April 4, 2011

BY ELECTRONIC TRANSMISSION

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

Re: Department of Justice
National Standards to Prevent, Detect, and Respond to Prison Rape
Docket No. OAG-131

Dear Mr. Hinchman:

The Center for HIV Law and Policy ("CHLP"), on behalf of the undersigned organizations, submits these comments on the Department of Justice's Proposed National Standards to Prevent, Detect, and Respond to Prison Rape, Docket No. OAG-131. We appreciate the opportunity to provide these comments to address the specific needs of young people who are confined in juvenile facilities across the country.

CHLP is a national legal and policy resource and strategy center for people with HIV and their advocates. CHLP works to reduce the impact of HIV on vulnerable and marginalized communities and to secure the human rights of people affected by HIV. For the past three years, CHLP and a coalition of community based organizations, medical professionals, and juvenile justice officials have been working on Teen SENSE (Sexual health and Education Now in State Environments), an initiative that promotes comprehensive sexual health care for juveniles in state custody, including detention and foster care facilities. Teen SENSE emphasizes that sexual health education, sexual medical care, and training for staff on sexuality, sexual orientation and appropriate conduct with youth is central to healthier lives for at-risk youth and reduces the risk of sexual abuse and harassment in these facilities.

We emphatically endorse the adoption of strong national standards to address and prevent the ongoing personal and public health tragedy of rape in correctional facilities of every kind, and the independent oversight that is essential to ensure that these standards are implemented and enforced. While we commend the DOJ for the thoughtful analysis of the issues facing youth in juvenile facilities, we believe that the standards as now proposed continue to fall short of what is needed to address the issue.

We agree with and endorse the comments of Just Detention International, specifically that the standards must apply to immigration facilities; that they must prohibit youth from being held in adult prisons and jails where they are vulnerable and brutalized; that they should limit cross-gender viewing and pat searches, the documented genesis of much abuse; and that they ensure that prisoner and detainee rape survivors receive real support that includes, but is not limited to, protection from involuntary segregation, access to a community-based victim advocate, and easy access to a fair grievance system in the event they choose to report a sexual assault.

Our primary comments here are focused on the critical connection between sexual health education and health services and a more proactive approach to preventing abuse of young people confined in corrections and detention facilities. As noted in our comments on the National Prison Rape Elimination Commission's ("NPRE Commission") standards last May, to effectively protect the sexual health and safety of juvenile detainees, the standards must recognize the unique vulnerability and needs of these young people and the importance of addressing sex and sexual health in an affirmative way. The proposed standards utterly fail to recognize the role of sexual health care and education in helping young people to recognize, name and report sexual abuse, and to discourage staff and other detainees from engaging in sexual terrorizing of vulnerable inmates and detainees.

Our comments regarding the NPRE Commission's standards were not incorporated or acknowledged in the current notice of rulemaking. Consequently, many of the comments below reiterate the points raised in our May 2010 comments. We ask that you now address our comments in this public comment period.[1]

Introduction

The DOJ's Bureau of Justice Statistics Special Report on Sexual Victimization in Juvenile Facilities from January 2010 ("BJS Report") on the sexual assault experiences of young people in detention was an important, if sobering, step in calling attention to the extent of

[1] Exec. Order No. 12,866 §6(a)(1), 3 C.F.R. 638 (1993), *reprinted as amended in* 5 U.S.C. § 601 (2000); U.S. Tanker Owners Comm. v. Dole, 809 F.2d 847, 852 (D.C.Cir.1987) (under the Administrative Procedure Act that "when an agency initiates a rulemaking that the governing statute does not require to be undertaken 'on the record,' the agency is nonetheless bound to comply with the requirements for 'notice and comment' rulemaking set out in 5 U.S.C. Sec. 553 (1982). One requirement is that after the agency considers the comments presented by the participating parties, it 'shall incorporate in the rules adopted a concise general statement of their basis and purpose.' 5 U.S.C. Sec. 553(c). [...] At the least, such a statement should indicate the major issues of policy that were raised in the proceedings and explain why the agency decided to respond to these issues as it did, particularly in light of the statutory objectives that the rule must serve.")

the violence that youth in custody, particularly lesbian, gay, bisexual, transgender, and questioning ("LGBTQ") youth, suffer.[2]

