



## American Jail Association

1135 PROFESSIONAL COURT | HAGERSTOWN, MD 21740-5853 | PHONE: 301.790.3930 | FAX: 301.790.2941

### Testimony of Chief Deputy Mitch Lucas

Thank you for allowing me to represent the American Jail Association and participate in the critical work of this panel. I believe I speak for all jail professionals when I say that every effort should be made to combat sexual assault and victimization in the jails of this country. While we all recognize the importance of protecting inmates from such abuse, we also understand that given the number of jails, the complexities of individual jail cultures, and insufficient funding realities, it will be difficult for many jails to achieve positive results. Having said that, the work of this panel over the past few years shows that while some jails are struggling in their efforts, others are doing substantially better, implementing measures, programs, and policies and procedures that have reduced the number of sexual assaults on inmates in their facilities. What causes such a vast disparity of success in this regard? In the simplest discussion of the issue, there are three main obstacles that jails face when attempting to make changes in their operations to reduce the sexual victimization of inmates. These are funding, attitude, and culture. Unfortunately, each can compound the effects of the others.

Even before the current economic crisis, jails have struggled with being underfunded by local governments. Typically, the cost of running a jail is one of the largest expenditures of local government. The jail provides services to a population that has little political power, evokes little sympathy from the public, and carries a stigma which causes groups that do have political influence to shun them for fear of being associated with criminals. The majority of inmates in American jails are pre-trial and have not been convicted of the charges they face; however, most people believe that anyone who gets arrested deserves the punishment of incarceration, and any bad things that happen to them while incarcerated are justified by the inmate's alleged criminal behavior. Unfortunately, it is not uncommon to find this thinking among members of legislative bodies that fund local jails. In the current fiscal environment, most jails are facing funding cuts, even to the point of closing facilities and laying off detention staff. Obviously, there is little available funding for improving the institutional environment of inmates, even for something as important as protecting inmates from sexual abuse. A jail administrator who has a strong desire to address the problem may find his efforts frustrated by the authority to which he reports.

Those of us who are jail administrators, rarely work for people who have firsthand knowledge of jail operations. Like many in my position, I was a law enforcement officer before I became a jail administrator. After 23 years of law enforcement experience, I thought I had a basic understanding of jail operations; however, after being promoted to jail administrator I quickly discovered I was very much mistaken. Such is the case with many elected sheriffs. Most come from a law enforcement background, and in many cases focus the majority of their energy on the law enforcement responsibilities of the office. Greater emphasis is placed on the services provided directly to the public, rather than the more latent responsibilities associated with jail opera-

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tions. When funding is scarce, law enforcement services provided to the public are usually considered more critical than jail services provided to inmates. Sheriffs and other local law enforcement figures are not alone in this mentality. Typically, public safety grants made available by State and Federal sources tend to focus on police services, while almost none are being distributed for jail purposes.

In jails operated by county or municipal governments instead of an elected sheriff, basic jail operations may be even less understood. The jail administrator in those cases work for people who usually have no experience in law enforcement or jail operations. The jail administrator has to convince the local government administrator of the need for funding, and in most cases, then plead his case before the legislative body responsible for funding government activities. This same legislative body is also trying to decide how much money to allocate to other county or local government services. In essence, they must decide to spend money on maintaining the quality of citizens' lives or the welfare of jail inmates. In all my years of public service, and the countless meetings of city, county, and State legislative bodies I have attended, I have never witnessed a citizen speak on behalf of inmate welfare or to ask that jail conditions be improved.

What does this mean for local jail managers trying to make their facilities safer for inmates? It means for the most part we will have to manage the problem with existing funding, existing facilities, and existing manpower. In many cases, jail staff are working in facilities that needed to be replaced decades ago, that were not properly maintained, and that are vastly overcrowded, making an already hazardous work environment even more dangerous. This is another example of jails being a very low priority to some local governments and ignoring the fact that such conditions can be directly linked to inmate sexual assault and abuse.

