

HUMAN RIGHTS WATCH

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January 5, 2010

Attorney General Eric Holder
Office of the Attorney General
US Department of Justice
Washington, DC 20530

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www.hrw.org

Re: Prison Rape Elimination Standards

Dear Attorney General Holder:

I write to express Human Rights Watch's hope that the Department of Justice will soon promulgate comprehensive and effective standards for the elimination of prison rape. As you may know, Human Rights Watch has been investigating and advocating reforms to address prison rape by staff and inmates for over a decade. We strongly believe the standards submitted to you in June 2009 by the National Prison Rape Elimination Commission (the Commission), on which I had the privilege of serving as a commissioner, constitute such standards. If adopted, those standards would go far toward eliminating rape in adult prisons and jails, juvenile and immigration detention facilities, and community corrections.

As you know, the Commission developed its standards over several years of extensive research, direct consultation with stakeholders and experts, including prison and jail administrators, and extended periods of public comment. The resulting standards reflect the best thinking and effective practices from around the country for the prevention, detection, and punishment of prison rape. They do not please everyone—no set of standards will—but they were developed in a transparent, painstaking process in which all were able to participate and all were listened to, and in which the commissioners balanced to the greatest possible extent all legitimate concerns and priorities.

In your review of the Commission's standards, you may decide that a few should be clarified or strengthened even further. But we strongly urge you to view them as a coherent whole, and not to weaken or eliminate the substance or spirit of any one of them. Indeed, we believe the national goal of eliminating prison rape will best be served if you take the proposed standards as the basis for the final standards you approve.

We are well aware there are critics of the Commission's standards, including some who do not share the Congress's sense of urgency regarding prison rape, who mistakenly believe costs are the single most important consideration, or who are simply averse to meaningful external regulation and oversight of prison operations. Some may even

believe the Working Group process offers them a chance to scuttle needed reforms and to weaken or dilute the standards proposed by the Commission. Human Rights Watch hopes the Justice Department proves them wrong.

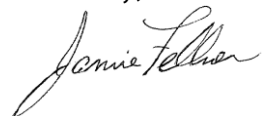
The Commission listened attentively to concerns about cost and feasibility and took them into account. The study you have commissioned may shed some light on the costs of complying with the Prison Rape Elimination Act (PREA), although it may not be able to offer significant guidance given the range of facilities covered by PREA and the differences in the steps they have already taken to respond to prison rape, in the quality of their management, and in their institutional cultures of violence and accountability. In any event, Congress did not prohibit PREA standards that impose costs, but only the imposition of “substantial” costs, leaving that term undefined. It is safe to say from the record that Congress did not intend to permit facilities or agencies that had done a poor job of protecting inmates to plead expense as an excuse for failing to improve their performance and institute the necessary safeguards. In addition, any cost of implementing the standards must be weighed against the continuing costs in human suffering, as well as the expense of defending lawsuits and the very costly settlements, that result from failure to protect inmates from sexual assault.

We also hope you will meet the congressional mandate of promulgating final standards within a year of the Commission’s report and recommendations, that is, by June 2010. Although a growing number of prison authorities are trying to curb sexual violence, data from the Bureau of Justice Statistics reveal that tens of thousands of adults and juveniles are still sexually abused each year because officials have not instituted basic measures to protect them. Every week without standards is another week of missed opportunities to put an end to this horrific crime.

With the Commission’s standards, you have in your hands sound guidance for how to meet Congress’ goal of eliminating prison rape. There is no need, quite frankly, to reinvent the wheel, to reconsider strategies already thoroughly vetted during the Commission’s painstaking process of research and review, or to delay moving forward.

Human Rights Watch appreciates the commitment of the Justice Department to the goal of ending the scourge of prison sexual violence and hopes you share our sense of urgency. We would welcome the opportunity to discuss our concerns with you and your staff at your convenience. We will call your office to see if a meeting can be scheduled.

Sincerely,

A handwritten signature in cursive script, reading "Jamie Fellner".

Jamie Fellner, Esq.
Senior Counsel
US Program