



A housing area at the Connelly Transition Unit in Roslindale, MA © Richard Ross

The Prison Rape Elimination Act Standards

Comments from youth advocates
on minimum staffing ratios in
juvenile facilities

Docket No. OAG-131

August 20, 2012

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INTRODUCTORY LETTER

Dear Attorney General Holder,

Thank you for the opportunity to comment on the Prison Rape Elimination Act (PREA)'s staffing ratio standard for secure juvenile facilities. Our organizations previously submitted joint comments in response to the Department's advanced notice of proposed rulemaking and notice of proposed rulemaking on the proposed PREA standards in May 2010 and April 2011, respectively. We are pleased that the Department has issued standards that reflect a practical approach to the widespread problem of sexual victimization in facilities that house youth.

Staffing ratios represent one crucial component of this approach. They ensure that facilities maintain a level of direct supervision that is necessary to protect youth from victimization. When used alongside rigorous implementation of the PREA standards' other tools to combat sexual misconduct such as staff training, youth education, supervision of staff, and reporting mechanisms, minimum staff-to-youth ratios represent a key component in protecting youth from sexual misconduct in juvenile facilities.

Although we strongly support the Department's inclusion of a minimum staffing ratio requirement, we recommend revisions that are necessary to fulfill PREA's mandate. Our submission outlines the importance of staffing levels to sexual misconduct prevention, details specific revisions we believe are appropriate, and answers the individual questions posed by the Department. Where we propose textual changes to the staffing ratio standard, we mark deletions of text as ~~struck through~~ and additions of text in **bold**. In each section, we only include deletions and additions of text that pertain to the suggestions addressed in that section, even when we recommend other changes to the same sentence elsewhere in our comments.

In the last round of public comments, some submissions opposed the inclusion of minimum staffing ratios in the PREA standards. Commenters stated a desire to determine staffing levels based on differences in treatment goals and the needs of the youth in their care. The inclusion of minimum staffing ratios is consistent with this desire. While there are many differences among juvenile facilities, and many circumstances under which youth may need more supervision than others, the risk of sexual victimization is a reality in all settings that house youth. The staffing ratio requirement simply sets a floor below which facilities may not go in order to achieve PREA's mandate, but allows agencies to analyze their particular facility structures, youth populations, youth with special needs, and other factors to determine staffing levels above the mandated floor.

Our research and experience – and the Department's own experience investigating sexual misconduct in juvenile facilities – demonstrates that insufficient staff supervision bears a clear

link to the sexual victimization of youth. Although we prefer the standard's minimum staffing levels to no minimum at all, we urge you to consider and accept our recommended modifications.

Thank you for your consideration.

Sincerely,

Dana Shoenberg, Center for Children's Law and Policy

Jason Szanyi, Center for Children's Law and Policy

Liz Ryan, Campaign for Youth Justice

Shannon Price Minter, The Equity Project

Jessica Feierman, Juvenile Law Center

Sarah Bergen, National Juvenile Defender Center

Sue Burrell, Youth Law Center

Amy Fettig, American Civil Liberties Union, National Prison Project

Catherine Beane, Children's Defense Fund

ORGANIZATION DESCRIPTIONS AND CONTACT INFORMATION

Our organizations are committed to policy reforms that remove youth from adult facilities, improve the conditions of confinement for youth held in juvenile and adult facilities, and ensure that youth under community supervision are kept safe. Many of our organizations have extensive experience working to improve the conditions of confinement for youth held in juvenile and adult facilities. Please feel free to contact us if you have questions about our recommendations or other concerns regarding children and youth.

- The **Campaign for Youth Justice** (CFYJ) is dedicated to ending the practice of prosecuting, sentencing, and incarcerating youth under the age of 18 in the adult criminal justice system. CFYJ advocates for reforms to the justice system by serving as a clearinghouse of information on youth prosecuted as adults; conducting original research; providing support to federal, state, and local elected officials, policymakers, and advocates; coordinating outreach to parents, youth, and families; and leading national coalition efforts to reauthorize the Juvenile Justice and Delinquency Prevention Act.

Staff Contact: Liz Ryan, President and Chief Executive Officer, (202) 558-3580 ext. 11, lryan@cfyj.org.

- The **Center for Children’s Law and Policy** (CCLP) is a public interest law and policy organization focused on reform of juvenile justice and other systems that affect troubled and at-risk children, and protection of the rights of children in those systems. The Center’s work covers a range of activities including research, writing, public education, media advocacy, training, technical assistance, administrative and legislative advocacy, and litigation. CCLP has a central role in major foundation-funded juvenile justice initiatives in the United States including the John D. and Catherine T. MacArthur Foundation’s Models for Change initiative and the Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative (JDAI). CCLP staff provide training and technical assistance nationwide on assessing conditions of confinement in juvenile facilities, investigate potentially abusive conditions for youth in locked juvenile and adult facilities, and advocate for needed changes to the Prison Litigation Reform Act.

Staff Contact: Dana Shoenberg, Deputy Director, (202) 637-0377 ext. 107, dshoenberg@cclp.org.

- **The Equity Project** is an initiative to ensure that lesbian, gay, bisexual, transgender and intersex (LGBTI) youth in juvenile delinquency courts are treated with dignity, respect, and fairness. The Equity Project examines issues that impact LGBTI youth during the

entire delinquency process, ranging from arrest through post-disposition. Core activities of The Equity Project include: gathering information from stakeholders about LGBTI youth in juvenile delinquency courts, identifying obstacles to fair treatment, reporting findings, and crafting recommendations for juvenile justice professionals. Partners of The Equity Project include Legal Services for Children, National Center for Lesbian Rights, and the National Juvenile Defender Center.

Staff Contact: Shannon Price Minter, Legal Director, National Center for Lesbian Rights, 415.392.6257 x310, sminter@nclrights.org.

- The **National Juvenile Defender Center** (NJDC) was created in 1999 to respond to the critical need to build the capacity of the juvenile defense bar and to improve access to counsel and quality of representation for children in the justice system. In 2005, NJDC separated from the American Bar Association to become an independent organization. NJDC's mission is to ensure excellence in juvenile defense and promote justice for all children. NJDC gives juvenile defense attorneys a more permanent capacity to address practice issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile crime. NJDC provides support to public defenders, appointed counsel, law school clinical programs and non-profit law centers to ensure quality representation in urban, suburban, rural and tribal areas. NJDC offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building, and coordination.
Staff Contact: Sarah Bergen, Staff Attorney, (202) 452-0010, SBergen@njdc.info.
- **Juvenile Law Center** (JLC) is one of the oldest multi-issue public interest law firms for children in the United States. JLC maintains a national litigation practice that includes appellate and amicus work. JLC promotes juvenile justice and child welfare reform in Pennsylvania and nationwide through policy initiatives and public education forums. JLC uses the law to protect and promote children's rights and interests in the child welfare and juvenile justice systems, with a particular emphasis on ensuring that public systems do not harm children and youth in their care. JLC works to ensure that the juvenile justice and child welfare systems, which were created to help vulnerable children and youth, provide them with access to education, housing, physical and behavioral health care, employment opportunities and other services that will enable them to become productive adults.
Staff Contact: Jessica Feierman, Supervising Attorney, (215) 625-0551, jfeierman@jlc.org.

- The **Youth Law Center** (YLC) is a public interest law firm that works to protect children in the nation’s foster care and juvenile justice systems from abuse and neglect, and to ensure that they receive the necessary support and services to become healthy and productive adults. Since 1978, its lawyers have worked across the United States to reduce the use of out-of-home care and incarceration, to ensure safe and humane conditions in out-of home placements, to keep children out of adult jails, and to secure equitable treatment for children in both systems. Its efforts have focused on strengthening families and on advocating for education, medical and mental health, legal support, and transition services needed to assure children’s success in care and in the community. YLC advocates for increased accountability of the juvenile justice and child welfare systems, and champions professional and public education.
Staff Contact: Sue Burrell, Staff Attorney, (415) 543-3379 ext. 3911, sburrell@ylc.org.
- The **American Civil Liberties Union** is a nationwide, nonprofit, non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of liberty and equality embodied in our Constitution and our civil rights laws. The ACLU and many of our legal projects, such as the National Prison Project (NPP) and the Lesbian, Gay, Bisexual and Transgender Project, have long worked to protect and promote the civil and constitutional rights of prisoners. Our years of experience in the American criminal justice system have made us acutely aware of the problem of sexual violence in our prisons, jails and youth detention centers. As a result, we advocate for greater oversight and institutional accountability to help eradicate this pervasive problem.
Staff Contact: Amy Fettig, Senior Staff Counsel, National Prison Project of the ACLU, (202) 548-6608, afettig@npp-aclu.org.
- The **Children’s Defense Fund** (CDF) is a non-profit child advocacy organization that has worked relentlessly for more than 35 years to ensure a level playing field for all children, with special attention to the needs of poor and minority children and those with disabilities. CDF champions policies and programs that lift children out of poverty, protect them from abuse and neglect, and ensure their access to quality health and mental health care and early childhood and education experiences. CDF’s *Cradle to Prison Pipeline*® Crusade seeks to achieve a fundamental paradigm shift in policy and practice away from punishment and incarceration and toward prevention and early intervention and sustained child investment.
Staff Contact: Catherine V. Beane, Director of Policy, (202) 662- 3615, cbeane@childrensdefense.org.

GENERAL STATEMENT ON THE MINIMUM STAFFING RATIO REQUIREMENT

We strongly support the Department's inclusion of minimum staff-to-youth ratios in the Prison Rape Elimination Act (PREA) juvenile facility standards. Requiring minimum staffing ratios reflects what we now know about the best ways of preventing and detecting sexual misconduct, as well as the many tragic examples of what can happen when facilities fail to adequately supervise youth in their care.