Youth in state custody are particularly vulnerable to sexual victimization. According to the BJS Report, from 2008 to 2009 at least one in ten youth was sexually abused; at least one in ten youth experienced staff sexual misconduct; and LGBTQ youth were ten times more likely to be sexually victimized than heterosexual youth.[3] The NPRE Commission also found that "juveniles in confinement are much more likely than incarcerated adults to be sexually abused [...] [and] [t]o be effective, sexual abuse prevention, investigation, and treatment must be tailored to the developmental capacities and needs of youth."[4]

According to a National Institute of Health longitudinal study of morbidity and mortality over a twenty-four year period, "childhood experiences often set-up cascading events over life that have dramatic effects on adult health."[5] Therefore, "economic and education policies that are targeted at children's well-being are implicit health policies with effects that reach far into the adult life course."[6] It is well documented that sexual abuse and trauma have life-long effects that can result in post-traumatic stress disorder, violence, prostitution, depression, and suicide well after the initial abuse took place.[7] Failure to address the crisis of sexual assault to which youth in detention and correctional facilities are subjected has far-reaching consequences for these young people and the communities to which they eventually return.

---

[2] BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SPECIAL REPORT: SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH 2008-2009 (2010)

[3] Bureau of Justice Statistics, *supra* note 1 at 3, 1, 11.

[4] NAT'L PRISON RAPE ELIMINATION COMM'N, REPORT 16 (2009). At least one federal district court has already held that a state violated the rights of youth in its custody by failing to develop policies, procedures, and staff training necessary for understanding and protecting LGBTQ youth. In *R.G. v. Koller*, the District Court of Hawaii examined the conditions at the Hawaii Youth Correction Facility (HYCF), where youth who identified as or were perceived to be LGBT were subject to pervasive verbal and physical harassment by guards and other youth. 415 F. Supp. 2d.1129 (D. Haw. 2006). The court found that the pervasive verbal abuse in the form of homophobic slurs harmed the youth in HYCF's care. *Id*. at 1143-44. The court noted that, because youth in custody "cannot retreat to the safety of their home and family at the end of the day [. . .] name-calling and other identity-based harassment based on actual or perceived sexual orientation or gender identity by guards at HYCF often is acutely damaging to wards who have been entrusted to the state's care by the family court." *Id.* The court held that HYCF violated the Due Process Clause by failing to maintain policies and training to protect LGBT youth, adequate staff and supervision, a functioning grievance system, and a classification system to protect vulnerable youth. *Id*. 1156-57. While the court stated that it did not suggest that the constitution requires particular policies or safeguards, it made clear that "failure to adopt any professionally acceptable methods of maintaining order and safety," including "failure to adopt policies and procedures and to provide training regarding how to ensure the safety of LGBT wards" violated the due process rights of the youth in HYCF custody. *Id*. at 1157.

[5] MARK. D. HAYWARD, THE LONG ARM OF CHILDHOOD: THE INFLUENCE OF EARLY LIFE CONDITIONS ON ADULT MORBIDITY AND MORTALITY, PENN. STATE UNIVERSITY (2004) *available at* http://www.rand.org/labor/aging/rsi/rsi_papers/2004_hayward4.pdf.

[6] *Id.*

[7] Bureau of Justice Statistics, *supra* note 2 at 14; Frank Putnum, *Ten Year Research Update Review: Child Sexual Abuse*, 42 JOURNAL AM. ACAD. CHILD ADOLESCENT PSYCHIATRY 269, 271 (2003).

Provisions of sexual health care for youth in juvenile facilities are not only an ethical imperative but an affirmative legal obligation of these facilities.[8] When the state takes a young person into its custody, the due process clause of the federal Constitution requires the state to take affirmative steps to ensure the well-being of that individual, including provision of medical services, mental health services, and staff training adequate to preserve his or her physical and psychological health and safety.[9] Comprehensive sexual health care is a key part of essential services for young people who must rely on the state for all aspects of their care and education, and who are at a demonstrably significant risk, by virtue of their detention, for sexual assault and abuse.

The proposed DOJ standards for health screenings, education, and training that focus exclusively on sex through the prism of sexual abuse, while good in many respects, simply do not go far enough. Prevention of sexual abuse should occur in a broader framework of respect for and cultivation of long-term sexual health. The final standards should explicitly recognize the critical connection between access to sexual health care and education – including medical services that go beyond admission screening, sexual education programs for youth, and staff training that ensures understanding of sexuality, sexual orientation, and healthy sexual expression – and the prevention of sexual abuse.

