



# **REPORT ON RAPE IN FEDERAL AND STATE PRISONS IN THE U.S.**

Based On Public Hearings and Review Of  
Documentary Evidence By  
**The Review Panel On Prison Rape**

Steven T. McFarland  
Carroll Ann Ellis

Findings And Best Practices

September 24, 2008

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## **Panel Members and Staff**

In accordance with the Prison Rape Elimination Act of 2003 (PREA), Public Law 108-79, 117 Stat. 972 (codified as amended at 42 U.S.C. §§ 15601-15609 (2006)), the Attorney General, in consultation with the Secretary of the Department of Health and Human Services, appointed the members of the Review Panel on Prison Rape (Panel) on March 29, 2006. Members of the Panel in calendar year 2008 were Director Carroll Ann Ellis, Victim Services Division, Fairfax County, Virginia, Police Department; Director Steven T. McFarland, Task Force for Faith-Based and Community Initiatives, U.S. Department of Justice; Sheriff Ted Sexton, Tuscaloosa County, Alabama, Sheriff's Office;<sup>1</sup> and President and CEO Walter Ridley, Ridley Group, LLC.<sup>2</sup> Mr. Sexton did not participate in the Panel's hearings or in the preparation of the instant Report. While Mr. Ridley participated in the Panel's April 30, 2008, telephonic hearing involving the testimony of the Estelle Unit's current warden and his predecessor, he did not contribute to the preparation of this Report.

The Panel expresses its sincere appreciation to Robert Siedlecki, Jr., Senior Legal Counsel at the Task Force For Faith-Based and Community Initiatives, Office of the Deputy Attorney General, and to attorneys from the Office of Justice Programs for their invaluable assistance to the Panel in arranging public hearings and reviewing transcripts and voluminous documentary evidence.

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<sup>1</sup> Sheriff Sexton resigned from the Panel on March 6, 2008.

<sup>2</sup> Mr. Ridley resigned from the Panel on June 17, 2008.

## **I. Role of the Panel**

According to PREA, the duty of the Panel is to hold annual hearings, based on statistics gathered by the Bureau of Justice Statistics (BJS), concerning the operation of the three prisons with the highest incidence of prison rape and the two prisons with the lowest incidence of prison rape in each category of facilities identified under Section (4)(c)(4) of the statute. *Id.* § 15603(b)(3)(A). The purpose of the hearings is to aid BJS in the identification of common characteristics of victims and perpetrators of prison rape, as well as of prisons and prison systems that have the highest and lowest incidence of prison rape.<sup>3</sup> *Id.* Under PREA, each year, no later than June 30, the Attorney General is to submit a report to Congress and the Secretary of Health and Human Services on the activities of the Panel in the preceding calendar year. *Id.* § 15603(c)(1).

## **II. Panel's 2008 Prison Hearings**

In 2008, the Panel conducted hearings in response to the BJS report entitled *Sexual Victimization in State and Federal Prisons Reported by Inmates, 2007* (hereinafter referred to as *Sexual Victimization Survey*), which was published in December of 2007.<sup>4</sup>

### **A. Selection of Prisons Invited To Testify**

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<sup>3</sup> Under PREA, the Panel is to conduct hearings “to collect evidence to aid in the identification of common characteristics of both victims and perpetrators of prison rape, and the identification of common characteristics of prisons and prison systems with a high incidence of prison rape, and the identification of common characteristics of prisons and prison systems that appear to have been successful in deterring prison rape.” 42 U.S.C. § 15603(b)(3)(A).

<sup>4</sup> The Panel also held a preliminary hearing on November 14-15, 2006 at the California State Prison, Sacramento in Represa, California.

The *Sexual Victimization Survey* did not provide an exact ranking of the prevalence of sexual assault for the facilities in its statistical survey as required by PREA because BJS' estimates were based on a sample of inmates from 146 state and federal prisons, and, consequently, its findings were subject to sampling error. BJS was able to statistically identify a group of ten facilities among those surveyed with the highest reported rates of sexual victimization in addition to six facilities in which no incidents of sexual victimization were reported by inmates. The BJS report also included appendix tables which set forth in detail the tabulated results of the survey by facility and state. In light of the inability of BJS to provide a rank order of federal and state facilities based on the incidence of sexual assault, the Panel relied on the data in the appendix tables to select the facilities it planned to review at its hearings in 2008.

The Panel identified the following two prisons among the federal and state prisons surveyed by BJS with the lowest prevalence of sexual abuse to invite to a hearing: (1) Ironwood State Prison (Ironwood), California Department of Corrections and Rehabilitation (CDCR); and (2) Schuylkill Federal Correctional Institution (Schuylkill), Federal Bureau of Prisons (BOP). The Panel chose Ironwood because it was one of three state facilities among the six that the BJS survey identified with no reported incidents of sexual assault (*id.* Table 1) and because it was part of CDCR, the nation's largest state prison system. The Panel identified Schuylkill because it was part of the federal prison system and had a relatively high response rate to the inmate survey. (*Id.*)

The BJS report showed that five out of the ten state and federal prisons surveyed by the BJS with the highest prevalence of sexual assault were part of the Texas Department of Criminal Justice (TDCJ): the Estelle Unit, the Clements Unit, the Allred

Unit, the Mountain View Unit, and the Coffield Unit. (*Id.*). The Estelle Unit had the highest reported prevalence of sexual victimization in the country (*id.*), including the third worst record with inmate-on-inmate sexual assault involving physical force (*id.* Table 4) and the fourth worst record with inmates having the highest number of incidents of nonconsensual sexual acts per 1,000 inmates. (*Id.* Table 5). So, the Panel set a separate hearing in Texas to focus on the issues at TDCJ.

The Panel also identified the following state prisons with the highest prevalence of sexual abuse among those surveyed: (1) Charlotte Correctional Institution (Charlotte), Florida Department of Corrections (FDOC); (2) Rockville Correctional Facility (Rockville), Indiana Department of Correction (IDOC); and (3) Tecumseh State Correctional Institution (Tecumseh), Nebraska Department of Correctional Services (NDCS).

The Panel chose Charlotte because it had the fourth highest prevalence of sexual victimization (*id.* Table 3); it had the third worst record for the prevalence of staff sexual misconduct (*id.* Table 2); and the second worst record for incidents of nonconsensual sexual acts per 1,000 inmates. (*Id.* Table 5).

The Panel chose Rockville because it had the highest prevalence of sexual victimization among female facilities (*id.* Table 1) and for inmate-on-inmate (IOI) sexual assault resulting in injury (*id.* Table 4), the second worst record for IOI assault involving physical force, and the second worst record for IOI sexual assault involving pressure. (*Id.*).

Tecumseh was selected because of its ranking as the facility with the highest number of incidents of nonconsensual sexual acts per 1,000 inmates (*id.* Table 5).<sup>5</sup>

The Panel held hearings on March 11, 2008, regarding two of the federal and state prisons among those surveyed with the lowest incidence of prison rape (Ironwood, CDCR; and Schuylkill, BOP). The Panel held hearings on March 12, 13, and 14, 2008, regarding three of the state prisons in the United States with the highest incidence of prison rape (Charlotte, FDOC; Rockville, IDOC; and Tecumseh, NDCS) and held hearings on March 27, March 28, and April 30, 2008, regarding TDCJ and its Estelle, Clements, Allred, Mountain View, and Coffield Units.

## **B. Identified Common Characteristics of Victims and Perpetrators of Prison Rape**

Pursuant to its mandate under PREA, the Panel held hearings in part to identify the factors that prisons and prison systems use to detect potential sexual assault victims, as well as potential inmate and staff sexual assault perpetrators. In preparation for its hearings, the Panel issued document requests to each prison and prison system invited to participate, and solicited additional documents and data from certain witnesses during and after the hearings. After the conclusion of the hearings, the Panel reviewed and analyzed the documents and data it received, as well as the written and oral sworn testimony provided by hearing witnesses.

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<sup>5</sup> The Panel was initially reluctant to select this facility as one of the prisons with the highest prevalence of prison rape because of the relatively low response rate to the inmate survey. (*Id.* Table 1). However, the Panel was wary of establishing a precedent that made low response rates determinative because that could provide an incentive for facilities to discourage inmate participation in future PREA-related BJS surveys and thereby avoid Panel scrutiny.

In discerning those common characteristics which were used to identify sexual assault victims and perpetrators, the Panel sought to adopt a workable analytical framework that gave appropriate weight to the information provided in connection with its hearings.<sup>6</sup> In reviewing the documentary and testimonial evidence, the Panel noted that, in many instances, more than one prison or prison system identified a particular characteristic in describing a sexual assault victim or predator. Specifically, at least two prisons or prison systems identified twelve IOI victim characteristics, fifteen staff-on-inmate (SOI) victim characteristics, eight inmate perpetrator characteristics, and twenty-nine staff perpetrator characteristics. In contrast, there were fewer instances when only one facility or system identified a specific trait in describing potential victims or perpetrators. Given the apparent consensus that existed among prisons and prison systems as to certain victim and perpetrator traits, the Panel emphasizes below those attributes that were mentioned by at least two facilities or systems.

**1. Identified Common Characteristics of Victims of Inmate On Inmate Prison Rape**

*a. Inmate Physical Attributes*

According to several hearing witnesses, inmates of small stature were more vulnerable to sexual assault. The IDOC, NDCS, and TDCJ systems, as well as individuals from Schuylkill, Charlotte, Rockville, and Estelle, recognized that an inmate's small or slight physical stature could increase his or her vulnerability to sexual assault.<sup>7</sup>

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<sup>6</sup> It is important to note that the Panel's conclusions are based solely on the documents and testimony provided by the prison facilities and systems in connection with its hearings.

<sup>7</sup> (Transcript of Hearing of Review Panel on Prison Rape [hereinafter Tr.], G. Walters, 243:16-244:1 (Mar. 11, 2008) (BOP); *id.*, A. Leonard, 352:2-6 (BOP); *id.*, D. Colon, 327:16-328:6 (Mar. 12, 2008) (FDOC);

b. *Smaller Inmate Paired With Larger Cellmate*

According to several hearing witnesses, smaller inmates who shared cells with inmates of larger stature were more vulnerable to sexual assault. For instance, CDCR Secretary James Tilton testified that, in making housing assignments, CDCR staff members assessed an inmate's height and weight, both of which he deemed to be important to facility safety.<sup>8</sup> Charlotte Lieutenant David Colon also noted that an inmate with a smaller stature may have been especially vulnerable to attack if his cellmate was of a larger stature.<sup>9</sup>

c. *Age*

According to several hearing witnesses, younger inmates were more vulnerable to sexual assault. Under California's Sexual Abuse in Detention Elimination Act of 2005 (SADEA),<sup>10</sup> CDCR must take age into account in making housing assignments to prevent inmates from sexual victimization.<sup>11</sup> In considering age as a predictive factor of prison sexual assault, witnesses asserted that younger offenders were at risk. Representatives from Ironwood, Rockville, and Estelle noted that the most

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IDOC, Sexual Violence Assessment Tool, at 2; Tr., R. Brown, 120:12-17 (Mar. 13, 2008) (IDOC); *id.*, J. Stout, 333:15-334:10 (IDOC); NDCS, Internal Classification Initial Screening Instrument Manual (rev. June 26, 2006) (hereinafter referred to as 2006 Initial Screening Instrument Manual), at 4; TDCJ, Orientation – Safe Prisons Program (SPP) Pt. 8; Tr., B. Jenkins, 14:6-10, 21:19-22:2, 23:14-19 (Mar. 28, 2008) (TDCJ); *id.*, J. T. Morgan, 48:7-17 (Apr. 30, 2008) (TDCJ)).

<sup>8</sup> (Tr., J. Tilton, 31:2-7 (Mar. 11, 2008) (CDCR); *see also id.* 31:11-13 (“We know that establishing housing protocols and considering offenders’ size . . . is critical to . . . inmate safety.”). Schuykill also emphasized the importance of inmate custody and housing classification procedures in preventing sexual assault. (*Id.*, H. Lappin, 190:3-19 (CDCR)).

<sup>9</sup> (Tr., D. Colon, 328:3-6 (Mar. 12, 2008) (FDOC)).

<sup>10</sup> Cal. Penal Code §§ 2635-2643 (West 2006).

<sup>11</sup> *Id.* § 2636; Tr., J. Tilton, 31:11-13 (Mar. 11, 2008) (CDCR) (“We know that establishing housing protocols and considering offenders’ . . . age is critical to . . . inmate safety.”).

vulnerable inmates for sexual assault were young inmates,<sup>12</sup> while materials from IDOC's sexual violence assessment tool and TDCJ's Safe Prison Plan (SPP) stated that younger offenders faced a heightened risk of sexual assault.<sup>13</sup>

*d. Nature of Offense*

Several hearing witnesses considered the nature of an inmate's offense in determining whether he or she was more susceptible to sexual assault. IDOC and TDCJ recognized that the targeted offender often was a non-violent offender, and that the typical victim would have no history of acting out in a violent manner.<sup>14</sup> IDOC and NDCS also concluded that an inmate was more vulnerable if he or she committed sex-related crimes, such as those involving children.<sup>15</sup>

*e. History of Prior Incarceration*

According to several hearing witnesses, first-time inmates were more vulnerable to sexual assault. Under SADEA, CDCR evaluated whether an inmate had served a prior term of commitment in making housing assignments to prevent inmates from sexual victimization.<sup>16</sup> Schuykill, NDCS, IDOC, and TDCJ also recognized that

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<sup>12</sup> (Tr., T. Riddle, 104:2-8 (Mar. 11, 2008) (CDCR); *id.*, R. Brown, 120:12-17 (Mar. 13, 2008) (IDOC); *id.*, B. Jenkins, 21:19-22:2, 23:14-22 (Mar. 28, 2008) (TDCJ)).

