require, produce the kind of information administrators need to deploy staff wisely, safely manage high-risk areas, and develop more effective policies and procedures.

Correctional agencies must also collect uniform data on these incidents. However, even the most rigorous internal monitoring is no substitute for opening correctional facilities to outside review. The Commission therefore requires detailed, robust audits of compliance with its standards by independent auditors at least every three years.

In another of our major findings, we concluded that many victims cannot safely and easily report sexual abuse, and those who speak out often do so to no avail.

Reporting procedures need to be significantly improved to build confidence and prevent retaliation, without relying on isolation of the victims. Investigations of reported abuse must be thorough and competent, and perpetrators must be held accountable through administrative sanctions and criminal prosecutions.

Those are just a few of the significant conclusions our Commission reached. In addition to our key findings, the Commission also submitted proposed standards to the Department of Justice and other state and federal officials to help eliminate prison rape. The standards were developed after consultation with correctional officials, survivors, and sexual abuse experts and a comment period during which we received feedback from more than 225 organizations and individuals.

Our proposed standards address hiring, training, staff and inmate education, monitoring, investigation, and oversight in a wide range of correctional facilities, including prisons, jails, lock-ups, juvenile detention centers, and community corrections. As required by PREA, Attorney General Holder now has one year to issue final rules based on these standards.

Congress can further facilitate effective responses to sexual abuse in confinement and detention. Beyond providing funding to continue the robust initiatives of the Department of Justice under PREA, Congress should amend the Prison Litigation Reform Act, the Violence Against Women Act, and revise language in the 1996 Guidelines on Victim Assistance that direct the use of funds from the Victims of Crime Act.

Based on testimony from legal experts, survivors and their families, we recommend that Congress amend the administrative exhaustion provision and physical injury requirement in the Prison Litigation Reform Act. These can create unreasonable barriers for victims of sexual abuse to gain access to our federal courts. The Commission further recommends that Congress amend the Violence Against Women Act (VAWA) Reauthorization of 2005 to include incarcerated victims of sexual abuse as a class served under VAWA notwithstanding the nature of their criminal convictions. The Commission

heard testimony from practitioners that limitations placed on VAWA and Victims of Crime Act (VOCA) funding restrict their ability to provide services to certain categories of inmates, even when they have been the victims of sexual abuse.

The members of the Commission have been shocked and saddened by the personal accounts we have heard. But amid darkness we have discovered inspiration and hope --- Inspiration in the resilience and determination demonstrated by survivors who are willing to expose and oppose sexual abuse in correctional facilities --- Hope because of the many correctional staff and supervisors who currently confront and work to resolve this persistent problem. PREA has raised the consciousness of many corrections officials – and the elected officials to whom they report – about the importance and feasibility of responding to rape and other forms of sexual abuse. But there is still much to be done. The Commission trusts that our report and national standards will convince everyone of the need to act now.

As the Commission's assignment concludes, another phase of the work begins. The standards the Attorney General promulgates will be immediately applicable to the federal Bureau of Prisons. The action then moves to the states. After the promulgation of standards by the Attorney General, state systems will have one year to comply, or risk losing five percent of any federal funding they receive for prison purposes.

Along with my distinguished and committed colleagues on the Commission, I am proud to offer our report and standards as the next step toward creating correctional and detention settings that are safe and free of the danger and shame of sexual abuse.

The Commission members remain ready to assist the Attorney General, Congress, our Nation's many corrections and detention leaders and staff, and others as they move forward on this matter of legal and moral consequence to incarcerated individuals, those who are responsible for their safety, and the American public.

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