The following comments provide a high impact, low cost supplement[10] to the proposed rules and are fundamental to preventing, detecting, and reporting sexual abuse.

I. The Proposed Standards for Medical Services to Prevent Sexual Abuse Should be Broadened to Include Regular Access to a More Complete Array of Sexual Health Care Services

While the DOJ proposed standards address medical care screenings, we recommend expanded medical care services and programs that, by routinizing sexual health care and education, will effectively deter and detect sexual abuse. Proposed standards 115.341[11] and

---

[8] *See* THE CENTER FOR HIV LAW AND POLICY, JUVENILE INJUSTICE: THE UNFULFILLED RIGHTS OF YOUTH IN STATE CUSTODY TO COMPREHENSIVE SEXUAL HEALTH CARE (2010) *available at* http://www.hivlawandpolicy.org/resources/view/565.

[9] In *A.M. v. Luzerne County Juvenile Detention Center*, for example, the Third Circuit allowed a youth's suit against a detention center to go forward on the theory that the detention center had insufficient policies to ensure the physical safety and psychological well-being of those in its custody. 372 F.3d 572, 583-85 (3rd Cir. 2004). Similarly, in *Alexander S. v. Boyd*, the federal district court for the District of South Carolina held that a state detention center's policies violated the Fourteenth Amendment by failing to provide adequate education to special-needs youth, adequate medical services due to a shortage of nurses, and adequate programming geared toward correcting the behavior of youth in custody. 876 F.Supp. 773, 787-89, 790, 797 (D. S.C. 1995).

[10] The potential medical costs savings amongst those aged 18-19 years old who received comprehensive sexual health education were $0-$280 per participant. This estimates to a $5.19 medical costs savings for every dollar invested in a sexual health care education program. Samuel Tunde Olaiya, Medical Cost Savings Attributable to Comprehensive Sex Education Programs that Delay Coitus and Increase Condom Use Among Adolescents in the United States, 191 (2006)(unpublished Ph.D. dissertation, The Ohio State University).

[11] Nat'l Standards to Prevent, Detect, and Respond to Prison Rape, 76 Fed. Reg. 6248, 6297 (proposed Feb. 3, 2011) [hereinafter *DOJ Proposed Rules*] (to be codified at 25 C.F.R. pt. 115). ("§115.341 Obtaining

115.381[12] mandate screening youth to determine past sexual victimization and any potential information that may require a need for heightened supervision. While such screenings are important, they are only part of the preventive medical care needed to reduce sexual abuse. The standards should be more comprehensive regarding the required scope of the intake screening for juveniles.

The current standards do not mandate the intake of enough information to be effective in preventing, reporting, and detecting sexual abuse. Many of the youth in state custody may have a history of sexual abuse, exposure to STIs or HIV, distrust of authority, and engagement in survival techniques including prostitution. LGBTQ youth in particular, who are disproportionately represented in these facilities and also at significantly higher risk of sexual abuse, may face unique physical and mental health challenges.[13] With these issues in mind, the standards must reflect a broader approach in access to and implementation of health care and screenings. To ensure that youth have reasonable, regular access to the range of sexual health and medical related services needed in this context, we recommend that the sections of the standards related to the medical care of youth in custody include the following language:

> All youth must receive a complete sexual health assessment and health maintenance examination ("initial examination"). The initial examination must include a medical history; social history; physical examination; sexual transmitted infection ("STI") and HIV counseling; offer of STI and HIV testing; contraception counseling; pregnancy counseling and offer of pregnancy test; and assessment of potential abuse, including sexual abuse. The initial examination and subsequent annual examinations of youth from age 11 and up must include a discussion of the youth's involvement in sexual

---

information from residents. During the intake process and periodically throughout a resident's confinement the agency shall obtain and use information about each resident's personal history and behavior to reduce the risk of sexual abuse by or upon a resident. Such assessment shall be conducted using an objective screening instrument [...] at a minimum the agency shall attempt to ascertain information about prior sexual victimization or abusiveness; sexual orientation, transgender, or intersex status; [...].")