<sup>13</sup> (IDOC, Sexual Violence Assessment Tool, at 2). TDCJ's SPP materials noted that the typical sexual assault victim would be in his or her late teens or early twenties, while its Peer Educator training program also highlighted the assault risks faced by younger offenders. (TDCJ, Orientation – SPP Pt. 8; TDCJ, Safe Prisons Peer Educator Training Manual, at 52).

<sup>14</sup> (IDOC, Sexual Violence Assessment Tool, at 2; TDCJ Orientation – SPP Pt. 8).

<sup>15</sup> (IDOC, Sexual Violence Assessment Tool, at 1; NDCS, Aggression and Vulnerability Potential Risk Assessment Manual (rev. Sept. 13, 2007) (hereinafter referred to as 2007 Risk Assessment Manual), at 12; NDCS, 2006 Initial Screening Instrument Manual, at 4).

<sup>16</sup> Cal. Penal Code § 2636; *see also* Tr., T. Riddle, 104:2-12 (Mar. 11, 2008) (CDCR) (noting that first-time inmates often are vulnerable because they are not familiar with inmate politics).

first-time offenders, in addition to other inmates who were naïve about and unfamiliar with the prison system, faced a greater risk of sexual assault.<sup>17</sup>

*f. Mental Illness or Physical Limitations*

According to several hearing witnesses, mentally ill or physically limited inmates were more vulnerable to sexual assault. CDCR, IDOC, NDCS, as well as representatives from Schuylkill, Charlotte, and Estelle, emphasized that an inmate who had a mental illness or physical restriction was more likely to become a sexual assault victim.<sup>18</sup> NDCS specifically assessed an inmate's ability to comprehend, speak, and answer difficult questions, as well as his or her history of special education placements.<sup>19</sup> Representatives from Estelle further explained that inmates with certain mental conditions (e.g., having developmental challenges or taking psychiatric medication) or physical limitations (e.g., being blind or deaf) were more vulnerable to sexual assault.<sup>20</sup>

*g. Sexual Orientation (Male Inmates<sup>21</sup>)*

According to several hearing witnesses, gay inmates were more vulnerable to sexual assault. In responding to the Panel's document requests, CDCR provided a

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<sup>17</sup> (Tr., G. Walters, 243:16-244:9 (Mar. 11, 2008) (BOP); IDOC, Sexual Violence Assessment Tool, at 2-3; Tr., R. Brown, 120:12-17 (Mar. 13, 2008) (IDOC); *id.*, J. Stout, 333:15-334:3 (IDOC); NDCS, 2006 Initial Screening Instrument Manual, at 4; TDCJ, Orientation – SPP Pt. 8; TDCJ, Safe Prisons Peer Educator Training Manual, at 52; Tr., B. Jenkins, 21:19-22:2, 23:14-20 (Mar. 28, 2008) (TDCJ)).

<sup>18</sup> Cal. Penal Code § 2636; Tr., H. Lappin, 191:12-192:9 (Mar. 11, 2008) (BOP); *id.*, G. Walters, 243:16-244:10 (BOP); FDOC, Procedure No. 108.010, Prison Rape: Prevention, Elimination and Investigation, at 6; IDOC, Sexual Violence Assessment Tool, at 2; NDCS, 2006 Initial Screening Instrument Manual, at 4-5. However, Ironwood Lieutenant Timothy Riddle noted that, in his experience, developmentally disabled inmates were protected by other inmates. (Tr., T. Riddle, 104:13-20 (Mar. 11, 2008) (CDCR)).

<sup>19</sup> (NDCS, 2006 Initial Screening Instrument Manual, at 4-5).

<sup>20</sup> (Tr., B. Jenkins, 22:21-23:22 (Mar. 28, 2008) (TDCJ); *id.*, A. Castillo, 39:11-15 (Apr. 30, 2008) (TDCJ); *see also* TDCJ, Safe Prisons Peer Educator Training Manual, at 52).

<sup>21</sup> Gay female inmates may be perceived as less vulnerable. This invites further study.

published study which concluded that sexual orientation was a paramount consideration “when thinking about the correlates of sexual assault in California correctional facilities.”<sup>22</sup> IDOC identified gay and bisexual inmates as being susceptible to assault,<sup>23</sup> while CDCR also identified transgender inmates as being more vulnerable to assault.<sup>24</sup> Similarly, witnesses from Estelle also testified that being homosexual, or being perceived as gay, was a factor that could make an inmate more vulnerable to assault.<sup>25</sup> In contrast, TDCJ’s SPP written materials stated that the typical victim would be heterosexual.<sup>26</sup>

*h. Lack of Gang Affiliation or Social Support*

According to several hearing witnesses, inmates with no gang affiliation were more vulnerable to sexual assault. In making housing assignments, CDCR staff members considered an inmate’s gang affiliation.<sup>27</sup> Schuylkill also recognized that inmates who did not have anyone to support them, such as loners, were at risk, including inmates with no gang affiliation.<sup>28</sup>

*i. Sexual Assault History*

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<sup>22</sup> Valerie Jenness, et al., *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault* 33 (Center For Evidence-Based Corrections, University of California, Irvine, April 27, 2007).

<sup>23</sup> (IDOC, Sexual Violence Assessment Tool, at 2-3).

<sup>24</sup> (Tr., J. Tilton, 31:13-32:1 (Mar. 11, 2008) (CDCR)).

<sup>25</sup> (Tr., B. Jenkins, 14:6-10, 22:17-20 (Mar. 28, 2008) (TDCJ); *id.*, A. Castillo, 39:13-18 (Apr. 30, 2008) (TDCJ); *id.*, J. T. Morgan, 48:7-17 (TDCJ)).

<sup>26</sup> (TDCJ Orientation – SPP Pt. 8).

<sup>27</sup> (Tr., J. Tilton, 30:18-31:5 (Mar. 11, 2008) (CDCR)).

<sup>28</sup> (*Id.*, H. Lappin, 191:12-192:2 (BOP); *id.*, G. Walters, 243:16-244:7 (BOP)).

According to several hearing witnesses, an inmate who had previously been assaulted was more likely to be assaulted again. Under SADEA, CDCR was obligated to take an offender's sexual assault history into account in making housing assignments to prevent inmates from sexual victimization.<sup>29</sup> IDOC, NDCS, and TDCJ, as well as representatives from Schuylkill and Rockville, also noted that an inmate's history of sexual assault or victimization may have made him or her more vulnerable to future assaults.<sup>30</sup>

*j. Low Self-Confidence or Projection of Feeling of Fear*

According to several hearing witnesses, an inmate who had low self-confidence or projected a feeling of fear was more vulnerable to sexual assault. At Ironwood, the most vulnerable inmates for sexual assault were identified as those perceived as being weak,<sup>31</sup> while written materials from IDOC and NDCS noted that an inmate may have become more susceptible to assault if he or she was unassertive, appeared to be fearful, nervous, or anxious, or expressed concern about sexual victimization during intake.<sup>32</sup> TDCJ's SPP written materials recognized that the typical

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<sup>29</sup> Cal. Penal Code § 2636; Tr., J. Tilton, 30:18-31:5 (Mar. 11, 2008) (CDCR). CDCR's Initial Housing Review Form had a question that allowed CDCR staff members to record, based on a private interview with the inmate, whether the inmate was ever a victim of sexual assault. (CDCR, Initial Housing Review, CDCR 1882 (rev. Oct. 2006); *see also* Tr., R. Anti, 120:14-21 (Mar. 11, 2008) (CDCR)).

<sup>30</sup> (Tr., H. Lappin, 192:10-193:3 (Mar. 11, 2008) (BOP); *id.*, R. Brown, 120:12-19 (Mar. 13, 2008) (IDOC); *id.*, J. Stout, 333:15-334:6 (IDOC); NDCS, 2007 Risk Assessment Manual, at 15; NDCS, 2006 Initial Screening Instrument Manual, at 5; IDOC, Sexual Violence Assessment Tool, at 3). TDCJ's Peer Educator training program noted that a history of relationship abuse also was a predictor of assault. (TDCJ, Safe Prisons Peer Educator Training Manual, at 52).

<sup>31</sup> (Tr., T. Riddle, 104:2-9 (Mar. 11, 2008) (CDCR)).

<sup>32</sup> (IDOC, Sexual Violence Assessment Tool, at 3; NDCS, 2006 Initial Screening Instrument Manual, at 4).

victim was passive, soft spoken, and had no history of acting out in a violent manner, while Estelle Captain Bobby Jenkins testified that an inmate who lacked self-confidence may have become more vulnerable to sexual assault.<sup>33</sup> Similarly, Rockville evaluated whether female inmates had low self-esteem or were scared in identifying those at greater risk of assault.<sup>34</sup>

*k. Extortion Vulnerability*

According to several hearing witnesses, an inmate who had been subjected to extortion was more vulnerable to sexual assault. Schuylkill and TDCJ recognized that inmates who took favors from other inmates or otherwise were victims of extortion had a heightened risk of being sexual victims in the future.<sup>35</sup>

**2. Identified Common Characteristics of Victims Staff-On-Inmate Prison Rape**

After reviewing the documentary and testimonial evidence provided in connection with the Panel's hearings, the Panel identified fifteen common characteristics of SOI sexual assault victims.<sup>36</sup>

In an effort to prevent SOI sexual misconduct, BOP and IDOC developed warning signs that identified male and female offenders who may have had a greater

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<sup>33</sup> (TDCJ, Orientation – SPP Pt. 8; Tr., B. Jenkins, 21:23-22:2 (Mar. 28, 2008) (TDCJ)).

<sup>34</sup> (Tr., J. Stout, 333:15-334:9 (Mar. 13, 2008) (IDOC)).

<sup>35</sup> (Tr., J. Baxter, 295:20-296:5 (Mar. 11, 2008) (BOP); *id.*, D. Stacks, 50:24-51:1 (Mar. 27, 2008) (TDCJ)).

<sup>36</sup> While each prison system evaluated by the Panel has male and female inmates, only two of the ten facilities (Rockville and Mountain View) housed female inmates. The documentary and testimonial evidence provided to the Panel through its hearings suggests that male and female inmate sexual victims may share similar common characteristics; however, there also may be distinguishing factors between these two offender groups that warrant further review. For instance, IDOC identified specific traits of female offenders who are more prone to SOI assault, noting that a female inmate was more susceptible if she (1) was unmarried, (2) experienced sexual or physical abuse since childhood, (3) was a mother, (4) never completed high school, or (5) was unemployed before incarceration. (IDOC Sexual Misconduct Training Module Three: Characteristics and Strategies (2003), at 6).

tendency to be victimized by a staff member. An offender may have been identified as being more susceptible to SOI sexual assault if he or she displayed the following characteristics: (1) had a history of substance abuse;<sup>37</sup> (2) engaged in horse-play or sexual interaction with a staff member (including non-sexual interactions that may have escalated to sexual involvement); (3) knew personal information about staff members; (4) had letters from or photos of staff; (5) was in an unauthorized area, or was repeatedly out of his or her assigned place; (6) exchanged telephone calls with staff; (7) became pregnant or was diagnosed with a sexually transmitted disease; (8) underwent a drastic behavioral change; (9) wanted to start working before or after his or her regularly scheduled times; (10) improved his or her appearance; (11) had isolated work assignments; (12) had family that was involved with staff's family; (13) worked in a secluded area with staff; (14) went out of his or her cell at unusual times; and (15) had an unusually high balance or frequency of activity in his or her commissary account.<sup>38</sup>

### **3. Identified Common Characteristics of Inmate Perpetrators of Prison Rape**

In its *Sexual Victimization Survey*, BJS surveyed the prevalence rates of

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<sup>37</sup> (BOP, Annual Training FY 2006 – Sexually Abusive Behavior Prevention and Intervention Program, at 7; IDOC Sexual Misconduct Training Module Three: Characteristics and Strategies (2003), at 6).

<sup>38</sup> (BOP, Red Flags – Are We Paying Attention to Staff?, Sexually Abusive Behavior Prevention and Intervention Program – FY 2006 (2006), at unnumbered 1; IDOC, Sexual Misconduct Training Module Two: Warning Signs (2003), at 7-9). BOP and IDOC also each highlighted additional characteristics to identify offenders who are more prone to SOI assault. BOP noted that an inmate was more susceptible if he or she (1) was the victim of abuse, (2) had a mental illness, or (3) was new to the system. (BOP, Annual Training FY 2006 – Sexually Abusive Behavior Prevention and Intervention Program, at 7). IDOC's materials also asserted that an inmate was more susceptible if he or she (1) had good social skills, (2) had a perceptive and sensitive façade, (3) was high achieving, (4) was not a behavioral problem, or (5) had a subdued appearance. (IDOC, Sexual Misconduct Training Module Three: Characteristics and Strategies (2003), at 5-6).

IOI and SOI sexual assault. Various prisons and prison systems also made separate assessments in evaluating inmate and staff predators. Given those considerations, the Panel separately evaluated inmate and staff perpetrators. After reviewing the documentary and testimonial evidence provided in connection with the Panel's hearings, the Panel identified eight common characteristics of inmate sexual assault perpetrators that were noted by at least two prisons or prison systems.<sup>39</sup>

*a. Smaller Inmate Paired With Larger Cellmate*

According to several hearing witnesses, larger inmates who shared cells with inmates of smaller stature were more prone to engage in sexual assault. For instance, CDCR assessed an inmate's height and weight in making housing assignments.<sup>40</sup> Representatives from Charlotte and Estelle emphasized that an inmate perpetrator may have been big in stature and that those inmates were not housed with inmates of a smaller stature.<sup>41</sup>

*b. History of Sexual Victimization or Perpetration*

Several hearing witnesses considered the nature of an inmate's offense in determining whether he or she was more prone to engage in sexual assault. Under SADEA, CDCR had to determine if an inmate was a violent offender who would act in a

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<sup>39</sup> For discussion of characteristics of staff perpetrators of SA, see II B 4, *infra*.

