



## Texas Department of Criminal Justice

Brad Livingston  
Executive Director

April 4, 2010

Robert Hinchman, Senior Counsel  
Office of Legal Policy  
United States Department of Justice  
950 Pennsylvania Ave NW, Room 4252  
Washington, DC 20530-0001

RE: Docket No. OAG-131

Dear Mr. Hinchman:

On behalf of the Texas Department of Criminal Justice (TDCJ), I am writing in response to the proposed national standards relating to the prevention, detection and response to prison rape. Thank you once again for the opportunity to have input on the development of the standards. Please see the enclosure containing our agency's comments.

This agency had relatively few issues relating to the recommendations offered by the Prison Rape Elimination Act (PREA) commission because most of the recommendations were similar to agency policy. For the same reason and because it is apparent the Department of Justice gave careful consideration to the comments submitted by many interested parties during 2010, the TDCJ has few issues relating to the proposed national standards. I appreciate the time and effort you and other staff members in the Department of Justice have devoted to this matter.

There are only two significant issues that I want to address in this correspondence. First, the standards address "sexual abuse" rather than prison "rape" as defined in section 10 of Public Law 108-79 (42 U.S.C. 15609(9)). To the extent the standards utilize this broader definition, please consider how prohibitions related to behavior such as voyeurism are going to be particularly challenging in the correctional environment where accusations may result simply from staff performing their official duties.

The second issue is somewhat related to the first and involves prohibitions on the opposite gender viewing offender's buttocks or genitalia. The limited exceptions made in the standards do not fully account for the incidental viewing inherent when staff performs their official duties. Compliance with this standard may require employment decisions based on gender, which in the case of the TDCJ could involve violating both state and federal law as well as severely impacting unit operations.

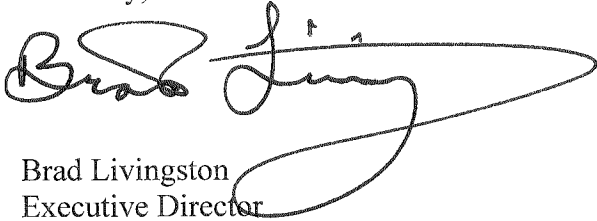
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*Our mission is to provide public safety, promote positive change in offender behavior, reintegrate offenders into society, and assist victims of crime.*

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Again, thank you for the opportunity to comment. Please know this agency is committed to a zero tolerance policy regarding sexual assault and other acts of violence within our institutions and will continue to enforce that policy regardless of what actions are taken regarding the proposed standards.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Livingston". The signature is stylized with a large, sweeping loop at the end.

Brad Livingston  
Executive Director

Enclosures

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