[12] *DOJ Proposed Rules, supra* note 11, at 6300. ("§115.381: Medical and mental health screening; history of sexual abuse. All facilities shall ask residents about prior sexual victimization during the intake process or classification screenings. [...].").

[13] LGBTQ youth face distinct health challenges, in addition to sexual abuse, including an increased risk for substance abuse, sexually transmitted infections, and eating disorders. Due to the societal discrimination and isolation, these youth commonly suffer from the effects of chronic stress which can lead to increased levels of depression and anxiety. SHANNEN WILBER ET AL., THE MODEL STANDARDS PROJECT: CREATING INCLUSIVE SYSTEMS FOR LGBTQ YOUTH IN OUT-OF-HOME CARE 6 (2006). Puberty is a particularly difficult time for transgender youth due to lack of a support system to make sense of their physical changes. These changes may shame or repulse transgender youth, prompting them to attempt to alter their appearance by concealing or injuring unwanted body parts, or purchasing drugs. Fear of ridicule, rejection, or harassment prevents many transgender youth from seeking services in the health care system. As a result, transgender youth may not receive health care on a consistent basis, much less care that addresses their individual health needs. Due to the lack of social, medical, and societal support LGBTQ youth are two to three times more likely to attempt suicide than their heterosexual peers and account for up to 30% of all completed suicides among teens. REGION II MALE INVOLVEMENT ADVISORY COMMITTEE, GUIDELINES FOR MALE SEXUAL AND REPRODUCTIVE HEALTH SERVICES: A TOOL FOR FAMILY PLANNING PROVIDERS 25 (2005).

> behaviors, in connection with STI, HIV, history of abuse, and pregnancy counseling and recommendations. Inquiries and discussion should include: sexual orientation, gender identity, age of initiation into sexual activity, frequency of sexual activity, type of sexual activity, use of contraception and motivation for use, use of prophylaxis and motivation for use, history of forced or coerced sex, and history of STI and HIV testing.
>
> Staff should discuss these topics in a confidential, non-judgmental manner during the course of the examination, in a way that is accepting and normalizing of the full spectrum of sexual identity and behavior. Youth who identify as gay, lesbian, bisexual, transgender, or questioning should be asked about feelings of social acceptance or isolation. This especially applies to adolescents who are in the process of coming out. Providers should be aware of the health concerns facing lesbian, gay, bisexual, transgender, and questioning youth, and should be aware of the relevance of sexual orientation and gender identity on the youth's health status.

Because LGBTQ youth are traditionally marginalized in these facilities, it is particularly important that there be a medical staff and a medical support system that recognizes the existence and needs of these youth if they are to safely report and be treated for sexual misconduct.[14]

The initial examination serves as a true assessment of the youth's health status and initial indicators of risk for sexual abuse. Youth who have been sexually victimized, whether prior to or after enrollment in corrections or detention facilities, may experience fear and anger and present with a history of or current STIs, pregnancy, or other health and mental health related issues that need to be addressed. It also is important for medical staff to have a full sexual health history for the youth in their care at the outset, in part because such a history may help to identify subsequent sexual abuse that a youth might be afraid or unwilling to disclose.

Many youth may be initially unwilling to discuss current or past sexual victimization because they do not trust the medical providers or are fearful of retribution. It is important that medical providers not only conduct a thorough medical, sexual, and social history, but also establish a rapport and trust with youth that can require multiple visits, medical evaluations, and counseling. To this end, medical providers should also be trained in LGBTQ cultural competency. (*See* Sec. III. Staff Training Standards Should Require That All Juvenile Detention Staff, including Volunteers and Contractors, Are Trained and Competent in the Areas of Sexuality, Sexual Orientation, and the Needs of LGBTQ Youth).

II. The Standards Should Require Comprehensive Sexual Health Education That Fosters Understanding of Sexuality, Sexual Orientation, and Gender Expression

[14] Nat'l Prison Rape Elimination Comm'n, *supra* note 3, at 73-74, 145-148.