<sup>40</sup> (Tr., J. Tilton, 31:2-7 (Mar. 11, 2008) (CDCR)).

<sup>41</sup> (Tr., D. Colon, 328:3-6 (Mar. 12, 2008) (FDOC); *id.*, L. Dawson, 38:18-39:1 (Mar. 28, 2008) (TDCJ); *see also* TDCJ, Orientation – SPP Pt. 8).

sexually aggressive manner toward other inmates.<sup>42</sup> Representatives from Schuylkill and Estelle noted that inmates who had committed sexual offenses or who had engaged in misconduct of a sexual nature may have been at risk for being sexual aggressors.<sup>43</sup> Charlotte considered whether the sentencing authority designated the inmate as a sexual offender based on his criminal history,<sup>44</sup> while NDCS identified whether an inmate's offense was predatory or impulsive in nature and whether the offense was for sexual assault or abuse.<sup>45</sup>

*c. History of Incarceration*

According to several hearing witnesses, inmates with a history of incarceration were more prone to engage in sexual assault. California's SADEA instructed CDCR to determine whether an inmate had served a prior term of commitment, which may have increased his or her sexual aggressiveness toward other inmates.<sup>46</sup> NDCS also evaluated whether an offender had multiple prior incarcerations and appeared familiar with the prison environment.<sup>47</sup>

*d. History of Engaging in Violence*

According to several hearing witnesses, inmates were more likely to be

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<sup>42</sup> Cal. Penal Code § 2635; *see also* Tr., J. Tilton, 30:19-31:5 (Mar. 11, 2008) (CDCR) (noting that offender's commitment offense may be factor in identifying sexual predators).

<sup>43</sup> (Tr., H. Lappin, 190:3-12 (Mar. 11, 2008) (BOP); *id.*, A. Leonard, 301:12-21 (BOP); *id.*, B. Jenkins, 39:11-16 (Mar. 28, 2008) (TDCJ)).

<sup>44</sup> (FDOC, Procedure No. 601.209, Reception Process – Initial Classification, at 8).

<sup>45</sup> (NDCS, 2007 Risk Assessment Manual, at 5, 7-9; NDCS, 2006 Initial Screening Instrument Manual, at 2-3).

<sup>46</sup> Cal. Penal Code § 2635.

<sup>47</sup> (NDCS, 2007 Risk Assessment Manual, at 5, 9-10; NDCS, 2006 Initial Screening Instrument Manual, at 1-2).

sexual predators if they had a history of engaging in sexually assaultive misconduct. As John Baxter, psychologist service administrator for BOP, explained, inmate perpetrators typically had a history of violence in their background and a pattern of disregarding the rights of other individuals.<sup>48</sup> Consistent with this observation, BOP's written materials noted that an inmate may pose a heightened risk as a sexual predator if he has a history of sexually abusive behavior while in prison, including stalking or excessive sexual preoccupation.<sup>49</sup> Charlotte Lieutenant David Colon and Rockville Superintendent Julie Stout also noted the importance of identifying an individual's assaultive history.<sup>50</sup> CDCR, NDCS, and TDCJ also had procedures in place to evaluate an inmate's prior sexual assault history. In making housing assignments, CDCR staff members were expected to elicit information about whether an inmate was ever an assailant in a sexual assault.<sup>51</sup> As part of its initial classification, NDCS administered predation risk assessment tools that included the identification of any sex-related misconduct or charges.<sup>52</sup> At TDCJ, its Unit Safe Prisons Program Coordinators reviewed an offender's history for any record of past sexual predator allegations, and sought to identify any history of aggression.<sup>53</sup>

*e. Extortion.*

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<sup>48</sup> (Tr., J. Baxter, 294:13-295:12 (Mar. 11, 2008) (BOP)).

<sup>49</sup> (BOP, Program Statement No. P5324.06, Sexually Abusive Behavior Prevention and Intervention Program (Apr. 27, 2005), at 7).

<sup>50</sup> (Tr., D. Colon, 330:7-12 (Mar. 12, 2008) (FDOC); *id.*, J. Stout, 335:8-15 (Mar. 13, 2008) (IDOC)).

<sup>51</sup> (CDCR, Initial Housing Review Form, CDCR 1882; Tr., J. Tilton, 30:18-31:5 (Mar. 11, 2008) (CDCR)).

<sup>52</sup> (NDCS, 2007 Risk Assessment Manual, at 3-4; NDCS, 2006 Initial Screening Instrument Manual, at 2).

<sup>53</sup> (TDCJ, SPP, at 7; TDCJ, Orientation – SPP Pt. 8; *see also* Tr., L. Dawson, 38:23-39:1 (Mar. 28, 2008) (TDCJ) (explaining that an inmate perpetrator may have raped someone previously)).

According to several hearing witnesses, inmates who engaged in extortion of other inmates were more prone to engage in sexual assault. As John Baxter, psychologist service administrator for BOP, noted, inmate perpetrators may have studied a target and then established a relationship with the potential victim; the relationship was often characterized by real or perceived indebtedness.<sup>54</sup> TDCJ also recognizes that extortion may have resulted in sexual assault; its Unit Safe Prisons Program Coordinators determined whether an inmate had a record for extortions, assault, trafficking, and trading.<sup>55</sup>

*f. Gang Affiliation.*

Several hearing witnesses considered an inmate's gang affiliation in determining whether he or she was more prone to engage in sexual assault. NDCS and TDCJ noted that a sexual assault predator may have been a member of a gang or other security threat group,<sup>56</sup> while CDCR assessed an inmate's gang affiliation in making housing assignments.<sup>57</sup>

*g. Aggressive Attitude During Intake*

According to IDOC and NDCS, offenders with intimidating or aggressive attitudes during intake were more prone to engage in sexual assault.<sup>58</sup>

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<sup>54</sup> (Tr., J. Baxter, Psychology Services Administrator, retired, 295:6-12 (Mar. 11, 2008) (BOP)).

<sup>55</sup> (TDCJ, SPP, at 7). Estelle Captain Lawrence Dawson also noted that an inmate perpetrator may have "money on the books." (Tr., L. Dawson, 38:23-39:1 (Mar. 28, 2008) (TDCJ)).

<sup>56</sup> (NDCS, 2007 Risk Assessment Manual, at 5-6; TDCJ, Orientation – SPP Pt. 8). However, Estelle Captain Bobby Jenkins suggested that gangs "don't believe in committing rapes and stuff like that." (Tr., B. Jenkins, 39:17-23 (Mar. 28, 2008) (TDCJ)).

<sup>57</sup> (Tr., J. Tilton, 31:2-7 (Mar. 11, 2008) (CDCR)).

<sup>58</sup> (IDOC, Sexual Violence Assessment Tool, at 4; NDCS, 2006 Initial Screening Instrument Manual, at 1).

#### **4. Identified Common Characteristics of Staff Perpetrators of Prison Rape**

After reviewing the documentary and testimonial evidence provided in connection with the Panel's hearings, the Panel identified twenty-nine common characteristics of staff sexual assault perpetrators.<sup>59</sup>

In an effort to prevent SOI sexual misconduct, BOP and IDOC developed warning signs to identify staff that may have a greater tendency to engage in sexual misconduct with an inmate. A staff member may raise a "red flag" if he or she displays the following characteristics: (1) over-identifies with an inmate and his or her issues; (2) engages in horse-play or sexual interaction with an inmate (including non-sexual interactions that may have escalated to sexual involvement); (3) is isolated from other staff; (4) grants special requests to an inmate or shows favoritism; (5) spends an unexplainable amount of time with an inmate; (6) exchanges telephone calls with an inmate; (7) is in the facility while off-duty (outside of his or her regular schedule); (8) is pregnant or is diagnosed with sexually transmitted disease; (9) is overly concerned about an inmate; (10) undergoes drastic behavioral change; (11) has sole involvement with an inmate; (12) views an inmate as indispensable to performing his or her assignment; (13) has unusually high or low number of inmate grievances; (14) confronts other staff over an inmate; (15) intercepts or revises an inmate's disciplinary infractions; (16) tracks outside inmate calls; (17) has isolated posts, positions, or work assignments; (18) cannot account for time; (19) has his or her family involved with an inmate's family; (20) works

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<sup>59</sup> In evaluating information provided by prison facilities, BJS emphasized that "a large proportion of substantiated incidents of staff sexual misconduct involve[ed] female staff with male inmates." (Tr., A. Beck, 21:21-22:3 (Mar. 11, 2008) (BJS)). As Ironwood Warden Debra Dexter further explained, one common concern, at least in male institutions, was that female staff, especially teachers, may have been prone to fall in love with male inmates. (*Id.*, D. Dexter, 165:9-18 (CDCR)).

in a secluded area with an inmate; (21) removes an inmate from his or her cell at unusual times; (22) experiences a personal crisis (e.g., divorce, ill health, bankruptcy, or death in the family); (23) has excessive knowledge about an inmate and his or her family; (24) intervenes or helps with an inmate's personal life and legal affairs; (25) shares food or snacks with an inmate; (26) testifies for an inmate, or requests special treatment for an inmate; (27) delegates duties to an inmate; (28) is lonely or depressed; or (29) brings into the facility large amounts of food, soda, or snacks.<sup>60</sup>

### **C. Common Characteristics of Prisons and Prison Systems With High or Low Prevalence of Prison Rape**

Pursuant to the Panel's mandate under PREA, it sought to identify common characteristics of prisons and prison systems with a high or low prevalence of prison rape. To accomplish this, the Panel reviewed and analyzed the information submitted by the prisons and prison systems in response to its document requests, which comprised thousands of pages of documents, as well as the written and oral sworn testimony of seventy-nine fact and expert witnesses in connection with the Panel's hearings.

As a result of the Panel's review and analysis, and in an effort to identify unique and common characteristics, it sought to answer seventy-two specific questions about each pertinent facility and system that encompassed ten main areas of inquiry:

(1) general PREA factors, which evaluated the designation of PREA coordinators at the

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<sup>60</sup> (BOP, Red Flags – Are We Paying Attention to Staff?, at unnumbered 1; IDOC, Sexual Misconduct Training Module Two, at 7-9). IDOC's training materials also emphasized that employees who had narcissistic personalities, those who were "rescuers," and those who were situationally distressed, including individuals who had relationship problems or were dissatisfied with life in general, were more likely to get involved with offenders. (IDOC, Sexual Misconduct Training Module Three, at 7-8).

system and facility levels; (2) policy factors, which investigated certain written policies and procedures regarding PREA-related issues; (3) training factors, which reviewed the extent to which certain PREA information was provided to inmates, correctional officers, and investigators; (4) investigative process factors regarding grievances and complaints, which assessed various facets of IOI and SOI sexual assault reports and investigations; (5) human resource factors, which evaluated various correctional officer and staff human resource issues; (6) operational factors, which investigated various inmate demographic and offender supervision issues; (7) housing classification factors, which reviewed housing assignment policies and procedures both during intake and after the report of a sexual assault; (8) medical and mental health factors, which assessed sexual assault response team resources and PREA training for mental health staff; (9) program services factors, which evaluated the level of inmate involvement in a facility's work and educational programs; and (10) inmate population factors, which investigated issues involving inmate sexual orientation, as well as inmate suicide and homicide rates.<sup>61</sup>

**1. Identified Characteristics Present In Prisons With Low Prevalence of Sexual Victimization and Absent from One or More Prisons or Prison Systems with a High Prevalence of Sexual Victimization**

After reviewing the documentary and testimonial evidence provided in connection with the Panel's hearings, the Panel identified five characteristics that were common to Ironwood, CDCR, and Schuylkill, BOP, which were the prisons with low prevalence rates of prison rape, and absent in one or more of the prisons or prison systems with a high prevalence of sexual victimization that participated in the hearings.

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<sup>61</sup> The questions evaluated by the Panel are provided in the Appendix to the instant Report.

While these factors were common to both of the low prevalence prisons, they were not unique to them, in that they were also shared by one or more of the high prevalence prisons as well.

- a. Prisons track inmate complaints alleging inmate-on-inmate sexual assault.<sup>62</sup>
- b. Prisons track inmate complaints alleging staff-on-inmate sexual assault.<sup>63</sup>
- c. Prisons have a low turnover rate among new corrections officers.<sup>64</sup>
- d. Prisons are fully staffed or almost fully staffed.<sup>65</sup>

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<sup>62</sup> Compare Cal. Penal Code § 2640; CDCR, Department Operations Manual (DOM), ch. 5. art. 44, § 54040.13; BOP, Program Statement No. P5324.06, at 15-16 (reflecting ability to track sexual assault complaints); Tr., G. Sapp, 22:20-23:3 (Mar. 12, 2008) (FDOC); *id.*, A. Johnson, 369:15-370:20 (grievances are logged and tracked); *id.*, D. Donahue, 12:8-21 (Mar. 13, 2008) (IDOC) (IDOC has new web-based grievance tracking system); *id.*, B. Livingston, 19:11-12 (Mar. 27, 2008) (TDCJ) (Safe Prisons Program includes “reporting, tracking and analysis of alleged sexual assaults”), *with id.*, R. Koester, 194:8-18 (Mar. 13, 2008) (IDOC) (there is no mechanism for tracking sexual assault complaints at Rockville); *id.*, A. Simon, 112:7-13 (Mar. 14, 2008) (NDCS) (an incident report that is not numbered could be lost); *id.*, B. Jenkins, 54:15-55:17 (Mar. 28, 2008) (TDCJ) (grievances “not numbered or tracked”).

