

REVIEW PANEL ON PRISON RAPE
March 13, 2008

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Testimony

Hello, my name is J. David Donahue, I am the Commissioner of the Indiana Department of Correction. I want to first offer my appreciation for the opportunity to appear before this Panel to submit testimony and share information that could help reduce sexual violence in America's correctional facilities, and assist this Panel and the PREA Commission with the lofty goal of eradicating prison rape. As Commissioner, I am the Chief Executive Officer of a prison system that includes 21 adult correctional facilities, and seven juvenile detention facilities. There are over 26,000 offenders sentenced to Indiana's Department of Correction, including just over 1,000 juvenile offenders. Presently, 8.4% of the adult inmates are female, and 17.7% of the adjudicated juvenile delinquents are female. The Department also has over 9,000 employees and contractual workers.

Each of these staff members and contract employees, no matter their title, is a correctional worker first. As correctional professionals, each employee

must observe fundamental correctional practices, including the duty to help protect the inmate population from all forms of violence, including sexual violence.

When President Bush signed into law the Prison Rape Elimination Act on September 4, 2003, the knee-jerk consensus within the corrections community was not one of initial acceptance. Commissioners, wardens, and directors across the country were all echoing the same phrase, “We already implement zero tolerance for prison rape.”

There is little doubt that the culture within prisons in America is changing. For those of us who started our careers in corrections decades ago, we have witnessed a great evolution. Once, there was very little focus on rehabilitation, and preparing offenders for successful release. Prison was itself a place that was meant to be in high contrast to freedoms we experience as free citizens, and programming resources were simply not made available to Departments of Correction. The primary focus for staff was to make certain offenders did not escape or disrupt the smooth running of the facility. So long as the facility ran smoothly, what happened among the offenders in prison stayed in prison. Staff did not get involved in

offender business, and, like the character Sergeant Schultz in the television series Hogan's Heroes, would, when confronted with sexual violence within prison, simply look away, repeating "I hear nothing, I see nothing, I know nothing."^[1]

As we continue to commit ourselves to institutional reforms, those of us who have made our careers in corrections, and as such, have devoted our lives to protecting the public have accepted a broader view. We now know our mission of public safety is not advanced by allowing criminal offenders to serve time in a violent environment. In fact, this virtually guarantees that offenders will re-offend after release from prison. Certainly, those who support the reforms contemplated by PREA understand this. To that end, Indiana has made many changes in the last several years.

As the PREA Commission toured the country hosting regional public meetings, the general disdain for PREA among Departments of Correction began to dissolve. On March 31, 2005, only three months into my appointment as Commissioner, I accepted an invitation to speak at one of these Regional Meetings where I sat on a panel at Notre Dame Law School.

^[1] Hogan's Heroes, a Bing Crosby Production, 1965 to 1971.

I listened to a gentleman who had previously served time in the Ohio Department of Rehabilitation and Correction describe himself as suffering from mental illness and gender identity issues. He vividly relayed how he was the victim of repeated sexual assaults by the offender population. My compassion went out to this individual. After he spoke, there was much discussion about what can be done to protect individuals like him. I often say that people are sent to prison as punishment, not for punishment. No human being should have to endure such threats to their safety and wellbeing. Departments of Correction cannot begin to make a positive impact on the lives of those who are incarcerated unless these agencies first ensure the inmates who reside within their facilities are afforded an environment that is conducive to rehabilitation. This begins by offering safe conditions of confinement.

After I returned from the PREA Regional Meeting, I called together key staff to begin drafting a new Policy and Administrative Procedure (02-01-115) specifically designed to guide staff on “Sexual Assault Prevention and Reporting.” This new procedure became effective May 25, 2005, and clearly established the Department’s zero tolerance for sexual misconduct. It also authorized improved staff orientation and training designed to

emphasize zero tolerance, and included detailed guidelines for educating the offender population on the Department's new standard. Each facility is to assign a PREA Coordinator, and develop a Sexual Assault Prevention Committee. This procedure also set out guidelines for reporting and tracking incidents of sexual misconduct. Coupled with this procedure, the Department designed brochures to give to inmates that described the PREA mandates, and the Department's drive towards the ideal zero tolerance. The Department also designed and printed posters outlining PREA, which were placed in key areas throughout all adult and juvenile facilities.