The DOJ proposed standard 115.333[15] (Resident Education) focuses on juvenile education only in relationship to sexual abuse but should include basic concepts of sexual education and sexual health. To effectively address sexual abuse, the standards should explicitly affirm that sex abuse education programs in these facilities provide youth with a basic understanding of sexual anatomy and development; sexuality and healthy relationships; sexual orientation; and gender roles and gender identity.[16]

Surprisingly, the standards do not mandate that youth should be able to understand and identify what is sexual abuse or the dynamics of sexual abuse. The NPRE Commission's standards included more language on sexual abuse education but, unfortunately, such language was removed from the current proposed standards.[17]

Sexual health education can effectively prevent and increase reporting of sexual abuse in routinizing discussions on sex and providing youth with the ability to understand and communicate about sexual health issues in a positive and proactive way.[18] Research and

---

[15] *DOJ Proposed Rules, supra* note 11, at 6297. ("§115.333(b) Resident education. Within 30 days of intake, the agency shall provide comprehensive age-appropriate education to residents either in person or via video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such abuse or harassment, and regarding agency sexual abuse response policies and procedures.").

[16] UNICEF, CHILD PROTECTION: A HANDBOOK FOR PARLIAMENTARIANS 72 (2004) *available at* www.ipu.org/PDF/publications/childprotection_en.pdf ("Sexual health education […] enables the child to understand the nature of sexual activity and helps safeguard against sexual abuse based on misrepresentation of the nature of the act."); JAMES KRIVACKSA, CHILD ABUSE PREVENTION PROGRAMS AND ACCUSATIONS OF CHILD SEXUAL ABUSE: AN ANALYSIS, INST. FOR PSYCHOLOGICAL THERAPIES (1989) *available at* www.ipt-forensics.com/journal/volumne1/j1_1_2.htm ("A more sensible approach [to preventing child abuse] would be a primary prevention approach geared toward improving the overall mental health and probablem-solving skills among children ... Such a program may include some exposure to the concept of sexual abuse but only after some general sexual education.").

[17] Nat'l Prison Rape Elimination Comm'n, *supra* note at 3, 226 ("TR-3: Resident Education: Within a reasonably brief period of time following the intake process, the agency provides comprehensive age-appropriate education to residents regarding their right to be free from sexual abuse and to be free from retaliation for reporting abuse, the dynamics of sexual abuse in confinement, and the common reactions of sexual abuse victims, and agency sexual abuse response policies and procedures.").

[18] Robert E. Freeman-Longo, *Reducing Sexual Abuse in America: Legislating Tougher Laws for Public Education and Prevention*, 23 NEW. ENG. J. CRIM. & CONFINEMENT 303, 320-321 (1997) (Sexual education, both at home and in the schools, can be an effective mechanism of preventing sexual abuse, particularly of children. Many who become sex abusers, including many juvenile sex abusers, may not possess sufficient information about human sexuality and the impropriety of nonconsensual sex with others.); David Finkelhor et al., *Sexual Abuse in a National Survey of Adult Men and Women: Prevalence, Characteristics, and Risk Factors*, 14 CHILD ABUSE & NEGLECT 19, 24-7 (1990) (Risk factors for sexually abused children include receiving no or inadequate formal sexual education.); UNICEF, *supra* note at 12; JAMES KRIVACKSA, *supra* note at 12; GRETCHEN OVERSTOLZ, DARKNESS TO LIGHT, PREVENT CHILD SEXUAL ABUSE (2008) (finds that children will be better able to discuss and report sexual abuse once they are educated with the descriptive language and knowledge about sex); Patricia C. Wass, Sex Education Helps Keep Children Safe From Abuse, *available at* http://www.smith-lawfirm.com/sex_ed.html ("The focus of the discussion has been about keeping children and teens safe from unwanted pregnancy and disease, especially important in light of the increasing spread of HIV and AIDS. As usual, opinions range across the spectrum, from no sex education in the schools to the schools should start as early as possible. But there is a piece of the debate which does not seem to be taking place at all: the importance of educating

experience demonstrates that sex education programs result in increased levels of disclosure when abuse occurs and a decrease in self-blame by the victim of abuse in these situations.[19]

Mandated sexual health education that routinize discussions on sexual health are essential to addressing sexual abuse in youth detention facilities. Accordingly, we recommend that the following language be incorporated into the standards:

> Sexual health education programs for youth should include, but not be limited to, comprehensive, scientifically accurate, and age-appropriate information on anatomy and development; STI and HIV prevention, transmission, and treatment; sexuality and healthy relationships; sexual orientation; gender and gender identity; pregnancy and pregnancy options; prevention skills related to sexual relationships; contraception; sexual violence and abuse; and access to facility and community resources available for additional information on all issues discussed. These programs should be conducted on a regular basis.