<sup>63</sup> Compare Cal. Penal Code § 2640; CDCR, DOM, ch. 5. art. 44, § 54040.13; BOP, Program Statement No. P5324.06, at 15-16 (reflecting ability to track sexual assault complaints); Tr., G. Sapp, 22:20-23:3 (Mar. 12, 2008) (FDOC); *id.*, A. Johnson, 369:15-370:20 (grievances are logged and tracked); *id.*, D. Donahue, 12:8-21 (Mar. 13, 2008) (IDOC) (IDOC has new web-based grievance tracking system); *id.*, B. Livingston, 19:11-12 (Mar. 27, 2008) (TDCJ) (Safe Prisons Program includes “reporting, tracking and analysis of alleged sexual assaults”), *with id.*, R. Koester, 194:8-18 (Mar. 13, 2008) (IDOC) (there is no mechanism for tracking sexual assault complaints at Rockville); *id.*, A. Simon, 112:7-13 (Mar. 14, 2008) (NDCS) (an incident report that is not numbered could be lost); *id.*, B. Jenkins, 54:15-55:17 (Mar. 28, 2008) (TDCJ) (grievances “not numbered or tracked”).

<sup>64</sup> Compare Email from Terrie Flaherty, Correctional Business Manager, Ironwood State Prison (CDCR), to R. Siedlecki [not sworn testimony] (Aug. 6, 2008): “The annual turnover rate for C/O’s in 2006 was .009%. Of that rate there were 0 new C/O’s who quit/were terminated within their first year of work.” *and* Tr., H. Lappin, 204:9-205:4 (Mar. 11, 2008) (BOP) (reflecting low turnover rate), *with id.*, R. Houston, 26:4-18, 36:6-37:2 (Mar. 14, 2008) (NDCS); *id.*, B. Livingston, 72:6-20 (Mar. 27, 2008) (TDCJ) (reflecting high turnover rate).

<sup>65</sup> Compare Email from T. Flaherty (CDCR) to R. Siedlecki [not sworn testimony] (Aug. 6, 2008): “ISP is currently fully staffed in the C/O classification.”; Email from S. Batts (BOP) to S. McFarland & R. Siedlecki [not sworn testimony] (Aug. 1, 2008), *with* Tr., J. Tilton, 44:17-20, 45:19-46:16 (Mar. 11, 2008) (CDCR); *id.*, D. Dexter, 154:12-18 (CDCR); *with id.*, R. Houston, 34:10-18 (Mar. 14, 2008) (NDCS); *id.*, B. Livingston, 31:19-32:4 (Mar. 27, 2008) (TDCJ); *id.*, O. Black, 278:11-13 (Mar. 28, 2008) (TDCJ); *id.*,

e. Pornography (soft- and/or hard-core) among inmates is prohibited.<sup>66</sup>

## **2. Identified Unique Characteristics of Prisons and Prison Systems With High Prevalence of Prison Rape**

After reviewing the documentary and testimonial evidence provided in connection with the Panel's hearings, the Panel identified five characteristics that were shared by at least two of those prisons and prison systems with a high prevalence of prison rape that participated in the hearings and absent in both of the prisons with a low prevalence of prison rape.

a. Prisons are significantly understaffed.<sup>67</sup>

b. Prisons have a high turnover rate among new corrections officers.<sup>68</sup>

c. Prisons house maximum security inmates.<sup>69</sup>

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B. Rodeen, 278:25-279:1, 279:19-280:14 (TDCJ); *id.*, E. Williams, 272:21-273:2, 281:19-20 (TDCJ); *id.*, R. Thompson, 274:11-21, 287:7-21 (TDCJ).

<sup>66</sup> Compare Email from T. Flaherty (CDCR) to R. Siedlecki [not sworn testimony] (Aug. 6, 2008): "Inmates are not allowed to have pornography due to the departments Sexual Harassment Policy. Approximately 7 years ago the departments policy was changed from allowing full frontal nudity to zero nudity." *and* Tr., A. Leonard, 282:1-20 (Mar. 11, 2008) (BOP) (prohibiting certain kinds of pornography); Email from S. Batts (BOP) to S. McFarland & R. Siedlecki [not sworn testimony] (Aug. 1, 2008), *with id.*, S. Anderson, 158:7-12 (Mar. 12, 2008) (FDOC); *id.*, A. Simon, 99:13-21, 100:16-19 (Mar. 14, 2008) (NDCS) (permitting certain kinds of pornography).

<sup>67</sup> Compare Email from T. Flaherty (CDCR) to R. Siedlecki [not sworn testimony] (Aug. 6, 2008): "ISP is currently fully staffed in the C/O classification.", *with* Tr., J. Tilton, 44:17-20, 45:19-46:16 (Mar. 11, 2008) (CDCR); *id.*, D. Dexter, 154:12-18 (CDCR); Email from S. Batts (BOP) to S. McFarland & R. Siedlecki [not sworn testimony] (Aug. 1, 2008), *with* Tr., R. Houston, 34:10-18 (Mar. 14, 2008) (NDCS); *id.*, B. Livingston, 31:19-32:4 (Mar. 27, 2008) (TDCJ); *id.*, O. Black, 278:11-13 (Mar. 28, 2008) (TDCJ); *id.*, B. Rodeen, 278:25-279:1, 279:19-280:14 (TDCJ); *id.*, E. Williams, 272:21-273:2, 281:19-20 (TDCJ); *id.*, R. Thompson, 274:11-21, 287:7-21 (TDCJ).

<sup>68</sup> Compare Email from T. Flaherty (CDCR) to R. Siedlecki [not sworn testimony] (Aug. 6, 2008): "The annual turnover rate for C/O's in 2006 was .009%. Of that rate there were 0 new C/O's who quit/were terminated within their first year of work." *and* Tr., H. Lappin, 204:9-205:4 (Mar. 11, 2008) (BOP) (reflecting low turnover rate), *with id.*, R. Houston, 26:4-18, 36:6-37:2 (Mar. 14, 2008) (NDCS); *id.*, B. Livingston, 72:6-20 (Mar. 27, 2008) (TDCJ) (reflecting high turnover rate).

d. Soft pornography is permitted among the inmates.<sup>70</sup>

e. Prisons do not track inmate grievances alleging inmate-on-inmate sexual assault.<sup>71</sup>

### 3. Identification of Additional Characteristics of Both Prisons and Prison Systems With High and Low Prevalence of Sexual Victimization

In the preceding sections of this report, the Panel identifies (1) those characteristics that were true of the two prisons with a low prevalence of sexual victimization but absent in one or more of the prisons or prison systems with a high prevalence of sexual victimization (see Section II.C.1. above), and (2) those characteristics that were absent in both of the “low prevalence” prisons but true of at least two of the “high prevalence” prisons or prison systems (see Section II.C.2. above).

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<sup>69</sup> Compare Tr., J. Upchurch, 30:15-31:17 (Mar. 12, 2008) (FDOC); *id.*, A. Simon, 115:16-19 (Mar. 14, 2008) (NDCS); *id.*, B. Livingston, 22:23-23:3 (Mar. 27, 2008) (TDCJ) (housing maximum security inmates), *with id.*, D. Dexter, 155:18-21 (Mar. 11, 2008) (CDCR); *id.*, A. Leonard, 283:21-284:4 (BOP) (housing offenders at security levels less than maximum security).

<sup>70</sup> Compare Email from T. Flaherty (CDCR) to R. Siedlecki [not sworn testimony] (Aug. 6, 2008): “Inmates are not allowed to have pornography due to the departments Sexual Harassment Policy. Approximately 7 years ago the departments policy was changed from following full frontal nudity to zero nudity.” *and* Tr., A. Leonard, 282:1-20 (Mar. 11, 2008) (BOP) (prohibiting certain kinds of pornography); Email from S. Batts (BOP) to S. McFarland & R. Siedlecki [not sworn testimony] (Aug. 1, 2008), *with* Tr., S. Anderson, 158:7-12 (Mar. 12, 2008) (FDOC); *id.*, A. Simon, 99:13-21, 100:16-19 (Mar. 14, 2008) (NDCS) (permitting certain kinds of pornography).

<sup>71</sup> Compare Cal. Penal Code § 2640; CDCR, DOM, ch. 5. art. 44, § 54040.13; BOP, Program Statement No. P5324.06, at 15-16 (reflecting ability to track sexual assault complaints); Tr., G. Sapp, 22:20-23:3 (Mar. 12, 2008) (FDOC); *id.*, A. Johnson, 369:15-370:20 (grievances are logged and tracked); *id.*, D. Donahue, 12:8-21 (Mar. 13, 2008) (IDOC) (IDOC has new web-based grievance tracking system); *id.*, B. Livingston, 19:11-12 (Mar. 27, 2008) (TDCJ) (Safe Prisons Program includes “reporting, tracking and analysis of alleged sexual assaults”), *with id.*, R. Koester, 194:8-18 (Mar. 13, 2008) (IDOC) (there is no mechanism for tracking sexual assault complaints at Rockville); *id.*, A. Simon, 112:7-13 (Mar. 14, 2008) (NDCS) (an incident report that is not numbered could be lost); *id.*, B. Jenkins, 54:15-55:17 (Mar. 28, 2008) (TDCJ) (grievances “not numbered or tracked”).

In this section, the Panel also identifies those characteristics that were shared by at least one “low prevalence” prison and at least a majority (five of the eight) of the “high prevalence” prisons. The Panel believes it important to identify these common characteristics to emphasize that there may be a pivotal difference between policies on paper and how – or whether – those policies are actually implemented. Following each factor, the Panel suggests a more probative question that may explain how that factor can be true of both the “high” and “low” prisons.

At least one of the “low prevalence” prison systems and a majority of the “high prevalence” prison systems:

Have a PREA coordinator on site in the prison.<sup>72</sup>

*But what is his or her training, authority to act, and opportunity to train staff and inmates?*

Have a written policy on preventing sexual victimization.<sup>73</sup>

*But are the policies strictly and uniformly enforced?*

Have a policy and a criminal law against staff-on-inmate sexual misconduct.<sup>74</sup>

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<sup>72</sup> See, e.g., Tr., W. Still, 62:13-15 (Mar. 11, 2008) (CDCR); *id.*, G. Walters, 224:20-225:2 (BOP); *id.*, R. Brown, 61:15-17 (Mar. 13, 2008) (IDOC); *id.*, D. Thomas, 97:1-12 (Mar. 14, 2008) (NDCS); *id.*, R. Bales, 104:25-105:3 (Mar. 27, 2008) (TDCJ).

<sup>73</sup> See, e.g., CDCR, DOM, ch. 5, art. 44, Prison Rape Elimination Policy (Jan. 19, 2006), at 1-6; Ironwood, Operational Procedure No. 062, Suspected Sexual Assault (Jan. 2008), at 1-4; BOP, Program Statement No. P5324.06, at 1-19; BOP, Program Statement No. 3420.09, Standards of Employee Conduct (Feb. 5, 1999), at 8; Schuylkill, Institution Supplement No. SCH 5324.06, Sexually Abusive Behavior Prevention and Intervention Program (Jan. 12, 2007), at 1-2. Within BOP, each institution also is required to develop a supplement to the general BOP national program statement. (Tr., T. Sniezek, 333:15-334:11 (Mar. 11, 2008) (BOP)). See also FDOC, Procedure No. 108.010, Prison Rape: Prevention, Elimination and Investigation, at 1-11; Tr., G. Sapp, 22:8-19 (Mar. 12, 2008) (FDOC); IDOC, Policy & Administrative Procedure No. 02-01-115, Sexual Assault Prevention and Reporting, at 1-13; IDOC, Policy & Administrative Procedure No. 00-01-103, The Operation of the Office of Internal Affairs, at 1-13; Tr., D. Donahue, 10:8-11:2 (Mar. 13, 2008) (IDOC); Rockville, Operation Directive No. 0-08, Sexual Assault Prevention, at 1-3; NDCS, Administrative Regulation No. 203.11, Sexual Assault, at 1-7; TDCJ, SPP, at 1-31. The most comprehensive and impressive written policies on sexual assault were those of TDCJ, yet that system operates five of America’s ten facilities with the highest prevalence of sexual assault.

<sup>74</sup> See, e.g., Cal. Code Regs. tit. 15, § 3401 (2008); Cal. Penal Code § 289.6 (West 2006); CDCR DOM, ch. 5, art. 44, § 54040.3; 18 U.S.C. §§ 2241-2248 (2000); BOP, Program Statement No. P5324.06, at 4; Fla.

*But are the policy and law enforced, are staff prosecuted, and do other staff know about the consequences of their peer's misconduct?*

Have a well-known grievance procedure for inmates to pursue sexual victimization complaints.<sup>75</sup>

*But are the grievances tracked or can they be “forgotten” or destroyed?*<sup>76</sup>

Establish policy on how to investigate sexual victimization.<sup>77</sup>

*But are the policies carried out in practice and without recrimination or interference?*

Inform new inmates at orientation regarding sexual assault policies.<sup>78</sup>

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Stat. Ann. §§ 794.011, 944.35(3)(b)(2) (West 2008); FDOC, Procedure No. 108.010, at 8; IDOC, Policy & Administrative Procedure No. 02-01-115, at 1-2, 11-12; Ind. Code Ann. § 35-44-1-5 (West 2008); IDOC, Policy & Administrative Procedure No. 00-01-103, at 1; Neb. Rev. Stat. §§ 28-322.01, 28-322.02, 28-322.03 (2007); NDCS, Administrative Regulation No. 203.11, at 2, 4-6; Tex. Penal Code Ann. § 39.04 (Vernon 2007); TDCJ, SPP, at 8-9, 13-26; TDCJ, Executive Directive No. PD-29 (Rev. 2), Sexual Misconduct with Offenders, at 3.