In the spring of 2006, the Department installed a new telephone "Hotline" system. This was first introduced in juvenile facilities, and utilizes regular housing unit telephones. By calling a specific posted number, inmates can leave a confidential message for internal affairs investigators. The purpose is to provide an immediate and safe way for inmates to report misconduct by fellow offenders or staff. This tool proved successful, and was rolled out to adult facilities, under the acronym TIPS (Timely Information Promotes Safety). This system is monitored daily. A review of the TIPS activity at the Rockville Correctional Facility since January of 2007 indicates there were complaints raised about a variety of conditions of confinement issues,

but there were no communications from offenders regarding sexual violence or potential threats of sexual violence.

In December of 2005, the Indiana Department of Correction also obliterated its arduous five-step bureaucratic offender grievance process. By all indications, in practice this administrative grievance review process actually dissuaded offenders from filing grievances. The new process emphasized a more streamlined informal reporting of complaints to Unit Team Members for resolution. The Department built a new web-based grievance tracking system that allows visual reports to be generated. These enhanced reports permit a closer look to at the types of complaints being raised by inmates, and the staff members involved. To assist early resolution of offender issues, the Department also changed facility protocols requiring members of each facility's Executive Staff to schedule time in the dining halls to discuss any offender issues.

On the Legislative front, the Indiana Department of Correction crafted legislation in 2005 that would enhance the sentences for the crime of "Sexual Misconduct", which pertains to those who engage in sexual intercourse or sexual deviate conduct with those who are in lawful detention.

The legislation raised the crime from a D to a C felony if they engage in sexual activity with an incarcerated adult, and from a C to a B felony if the sexual activity is with a juvenile offender. The purpose behind this enhancement was to ensure those staff that crossed that line would face incarceration themselves, and this message would be drumbeat into employees as a part of new employee and annual in-service trainings.

Although the Department was not successful in getting this measure passed in 2005, we tried again in 2007, and were successful in persuading Indiana lawmakers to unanimously support this legislation.

During the 2006 Session of the Indiana General Assembly, the Department was successful in introducing a change in law (Senate Enrolled Act 12) that moved Indiana's sex offender registry under the auspices of the Department, and, among other things, allows the Department to restrict credit time from sex offenders that refuse to engage in treatment. During the current Session of Indiana's General Assembly, the Department proposed another measure (Senate Bill 86, Amendment 86-1), which would expand the definition of the crime of sexual deviate conduct, to make it clear that prosecutors could charge those incarcerated in prisons with this crime, if they should sexually

victimize other offenders. The current Session is not yet concluded, so we must wait to see if this measure will pass.

In addition, by my Executive Order, issued in August of 2005, each facility removed video games used by the offenders that contained violent or explicit content. Again, the goal is to remove violence in all its forms from the prison setting, and to demonstrate a zero level of acceptability for violent behavior.

The Department also revised its correspondence Policy, to expand the definition of materials restricted from the population because they contain pornography. Soon after this policy became effective (July 1, 2006), the American Civil Liberties Union of Indiana commenced a legal action claiming this policy unduly restricts offenders' Constitutional rights. The lawsuit is still pending.

The Indiana Department of Correction focused its brightest spotlight on PREA in 2007. I assembled a task force composed of some of the brightest correctional leaders Indiana has to offer, including Julie Stout, who is here today, and serves as Superintendent of the Rockville Correctional Facility. I

charged these correctional leaders with the responsibility of changing the very culture of Indiana's correctional facilities, working to instill best practices designed to end sexual victimization. This working group, dubbed the "Prison Rape Oversight Group" (PROG), was composed of the Department's Deputy Commissioner of Operations, facility superintendents, the Department's Director of Mental Health Services, Planning and Research staff, and a seasoned internal affairs investigator. The PROG Group meets quarterly to review facility operational procedures relating to PREA, it examines barriers to PREA implementation, and it examines data being collected by the Department's Research and Planning Division.

In April 2007, the Department hosted a statewide Summit to address sexual violence in prison. The theme of this Summit was "Silence is a Crime", and guest speakers included national PREA experts, including PREA Commissioner Pat Nolan. This Summit coincided with Sexual Assault Awareness Month, and brought together hundreds of state and local corrections professionals to learn about prevention, detection, treatment, and adjudication of sexual misconduct in prison.

The Department successfully piloted new “Incident Reporting, Monitoring and Mapping” protocols that helped pinpoint potential dangerous areas within a prison compound. This procedure became required practice at all facilities on November 1, 2007.

The Indiana Department of Correction also began participating in the “Protecting Inmates and Safeguarding Communities” grant. By Executive Directive issued November 21, 2007 (#07-68), the Department introduced a new sexual violence assessment tool, a summary report of the tool, and a screening tool to be used at intake to help identify sexual predators and sexual victims.