The proposed standard reflects a practical approach to the widespread problem of sexual victimization in facilities that house youth. By establishing a minimum level of direct supervision, agencies and facilities will be better equipped to prevent and detect the red flags associated with victimization. When implemented alongside other tools to combat sexual misconduct such as staff training, youth education, supervision of staff, and reporting mechanisms, the minimum staff-to-youth ratios will present the best opportunity to protect youth from sexual misconduct.

Although we strongly support the Department's inclusion of a minimum staffing ratio requirement, we recommend revisions to ensure that the standard fulfills PREA's mandate. These include:

- **Modifying the current standards to require staff-to-youth ratios of 1:6 during waking hours and 1:12 during sleeping hours.** Many jurisdictions mandate staffing ratios that provide for greater levels of supervision than the ratio currently included in the PREA regulations. Although we prefer the standard's minimum staffing levels to no minimum at all, we encourage the Department to look to best practices when determining the levels of direct supervision that will reduce sexual victimization in secure facilities.
- **Revising the definition of "exigent circumstances" that allow for a departure from minimum staffing requirements.** As written, the Department's definition leaves open the potential for abuse, as facilities may claim that a wide range of unforeseen but foreseeable events justify departures from the standard. We encourage the adoption of a strengthened definition that limits exceptions to situations that present a serious threat to the safety of an institution and that requires agencies to plan ahead for foreseeable occurrences.
- **Ensuring that facilities only include staff who directly supervise and interact with youth when computing staffing ratios.** The inclusion of the staffing ratio requirement reflects the value of direct supervision in preventing and detecting misconduct. We

encourage the Department to clarify that only those staff who interact with youth in person should be included in the minimum staffing ratios.

- **Requiring that all juvenile facilities have at least two direct care staff on duty at all times when youth are present.** Sexual victimization is a risk in any setting that houses youth. However, almost all of the research on the relationship between staffing levels and safety has been limited to secure facilities. Although we do not recommend a particular staffing ratio for non-secure settings for this reason, we strongly encourage the Department to lead the effort in gathering information on the connection between staffing ratios and safety in non-secure settings. We also recommend that the standard require that *all* juvenile facilities – not just secure juvenile facilities – have at least two direct care staff on duty at all times when youth are present. This is a basic protection that many jurisdictions already take to ensure the safety of both youth and staff.
- **Requiring immediate steps to comply with the standard.** Facilities can and should begin planning now to meet the required staffing ratios. We do not believe that setting August 20, 2017, as the deadline for compliance with the staffing ratio standard is appropriate, as it allows for a lengthy delay that will perpetuate ongoing victimization. We do recognize that agencies may need to request appropriations to implement the standard, and we know that some state legislatures operate on a two-year legislative cycle. Accordingly, we recommend that the Department require compliance by August 20, 2014, which will give jurisdictions a full two years to meet the standard.

We expect that the Department will receive comments opposing the inclusion of minimum staffing ratios because of a desire to set staffing levels based on differences in treatment goals and the characteristics of youth. The inclusion of minimum staffing ratios is not inconsistent with this desire. While there are indeed many differences among juvenile facilities, the risk of sexual victimization and the value of direct supervision are principles common to all settings. The standard does not dictate particular staffing patterns. It simply sets a floor for supervision, allowing agencies to analyze their particular facility structures, youth populations, youth with special needs, and other factors to determine staffing rates above the mandated floor. As the Department noted in its comments accompanying the PREA standards, a majority of states already mandate staffing ratios in their facilities. They have done so because they, too, see the value in setting a floor for minimum levels of direct supervision.

As the National Prison Rape Elimination Commission noted in its 2009 report, “[d]irect supervision is the most effective mode of supervision for preventing sexual abuse.” Our research and experience – and the Department’s own experience investigating sexual

misconduct in juvenile facilities – demonstrates that insufficient staff supervision bears a clear link to the sexual victimization of youth. For these reasons, we urge the Department to retain and strengthen its proposed standard on minimum staffing ratios.

RESPONSES TO THE DEPARTMENT'S QUESTIONS

(1) Whether the provision, as written, is appropriate.

We applaud the Department's inclusion of a minimum staffing ratio for secure juvenile facilities in the PREA standards. However, in this response and the responses to the other questions posed by the Department, we recommend a number of modifications to ensure that the standard provides for the level of in-person supervision necessary to prevent and detect sexual victimization.

First, the standard should clarify that staff-to-youth ratios should be computed with respect to individual housing units and other defined areas, not on a facility-wide basis. A facility-wide ratio that simply divides the number of youth by the number of staff on duty at any one time will not ensure that youth receive the level of direct supervision envisioned by the standard because staff may not be deployed in a way that maintains the same level of supervision throughout the institution. We propose language to clarify the way that facilities should assess staffing levels.

Our second concern relates to the reference to "security staff" in the standard. The term is problematic because it will not ensure that facilities provide the type of in-person supervision that will curb abuse. For one, the term "security staff" does not reflect the intent of the staffing ratio standard, which is to ensure a baseline level of direct supervision. For example, in some facilities, there are staff members who stay in a central location and respond to security threats. Such personnel should not be included in the staffing ratios, but would be considered "security staff" under the definition in the PREA regulations. Also, "security staff" is a more adult facility-oriented term. "Direct care staff" is a term more frequently used to describe the kind of personnel we think that the Department intended to include in this ratio: those staff routinely spending time with youth in their units and during activities. Because the use of the term "security staff" is appropriate in other parts of the PREA standards, we propose that the department use a different term such as "direct care staff" here, which will convey the particular importance of in-person interactions in juvenile facilities.

The definition of "security staff" is also overinclusive for the purposes of computing a minimum ratio of staff to youth. As written, the definition includes staff responsible for the "*supervision and control of . . . residents in housing units, recreational areas, dining areas, and other program areas of the facility.*" Under this definition, facilities could include a wide range of staff who are not directly supervising youth in their staffing ratio calculations. For example, facilities may include staff who work in a control center because control center staff monitor video cameras and open doors to permit movement throughout the facility. However, control center staff must split their attention across a range of competing demands and cannot engage in the

type of in-person interactions that help uncover red flags associated with sexual misconduct. Thus, the standard’s reference to “security staff” is too broad to achieve the goals of the staffing ratio standard.

Given these concerns, we propose two possible approaches to modifications. First, we propose that the department include a new term in the PREA standards’ general definitions – “direct care staff” — that reflects the goal of direct, in-person supervision. The staffing ratio standard should reference this term in lieu of the current reference to “security staff.”

Alternatively, the Department could modify the standard to include only those individuals providing “direct staff supervision,” a term also defined in the regulations. This change would help ensure that facilities only include staff who are physically present and interacting with youth in their staffing ratio calculations.

Proposed revision #1:

§ 115.5 General definitions.

For purposes of this part, the term—

...

***Direct care staff* means staff who are responsible for providing in-person supervision of and interacting with residents in housing units, recreational areas, dining areas, and other program areas of the facility.**

...

§ 115.313 Supervision and monitoring.

...

(c) Each secure juvenile facility shall maintain staff ratios of a minimum of 1:8 during resident waking hours and 1:16 during resident sleeping hours, except during limited and discrete exigent circumstances, which shall be fully documented. Only ~~security staff~~ **direct care staff** shall be included in these ratios. Any facility that, as of the date of publication of this final rule, is not already obligated by law, regulation, or judicial consent decree to maintain the staffing ratios set forth in this paragraph shall have until October 1, 2017, to achieve compliance.

....

Proposed revision #2:**§ 115.313 Supervision and monitoring.**

...

(c) Each secure juvenile facility shall maintain staff ratios of a minimum of 1:8 during resident waking hours and 1:16 during resident sleeping hours, except during limited and discrete exigent circumstances, which shall be fully documented. Only ~~security staff~~ **individuals who provide direct staff supervision** shall be included in these ratios. Any facility that, as of the date of publication of this final rule, is not already obligated by law, regulation, or judicial consent decree to maintain the staffing ratios set forth in this paragraph shall have until October 1, 2017, to achieve compliance.

....

(2) Whether the specific ratios enumerated in the provision are the appropriate minimum ratios, or whether the ratios should be higher or lower.

Although we support the Department's inclusion of a minimum staffing ratio requirement, we propose two modifications to the current supervisions levels. First, we encourage the department to revise its staff-to-youth ratios to 1:6 for waking hours and 1:12 for sleeping hours. These staffing levels best permit the type of eyes-on supervision and quality interactions that are effective at preventing and detecting victimization.

In the Bureau of Justice Statistics Study of Sexual Victimization in Youth Facilities, only one state has more than one facility on the list of institutions with the lowest victimization rates: Missouri. The state agency responsible for those facilities generally maintains a staff-to-youth ratio of 1:5 or 1:6.¹ Missouri is not alone. The following jurisdictions also establish standards for supervision in secure facilities that are more stringent than the Department's proposed ratios:

- **Alabama**
 - Detention: 1:6 (does not distinguish between waking and sleeping hours).²
- **District of Columbia**
 - Detention: 1:5.5, plus one floater staff member for 2 units during waking hours; 1.5:11 during sleeping hours.³
 - Post-adjudication: 1:5.5 during waking hours; 1:11 during sleeping hours.⁴

¹ Email from Scott Odum, Assistant Deputy Director, Treatment Section, Missouri Department of Youth Services, to Vivian Murphy, Director, Missouri Juvenile Justice Association (June 25, 2012).