<sup>75</sup> See, e.g., CDCR, DOM, ch. 5, art. 44, § 54040.4; CDCR, Notice to Inmates/Parolees, at 1; CDCR, Sexual Abuse/Assault Prevention & Intervention (rev. Oct. 2005), at 4; BOP, Sexual Abuse/Assault Prevention and Intervention (Oct. 1998), at 3-4; Tr., H. Lappin, 183:12-15 (Mar. 11, 2008) (BOP); *id.*, G. Sapp, 20:7-18, 21:7-14 (Mar. 12, 2008) (FDOC); IDOC, Policy & Administrative Procedure No. 02-01-115, at 7-8, 10; Rockville, Operation Directive No. 0-08, at Attachment A; Tr., J. Newlin, 237:12-21, 241:15-242:4 (Mar. 13, 2008) (IDOC); NDCS, Administrative Regulation No. 203.11, at 4; Tr., F. Britten, 361:6-362:12 (Mar. 14, 2008) (NDCS); TDCJ, SPP, at 14-16; TDCJ, SPP Orientation – Pt. 9; Tr., K. Wheat, 51:22-52:8 (Mar. 28, 2008) (TDCJ); *id.*, B. Jenkins, 53:13-23 (TDCJ).

<sup>76</sup> Compare Cal. Penal Code § 2640; CDCR, DOM, ch. 5, art. 44, § 54040.13; BOP, Program Statement No. P5324.06, at 15-16 (reflecting ability to track sexual assault complaints); Tr., G. Sapp, 22:20-23:3 (Mar. 12, 2008) (FDOC); *id.*, A. Johnson, 369:15-370:20 (grievances are logged and tracked); *id.*, D. Donahue, 12:8-21 (Mar. 13, 2008) (IDOC) (IDOC has new web-based grievance tracking system); *id.*, B. Livingston, 19:11-12 (Mar. 27, 2008) (TDCJ) (Safe Prisons Program includes “reporting, tracking and analysis of alleged sexual assaults”), with *id.*, R. Koester, 194:8-18 (Mar. 13, 2008) (IDOC) (there is no mechanism for tracking sexual assault complaints at Rockville); *id.*, A. Simon, 112:7-13 (Mar. 14, 2008) (NDCS) (an incident report that is not numbered could be lost); *id.*, B. Jenkins, 54:15-55:17 (Mar. 28, 2008) (TDCJ) (grievances “not numbered or tracked”).

<sup>77</sup> See, e.g., CDCR, DOM, ch. 5, art. 44, § 54040.9; BOP, Program Statement P5324.06, at 10-15; Tr., J. Tilton, 35:19-38:8 (Mar. 11, 2008) (CDCR); *id.*, B. Kovach, 230:1-231:18 (BOP); FDOC, Procedure No. 108.010, at 8; Tr., W. McNeil, 10:20-11:1 (Mar. 12, 2008) (FDOC); *id.*, G. Sapp, 21:17-22:6 (FDOC); *id.*, D. Hoffman, 206:19-207:3 (FDOC); *id.*, A. Johnson, 369:17-21 (FDOC); IDOC, Policy & Administrative Procedure No. 02-01-115, at 1, 11; Rockville, Operation Directive No. 0-08, at 2; Tr., D. Donahue, 45:1-17 (Mar. 13, 2008) (IDOC); NDCS, Administrative Regulation No. 203.11, at 5; Tr., R. Houston 56:11-20, 62:6-11 (Mar. 14, 2008) (NDCS); *id.*, B. Hansen, 170:12-172:12 (NDCS); TDCJ, SPP, at 16, 22-24; Tr., K. Wheat, 28:18-29:1 (Mar. 28, 2008) (TDCJ); *id.*, J. Moriarty, 144:14-16 (TDCJ).

<sup>78</sup> See, e.g., CDCR, DOM, ch. 5, art. 44, § 54040.4; Tr., W. Still, 67:17-68:2 (Mar. 11, 2008) (CDCR); *id.*, T. Riddle, 107:14-108:4 (CDCR); *id.*, D. Dexter, 161:5-162:2 (CDCR). Ironwood also presented a

*But how comprehensive is the orientation?*

Distribute written information to inmates on sexual assault policies.<sup>79</sup>

*But can the information be actually read and understood by inmates in their language and at their reading level?*

Have a written policy on services available to sexual assault victims.<sup>80</sup>

*But how well-publicized is it among inmates, especially among likely victims?*

Have a written policy or instructions requiring reporting of inmate-on-inmate sexual assault.<sup>81</sup>

*But are there disciplinary sanctions for staff who fail to report?*

Have multiple channels for inmates to report sexual assaults.<sup>82</sup>

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National Institute of Corrections video regarding sexual assault during inmate orientation. (Tr., R. Anti & D. Dexter, 166:20-167:9 (Mar. 11, 2008) (CDCR)). *See also* BOP, Program Statement No. P5324.06, at 9; Schuylkill, Admission & Orientation (A&O) Inmate Handbook, Federal Bureau of Prisons (Feb. 2008), at 24-25, 48; Tr., A. Leonard, 349:8-15 (Mar. 11, 2008) (BOP); FDOC, Procedure No. 108.010, at 7; Tr., G. Sapp, 23:13-20 (Mar. 12, 2008) (FDOC); NDCS, Administrative Regulation No. 201.02, Inmate Classification and Assignment – Initial Classification, Reception and Orientation, at 6, Attachment C; IDOC, Policy & Administrative Procedure No. 02-01-115, at 6; Rockville, Operation Directive No. 0-08, at 1; Tr., J. Stout, 311:1-19 (Mar. 13, 2008) (IDOC); TDCJ, SPP Pt. 8; Tr., B. Livingston, 17:11-14 (Mar. 27, 2008) (TDCJ); *id.*, D. Stacks, 51:22-52:2 (TDCJ).

<sup>79</sup> *See, e.g.*, CDCR, DOM, ch. 5, art. 44, § 54040.4; Tr., W. Still, 67:17-68:2 (Mar. 11, 2008) (CDCR); *id.*, D. Dexter, 161:5-162:2 (CDCR); BOP, Program Statement No. P5324.06, at 9; Schuylkill, A&O Inmate Handbook, at 24-25; Tr., A. Leonard, 349:8-15 (Mar. 11, 2008) (BOP); *id.*, J. Stout, 311:1-19 (Mar. 13, 2008) (IDOC); *id.*, B. Livingston, 17:11-14 (Mar. 27, 2008) (TDCJ); *id.*, D. Stacks, 51:22-52:2 (TDCJ).

<sup>80</sup> *See, e.g.*, CDCR, DOM, ch. 5, art. 44, § 54040.14; BOP, Program Statement No. P5324.06, at 12; Schuylkill, Institution Supplement No. SCH 5324.06, at 2; FDOC, Procedure No. 108.010, at 9; NDCS, Administrative Regulation No. 203.11, at 4, Attachment B; IDOC, Policy & Administrative Procedure No. 02-01-115, at 12; TDCJ, SPP, at 8-9, 10.

<sup>81</sup> *See, e.g.*, CDCR, DOM, ch. 5, art. 44, § 54040.5; BOP, Program Statement No. P5324.06, at 10; BOP, Program Statement No. 3420.09, at 10; Schuylkill, Institution Supplement No. SCH 5324.06, at 2; FDOC, Procedure No. 108.010, at 5, 7; FDOC, Classification and Central Records, ch. 33-601.303; IDOC, Policy & Administrative Procedure No. 02-01-115, at 10; IDOC, Policy & Administrative Procedures No. 00-01-103, at 5; NDCS, Administrative Regulation No. 203.11, at 4; TDCJ, SPP, at 5, 22-23.

<sup>82</sup> *See, e.g.*, CDCR, DOM, ch. 5, art. 44, § 54040.4; CDCR, Notice to Inmates/Parolees, at 1; CDCR, Sexual Abuse/Assault Prevention & Intervention, at 4; BOP, Sexual Abuse/Assault Prevention and Intervention, at 3-4; Tr., H. Lappin, 183:12-15 (Mar. 11, 2008) (BOP); *id.*, G. Sapp, 20:7-18, 21:7-14 (Mar. 12, 2008) (FDOC); IDOC, Policy & Administrative Procedure No. 02-01-115, at 7-8, 10; Rockville, Operation Directive No. 0-08, at Attachment A; Tr., J. Newlin, 237:12-21, 241:15-242:4 (Mar. 13, 2008) (IDOC); NDCS, Administrative Regulation No. 203.11, at 4; Tr., F. Britten, 361:6-362:12 (Mar. 14, 2008) (NDCS); TDCJ, SPP, at 14-16; TDCJ, SPP Orientation – Pt. 9; Tr., K. Wheat, 51:22-52:8 (Mar. 28, 2008) (TDCJ); *id.*, B. Jenkins, 53:13-23 (TDCJ).

*But how well-publicized is it among inmates, especially among likely victims?*

Have a hotline to an agency outside the facility for both inmates and staff to report sexual assaults.<sup>83</sup>

*But how well-publicized is it among inmates, especially among likely victims?*

Have a written policy punishing inmates or staff for knowingly making false allegations of sexual assaults.<sup>84</sup>

*But are people actually prosecuted for violating it?*

Provide pre-service staff training (in the academy) on sexual assault.<sup>85</sup>

*But are staff tested on what is taught and are there consequences for failure to master the material?*

Provide in-service staff training and periodic “refresher” updates on sexual assault policy and procedure.<sup>86</sup>

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<sup>83</sup> See, e.g., CDCR, DOM, ch. 5, art. 44, § 54040.4; Tr., T. Riddle, 109:17-110:4 (Mar. 11, 2008) (CDCR); *id.*, G. Sapp, 21:7-22:6 (Mar. 12, 2008) (FDOC); *id.*, A. Johnson, 384:17-18 (FDOC); IDOC, Policy & Administrative Procedure No. 00-01-103, at 7-8; Tr., J. Moriarty, 124:17-18 (Mar. 28, 2008) (TDCJ).

<sup>84</sup> See, e.g., Cal. Penal Code § 2637(c); CDCR, DOM, ch. 5, art. 44, § 54040.11.1; Tr., D. Dexter, 173:6-16 (Mar. 11, 2008) (CDCR); *id.*, B. Kovach, 285:18-286:16 (BOP); Schuykill, A&O Inmate Handbook, at 67 (noting that lying or providing a false statement to a staff member was misconduct subject to sanctions); BOP, Program Statement No. P5270.07, Inmate Discipline and Special Housing Units (Dec. 29, 1987), at ch. 4, 11 (same); Fla. Stat. § 944.35(4)(b) (West 2008); TDCJ, Executive Directive No. PD-29 (Rev. 2), Sexual Misconduct with Offenders, at 4.

<sup>85</sup> See, e.g., CDCR, DOM, ch. 5, art. 44, § 54040.4; IDOC, Staff Development & Training – Preservice Academy – PREA (June 2007); NDCS, Staff Training Academy Course Outline – Pre-Service – Sexual Abuse/Assault Awareness (rev. July 2005); Tr., B. Livingston, 17:20-24 (Mar. 27, 2008) (TDCJ); *id.*, D. Stacks, 48:2-4 (TDCJ); *id.*, J. T. Morgan, 52:14-24 (Apr. 30, 2008) (TDCJ).

<sup>86</sup> See, e.g., CDCR, DOM, ch. 5, art. 44, § 54040.4; Tr., D. Dexter, 166:12-19 (Mar. 11, 2008) (CDCR); BOP, Program Statement No. P5324.06, at 7-9; BOP, Annual Training FY 2006 – Sexually Abusive Behavior Prevention and Intervention Program, at 1; Tr., B. Kovach, 279:15-280:19 (Mar. 11, 2008) (BOP); *id.*, A. Leonard, 281:2-17, 349:17-350:9 (BOP); *id.*, H. Lappin, 331:21-333:14 (BOP); FDOC, Procedure No. 108.010, at 5-6; FDOC, Job Manual of Common Tasks – On-Line In-Service for All FDOC Staff; Tr., G. Sapp, 23:4-12 (Mar. 12, 2008) (FDOC); IDOC, Policy & Administrative Procedure No. 01-01-115, at 5; IDOC, Staff Development and Training – Sexual Misconduct – Modules One, Two, Three, and Four (2003); Rockville, Operation Directive No. 0-08, at 1; Tr., R. Brown, 119:1-19 (Mar. 13, 2008) (IDOC); *id.*, B. Hansen, 175:18-176:20 (IDOC); NDCS, Administrative Regulation No. 114.05, Employee In-Service Training, at 3-5; TDCJ, SPP, at 6; Tr., B. Livingston, 17:20-24 (Mar. 27, 2008) (TDCJ); *id.*, D. Stacks, 48:11-15, 48:17-19, 67:3-8, 67:23-68:12 (TDCJ); *id.*, J. T. Morgan, 52:14-53:1 (Apr. 30, 2008) (TDCJ); *id.*, A. Castillo, 54:12-17 (TDCJ).

