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VIA ELECTRONIC AND U.S. MAIL

January 16, 2014

RE: Compliance with PREA regulations

Dear Sheriff XXX

As you are likely aware, final rules to enact the federal Prison Rape Elimination Act (PREA) to address sexual assault in prisons and jails have been adopted and apply to “any confinement facility,” including jails.¹ Of particular concern in North Carolina, due to the State’s practice of treating 16 and 17 year olds as adults for purposes of charging and trying offenders, are provisions that mandate complete sight and sound separation in housing youthful offenders as well as several provisions regarding isolation, availability of educational services, and supervision.² At this time all state and local correctional agencies, including jails must be in compliance with PREA or working towards full compliance.³

An exhaustive review of sexual assault and strategies for combating assault in prisons and jails by the Department of Justice consistently highlighted the heightened vulnerability of youthful offenders. For example, while youth under the age of 18 represented only one percent of jail inmates, youth represented 21 percent of all substantiated victims of inmate-on-inmate sexual violence in jails in 2005 and 13 percent in 2006.⁴ The National Prison Rape Elimination Commission noted that “more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse.”⁵ In order to address this, the final PREA regulations include specific protections for youth including a requirement that youthful inmates be housed in units where no contact will occur with adult inmates in a “common space, shower area, or sleeping quarters.”⁶ Outside of the housing units, youth must either be completely sight and sound separated from adult inmates or there must be direct staff supervision.⁷ PREA directs agencies to make best “efforts to avoid placing youthful inmates in isolation to comply”⁸ and requires meaningful review before isolation can be used.⁹ Additionally, PREA requires that absent exigent circumstances, facilities must offer youth the opportunity to participate in daily exercise and any legally required special education services.¹⁰ The North Carolina Constitution guarantees the “right to the privilege of education.”¹¹ Young people, including youthful

¹ 42 U.S.C 15609(7).

² See 28 C.F.R. §§ 115.14(a)-(c).

³ See 28 C.F.R. § 115 (effective date August 20, 2012; 28 C.F.R. § 115.401 (explaining the audit cycle beginning Aug. 20, 2013).

⁴ Beck, A.J., Harrison, P.M., Adams, D.B. (2007, August). *Sexual Violence Reported by Correctional Authorities, 2006*; Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics; Beck, A. J., Harrison, P.M., Adams, D.B. (2007, August). *Sexual Violence Reported by Correctional Authorities, 2005*; Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

⁵ National Prison Rape Elimination Commission, Report 18 (June 2009), available at <http://www.ncjrs.gov/pdffiles1/226680.pdf>.

⁶ 28 C.F.R. § 115.14(a).

⁷ *Id* at § 115.14(b).

⁸ *Id* at §115.14(c).

⁹ *Id* at § 115.43 (a) (requiring that prisoners places in solitary without an assessment of all available alternatives and a determination has been made that no available alternative means of separation is available).

¹⁰ *Id* at §115.14(c).

¹¹ N.C. CONST. art. I, § 15.

inmates, are therefore legally entitled to basic educational services even while incarcerated. Absent exigent circumstances, your facility is responsible for providing access to these services to the extent possible. Failure to comply with these national standards not only puts youth confined in jails at risk, but it also puts facilities at risk of liability should an incident occur.

In order to come in to compliance, your facility has no doubt needed to evaluate staffing plans and video monitoring, as well as adopt a variety of new policies and likely schedule an audit to confirm compliance. Under the North Carolina Public Records Act, N.C. Gen. Stat. § 132-1 we are requesting the following records related to PREA compliance:

- A copy of any written policies and staffing plans adopted to comply with PREA or, if a policy has not been adopted, any plans for such a policy or an explanation of why a policy has not been adopted;
- All documents related to policies, practices, and protocols on how offenders or detainees under the age of 18 are housed in the County Jail, including any intake instruments and policies regarding the use of solitary confinement or other form of isolation or segregation housing for youth;
- All records, including, but not limited to, all documents, papers, letters, emails, books, tapes, photographs or diagrams, films, recordings, staff training records and curriculum materials and other material developed for or describing policies, protocols, and evaluations performed as a result of the County Jail's (1) compliance with the requirements of PREA; (2) compliance with federal sight and sound separation requirements for youthful offenders; and (3) detention of youthful offenders;
- Any schedule of the audits planned for the County Jail over the next three years as well as contact information for the auditors.

Please provide your response to this request by February 14, 2014. In the event that your Office has yet to adopt policies to comply with PREA, please let us know if we can be of assistance in preparing proper guidelines for the treatment of youthful offenders in custody.

Best regards,

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