



Department of Public Safety and Correctional Services

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Testimony of Gregg Hershberger, Secretary, Maryland Department of Public Safety and Correctional Services to the Review Panel on Prison Rape

Testimony as prepared

Introduction

Mr. Chairman, members of the committee:

Thank you for inviting me to testify today. My name is Gregg Hershberger, and I am Secretary for the Maryland Department of Public Safety and Correctional Services. I have with me today, Jail Administrator Ricky Foxwell, who oversees the Baltimore City Detention Center, or BCDC. In addition to Jail Administrator Foxwell, in attendance are Chief of Staff Rhea Harris, who is our PREA Coordinator, and our Internal Investigation Unit Director Mark Carter.

As you may be aware, I am only a month new to this position. I was previously Deputy Secretary of Operations for the Department.

Sexual assault and rape inside prisons is not a new issue but it is one which this Department takes extremely seriously. As a former warden, I know firsthand the importance of this issue.

Let me be clear – this Department does not tolerate sexual contact between its staff and the detainees and inmates in our custody. It is for this reason that we are concerned about the survey's reported prevalence of staff – on –inmate sexual assaults in the Baltimore City Detention Center.

To provide a bit of background, Baltimore City Detention Center has the capacity to house approximately 3,000 detainees and local inmates. The majority of detainees are male. It is the 18th largest jail in the United States by average daily population and is uniquely the only major metropolitan jail that is run by the State agency rather than a county or city. The core of the facility was built in 1859 and received some remodeling and upgrades between 1950 and 1970. However, the

fundamental design of the facility is based on 19th Century prison philosophy. Approximately 600 correctional officer staff are employed in the facility.

The Report

As I have already stated, the report indicates that detainees who are housed at BCDC reported a higher rate of sexual assault by staff members when compared with other facilities surveyed. While we cannot extrapolate figures of the prevalence of *reported* assaults from the survey, we do know that our internal investigative unit received reports of six sexual assaults between calendar years 2011 and 2012 during the same time period.

Of these reported incidents, only two involved staff assault; and only one report was sustained for sexual assault. The other could not be sustained for sexual assault but received an administrative finding for fraternization; the sexual assault cannot be sustained because the parties are unwilling to admit their sexual relationship. The remaining four incidents investigated were all inmate-on-inmate assaults. Of these four investigations, two reports were unsubstantiated and two were unfounded.

Obviously, the large disparity between the survey's reported figures and the internal reported figures suggests that this is not the entire picture. Inmates may not feel they have the adequate resources to report sexual assault to the Department for investigation.

In response to the required PREA standards, the Department created a PREA hotline for inmates to call. The hotline answering services in which inmates/detainees can record a discreet message. The hotline messages are being monitored by an external agency, the Life Crisis Center, which reports calls regarding sexual assault.

The PREA hotline began in June 2013 and as of December 2, 2013, 112 calls have been received. Please note that this updates the prior reported figures in our October testimony submitted to the panel. Most of the calls do not involve actual allegations of any sexual assault but are generalized grievances about the conditions of confinement. An overwhelming number of calls come from the Maryland Correctional Institution for Women – the only large facility for women in the state - but a few come from the detention facilities. Some of the calls from the detention facilities have led to seizures of contraband, i.e. tobacco, etc.

Any call or report that alleges sexual assault by a staff member or an inmate – including consensual sex between staff and an inmate – is investigated by our internal investigative unit. Our IIU is comprised of certified police officers; and as such, all have been trained on procedures used to respond to sexual assaults. Today,

all new IIU detectives receive specific PREA training as part of their initial training and on-the-job training.

Each investigation – regardless of whether it involves an inmate or staff sexual assault – involves a thorough investigation. It can involve:

- Sexual assault examination of the victim (a forensic examination by a SAFE/SAN Nurse)
- Interviewing the victim
- Examination of clothing, linens, and other property for evidence, which is collected and analyzed as appropriate
- Witness interviews
- Review of institutional reports, including serious incident reports
- Review of video evidence, if available in the facility
- Interviews of suspects
- DNA collection, if applicable
- Reviewed by local state’s attorney for criminal charges, if appropriate

Each investigation ends in a report. If an allegation is substantiated by the investigation, criminal charges would be filed in addition to administrative charges by the Department, against the staff or an inmate.

PREA Compliance

The Department also continues to make progress in implementing PREA standards. By our own internal assessment, we have achieved compliance with the majority of PREA standards as issued in 2012. The PREA Coordinator and Compliance Managers for each facility have worked towards implementing policies and procedures for “zero tolerance.”

We have also developed and tested a screening tool for victimization. The screening will be used in our six direct intake facilities across the state.

The Department sent three of our auditors to US DOJ Audit training in November 2013. These trained auditors will be made available of circular auditing with four other states and DC in our agreement to assist each other. The other states being considered are Virginia, Delaware, West Virginia, and Pennsylvania. The Department is taking the lead on negotiating this agreement. This agreement will help defray the costs of auditing for each of us.

As you know the PREA standards require that we audit one-third of our facilities by August 2015. We are vigorously implementing and tracking compliance

to new policies and procedures in preparation of pre-audits in the Spring. By March 2014, we expect to begin pre-audits of our facilities for PREA compliance. By this time, we expect all policies and standards to be fully in place and operational.

Governor O'Malley is to make a statement about the State's Compliance status this month.

BCDC Improvements

BCDC has obviously been in the news for the indictment of 27 correctional officers as part of a long standing investigation of corruption by the Maryland Prison Task Force, collaboration between the Department, the US Attorney for the District of Maryland, the FBI, Maryland State Police, Baltimore Police, and numerous other federal, state, and local partners. The Task Force was formed as a direct result of our efforts to combat gangs within the Maryland prison system.

Since the original indictment, the Department has taken steps to significantly improve the security of the facility and crackdown on corruption.

- We have repaired and replaced the camera system, upgrading it to provide 45 or more days of recorded, high definition digital surveillance of the facility. Now, over 280 cameras monitor the facility
- We have almost completed installation of managed access technology, which will prevent contraband cell phones from being useful within the confines of the facility
- We now perform additional random searches on 30 staff and 30 cells in addition to standard entry security procedures.
- Streamlining intelligence and investigation personal under IIU and Mr. Carter
- Rotating front-entrance personnel between facilities to decrease familiarity

Other changes include new leadership at the facility – including Mr. Foxwell – and using fingerprint devices to validate the identities of visitors.

As a result of these changes, BCDC is a better facility than it was in April. We will continue to make changes – including legislation that the Department will introduce in the upcoming legislative session.

This concludes my testimony and I would be happy to answer any questions you have.