The United States Department of Education has noted that "sex education ideally should provide every adolescent with full information about the entire gamut of sexual activities and outcomes and their social-emotional components."[20] Effective sexual education programs in these facilities need to include a curriculum that goes beyond the narrow focus of sexual abuse, and instead address a range of important topics not only on sexual development but also on the way youth think and communicate about their bodies, their sexual identity, and how they respect the sexual identity and bodies of others. This is particularly relevant in terms of LGBTQ youth who are often abused because of their sexual orientation due to bigotry and a lack of understanding of other youth and staff.

An education program for youth in state custody cannot ignore how homophobia relates to sexual violence. A consistent, serious problem common in most youth detention facilities is the routine acceptance of negative treatment, harassment, and abuse of LGBTQ youth. These individuals are more likely to be sent through the juvenile justice system due to abandonment by their family and using risk survival skills, such as prostitution, to cope.[21] They are routinely the target of discrimination, harassment, sexual assault, and violence from

---

children about healthy sexuality in order to help kids keep themselves safe from sexual abuse."); *See also* Unitarian Universalist Association of Congregations, Lifespan Sexuality Education Curricula, *available at* http://www.uua.org/religiouseducation/curricula/ourwhole/; The American Psychological Association on Understanding Child Sexual Abuse: Education, Prevention, and Recovery (Protecting Children from Sexual Abuse) *available at* http://www.apa.org/pubs/info/brochures/sex-abuse.aspx.

[19] David Finkelhor, *The Prevention of Childhood Sexual Abuse*, 19 FUTURE OF CHILDREN 169, 181 (2009); David Finkelhor et al., *Victimization Prevention Programs for Children: A Follow-Up,* 85 AM. JOURNAL. OF PUB. HEALTH 1684, 1688 (1995).

[20] U.S. HEALTH CARE FINANCING ADMINISTRATION, A GUIDE TO ADOLESCENT HEALTH CARE: EPSDT 51 (1980)

[21] Peter A. Hahn, *The Kids are Not Alright: Addressing Discriminatory Treatment of Queer Youth in Juvenile Detention and Correctional Facilities*, 14 B.U. PUB. INT. L.J. 117 (2005) 121 -24.

peers and staff at custodial facilities.[22] The NPRE Commission noted that LGBTQ youth are targeted by staff and other youth more often than heterosexual youth; "[r]esearch on sexual abuse in correctional facilities consistently documents the vulnerability of men and women with non-heterosexual orientations and transgender individuals."[23] To prevent sexual violence against LGBTQ youth it is imperative that there are sexual education standards that bring greater sensitivity and awareness to the issues faced by these particularly vulnerable young detainees.

III. Staff Training Standards Should Require That All Juvenile Detention Staff, including Volunteers and Contractors, Are Trained and Competent in the Areas of Sexuality, Sexual Orientation, and the Needs of LGBTQ Youth

The knowledge and sensitivity of staff, volunteers, and contractors has a direct impact on their ability to maintain the safety of youth in state custody. DOJ proposed standards 115.331 (Employee Training), 115.332 (Volunteer and Contractor Training), 115.334 (Specialized Training: Investigations), and 115.335 (Specialized Training: Medical and Mental Health Care),[24] while an improvement over the NPRE Commission standards, fail to require sufficient competency and training of all adults who work with youth in these facilities.

We commend the DOJ on including language in standard 115.331[25] (a)(9) (Employee Training), on the importance of effective communication with LGTBTQ youth. However, 115.331 is the only standard[26] that addresses sexual abuse training for staff and has language related to effective communication with LGBTQ youth. Staff at every level, including all administrative staff, medical and mental health providers, direct care staff, social workers, security personnel, intake staff, cafeteria staff, and other employees, contractors or volunteers who have contact with youth must have comprehensive sexual education training in addition to background checks and screenings. The training should include the following areas in relationship to sexual abuse, sexual health education, and LGBTQ cultural competency: law and policy; diversity, cultural awareness, and vocabulary; identity, sexuality, and gender formation; and the effects of homophobia, transphobia, and heterosexism.