² Ala. Admin. Code § 950-1-13-.03.

³ Interview with Jeff McInnis, Department of Youth Rehabilitation Services (June 27, 2012).

- **Kansas**
 - Detention: 1:7 during waking hours; 1:11 during sleeping hours.⁵
 - Post-adjudication secure care centers: 1:7 during waking hours; 1:11 during sleeping hours.⁶
- **Maryland**
 - Detention (Baltimore City Juvenile Justice Center): 1:6 during waking hours; 1:12 during sleeping hours.⁷
- **Oklahoma**
 - Detention: 1:7 during waking hours; 1:16 during sleeping hours.⁸
- **Pennsylvania**
 - Detention and post-adjudication: 1:6 during waking hours; 1:12 during sleeping hours.⁹
- **Texas**
 - Post-adjudication (Corsicana Residential Treatment Center): 1:4 during evening and weekend awake shifts.¹⁰

National standards also support a higher level of supervision than that proposed by the Department. For example, the Institute for Judicial Administration and American Bar Association's Juvenile Justice Standards provide for a staff ratio of 1:4 during waking hours and 1:12 during sleeping hours in post-adjudication facilities.¹¹

Second, the standard should require that all juvenile facilities – not just secure juvenile facilities – have at least two direct care staff on duty at all times when youth are present. Many jurisdictions already include such a provision in the rules, regulations, and statutes governing

⁴ Department of Youth Rehabilitation Services, Post Analysis, March 19, 2007.

⁵ Kan. Admin. R. § 28-4-353(e)(2)(B).

⁶ *Id.*

⁷ Kelly Dedel & Peter Leone, Fourth Monitor's Report for the Baltimore City Juvenile Justice Center (BCJJC) (June 2009), available at <http://www.djs.state.md.us/pdf/fourth-bcjjc-monitors-report.pdf>. The report notes that while the Department of Juvenile Services generally maintains a staff-to-youth ratio of 1:8 during waking hours and 1:16 during sleeping hours, there is increased staff supervision at BCJJC because of its two-tiered housing unit structure.

⁸ Okla. Admin. Code § 377:3-13-44(4).

⁹ 55 Pa. Code §§ 3800.274(5), (6).

¹⁰ Sexual Victimization in Juvenile Correctional Facilities: Hearing Before the Review Panel on Prison Rape, U.S. Department of Juvenile Justice (2010) (written testimony of Cheryl K. Townsend, Executive Director, Texas Youth Commission). The agency responsible for overseeing the Corsicana facility increased staffing at the facility in the wake of findings from the Bureau of Justice Statistics report, *Sexual Victimization in Juvenile Facilities Reported by Youth, 2008-09*.

¹¹ Institute for Judicial Administration and American Bar Association, Juvenile Justice Standards § 7.11(F) (1996). The standard contemplates small secure residential facilities of no more than 24 youth.

staffing.¹² The reasons to do so are obvious. Any event that requires one staff member to devote his or her attention to one area of a facility will leave another area unsupervised. This may leave youth vulnerable to victimization by other youth. It is also dangerous for staff, as sexually aggressive or otherwise violent youth can more easily victimize staff members who do not have adequate backup. Accordingly, we recommend adding the proposed subsection (d) to the standard.

Although we prefer the standard's minimum staffing levels to no minimum at all, we encourage the Department to incorporate best practices when establishing a minimum staffing ratio in the PREA standards.

Proposed revisions:

§ 115.313 Supervision and monitoring.

...

(c) Each secure juvenile facility shall maintain staff ratios of a minimum of ~~1:8~~ **1:6** during resident waking hours and ~~1:16~~ **1:12** during resident sleeping hours, except during limited and discrete exigent circumstances, which shall be fully documented. Only security staff shall be included in these ratios. Any facility that, as of the date of publication of this final rule, is not already obligated by law, regulation, or judicial consent decree to maintain the staffing ratios set forth in this paragraph shall have until October 1, 2017, to achieve compliance.

(d) All juvenile facilities shall have a minimum of two direct care staff on duty at all times to directly supervise residents.

~~(d)~~ **(e)** Whenever necessary, but no less frequently than once each year, for each facility the agency operates, in consultation with the PREA coordinator required by § 115.311, the agency shall assess, determine, and document whether adjustments are needed to:

- (1) The staffing plan established pursuant to paragraph (a) of this section;
- (2) Prevailing staffing patterns;
- (3) The facility's deployment of video monitoring systems and other monitoring technologies; and
- (4) The resources the facility has available to commit to ensure adherence to the staffing plan.

¹² See, e.g., Arkansas Juvenile Detention Facility Review Commission, Juvenile Detention Standards § 6-100; Ill. Admin. Code Tit. 20 §§ 702.30, 702.130; Kan. Admin. R. §§ 28-4-353, 505; Ky. Admin. R. 2:060; Mo. Supreme Court Rule 129, Section 11.2; Okla. Admin. Code § 377:3-13-44(4); Utah Department of Juvenile Justice Services Policy No. 05-08.

~~(e)~~ (f) Each secure facility shall implement a policy and practice of having intermediate-level or higher level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts. Each secure facility shall have a policy to prohibit staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

(3) Whether the provision appropriately allows an exception from the minimum ratios during “limited and discrete exigent circumstances” (as “exigent circumstances” is defined in § 115.5), or whether that exception should be broadened, limited, or otherwise revised.

The staffing ratio requirement appropriately allows for an exception from the minimum ratios. We recognize that facilities may encounter a limited number of situations that necessitate a brief departure from what the standards require. However, the current definition of “exigent circumstances” is problematic, and raises three issues.

The first issue relates to the use of the term “unforeseen,” which is too broad to provide an adequate limit on the exigent circumstances exception. For example, facility administrators know that altercations among youth are common in secure settings. Facility administrators may not be able to predict exactly when and where fights may break out, or which youth will be involved, so each incident is arguably unforeseen, but such incidents are certainly foreseeable. The same analysis could apply for the purposes of staff who are unavailable because of illness. An administrator might argue that the individual staff member’s illness was unforeseen. However, a facility should not be able to depart from minimum staffing ratios and several other provisions allowing departure for exigent circumstances just because an employee calls in sick. We are concerned that agencies may characterize routine events such as these as “unforeseen” for the purpose of evading the staffing ratio requirement and other requirements in the PREA standards. Accordingly, we recommend that the Department use the term “unforeseeable” instead of the term “unforeseen.” The proposed change will ensure that predictable occurrences do not expand the limits of the exigent circumstances exception to unreasonable points.

The second issue relates to the definition’s references to circumstances that present “a threat to the security or institutional order of a facility.” This provision, like the term “unforeseen,” is too broad to place reasonable limits on the exigent circumstances exception. In our experience, facilities may categorize a wide range of events as threats to security or institutional order – events ranging from a riot to a youth’s refusal to leave his or her room to attend school to a

youth who talks back to a staff member. While a riot requires a response that may justifiably draw staff away from assigned positions, other less serious situations should not suspend the obligation to provide adequate direct, in-person supervision of youth. Accordingly, we recommend that the Department modify its definition to limit exigent circumstances to situations that require “an immediate action in order to combat a serious threat to the security of a facility.”

The final issue relates to the fact that the exigent circumstances exception applies to multiple requirements in the PREA standards. Of the requirements that apply specifically to youth, these include:

- the bar on cross-gender pat down searches of youth in juvenile facilities;
- the bar on cross-gender viewing of youth in juvenile facilities when showering, performing bodily functions, or changing clothing;
- the bar on cross-gender strip searches or visual body cavity searches of youth in juvenile facilities by staff other than medical professionals;
- the requirement to afford youth in adult facilities who are isolated the opportunity for large muscle exercise and legally required special education services;
- the requirement to comply with the staffing plan in juvenile facilities; and
- the requirement to maintain minimum staff-to-youth ratios during the hours when youth are awake and when they are asleep.

We believe that our proposed limits on the definition of exigent circumstances should apply to each of these situations for the reasons described above. Thus, we recommend that the Department modify the definition of exigent circumstances contained in section § 115.5 to reflect our proposed edits. We strongly recommend this fix to the regulations. If, however, the Department determines that a narrower definition of exigent circumstances should only apply to the staffing ratio standard, we propose that the Department develop a new term such as “emergency situations” to reflect that narrower definition.

Proposed revision #1 (strongly preferred):

§ 115.5 General definitions.

For purposes of this part, the term—

...

Exigent circumstances means any set of temporary and ~~unforeseen~~ **unforeseeable** circumstances that require immediate action in order to combat a **serious** threat to the security or institutional order of a facility.

....

Proposed revision #2:

§ 115.5 General definitions.

For purposes of this part, the term—

...

***Emergency situations* means any set of temporary and unforeseeable circumstances that require immediate action in order to combat a serious threat to the security of a facility.**

...

§ 115.313 Supervision and monitoring.

...

(c) Each secure juvenile facility shall maintain staff ratios of a minimum of 1:8 during resident waking hours and 1:16 during resident sleeping hours, except during limited and discrete **emergency situations** ~~exigent circumstances~~, which shall be fully documented. Only security staff shall be included in these ratios. Any facility that, as of the date of publication of this final rule, is not already obligated by law, regulation, or judicial consent decree to maintain the staffing ratios set forth in this paragraph shall have until October 1, 2017, to achieve compliance.

....

(4) Whether certain categories of secure juvenile facilities should be exempt from the minimum ratio requirement or, conversely, whether certain categories of non-secure juvenile facilities should also be included in the minimum ratio requirement.