*But are staff tested on what is taught and are there consequences for failure to master the material?*

They train investigators how to conduct sexual assault investigations.<sup>87</sup>  
*But what is the quality of the training? For example, do they clarify what standard of review should be used in weighing evidence (more likely than not, clear and convincing, or beyond a reasonable doubt)?*

Have a policy that the reporting of inmate-on-inmate sexual assault automatically triggers an investigation.<sup>88</sup>

*But is an investigation always carried out?*

Have a policy that the reporting of staff-on-inmate sexual assault automatically triggers an investigation.<sup>89</sup>

*But is an investigation always carried out?*

Use some form of assessment instrument to identify potential inmate sexual predators.<sup>90</sup>

*But what factors does the instrument consider and how accurate is the information that is gleaned from the inmate?*

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<sup>87</sup> See, e.g., CDCR, DOM, ch. 5, art. 44, § 54040.4; BOP, Program Statement No. P5324.06, at 9, 13; Tr., B. Kovach, 279:15-280:19 (Mar. 11, 2008) (BOP); IDOC, Policy & Administrative Procedure No. 02-01-115 – Sexual Assault Prevention and Reporting, at 11; IDOC, Operation Directive No. 0-08 – Sexual Assault Prevention, at 2; Tr., J. Moriarty, 126:14-19 (Mar. 28, 2008) (TDCJ); *id.*, L. Dawson, 90:19-21 (TDCJ).

<sup>88</sup> See, e.g., CDCR, DOM, ch. 5, art. 44, § 54040.9; BOP, Program Statement P5324.06, at 10-15; Tr., B. Kovach, 230:1-231:18 (Mar. 11, 2008) (BOP); FDOC, Procedure No. 108.010, at 8; Tr., D. Hoffman, 206:19-207:3 (Mar. 12, 2008) (FDOC); *id.*, A. Johnson, 369:17-21 (FDOC); IDOC, Policy & Administrative Procedure No. 02-01-115, at 1, 11 (allegations referred to Internal Affairs staff); Rockville, Operation Directive No. 0-08, at 2; NDCS, Administrative Regulation No. 203.11, at 5 (allegations referred to corrections investigators); TDCJ, SPP, at 16, 22-24; Tr., K. Wheat, 28:18-29:1 (Mar. 28, 2008) (TDCJ).

<sup>89</sup> See, e.g., CDCR, DOM, ch. 5, art. 44, § 54040.9; BOP, Program Statement P5324.06, at 10-15; Tr., B. Kovach, 230:1-231:18 (Mar. 11, 2008) (BOP); FDOC, Procedure No. 108.010, at 8; Tr., D. Hoffman, 206:19-207:3 (Mar. 12, 2008) (FDOC); *id.*, A. Johnson, 369:17-21 (FDOC); IDOC, Policy & Administrative Procedure No. 02-01-115, at 1, 11 (allegations referred to Internal Affairs staff); Rockville, Operation Directive No. 0-08, at 2; NDCS, Administrative Regulation No. 203.11, at 5 (allegations referred to corrections investigators); TDCJ, SPP, at 16, 22-24; Tr., K. Wheat, 28:18-29:1 (Mar. 28, 2008) (TDCJ).

<sup>90</sup> See, e.g., Cal. Penal Code § 2636; Tr., J. Tilton, 31:2-7 (Mar. 11, 2008) (CDCR); BOP, Intake Screening Form (Feb. 29, 2008); Tr., A. Leonard, 299:17-300:15 (Mar. 11, 2008) (BOP); FDOC, Procedure No. 601.209, Reception Process – Initial Classification, at 5, 8; IDOC, Policy & Administrative Procedure No. 02-01-115, at 8-9; Rockville, Operation Directive No. 0-08, at 1-2; Tr., R. Brown, 80:17-81:14; 119:20-120:8 (Mar. 13, 2008) (IDOC); NDCS, Administrative Regulation No. 201.02, at 4, Attachments A, B; TDCJ, SPP, at 6-7, SPP-08; Tr., R. Bales, 117:14-121:16 (Mar. 27, 2008) (TDCJ).

Use some form of assessment instrument to identify potential inmate sexual victims.<sup>91</sup>

*But what factors does the instrument consider and how accurate is the information that is gleaned from the inmate? Is the assessment appropriate to the gender of the inmate?*

Assign both sexual assault victims as well as alleged sexual assault perpetrators to administrative segregation, by policy or practice.<sup>92</sup>

Have staff assigned to respond to an allegation of sexual assault.<sup>93</sup>

*But does this team have the necessary training, authority, and responsibility to respond in a coordinated fashion, and do they respond immediately?*

#### **D. Best Practices to Lessen the Risk of Rape in U.S. Prisons**

The publication of the preceding findings based on the Panel's public hearings and document review (sections II.A. – C.) complete this Panel's responsibility under PREA with respect to prisons and prison systems. The Panel's findings, together

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<sup>91</sup> See, e.g., Cal. Penal Code § 2636; Tr., J. Tilton, 31:2-7 (Mar. 11, 2008) (CDCR); BOP, Intake Screening Form; Tr., A. Leonard, 299:17-300:15 (Mar. 11, 2008) (BOP); FDOC, Procedure No. 601.209, at 5, 8; IDOC, Policy & Administrative Procedure No. 02-01-115, at 8-9; Rockville, Operation Directive No. 0-08, at 1-2; Tr., R. Brown, 80:17-81:14; 119:20-120:8 (Mar. 13, 2008) (IDOC); NDCS, Administrative Regulation No. 201.02, at 4, Attachments A, B; TDCJ, SPP, at 6-7, SPP-08; Tr., R. Bales, 117:14-121:16 (Mar. 27, 2008) (TDCJ).

<sup>92</sup> See, e.g., Tr., R. Anti, 131:11-133:20 (Mar. 11, 2008) (CDCR); *id.*, J. Tilton, 45:15-18 (CDCR); BOP, Program Statement No. P5270.07, ch. 9, at 7-15; Tr., H. Lappin, 314:18-315:11 (Mar. 11, 2008) (BOP); FDOC, Procedure No. 108.10, at 7; Tr., G. Sapp, 18:11-18 (Mar. 12, 2008) (FDOC); NDCS, Administrative Regulation No. 201.05 – Inmate Classification & Assignment – Special Management Inmates, at 1-11; IDOC, Policy & Administrative Procedure No. 01-02-115, at 11; TDCJ, SPP, at 9-12, 16; Tr., J. White, 164:24-165:13 (Mar. 28, 2008) (TDCJ).

<sup>93</sup> See, e.g., Tr., T. Riddle, 90:8-12 (Mar. 11, 2008) (CDCR) (there is “not a SART [Sexual Assault Response Team] team per se”); *id.*, G. Walters, 231:19-232:17 (BOP) (explaining multi-person response to sexual assault allegations, but not called SART); *id.*, T. Sniezek, 335:8-7 (BOP); *id.*, B. Hansen, 169:1-12 (Mar. 14, 2008) (NDCS) (testifying no official SART team exists, but personnel on staff to deal with sexual assault); *id.*, S. Anderson, 147:11-13 (Mar. 12, 2008) (FDOC); *id.*, D. Stacks, 55:11-25 (Mar. 27, 2008) (TDCJ). Although several facilities do have staff trained to respond to sexual assault allegations (e.g. nurses, psychologists), the testimony suggests that these “teams” are composed of trained individuals, but they respond independently to allegations, rather than as part of a coordinated effort.

with its suggested best practices below, will be considered by the National Prison Rape Reduction Commission. In the Prison Rape Elimination Act, Congress gave to the Commission the exclusive responsibility of recommending to the Attorney General and to the Secretary of Health and Human Services national standards for detecting, preventing, reducing, and punishing prison rape.<sup>94</sup> To assist the Commission in formulating those standards, the Chair of the Commission, the Honorable Reggie Walton, asked the Panel to provide the Commission with a report on best practices in correctional facilities, based on the Panel's public hearings. The Commission will propose national standards in early 2009. Under PREA, however, the Commission may not "propose a recommended standard that would impose substantial additional costs on Federal, state, or local prison authorities."<sup>95</sup> The Attorney General then will have one year to publish a final rule adopting national standards.<sup>96</sup>

Therefore, the Panel identifies for the Commission, for BJS, and for correctional administrators and policymakers the following list of best practices, which are based on the Panel's nine days of hearings involving six prison systems, thousands of pages of documents, and seventy-nine fact and expert witnesses:

1. The management of the prison system (beginning with the Secretary of the Department of Corrections) must believe that sexual assault – both IOI and SOI – can and will occur in their facilities unless they make prevention a high and unequivocal priority. Unless zero tolerance is clearly and repeatedly conveyed from the top down, the best PREA policy will be little more than a paper façade.<sup>97</sup>

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<sup>94</sup> 42 U.S.C. 15606(e)(1).

<sup>95</sup> 42 U.S.C. 15606(e)(3).

<sup>96</sup> 42 U.S.C. 15607(a)(1).

<sup>97</sup> The CEOs of two of the four systems with the highest reported prevalence of sexual assault testified that they enforced a "zero tolerance" policy system-wide. (Tr., D. Donahue, 351:2-352:11; *see also* 10:8-21 (Mar. 13, 2008) (IDOC); *id.*, R. Houston, 44:21-45:2, 64:4-7 (Mar. 14, 2008) (NDCS)). In addition, the CEOs of the other two "highest prevalence" prisons testified that, during the course of the Panel hearings, they developed a clearer understanding of how their systems could have a sexual assault problem, and they

2. When making inmate housing assignments, staff should determine and consider, among other factors, the risk of sexual predation or victimization of the inmate. To do this, staff must use a risk assessment instrument that includes questions relevant to the characteristics of potential perpetrators and victims, including sexual orientation.<sup>98</sup> Housing classification officers should also request that the jail or the sending institution forward on or before the inmate's arrival his or her history of sexual assault.<sup>99</sup>
3. Whenever possible, interview new inmates privately when assessing them for classification, prison job assignments, and housing assignments.<sup>100</sup> Inmates must be assured of confidentiality so they will be more open to discussing sexual orientation, whether they were a victim of sexual assault in the past, and the like. Such questions should be included in any assessment tool. Train staff in administering this tool.
4. Video Surveillance. As funding permits:
  - Install more video cameras in places where assaults are more likely to occur (backroom kitchen areas, laundry, supply closets, showers, behind stairwells, cells of inmates who are high risk of being victims or predators).<sup>101</sup>
  - Have staff monitor video cameras, at least periodically.<sup>102</sup>

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ultimately testified they would expect their staff to vigorously enforce a “zero tolerance” policy in every facility. *See* Tr., W. McNeil, 389:1-395:1 (Mar. 12, 2008) (FDOC); *see also* 11:7, 13:21, 22:11, 23:5 (FDOC); *id.*, B. Livingston, 16:9-14 (Mar. 27, 2008) (TDCJ), 188:14-19 (Mar. 28, 2008) (TDCJ); *id.*, N. Quarterman, 140:9-143:23 (Apr. 30, 2008) (TDCJ); *see also* 16:12, 40:21, 48:4, 65:20, 68:7 (TDCJ).

<sup>98</sup> *See, e.g.*, Cal. Penal Code § 2636; Tr., J. Tilton, 31:2-7 (Mar. 11, 2008) (CDCR); BOP, Intake Screening Form; Tr., A. Leonard, 299:17-300:15 (Mar. 11, 2008) (BOP); FDOC, Procedure No. 601.209, at 5, 8; IDOC, Policy & Administrative Procedure No. 02-01-115, at 8-9; Rockville, Operation Directive No. 0-08, at 1-2; Tr., R. Brown, 80:17-81:14; 119:20-120:8 (Mar. 13, 2008) (IDOC); NDCS, Administrative Regulation No. 201.02, at 4, Attachments A, B; TDCJ, SPP, at 6-7, SPP-08; Tr., R. Bales, 117:14-121:16 (Mar. 27, 2008) (TDCJ).

<sup>99</sup> (Tr., R. Anti, 120:5-13, 121:7-122:14 (Mar. 11, 2008) (CDCR); *id.*, H. Lappin, 192:14-193:7 (BOP); *id.*, A. Leonard, 306:5-13 (BOP); *id.*, D. Colon, 321:7-9 (Mar. 12, 2008) (FDOC); *id.*, D. Donahue, 55:3-6 (Mar. 13, 2008) (IDOC); *id.*, R. Houston, 254:17-255:20 (Mar. 14, 2008) (NDCS); *id.*, J. T. Morgan, 103:15-104:2 (Apr. 30, 2008) (TDCJ); *id.*, A. Castillo, 104:3-21 (TDCJ)).

<sup>100</sup> (*Id.*, R. Anti, 123:2-9 (Mar. 11, 2008) (CDCR); *id.*, D. Dexter, 159:21-160:8 (CDCR); *id.*, D. Colon, 323:2-324:19 (Mar. 12, 2008) (FDOC); *id.*, D. Ballard, 185:9-21 (Mar. 28, 2008) (TDCJ)).

<sup>101</sup> (*Id.*, W. Still, 69:17-70:3 (Mar. 11, 2008) (CDCR); *id.*, R. Brown, 104:8-105:12 (Mar. 13, 2008) (IDOC); *id.*, K. Wheat, 21:2-11 (Mar. 28, 2008) (TDCJ); *id.*, K. Wheat, L. Dawson & B. Jenkins, 46-49 (TDCJ); *id.*, O. Black, 256:3-18 (TDCJ); *id.*, A. Castillo, 56:21-57:22 (Mar. 30, 2008) (TDCJ)).

<sup>102</sup> (*Id.*, J. Upchurch, 39:15-18 (Mar. 12, 2008) (FDOC); *id.*, A. Simon & R. Brittenham, 119:8-18 (Mar. 14, 2008) (NDCS); *id.*, R. Thompson, 240:8-11 (Mar. 28, 2008) (TDCJ)).

