

**NATIONAL
PRISON
RAPE
ELIMINATION
COMMISSION**

February 9, 2015

The Honorable John Cornyn
United States Senate
517 Hart Senate Office Building
Washington, DC 20510

Dear Senator Cornyn:

As members of the former National Prison Rape Elimination Commission (Commission), we write to express our concern about the high incidence of sexual violence in US correctional facilities. According to recent statistics collected by the Bureau of Justice Statistics (BJS) an estimated 200,000 inmates were sexually abused in 2011, not including juveniles. We believe full compliance with the National Standards to Prevent, Reduce and Detect Prison Rape (Standards)¹ is essential to protecting men, women, and children under custodial supervision.

During the 2014 Congressional session you proposed an amendment to the Prison Rape Elimination Act (PREA) and understand you may re-introduce the amendment again during the current 2015 session. We urge you not to propose any modifications to PREA² that would delay or weaken penalties for non-compliance with the Standards. You voted for PREA during its initial enactment and in subsequent years. This reflects your belief in humane, recidivism-reducing conditions of confinement and protecting individuals in custody from violence, including sexual abuse and harassment. As a United States Senator, you are in a unique position to ensure federal, state and local officials protect all persons confined in their facilities.

¹ See 28 C.F.R. § 115 (2012).

² See The Prison Rape Elimination Act, Pub. L. No. 108-79 (2003).

The Standards, promulgated by the Department of Justice (DOJ) in May 2012, were based on standards proposed by the Commission after extensive research into widely accepted standards of practices across the country. Both DOJ and the Commission consulted with federal, state and local corrections officials and other stakeholders. DOJ also undertook a careful and sound cost-benefit analysis which concluded the benefits from compliance far outweighed their costs.³

Although full compliance with the Standards is urgent, to date, only two states have certified compliance. Forty-seven states and territories assure they are working towards compliance and the remaining seven have chosen not to provide a certification or assurance with the Standards.⁴

I. Financial Incentives

To balance federalism concerns with the need to hold accountable states who do not protect people in their custody from sexual abuse, Congress included a provision in the act itself providing that any federal grants a state could receive for ‘prison purposes’ should be reduced by five percent if the state does not certify compliance with the Standards or provide the requisite assurance delineated in the act.

Careful tailoring of federal grants for ‘prison purposes’ that could be reduced for failure to comply with the Standards or providing assurances of future compliance is sensible and consistent with the goal of eliminating prison rape and other forms of sexual abuse in custody. You previously proposed an amendment to PREA that would exclude funds provided to states under the Violence Against Women Act (VAWA) from being considered a federal grant program for purposes of assessing the penalty. We agree that these specific funds to help victims should not be included among the grants that would be reduced for failure to comply with PREA. Both PREA and VAWA were enacted to advance protections against sexual abuse and penalties for the former should not be built on losses to the latter, especially since incarcerated victims of sexual abuse are now eligible for VAWA services. We do not believe that removing VAWA grants from the pool of federal funds that might be reduced weakens PREA.

We urge you, however, not to propose revisions to the current language regarding the funds which states must commit to spending when providing an assurance. The current legislation provides that states not certifying full compliance with the standards be subject to a five percent reduction in prison-related federal grants unless they provide “*an assurance that **not less than** 5 percent of such amount shall be used only for the purpose of enabling the State to adopt, and achieve full compliance with, those national standards*” in future years. The phrase “not less than” sets a minimum amount of federal

³ See *Id.* at 9-11 (2012).

⁴ See BUREAU OF JUSTICE ASSISTANCE, STATES’ AND TERRITORIES RESPONSES TO THE MAY 15, 2014 PRISON RAPE ELIMINATION ACT DEADLINE *available at* <https://www.bja.gov/Programs/PREAcpliance.pdf>.

funding which states must commit to spending to come into compliance with the Standards. Importantly, however, it does not imply this is all states need to do to satisfy PREA. States should spend at least five percent of the designated federal funds for increasing their ability to comply with the Standards and should supplement those funds with state funds as needed to move ahead with PREA implementation

II. Certifications and Assurances of Compliance

Currently, it is too easy for states to routinely submit assurances in lieu of certifications of full compliance with the Standards. We believe additional provisions should be added to PREA to ensure that states do not use the assurance process as a means to endlessly delay full compliance with the Standards.