We strongly oppose any exemption for certain categories of secure juvenile facilities from the minimum staffing ratio requirement. The crucial role of direct supervision in preventing and detecting sexual misconduct does not change based on the programming offered by a facility or whether the facility serves pre- or post-adjudicated youth.

Although sexual victimization is a risk in any setting that houses youth, almost all of the research on the relationship between staffing levels and safety has been limited to secure facilities. Unfortunately, the same type of efforts to understand the links between staffing levels and safety have not taken place in non-secure settings, which are generally less regulated and more varied in terms of program design, facility layout, and population served.

Because of the limited information available on the relationship between staffing levels and victimization in non-secure settings, we do not recommend a particular minimum staffing ratio at this time for these facilities.¹³ However, we strongly encourage the Department to lead the effort in gathering information that will help the field understand how staffing levels relate to sexual misconduct in non-secure facilities, as non-secure facilities house a large number of youth in out-of-home placements. For example, the most recent Juvenile Residential Facility Census conducted by the Department revealed that a 27 percent of facilities surveyed were group homes.¹⁴

Although we do not propose a particular staffing ratio for non-secure facilities, we do recommend that the standard require that *all* juvenile facilities – not just secure juvenile facilities – have at least two direct care staff on duty at all times when youth are present. As described in our response to question two, this is a basic protection that many jurisdictions already take to ensure the safety of both youth and staff, and it should extend to all custodial settings.

Proposed revisions:

§ 115.313 Supervision and monitoring.

...

(c) Each secure juvenile facility shall maintain staff ratios of a minimum of 1:8 during resident waking hours and 1:16 during resident sleeping hours, except during limited and discrete exigent circumstances, which shall be fully documented. Only security staff shall be included in these ratios. Any facility that, as of the date of publication of this

¹³ Although we do not propose a particular staffing ratio, our research reveals that many jurisdictions already require staffing levels at the same level or a higher level in their group homes and shelters than what the Department has proposed for secure juvenile facilities. *See, e.g.*, 29 DCMR §§ 6219(10)-(11) (District of Columbia group homes and shelter houses serving delinquent youth must maintain staff-to-youth ratios of 1:5 during waking hours and 1:10 during sleeping hours); Iowa Admin. Code 441 – 105.5(c) (requiring minimum staff ratio of 1:5 during “prime programming time” in juvenile shelter care homes and juvenile detention homes); Kentucky Department of Juvenile Justice Policy #319 (requiring minimum of two staff members present and on duty during waking hours in Kentucky group homes housing more than eight youth); Mich. Admin. Code R. § 400.10123(2) (requiring minimum staff ratio of 1 direct care worker or supervisory staff for 8 youth at all times during waking hours); New York City Administration for Children’s Services, *Close to Home: Plan for Non-Secure Placement* 119 (June 8, 2012) (non-secure placements in New York City must maintain at least two staff on duty at all times regardless of size; group homes limited by state law to no more than 12 youth); Utah Department of Juvenile Justice Services Policy No. 05-08(III)(A)(7) (requiring awake staff-to-youth ratio of 1:8 during waking hours and 1:16 during sleeping hours in all facilities and programs operated by the department); Wash Admin. Code § 388-148-0725 (requiring staff-to-youth ratio of 1:8 during both waking and sleeping hours in group care facilities in Washington State).

¹⁴ Sarah Hockenberry et al., *Juvenile Residential Facility Census, 2008: Selected Findings* 3 (July 2011).

final rule, is not already obligated by law, regulation, or judicial consent decree to maintain the staffing ratios set forth in this paragraph shall have until October 1, 2017, to achieve compliance.

(d) All juvenile facilities shall have a minimum of two direct care staff on duty at all times to directly supervise residents.

~~(d)~~ (e) Whenever necessary, but no less frequently than once each year, for each facility the agency operates, in consultation with the PREA coordinator required by § 115.311, the agency shall assess, determine, and document whether adjustments are needed to:

- (1) The staffing plan established pursuant to paragraph (a) of this section;
- (2) Prevailing staffing patterns;
- (3) The facility's deployment of video monitoring systems and other monitoring technologies; and
- (4) The resources the facility has available to commit to ensure adherence to the staffing plan.

~~(e)~~ (f) Each secure facility shall implement a policy and practice of having intermediate-level or higher level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts. Each secure facility shall have a policy to prohibit staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

(5) The extent to which the provision can be expected to be effective in combating sexual abuse.

Alert, engaged staff supervision of youth plays a vital role in combating sexual misconduct in facilities that house youth. A minimum level of direct supervision ensures that staff can interact with youth in a way that increases the likelihood that they will identify red flags associated with victimization. When direct care staff are engaged with youth, they can prevent victimization because youth are focused on other activities and on positive interactions with staff. Control center and intake functions do not allow for this kind of engagement with a group of youth.

Staffing ratios are a key aspect of prevention and detection that complement other requirements in the PREA standards, such as staff training, youth education, supervision of staff, and reporting mechanisms. Without adequate direct supervision, staff training on the signs of victimization and dynamics of sexual misconduct cannot achieve its goals.

Throughout our comments, we provide evidence supporting the effectiveness of minimum staffing ratios at reducing sexual victimization. Here, we highlight five areas that reinforce that connection: (1) the Department’s recent investigations of juvenile facilities; (2) findings and testimony from the Department’s review panel on victimization in juvenile facilities; (3) expert testimony before the National Prison Rape Elimination Commission and the Commission’s findings; (4) national standards and other expert reports; and (5) recent litigation over and investigations of sexual victimization in juvenile facilities.

We anticipate that commenters will argue against the inclusion of the staffing ratios in the standards, proposing that facilities have flexibility to set staffing levels according to their programming needs and the needs of youth in their care. The standard does not eliminate this flexibility. It does, however, establish a level below which facilities cannot go if they are to meet their responsibility to take an important step toward preventing and detecting sexual victimization. It allows agencies to analyze their particular facility structures, youth populations, youth with special needs, and other factors to determine staffing ratios above the mandated floor. As the Department noted in its comments accompanying the PREA standards, a majority of states already mandate staffing ratios in their facilities. They have done so because they, too, see the need to set a floor for minimum levels of direct supervision.

Arguing that facilities should set staffing levels without any minimum level of direct supervision because it is a “complicated” and “facility specific” inquiry also ignores the fact that it is this very arrangement – the status quo – that contributed to the current rate of sexual abuse in juvenile facilities. Given that over one in eight youth report being sexually victimized, and given the evidence described below, PREA requires that more be done to protect youth. Accordingly, we urge the Department to retain this standard with our proposed modifications.

The Department’s Investigations of Juvenile Facilities

The Department has to look no further than its own recent investigations of juvenile facilities to see the connection between inadequate direct supervision and sexual misconduct in juvenile facilities. The Civil Rights Division’s Special Litigation Section has documented numerous instances in which inadequate supervision contributed to victimization of youth and staff.

- Following a two year investigation of the Indianapolis Juvenile Correctional Facility (IJCF), the Department stated that the facility’s “staffing pattern likely exacerbate[d] IJCF’s problems with incidents of sexual misconduct.”¹⁵ For example, on numerous occasions, the Department observed a single male officer supervising a unit of approximately 25 girls when the girls were engaged in private activities such as

¹⁵ Findings Letter from Thomas E. Perez, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to Mitch Daniels, Governor, State of Indiana, at 12 (Jan. 29, 2010), *available at* http://www.justice.gov/crt/about/spl/documents/Indianapolis_findlet_01-29-10.pdf.

showering, toileting, dressing, and undressing.¹⁶ According to the Department, “[s]uch staffing patterns not only le[d] to violations of girls’ privacy and facilitate[d] staff misconduct, but they also expose[d] staff members to false allegations of staff misconduct.”¹⁷

- An investigation of Los Angeles County’s Juvenile Probation Camps led to a 2008 findings letter that documented the failure to provide “sufficient staffing to adequately supervise youth.”¹⁸ The letter detailed a range of waking and sleeping staffing ratios at the 19 different camps throughout the county, and the Department drew a direct link between insufficient staffing and youth victimization: “Adequate numbers of staff must be deployed to supervise youth during waking and sleeping hours in order to protect youth from harm. The number of staff available to supervise youth is directly relevant to nearly all of the measures designed to protect youth from harm.”¹⁹
- In Mississippi, an investigation of the Oakley Training School and Columbia Training School revealed “unsafe living conditions and . . . inadequate treatment and care,” which the Department concluded stemmed from “staff shortages, ineffective management and supervision at every organizational level within both facilities, and the facilities’ emphasis on control and punishment instead of rehabilitation.”²⁰ The Department’s 2003 findings letter documented instances of alleged victimization and sexual misconduct, including a situation where female youth complained that a security guard stood in front of the uncovered windows of their cottage and observed them while they were undressing.²¹ The letter concluded that inadequate staff-to-youth ratios, which reached as high as 1:30 at the Oakley Training School, “compromised the safety of both staff and youth.”²²
- Following a March 2010 investigation of the Terrebonne Parish Youth Detention Center in Louisiana, the Department concluded that the facility’s operations created “serious

¹⁶ *Id.* at 10, 13.

¹⁷ *Id.* at 13.

¹⁸ Findings Letter from Grace Chung Becker, Acting Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to Yvonne B. Burke, Chairperson, Los Angeles County Board of Supervisors, State of California, at 19 (Oct. 31, 2008), available at http://www.justice.gov/crt/about/spl/documents/lacamps_findings_10-31-08.pdf.

¹⁹ *Id.* at 20.