Outdated physical plants are notorious for offering concealment, poor lighting, and security systems that focus on perimeter integrity rather than on activities occurring within the facility. This environment creates conditions that can be exploited by staff members who are intent on sexually abusing inmates and inmates who want to leverage their willingness to provide sexual favors for preferential treatment. Overcrowding provides predatory inmates increased opportunities to victimize others. In an overcrowded jail it is not uncommon to find cells in the booking area housing a greater numbers of inmates than the cells were designed to hold. Typically, the inmates in these cells were not properly classified; therefore, the predators are held with the prey who, if properly classified, would be kept separate. Additionally, because of the overcrowded conditions, direct observation by detention staff is limited. Predatory inmates may also find other inmates who are willing to help conceal the sexual assault and even participate as a reward for their assistance. Similar situations are found in overcrowded housing units that do not utilize direct supervision.

Who protects inmates in these conditions? In most cases, it is the detention officer who is paid less than the law enforcement officer in the same community and, in many cases, in the same



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agency. It is not uncommon to find the minimum qualifications for employment less stringent for detention officers than their law enforcement counterparts. Even in agencies where the hiring requirements are similar, the State's basic certification requirements for detention officers are less rigorous than those for law enforcement officers. In my own State of South Carolina, the State academy class for basic law enforcement officer certification is 12 weeks long, whereas for detention officers it is just 3 weeks. In spite of that, I consider jails in South Carolina to be fortunate. We have State-mandated minimum standards for local jails, with a fairly robust State jail inspection department. Seventeen States have **no** minimum standards for jails, and in some States that do have standards, the jail inspection process is either weak or non-existent. I am not suggesting that the quality of detention officers in this country is such that preventing sexual abuse of inmates is beyond their capabilities. To the contrary, a common attribute among detention officers is the ability to perform important functions that are critical to the safety of the public and inmates alike with little in their favor except pride, camaraderie, a personal commitment to serving the public, and hopefully a professional jail management team that follows modern detention practices.

As proven, some jails have the strong leadership, dedicated staff, and the resources necessary to effectively respond to the problem of inappropriate and illegal sexual abuse of inmates. Others simply cannot develop a plan of action because they are unable to juggle their budgets to pay for the training, enhanced recruiting processes, and improved inmate classification, as well as how to make better use of their surveillance equipment or separate potential victims from possible perpetrators because of poor facility design. The critical component for all successful programs that protect inmates from sexual abuse is an administrator or director committed to a zero-tolerance policy with a command staff of the same mindset, thus imposing that philosophy on the entire facility. Whether the facility is large or small, the leadership must provide the example and enforce the zero-tolerance policy in a fair and even-handed manner.

It may sound as though I am attempting to persuade the panel that most jails cannot take the steps necessary to prevent inmate rape and abuse. I can assure you that is not the case. I know there are a number of jails in the United States who are successfully preventing sexual assaults and victimization of inmates and who were successfully protecting inmates before this panel was convened, although I am sure the recent focus on the issue has enhanced their efforts. I am convinced that while jail professionals want to protect those who are in their custody from sexual abuse at the hands of either staff or predatory inmates, many times their efforts fall short. So the question remains, what causes these alarming disparities? Allow me to discuss the seven "Best Practices to Lessen the Risk of Rape in U.S. Jails" identified in the *Report on Rape in Jails in the U.S.*, published by the U.S. Department of Justice in 2008.

### **Training for Staff and Inmates**

Policies that establish the importance of protecting inmates from sexual abuse are already available in many jails and can be developed for those others that do not have up-to-date writ-



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ten policies. However, it is not uncommon to find small- and even medium-sized facilities that have no written policies and procedures. Providing expanded initial training and additional in-service training is difficult for many jails due to the expense and, unfortunately, because training is one of the first casualties of budget cuts. In other jails there are no training staff or existing training programs, especially those jails in States that do not have training requirements.

The Justice Department report suggests that PREA training include the testing of staff and provide “meaningful career consequences for those who repeatedly fail such testing.” In order to utilize such repercussions, the testing firsts has to be validated by an independent source, such as a State training academy, to pass muster with existing labor laws as well as labor unions.

Educating inmates on the facility’s policy of zero-tolerance of sexual abuse is achievable in most facilities. Although providing each inmate with written material could be cost prohibitive, simple posters explaining what kinds of behavior are not acceptable and how to report any abuses can certainly be utilized. Videos produced by most jails are of low quality and difficult to watch. Professionally produced videos are more effective, but the cost can be prohibitive. It goes without saying that all volunteers and vendors who work in the jail should be aware of the jail’s zero-tolerance stance on the sexual abuse of inmates and should receive training similar to that of detention staff.