First, we strongly urge you to add language to PREA that when submitting an assurance, a state must also submit: (1) an explanation of the states' current degree of implementation of the national standards; (2) its specific plans to move to full compliance; (3) the current year's budget for PREA-related expenditures; (4) a proposed plan for expenditure of at least the five percent of federal grants that would increase current PREA-related expenditures beyond current state levels; and (5) before submitting another assurance, the state provides an accounting of its PREA related expenditures including how the federal grants funds were used.

Second, we support adding a reasonable termination date for assurances. Permitting states to postpone ad infinitum full compliance with no consequence permits sexual abuse to continue ad infinitum. PREA was enacted in 2003, and although the final Standards were not promulgated until 2012, states have been on notice for over a decade they were going to need to adjust policies and procedures to address sexual abuse in their facilities. Many states received substantial federal grants since PREA's enactment in 2003 to support the necessary changes.⁵ At some point, delays in full compliance reflect insufficient commitment to the purposes of PREA and unwillingness to commit the financial and political resources to protecting people under custodial supervision from sexual abuse. Congress should not condone or encourage resistance to doing what is necessary.

Third, we support adding language to the certification and assurance provisions that will clarify and strengthen the requirement under the Standards, that states have their facilities audited by a certified DOJ auditor to ascertain their level of compliance with the Standards.

⁵ See, THE PROJECT ON ADDRESSING PRISON RAPE, THE FIFTY STATE SURVEY: FEDERAL PREA SUPPORT AND POTENTIAL FUNDING LOSS, (2014) *available at* https://www.wcl.american.edu/endsilence/documents/50StateSurvey_FederalPREAGrantsPotentialFederalFundingLoss-UPDATE5-29-14DOJStateList.pdf.

The new provision should require that:

1. Any certification submitted by a state must identify all facilities operated by the state or by a private entity under contract with the state, identify the one-third of such facilities audited during the most recent audit year and include plans for auditing all the facilities over a three year period.
2. Any assurance submitted by a state must provide the same information above audits as required above for certification. If one-third of all facilities were not audited in the most recent year, an explanation must be provided for why not along with a year a plan for auditing one-third of the facilities in the next audit year. No assurances may be granted after May, 2016 unless all facilities have been audited at least once.

III. DOJ's Role in Implementation

Finally, we support the addition of a PREA amendment requiring DOJ to submit and publicly release annual reports regarding the implementation of the Standards.

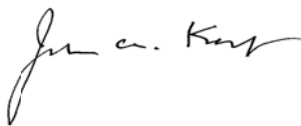
The reports would add transparency and accountability to the implementation process, providing Congress and the public a clear measurement of PREA's success in creating a "zero tolerance" policy towards rape in U.S. custodial settings. These reports should also include descriptions of various categories of implementations problems states have encountered and attempted to overcome.

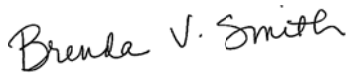
While DOJ's authority to resolve questions about the interpretation of the Standards and their application is implicit in PREA, adding language further affirming that authority could prove beneficial

We believe the lack of progress with regard to implementation of the Standards reflects a lack of commitment to the goals of PREA and ultimately the millions of people under custodial supervision who suffer from the threat of sexual abuse every day.

We hope you share our commitment to ensuring the promises of PREA are fulfilled.

Sincerely,





Members of the Former National Prison Rape Elimination Commission

The Honorable Reggie B. Walton, Chair
Commissioner John A. Kaneb, Vice-Chair
Commissioner James E. Aiken
Commissioner Jamie Fellner
Commissioner Pat Nolan
Commissioner Brenda V. Smith
Commissioner Cindy Struckman-Johnson

Cc: Senator Chuck Grassley, Chairman
Senator Patrick Leahy, Ranking Member
Senator Orrin G. Hatch
Senator Jeff Sessions
Senator Lindsey Graham
Senator Michael S. Lee
Senator Ted Cruz
Senator Jeff Flake
Senator David Vitter
Senator David Perdue
Senator Thom Tillis
Senator Dianne Feinstein
Senator Charles Schumer
Senator Dick Durbin
Senator Sheldon Whitehouse
Senator Amy Klobuchar
Senator Al Franken
Senator Christopher A. Coons
Senator Richard Blumenthal