²⁰ Findings Letter from Ralph F. Boyd, Jr., Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to Ronnie Musgrove, Governor of Mississippi, 5 (June 19, 2003), available at http://www.justice.gov/crt/about/spl/documents/oak_colu_miss_findinglet.pdf.

²¹ *Id.* at 13.

²² *Id.* at 14.

risk of avoidable harm” to youth.²³ In its findings letter, the Department noted that it had “received a significant number of credible reports of sexual and physical misconduct by staff members on youth within their custody.”²⁴ The letter cited TPYDC’s inadequate levels of direct supervision as a contributor to the facility’s problems. Specifically, the Department noted that TPYDC “claim[ed] to maintain a 1:8 [staff-to-youth] ratio during waking hours”²⁵ but that “typically[] direct supervision ratios [were] much lower and [fell] far below generally accepted professional standards.”²⁶ TPYDC also improperly calculated its staffing ratios by including staff who did not directly supervise youth.²⁷ The Department later entered into a settlement agreement with TPYDC that provided for staffing ratios that match those in the PREA standards – 1:8 during waking hours and 1:16 during sleeping hours.

- During the summer of 2004, an investigation of the Plainfield Juvenile Correctional Facility in Indiana revealed “rampant” sexual activity among youth housed there, which the Department described as a “consequence of the inadequate supervision of youths.”²⁸ The resulting findings letter singled out staffing as the core problem, stating that “[t]he most obvious and glaring reason for the frequency of physical assaults and OSB [overt sexual behavior] among juveniles at Plainfield is that there are not enough staff to supervise the residents adequately.”²⁹
- Following an investigation of two Arizona youth facilities from 2003 to 2004, the Department concluded that “[s]exual and physical assaults [were] more likely to occur because the facilities lack sufficient staff to supervise youth adequately, thus exposing youth to danger.”³⁰ In the Department’s findings letter, it noted that relevant policies required a minimum of 3 staff members to supervise up to 48 youth during waking

²³ Findings Letter from Thomas E. Perez, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to Michel Claudet, President, Terrebonne Parish, at 1 (Jan. 18, 2011), *available at* http://www.justice.gov/crt/about/spl/documents/TerrebonneJDC_findlet_01-18-11.pdf.

²⁴ *Id.* As a result of these allegations, seven staff members had been criminally charged as of January 2011. Of those seven staff members, two pled guilty to charges related to the alleged sexual misconduct, two had the charges against them dropped because prosecutors were unable to locate the alleged victim, one had the charges dropped at the victim’s request, and two were found not guilty following a trial. *See* Eric Heisig, Sex Charges Dropped Against Former Terrebonne Juvenile-Center Guards, *wwltv.com* (Feb. 23, 2011).

²⁵ *Id.* at 13.

²⁶ *Id.* at 14.

²⁷ *Id.*

²⁸ Findings Letter from Bradley J. Schlozman, Acting Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to Mitch Daniels, Governor of Indiana, at 5 (Sept. 9, 2005), *available at* http://www.justice.gov/crt/about/spl/documents/split_indiana_plainfield_juv_findlet_9-9-05.pdf.

²⁹ *Id.* at 7.

³⁰ Findings Letter from R. Alexander Acosta, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to Janet Napolitano, Governor of Arizona, at 14 (Jan. 23, 2004), *available at* http://www.justice.gov/crt/about/spl/documents/ariz_findings.pdf.

hours and only 1 staff member to supervise the same number of youth at night, which “deviate[d] substantially from generally accepted professional practices.”³¹

These investigations draw a clear link between direct staff supervision and the sexual and physical victimization of youth.

Findings from the Department’s Review Panel on Victimization in Juvenile Facilities

In October 2010, the Department released findings from its review panel on victimization in juvenile facilities.³² As part of the review, the Department gathered data and received testimony on victimization in facilities that reported the lowest rates of sexual victimization and the highest rates of sexual victimization based on the 2009 report, *Sexual Victimization in Juvenile Facilities Reported by Youth*. Although the review panel noted that each facility had some unique characteristics, a comparison of staffing ratios reveals a distinction between them:³³

Staff-to-Youth Ratios: Lowest Victimization Rates	Staff-to-Youth Ratios: Highest Victimization Rates
1:6 (Ft. Bellefontaine Campus, MO)	NO MINIMUM RATIO (Pendleton Juvenile Correctional Facility, IN)
1:8 (Rhode Island Training School, RI)	1:12 (Woodland Hills, TN)
	1:12 (Corsicana, TX)

This difference is not surprising, particularly when considered alongside the testimony of those before the panel. For example, the director of the Missouri Department of Youth Services, which oversees the Ft. Bellefontaine Campus, emphasized the importance of direct supervision to keeping youth safe: “In all programs staff are required to see all youth at all times, except during hygiene, and even then staff are strategically placed and aware . . . By keeping youth productively engaged and structuring staff member involvement, opportunities for unproductive or harmful interactions are decreased.”³⁴

³¹ *Id.*

³² *Sexual Victimization in Juvenile Correctional Facilities: Hearing Before the Review Panel on Prison Rape*, U.S. Department of Justice (2010).

³³ *Id.*

³⁴ *Id.* at 9-10.

Leadership of the agencies at facilities with the highest victimization rates tied problems with sexual victimization to staffing issues. For example, the executive director of the Indiana Department of Corrections' Department of Youth Services, which oversees the Pendleton facility, stated that the "number one factor" contributing to victimization was overcrowding, with significant delays in hiring new staff.³⁵ The executive director of the Texas Youth Commission, which oversaw the Corsicana campus, also recognized the connection between staffing and sexual victimization, stating that her agency was "[i]ncreasing supervision ratios during evening shifts and weekend awake shifts to 1:4" in response to sexual victimization rates.³⁶

PREA required the creation of the Review Panels on Prison Rape to identify the common characteristics of facilities with the highest rates of victimization and facilities with the lowest rates of victimization. As the hearing revealed, staffing levels are intimately linked with opportunities for sexual victimization by youth and staff.

Testimony to the National Prison Rape Elimination Commission and the Commission's Findings

The National Prison Rape Elimination Commission's report on sexual victimization in correctional facilities concluded that "[d]irect supervision is the most effective mode of supervision for preventing sexual abuse."³⁷ In public hearings before the Commission, testimony from victims of sexual victimization, corrections professionals, and experts offered many examples of why direct supervision is vital to efforts to prevent and detect victimization:

- "[A] direct-supervision model of managing jail facilities . . . not only increases your supervision capabilities, but it also increases communication, intelligence gathering that helps then allow the staff to take steps to prevent subsequent conflicts with sexual assault."³⁸
- Michael Hennessey, Sheriff, San Francisco, CA
- "There was no supervision in that jail. There was no guard who had a line of sight into the cell. The guards' office was pretty far away, and the T.V. was on all the time. This was zero supervision."³⁹

³⁵ *Id.* at 20.

³⁶ Sexual Victimization in Juvenile Correctional Facilities: Hearing Before the Review Panel on Prison Rape, U.S. Department of Juvenile Justice (2010) (written testimony of Cheryl K. Townsend, Executive Director, Texas Youth Commission). Another administrator of an agency that oversaw a facility with above-average sexual victimization rates stated that he planned to increase staff supervision by reducing the facility's population. See Julie Bisbee, *Sex Abuse Study Cites L.E. Rader Center*, *The Oklahoman* (Jan. 8, 2010), available at <http://newsok.com/sex-abuse-study-cites-l.e.-rader-center/article/3430543> (noting that "[t]he design of the units . . . make it difficult to monitor juveniles, as well as staff").

³⁷ National Prison Rape Elimination Commission, *Report 6* (2009).

³⁸ See *At Risk: Sexual Abuse and Vulnerable Groups Behind Bars*, Hearing Before the National Prison Rape Elimination Commission, at 6 (Aug. 19, 2005).

³⁹ *Id.* at 3

- *Chance Martin, testifying about being raped in a jail at the age of 18*

- “[W]e shouldn’t mislead ourselves and think [video monitoring is] going to solve the problem . . . I’ve been in facilities that do have lots and lots of cameras, and I’ve . . . talked to children who have been assaulted by staff in those facilities, and there are ways of getting out of camera view and cameras are not everywhere in the facilities”⁴⁰

-*Mark Soler, Executive Director, Center for Children’s Law and Policy*

- “One of the things that we have to stop doing is trying to, with all due respect, get off on the cheap, because it takes folks to supervise those folks, it takes folks to train those folks, and all my facilities have cameras in them, all of them, and we have digital cameras, we have all of that, and we’ve still an incident of those things occurring in the facility. And, so, if cameras were the – was – I won’t say the cure-all – then believe me, we wouldn’t be having this discussion now.”⁴¹

- *Leonard Dixon, President of the National Juvenile Detention Association and Director of the Michigan Bureau of Juvenile Justice*

- “I think you’ve got to have units no more than 20 youth, you’ve got to have staff ratios no less than one-to-eight, and we really need to systematically get rid of these facilities that don’t permit staff to directly observe what’s going on.”⁴²

-*Barry Krisberg, President, National Council on Crime and Delinquency*

- “We need to ensure that proper staffing ratios are maintained. Detention centers should maintain a staffing ratio of one-to-six in their high risk units and one-to-eight staff-youth ratios in their general population units.”⁴³

-*Carl Sanniti, Deputy Secretary, Maryland Department of Juvenile Services*

- “[Michigan detention facilities] with incidents [of staff sexual misconduct] had a worse staff ratio (more residents under the direct supervision of one staff member) than those facilities without incidents . . . How is it that we can even begin to expect, much less assure, the safety of children and youth when a single staff person with minimal training is expected to provide direct/continuous supervision to as many as twenty (20) to thirty (30) youth or more on a shift?”⁴⁴

⁴⁰ Elimination of Prison Rape: Focus on Juveniles, Hearing Before the National Prison Rape Elimination Commission, at 91 (Jun. 1, 2006).