“Pointing out the high-risk areas and times in the facility” to inmates would not be well received by staff, particularly if it is directed towards staff as the perpetrators. Many staff members would feel such information only better equips predators, and at the same time encourages false allegations for myriad reasons. Another objection to placing so much emphasis on the protection of inmates from sexual abuse is the potential for backlash from female detention staff. While most female staff readily accept that their job is to protect inmates from harm, including sexual abuse, many are angry due to the frequency that they themselves are victims of what they regard as, and is in fact, sexual abuse from inmates. Unlike some of the veteran female staff members, the younger generation female detention officer is unwilling to accept male inmates exposing genitalia and masturbating, as well as verbal sexual harassment, as part of their job. Even though such inappropriate inmate behavior is separate and apart from the objectives of this panel, female officers understandably feel slighted and may place obstacles to an agency’s attempt to eliminate sexual abuse of inmates. Because it is becoming common to find more female officers working on a shift than male officers, this concern will continue to exist. Additionally, male officers typically support the position of their female co-workers on this topic. This is a cultural issue that varies in importance from one jail to another.

As correctly identified in the Justice Department report, the most important step in developing policies and establishing effective PREA training is the jail leadership taking ownership in the overall PREA compliance effort. I believe most jail administrators will take such ownership. Such ownership is especially critical when it is necessary to change jail cultures that resist improvements meant to protect inmates.



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### Classification

Modern inmate behavior management is rooted in objective inmate classification systems. That being said, some jails do not use a classification system, while others only use a basic form of inmate separation based on current charges rather than personal information or history. Those jails using objective classification systems have the ability to incorporate the suggestions listed in the Justice Department report. However, there are many jail professionals who feel gathering so much information related to sexual orientation, preferences, and personal history is unnecessary and creates opportunities for savvy inmates to manipulate the system. With regards to interviewing inmates privately, most jail personnel are trained to ask sensitive questions in an appropriate manner, even though the physical plant may not provide for private interviews. The report also suggests that new inmates who have not been “risk assessed” be housed in a private cell. I do not believe there is a jail in this country with sufficient single-cells to even come close to accomplishing such a measure.

### Surveillance

All jails rely on the various surveillance techniques as the first-line of facility security. However, each type of surveillance has its strengths and its weaknesses. Direct observation has proven to be extremely effective in direct supervision environments, such as open-bay dormitories and open booking areas where the officer is stationed in direct contact with the inmates. Unfortunately, most jails were built either before direct supervision gained acceptance or they do not have sufficient numbers of inmates in each classification level or type to justify direct supervision. Direct observation is not as effective in housing units where cells have solid doors and only a small window to observe the interior of the cell. Likewise, direct observation can be ineffective in the control room model that requires an officer to keep more than one housing unit under observation, sometimes with the housing units situated in a 360-degree layout. Jails that are not designed with “line of sight” as a major component of security—and most fall into this category—are not easily modified to accommodate this technique. The cost of remodeling or rebuilding such facilities is astronomical.

Jails that utilize control rooms with remote video supervision, especially when the video is recorded and supplanted by direct observation, are certainly an improvement over those remote supervision units without video technology. Although their numbers are dwindling, there are still linear-style jails in use. Direct observation is limited to what can be seen from one side of the bars to another, whenever the housing officer is making rounds. Even if there are video cameras installed, inmates can easily block the camera view. It also can be difficult to utilize video cameras in a linear-style facility because toilet facilities may be exposed to the entire housing unit. This issue also effects video observation of cells with toilets.

If a jail is utilizing video technology, in either remote supervision housing units or a central control room, there must be sufficient manpower to constantly observe and operate the equipment. Aside from the initial expense of the equipment, these manpower costs place the use of



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such excellent technology out of reach for many jails. Additionally, expanding existing video capabilities entails more than simply installing more cameras, as IT equipment and recording devices have finite capabilities. Certainly a new jail being designed should consider the value of expanded video technology.

If designed properly, video can prevent strip search rooms from becoming probable locations for sexual abuse from staff. The strip search can occur behind a curtain or partition, with the camera focused on the officers who are standing in plain view and conducting the strip search, rather than behind the curtain. Adding audio-recording capabilities increases the cost, but is invaluable in determining if inappropriate comments were made while the inmate was undressed.