- Ensure that video cameras are recording 24 hours per day and that the “tapes” are archived for at least 90 days, in the event that an assault is alleged in the recorded area.<sup>103</sup>
5. Have independent (i.e., not part of the prison system) investigators conduct or at least oversee any investigation of sexual victimization in prisons.<sup>104</sup>
  6. Except in emergencies and to the extent permissible by employment law, limit those who participate in or observe strip searches of inmates to correctional officers of the same sex as the inmate. Except in emergencies or upon reasonable suspicion of contraband and to the extent permissible by employment law, prohibit pat downs of female inmates by male officers.<sup>105</sup>
  7. Train staff how childhood abuse, sexual abuse and other trauma uniquely affect and surface among men and women inmates.<sup>106</sup>
  8. As much as possible and to the extent permissible by employment law, ensure that correctional officers assigned to floor roving during shower times or assigned to the floor of the housing units during night shifts are of the same sex as the inmates in that unit.<sup>107</sup>
  9. In future construction, utilize better prison designs to minimize blind spots (i.e., better lines of sight into cells and showers).<sup>108</sup>

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<sup>103</sup> (*Id.*, W. Still, 71:1-72:20 (Mar. 11, 2008) (CDCR); *id.*, J. Upchurch, 39:15-18 (Mar. 12, 2008) (FDOC); *id.*, G. Sapp, 54:15-55:1 (FDOC); *id.*, D. Hoffman, 214:20-213:4 (FDOC); *id.*, A. Simon, 161:5-11 (Mar. 14, 2008) (NDCS); *id.*, D. Stacks, 52:24-53:9 (Mar. 27, 2008) (TDCJ)).

<sup>104</sup> *See, e.g.*, CDCR, DOM, ch. 5, art. 44, § 54040.9; BOP, Program Statement P5324.06, at 10-15; Tr., J. Tilton, 35:19-38:8 (Mar. 11, 2008) (CDCR); *id.*, B. Kovach, 230:1-231:18 (Mar. 11, 2008) (BOP); FDOC, Procedure No. 108.010, at 8; Tr., W. McNeil, 10:20-11:1 (Mar. 12, 2008) (FDOC); *id.*, G. Sapp, 21:17-22:6 (FDOC); *id.*, D. Hoffman, 206:19-207:3 (FDOC); *id.*, A. Johnson, 369:17-21 (FDOC); IDOC, Policy & Administrative Procedure No. 02-01-115, at 1, 11; Rockville, Operation Directive No. 0-08, at 2; Tr., D. Donahue, 45:1-17 (Mar. 13, 2008) (IDOC); NDCS, Administrative Regulation No. 203.11, at 5; Tr., R. Houston 56:11-20, 62:6-11 (Mar. 14, 2008) (NDCS); *id.*, B. Hansen, 170:12-172:12 (NDCS); TDCJ, SPP, at 16, 22-24; Tr., K. Wheat, 28:18-29:1 (Mar. 28, 2008) (TDCJ); *id.*, J. Moriarty, 144:14-16 (TDCJ).

<sup>105</sup> (*Id.*, W. Still, 78:20-79:16 (Mar. 11, 2008) (CDCR); *id.*, J. Upchurch, 105:21-112:12 (Mar. 12, 2008) (FDOC); *id.*, R. M. Lawson, 136:13-140:9 (Mar. 13, 2008) (IDOC); *id.*, A. Simon, 148:12-150:3 (Mar. 14, 2008) (NDCS)).

<sup>106</sup> (*Id.*, J. Stout, 309:5-14, 320:12-321:8 (Mar. 13, 2008) (IDOC); *id.*, O. Black, 191:11-192:1, 212:20-213:10 (Mar. 28, 2008) (TDCJ)).

<sup>107</sup> (*Id.*, J. Upchurch, 105:21-107:20 (Mar. 12, 2008) (FDOC); *id.*, A. Johnson, 343:9-17 (FDOC); *id.*, R. M. Lawson, 136:13-138:2 (Mar. 13, 2008) (IDOC)).

<sup>108</sup> (*Id.*, T. Riddle, 92:7-19 (Mar. 11, 2008) (CDCR); H. Lappin, 217:5-218:14 (BOP); *id.*, J. Upchurch, 40:9-12 (Mar. 12, 2008) (FDOC)). The Federal Bureau of Prisons, which administers one of the prisons

10. Except in emergencies, do not routinely require mandatory overtime for correctional officers.<sup>109</sup> Ensure that officers-especially those who often volunteer for overtime-do not establish a pattern of working in the same location in the prison.
11. Subject to negotiation in collective bargaining agreements, provide wardens with greater flexibility in shift arrangements (e.g., to permit shorter shifts, such as 10 to 12-hour shifts instead of 16-hour shifts).<sup>110</sup>
12. Maintain adequate numbers of correctional officers at high-risk times and areas.<sup>111</sup>
13. Offer higher pay to prison staff so as to better attract and retain recruits and to retain experienced staff.<sup>112</sup> After the Panel's hearings, the Texas prison system instituted on its own initiative signing bonuses for new correctional officer recruits at their unit with the highest reported prevalence (Estelle).<sup>113</sup>
14. Further enhance staff careers by certifying them to be law enforcement officers.<sup>114</sup>
15. Provide more and better training of prison staff in the requirements of PREA and the system's sexual assault policies, and require that staff perform satisfactorily in testing of same, with meaningful career consequences for

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with a low incidence of sexual victimization, said doing this had greatly helped with its supervision of inmates.

<sup>109</sup> (*Id.*, R. Houston, 34:10-18 (Mar. 14, 2008) (NDCS); *id.*, A. Simon, 130:16-131:7 (NDCS); *id.*, B. Rodeen, 269:25-270:13 (Mar. 28, 2008) (TDCJ)).

<sup>110</sup> (*Id.*, R. Houston, 35:13-36:5, 83:7-84:21 (Mar. 14, 2008) (NDCS)). The director of one prison system with a high incidence of sexual victimization (NDCS) said it would help him to have 10-12 hour shifts as this would cut down on mandatory overtime. (Union work rules presently forbid him from doing this.)

<sup>111</sup> Two of the prisons with the highest prevalence of sexual assault (NDCS and TDCJ) reported significant shortages of staff. *See supra* note 71 and accompanying text.

<sup>112</sup> (Tr., J. Tilton, 46:4-16 (Mar. 11, 2008) (CDCR)). The prison system with five of the ten prisons with the highest reported prevalence of sexual assault – TDCJ – reported that it loses 43% of its officers in their first year and suffers a 24% overall correctional staff attrition rate, and attributes this largely to low staff salaries. (*Id.*, B. Livingston, 72:6-20 (Mar. 27, 2008) (TDCJ); *id.*, B. Jenkins, 8:2-10 (Mar. 28, 2008) (TDCJ); *id.*, O. Black, 267:12-20 (TDCJ)).

<sup>113</sup> (*Id.*, N. Quarterman, 142:6-15 (Apr. 30, 2008) (TDCJ)).

<sup>114</sup> (*Id.*, H. Lappin, 197:20-198:4 (Mar. 11, 2008) (BOP); *id.*, B. Hansen, 171:16-19 (Mar. 14, 2008) (NDCS)).

those who repeatedly fail such testing.<sup>115</sup> The latter may require negotiation with staff labor unions.

16. Establish close control and supervision over staff who have access to remote, higher-risk areas (e.g., laundry, commissary, classroom), including strict accounting for who checks out keys to such unsupervised areas.<sup>116</sup>
17. Remove doors that conceal high-risk areas (food preparation, laundry, etc.). Install see-through doors on closets, high-risk cells, meat coolers, and laundry rooms, and increase visibility inside offices and rooms where medical or mental health staff meet in private with inmates.<sup>117</sup>
18. Establish a telephone hotline whereby inmates can report threats and sexual victimization confidentially and directly to the office of the prosecutor or system inspector general.<sup>118</sup>
19. Implement a peer training program in which appropriately-selected and – trained inmates teach new inmates about how to avoid sexual victimization in that facility and how to report threats and assaults. One of the prisons with the

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<sup>115</sup> There is TDCJ testimony that there were adverse consequences for an individual who failed pre-service or in-service training. (*Id.*, D. Stacks, 67:3-8, 67:23-68:12 (Mar. 27, 2008) (TDCJ)). *See also* CDCR, DOM, ch. 5, art. 44, § 54040.4; Tr., D. Dexter, 166:12-19 (Mar. 11, 2008) (CDCR); BOP, Program Statement No. P5324.06, at 7-9; BOP, Annual Training FY 2006 – Sexually Abusive Behavior Prevention and Intervention Program, at 1; Tr., B. Kovach, 279:15-280:19 (Mar. 11, 2008) (BOP); *id.*, A. Leonard, 281:2-17, 349:17-350:9 (BOP); *id.*, H. Lappin, 331:21-333:14 (BOP); FDOC, Procedure No. 108.010, at 5-6; FDOC, Job Manual of Common Tasks – On-Line In-Service for All FDOC Staff; Tr., G. Sapp, 23:4-12 (Mar. 12, 2008) (FDOC); IDOC, Policy & Administrative Procedure No. 01-01-115, at 5, 11; IDOC, Operation Directive No. 0-08 – Sexual Assault Prevention, at 2; IDOC, Staff Development & Training – Preservice Academy – PREA (June 2007); NDCS, Staff Training Academy Course Outline – Pre-Service – Sexual Abuse/Assault Awareness (rev. July 2005); IDOC, Staff Development and Training – Sexual Misconduct – Modules One, Two, Three, and Four (2003); Rockville, Operation Directive No. 0-08, at 1; Tr., R. Brown, 119:1-19 (Mar. 13, 2008) (IDOC); *id.*, B. Hansen, 175:18-176:20 (IDOC); NDCS, Administrative Regulation No. 114.05, Employee In-Service Training, at 3-5; TDCJ, SPP, at 6; Tr., B. Livingston, 17:20-24 (Mar. 27, 2008) (TDCJ); *id.*, D. Stacks, 48:2-19, 67:3-8, 67:23-68:12 (TDCJ); *id.*, J. Moriarty, 126:14-19 (Mar. 28, 2008) (TDCJ); *id.*, L. Dawson, 90:19-21 (TDCJ); *id.*, J. T. Morgan, 52:14-53:1 (Apr. 30, 2008) (TDCJ); *id.*, A. Castillo, 54:12-17 (TDCJ).

<sup>116</sup> (Tr., H. Lappin, 342:4-8 (Mar. 11, 2008) (BOP); *id.*, R. Brown, 92:14-95:1 (Mar. 13, 2008) (IDOC); *id.*, J. Newlin, 278:21-280:20 (IDOC); *id.*, D. Thomas, 208:8-209:2 (Mar. 14, 2008) (NDCS); *id.*, F. Britten, R. Brittenham & A. Simon, 343:21-347:5 (NDCS); *id.*, J. Moriarty, 148:12-24 (Mar. 28, 2008) (TDCJ); *id.*, L. Dawson, 88:14-89:3 (TDCJ); *id.*, R. Thompson, 245:16-246:9 (TDCJ)).

<sup>117</sup> (*Id.*, D. Thomas, 207:21-209:1 (Mar. 14, 2008) (NDCS); *id.*, D. Stacks, 54:21-55:4 (Mar. 27, 2008) (TDCJ); *id.*, L. Dawson, 88:2-23 (Mar. 28, 2008) (TDCJ); *id.*, E. Williams, 282:22-23 (TDCJ); *id.*, B. Rodeen, 283:3-284:8 (TDCJ)).

<sup>118</sup> *See, e.g.*, CDCR, DOM, ch. 5, art. 44, § 54040.4; Tr., T. Riddle, 109:17-110:4 (Mar. 11, 2008) (CDCR); *id.*, G. Sapp, 21:7-22:6 (Mar. 12, 2008) (FDOC); *id.*, A. Johnson, 384:17-18 (FDOC); IDOC, Policy & Administrative Procedure No. 00-01-103, at 7-8; Tr., J. Moriarty, 124:17-18 (Mar. 28, 2008) (TDCJ).

lowest incidence of sexual victimization (CDCR) used such a program with significant effect.<sup>119</sup>

20. Place staff offices inside housing units, so staff are more present and familiar with their inmates and the environment.<sup>120</sup>
21. Replace inmate idleness with work and programming (vocational, educational, chemical dependency therapy, etc.).<sup>121</sup>
22. Reduce prison overcrowding. Obviously, an overcrowded prison must divert staff to supervision and away from programming. Triple-bunked maximum security felons crammed in a gymnasium with little recreation or programming is a “perfect storm” in the making as far as sexual assault is concerned.<sup>122</sup> This may require more money, faster adjudication of pre-trial detainees, and/or amendment of sentencing guidelines.
23. Encourage the warden and senior management to make themselves available to inmates for conversation at one meal per day.<sup>123</sup>
24. Ban pornography among inmates, especially those who have a history of sexual assault or are assessed as higher risks of becoming sexual predators.<sup>124</sup>
25. As much as practicable without compromising their safety, provide sexual assault victims or those at higher risk of assault with safe housing in a “safekeeping” cellblock but with the same programming and privileges as

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<sup>119</sup> (Tr., J. Tilton, 32:17-21, 35:9-12 (Mar. 11, 2008) (CDCR); *id.*, W. Still, 65:10-66:4 (CDCR); *id.*, D. Dexter, 150:2-151:16, 161:19-2 (CDCR)). However, the system with the highest incidence of sexual victimization (TDCJ) also has a peer training program in effect. (*Id.*, B. Livingston, 17:20-22, 22:3-9 (Mar. 27, 2008) (TDCJ); *id.*, R. Bales, 123:23-126:21 (TDCJ); *id.*, D. Stacks, 56:8-15 (TDCJ); *id.*, O. Black, 192:6-20 (Mar. 28, 2008) (TDCJ); *id.*, B. Rodeen, 280:15-22 (TDCJ)).

