



**JUST DETENTION**  
INTERNATIONAL

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**RAPE IS NOT PART OF THE PENALTY**

Comments Submitted to the Department of Justice  
Notice of Proposed Rulemaking on  
National Standards to Prevent, Detect, and Respond  
to Prison Rape

Docket No. OAG-131; AG Order No. 3244-2011

April 4, 2011

**Appendix C**

***List of Provisions in the Department of Justice's  
Proposed National Standards to Prevent, Detect, and Respond to Prison Rape  
that are Missing from Immigration and Customs Enforcement's  
Proposed 2010 Performance-Based National Detention Standards (PBNDS) Provision 2.11<sup>e</sup>***

1. PBNDS 2.11 does not detail how a detainee can report abuse. As a result, it is unclear whether there are multiple reporting options (§ 115.51) or if any of them accommodate inmates with special needs (§ 115.15). PBNDS 2.11 also does not provide for third party reporting (§ 115.54).
2. PBNDS 2.11 does not provide for agreements with outside public entities and community service providers (§ 115.22), nor do detainees have access to confidential support services (§ 115.53).
3. PBNDS 2.11 does not provide for confidential staff reporting (§ 115.51(d)), nor does it detail staff responsibilities in the aftermath of a report, other than to say staff should follow facility policies (§§ 115.61-115.63).
4. Aside from stating that retaliation will not be tolerated, PBNDS 2.11 does not detail any efforts that must be made to ensure that retaliation does not occur. (§ 115.65)
5. PBNDS 2.11 does not detail who conducts criminal investigations and, if facility officers are not empowered to do so, what the policy is for contacting the appropriate legal authority and ensuring that criminal and administrative investigations are coordinated. (§ 115.23 and § 115.71). The PBNDS also does not provide for detainees to be informed of key actions in an investigation/prosecution (§ 115.73).
6. There is no specialized training for investigative and medical/mental health staff in the PBNDS 2.11 (§ 115.34 and § 115.35).
7. The screening portion of PBNDS 2.11 does not include the risk factors delineated in § 115.41.
8. PBNDS 2.11 does not discuss how screening information would be used (§ 115.42), particularly (a) whether a detainee's own assessment of vulnerability will be given serious consideration and (b) whether there will be a case-by-case assessment for transgender or intersex detainees to consider whether placement in a facility for male or female detainees would best ensure the health and safety of the detainee without imposing undue management or security problems.

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<sup>e</sup> While ICE's 2010 Performance-Based National Detention Standards are not yet publicly available, they were leaked to the Houston Chronicle in October 2010 and temporarily made available on its webpage.

9. PBNDS 2.11 does not provide for incident reviews (§ 115.86) or outside audits (§ 115.93).
10. PBNDS 2.11 does not cover background checks for staff in hiring and promotion decisions (§ 115.16).
11. PBNDS 2.11 does not provide for unannounced rounds conducted by intermediate or higher supervisors in facilities with more than 500 inmates (§ 115.13(d)).
12. While the PBNDS states that there should be a sexual assault coordinator at each facility, it does not provide for an upper-level agency-wide PREA coordinator (§ 115.11(b)).
13. The use of protective custody as a means of protecting detainees (§§ 115.43, 115.66) is not sufficiently addressed in PBNDS 2.11.