---

[22] CHILD WELFARE LEAGUE OF AMERICA, CWLA BEST PRACTICE GUIDELINES: SERVING LGBT YOUTH IN OUT-OF-HOME CARE 6, 49-50 (2006).
[23] Nat'l Prison Rape Elimination Comm'n, *supra* note 3, at 7
[24] *DOJ Proposed Rules, supra* note 11, at 6297.
[25] *DOJ Proposed Rules, supra* note 11, at 6297. ("115.331.(a) The agency shall train all employees who may have contact with residents on: (1) Its zero-tolerance policy for sexual abuse and sexual harassment; (2) How to fulfill their responsibilities under agency sexual abuse prevention, detection, reporting, and response policies and procedures; (3) Residents' right to be free from sexual abuse and sexual harassment; (4) The right of residents and employees to be free from retaliation for reporting sexual abuse; (5) The dynamics of sexual abuse in juvenile facilities; (6) The common reactions of juvenile victims of sexual abuse; (7) How to detect and respond to signs of threatened and actual sexual abuse; (8) how to avoid inappropriate relationships with residents; (9) How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, or intersex residents; and (10) Relevant laws related to mandatory reporting.").
[26] At a minimum, standards 115.332, 115.334., 115.335 must reflect the same language that is present in standard 115.331(a).

Training should also include how to work effectively with youth who have histories of trauma, and factors that make youth vulnerable to abuse

We recommend that the following language be included in the standards for staff training:

> All staff, medical personnel, volunteers, and contractors must have training and education that addresses the particular sexual health needs of youth in their care. This includes, but is not limited to, training on sex; sexual anatomy; sexual identity; sexual orientation; gender identity; the particular health care needs of LGBTQ youth; how to communicate effectively with LGBTQ youth; sexual violence, abuse, and harassment; and transphobia, homophobia, and heterosexism.

It is particularly important for medical staff to be trained to the sensitivities of youth in juvenile justice facilities. Medical professionals in the juvenile justice system must be aware that an insensitive attitude, a lack of knowledge and skills in reproductive and sexual health, poor communication, and discomfort on the part of medical providers can prevent a young person from disclosing vital health information, including information on past or current sexual abuse.[27] Medical staff, like all other facility staff, must be competent in cultural and sexual orientation and gender identity issues due to their particular responsibility to look for and address possible sexual abuse and sexual abuse victims.

IV. Conclusion

The final rule on standards that address the right to be free of all sexual abuse is a critically important step in protecting the health and lives of vulnerable youth in state custody. Standards must address the problem of sexual assault on multiple levels – in medical care and counseling services, sexual education programs, and mandated staff training.

We appreciate the opportunity to provide these comments, and look forward to the publication of the final rule.

Very truly yours,

René Bennett-Carlson

René Bennett-Carlson
Managing Attorney
The Center for HIV Law and Policy
(212) 430-6733
rbennett@hivlawandpolicy.org

[27] Michelle Staples-Horne, Kaityi Duffy, & Michelle Rorie, *Juvenile Corrections and Public Health Collaborations: Opportunities for Improved Health Outcomes, in* PUBLIC HEALTH FROM BEHIND BARS: FROM PRISONS TO COMMUNITIES 302, 307 (Robert Greifinger ed., 2007).

On behalf of CHLP and the following organizations and individuals:

AIDS Foundation of Chicago

Jeffrey M. Birnbaum, MD, MPH
Associate Professor of Pediatrics and Public Health
HEAT Program Executive Director
SUNY Downstate Medical Center
Brooklyn, NY

Elizabeth M. Casparian, Ph.D.
Executive Director
HiTOPS
Princeton, NJ

Equity Project

HIV Prevention Justice Alliance

Hyacinth AIDS Foundation

Massachusetts Commission on Gay, Lesbian, Bisexual, and Transgender Youth

National Center for Lesbian Rights

Cathryn L. Samples, MD, MPH, AAHIVS
Director, Boston Happens and
Medical Director, Metro-DYS
Division of Adolescent/Young Adult Medicine
Children's Hospital Boston

Wesley C. Ware
LGBT Youth Project Director/ BreakOUT! Coordinator
Juvenile Justice Project of Louisiana
New Orleans, LA

Gary Paul Wright
Executive Director
African American Office of Gay Concerns
Newark, NJ

Kathy Wright
Executive Director
New Jersey Parents Caucus, Inc.