<sup>120</sup> (*Id.*, H. Lappin, 183:12-20 (Mar. 11, 2008) (BOP)).

<sup>121</sup> (*Id.*, H. Lappin, 208:13-209:3 (Mar. 11, 2008) (BOP); *id.*, D. Donahue, 266:11-267:3 (Mar. 13, 2008) (IDOC); *id.*, R. Houston, 40:13-41:6, 80:18-81:4 (Mar. 14, 2008) (NDCS); *id.*, F. Britten, 372:11-373:19 (NDCS)).

<sup>122</sup> (*Id.*, J. Tilton, 43:12-44:8 (Mar. 11, 2008) (CDCR); *id.*, W. Still, 67:1-5 (CDCR); *id.*, D. Dexter, 153:1-12 (CDCR); *id.*, B. Livingston, 30:13-20 (Mar. 27, 2008) (TDCJ)).

<sup>123</sup> (*Id.*, H. Lappin, 214:13-216:6 (Mar. 11, 2008) (BOP); *id.*, L. Dawson, 56:5-10 (Mar. 28, 2008) (TDCJ); *id.*, J. T. Morgan, 62:18-22 (Apr. 30, 2008) (TDCJ)).

<sup>124</sup> *Compare* Tr., A. Leonard, 282:1-20 (Mar. 11, 2008) (BOP) (prohibiting certain kinds of pornography); Email from S. Batts (BOP) to S. McFarland & R. Siedlecki [not sworn testimony] (Aug. 1, 2008), *with* Tr., S. Anderson, 158:7-12 (Mar. 12, 2008) (FDOC); *id.*, A. Simon, 99:13-21, 100:16-19 (Mar. 14, 2008) (NDCS) (permitting certain kinds of pornography).

general population (i.e., protect the victim without penalizing him or her for reporting).<sup>125</sup>

26. Make available more beds in administrative segregation, safekeeping, close custody, and other areas for inmates assessed to be at higher risk of being sexual victims.<sup>126</sup> Again this may require additional staffing and beds.
27. Map where sexual assault occurs or may occur in the facility and assign more intense staff supervision accordingly.<sup>127</sup>
28. Ensure that inmates know that they may report threats or occurrences of sexual assault – either inmate-on-inmate or staff-on-inmate – to *any* staff member, not just the correctional officers or shift supervisor in their housing unit.<sup>128</sup>
29. Establish an effective system for tracking victim complaints; e.g., sequentially number request slips for medical appointments or complaints so they can be better tracked and less easily “lost” in the system.<sup>129</sup>

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<sup>125</sup> See, e.g., Tr., J. Tilton, 45:15-18 (Mar. 11, 2008) (CDCR); *id.*, R. Anti, 131:11-133:20 (CDCR); BOP, Program Statement No. P5270.07, ch. 9, at 7-15; Tr., H. Lappin, 314:18-315:11 (Mar. 11, 2008) (BOP); FDOC, Procedure No. 108.10, at 7; Tr., G. Sapp, 18:11-18 (Mar. 12, 2008) (FDOC); NDCS, Administrative Regulation No. 201.05, at 1-11; IDOC, Policy & Administrative Procedure No. 01-02-115, at 11; TDCJ, SPP, at 9-12, 16; Tr., J. White, 164:24-165:13 (Mar. 28, 2008) (TDCJ).

<sup>126</sup> (Tr., R. Anti, 129:15-21 (Mar. 11, 2008) (CDCR); *id.*, F. Smith, 246:13-249:11 (Mar. 13, 2008) (IDOC)).

<sup>127</sup> (*Id.*, D. Hoffman, 240:16-241:12 (Mar. 12, 2008) (FDOC); *id.*, D. Donahue, 17:10-16 (Mar. 13, 2008) (IDOC); *id.*, J. Newlin, 263:11-264:4 (IDOC); *id.*, R. Brittenham, 225:4-226:9 (Mar. 14, 2008) (NDCS); *id.*, R. Bales & N. Quarterman, 111:4-114:14 (Mar. 27, 2008) (TDCJ); *id.*, J. Moriarty, 127:10-21 (Mar. 28, 2008) (TDCJ)).

<sup>128</sup> See, e.g., CDCR, DOM, ch. 5, art. 44, § 54040.4; CDCR, Notice to Inmates/Parolees, at 1; CDCR, Sexual Abuse/Assault Prevention & Intervention, at 4; BOP, Sexual Abuse/Assault Prevention and Intervention, at 3-4; Tr., H. Lappin, 183:12-15 (Mar. 11, 2008) (BOP); *id.*, G. Sapp, 20:7-18, 21:7-14 (Mar. 12, 2008) (FDOC); IDOC, Policy & Administrative Procedure No. 02-01-115, at 7-8, 10; Rockville, Operation Directive No. 0-08, at Attachment A; Tr., J. Newlin, 237:12-21, 241:15-242:4 (Mar. 13, 2008) (IDOC); NDCS, Administrative Regulation No. 203.11, at 4; Tr., F. Britten, 361:6-362:12 (Mar. 14, 2008) (NDCS); TDCJ, SPP, at 14-16; TDCJ, SPP Orientation – Pt. 9; Tr., K. Wheat, 51:22-52:8 (Mar. 28, 2008) (TDCJ); *id.*, B. Jenkins, 53:13-23 (TDCJ).

<sup>129</sup> Compare Cal. Penal Code § 2640; CDCR, DOM, ch. 5, art. 44, § 54040.13; BOP, Program Statement No. P5324.06, at 15-16 (reflecting ability to track sexual assault complaints); Tr., G. Sapp, 22:20-23:3 (Mar. 12, 2008) (FDOC); *id.*, A. Johnson, 369:15-370:20 (grievances are logged and tracked); *id.*, D. Donahue, 12:8-21 (Mar. 13, 2008) (IDOC) (IDOC has new web-based grievance tracking system); *id.*, B. Livingston, 19:11-12 (Mar. 27, 2008) (TDCJ) (Safe Prisons Program includes “reporting, tracking and analysis of alleged sexual assaults”), with *id.*, R. Koester, 194:8-18 (Mar. 13, 2008) (IDOC) (there is no mechanism for tracking sexual assault complaints at Rockville); *id.*, A. Simon, 112:7-13 (Mar. 14, 2008)

30. Publicize among staff any case of staff sexual misconduct and its negative consequences (dismissal, felony prosecution). Applicable privacy law may require that the warden omit the name or other identifying information about the disciplined staff member.<sup>130</sup>
31. Have staff review weekly the list of sexual predators in the facility. Notify staff immediately when the list changes.<sup>131</sup>
32. Segregate and, subject to staffing limitations, provide enhanced security for transgendered inmates, but with the same programming and privileges of general population inmates.<sup>132</sup>

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(NDCS) (an incident report that is not numbered could be lost); *id.*, B. Jenkins, 54:15-55:17 (Mar. 28, 2008) (TDCJ) (grievances “not numbered or tracked”).

<sup>130</sup> (Tr., T. Riddle, 99:10-100:1 (Mar. 11, 2008) (CDCR); *id.*, R. Koester, 347:19-348:1 (Mar. 13, 2008) (IDOC)).

<sup>131</sup> (*Id.*, H. Lappin, 302:4-19 (Mar. 11, 2008) (BOP); *id.*, M. Hillman, 272:10-273:17 (Mar. 14, 2008) (NDCS); *id.*, R. Bales, 105:19-108:10 (Mar. 27, 2008) (TDCJ); *id.*, R. Thompson, 207:18-208:7 (Mar. 28, 2008) (TDCJ)).

<sup>132</sup> (*Id.*, J. Tilton, 31:13-32:1 (Mar. 11, 2008) (CDCR); *id.*, T. Riddle, 101:2-17 (CDCR); *id.*, D. Ballard, 175:22-176:7 (Mar. 28, 2008) (TDCJ); *id.*, J. T. Morgan, 125:16-127:17 (Apr. 30, 2008) (TDCJ)).

## **APPENDIX**

### **Potential Common Characteristics of Victims**

1. What risk factors, if any, did the department or facility use to identify potential inmate sexual victims?

### **Potential Common Characteristics of Perpetrators**

2. What risk factors, if any, did the department or facility use to identify potential inmate sexual predators?
3. What risk factors, if any, did the department or facility use to identify potential staff sexual predators?

### **Potential Common Characteristics of Facilities With High or Low Prevalence of Prison Rape**

#### *General PREA Factors*

4. Was there a PREA coordinator at the system level?
5. Was there a PREA coordinator at the facility level?

#### *Policy Factors*

6. Did the department or facility have a written policy addressing sexual assault prevention?
7. Did the department or facility have a written policy addressing staff-on-inmate sexual assault?
8. Did the department or facility have a written policy addressing opposite-gender staff searches of inmates?
9. Did the department or facility have a written grievance procedure for inmates to pursue sexual assault complaints?
10. Did the department or facility have a written policy addressing the conducting of a sexual assault investigation?
11. Did the department or facility have a written policy addressing sexual assault victim's services?

12. Did the department or facility have a written policy addressing safety concerns of gay, lesbian, and transgendered sexual assault victims?
13. Did the department or facility have a written policy requiring mandatory reporting of sexual assaults by staff?
14. Did the department or facility have a written policy providing for multiple channels for inmates to report sexual assault?
15. Did the department or facility have a hotline for inmates to report sexual assault?
16. Did the department or facility have a written policy addressing sanctions for false sexual assault reports by staff or offenders?

Training Factors

17. Did the facility review its sexual assault policies in inmate orientation?
18. Did the facility distribute written materials to inmates regarding its sexual assault policies?
19. Did correctional officers receive pre-service sexual assault training?
20. Did correctional officers receive sexual assault training after they began working at the facility?
21. Did the facility provide refresher sexual assault policy training to correctional officers who received training in the past?
22. Did the facility test correctional officers regarding its sexual assault policies?
23. Did investigators receive training about conducting sexual assault investigations?
24. Did the facility provide refresher investigations training to investigators who received training in the past?

Investigative Process Factors Regarding Grievances and Complaints

25. Did the department or facility have a policy that reporting of inmate-on-inmate sexual assault would automatically initiate an investigation?
26. Did the facility have a system that tracked all reports of alleged inmate-on-inmate sexual assault?
27. How many alleged inmate-on-inmate sexual assaults were reported?

28. Of the reported alleged inmate-on-inmate sexual assaults, how many occurred in a victim's cell?
29. If the reported alleged inmate-on-inmate sexual assault did not occur in a victim's cell, where did it occur?
30. Of the reported alleged inmate-on-inmate sexual assaults, how many victims requested a different housing assignment?
31. Of those victims that requested a different housing assignment, how many received it?
32. How many alleged inmate-on-inmate sexual assaults were investigated?
33. Of the investigated alleged inmate-on-inmate sexual assaults, how many complaints were unsubstantiated?
34. Did the department or facility have a policy that reporting of staff-on-inmate sexual assault would automatically initiate an investigation?
35. Did the facility have a system that tracked all reports of alleged staff-on-inmate sexual assault?
36. How many alleged staff-on-inmate sexual assaults were reported?
37. Of the reported alleged staff-on-inmate sexual assaults, how many occurred in a victim's cell?
38. Of the reported alleged staff-on-inmate sexual assaults, how many involved the pairing of a male staff offender and a female inmate victim?
39. Of the reported alleged staff-on-inmate sexual assaults, how many involved the pairing of a male staff offender and a male inmate victim?
40. Of the reported alleged staff-on-inmate sexual assaults, how many involved the pairing of a female staff offender and a male inmate victim?
41. Of the reported alleged staff-on-inmate sexual assaults, how many involved the pairing of a female staff offender and a female inmate victim?
42. How many alleged staff-on-inmate sexual assaults were investigated?
43. Of the investigated alleged staff-on-inmate sexual assaults, how many complaints were unsubstantiated?

44. Of the investigated alleged staff-on-inmate sexual assaults, how many offenders were indicted?
45. Of the investigated alleged staff-on-inmate sexual assaults, how many offenders were sentenced?
46. Did the facility halt a criminal investigation if a staff member resigned during the pendency of that investigation?

Human Resources Factors

47. What was the gender breakdown of correctional officers at the facility?
48. What was the average ratio of correctional officers to inmates at the facility?
49. What was the average ratio of staff to inmates at the facility?
50. Of entry-level correctional officers, how many left the facility within the first twelve months?
51. What was the minimum age required to be a correctional officer?
52. What was the minimum level of education required to become a correctional officer?
53. Did the facility require correctional officers to work mandatory overtime?

Operational Factors

54. Is the facility for male or female inmates?
55. What was the security level of the facility?
56. What was the inmate capacity level of the facility?
57. What was the average size of the facility's general population of inmates?
58. What was the facility's design?
59. Were cameras located at the facility?

Housing Classification Factors

60. Was an assessment instrument in place to identify potential inmate sexual predators?
61. Was an assessment instrument in place to identify potential inmate sexual victims?
62. Did the facility have a policy regarding reassignment of victims to administrative segregation?
63. Did the facility have a policy regarding reassignment of alleged perpetrators to administrative segregation?
64. What percentage of inmates was in administrative segregation?

*Medical and Mental Health Factors*

65. Was there a Sexual Assault Response Team at the facility?
66. Did the facility train mental health staff regarding responding to victims of sexual assault?

*Program Services Factors*

67. Did the facility offer work programs?
68. Did the facility offer educational programs?
69. What percentage of inmates attended some type of program on a daily basis?

*Inmate Population Factors*

70. What percentage of inmates at the facility was identified as gay, lesbian, transgendered?
71. How many suicides and suicide attempts occurred at the facility?
72. How many homicides and homicide attempts occurred at the facility?