So the question remains, with so much energy being devoted in Indiana to meet the requirements of PREA, why do the results of a recent survey indicate that the Rockville Correctional Facility is not a safe place? Why do the results of this survey suggest that this adult female institution does not adequately protect offenders against sexual victimization by other offenders?

First of all, using funds received from the “Protecting Inmates and Safeguarding Communities Grant”, the Indiana Department of Correction

conducted its own survey at each correctional facility. The survey conducted at Rockville does not support the conclusions drawn by the Bureau of Justice Statistics survey, which showed that as many as 10.2% of the population engages in offender-with-offender sexual activity. The Department's survey, which was conducted in December of 2007, revealed a much different story. Of the offenders randomly surveyed:

- 100% indicated they were never pressured or forced into having sexual contact;
- 90% reported they understand the proper steps for reporting sexual violence, with 6% indicating they somewhat knew the steps to take to report an act of sexual violence, and the remaining 4% indicating they did not know what steps.

When one takes a closer look at the Bureau of Justice Statistic's numbers and how they were interpreted within the Report, they will find that out of more than 1,200 female offenders housed at the Rockville Correctional Facility, only 169 actually participated in the "Sexual Victimization Survey." Of these, 18 reported they engaged in sexual activity with one or more other female offenders. Certainly an unacceptable measure, but is it a true measure? It is unfortunate that the survey method used does not ask for

those offenders who did indicate some sort of victimization to set out at least some level of detail, not only to determine whether they are interpreting the question correctly, but, even more importantly, to assist correctional administrators with making changes that improve the safety of the facility. Truly a missed opportunity that is frustrating to facility staff.

Other questions that need to be considered is why three of the top ten facilities scoring the highest propensity of sexual victimization are female institutions. Should a survey be developed that takes into consideration gender-specific issues?

Finally, I must congratulate those facilities that showed the lowest propensity of sexual victimization. In fact, the surveys conducted at all six top facilities showed no level of sexual victimization whatsoever - truly a remarkable accomplishment. But it does beg the question whether the results of the survey are skewed by the fact that so many offenders did not respond, (in one case as many as 62% of the offenders surveyed failed to respond). One must question whether a facility can be declared one of the safest in the country, and suggest they embrace PREA concepts, when 2/3^{rds} of the sample population were non-responsive. The willingness of the

population to cooperate and communicate certainly must be a factor in determining whether a facility is safe from sexual victimization.

Unfortunately, because of its limited questioning on the subject of sexual victimization, and because of the extremely broad definitions it used, this survey provides no real idea what is taking place. On the one hand, one might say the facility is not safe, and that offenders are raping one another.

If true, this warrants strong action against the aggressors, including criminal prosecution and removal to a more secured setting. If the people compiling the survey know this, it is wrong for them to fail to provide the Indiana Department of Correction with this information.^[2] Or, does the BJS survey indicate that perhaps some offenders are making unwanted sexual advances, not in an aggressive manner, but out of some attempt to seek companionship - certainly a much different scenario. The fact that there has been no physical evidence of sexual assault observed by facility medical staff, tends to indicate that this scenario is the more likely.

I can assure you the Rockville Correctional Facility is not a dangerous facility with a high propensity for sexual assault. One only has to walk its

^[2] The Indiana Department of Correction has made repeated requests to the surveyors for this information, but were told that this information either does not exist, or that they are not divulging it due to promises of anonymity.

compound, and talk to its offenders and staff to know this is a safe facility for offenders, and one whose mission emphasizes open communication, and engagement in positive activity. The enthusiasm and compassion shown by staff, and their commitment to ensuring a safe environment for their inmate population is all too apparent. Whenever there is a claim of sexual violence within the Indiana Department of Correction, staff waste no time investigating the claims, using experienced investigators, and tools such as Voice Stress Analyzers. They also invite the Indiana's State Police to join the investigation to provide objectivity and to help secure a conviction if facts would warrant.

The results of the survey also beg the question, "What are other jurisdictions doing that Indiana should be doing?" I can assure the Members of this Panel, and the Members of the PREA Commission, that, as long as I am Commissioner, the hardworking women and men who dedicate their lives to public safety working for the Indiana Department of Correction will not stop looking for ways to improve offender safety.

Again, thank you for this opportunity. This concludes my testimony. I will be happy to answer any questions the members of the Panel may have.