⁴¹ *Id.* at 93-94.

⁴² *Id.* at 112.

⁴³ *Id.* at 230.

⁴⁴ *Id.* at 7, 36 (written testimony).

-David Roush and Earl Dunlap, National Partnership for Juvenile Services

The consistency of testimony from a broad range of individuals, combined with the National Prison Rape Elimination Commission's observations about direct supervision, strongly support the Department's inclusion of minimum staff ratios in the PREA standards.

National Standards and Reports

A wide range of nationwide standards include minimum staff-to-youth ratios, recognizing that adequate direct supervision of youth goes hand-in-hand with the safety of youth and staff in a facility. These include:

- The National Juvenile Detention Association;⁴⁵
- The Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative Juvenile Detention Facility Standards;⁴⁶
- The Institute for Judicial Administration and American Bar Association's Juvenile Justice Standards;⁴⁷ and
- The National Advisory Committee for Juvenile Justice and Delinquency Prevention's Standards for the Administration of Juvenile Justice.⁴⁸

Even the Performance-based Standards established by the Council of Juvenile Correctional Administrators, while not mandating a particular ratio, acknowledge the relevance of staffing levels. The standards include the "[a]verage ratio of direct care staff to youth for each day during the collection month" as one of the five outcome measures for minimizing environmental risks and reducing harm in the use of restraints and isolation.⁴⁹

Recent reports from experts also support the use of a minimum staff ratio to protect youth from sexual abuse and other types of victimization. For example, a 2009 report by the National Council on Crime and Delinquency stated that inadequate staffing and training contributed to rampant sexual assault in certain juvenile facilities and recommended that facilities maintain a

⁴⁵ National Juvenile Detention Association, Minimum Direct Care Staff Ratio in Juvenile Detention Centers, at 6 (June 8, 1999), available at http://npjs.org/docs/NJDA/NJDA_Position_Statements.pdf.

⁴⁶ Annie E. Casey Foundation, Juvenile Detention Alternatives Initiative, Juvenile Detention Facility Standards, §§ V(B)(2), (3) (mandating minimum ratio of 1:8 during awake hours and 1:16 during sleeping hours).

⁴⁷ Institute for Judicial Administration and American Bar Association, Juvenile Justice Standards § 7.11(F) (1996) (providing for a staff ratio of 1:4 during waking hours and 1:12 during sleeping hours in post-adjudication facilities). The standard contemplates small secure residential facilities of between 12 and 24 youth.

⁴⁸ National Advisory Committee for Juvenile Justice and Delinquency Prevention, Standards for the Administration of Juvenile Justice § 4.2192 (1980) (providing for a ratio of 1:3.4 during waking hours and 1:5 during sleeping hours in post-adjudication units that house aggressive youth who present behavioral challenges to facility staff). The National Advisory Committee's standards established general staff-to-youth ratios of 1:10 during waking hours and 1:20 during sleeping hours in detention and post-adjudication facilities. *Id.* at §§ 4.212, 4.262. We believe that knowledge of best practices has moved the benchmark forward since these standards were established 32 years ago.

⁴⁹ See Council of Juvenile Correctional Administrators, Performance-based Standards, Safety Standard 2 - Sa9.

minimum staff-to-youth ratio of at least 1:8.⁵⁰ The report noted that in some situations, victimized youth deliberately engaged in violent or psychologically abnormal behavior in order to be placed in restricted housing units with increased staff supervision.⁵¹

Additionally, in 2000, the Department's Office of Juvenile Justice and Delinquency Prevention released a bulletin "designed to present the most up-to-date knowledge" with respect to the operation of juvenile confinement facilities.⁵² The publication recommended a staff-to-youth ratio of 1:8 or 1:10 "to ensure effective involvement and behavior management."⁵³

Finally, the Child Welfare League of America's best practice guidelines for serving lesbian, gay, bisexual, and transitioning (LGBT) youth in institutional settings draws a direct connection between staffing ratios and victimization. Specifically, the report notes that "[i]ncidents of harassment or violence toward LGBT youth are much less likely to occur or to escape the staff's attention when a facility has high staff-to-resident ratios."⁵⁴ The authors note that enhanced supervision "maximize[s] the opportunities for interaction between staff and residents."⁵⁵

The requirements contained in national standards and the perspectives of experts fully support the Department's inclusion of minimum staff-to-youth ratios as a way of combating sexual victimization.

Recent Litigation Over and Investigations of Sexual Victimization in Juvenile Facilities

In addition to the summaries of the Department's own investigations into victimization in juvenile facilities, recent litigation and investigations involving other facilities also exposes the connection between inadequate supervision and sexual victimization.

In July 2012, an audit of the Kansas Juvenile Correctional Complex (KJCC) in Topeka revealed that "[p]oor supervision in the dining area and living units has led to theft, injuries, and sexual misconduct."⁵⁶ In the report, auditors noted that KJCC was operating under a 1:15 staff-to-youth ratio.⁵⁷ The report describes an incident of sexual misconduct when youth engaged in sexual activity while a staff member's attention was directed to another group of youth.⁵⁸

Additionally, a 2003 grand jury investigation of sexual abuse at the Florida Institute for Girls in Palm Beach County, Florida, noted the following in its final report:

⁵⁰ Barry Krisberg, Special Report: Breaking the Cycle of Abuse in Juvenile Facilities 6 (2009).

⁵¹ *Id.* at 3-5.

⁵² David Roush & Michael McMillen, *Construction, Operations, and Staff Training for Juvenile Confinement Facilities* 9, Office of Juvenile Justice and Delinquency Prevention Bulletin (Jan. 2000).

⁵³ *Id.*

⁵⁴ Shannan Wilber et al., *Best Practice Guidelines: Serving LGBT Youth in Out of Home Care* 51 (2006).

⁵⁵ *Id.*

⁵⁶ Legislative Division of Post Audit, Performance Audit Report - JJA: Evaluating the Kansas Juvenile Correctional Complex, Part I, at 10 (July 2012).

⁵⁷ *Id.* at 29.

⁵⁸ *Id.* at 11.

“Male staff are prohibited [by policy] from being alone with a girl and entering a girl’s room without a female staff in attendance. However, staff shortages contributed to circumstances allowing certain male staff to violate this policy resulting in allegations of inappropriate touching. Inadequate staffing also contributed to a protective culture among some of the staff, that fostered coverups and non-reporting of inappropriate behavior in at least one case . . . Inadequate staffing breeds and [sic] environment that has a potential for sexual abuse of the girls”⁵⁹

Similarly, in recent litigation against the Hawaii Youth Correctional Facility (HYCF) for failures to protect LGBT youth from victimization, a federal district court found that the defendants had “failed to maintain . . . adequate staffing and supervision.”⁶⁰ The court noted that the plaintiff’s allegations that they “frequently experienced ward-on-ward harassment when [staff] were not paying attention or were absent [was] consistent with the . . . finding that defendants ha[d] employed an insufficient number of staff at HYCF to monitor youth.”⁶¹

Cases such as these reinforce the connection between inadequate direct supervision and sexual victimization, and they support the Department’s inclusion of a minimum staffing ratio in the PREA standards.

(6) The expected costs of the provision.

Although we are not in a position to estimate costs of the staffing ratio requirement for particular jurisdictions, we have several comments related to the estimates in the Department’s Regulatory Impact Assessment (RIA). Specifically, we believe that the RIA’s estimates of the costs of victimization are too low and that the actual cost of victimization and its associated consequences offset any investment required to comply with the staffing ratio standard.

The RIA projects an estimated average annualized cost of \$53,666 per juvenile facility to come into compliance with all of the PREA standards, stating that the staffing standards represent 25.3% of the total cost.⁶² The RIA also explains that the actual cost of compliance is likely to be less than the quoted figure.

We agree with this assessment. Many juvenile facilities already meet or exceed the 1:8 and 1:16 staffing ratios during awake and sleeping hours, respectively. In the comments accompanying the final standards, the Department noted that the proposed ratios matched or

⁵⁹ Palm Beach County Grand Jury, Final Report on the Investigation of Florida Institute for Girls 28, 60 (2003).

⁶⁰ *R.G. v. Koller*, 415 F. Supp. 2d 1129, 1157 (D. Haw. 2006).

⁶¹ *Id.* at 1157 (internal quotation marks omitted).

⁶² U.S. Department of Justice, Regulatory Impact Assessment - National Standards to Prevent, Detect, and Respond to Prison Rape Under the Prison Rape Elimination Act (PREA) 71, 92 (May 17, 2012).

were less stringent than the ratios mandated by 12 states, plus the District of Columbia and Puerto Rico, for their juvenile detention facilities, juvenile correctional facilities, or both.⁶³ Our work with specific jurisdictions and research of publicly available state laws, regulations, and policies revealed at least 13 states with ratios that met or exceeded the Department’s standard for both waking and sleeping hours, in addition to Puerto Rico and the District of Columbia.⁶⁴ The RIA properly observes that these facilities should have no costs for compliance with the staffing ratio standard.

We were pleased that the RIA considered monetary costs of victimization that are often ignored such as suffering and loss of quality of life, costs of mental health treatment, suicide acts, medical care, sexually transmitted infections, pregnancy, substance abuse, and serial victimization. However, the Department appears to omit other important costs related to the prosecution and litigation of sexual abuse claims and the costs associated with systemic reform.