The Department of Justice report is absolutely correct that all strip searches should be conducted by detention officers of the same gender as the inmate being searched. There are few “emergencies” that require cross-gender strip searches. In most cases, time is not a critical element. If the inmate is acting hostile or the officers feel the inmate can potentially reach the suspected contraband, the inmate can be placed in an emergency restraint chair, or otherwise restrained, until a sufficient number of officers of the appropriate gender can be brought to the strip search room.

Any jail using video systems, especially those using video to cover the entire facility, needs to identify blind spots and make every attempt to mitigate their risk.

I believe installing “secret” video cameras does more harm than good. Given the nature of detention staff, most consider such “spying” equipment as proof the jail leadership does not trust them and are looking for reasons to persecute them. Jail staffs can be very close-knit and jail management should avoid contributing to an “us against them” mentality. I believe the ensuing resentment towards such secret techniques would adversely affect the overall effort to protect inmates from sexual abuse.

### Reporting

No part of a jail’s efforts to prevent sexual abuse of inmates is more affected by individual jail culture than the reporting component. Jail culture can adversely affect every level of reporting sexual abuse. Some examples of the role culture plays in reporting might be:

- The inmate who is either victim or witness must decide how their life will change in the jail if he/she reports an officer for sexual misconduct.
- Even though technically an inmate cannot consent, a victim who agrees to have sex with a staff member may feel they have more control of their conditions of incarceration if they provide sexual favors.



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- An officer who suspects a co-worker of having an inappropriate relationship may be hesitant to report his suspicions because of friendship, the possibility of the co-worker losing his/her job, or even the fear of becoming a pariah within the jail workforce.
- The supervisor who learns an officer is having sex with an inmate, but has known the officer for years and understands the consequences of making an official report, decides to handle the issue himself.
- The jail administrator of a small jail does not want to “ruin” an otherwise “good” employee and watch the officer’s personal life and reputation be destroyed within the community.
- The jail may have an administrator or supervisor who fears that the discovery of inmates being sexually abused “on their watch” may adversely affect his/her own career.
- The officer who, for compensation, allows predatory inmates to victimize certain other inmates or allows the predator to prostitute other inmates in the housing unit.
- In my opinion, the worst reason for not reporting is a jail culture in which staff members use willing predators to “get even” with inmates who have crossed an officer.

One cannot discount any of the human factors listed above or those not mentioned. Most jails are in smaller communities and the impact of a staff member being terminated or arrested for sexual involvement with an inmate carries enormous social implications within those communities.

Once again, whether in the small town or a large metropolitan area, the remedy for all this is strong leadership and zero-tolerance for sexual misconduct in the jail. Proper reporting will not occur if strong leadership and enforcement of laws and policies does not exist. Jail management should use simple and understandable methods to inform inmates of how to report sexual abuse, no matter who the perpetrator might be. As the Justice Department report states, there should be an effective tracking system for inmate grievances and victim complaints. Because of the dynamic nature of jail populations, some inmates may report sexual misconduct or assault, then be released from custody before the facility can respond. The release of the inmate victim does not relieve the jail’s responsibility to investigate the allegation. Telephone hotlines, especially in the booking area, are a good idea, as are computer kiosks in the housing units, which are becoming more prevalent in jails. The kiosk allows the inmate to submit grievances and other communication to various points of contact without the assistance or interference of staff. The tracking system must be centrally managed, either by a command staff member or the internal affairs unit, to ensure consistency. If an inmate personally reports the abuse to an officer, the officer should notify a supervisor immediately and submit a written report. If an inmate is afraid to make report sexual abuse, and the technologies discussed are not available, an inmate who was sexually abused, or is fearful of being abused, can notify any member of the jail leadership via the U.S. Postal Service. Correspondence from inmates should be date stamped and opened only by the addressee.



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In most jail cultures, the jail administrator and senior staff eating their meals with inmates is difficult for detention staff to accept and would adversely affect the facility's overall efforts to combat inmate sexual assault. Likewise, placing supervisors' offices in the middle of housing areas undermines the authority of the housing officers. Finally, if a local jail has so many sexual assaults that a site map identifying crime scenes is necessary, there are systemic problems so severe outside that technical assistance should be sought immediately.

