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RICK PERRY  
GOVERNOR

March 28, 2014

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice (DOJ)  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Dear Attorney General Holder:

The Prison Rape Elimination Act (PREA) was passed in 2003 to prevent sexual abuse in federal, state and local lock-ups, jails and prisons. The intent of PREA is commendable. Sexual assault, including assaults in correctional facilities, is unacceptable, and all reasonable steps must be taken to prevent it.

No one argues against PREA's good intentions; however, DOJ recently adopted rules making it impossible for Texas — and, I suspect, other states — to comply with PREA.

The rules appear to have been created in a vacuum with little regard for input from those who daily operate state prisons and local jails. They are inconsistent with other federal laws, such as labor laws and the Juvenile Justice and Delinquency Prevention Act (JJDP Act), mandate staff ratios that impose substantial financial burden on communities and impose compliance dates impossible to meet.

PREA's ill-conceived standards on cross-gender viewing would likely cause the Texas Department of Criminal Justice (TDCJ) to violate state and federal labor laws that prohibit discrimination based on gender. Approximately 40 percent of TDCJ correctional officers at male units are female. Because PREA standards prohibit most cross-gender viewing, TDCJ would be compelled to deny female officers job assignments and promotion opportunities, simply based on their gender. A consultant referred to TDCJ by the PREA Resource Center absurdly suggested that TDCJ solve this problem by removing security cameras and obstructing lines of sight. That is ridiculous. Doing so would not only be a security risk for both prisoners and staff but also increase the likelihood of assaults taking place, defeating the intent of the law.

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PREA also infringes on Texas' right to establish the state's own age of criminal responsibility. That age in Texas is 17. PREA, unlike the JJDP Act, which recognizes each state's age of full criminal responsibility, makes no allowance for differences among the states. PREA sight and sound separation standards would require Texas to separate 17-year-old adult inmates from 18-year-old adult inmates at substantial cost with no discernible benefit to the state or its inmates.

PREA standards also set specific staffing ratios for juvenile detention facilities different than the state's current rate. While this ratio may be ideal in some facilities, the decision of what constitutes appropriate staffing ratios should be left to each state and to those professionals with operational knowledge. One of Texas' 254 counties has said that compliance with this standard would require them to hire 30 more detention officers. That is an unacceptable cost for a small county with a limited budget.

Instead of waiting for Washington to act, Texas has devoted considerable resources to eliminating sexual assaults in correctional facilities. Since 2001, TDCJ has started the Safe Prisons Program, created and tested zero tolerance policies, added additional video surveillance, established a PREA ombudsman and developed comprehensive sexual assault training for staff and offenders. The Texas Juvenile Justice Department (TJJD) has conducted extensive vulnerability assessments, established zero tolerance policies, enforced same-gender pat and search policies, added more video surveillance systems and trained staff and offenders. TJJD has also created Sexual Abuse Review Boards in each of its facilities to review incidents of sexual abuse. Texas did this on its own without waiting for a federal mandate. Between 2011 and 2012, Texas saw an 84 percent decrease in the number of allegations of non-consensual sex acts among offenders confined in TJJD and a 10 percent reduction at TDCJ facilities in the same time period.

PREA standards also mandate that by May 15, 2014, the governor of each state must certify, under threat of criminal penalties, that *all* facilities under the governor's control are compliant with PREA standards. Texas has approximately 297 facilities subject to PREA, including 164 lock-up facilities. PREA requires one-third of these facilities to be audited each year, yet no audit tool for lock-ups has even been developed. There is no way that I will certify compliance for facilities that have not even been audited. The compliance and certification deadline is further complicated by the fact that PREA requires states to conduct audits by PREA-certified auditors. There are only about 100 PREA-certified auditors nationwide, and the first of those were not certified until late 2013.

Even if the manifest problems with PREA standards I laid out above did not exist, I cannot and will not certify as true those things for which I do not have facts.

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Washington has taken an opportunity to help address a problem in our prisons and jails, but instead created a counterproductive and unnecessarily cumbersome and costly regulatory mess for the states.

I encourage the administration to change these standards and do so soon. Absent standards that acknowledge the operational realities in our prisons and jails, I will not sign your form and I will encourage my fellow governors to follow suit. In the meantime, Texas will continue the programs it has already implemented to reduce prison rapes.

Sincerely,

A handwritten signature in black ink that reads "RICK PERRY" in a cursive, all-caps style.

Rick Perry  
Governor

RP:cbp

cc: The Honorable David Dewhurst, Lieutenant Governor, State of Texas  
The Honorable Joe Straus, Speaker, Texas House of Representatives  
The Honorable John Whitmire, Chairman, Texas Senate Criminal Justice Committee  
The Honorable Abel Herrero, Chairman, Texas House of Representatives,  
Criminal Jurisprudence Committee  
Mr. Mike Griffiths, Executive Director, Texas Juvenile Justice Department  
Mr. Brad Livingston, Executive Director, Texas Department of Criminal Justice  
Colonel Steve McCraw, Director, Texas Department of Public Safety  
Texas Congressional Delegation