For example, the RIA assigns only \$871 to “Criminal Justice Investigation/Adjudication” for child rapes.⁶⁵ This figure would scarcely cover the costs of making court personnel available for one court appearance, let alone the many costs associated with litigating sexual abuse cases. For example, a study of court costs in Los Angeles County conducted during the 1980s found that the daily costs of operating a court were \$2,318.⁶⁶

⁶³ National Standards to Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37106, 37123 (June 20, 2012) (amending 28 CFR Part 115).

⁶⁴ **Alabama:** Ala. Admin. Code r. § 950-1-13-.03 (1:6 in short-term detention facilities); **Idaho:** Idaho Department of Juvenile Corrections – JCC Lewiston Overview, *available at* <http://www.idjc.idaho.gov/ProgramsFacilities/StateFacilities/JCCLewiston/tabid/111/Default.aspx> (1:8 waking and 1:12 sleeping at Lewiston Juvenile Correctional Center); **Kansas:** Kan. Admin. R. § 28-4-353(e)(2)(B) (1:7 waking and 1:11 sleeping in detention and secure care centers); **Louisiana:** La. Adm. Code LAC 67:V.Chapter 75 §7511 (G) (1:8 waking and 1:16 sleeping in secure detention facilities); **Maryland:** Kelly Dedel & Peter Leone, Fourth Monitor’s Report for the Baltimore City Juvenile Justice Center (BCJJC) (June 2009), *available at* <http://www.djs.state.md.us/pdf/fourth-bcjjc-monitors-report.pdf> (1:8 waking and 1:16 sleeping in Department of Juvenile Services Facilities; Baltimore City Juvenile Justice Center detention facility must maintain 1:6 waking and 1:12 sleeping); **Missouri:** Supreme Court Rule 129, Section 11.2 (1:8 in secure detention facilities); **Missouri:** Email from Scott Odum, Assistant Deputy Director, Treatment Section, Missouri Department of Youth Services, to Vivian Murphy, Director, Missouri Juvenile Justice Association (June 25, 2012) (1:5 or 1:6 in Department of Youth Services facilities); **Montana:** Mont. Admin. R. § 20.9.612(3) (1:8 waking and 1:12 sleeping in secure detention); **New Jersey:** N.J. Admin. Code § 13:92-10.6 (1:8 waking and 1:16 sleeping in secure detention); **New York:** 9 N.Y. Comp. Codes R. & Regs. § 180.9(15) (1:8 waking and 1:15 sleeping in secure detention); **Oklahoma:** Okla. Admin. Code § 377:3-13-44(4) (1:7 waking and 1:16 sleeping in secure detention); **Pennsylvania:** 55 Pa. Code §§ 3800.274(5), (6) (2011) (1:6 waking and 1:12 sleeping in detention and post-adjudication facilities); **Texas:** Tex. Admin. Code § 343.440 (1:8 in secure detention multiple occupancy housing units); **Utah:** Utah Department of Juvenile Justice Services Policy No. 05-08(III)(A)(7) (1:8 waking and 1:16 sleeping in all facilities operated by the Utah Department of Juvenile Justice Services).

⁶⁵ *Id.* at 44.

⁶⁶ Kent John Chabotar et al., *Analyzing Costs in the Courts*, U.S. Dept. of Justice Office of Communication and Research Utilization 110 (1987). See generally J.S. Kakalik & R.L. Ross, *Costs of the Civil Justice System: Court Expenditures for Various Types of Civil Cases* (1983).

It is impossible to estimate accurately the expense of litigation without including attorney fees and costs.⁶⁷ For example, when cases are handled by experienced attorneys, fees alone are likely to run several hundred dollars per hour. The *Laffey* matrix, a rubric commonly used by courts to determine the appropriate rates for attorney fees, pegs the hourly rate for an attorney with more than 20 years of experience at \$495 per hour.⁶⁸

In almost every case where there is a settlement or judgment in favor of the plaintiff, there is an award of attorney fees and costs. In many cases, the attorney fees and costs exceed the award to the plaintiff. For example, a teenager raped in a Utah prison was recently awarded \$435,000 as part of a settlement, with punitive damages and attorney fees exceeding \$1 million.⁶⁹ Unlike in other kinds of juvenile and correctional facility litigation, plaintiffs in rape and strip search cases may no longer be in custody, meaning that attorney fees are not restricted by the Prison Litigation Reform Act.

Additionally, rape and sexual abuse cases often require extensive investigations because they come down to a disputed version of what happened. They also frequently involve expert testimony on damages. Even injunctive cases, which seek to change practices rather than to compensate victims, can entail substantial attorney fees.⁷⁰ All of these costs must be borne by the losing party, which is often a state or local governmental agency.

There are also substantial costs associated with representing agency officials and staff members in sexual abuse cases, a task that often falls to the state's attorney general or a county counsel's office. Defense of these cases requires compliance with discovery requests, filing of responsive motions and briefs, settlement negotiations, and sometimes trial. Extensive time commitment by counsel for state or local governments may also be required when apparent patterns of problems at an institution trigger independent investigation by the Department of Justice or another monitoring entity. It is our experience that public agencies often turn to outside law firms for assistance in defending such cases, which entails payments for representation at

⁶⁷ This is a different question than the question of whether the PREA standards will decrease or increase litigation, which the RIA does address.

⁶⁸ United State's Attorney's Office for the District of Columbia, *Laffey Matrix – 2003-2012*, available at http://www.justice.gov/usao/dc/divisions/civil_Laffey_Matrix_2003-2012.pdf.

⁶⁹ Emiley Morgan, Utah prison guard ordered to pay \$1.4M in rape case, *Deseret News* (Feb. 25, 2010). In another class action lawsuit stemming from strip searches of youth in a Florida jail, each of 1,312 claimants class members received an average settlement award of about \$3,500, with attorney fees, costs, and expenses totaling \$1.1 million. Margo Schlanger, *Jail Strip Search Cases: Patterns and Participants*, 71 *Law and Contemporary Problems* 65, 72 (2008). In two cases involving strip searches in Los Angeles and Washington, D.C., the attorney fees were \$13 million. *Id.* A website, [LawyersandSettlements.com](http://www.lawyersandsettlements.com/settlements/civil-human-rights-settlements/), provides additional descriptions of civil and human rights case settlements and fees. See <http://www.lawyersandsettlements.com/settlements/civil-human-rights-settlements/> (last visited July 5, 2012).

⁷⁰ For example, a case for injunctive relief over conditions in a juvenile detention facility in Sacramento County, California, recently resulted in a \$700,000 attorney fee award. Andy Furillo, Sacramento County settles juvenile detention suit, *Sacramento Bee* (Dec. 14, 2009).

private law firm rates. These costs of legal services, along with the other costs described above, should be factored into the RIA's "break even" analysis.

Further, jurisdictions confronting widespread failures to prevent sexual misconduct often face many additional costs associated with systemic change. For example, the recent sexual misconduct scandal at the Texas Youth Commission involved more than 750 complaints over a period of less than 10 years.⁷¹ While the RIA addresses the issue of multiple victims of sexual abuse, it does not fully address the costs of systemic sexual abuse, which may entail restructuring agencies, replacing key staff, and responding to public scrutiny in legislative hearings and other public forums. There are also costs associated with prosecuting and, in some cases, incarcerating staff or youth guilty of perpetrating misconduct.

Finally, we are concerned that the RIA's estimated cost of \$675,000 per case of sexual abuse of a youth is too low and does not reflect the actual costs associated with victimization. We understand that the figure was calculated, in part, using quality of life awards and settlements in actual cases. The RIA does not provide the raw data on awards that were factored into the estimate, and we are concerned that some awards are significantly lower than what a victim ought to have received when compared with victims in other similar situations.

We are grateful for the research and thoughtful reasoning that the Department applied when developing the RIA. However, we urge the Department to incorporate the costs and considerations described above when assessing any expenses associated with the staffing ratio standard. The RIA concluded that the costs of compliance for juvenile facilities would be offset if the PREA standards helped prevent just 2.55% of the expected number of sexual assault incidents. Adequate in-person supervision of youth is critical element in meeting and exceeding that goal.

(7) Whether the required ratios may have negative unintended consequences or additional positive unintended benefits.

Because of the connection between staffing ratios and sexual misconduct, the proposed standard will play an instrumental role in achieving PREA's goal of effective sexual misconduct prevention, detection, and response. Whether intended or unintended, the inclusion of minimum staffing ratios will also yield a number of other positive benefits. These include:

- increased safety and security of institutions;
- greater support for existing direct care staff;
- reduced rates of staff injury and turnover;

⁷¹ Doug Swanson, Complaints filed against guards at all 13 youth prisons documents show, *Dallas Morning News* (Mar. 7, 2007).

- fewer opportunities for abuse and harassment of a non-sexual nature;
- fewer opportunities for youth to engage in self-harming behavior;
- greater opportunities for interactions focused on helping youth develop positive skills; and
- fewer instances of canceled rehabilitative programming or services because of staff shortages.

Minimum staffing ratios will also help protect staff against false allegations of sexual abuse. For example, it is easier for a staff member to respond to false allegations of misconduct when a coworker who was present on the unit can corroborate the staff member's account of a situation.