### Investigation

Some law enforcement agencies and prosecutors are reluctant to prosecute jail sexual misconduct cases for any number of reasons. A number of them believe that jails are their own separate society and the detention staff provides all government services, including law enforcement and courts. In other cases, law enforcement and prosecutors simply are not familiar with the laws that cover inappropriate conduct of staff. In the last six years, the jail I manage has had three reported cases of sexual misconduct that rose to the level of violating an existing State statute. During the last two investigations, neither investigating officers or the prosecuting attorneys were aware that South Carolina has a specific statute that carries a sentence of up to 10 years for sexual misconduct with an inmate. After jail staff intervened, appropriate arrest warrants were obtained in both cases and arrests were made.

First and foremost, sexual abuse or assault of inmates by anyone is a crime, and should be treated the same as a sexual abuse or assault that occurs outside of a custodial environment. If there is reason to believe an inmate has been the victim of such a crime, the first action is to notify law enforcement so that a criminal investigation may be initiated—just as anywhere else. Jail staff, untrained in advanced investigative techniques and forensics may contaminate crime scenes or otherwise compromise the investigation to the degree that the case cannot be successfully prosecuted in criminal court.

Most jails do not have sufficient, full-time medical staff who can be trained in forensic rape examination. Large jails that do have full-time medical staff, but use a private vendor, may face resistance by vendors to having their nurses and doctors trained to perform such examinations. These examinations would require time on the part of the medical personnel to testify in court, time for which the vendor would need to compensate its staff. In addition to the vendor's reluctance to become a participant in the investigation, if the facility is accredited by the National Commission on Correctional Health Care (NCCHC), collection of evidence may not be allowed under NCCHC standards. A better solution is a local hospital emergency room that has more experience in collecting evidence in sexual assault cases. The only expense to the jail would be maintaining security of the inmate during the examination. In most cases of sexual assault in a jail, the victim knows the identity of the perpetrator, and therefore a suspect sexual assault examination may be in order. Every jail should have established partnerships with organizations that provide services to victims of sexual assault, even those who have been assaulted prior to their incarceration.



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### Prosecution

Every recommendation made in the Justice Department report regarding prosecution should be followed, but I would add that the law enforcement agency charged with investigating crimes at the jail should also be included in meetings. Unfortunately, some prosecutors do not consider sexual assault of inmates, especially if the perpetrator is another inmate, the same as if the assault occurred in a non-custodial setting.

### Relevant Policies and Practices

Policies must be developed that prohibit staff from engaging in inappropriate relationships with inmates when on duty or off. The outcome to such inappropriate relationships is rarely good and may lead to officer-on-inmate sexual abuse. Policies should clearly state that:

- Sexual harassment, sexual contact, or sexual activity between staff and inmates in any form will not be tolerated.
- Staff who are aware of another staff member being involved in such activities or relationship must report them to a supervisor.
- Any incident that may be criminal in nature must be reported to law enforcement.

In addition, policies should identify/cite those State laws that prohibit such illegal behaviors.

Most jails do not allow inmates to receive or possess pornography or sexually explicit material. Most jails also attempt to segregate those inmates who are likely to be victims or perpetrators of sexual assault, yet they also try to provide the same privileges to those inmates as to the general population. However, due to the costs, it is difficult in some jails to duplicate exactly the programs available to general population inmates.

### Closing Remarks

Jail professionals in this country prove everyday that they are advocates for the safety and well being of inmates in their charge. Some risks to inmates are easier to identify and mitigate than others, and certainly protection of inmates from sexual abuse is one of the highest priorities. Although the goal of jail professionals is to improve our capabilities of protecting inmates from such abuse, the resources to do so are not available in most of jails. The federal government has taken a very positive step in contracting The Moss Group to develop the PREA toolkit and offer technical assistance to local jails. The Moss Group has partnered with key organizations like the Center for Innovative Public Policies, the National Institute of Corrections, the National Sheriffs' Association, the American Jail Association, and other stakeholders who are fully vested in the effort to provide a safer environment for inmates. The proposed PREA Resource Center website will be another tool that helps jails to strengthen their efforts to protect inmates from sexual abuse or assault in any form.



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Thank you for allowing me to testify today. It has been a privilege both personally and professionally, and I look forward to the American Jail Association remaining involved in the important work of this panel.