



Risk of Sexual Assault and Applicability of PREA to Unaccompanied Children in Immigration Custody

Prior to 2003, unaccompanied alien children (UAC) were held in INS custody (which was under the Department of Justice at that time). In March 2003, the Homeland Security Act (HSA) transferred responsibility for care and custody of unaccompanied alien children from the former INS to the Department of Health and Human Services (HHS). The Division of Children's Services (DCS)¹ is the office within HHS' Office of Refugee Resettlement that directly services this population. Children in the custody of DUCS may be housed in residential shelters, staff secure and secure facilities and a small number are placed into DCS' contracted foster care homes. While approximately 60% of UACs are eventually reunited with family or sponsors and released to the community, DCS has custody of approximately 8000 UAC's a year for an average length of stay of 90 days. Forty percent remain in custody throughout the duration of their immigration case. Despite the transfer of custody, DHS retained prosecutorial authority over UAC and remains responsible for apprehending, screening and repatriating UAC.

As noted above, many of these children are held in shelters or other staff secure or secure facilities contracted by DCS. Staff secure and secure facilities are regularly the same juvenile detention or delinquency facilities used in the criminal or juvenile justice system. DCS shelters are locked facilities, usually surrounded by fences and concertina wire, in some cases children are even locked in their rooms at night. Access to the outside world is extremely limited. Phone calls are limited to pre-approved individuals and telephone numbers. Children in these facilities are not free to leave the facility and despite the terminology, are clearly confined. UAC in all forms of custody are particularly vulnerable to sexual assault while in DCS custody. In addition, many, especially girls, are past victims and as such are in need of identification and care. DCS estimates that approximately 80% of UACs have experienced some form of physical or sexual abuse prior to their custody. In particular because the majority of children in immigration proceedings has no attorney and often face language and cultural barriers, there is no systemic access to advocates or guardians. Additionally, unaccompanied children in DCS custody have by definition no parent or guardian available or able to care for them; few have anyone from whom they can seek guidance and advice if they have been victims.

The need to extend PREA to HHS is evidenced by numerous documented incidents of abuse.² Following allegations of repeated sexual, physical and emotional abuse of children at the Away From Home, Texas Sheltered Care Facility in Nixon, Texas, a staff member was arrested and subsequently convicted of sexual assault involving a child at the facility. Advocates at the local and national level

¹ Formerly the Division of Unaccompanied Children's Services (DUCS)

²²See "*Halfway Home: Unaccompanied Children in Immigration Custody*", Women's Refugee Commission at www.womensrefugeecommission.org.

told Women's Refugee Commission that there had been warning signs of these incidents for over a year, but their efforts to communicate their concerns to DUCS went unheeded. In contrast, the benefits of appropriate staff training and procedures are evidenced by an incident at the Crittenton facility in California. A Crittenton staff member was found to have sexually abused an unaccompanied child in DCS custody. The facility took immediate and appropriate action.

In order to appropriately protect UACs in immigration custody, PREA must apply to both DHS and HHS custody. PREA defines a prison as "any confinement facility of a Federal, State or local government, whether administered by such government or by a private organization on behalf of such government." These shelters run by ORR fit the definition of prison and should be subject to PREA. A zero tolerance policy and appropriate preventative and responsive measures must be implemented uniformly in all facilities. Failure to extend PREA to the DCS' population would create the same inconsistency that presently exists for adults in civil immigration detention who enjoy PREA protections while in criminal custody but lose those protections once transferred to immigration detention.