We do not anticipate any negative unintended consequences of the staffing ratio standard, as any additional staff members will be subject to all of the PREA standards' requirements with respect to sexual misconduct prevention, detection, and response. To the contrary, our experience with juvenile facilities demonstrates that staff fully recognize the importance and benefits of direct supervision. When touring or working with juvenile facilities, we often ask staff and administrators what changes they would like to see in their facilities. The leading response is "more staff." Indeed, in a recent survey of stakeholders in the Texas' juvenile justice system, 70% of supervisors at a state-operated secure institutions responded that improved staff-to-youth ratios was a factor that they considered to be "most important" in maintaining the safety of youth and staff.⁷²

For these reasons, we support the Department's inclusion of a minimum staff ratio. It will not only play a vital role in reducing sexual victimization, but it will also make juvenile facilities safer, more humane, and more rehabilitative.

(8) Question 8: Whether empirical studies exist on the relationship between staffing ratios and sexual abuse or other negative outcomes in juvenile facilities.

Although we are not aware of any peer-reviewed experimental research on the relationship between staffing ratios and sexual abuse in juvenile facilities, there is evidence from the juvenile justice and corrections literature linking direct supervision with the safety of youth.

In 2000, the Department's Office of Juvenile Justice and Delinquency Prevention released a bulletin, described above, "designed to present the most up-to-date knowledge" with respect to the operation of juvenile confinement facilities.⁷³ That bulletin recommended a staff-to-

⁷² Texas Juvenile Justice Department, Stakeholder Survey 4 (Feb. 2012), available at <http://www.tjjd.texas.gov/docs/BoardAgenda/Information%20Packet.pdf>.

⁷³ David Roush & Michael McMillen, *Construction, Operations, and Staff Training for Juvenile Confinement Facilities* 9, Office of Juvenile Justice and Delinquency Prevention Bulletin (Jan. 2000).

youth ratio of 1:8 or 1:10 “to ensure effective involvement and behavior management.” Specifically, the report noted the following:

Higher staff-resident ratios at juvenile facilities allow for more effective interaction. When staff have many opportunities to work with residents, problems can be identified and resolved before they pose a threat to safety. Juveniles themselves will feel safer, will feel less exposed to unknown threats, and will be less likely to act out.⁷⁴

In a 2009 study of factors that predict victimization of youth in juvenile facilities, researchers noted that “overcrowding and staffing ratios have been found by several prior researchers to be significant predictors of victimization when using aggregated facility-level data.”⁷⁵ The study examined a range of factors, finding that facilities with a higher number of youth supervised by each staff member reported significantly more instances of physical abuse and fights.⁷⁶

Unlike previous studies, the researchers also included individual-level variables in their analyses, such as youth’s perceptions of facilities’ rules and practices, school quality, and staff helpfulness. These individual-level variables significantly predicted victimization, which led the researchers to conclude that “one needs to understand how rules are communicated to inmates, how staff interact with inmates, and the content of facility schools, rather than only what rules are in place, how many staff are at a facility, or what classes are offered to inmates.”

We agree with the researchers’ conclusion that staffing levels are just one part of creating a safe environment. Fortunately, the PREA standards include a range of strategies aimed at reducing victimization, including staff training, youth education, supervision of staff, and data collection and review. However, we question the conclusion that individual perceptions may be better predictors of victimization than the level of direct supervision in a facility. For one, the researchers acknowledged that their data came from facilities that self-selected to participate in the research. Furthermore, the facilities that volunteered were a self-selected subset of the voluntary participants in the Council of Juvenile Correctional Administrators’ Performance-based Standards (PbS).

The fact that the facilities in this study are part of the PbS program is not a problem in and of itself. To the contrary, the facilities’ participation in PbS is laudable, as it means that the participating facilities have taken voluntary steps to monitor and regularly report data on a

⁷⁴ *Id.*

⁷⁵ Aaron Kupchik and R. Bradley Snyder, *The Impact of Juvenile Inmates’ Perceptions and Facility Characteristics on Victimization in Juvenile Correctional Facilities*, 89 *The Prison Journal* 265, 280 (2009).

⁷⁶ *Id.* at 278.

range of factors related to the safety and security of their facilities. However, it means that the study's conclusions may not extend to facilities that suffer from greater problems with victimization that have not taken similar steps to engage in quality assurance efforts. The Department should, therefore, interpret this study's conclusions carefully.

Finally, a 2002 review of the impact of group size on outcomes in juvenile justice facilities also suggested a relationship between staff supervision and safety.⁷⁷ The study cited research that found that as the number of residents under one staff member's supervision increased, staff became more punitive in their interactions with residents.⁷⁸ Although the review did not focus specifically on the impact of staffing ratios on victimization and other outcomes, the author noted that "an increase in group size is associated with a reduction or decrease in positive correctional effects."⁷⁹

(9) Whether specific objectively determined resident populations within a secure facility should be exempt from the minimum ratios.

The purpose of a staffing ratio requirement is to establish a minimum level of direct supervision necessary to prevent sexual victimization. Thus, no specific populations of youth should be exempt from the provision.

However, there are numerous situations that warrant higher levels of staff involvement. For example, youth in special housing units for medical or mental health needs, youth with disabilities, and youth who exhibit risk factors for suicide all require additional in-person supervision and interaction. Thus, the standard should add language that makes clear that staff must deploy additional staff in situations that require enhanced supervision.

Proposed revisions:

§ 115.313 Supervision and monitoring.

...

(c) Each secure juvenile facility shall maintain staff ratios of a minimum of 1:8 during resident waking hours and 1:16 during resident sleeping hours, except during limited and discrete exigent circumstances, which shall be fully documented. Only security staff shall be included in these ratios. **This standard does not limit the ability of facilities to deploy additional staff in situations that require higher levels of supervision, such as times when units are housing**

⁷⁷ David W. Roush, *The Relationship Between Group Size and Outcomes in Juvenile Corrections: A Partial Review of the Literature*, 17 *Journal for Juvenile Justice and Detention Services* 1 (Spring 2002).

⁷⁸ *Id.* at 12.

⁷⁹ *Id.* at 11.

youth with medical or mental health needs, youth with disabilities, or youth who exhibit risk factors for suicide, or in any other context in which facility administrators determine that increased staffing is advisable. Any facility that, as of the date of publication of this final rule, is not already obligated by law, regulation, or judicial consent decree to maintain the staffing ratios set forth in this paragraph shall have until October 1, 2017, to achieve compliance.

....

(10) Whether additional categories of staff, beyond security staff, should be included in the minimum ratios.

We do not support expanding the definition of staff included in the minimum ratios beyond staff who provide in-person supervision of and interact with youth. In our response to Question 1, we proposed a definition of “direct care staff” that ensures that facilities would only include individuals who provide direct, in-person supervision of youth when computing their staff-to-youth ratios.

As written, this definition allows other individuals such as unit counselors or social workers to count toward the staffing ratio standard, so long as they are supervising and interacting with youth in a housing unit, recreational area, dining area, or other program area. However, this definition would not allow facilities to include counselors, social workers, and medical and mental health professionals in staffing ratios if they are engaged in one-on-one interactions with individual youth. We believe that this approach strikes an appropriate balance with respect to the goal of the staffing ratio standard.

(11) Whether the standard should exclude from the minimum ratio requirement facilities that meet a specified threshold of resident monitoring through video technology or other means, and, if so, what that threshold should include.

Video technology can complement efforts to prevent, detect, and respond to sexual abuse. However, cameras should not serve as a substitute for the minimum staffing requirement. Continuous, direct, and engaged supervision provides one of the best forms of protection against victimization, as staff can prevent and identify signs of developing problems among youth through regular interactions with them. Additionally, video surveillance systems rarely capture live audio, which severely diminishes the quality and effectiveness of video as a monitoring tool. Staff who directly supervise youth rely on what they hear, as well as what they see, to help prevent dangerous situations from developing, taking cues from residents’ conversations and changes in tone or inflection. Because video surveillance systems lack this

feature, facilities that rely on that technology to meet their supervision needs are compromised in anticipating and responding to events.

The Department acknowledged the limitation of video technology as a tool to prevent sexual misconduct in its comments accompanying the PREA standards, noting that video surveillance “cannot substitute for more direct forms of staff supervision (in part because blind spots are inevitable even in facilities with comprehensive video monitoring), and cannot replace the interactions between inmates or residents and staff that may prove valuable at identifying or preventing abuse.”⁸⁰ We agree. Thus, we strongly oppose any exemption from the staffing ratio requirement for facilities that meet a specified threshold of resident monitoring through video technology or other means.

(12) Whether the standard appropriately provides an effective date of October 1, 2017, for any facility not already obligated to maintain the staffing ratios.

We do not believe that the current timeline for compliance with the staffing ratio standard is appropriate, as it allows for a lengthy delay that will perpetuate ongoing victimization. Facilities can and should begin planning now to meet this requirement. Any postponement will come at a significant cost. The Department’s survey of sexual victimization in juvenile facilities estimated that 3,220 youth nationwide reported incidents of sexual violence from April 2008 to June 2009. The survey likely underestimated victimization rates, as it was restricted to confinement facilities that held adjudicated youth for at least 90 days. Even so, multiplying the estimated number of victimized youth by the current four-year delay yields an additional 12,880 youth who will be sexually victimized during that period.

We do recognize that agencies may need to request appropriations to implement the standard, and we know that some state legislatures operate on a two-year budget cycle. Accordingly, we recommend that the Department require compliance by August 20, 2014, which will give jurisdictions a full two years to meet the standard.

Staffing ratios are one important part of a broader, coordinated approach to sexual misconduct prevention, detection, and response. The Department should not unnecessarily delay the implementation of a requirement that research, experience, and the Department’s own investigations demonstrate to be crucial in combating sexual violence against youth.

⁸⁰National Standards To Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37106, 37125 (June 20, 2012) (amending 28 CFR Part 115).

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....